

Examining the Legal Impact of Presidential Threshold Implementation in the 2024 Presidential Election

Imawan Sugiharto[✉], Erwin Aditya Pratama²

^{1,2} Faculty of Law, Universitas Pancasakti Tegal

Abstract

Presidential threshold is the threshold of vote acquisition that must be obtained by political parties in an election to be able to nominate a presidential candidate. General elections for president and vice president are submitted by political parties or a combination of political parties that have at least 20% of the seats in the DPR or 25% of the national valid votes in legislative elections. The type of research used is library research. The approach used is a normative approach. The data collection technique is through literature study. And analyzed by qualitative data analysis method. The presidential threshold setting as determined by the Constitutional Court through decision Number 53/PUU-XV/2017 states Article 222 of Law Number 7 of 2017 concerning Elections which regulates the Presidential threshold requirements have an impact on political parties, due to restrictions on the constitutional rights of political parties that has a small number of seats in the DPR. Then the high threshold number will cause only political parties to nominate their president and vice president so that the implementation of the Presidential threshold is more likely to benefit the authorities and harm the people and negate the people's right to be able to choose alternative figures in the 2024 Presidential Election.

Keywords: Presidential Threshold, Presidential Election, 2024 Presidential Election, President.

Abstrak

Presidential threshold adalah ambang batas perolehan suara yang harus diperoleh oleh partai politik dalam suatu pemilu untuk dapat mengajukan calon presiden. Pemilihan Umum presiden dan wakil presiden diajukan oleh partai politik atau gabungan partai politik yang memiliki sekurangnya 20% kursi di DPR atau 25% suara sah nasional dalam pemilu legislatif. Jenis Penelitian yang digunakan adalah penelitian kepustakaan. Pendekatan yang digunakan menggunakan pendekatan normatif. Teknik pengumpulan datanya melalui studi pustaka. Dan dianalisis dengan metode analisis data kualitatif. Pengaturan presidential threshold sebagaimana pengaturannya diputuskan Mahkamah Konstitusi melalui putusan Nomor 53/PUU-XV/2017 menyatakan Pasal 222 Undang-Undang Nomor 7 Tahun 2017 tentang Pemilu yang mengatur syarat Presidential threshold menimbulkan dampak pada partai politik, karena adanya pembatasan hak konstitusional dari partai politik yang memiliki jumlah kursi sedikit di DPR. Kemudian tingginya angka ambang batas tersebut akan menimbulkan partai politik itu saja yang bisa mencalonkan presiden dan wakil presidennya sehingga penerapan Presidential threshold tersebut lebih cenderung menguntungkan penguasa dan merugikan rakyat serta menegasikan hak rakyat untuk bisa memilih figur-figur alternatif dalam Pemilihan Presiden 2024.

Kata kunci: Presidential Threshold, Pemilihan Presiden, Pilpres 2024, Presiden.

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Introduction

The amendment of the 1945 Constitution of the Republic of Indonesia has laid the foundation of State institutions in the government system in Indonesia. Similarly, the election of the President and Vice President, which was previously elected by the People's Consultative Assembly as the embodiment of sovereignty in Indonesia, was transferred to be elected by the

voters directly. Since the election of the President and Vice President in 2004, direct election by the voters has been practiced.

Indonesia as a state of law with a democratic government recognizes elections as an important pillar of democracy that must be held democratically. Indonesia has regulated the implementation of elections as stipulated in the 1945 Constitution of the Republic of Indonesia (UUD NRI). The concept of democratic government is a government of the people, by the people and for the people. Therefore, the people have the supreme power in a democratic state. Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia affirms that sovereignty is vested in the people and exercised according to the Constitution. As a democratic country, it can be said that choosing and being chosen in elections is a deviation from the sovereignty of the people, which is part of the human rights of every citizen (Sardini, 2011). Therefore, it is common in countries that call themselves democracies to traditionalize general elections to elect public officials in the legislative and executive fields both at the central and regional levels (Fadjar, 2009).

Indonesia has held 12 elections, starting from the first election in 1955, to the last election in 2019. The elections were held in 1955, 1971, 1977, 1982, 1987, 1992, 1997, 1999, 2004, 2009, 2014 and 2019, respectively. The first election in 1955 was called the best election in the history of elections in Indonesia because it was able to provide a sense of security and fulfill democratic elements with 27 political parties and one individual participant. In fact, the 1955 elections had almost no conflicts and fulfilled democratic elements because almost all elements of society were involved, both parties and individuals as election participants. Although in the 1955 elections there were members of parliament and ministers involved in the electoral candidacy, they did not use the facilities or positions attached to them as an effort to win public votes.

