



Reforming the Parliamentary Threshold in Indonesia's General Elections: A Legal and *Fiqh Siyasah Dusturiyah* Perspective

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Abstract

This study examines the issues surrounding the establishment of the parliamentary threshold in Indonesian elections from 2009 to 2024, as well as the urgency of its reform, from the perspective of *fiqh siyasah dusturiyah*. The study aims to analyze the impact of the parliamentary threshold on the multi-party system and the stability of democracy and to offer solutions based on Islamic legal studies. The research employs a juridical-normative method with both a legislative and conceptual approach. Data were collected through literature studies, including legal documents, scholarly journals, and court proceedings. The study results show that applying the 4% parliamentary threshold in Law No. 7 of 2017 has led to negative consequences, such as the significant waste of valid votes and the limited access of smaller parties to the Parliament. From the perspective of *fiqh siyasah dusturiyah*, this policy does not fully align with the principle of *maslahat*, as it creates imbalances in political representation. Therefore, a threshold revision to a more rational figure, such as 1%, is needed to minimize wasted votes and reinforce the principle of democratic justice. The conclusion emphasizes that the threshold size must consider the *maslahat* (benefit) of society and align with the principles of *fiqh siyasah dusturiyah* to support implementing a more inclusive and just electoral system.

Keywords: *Fiqh siyasah dusturiyah*, General Elections, Parliamentary Threshold



Introduction

The implementation of general elections in Indonesia, held every five years, is a form of the democratic process aimed at creating justice within the country. The goal is to facilitate the peaceful, secure, and orderly transition of executive and legislative officials while ensuring the continuity of national development.¹ However, several issues emerged during these elections, including establishing the parliamentary threshold. The introduction of this threshold began in the 2009 legislative election with the implementation of Article 202 of Law No. 10 of 2008 on the implementation of elections. This article stipulates that political parties participating in the election must secure at least 2.5% of the valid votes from the total national votes recorded. Secondly, to participate in the allocation of legislative seats in the House of Representatives (DPR), the threshold was revised with the new policy outlined in the most recent version of Law No. 8 of 2012, which raised the parliamentary threshold to 3.5%. This regulation was applied nationwide to all DPR and Regional People's Representative Councils (DPRD) candidates.² This change occurred due to a legal challenge from 14 political parties, resulting in a decision by the Constitutional Court (MK) in case No. 52/PUU-X/2012, which upheld the parliamentary threshold at 3.5%. The rule was applied only to DPR candidates, while the threshold for the DPRD was removed, and this was applied in the 2014 election.

Thirdly, with the enactment of Law No. 7 of 2017 on General Elections, the parliamentary threshold was further increased to 4% in 2017. Legislative candidates from political parties that met or surpassed the 4% threshold regulated in Article 414 of Law No. 7 of 2017 were eligible to contest for seats in the DPR. This meant that political parties failing to achieve 4% of the national vote could not nominate candidates for the legislative body.

¹ Ofis Rikardo, "Penerapan Kedaulatan Rakyat Di Dalam Pemilihan Umum Di Indonesia Berdasarkan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945," *Jurnal Hukum Sasana* Volume 6, Nomor 1 (Juli 2020): 57, <https://doi.org/10.31599/Sasana.V6i1.228>.

² Ahmad Solikhin, "Menimbang Pentingnya Desentralisasi Partai Politik Di Indonesia," *Journal Of Governance* Volume 2, Nomor 1 (September 2017): 40, <https://doi.org/10.31506/Jog.V2i1.2120>.

Over time, the 4% parliamentary threshold was reevaluated for the 2024 election, as demonstrated by the Constitutional Court's decision No. 116/PUU-XXI/2023. In this ruling, the Court stated that the 4% threshold was inconsistent with the principle of popular sovereignty, election fairness, and legal certainty guaranteed by the Constitution. While the threshold was deemed constitutional for the 2024 elections, it would be subject to review for the 2029 elections.³ Despite this, the Court did not abolish the parliamentary threshold but indicated that the 4% figure was subject to re-evaluation. This ruling supports the author's argument in this thesis, as historically, the size of the parliamentary threshold has been a subject of debate and controversy during every democratic election.

Several previous studies relevant to this research include the work of M. Wahyul Amri, who highlighted the significance of the parliamentary threshold in a presidential system in limiting the number of political parties.⁴ Another study by Awanda Trisna Putri argues that the legal politics surrounding the parliamentary threshold provision do not violate the constitution, as the law grants citizens the opportunity to establish political parties.⁵ In addition, Sunny Ummul Firdaus discussed the issues surrounding the parliamentary threshold provisions for candidates for the House of Representatives under Law No. 7 of 2017 on General Elections.⁶ Sandri Saltie further explained that the changes in the parliamentary threshold in each General Election Law aim to simplify political parties and maintain government stability. The threshold in Article 414 of Law No. 7 of 2017 is seen as a government commitment to strengthening the presidential system, as a multi-party system is incompatible with a presidential system.⁷

³ Putusan Mahkamah Konstitusi Nomor 116/Puu-Xxi/2023.

⁴ M. Wahyul Amri, "Parliamentary Threshold Dalam Perspektif Siyasa Syar'iyah (Studi Uu No 7 Tahun 2017 Tentang Pemilihan Umum Pasal 414 Ayat 1)" (Skripsi, Yogyakarta, Uin Sunan Kalijaga, 2019).

