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Submission date: 04-May-2025 12:42PM (UTC+0530)
Submission ID: 2665620639
File name: jurnal_analisis_ENGLISH.docx (60.47K)
Word count: 5715
Character count: 34246

Fiqh Siyasah Analysis of the Constitutional Court Decision Number 116/PUU-XXI/2023 on Parliamentary Threshold

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Abstract

This study aims to conduct an in-depth analysis of fiqh siyasah as it pertains to the Constitutional Court's ruling No. 116/PUU-XXI/2023 concerning the Parliamentary Threshold. Utilizing a normative juridical methodology alongside a comprehensive fiqh siyasah interpretative framework, the research critically explores how the judicial panel's decision-making process aligns with the foundational Islamic principles of justice, collective deliberation, and maslahat (public interest), thereby reflecting core Sharia values. This study employs a normative juridical research design, which involves systematically gathering and analyzing pertinent primary and secondary legal sources. The research integrates multiple approaches, including conceptual analysis, statutory interpretation, and case law examination, specifically focusing on the Constitutional Court's Decision No. 116/PUU-XXII/2023. This multifaceted approach facilitates a detailed investigation within the domains of constitutional law and fiqh siyasah. The findings of this research reveal that the Constitutional Court predominantly adhered to a formalistic legal framework in its decision-making process, which consequently resulted in a shortfall of substantive justice. From the perspective of fiqh siyasah, the analysis of Constitutional Court Decision No. 116/PUU-XXI/2023 regarding the Parliamentary Threshold highlights a notable absence of profound judicial ijtihad grounded in substantive values. The court is more inclined to legal formalities than fighting for representative justice which should be the main focus. Whereas in Islam, judges have a spiritual and social responsibility to uphold al-'adl and al-maslahah, even when positive law is unable to achieve it.

Keywords: Constitutional Court, Parliamentary Threshold, Fiqh Siyasah

Introduction

Indonesia is constitutionally defined as a state of law (Negara Hukum), as stipulated in Article 1, paragraph (3) of the Constitution of the Republic of Indonesia. Accordingly, this foundational principle mandates that all actions undertaken by both

citizens and government officials are required to strictly adhere to the prevailing legal framework.[1] The legal framework in Indonesia is structured according to a hierarchical system, with the 1945 Constitution of the Republic of Indonesia positioned at the apex as the supreme law, cascading downward through various levels of legislation, ultimately culminating in the regulations issued by Regency or City Regional Governments at the lowest tier. [2]

In addition to its characterization as a state of law, Indonesia fundamentally embraces a democratic system of governance. This commitment to democratic principles is exemplified through the conduct of general elections, which serve as a mechanism for selecting representatives to legislative bodies such as the People's Representative Council (DPR) and the Regional Representative Council (DPD), as well as for electing executive leaders, specifically the president and vice president.

Historically, elections in Indonesia were first held in 1955 to elect the President and Vice President. During the period after the first election in 1955, Indonesia recorded holding elections 9 times until 2014. Similarly, in 2019 simultaneous elections were held to elect the President and Vice President as well as legislative members both at the central and regional levels as regulated in Article 347 of the Election Law.[3]

Recently, the Constitutional Court delivered a ruling pertaining to the parliamentary threshold, a regulatory mechanism designed to establish a minimum vote share requirement that political parties must achieve in order to qualify for seat allocation within the House of Representatives.[4] The implementation of a threshold for political parties constitutes a discretionary legal policy aimed at facilitating the realization of a streamlined multiparty system, which, in turn, is intended to enhance the functional

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[1] Maruarar Siahaan, *Procedural Law of the Constitutional Court of the Republic of Indonesia (Second Edition)* (Sinar Grafika, 2022), 178.

[2] Wahyu Prianto, "Analysis of the Hierarchy of Legislation Based on the Theory of Legal Norms by Hans Kelsen and Hans Nawiasky," *Journal of Social Science and Education* 2, no. 1 (January 6, 2024): 10, https://jurnal.unusultra.ac.id/index.php/jisdik/article/view/52.

[3] Debby Nauli Rafeyfa Simanjuntak et al., "The Enactment of Parliamentary Threshold in the Legislative General Election System in Indonesia" 1, no. 3 (2024).

