ANALYSIS OF CONSTITUTIONAL COURT VERDICT NUMBER 14/PUU-XI/2013 ON THE *PRESIDENTIAL THRESHOLD*

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Abstract

In judicial review on Article 9 of Law Number 42 Year 2008 on Election of President and Vice-President which regulates presidential threshold, the Constitutional Court declined it since it is an open legal policy mandated by Article 6 paragraph (5) of the 1945 Constitution that the administration of Pres-ident and Vice-President election will be further regulated in a Law. This reason is deemed insufficient as the Article 6 paragraph (5) regulates procedures (phases of the process), not requirements for can-didates of President and Vice President to be eligible on participating in the election. Moreover, Article 9 of Law Number 42 Year 2008 potentially expands the norms as stipulated in Article 6A paragraph (2) of the 1945 Constitution in which the candidates for President and Vice President shall be nominated by a political party or coalition of political parties participating in the election prior to the election without any other frills (the threshold).The term presidential threshold that is being used up until now is actually incorrect term; instead, presidential candidacy threshold should be considered as the more appropriate term.

Keywords: Presidential Election, Presidential threshold, Constitutional Court Verdict

Abstrak

Dalam pengujian Pasal 9 UU Nomor 42 Tahun 2008 tentang pemilihan umum Presiden dan Wakil Presiden yang mengatur tentang *presidential threshold*, Mahkamah Konstitusi menolak dengan alasan hal tersebut merupakan open legal policy dengan bersandarkan pada Pasal 6 ayat (5) UUD 1945 bahwa tata laksana pelaksanaan pemilihan Presiden dan Wakil Presiden lebih lanjut diatur dalam Undang-Undang. Argumen-tasi tersebut kurang tepat karena Pasal 6 ayat (5) mengatur tata laksananya (proses tahapan pelaksana-an) bukan persyaratan bagi pasangan calon Presiden dan Wakil Presiden untuk menjadi peserta pemilu. Selain itu Pasal 9 UU Nomor 42 Tahun 2008 tersebut berpotensi memperluas norma sebagaimana yang di-atur dalam Pasal 6A ayat (2) UUD 1945 bahwa pasangan calon Presiden dan Wakil Presiden diusulkan oleh partai politik atau gabungan partai politik peserta pemilu sebelum pemilu tanpa adanya embel-embel lain (adanya ambang batas). Istilah *presidential threshold* yang digunakan selama ini adalah keliru, seha-rusnya adalah presidential candidacy threshold

Kata kunci: Pemilu Presiden, *Presidential threshold*, Putusan Mahkamah Konstitusi

Introduction

The implementation of the President and Vice President direct election is arguably more democratic than the President and Vice Presi-dent appointment by People's Consultative As-sembly (MPR) since the implementation mecha-nisms directly involves people which assumes the President and Vice President received a di-rect mandate and real support as a form of di-rect interaction between the elector and the elected. To strengthen the view, two (2) rea-sons are given as follows. *First*, the direct elec-tion is 'more open' 'the door' for the emer-gence of the President and Vice President ac-

cording to the pretension of the majority; *second*, to maintain the stability of government in accordance with applicable presidential system. Accordingly, it makes sense if the people expect the election of President and Vice President to create a democratic state government and free from authoritarian ruler based on Pancasila and the 1945 Constitution as well as to build people's sovereignty completely.[1]

Since the selection is directly conducted, president and vice president election is always preceded by legislative election (Election of DPR, DPD and DPRD). It means that presidential and vice presidential elections conducted separately with legislative election. Based on the results of the legislative election then the political parties or coalition of political parties that met the threshold determined by legislation nominate candidates for president and vice president to stand for election of president and vice president. This mechanism is due to the reason that it will provide adequate time for the political parties joining the election to consolidate or merge with other political parties to nominate the president and vice president.

The elections are conducted separately and it believes that it brings some negative impacts such as in terms of cost, time allotment and effort in organizing these elections. Besides, the legislative and president and vice president elections are held separately (the legislative elections do first). Politically it is the will of the major parties in order to propose candidates and to suppress or eliminate small parties by making the minimal threshold for the nomination of President and Vice President.