⁵ Awanda Trisna Putri, "Parliamentary Threshold Dalam Pasal 414 Ayat (1) Undang-Undang Nomor 7 Tahun 2017 Tentang Pemilu Persepektif *Fiqh siyasah* Dusturiyyah" (Skripsi, Malang, Uin Maulana Malik Ibrahim, 2022).

⁶ Sunny Ummul Firdaus, "Relevansi Parliamentary Threshold Terhadap Pelaksanaan Pemilu Yang Demokratis," *Jurnal Konstitusi* 8, No. 2 (20 Mei 2016): 91, <https://doi.org/10.31078/Jk825>.

⁷ Sandri Saltiel Nae, "Analisis Yuridis Tentang Ambang Batas Parlemen (Parliamentary Threshold) Dalam Pemilihan Umum Dewan Perwakilan Rakyat Republik Indonesia Pasca Keluarnya Undang-Undang Nomor 7 Tahun 2017 Tentang Pemilihan Umum," *Lex Administratum* 9, No. 7 (1 Juli 2021).

Ady Supradi concluded that the decision in case No. 116/PUU-XXI/2023 regarding the parliamentary threshold was not based on a comprehensive legal consideration, particularly in determining the nature of the decision. The Court should have boldly declared that the judicial review of the petition was conditionally unconstitutional.⁸ Finally, Mirza Muhammad Fauzi explained that the Constitutional Court's decision in case No. 116/PUU-XXI/2023 partially granted the petition filed by Perludem, which challenged the 4% threshold in Article 414 paragraph (1) of Law No. 7 of 2017. The 4% threshold will remain applicable for the 2024 elections but will be reviewed before 2029.⁹

In contrast to previous studies, this research focuses on the issues surrounding the size of the parliamentary threshold in the election process and examines its restructuring. Additionally, it will be analyzed from the perspective of *fiqh siyasah dusturiyah* (Islamic Political Jurisprudence), which is used to examine the political aspects of legislation following the Constitutional Court's ruling on Law No. 7 of 2017 on General Elections, which calls for changes in the parliamentary threshold.

Research Method

This study is normative legal research, which focuses solely on written regulations. Another term for normative legal research is doctrinal legal research, which is also referred to as library research or document study.¹⁰ Therefore, this research is classified as juridical-normative research, utilizing both the statute and conceptual approaches. The data used in this research is secondary data, consisting of primary legal materials, such as the Election Law, which was last amended by Law No. 7 of 2017, and the Constitutional Court decision No. 116/PUU-XXI/2023.

⁸ Ady Supryadi Dkk., "Penafsiran Konstitusi Terhadap Putusan Nomor 116/Puu-Xxi/2023 Tentang Ambang Batas Parlemen," *Ganec Swara* 18, No. 1 (9 Maret 2024): 592–96, <https://doi.org/10.35327/Gara.V18i1.800>.

⁹ Mirza Muhammad Fauzi dan S. H. Moh. Indra Bangsawan, "Analisis Putusan Mahkamah Konstitusi Nomor 116/PUU XXI/2023 Tentang Parliamentary Treshold Dalam Perspektif Demokrasi" (s1, Universitas Muhammadiyah Surakarta, 2024), <https://doi.org/10/Halaman%20Depan.pdf>.

¹⁰ Pm. Agus Santoso, "Kajian Tentang Manfaat Penelitian Hukum Bagi Pembangunan Daerah," *Yuriska: Jurnal Ilmiah Hukum* 3, No. 2 (19 Oktober 2017): 1–22, <https://doi.org/10.24903/Yrs.V3i2.177>.

The secondary legal materials include research reports, journals, theses, dissertations, and other scholarly writings, while tertiary legal materials include dictionaries. The data collection technique in this study involves literature review through document collection. The gathered data will be analyzed descriptively. The data will also be analyzed using the perspective of *fiqh siyasah dusturiyah* (Islamic Political Jurisprudence).

Fiqh Siyasah Dusturiyah

Fiqh siyasah dusturiyah examines issues related to state legislation, including the concept of legislation (the process of formulating laws), democratic institutions and *syura* (consultation) are essential pillars of this legislative framework. The aim is to realize the welfare of humanity and meet human needs.

According to Abdul Wahab Khalaf, the object of *fiqh siyasah* is to create regulations and laws necessary for managing the state following the core principles of religion.¹¹ *Fiqh siyasah* is an autonomous discipline, even though it is a part of Islamic jurisprudence (*fiqh*), addressing issues such as the caliphate, *imamah* (leadership), *imarah* (authority), the titles of heads of state, the appointment and dismissal of heads of state, their qualifications, *bai'ah* (oath of allegiance), the *waliyul ahdi* (successor), the role of *ahlul halli wal aqdi* (those authorized to resolve disputes), economic matters, finance and taxation, relations between states, war and peace, the sources of power, and the form of the state, whether in historical practices or the concepts and political thinking of governance.¹²

The principle embedded in the formulation of the constitution is the guarantee of human rights for every member of society and their equality before the law, regardless of social stratification, wealth, education, or religion. The purpose of creating laws and regulations is to realize human welfare and fulfill human needs,

¹¹ Ahmad Deski, "Maqasid Syari'ah Menurut Abdul Wahab Khalaf," *Jurnal Ilmiah Al-Furqan: Al-qur'an Bahasa dan Seni* 9, no. 1 (30 Juni 2022): 203–13, <https://doi.org/10.69880/alfurqan.v9i1.59>.