[4] Fahri Bachmid, "The Existence of Popular Sovereignty and the Implementation of Parliamentary Threshold in the General Election System in Indonesia," *SIGn Jurnal Hukum* 2, no. 2 (November 19, 2020): 93, https://doi.org/10.37276/sjh.v2i2.83.

efficiency and performance effectiveness of the representatives serving within the parliamentary institution. [5]

The beginning of the enactment of this threshold was because in the 1999 elections there were 48 political parties, which was considered inefficient and inefficient for the community because if faced with a very large number of political parties, the community would experience confusion to elect party members efficiently. With this threshold, it is expected that political parties can compete fairly and efficiently in organizing elections.[6]

The regulation regarding the threshold for political parties to gain parliamentary seats is contained in Law No.7 of 207 Article 414 paragraph (1) which reads "*Election Participant Political Parties must meet the threshold of obtaining at least 4% (four percent) of the total number of valid votes nationally to be included in the determination of the acquisition of DPR member seats*".[7]

Looking at the organization of the last election in 2019 where a *parliamentary* threshold of 4% was imposed, this was considered detrimental to some parties, especially for small parties, therefore several parties requested a *judicial review of* the article governing the *parliamentary threshold*. The Constitutional Court has issued several decisions related to the parliamentary threshold. Among them are; Constitutional Court Decision Number 3/PUU-VII/2009 with the result of the decision rejecting the petition of the petitioners as a whole, Constitutional Court Decision Number 20/PUU-XVI/2018 with the ruling that the petition cannot be accepted because the petition *is ne bis in idiem*, Constitutional Court Decision Number 48/PUU-XVIII/2020 with the ruling that the petition cannot be accepted because the petitioner does not have legal standing.

In this matter, the Constitutional Court promulgated Decision No. 116/PUU-XXI/2023 following a judicial review challenging Article 414, paragraph (1) of Law No. 7 of 2017. The Court's ruling affirmed the constitutionality of the 4% parliamentary threshold norm for the 2024 general election, while conditionally upholding its constitutionality for the 2029 election and subsequent electoral processes, contingent upon implemented modifications to the parliamentary threshold in accordance with

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[5] Ady Supryadi et al., "Constitutional Interpretation of Decision Number 116/PUU-XXI/2023 on Parliamentary Threshold," *GANEC SWARA* 18, no. 1 (March 9, 2024): 592, https://doi.org/10.35327/gara.v18i1.800.

[6] Muhammad Nizar Kherid, *Evaluation of the Election System in Indonesia 1955-2019: A Perspective of Legal Pluralism* (PT. Rayyana Komunikasindo, 2021), 32.

[7] Law No. 7/2017 Article 414 paragraph (1)

stipulated criteria. Constitutional Court Judge Erny Nurbaningsih elucidated that the Court's ruling did not abolish the parliamentary threshold itself; rather, it affirmed that the determination of the specific threshold level or percentage remains within the discretionary authority of the legislative body.[8]

Furthermore, if we look at the study of fiqh shasah, the judicial institution is known as *Qadhaiyyah*. *Fiqh Siyasah Qadhaiyyah* is a judicial institution that aims to resolve cases using Islamic law. If we look at the decision number 116/PUU-XXI/2023 decided by the Constitutional Court in testing Law number 7 of 2017 against the 1945 Constitution of the Republic of Indonesia, the Constitutional Court is an institution that has the authority in the judicial system in Indonesia.

Based on the description above, there is an urgency to be able to analyze *siyasah dusturiyah* on the decision of the Constitutional Court number 116 / PUU-XXI / 2023 concerning the *parliamentary threshold* as new scientific literature in the field of constitutional law and fiqh siyasah. Previously there have also been previous studies that are relevant including by. First, a journal written by Dayandini Hastiti Putri and Edi Sofwan (2024)[9] , discusses the proportionality of the parliamentary threshold and the juridical impact of the constitutional court's decision number 116/PUU-XXI/2023. Second, the journal written by Muthi'ah Maizaroh and Andriansyah (2024)[10] , discusses judicial review and legal standing of the applicant. The third journal written by Dian Agung Wicaksono and Garuda Era Ruhpinesthi (2025)[11] , discusses the application of *purcel principal* in the Constitutional Court. Fourth, the journal written by Muh.Rizal Hamidi et al (2024)[12] , discusses the implications of the Constitutional Court's decision

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[8] M. Husnu Abadi, Wira Atma Hajri, and Umi Muslikhah, "Implications of the Constitutional Court's Change of Attitude Towards Law Testing Which Is an Open Legal Policy, Through Constitutional Court Decision No. 116/PUU-XXI/ 2023," *Journal of Mandalika Social Science* 3, no. 1 (September 4, 2024): 183–200, https://doi.org/10.59613/jomss.v3i1.147.