The birth of new regulations related to elections was colored by the presidential threshold polemic. Law Number 7/2017 on General Elections as a single regulation at the level of laws in organizing elections is not free from controversy. Many people have responded pro and con. The pro and con responses are focused on several things, one of which is the presidential threshold.

The presidential threshold is the minimum threshold for the nomination of the president and vice president based on the number of seats in parliament or the number of valid votes nationally obtained from a

political party or a coalition of political parties through elections. The presidential threshold regulation as previously explained is regulated in Law Number 7 of 2017 concerning General Elections precisely in Article 222 (Diniyanto, 2018).

Research Problems

Based on the formulation of the Background above, the following problem formulations can be proposed: *First*, how is the presidential threshold set in the presidential election; *Second*, how is the impact of the presidential threshold in the 2024 presidential election?

Research Methods

This type of research is library research. Library research is basic data which in research (science) is classified as secondary data. Secondary data includes personal letters, books to official documents issued by the government (Mamudji, 2009).

The approach used in this research is a normative approach. Normative approach is to review legal issues normatively (may or may not be according to applicable law) (Asyikin, 2010). In conducting this research, the author will look for legal rules that apply in legislation on matters relating to the regulation of the presidential threshold.

The data sources used are secondary data sources. Secondary data sources are research data sources obtained through intermediary media or indirectly in the form of books, records, existing evidence, or archives both published and unpublished in general. Secondary data sources that the authors use include: Law of the Republic of Indonesia Number 7 of 2017 concerning Elections.

Data collection methods used in this research by means of library methods. The literature method is obtained through library research sourced from laws and regulations, books, official documents, research results. And journals, articles, newspapers related to presidential threshold arrangements. The author collects data through online literature consisting of legislation, books, official documents, and research results through the website, and the author also collects data actually by visiting the library of Pancasakti University Tegal.

Data analysis method is done qualitatively. Qualitative method is a research procedure that produces descriptive data in the form of written or spoken words from people and observed behavior. This method is done by using inductive logic, to draw conclusions from specific things into general

cases (Ibrahim, 2006). The results of the analysis are then presented descriptively, to be compiled as a conclusion in analyzing how the impact of the application of the presidential threshold in the election of the president and vice president.

Discussion

1. Presidential Threshold Arrangements in Presidential Elections

The regulation regarding the Presidential threshold in the Presidential Election is regulated in the Constitutional Court Decision number 53 / PUU-XV / 2017 stating that Article 222 of Law Number 7/2017 concerning Elections which regulates the Presidential threshold requirements, namely the presidential and vice presidential candidate pairs are proposed by a political party or a combination of political parties participating in the elections that meet the requirements of obtaining at least 20% (twenty percent) of the total seats in the House of Representatives (DPR) or obtaining 25% (twenty-five percent) of the national valid votes in the previous elections for members of the DPR, is constitutional because this provision is needed to provide certainty of parliamentary support for the president as one of the conditions for the stability of the president's performance (Ghafur, 2017).

Juridically, the role of the Constitutional Court (MK) to issue a decision on the lawsuit is correct, but not for the Constitutional Court to handle the legislative process or the formation of the law. The mechanism must of course still be handed back to the authorized legislative body, but in principle, decision-making in the legislative process must refer to the Constitutional Court's decision, the purpose of which is to strengthen the presidential system. If the final decision is the implementation of the Presidential threshold of 20-25%. The presidential threshold is the threshold limit used in the nomination of the president and vice president (Antameng, 2019).

Based on the plenary session of the House of Representatives regarding the Draft General Election Law, the size of the Presidential threshold is set at 20-25%. This means that a presidential candidate must be supported by 20% of political parties or a coalition of political parties that have seats in parliament and 25% of the national valid votes. The move to push the Presidential threshold must be interpreted not in the scheme of the interests of the major parties, but to strengthen our presidential system which seems to be half parliamentary (quase parlementary) or in Hanta Yudha's term as half-hearted presidential (Haris, 2014).