¹² Adinda Dwi Putri dkk., "Fiqh Siyasah dalam Pembelajaran Islam," *MARAS: Jurnal Penelitian Multidisiplin* 2, no. 1 (23 Januari 2024): 218–30, <https://doi.org/10.60126/maras.v2i1.169>.

aligning with *fiqh siyasah's* principles.¹³ There are two main aspects in *fiqh siyasah dusturiyah*. The first is the general principles derived from the Qur'an and Hadith, *maqasid al-shariah* (the objectives of Islamic law), and the spirit of Islamic teachings regulating society, which remain constant regardless of social changes. These general principles serve as dynamic factors in transforming society. The second aspect involves rules that can change according to evolving circumstances, including scholars' results of *ijtihad* (juridical reasoning), though not all of them are subject to change.¹⁴

The concept of Parliament or the DPR (People's Representative Council) in *fiqh siyasah dusturiyah* is akin to the Islamic concept of *ahlul halli wal aqdi*. This term refers to those who have the authority to loosen or bind (resolve or undo) matters. This term can be equated with "parliament," a body of individuals who have the right to elect, bind, and dismiss the head of government.

In *fiqh siyasah dusturiyah*, members of the Parliament, or the Dewan Perwakilan Rakyat (DPR), have a parallel function to the concept of *ahlul halli wal aqdi* in Islamic governance. Both institutions serve as platforms for gathering, absorbing, and addressing public aspirations.¹⁵ The difference is that the *ahlul halli wal aqdi* is tasked with selecting the leader, while the DPR does not have such a function. In Indonesia, the head of state is directly elected through the General Election.¹⁶

In leadership selection by *ahlul halli wal aqdi*, once they convene to choose a leader, they assess which individuals meet the criteria to hold the leadership position. They prioritize those who are most qualified and complete in their

¹³ Cholida Hanum, "Perda Syariah Perspektif Ketatanegaraan dan Siyasah Dusturiyyah," *Al-Ahkam Jurnal Ilmu Syari'ah dan Hukum* 4, no. 2 (31 Desember 2019), <https://doi.org/10.22515/al-ahkam.v4i2.1530>.

¹⁴ Djazuli, *Fiqh Siyasah: Implementasi Kemaslahatan Umat Dalam Rambu-Rambu Syariah*, 27.

¹⁵ Muhammad Raka Mahendra, Paisol Burlian, dan Yuswalina Yuswalina, "Analisis *Fiqh siyasah* Terhadap Peran Dewan Perwakilan Rakyat Dalam Hukum Tata Negara Indonesia," *Muqaranah* 5, no. 2 (23 Desember 2021): 159–72, <https://doi.org/10.19109/muqaranah.v5i2.10511>.

¹⁶ Muhamad Nurul Huda, "Kedudukan dan Peran Ahl Al-Hall wa Al-'Aqd serta Relevansinya pada Kinerja DPR," *Staatsrecht: Jurnal Hukum Kenegaraan dan Politik Islam* 2, no. 1 (22 November 2022), <https://doi.org/10.14421/staatsrecht.v2i1.2527>.

qualifications, as well as those who have a good reputation in the eyes of the people, ensuring that the people will immediately pledge allegiance and not oppose them.¹⁷

The Urgency of Establishing the Parliamentary Threshold in General Elections

Introducing the parliamentary threshold is the government's initial step towards streamlining the party system in Indonesia. This aims to simplify the multi-party system in Indonesia's general elections. However, implementing the parliamentary threshold has led to the waste of votes for several political parties in each election over the years.¹⁸ This is because these political parties failed to meet the required threshold, which has changed over time.¹⁹

The percentage of the parliamentary threshold is outlined in Article 414, Paragraph (1) of Law No. 7 of 2017 on General Elections, which states that political parties participating in the election for parliamentary seats are only allowed to participate in the allocation of seats if their list of candidates receives at least 4% of the total national votes.²⁰ This provision has attracted significant attention from the Indonesian public, particularly from political parties contesting in the elections. Many parties have even resorted to filing constitutional review petitions, which resulted in 7 rulings from the Constitutional Court regarding the parliamentary threshold. For the 2024 elections, the parliamentary threshold of 4% was upheld, in line with the constitution, effectively excluding ten political parties from participating.

¹⁷ Abdul Rohman, "Konsep Pemilihan Pemimpin Dalam Perspektif Konstitusi Indonesia dan Islam," *Jurnal At-Tadbir: Media Hukum dan Pendidikan* 31, no. 2 (31 Juli 2021): 139–52, <https://doi.org/10.52030/attadbir.v31i2.78>.

¹⁸ Muhammad Yasin al Arif, "Politik Hukum Calon Tunggal Dalam Putusan Mahkamah Konstitusi dan Implikasinya Terhadap Sistem Pilkada Serentak," *Jurnal Yuridis* 3, no. 2 (28 September 2017): 98–114, <https://doi.org/10.35586/.v3i2.182>.

¹⁹ Ratnia Solihah, "Fenomena Fragmentasi Partai Politik Versus Penerapan Parliamentary Threshold Indonesia," *Jurnal Tapis: Jurnal Teropong Aspirasi Politik Islam* 14, No. 1 (16 Agustus 2018): 14–33, <https://doi.org/10.24042/Tapis.V14i1.2851>.