Separation of the electoral system, both nationally and locally, the executive and legislative branches are considered less effective and efficient in a presidential system. Moreover, it causes a lot of conflicts among groups or individuals as well as the impact on the efficient use of state budget related to the implementation of the election.[2]

Based on those reasons, a civil society coalition for the elections represented by Effendi Ghazali filed a Judicial Review of Law Number 42 Year 2008 on President and Vice President General Election to the Constitutional Court. The proposed articles are Article 3 Paragraph (5), Article 9, Article 12, paragraph (1) and (2), Article 14 paragraph (2), and Article 112 of Law Number 42 Year 2008. Based on the application, the Constitutional Court granted some Effendy Ghazali's request and declared that Article 3 paragraph (5), Article 12 paragraph (1) and (2), Article 14 paragraph (2), and Article 112 of Law Number 42 Year 2008 was not valid and has no legal force noting that it applies to the 2019 general election of President and Vice President.

In this verdict, the Constitutional Court declared that Article 9 of Law Number 42 Year 2008 remained valid and has legal force which means that the Constitutional Court on the implementation of the presidential threshold in simultaneous elections is considered as legal policy and regulation submitted to the law maker. Actually, Effendi Ghazali in his petition stated that the enactment of simultaneous elections, Article 9 of Law Number 42 Year 2008 on the presidential threshold should automatically be declared invalid since the application of presidential threshold in simultaneous elections is irrelevant.[3] In his request, Effendi Ghazali asserted that the submission of candidates for President and Vice President should use the provisions of Article 6A paragraph (2) of the

[1] Moh. Mahfud MD, 2011, *Perdebatan Hukum Tata Negara Pasca Amandemen Konstitusi*, Jakarta: Rajawali Press, page 137-139.

[2] Hayat, "Korelasi Pemilu Serentak Dengan Multi Partai Sederhana Sebagai Penguatan Sistem Presidensial", *Jurnal Konstitusi*, Vol. 11 No. 3, September 2014, Jakarta: Mahkamah Konstitusi of Republic of Indonesia, page 471.

[3] Mahkamah Konstitusi of Republic of Indonesia Verdict Number 108/PUUXI/2013 concerning Testing on Law Number 42 Year 2008 concerning President and Vice President General Elections.

1945 Constitution or do not use the provisions of the presidential threshold. Later on, after the decision of the judicial review request filed by Effendi Ghazali was decided, the Constitutional Court also issued Decision Number 108/PUU-XI/2013 filed by Yusril Ihza Mahendra. In the petition, Yusril request the Constitutional Court to conduct a constitutional interpretation toward the implementation of President and Vice President General Election. The main substance of Yusril's petition deals with the elimination of presidential threshold provision as a requirement of a party or coalition of political parties to propose candidates for President and Vice President. Yusril argued that the presidential threshold is a provision that violates the constitutional rights of a person to nominate themselves as candidates for President and Vice President. Besides the 1945 Constitution does not regulate this issue, Yusril believed the provisions of presidential threshold is contrary to the constitution. The Constitutional Court through Decision Number 108/PUU-XI/2013 is still consistent with the previous decision (Decision Number 14/PUU-XI/2013) which retains the provisions of the presidential threshold in the President and Vice President General Elections.[4]

If further investigation of the MPR session which discusses Article 6A in general and paragraph (2) in particular, no one of fraction or MPR member offense the threshold issue (presidential threshold). The provisions of paragraph (5) of Article 6A has locked the addition of the prerequisites for nominating candidates, not as prerequisites of personals like in a discussion had been given the authority to the Law to provide additional constraints, not just within the norm of 1945 Constitution under Article 6 paragraph (2).[5] Talking the substance of this article, basically there are some papers that discuss similar object but this article will focus on discussing and studying about the legal reasons or legal considerations of constitutional judges refusal to drop the threshold of the presidential nomination (presidential threshold) and the definition of the presidential threshold itself.

Based on the description in the background, the author will discuss the following issues; Why the Judges of the Constitutional Court in deciding the case Number 14/PUUXI/2013 concerning Testing on Law Number 42 Year 2008 refused to cancel requirements threshold of presidential nomination (presidential threshold) and what is the meaning of the presidential threshold?