When examined more deeply, the presidential threshold policy is actually one way to strengthen the presidential system through the simplification of political parties. The goal is to create a stable government and not cause the current government to experience difficulties in making policies with the legislature (Ansori, 2017).

The reason for the presidential threshold to create an effective government by the elected President, simplify the parties and select candidates for President and Vice President is also not entirely correct. This is because political parties as election participants have been strictly selected by the General Elections Commission (KPU), so that political parties that pass strict verification as political parties participating in the elections then propose candidates for President and Vice President. The selection of political parties participating in the elections carried out by the General Election Commission is a form of simplification of the party system.

However, there are also those who argue that the presidential threshold requirement in the General Election Law actually reduces and co-opts the constitutional rights of political parties to propose presidential and vice-presidential candidates. This is because the logic of the regulation is that with the existence of the threshold, those who can propose are party formations that have a majority of seats, so that the presidential and vice presidential candidates become very limited. In fact, in the last two editions of the presidential and vice presidential elections in 2014 and 2019, only two (2) pairs of candidates participated. President Joko Widodo-Jusuf Kalla's coalition at the beginning of his leadership was only carried by a coalition of PDIP, PKB, Hanura, and Nasdem Party (Akuntono, 2014), then in the middle of his administration received support from PAN, Golkar, and PPP, so that it became the majority power in parliament. This is an empirical fact that the presidential threshold is not a determinant of the strengthening of the presidential system and the stability of support in the government. In fact, this provision can be part of an oligarchic inclinative normative institution and is not in line with the spirit of the constitution which opens up a wide space for presidentialism.

Theoretically, the threshold is the minimum level of support that must be obtained in order to place a representative and is generally developed in countries that use a proportional representation electoral system. The presidential election is determined in Article 159 paragraph (2) and paragraph (3) of Law No. 42/2008 using a plurality/majority system with a variant of the two-round system combined with the requirements for the distribution of

votes based on Article 159 paragraph (4) and paragraph (5) of Law No. 42/2008 based on this principle, the presidential threshold becomes incompatible with the system used in the election of the president and vice president.

The presidential threshold can then be interpreted as a rule of game tool that determines which political parties can carry candidates for the presidential and vice presidential pairs in the elections. This threshold or presidential threshold has been criticized by several parties, one of which is small parties whose votes do not meet the presidential threshold provisions, small parties consider this mechanism to be contrary to the constitutional rights of citizens even though there is an option for parties whose votes do not meet the presidential threshold provisions to join other political parties by uniting the ideology and national ideals carried.

Table 1. Presidential threshold since the direct election of the President and Vice President.

No.	Year	Basic Law	Presidential Threshold		Description
			House votes	National Legitimate Vote	
1	2004	Law No. 23/2003 on General Election of President and Vice President Article 5 paragraph (4)	15%	20%	Elections are held in two stages
2	2009	Law No. 42/2008 on General Elections for President and Vice President Article 9	20%	25%	Elections are held in two stages
3	2014	Law No. 42/2008 on General Elections for President and Vice President Article 9	20%	25%	Elections are held in two stages
4	2019	UU Nomor 7 Tahun 2017 Tentang Pemilihan Umum Pasal 222	20%	25%	Elections are held simultaneously

Source: Jurnal State Law Review

Table 1 has explained the legal basis and number of presidential threshold votes. The 2004 presidential and vice-presidential elections used a presidential threshold of 15% of the DPR votes or 20% of the national valid votes obtained by a political party or a coalition of political parties in the General Election of the House of Representatives. The presidential and vice-presidential elections after 2004 until 2019 use the same presidential

threshold of 20% of the DPR votes or 25% of the national valid votes obtained by a political party or a coalition of political parties in the General Election of the DPR.

However, if we look at Article 6A of the 1945 Constitution of the Republic of Indonesia, it does not determine the existence of a presidential threshold in the Presidential and Vice Presidential Elections, only "Presidential and Vice Presidential candidates are nominated by a political party or a coalition of political parties participating in the general elections". Here, Article 6A paragraph (2) of the 1945 Constitution of the Republic of Indonesia, if not interpreted otherwise, then its implementation is without any obstacles. In accordance with Article 6A paragraph (2) of the 1945 Constitution of the Republic of Indonesia with simultaneous elections, each political party participating in the general election can propose a pair of candidates for President and Vice President without the requirement of having a certain number of seats in the DPR.