[9] Dayandini Hastiti Putri and Edi Sofwan, "Parliamentary Threshold and the Future of Multiparty in Indonesia: Analysis of Constitutional Court Decision NO. 116/PUU-XXI/2023," *National Law Magazine* 54, no. 2 (December 28, 2024): 199–215, https://doi.org/10.33331/mhn.v54i2.419.

[10] Muthi'ah Muti Maizaroh and Andriansyah Andri -, "The Breath of the Constitution: Constitutional Interests as a Paradigm of Judicial Review in Indonesia," *Journal of Rechts Vinding: Media for National Law Development* 13, no. 1 (April 30, 2024), https://doi.org/10.33331/rechtsvinding.v13i1.1577.

[11] Dian Agung Wicaksono and Garuda Era Ruhpinesthi, "Initiation of the Purcell Principle by the Constitutional Court in Judicial Review Related to the Law of General Elections: Initiation of the Purcell Principle by the Constitutional Court in Judicial Review Related to the Law of General Elections," *Constitutional Journal* 22, no. 1 (March 1, 2025): 109–36, https://doi.org/10.31078/jk2216.

[12] Muh. Rizal Hamdi, Eid Adnan, and Lalu Hendri Nuriskandar, "Implications of the Elimination of Parliamentary Threshold in the Simultaneous Election in 2029," *Darussalam Journal: Constitutional Law Thought and Mazhab Comparison* 4, no. 2 (2024): 161–76, https://doi.org/10.59259/jd.v4i2.193.

Number 116/PUU-XXI/2023. Fifth, the journal written by Muh Rakhul Rahman et al (2024)[13] , discusses the impact of the Constitutional Court's decision Number 116/PUU-XXI/2023.

Methods

The methodology employed in this study is normative legal research, which entails a systematic examination of relevant literature and legal documents, as outlined by Muhammad Syahrum in his 2022 work Introduction to Legal Research Methodology. The research incorporates multiple approaches: the conceptual approach, which involves the analysis of legal theories and doctrines articulated by scholars; the statutory approach, focusing on the interpretation and application of legislation; and the case approach, specifically examining Constitutional Court Decision Number 116/PUU-XXII/2023 to derive relevant legal principles.

Results and discussion

Parliamentary in conceptual studies

The parliamentary threshold represents the minimum proportion of the total national vote that a political party is required to secure in a general election to be eligible for seat allocation within the House of Representatives (Dewan Perwakilan Rakyat, DPR). Should a political party fail to meet this stipulated threshold, the votes it has garnered are excluded from the calculation process used to distribute seats among the qualifying parties in the DPR.[14]

The first *parliamentary threshold* was implemented in Indonesia in the 2004 elections. In that year, the *parliamentary threshold* amounted to 2%. The application of

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[13] Muh Rakhul Rahman et al., "The Abolition of the Parliamentary Threshold: A Legal Analysis of the Constitutional Court's Decision from the Perspective of Constitutional Law," *Palangka Law Review* 4, no. 2 (2024), https://doi.org/10.52850/palarev.v4i2.14994.

[14] A. Junaedi Karso, *Peeling Through the Parliamentary & Presidential Threshold in Indonesia: Between Positive & Negative Perspectives* (Samudra Biru, 2024), 37.

this threshold was based on Law Number 12/2003 on General Elections.[15] In the 2009 elections, the parliamentary threshold was raised to 2.5%, based on Law Number 10/2008 on Elections. This increase was made because the 2% parliamentary threshold in the 2004 elections was considered still not enough to reduce the simplification of political parties.[16] Subsequently, during the 2014 general elections, the parliamentary threshold was elevated to 3.5 percent pursuant to the provisions set forth in Law Number 8 of 2012 concerning Elections. Later, in the context of the 2019 elections, Indonesia further increased this threshold to 4 percent, as mandated by Law Number 7 of 2017 governing the electoral process.[17] Seeing from the description, it can be concluded that the parliamentary threshold has experienced a significant increase since it was initially set in the 2004 elections to the 2019 elections.