²⁰ Ramadhanya Sibarani, "Perbandingan Pengaturan Kuota Pemilihan Perempuan Dan Kondisi Keterwakilan Perempuan Di Parlemen: Studi Kasus Indonesia, Timor-Leste, Dan Finlandia (A Studi Perbandingan Odari Kuota Dan Ketentuan Keterwakilan Perempuan Di Parlemen Indonesia, Timor-Leste, Dan Finlandia)," *Jurnal Studi Sosial-Hukum Indonesia* 3, No. 2 (1 Maret 2024), <https://doi.org/10.54828/Ijls.2024v3n2.2>.

What draws particular attention is the case of the United Development Party (PPP), a long-established and major political party in Indonesia, which did not pass the parliamentary threshold in the 2024 election due to failing to meet the required threshold. The PPP garnered only 3.87% of the valid national votes. This indicates that the 4% parliamentary threshold is inefficient, as it is seen as too high. Moreover, the government has not subjectively justified this threshold, which, instead of simplifying the party system, leads to a monopoly among the political parties.²¹

The urgency of implementing the parliamentary threshold in the General Election Law is meant to simplify the number of political parties in Parliament. However, the impact of the threshold size should be carefully considered. The 4% parliamentary threshold in the General Election Law has led to significant legal consequences, including the monopoly of political parties, a disproportionate election outcome, and the wastage of votes. This is consistent with the judicial review conducted by Perludem, which calls on the President and the DPR (People's Representative Council) as the lawmakers to immediately amend the parliamentary threshold provision in Law No. 7 of 2017 on General Elections, formulating the threshold based on rational, mathematical calculations and ensuring that it is done transparently, honestly, and fairly according to the principles of a proportional electoral system. The parliamentary threshold is one of the key variables in determining whether an election outcome is proportional.²²

The sovereignty vested in the people of Indonesia represents a system where the people hold the highest power. This sovereignty also reflects the fulfillment of general will, which is concerned not only with the exercise of government and judicial power but also with the power to create regulations.²³ As stipulated in

²¹ Nurul Zahro Qolbu Dan Lia Wulandari, "The Impact Of The Parliamentary Threshold Policy On Small Parties: The Failure Of The Partai Persatuan Pembangunan To Meet The Parliamentary Threshold In The 2024 Election," *Journal Of Law, Politic And Humanities* 4, No. 4 (18 Mei 2024): 453–61, <https://doi.org/10.38035/Jlph.V4i4.382>.

²² Muhammad Saeful Mumin Dan Sanusi Sanusi, "Implikasi Ambang Batas Parliamentary Threshold Terhadap Kursi Parlemen," *Hukum Responsif* 11, No. 1 (26 Februari 2020), <https://doi.org/10.33603/Responsif.V11i1.5020>.

²³ Vanesa Ingka Putri Dkk., "Pelanggaran Hak Kedaulatan Bagi Rakyat Secara Sistematis Dalam Parliamentary Threshold Pada Pemilu Di Indonesia," *Al-Manhaj: Jurnal Hukum Dan Pranata Sosial Islam* Volume 5, Nomor 1 (Mei 2023): 677, <https://doi.org/10.37680/Almanhaj.V5i1.2674>.

Article 1, Paragraph (2) of the 1945 Constitution of the Republic of Indonesia (UUD NRI), it is stated that:

"Sovereignty is in the hands of the people and is exercised according to the Constitution."²⁴

Popular sovereignty is further explained through the General Elections (Pemilu) system, where public officials act as people's representatives. Elections²⁵ are not only a form of participation but also an implementation of the principle of popular sovereignty. Since the people's sovereignty is the main source of state power, regulating elections must have a dignified and democratic legal character. According to Article 1, paragraph 1 of Law No. 7 of 2017 on General Elections (UUD No. 7/2017):

"General Elections, hereafter referred to as Pemilu, are the means of the people's sovereignty to elect members of the People's Representative Council, members of the Regional Representative Council, the President and Vice President, and to elect members of the Regional People's Representative Council, conducted directly, publicly, freely, secretly, honestly, and fairly within the Unitary State of the Republic of Indonesia based on Pancasila and the Constitution of the Republic of Indonesia 1945."²⁶

This provision means that General Elections serve as a means to establish a democratic relationship between the people and the state (government). One of the state instruments related to people's representation is the legislative power, which is responsible for creating regulations beneficial to the welfare of all people in Indonesia. In this context, the Parliamentary Threshold in the electoral system is intended to simplify the multi-party system in Indonesia. As stated in Article 414, Paragraph (1) of Law No. 7 of 2017:

"Political parties participating in the General Election must meet a minimum threshold of 4% of valid national votes to be included in the determination of the allocation of seats in the DPR."²⁷

²⁴ Pasal 1 Ayat (2) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

²⁵ Ari Priyanto, Mirah Satria Alamsyah, dan M. Yasin Al Arif, "The Effectiveness of Implementing a Closed-List Proportional System in Selecting Legislative Members from the Perspective of Islamic Law," *KnE Social Sciences*, 11 Januari 2024, 433-44, <https://doi.org/10.18502/kss.v9i2.15001>.

²⁶ *Undang-Undang Nomor 7 Tahun 2017 Tentang Pemilihan Umum*, T.T.

²⁷ *Undang-Undang Nomor 7 Tahun 2017 Tentang Pemilihan Umum*.

However, the provision above can potentially eliminate the opportunity for a candidate to obtain a seat in the DPR if the political party supporting the candidate does not meet the parliamentary threshold.²⁸ This provision also results in the loss of votes, which can be seen as a loss of public aspirations. This contradicts the guarantee of human rights and leads to the emasculation of the concept of popular sovereignty.