Thus, the presidential threshold provision is contrary to the provisions of Article 6A Paragraph (2) and Article 22E of the 1945 Constitution of the Republic of Indonesia. The Constitutional Court committed inconsistencies and even tended to be paradoxical in its legal considerations in the presidential threshold decision in Decision Number 14/PUU-XI/2013 with Decision Number 53/PUU-XV/2017 on the Threshold Testing of Presidential and Vice Presidential Candidacy. The application of the presidential threshold has no relevance to the strengthening of the presidential system and the effectiveness of the government.

2. The Impact of the Presidential threshold in the 2024 Presidential Election

The impact of the presidential threshold is related to the constitutional rights of political parties. Political parties can be said to be the most affected by the presidential threshold. Law No. 7/2017 essentially states that the presidential threshold is 20% of the seats in the House of Representatives or 25% of the national valid votes owned by a political party or a coalition of political parties. The presidential threshold is taken from the election of the House of Representatives held in 2019. Looking at the results of the 2014 People's Representative Elections, no one political party received 20% of the DPR votes or 25% of the national valid votes. This means that no political party can nominate a President and Vice President pair. This condition is clearly detrimental to political parties. Political parties are constitutionally

disadvantaged because in fact political parties are guaranteed by the constitution to be able to nominate pairs of Presidential and Vice Presidential Candidates (1945 Constitution Article 6A paragraph 2). The existence of the presidential threshold has violated the constitutional rights of political parties to nominate the President and Vice President. The presidential threshold is also considered to discriminate against political parties. (Beritagar, 2018)

The polemical presidential threshold arrangement raises the question of whether the presidential threshold is in accordance with the wishes of the community? If it is answered at a glance, the answer is no. This is because there are still polemics related to the regulation and application of the presidential threshold. This is because there are still polemics related to the regulation and application of the presidential threshold. As mentioned earlier, the presidential threshold can be said to be in accordance with the wishes of the community if there are no polemics in the community even though only a few are polemic. The community should first agree to the implementation of the presidential threshold. If all people agree, it can be said that the regulation and application of the presidential threshold is in accordance with the wishes of the community.

The strengthening of the presidential threshold in accordance with the wishes of the community can be seen from the impact of the implementation of the presidential threshold in the 2019 simultaneous elections. Why do we see the impact of the 2019 simultaneous elections, because later if there is no change in the Law on Elections, it will be repeated how the impacts on the implementation of the presidential threshold in the presidential election in 2024 will be. The impact of the application of the presidential threshold in the 2019 simultaneous elections in reality can be felt by the community, especially groups with a direct interest in the elections, especially the elections of the President and Vice President. Identification of the impact of the implementation of the presidential threshold in the 2019 simultaneous elections can already be done since the stages of the 2019 simultaneous elections were held.

The impact of the presidential threshold on political parties does not stop there. New political parties that register in the 2024 elections will certainly not be able to propose candidates for President and Vice President. New political parties can only campaign for the Presidential and Vice Presidential candidates they support. New political parties cannot nominate candidates for President and Vice President because new political parties do

not yet have votes in the DPR. This is different from old political parties that already have votes in the DPR. Old political parties that have votes in the DPR can nominate the President and Vice President. Although the old political parties must first coalition because of the lack of votes (Paat, 2018).

The difference between old political parties and new political parties can cause injustice in political contestation. The differential treatment of old and new political parties is clearly not in accordance with the constitutional mandate. The Constitution has clearly stated that any political party or coalition of political parties can nominate the President and Vice President. The Constitution does not distinguish between old political parties and new political parties in nominating the President and Vice President (Triyoga, 2018).

This means that new political parties are disadvantaged in two ways at the same time. First, new political parties cannot independently nominate the President and Vice President. Second, new political parties cannot nominate the President and Vice President even though they are in coalition and meet the presidential threshold requirements. The disadvantages of new political parties are also exacerbated by the image of political parties that are not listed as proposing candidates for President and Vice President. The amount of campaign contribution limits for new political parties to the Presidential and Vice Presidential candidates is also different from the old political parties. This is because the position of new political parties is not to nominate candidates for President and Vice President (Luzuardi, 2018).