The main function of the *parliamentary threshold* is to filter political parties based on the level of national electoral support. By setting the national vote threshold as currently applied in Indonesia at 4% of the total national valid vote, only parties that meet this threshold are entitled to obtain seats in the House of Representatives (DPR). In addition, this threshold is also considered to streamline the legislative process. A parliament that is too plural tends to slow down decision-making because it has to accommodate the interests of too many factions

The parliamentary threshold is an important element in Indonesia's electoral system, which is normatively regulated in Article 414 of Law Number 7/2017 on General Elections.[18] This statutory provision mandates that political parties secure a minimum of 4% of the total valid national votes to qualify for the allocation of seats in the House of Representatives (DPR). While this threshold is not expressly articulated within the 1945 Constitution itself, its existence derives from the discretionary legal authority vested in

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[15] Muslimin Ritonga and Raegen Harahap, "Celebrity Involvement After Parliamentary Threshold in Electoral Political Contestation in Indonesia," *Journal of Government and Politics* 8, no. 3 (October 25, 2023): 240, https://doi.org/10.36982/jpg.v8i3.3320.

[16] Ahmad Nur Ansari, Suhardiman Syamsu, and Dian Ekawaty, "The Relevance of Parliamentary Threshold and Party System in Indonesia," *Palita: Journal of Social Religion Research* 7, no. 1 (2022): 83, https://doi.org/10.24256/pal.v7i1.2851.

[17] Aenal Fuad Adam, Wellem Levi Betaubun, and Nur Jalal, "Quo Vadis Parliamentary Threshold in Indonesia," *JJIIP: Scientific Journal of Government Science* 6, no. 1 (2021): 2, https://doi.org/10.14710/jiip.v6i1.8618.

[18] Suha Yusbairoh Barqi, M. Yasin al Arif, and Irwantoni Irwantoni, "Reforming the Parliamentary Threshold in Indonesia's General Elections: A Legal and Fiqh Siyasah Dusturiyah Perspective," *As-Siyasi: Journal of Constitutional Law* 4, no. 2 (December 13, 2024): 119, https://doi.org/10.24042/as-siyasi.v4i2.24326.

the legislature. Consequently, the legislative body retains the latitude to formulate and adjust the electoral framework, provided such regulations remain consistent with, and do not infringe upon, the fundamental constitutional principles.

Nevertheless, juridically, the position of the *parliamentary threshold* has also generated polemics in the community where the application of the *parliamentary threshold* has become the object of testing at the Constitutional Court. A number of parties consider that this threshold has the potential to ignore the principle of fair and equal representation as guaranteed in Article 28D of the 1945 Constitution. Many valid votes of the people who voted for small parties were eventually not converted into seats in parliament because they did not reach the 4% limit, and this led to a high phenomenon of *wasted votes*. In practice, this can harm the representation of minority groups, regional-based parties, and weaken political diversity in the legislature. Therefore, the position of the *parliamentary threshold* is not only technical, but also concerns fundamental values in constitutional democracy.

The parliamentary threshold has a significant impact on the quality of political representation and the proportionality of democracy in the constitutional system.[19] In a proportional electoral system, the basic principle upheld is that every popular vote must be fairly converted into seats in the legislature.[20] However, the existence of a national vote threshold such as 4% in the Indonesian system directly limits the chances of political parties with votes below this threshold to gain seats, no matter how large their votes are in absolute terms. As a result, millions of valid votes can be lost from the process of political representation due to not meeting the required minimum threshold.

Moreover, the role of the parliamentary threshold within the framework of the Indonesian constitutional system is intrinsically linked to the Constitutional Court's function as the principal guardian of constitutional integrity. Through numerous rulings, including but not limited to Constitutional Court Decision No. 116/PUU-XXI/2023, the Court has consistently upheld the threshold's constitutionality, grounding its rationale primarily in considerations related to ensuring governmental stability and the

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[19] Bernardinus Putra Benartin and Paulus Wisnu Yudoprakoso, "The Effect Of Parliament Limits On The Position Of Oposition Parties And Their Relationship To The Presidential Government System In Indonesia," *Gloria Justitia* 1, no. 2 (2021): 183, https://doi.org/10.25170/gloriajustitia.v1i2.3064.

[20] I. Wayan Astawa, I. Nyoman Suandika, and Kadek Frediandrika Adnantara, "Open Election System Based on the General Election Law," *Ethics and Law Journal: Business and Notary* 2, no. 2 (June 23, 2024): 152, https://doi.org/10.61292/eljbn.190.

rationalization of the party system. Nonetheless, the methodology employed by the Court predominantly emphasizes procedural considerations rather than delving deeply into substantive issues such as representational equity and electoral fairness. This underscores that, from a functional perspective, the role of the parliamentary threshold transcends mere legislative enactment, encompassing a significant judicial dimension wherein the Court bears responsibility for safeguarding a delicate equilibrium between the operational efficacy of the political system and the protection of citizens' constitutionally guaranteed rights.