The parliamentary threshold is a mechanism that limits political parties' participation in calculating valid votes to compete for seats in the People's Representative Council.²⁹ Historically, the application of the parliamentary threshold in Indonesia began with the 2009 General Election, as outlined in Article 202, Paragraph (1) of Law No. 10 of 2008 on General Elections, which states:

“Political parties participating in the election must meet a minimum threshold of 2.5% of the valid national votes to be included in the allocation of seats in the DPR. This provision does not apply to determining seats in the provincial and district/city DPRD.”³⁰

The establishment of the parliamentary threshold has sparked both support and opposition. Proponents argue that the parliamentary threshold is necessary to simplify the party system. In contrast, the implementation has shown the opposite, creating problems due to its irrelevance and lack of subjective justification.

After Law No. 7 of 2017 on General Elections was enacted, several citizens filed judicial reviews to challenge one of the most controversial provisions that have long been debated across election periods, namely the parliamentary threshold of 4%. The increase to 4% first appeared in the 2019 simultaneous elections.

In the process of judicial review, the issue of the parliamentary threshold is no longer new and has been the subject of approximately six decisions by the Constitutional Court regarding this provision since it was first introduced in the

²⁸ Dani Amran Hakim dan M. Yasin al Arif, “Questioning Presidential Threshold in Indonesia: Constitutional Analysis and Democracy Implementation,” *Veteran Law Review* 7, no. 1 (31 Mei 2024): 73–86, <https://doi.org/10.35586/velrev.v7i1.7591>.

²⁹ Fahri Bachmid, “Eksistensi Kedaulatan Rakyat Dan Implementasi Parliamentary Threshold Dalam Sistem Pemilihan Umum Di Indonesia,” *Sign Jurnal Hukum* Volume 2, Nomor 2 (Oktober 2021): 93, <https://doi.org/10.37276/Sjh.V2i2.83>.

³⁰ Undang-Undang Nomo Nomo 10 Tahun 2008 Tentang Pemilu Anggota Dpr, Dpd, Dan Dprd.

2009 General Election Law with a threshold of 2.5%. Some of the Constitutional Court's decisions include:³¹

1. Constitutional Court Decision No. 3/PUU-VII/2009, which rejected the petition in its entirety.
2. Constitutional Court Decision No. 52/PUU-X/2012 partially granted the petition, stating that the parliamentary threshold of 3.5% applies only to the DPR and has no legal effect on the allocation of seats in the provincial and district/city DPRD.
3. Constitutional Court Decision No. 51/PUU-X/2012, which rejected the petition.
4. Constitutional Court Decision No. 56/PUU-XI/2013 rejected the petition.
5. Constitutional Court Decision No. 20/PUU-XVI/2018 rejected the petition due to the principle of *ne bis in idem*.
6. Constitutional Court Decision No. 48/PUU-XVIII/2020 rejected the petition due to its lack of legal standing.³²

Smaller parties particularly feel the impact of the parliamentary threshold on political parties. Parties that fail to meet the threshold automatically lose their votes. Voters are left with fewer choices, as votes initially cast for parties that do not pass the threshold may be transferred to parties with ideological or programmatic similarities. However, the parliamentary threshold can also help improve parliamentary performance by concentrating efforts and allowing members of the parliamentary factions to focus more effectively on representing public aspirations. From a political rights perspective, introducing the parliamentary threshold reduces the people's right to form political parties. The right to form political parties is enshrined in Article 28 of the 1945 Constitution, which states:

³¹ Sandri Saltiel Nae, "Analisis Yuridis Tentang Ambang Batas Parlemen (Parliamentary Threshold) Dalam Pemilihan Umum Dewan Perwakilan Rakyat Republik Indonesia Pasca Keluarnya Undang-Undang Nomor 7 Tahun 2017 Tentang Pemilihan Umum," *Lex Administratum* Volume 9, Nomor 7 (Juli 2021): 183, <https://ejournal.unsrat.ac.id/V3/Index.Php/Administratum/Article/View/35240>.

³² Putusan Mk Nomor 48/Puuxviii/2020.

"Freedom to associate and assemble, to express thoughts orally and in writing, and so on, shall be regulated by law."³³

The substance of this right is further elaborated in Article 24, Paragraph (2), which affirms:

"Every citizen or group of citizens has the right to establish political parties, non-governmental organizations, or other organizations to participate in government and state administration, in line with the protection, enforcement, and promotion of human rights as stipulated in the law."³⁴

This means that establishing political parties is a fundamental human right, and any government-imposed restrictions on this right constitute a constitutional violation.

The Problematic Application of the Parliamentary Threshold in the 2009, 2014, 2019, and 2024 General Elections

The parliamentary threshold was first applied in the 2009 General Election, as stipulated in Article 202, Paragraph (1) of Law No. 10 of 2008 on General Elections. In the 2009 election, 38 political parties participated, all automatically subject to the parliamentary threshold of 2.5%. The following is the recap of the 2009 General Election results:

Table: 2009 General Election Results

Number	Political Party	Votes Obtained	Percentage (%)
1.	Democratic Party	21.655.295	20,81%
2.	Golkar Party	15.031.497	14,45%
3.	Indonesian Democratic Party of Struggle	14.576.388	14,01%
4.	Prosperous Justice Party	8.204.946	7,89 %
5.	National Mandate Party	6.273.462	6,03 %
6.	National Mandate	5.544.332	

³³ Perwujudan Politik Diatur Dalam Pasal 28 Undang-Undang Tahun 1945.