The disadvantage of the old political parties is only one, namely that they cannot independently nominate the president and vice president because they do not meet the presidential threshold. The old political parties can still nominate the president and vice president by working in coalition to meet the presidential threshold. (Ihsanuddin, 2018). There is one thing that is a principle and a disadvantage for old political parties. Political parties that can nominate candidates for President and Vice President cannot be absent or neutral in the Presidential and Vice Presidential Elections. They must participate in proposing candidates for President and Vice President even if they have to work in coalition with other parties. If an old political party that can propose candidates for President and Vice President but does not participate in proposing then the consequences obtained are that the political party cannot participate in the next five years of elections. This is a disadvantage for political parties. It is said to be a loss because not all political

parties have the same vision in coalition to propose candidates for President and Vice President.

The losses experienced by political parties as described are losses experienced by the people. The people in question are mainly the people who are members of the political parties referred to earlier. The losses experienced by the people are actually due to the application of the presidential threshold in the 2019 simultaneous elections. This means that the application of the presidential threshold is not in accordance with the wishes of the Indonesian people as a whole. This can be seen from the impact on political parties and the people in the political parties referred to.

The authority of each political party participating in the general election to propose a pair of candidates for President and Vice President in the General Election is one form of implementation of citizens' human rights, considering that the participants in the Presidential Election are the individual candidate pairs themselves as guaranteed in Article 27 paragraph (1) of the 1945 Constitution, which states that all citizens are equal before the law and government and must uphold the law and government with no exceptions. Likewise, Article 43 of Law Number 39 of 1999 concerning Human Rights has determined that:

- a. Every citizen has the right to be elected and to vote in General Elections based on equal rights through direct, free public, secret, honest and fair voting in accordance with the provisions of laws and regulations.
- b. Every citizen has the right to participate in government directly or through freely chosen representatives, in the manner prescribed by law.

In addition, the political participation of citizens through political parties is a responsibility of the human rights of every citizen, namely Article 28E paragraph (3) of the 1945 Constitution states that everyone has the right to freedom of association, assembly and expression. The provisions of Law Number 7 of 2017 concerning General Elections, which require a threshold for nominating Presidential and Vice Presidential candidate pairs, are a violation of citizens' rights that should not exist in a democratic country like Indonesia (Asep Wijaya, 2020).

However, in the context of the 2024 General Election, as regulated in Law Number 7 of 2017, which requires a threshold provision for the nomination of the President and Vice President. It is certainly not appropriate if the threshold rules for the nomination of the President and

Vice President are considered a logical and correct policy to limit the human rights of citizens to propose candidates for President and Vice President and be nominated as President and Vice President, based on considerations in ensuring recognition and respect for the freedom rights of others and to fulfill fair demands in accordance with moral considerations, religious values, security, and public order in a democratic society.

Conclusion

The regulation of the implementation of the presidential threshold refers to the decision of the Constitutional Court Number 53 / PUU-XV / 2017 stating Article 222 of Law Number 7 of 2017 concerning Elections which regulates the Presidential threshold requirements, namely the Presidential and Vice Presidential Candidate Pairs proposed by a Political Party or a Joint Political Party participating in the Election that meets the requirements of obtaining at least 20% (twenty percent) of the total seats in the House of Representatives (DPR) or obtaining 25% (twenty-five percent) of the national valid votes in the previous DPR elections. The reasons underlying the application of the Presidential threshold in the general election system of the president and vice president of Indonesia have an empirical basis related to the historical aspects of the history of electoral law and its relevance to the presidential system implemented in Indonesia based on the mandate of the 1945 Constitution of the Republic of Indonesia.

The impact of the implementation of the presidential threshold in Indonesia is the limitation of the constitutional rights of political parties that have a small number of seats in the DPR. Consequently, there will be parties who are disadvantaged. This certainly provides results that determine the quality and image of the political party.

Suggestion

Against the Constitutional Court to conduct a re-examination of the Presidential threshold policy in Law Number 7 of 2017 concerning General Elections still has high provisions in the number of votes from parliament or national valid votes. So that the application of the Presidential threshold is more likely to benefit the authorities and harm the people and negate the people's right to be able to choose alternative figures in the 2024 Presidential Election.

For political parties to conduct a judicial review or political review of the presidential threshold policy in Law Number 7/2017 on General Elections to avoid the impact of the application of the Presidential threshold being

repeated in the 2024 elections, the provisions should be revised so that later in the 2024 elections political parties do not feel disadvantaged as happened in the 2019 elections, because the threshold is too high. It is intended to form a more organized and directed national development for the better.

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