Thus, the *parliamentary threshold* has a complex position in the Indonesian constitutional system as a positive legal norm that is legal and strategic, but also normative and open to constitutional criticism. Seeing this, as mandated in the Constitutional Court Decision Number 116/PUU-XXI/2023, it is necessary to evaluate the application of the *parliamentary threshold* which is too high so that the arrangements regarding this matter can be improved in future elections.

A Normative Critique of Constitutional Court Decision No. 116/PUU-XXI/2023

The ruling rendered in Constitutional Court Decision Number 116/PUU-XXI/2023 represents the culmination of numerous judicial review processes meticulously undertaken to assess the implications and application of the parliamentary threshold. The issuance of this particular decision undeniably introduces a revitalizing influence on the democratic landscape of Indonesia. Examining the trajectory of Decision Number 116/PUU-XXI/2023 reveals that it was initiated and submitted by the Association for Elections and Democracy (Perludem), with legal representation provided by Khoirunnisa Nur Agustyati, who concurrently serves as Chairperson of the Perludem Foundation Board, alongside Irmalidarti, fulfilling the role of Treasurer of the same foundation. The applicant formally petitioned the Constitutional Court to undertake a judicial review assessing the constitutionality of Article 414, paragraph (1), which stipulates that political parties participating in elections must achieve a minimum vote acquisition threshold of 4% (four percent) of the total valid votes cast on a national scale in order to be considered in the allocation of seats within the DPR, specifically challenging the provision stating "at least 4% (four percent) of the total number of valid votes nationally" as set forth in Law Number 7 of 2017 concerning General Elections.

In the present case, the petitioner is the Perludem Foundation (Perkumpulan untuk Pemilu dan Demokrasi), a non-governmental organization dedicated to promoting democratic development and ensuring the conduct of equitable elections within Indonesia. Acting as a private legal entity, Perludem submitted its application pursuant to the provisions outlined in Article 51, paragraph (1) of the Constitutional Court Law, which recognizes such entities as legitimate legal subjects entitled to initiate judicial review proceedings before the Constitutional Court, provided they can substantiate claims of actual, concrete, or at the very least, potential infringement upon their constitutional rights.The legal standing of the applicant is founded upon multiple grounds. Firstly, the applicant's organizational objectives, as delineated in its deed of establishment, explicitly aim at the realization and promotion of a democratic and proportionally representative electoral system. Secondly, the applicant actively engages in comprehensive scholarly research and public advocacy efforts pertaining to the electoral system, which encompass the production and dissemination of academic publications, including books and research reports specifically focused on the issue of the parliamentary threshold. The third applicant contends that the stipulations set forth in Article 414, paragraph (1) of the Election Law, which impose a 4% electoral threshold, infringe upon the constitutional rights of the applicant by deviating from the foundational principles of a proportional electoral system as enshrined within the 1945 Constitution, specifically referenced in Article 1, paragraphs (2) and (3), Article 22E paragraph (1), as well as Article 28D paragraph (1).[21] *Parliamentary threshold* has negative implications for the protection of human rights, especially the right to political participation guaranteed by Article 28D paragraph (3) of the 1945 Constitution: the right of every citizen to obtain equal opportunities in government, and Article 25 of the ICCPR (International Covenant on Civil and Political Rights): the right to be elected and to vote in fair and representative elections.[22]

Looking at the petition submitted by the applicant, there are several main points that become the applicant's arguments, including. First, the applicant considers that the application of the 4% threshold nationally causes distortion of election results and injures

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[21] Dian Fitri Sabrina and Muhammad Saad, "Justice in Elections Based on the Presidential Threshold System," *Widya Pranata Hukum : Journal of Legal Studies and Research* 3, no. 1 (April 4, 2021): 17, https://doi.org/10.37631/widyapranata.v3i1.268.

[22] Constitutional Court Decision Number 116/PUU-XXI/2023

the principle of proportionality. Secondly, based on the study conducted by the Applicant and the results of tracing the legislative process, the amount of 4% was determined without going through clear and academic calculations. Third, with the number of votes that are not converted because the party does not pass the threshold, the constitutional rights of citizens to be represented in parliament are eroded. Fourth, the application of the threshold is considered to violate the principle of *fairness and honesty* as stipulated in Article 22E paragraph (1) of the 1945 Constitution. Fifth, the applicant highlighted that the existence of a threshold that is not synchronized with the proportional system creates uncertainty in the design of electoral law. Sixth, the Applicant asserts that this petition is not *nebis in idem*, because it uses a different test stone (constitutional basis) from previous cases.