³⁴ Pasal 24 Ayat (2) Undang-Undang Tahun 1945.

	Party		5,33%
7.	National Awakening Party	5.146.302	4,95%
8.	Great Indonesia Movement Party	4.642.795	4,46 %
9.	People's Conscience Party	3.952.620	3,77 %
10.	New Indonesian Struggle Party	198.803	0,19 %
11.	Sovereignty Party	43.803	0,42 %
12.	Regional Unity Party	553.299	0,53%
13.	National Awakening Party	5.146.302	4,95%
14.	Indonesian Youth Party	415.563	0,40 %
15.	Indonesian National Party Marhaenism	317.433	0,31 %
16.	Democratic Renewal Party	896.959	0,86 %
17.	Struggle Work Party	351.571	0,34 %
18.	Sun of the Nation Party	415.294	0,40 %
19.	Indonesian Democracy Enforcer Party	139.988	0,13 %
20.	National Democracy Party	671.356	0,65 %
21.	Republic of Nusantara Party	631.814	0,61 %
22.	Pioneer Party	345.092	0,33 %
23.	People's Care Work Party	1.461.75	1,40 %
24.	Sovereignty Party	43.803	0,42
25.	Prosperous Peace Party	1.522.032	1,46 %
26.	National Bridge of Indonesian Democracy Party	468.856	0,45 %
27.	Crescent Star Party	1.864.642	1,79 %
28.	New Indonesian Struggle Party	198.803	0,19

29.	Reform Star Party	1.264.150	1,21%
30.	Patriot Party	547.798	0,53%
31.	People's Care Work Party	1.461.75	1,40 %
32.	Indonesian Democracy Love Party	325.771	0,31%
33.	Prosperous Indonesia Party	321.019	0,31%
34.	National Ulama Awakening Party	1.527.509	1,47%
35.	Independence Party	111.609	0,11%
36.	Indonesian Nahdlatul Ulama Party	146.831	0,14%
37.	Indonesian Union Party	141.558	0,14%
38.	Labor Party	265.369	0,26%
Total Votes		104.048.118	100,00%

Source: General Elections Commission (KPU) 2009

According to Article 203, Paragraph (1) and Article 203, Paragraph (2) of Law No. 10 of 2008, only nine political parties passed the parliamentary threshold. A total of 19,048,653 valid votes cast for political parties did not meet the threshold and were discarded.

Table: 2014 General Election Results

Number	Political Party	Votes Obtained	Percentase (%)
1.	National Democratic Party	8.350.812	6,68 %
2.	National Awakening Party	11.298.957	9,04 %
3.	Prosperous Justice Party	8.480.204	6,79 %
4.	Indonesian Democratic Party of Struggle	23.681.471	18,95 %
5.	Golkar Party	18.432.312	14,75 %
6.	Great Indonesia Movement Party	14.760.371	11,81 %

7.	Democratic Party	12.728.913	10,19 %
8.	National Mandate Party	9.481.621	7,59 %
9.	United Development Party	8.157.488	6,53 %
10.	People's Conscience Party	6.579.498	5,26 %
11.	Crescent Star Party	1.825.750	1,46 %
12.	Justice and Unity Party	1.143.094	0,91 %
Total Votes		124.885 737	100,00 %

Source: General Elections Commission (KPU) 2014

Based on the votes from the table and following Article 203 in conjunction with Article 209, Paragraph (2) of Law No. 8 of 2012, 10 political parties met the parliamentary threshold. However, 2,968,844 valid votes from political parties were discarded because they did not meet the required threshold

Table: 2019 General Election Results

Number	Political Party	Votes Obtained	Percentage (%)
1.	Indonesian Democratic Party of Struggle	27.053.961	19,33 %
2.	Great Indonesia Movement Party	17.594.839	12,57 %
3.	Golkar Party	17.229.789	12,31 %
4.	Democratic Party	17.229.789	12,31 %
5.	National Awakening Party	13.570.097	9,96 %
6.	National Democratic Party	12.661.792	9,05 %
7.	Prosperous Justice Party	11.493.663	8,21 %
8.	National Mandate	9.572.623	6,84 %

	Party		
9.	United Development Party	6.323.147	4,52 %
10.	Garuda Party	702.536	0,50 %
11.	Indonesian Solidarity Party	2.651.361	1,89 %
12.	Berkarya Party	2.929.495	2,09 %
13.	People's Conscience Party	2.161.507	1,54 %
14.	Indonesian Unity Party	3.738.320	2,67 %
15.	Crescent Star Party	1.099.848	0,79 %
16.	Justice and Unity Party	312.775	0,22 %
Total Votes		139.972.260	100,00 %

Source: General Elections Commission (KPU) 2019

According to the votes in the table and based on Article 414, Paragraph (1) in conjunction with Article 415, Paragraph (1) of Law No. 7 of 2017, only nine political parties met the parliamentary threshold. A total of 14,458,842 valid votes from political parties were discarded as they did not meet the required threshold.