Nonetheless, certain observations warrant attention from the Constitutional Court. The Panel of Judges emphasized that the legislative provision mandating a 4% parliamentary threshold, as articulated in Article 414, paragraph (1) of Law Number 7 of 2017, does not contravene the 1945 Constitution and is regarded as a manifestation of the legislature's broad discretionary authority in the formulation of legal policy. The majority of judges argued that the parliamentary threshold is a legitimate constitutional policy to simplify the party system, encourage government effectiveness, and political stability. In addition, the determination of the amount is the authority of the legislators and is not included in the realm of the Court's review, as long as it does not violate the basic principles of the Constitution

The Constitutional Court, in its Decision No. 116/PUU-XXI/2023, rendered a unanimous judgment affirming that the provision establishing a 4% parliamentary threshold under Article 414, paragraph (1) of the Election Law conforms with constitutional mandates and constitutes a legitimate exercise of the legislature's discretionary authority within the scope of open legal policy. All constitutional judges agreed that the Court cannot interfere with legislative considerations as long as the norm is not clearly contrary to the 1945 Constitution.

However, this consideration can be criticized academically because the Court seems to emphasize a formal procedural approach, rather than substantively assessing the constitutional impact of the threshold. Indeed, within the framework of a representative

democratic system, the imposition of an elevated electoral threshold may precipitate the exclusion of a considerable number of valid votes, thereby undermining the political representation of minority groups and contributing to an increased incidence of wasted votes, which collectively pose a significant threat to the fundamental principle of electoral justice as enshrined in Article 28D, paragraph (1), and Article 22E, paragraph (1), of the 1945 Constitution.

The Court's consistent attitude of leaving the threshold issue to the legislators shows that the Court has not taken a progressive position in balancing the efficiency of the political system and the protection of citizens' constitutional rights. When there is inequality in political representation and neglect of the principle of proportionality of votes and seats, the Court actually has the space to provide a more inclusive and substantive constitutional interpretation.

Formally, the promulgation of Constitutional Court Decision No. 116/PUU-XXI/2023 derives its validity and legitimacy from the Constitutional Court's constitutional mandate as prescribed under Article 24C of the 1945 Constitution, in conjunction with the procedural authority conferred by Article 51 of the Constitutional Court Law.[23] This decision maintains the *parliamentary threshold* provision as part of an *open legal policy*, which is the right of lawmakers, as long as it does not clearly violate the constitution.

Operating within the overarching framework of the rule of law, the Court fulfills its institutional mandate through procedural mechanisms, which include the provision of legal certainty, the affirmation of the continued validity of positive law, and the preservation of systemic stability. Consequently, from the perspective of procedural legality, this ruling aligns with fundamental rule of law principles, insofar as it ensures strict adherence to due process requirements. However, in terms of material legality (the substance of legal justice), there is serious debate. The *Parliamentary threshold* has the potential to exclude the legitimate votes of the people and weaken the principle of popular sovereignty. In this case, the Court is considered not active enough in upholding the

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[23] Nur Mila Hayya, Rosmini _, and Harry Setya Nugraha, "Constitutionality of Replacing Judges Mid-Term and Its Implications on the Independence of the Constitutional Court, Indonesia," *As-Siyasi: Journal of Constitutional Law* 3, no. 2 (December 14, 2023): 157, https://ejournal.radenintan.ac.id/index.php/assiyasi/article/view/18683.

principle of substantive justice, which is also an important element of the modern rule of law.

This decision has negative implications for the protection of human rights, especially the right to political participation guaranteed by Article 28D paragraph (3) of the 1945 Constitution: the right of every citizen to have equal opportunities in government, and Article 25 of the ICCPR (International Covenant on Civil and Political Rights): the right to be elected and to vote in fair and representative elections.

By continuing to apply the 4% threshold, many valid votes from voters who choose small or alternative parties are not converted into seats, resulting in inequality in representation. This undermines the principle of *every vote counts* and creates politically "unheard" groups in parliament.As a result, this decision is not fully aligned with human rights principles, as it does not correct a norm that has the effect of limiting access to fair political representation

Fiqh Siyasah Analysis of the Constitutional Court Decision No. 116/PUU-XXI/2023

Fiqh Siyasah is a branch of fiqh science in Islam that discusses issues of government, politics, and statehood based on sharia principles.[24] Fiqh siyasah in the context of the judiciary is also referred to as part of *Siyasah Qadha'iyah*, which is part of fiqh siyasah that discusses the Islamic justice system how the law is enforced, who is authorized to adjudicate, and how justice is carried out in society.[25]

In the context of *fiqh siyasah*, judicial power is an important pillar in maintaining justice (*al-'adl*) and public good (*al-maslahah al-'ammah*). The function of the judiciary is not only to enforce the law textually, but also to uphold substantive justice that reflects the values of Islamic law. In this context, a *qadhi* (judge) is responsible for assessing not only whether a norm is legally valid, but also whether it has a good and just impact on society.[26] This principle suggests that the judiciary, including institutions such as the Constitutional Court, should have the courage to correct positive laws that create social

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[24] Askana Fikriana and M. Kahfi Rezki, "Political Ethics and Qualifications of Legislative Candidates in Elections: A Fiqh Siyasah Perspective," *ALADALAH: Journal of Politics, Social, Law and Humanities* 2, no. 1 (2024): 246, https://doi.org/10.59246/aladalah.v2i1.657.

[25] Khammi Zada Majar Ibnu Sharif, *Fiqh Siyasah: Doctrine and Islamic Political Thought* (Jakarta: Erlangga, 2009), 17.

[26] Abdul Manan, *A Comparison of Islamic and Western Political Law* (Jakarta: Prenada Media Group, 2016), 33.

or political inequalities, even if the norms are formally produced by the legislature. When legislation fails to create justice or even creates political exclusion, then Islamic judges are obliged to balance the situation through *ijtihad qodlaiyyah*.

In the scope of *siyasah qodlaiyyah*, judges are not only tasked with resolving cases procedurally, but are also responsible for ensuring that substantive justice is upheld.[27] In terms of *fiqh* literature, as Imam Ibn Qayyim al-Jawziyyah asserts, justice is the ultimate goal of the law. Therefore, a qadhi (judge) is commanded to resort to *ijtihad* if the positive law no longer meets the demands of justice. In this context, the Court should not stop at procedural legality, but also consider public aspirations, the potential for systemic injustice, and other constitutional principles such as proportionality and non-discrimination.

In a modern democratic state like Indonesia, the values of fiqh siyasah can serve as a normative framework to assess the extent to which positive laws including constitutional court decisions are in line with the principles of justice (*al-'adl*), benefit (*maslahah*), public participation (*shura*), and protection of citizens' basic rights.[28] Constitutional Court Decision No. 116/PUU-XXI/2023, which maintains the provision of the parliamentary threshold (4%), is a relevant object to analyze through this perspective. The concept of justice (*al-'adl*) is the main value and the basis for the formation of law and public policy as in the word of Allah in Surah An Nisa verse 58.

بِهِۦٓ يَعِظُكُم إِنَّ ٱللَّهَ نِعِمَّا يَعِظُكُم بِهِۦٓ إِنَّ ٱللَّهَ كَانَ سَمِيعًۢا بَصِيرًا ۝ إِنَّ ٱللَّهَ يَأۡمُرُكُمۡ أَن تُؤَدُّواْ ٱلۡأَمَٰنَٰتِ إِلَىٰٓ أَهۡلِهَا وَإِذَا حَكَمۡتُم بَيۡنَ ٱلنَّاسِ أَن تَحۡكُمُواْ بِٱلۡعَدۡلِۚ

Meaning: "*Verily, Allah enjoins you to deliver the trust to those who are entitled to it, and (enjoins you) when you set a law among men to set it justly. Verily, Allah gives you the best teaching. Verily, Allah is the All-Hearing, the All-Seeing*."

This paragraph emphasizes that state laws and decisions, including decisions of judicial institutions such as the Constitutional Court, must reflect the principle of

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[27] Arma Agusti, "Siyasah Qadhaiyyah's View on the Legal Certainty of the Authority of Constitutional Complaint," *Journal of Citizenship* 8, no. 1 (August 16, 2024): 1371, https://doi.org/10.31316/jk.v8i1.1589.

[28] Ari Priyanto et al., "Reviving House of National Representatives Power: A Normative Analysis Through the Lens of Fiqh Siyasah Dusturiyah," *Mimbar Keadilan* 18, no. 1 (January 31, 2025): 154, https://doi.org/10.30996/mk.v18i1.12648.

substantive justice. In the context of Constitutional Court Decision No. 116/PUU-XXI/2023, such justice was challenged when the parliamentary threshold led to a significant loss of valid votes without representation, thus creating political inequality.