2024 General Election Vote Results

Number	Political Party	Votes Obtained	Percentage (%)
1.	Indonesian Democratic Party of Struggle	25.387.279	16,72 %
2.	Golkar Party	23.208.654	15,28%
3.	Gerindra Party	20.071.708	13,22%
4.	National Awakening Party	16.115.655	10,61%
5.	Nasdem Party	14.660.516	9,65%
6.	Prosperous Justice Party	12.781.353	8,42%
7.	Democratic Party	11.283.160	7,43%
8.	National Mandate Party	10.984.003	7,23%
9.	United Development Party	5.878.777	3,87 %

10.	Indonesian Solidarity Party	4.260.169	2,806 %
11.	Indonesian Unity Party	1.955.154	1,29 %
12.	Wave of Indonesian People Party	1.281.991	0,84 %
13.	People's Conscience Party	1.094.588	0,72 %
14.	Labor Party	972.910	0,64 %
15.	Ummat Party	642.545	0,42 %
16.	Crescent Star Party	484.486	0,32 %
17.	Garuda Party	406.883	0,27 %
18.	Awakening of the Archipelago Party	326.800	0,215 %
Total Votes		151.796.631	100,00

Source: General Elections Commission (KPU) 2024

Based on the votes above, ten political parties did not pass the 4% parliamentary threshold for valid votes on a national scale. The eight parties that passed the threshold include the Indonesian Democratic Party of Struggle with 25,387,279 valid votes or 16.72%; Gerindra Party with 20,071,708 valid votes, or 13.22%; National Awakening Party (PKB) with 16,115,655 valid votes, or 10.61%, Nasdem Party with 14,660,516 valid votes, or 9.65%, Prosperous Justice Party (PKS) with 12,781,353 valid votes, or 8.42%, Democratic Party with 11,283,160 valid votes, or 7.43%, National Mandate Party (PAN) with 10,984,003 valid votes or 7.23%. These political parties have passed the threshold and can send representatives to the Parliament.

***Ius Constituendum* Determining the Parliamentary Threshold**

The phrase "at least 4% of the valid national votes" conflicts with the 1945 Constitution of the Republic of Indonesia and does not have binding legal force unless it is interpreted as "Political parties participating in the general election must meet the vote threshold based on rational, mathematical calculations and be conducted openly, honestly, and fairly following the principles of a proportional electoral system." This matter is addressed by the Constitutional Court in Decision No. 116/PUU-XXI/2023, which declared Article 414, Paragraph (1) of Law No. 7

of 2017 on General Elections to be constitutional for the 2024 DPR elections, but conditionally constitutional for implementation in the 2029 and subsequent DPR elections. This means that the urgency of setting the 4% parliamentary threshold requires detailed discussion, as it is a crucial variable in the electoral system that directly impacts the conversion of votes into seats. Indonesia applies a proportional system for its legislative elections.³⁵

The parliamentary threshold must be linked to the provision in Article 168, Paragraph (2) of the Election Law, which stipulates that elections for members of the DPR, both at the provincial and district/city levels, must be conducted using an open proportional system. The inconsistency of this threshold leads to uncertainty between the 4% parliamentary threshold and the failure to achieve a truly proportional electoral system, as the election results become disproportionate.³⁶

A rational and systematic calculation can be realized through a mechanism or adjustment in the parliamentary threshold, using a legislative basis that truly incorporates rational calculations. In this regard, the author proposes a parliamentary threshold of 1% of valid national votes, with the rationale to minimize wasted votes and allow smaller parties to secure seats in Parliament. In response to questions about how a 1% threshold would limit political parties' access to Parliament, the answer is that parties intending to participate must first register with the General Elections Commission (KPU), where party registration and verification are conducted. This demonstrates the government's commitment to allowing all political parties to contest in elections and parliamentary seats.³⁷

This mechanism aligns with the proposal made by Perludem in its petition to the Constitutional Court in 2015, advocating for the determination of the parliamentary threshold using the Taagepera formula, which uses the size of electoral districts and legislative seats as a calculation basis. The parliamentary

³⁵ Siti Aminah Dkk., "Pengaturan Ambang Batas Perolehan Suara (Parliamentary Threshold) Dalam Pemilu," *Datin Law Jurnal* 1, No. 1 (29 Februari 2020), <https://doi.org/10.36355/Dlj.V1i1.331>.

³⁶ Sholahuddin Al Fatih, "Implementasi Parliamentary Threshold Dalam Pemilihan Anggota Dprd Provinsi Dan Dprd Kabupaten/Kota," *Ahkam: Jurnal Hukum Islam* 6, No. 2 (1 November 2018): 363–88, <https://doi.org/10.21274/Ahkam.2018.6.2.363-388>.

³⁷ Sunny Ummul Firdaus, "Relevansi Parliamentary Threshold Terhadap Pelaksanaan Pemilu Yang Demokratis," *Jurnal Konstitusi* 8, No. 2 (20 Mei 2016): 91, <https://doi.org/10.31078/Jk825>.

threshold is effectively calculated by dividing 75 percent by the average district size, adding one, and multiplying by the square root of the number of districts. This mechanism results in a 1% parliamentary threshold of valid national votes.

A 1% parliamentary threshold would filter out parties that do not have significant voter support while maintaining the proportionality of election results. If this threshold had been applied in the 2009 General Election, with a 2.5% threshold, only nine out of 38 political parties would have gained seats in Parliament. However, with an effective 1% threshold, 15 political parties would have succeeded. Under the 2.5% threshold, 19,047,841 votes were wasted, but with the 1% threshold, only 10,146,823 votes would have been discarded.

In the 2014 General Election, with a 3.5% parliamentary threshold, 10 out of 12 political parties managed to secure seats in the DPR, and 2,964,975 votes were wasted. However, with the 1% parliamentary threshold, it is estimated that ten parties would have passed, with only 1,142,067 votes wasted. Applying the 1% threshold would have saved 1,822,908 votes, converting them into parliamentary seats.

In the 2019 General Election, out of 16 participating parties, 13 would have secured seats in Parliament if the 1% threshold had been applied. The total wasted votes would have been only 2,115,159. Only nine parties passed under the 4% threshold, and 13,595,845 votes were wasted. Lastly, in the 2024 General Election, eight out of 10 political parties passed the 4% threshold, and 17,304,303 votes were wasted. If the 1% effective threshold had been applied, around 11 parties would have secured seats in Parliament, and the wasted votes would have been approximately 5,210,203.³⁸

***A fiqh siyasah dusturiyah* Review of the Parliamentary Threshold**

As previously discussed, establishing the parliamentary threshold has always faced opposition from the public, particularly political parties. This is evidenced by the judicial reviews against the election law whenever it is amended

³⁸ Fuji Lestari Hasibuan Dan Yonna Wati, "Pemberlakuan Parliamentary Threshold Dalam Penyelenggaraan Pemilihan Umum," *Jurnal Pro Justitia (Jpj)* 1, No. 1 (11 Juli 2020), <https://doi.org/10.57084/Jpj.V1i1.246>.

to include provisions regarding the parliamentary threshold, with the most recent being the Constitutional Court's ruling in Decision No. 116/PUU-XXI/2023 on the judicial review of Article 414, Paragraph (1) of Law No. 7 of 2017. It can, therefore, be concluded that determining the parliamentary threshold size requires thorough consideration. In this ruling, the Constitutional Court granted the petition, stating that the parliamentary threshold must be re-determined. This ruling must be followed up with amendments to Law No. 7 of 2017, a matter within the jurisdiction of the People's Representative Council (DPR).

From the understanding above, establishing the parliamentary threshold is a legislative policy where the Constitutional Court's decision is the primary basis for determining its size. From the perspective of *fiqh siyasah dusturiyah*, this issue falls under the study of political legislation, where the size of the 4% parliamentary threshold must be analyzed in detail through the legislative process to ensure it serves the welfare of society. In *fiqh siyasah dusturiyah*, the lawmakers are referred to as *ahlul halli wal aqdi* (those authorized to resolve disputes and make binding decisions).³⁹

The issue of *fiqh siyasah dusturiyah* cannot be separated from two main principles: first, the *dalil kulliy* (universal principles), including verses from the Qur'an, Hadith, *maqasid al-shari'ah* (objectives of Islamic law), and the spirit of Islamic teachings in regulating society, which remain unchanged despite societal changes. These universal principles act as dynamic elements in societal transformation. The second principle involves rules that may change according to shifts in situations and conditions, including the *ijtihad* (juridical reasoning) of scholars. However, not all of them are subject to change. In line with the state's goal of creating *maslahat* (benefit) for all humanity, the state has important tasks to realize this goal.

Therefore, the determination of the parliamentary threshold, which will be further regulated through amendments to Law No. 7 of 2017 by the DPR, as the *ahlul halli wal aqdi*, must prioritize the *maslahat* (benefit) of society. This means

³⁹ Lutfi Fahrul Rizal, "Parliamentary Dan Presidential Threshold: Dalam Otokritik Politik Islam Kontemporer," *Adliya: Jurnal Hukum Dan Kemanusiaan* 11, No. 1 (13 Juni 2019): 137–50, <https://doi.org/10.15575/Adliya.V11i1.4856>.

that the size of the parliamentary threshold should not benefit only specific political parties.

In this regard, as proposed by the author, a parliamentary threshold of 1% is suggested, with the rationale to minimize the number of wasted votes and to allow other political parties to contest for seats in Parliament. This aligns with the Constitutional Court's ruling in Decision No. 116/PUU-XXI/2023, which calls for a change in the parliamentary threshold size for the 2029 general election, which amendments to the Election Law should follow. The political changes in the Election Law should be directed toward the *maslahat* (benefit) of humanity in accordance with the objectives outlined in *fiqh siyasah dusturiyah*.

Conclusion

Establishing the parliamentary threshold in the Election Law in Indonesia, particularly the 4% threshold stipulated in Law No. 7 of 2017, has raised several issues affecting the democratic system and political representation. This study shows that while the policy aims to simplify the multi-party system, it has led to a significant amount of wasted valid votes, reduced opportunities for smaller parties to enter Parliament, and the potential for monopoly by larger parties. These outcomes undermine the principles of fairness and inclusiveness in the democratic process. From the perspective of *fiqh siyasah dusturiyah*, this threshold policy is seen as not fully aligning with the principle of *maslahat*, as it compromises the foundation of fair representation. In the legislative context, the concept of *ahlul halli wal aqdi* emphasizes the importance of decision-making for the common good, meaning that the threshold should be formulated rationally and systematically based on transparent mathematical calculations. This study proposes reducing the threshold to 1% of valid national votes, a threshold deemed more capable of filtering political parties without significantly compromising public representation. Additionally, this approach aligns with the Constitutional Court's decision in No. 116/PUU-XXI/2023, which calls for a review of the threshold policy for future elections. Reforming this policy is essential to achieve a more proportional, inclusive electoral system that upholds democratic values and the principles of *fiqh siyasah dusturiyah*.

Author Contribution

Suha Yusbairroh Barqi, as the main author in the preparation of this article, contributed to designing and compiling the research concept, conducting data collection, and writing the main manuscript in its entirety. M. Yasin al Arif contributed to writing the methodology section, editing the manuscript, and the data analysis process. Irwantoni helped in compiling the systematic draft of the manuscript, compiling the introduction section, and literature review.

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