In Decision No. 116/PUU-XXI/2023, the Court held that the petition to review the parliamentary threshold on the grounds that it was an *open legal policy* that was within the domain of the legislator. The Court did not enter into the substance, although the Plaintiffs showed constitutional losses in the form of the loss of millions of people's votes that were not converted into seats in the DPR.

From the perspective of *siyasah qodlaiyyah*, this attitude shows a formalistic and passive tendency, where the Court only examines procedural aspects and not the substance of justice. In fact, in the treasures of Islamic law, judges have *ijtihad* space to assess the fairness of a norm,[29] even authorized to reject the application of written law if proven to create *mafsadah* or contrary to the values of *al-'adl* and *al-salamah al-ijtima'iyyah* (social harmony).

In Islam, judges are seen as representatives of divine power in maintaining justice. The judge's task does not stop at applying positive law, but must be able to read social realities and answer them with decisions that prevent injustice. The Prophet said in his hadith narrated by Imam Abu Daud

الْقُضَاةُ ثَلَاثَةٌ: عَنِ ابنِ بُرَيْدَةَ عَنْ أَبِيْهِ عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: قَاضٍ فِى الْجَنَّةِ وَقَاضِيَانِ فِى النَّارِ قَاضٍ عَرَفَ الْحَقَّ فَقَضَى بِهِ فَهُوَ فِى الْجَنَّةِ وَقَاضٍ عَرَفَ الحَقَّ فَحَكَمَ بِخِلَافِهِ فَهُوَ فِى النَّارِ وَقَاضٍ قَضَى عَلَى جَهْلٍ فَهُوَ فِى النَّارِ. (رواه أبو داود)

Meaning: "*Ibn Buraydah reported from his father that the Prophet said, "There are three kinds of judges. One is in Paradise and two are in Hell. The judge who knows the truth and rules accordingly will enter Paradise, the judge who knows the truth and rules contrary to the truth will enter Hell, and the judge who rules according to his ignorance will enter Hell."*

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[29] Muhammad Helmi, "LEGAL FINDING OF CERAI GUGAT BY THE JUDGE IN THE AGENCY BASED ON POST-POSITIVISM PARADIGMA," *Asy-Syari'ah* 23, no. 2 (2021): 263, https://doi.org/10.15575/as.v23i2.15001.

This Hadith emphasizes that judges are required to actively seek justice, not just follow existing rules. In the context of the Constitutional Court's decision, when the 4% threshold is proven to cause millions of people's votes not to be channeled into parliament, the Court should not only assess the formal legality of the norm, but also ethically and substantively assess the impact of the norm on democratic principles and citizens' rights.[30]

When the Court does not use its authority to correct exclusive or discriminatory norms, there is a vacuum of supervisory function in the democratic system. In fiqh siyasah, this is referred to as *al-qadha' ghair al-mu'tadil* an unjust judiciary or one that does not function proportionally. As a result, people's trust in the legal system and democracy weakens, and the political divide widens

Constitutional Court Decision No. 116/PUU-XXI/2023 has not shown this trend. When the Court chooses to stick to the formal approach that the threshold is the authority of the legislature, the function of the judiciary as a "balance of power" and protector of people's rights is weakened.

In the perspective of *fiqh siyasah*, especially *siyasah qodlaiyyah*, the Constitutional Court Decision No. 116/PUU-XXI/2023 shows a lack of substantial *judicial ijtihad* values. The Court is more inclined towards legal formalities than fighting for representative justice, which should be the main focus. Whereas in Islam, judges have a spiritual and social responsibility to uphold *al-'adl* and *al-maslahah*, even when positive law is unable to achieve it.

Conclusion

Based on the explanation presented, it can be concluded that the decision taken by the Constitutional Court in decision number 116/PUU-XXI/2023, namely by continuing to impose a parliamentary threshold of 4% in the election of legislative members, is considered to emphasize too much on the formal procedural approach, rather than substantively assessing the constitutional impact of the threshold. This shows that the Court has not taken a progressive position in balancing the efficiency of the political system and the protection of citizens' constitutional rights. In the perspective of *fiqh*

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[30] Rahman Yasin, "Review of Constitutional Court Decisions in Disputes over the 2004 Presidential Election PHPU (Perspective of a *Constitutional* Democratic State)," *Constitutional Journal* 11, no. 4 (2014): 656, https://doi.org/10.31078/jk1143.

siyasah, especially *siyasah qodlaiyyah*, the Constitutional Court Decision No. 116/PUU-XXI/2023 shows a lack of substantial *judicial ijtihad* values. The Court is more inclined towards legal formalities than fighting for representative justice which should be the main focus.

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