Discussion

In decision Number 14/PUU-XI/2013 concerning Testing on Law Number 42 Year 2008 regarding to President and Vice President General Election, the Constitutional Court has decided that president and vice president election with legislative election are conducted simultaneously. Yet, in Article 9 of Law Number 42 Year 2008 which regulates the President and Vice President Nomination threshold or presidential threshold, Constitutional Court declined the applicant's request. The reason is that the Court, in its function as the guardian of the constitution, im-possibly cancelled the Law or some of its contents if these norms are delegates of opened authority specified as a legal policy by law maker. Even if the content of a law considered poor as well as the provisions of the presidential threshold and separation of the election schedule in the case a quo, the Court is still not able to annul it for unconstitutional

[4] Mahkamah Konstitusi of Republic of Indonesia Verdict Number 108/PUUXI/2013 concerning Testing on Law Number 42 Year 2008 concerning President and Vice President General Elections.

[5] Ziffany Firdinal, "Perubahan Makna Pasal 6A Ayat (2) UUD 1945", *Jurnal Konstitusi*, Vol. 10 No. 4, December 2013, Jakarta: Mahkamah Konstitusi of Republic of Indonesial, page 670.

reason unless the product of legal policy apparently violates morality, rationality and intolerable injustice.[6] This legal view is in line with the Constitutional Court Verdict Number 010/ PUU-III/2005 dated on May 31st, 2005 stating that as long as the selection policy is not a matter beyond the authority of law maker, does not abuse the authority, and not manifestly contrary to the 1945 Constitution, then the choice of such a policy is impossibly to be cancelled by the Court.[7]

The author who disagrees with the Constitutional Court considers that the presidential threshold is a legal policy of law maker. Since the presidential threshold in Law Number 42 Year 2008 actually expands the meaning of Article 6A paragraph (1) of the 1945 Constitution, or even creates a new norm (Article 9 of Law Number 42 Year 2008). Similarly, Ahmad Farhan S states that Article 9 clearly contradicts to Article 6A paragraph (2) of 1945 Constitution.[8]

According to the authors by reading and observing the formulation contained in Article 6A paragraph (2) of the 1945 Constitution, the participant of President and Vice President general election is already clear that a couple of candidates is proposed by political parties or coalition of political parties before the election. Yet, the very clear formulation was amended by the various political forces in DPR, especially the major parties. This can be seen in the election of Pres-ident and Vice President in 2004 as stipulated in Article 5 (4) of Law Number 23 Year 2003 concerning General Election of President and Vice President that a pair of candidates can only be nominated by political parties or coalition of political parties that obtain at least 15% (fifteen percent) of the total seats in the House of Representatives or 20% (twenty percent) of the acquisition of valid votes in the national election of DPR members. For the 2009 elections, Law Number 42 Year 2008 concerning General Election of President and Vice President requires supported voice of at least 20% (twenty percent) of seats in the House of Representatives or 25% (twenty five percent) of national valid votes in the election the House of Representatives for political party or coalition of political parties to propose candidates for President and Vice President.

According to the authors, if we read the provisions contained in Article 6A paragraph (5) of the 1945 Constitution, the opportunity for law maker to use arguments of legal policy is possible only to the extent related to the implementation of the election procedures not a minimum threshold requirement. This is similar to what was presented by Philip M. Hadjon stating that because there is no delegates of the 1945 Constitution, the presidential threshold in Article 9 of Law Number 42 Year 2008 concerning the Presidential Election was made without authority *(onbevoegd)* of the law maker. Therefore, the rejection of the Constitutional Court at the request of a number of political parties to the provisions that contained in Article 9 of Law Number 42 Year 2008 with the building of legal policy argument is difficult to be understood.

The same view is also delivered by three of the Constitutional Judges by their dissenting opinions. They believe proposing of candidates for President and Vice President by the political party or coalition of political parties participating in the Elections listed in Article 6A paragraph (2) of the 1945 Constitution is already very clear intention and does not give the chance for law maker to create a legal policy with a "trick" contaminated by the political motives

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[6] Mahkamah Konstitusi of Republic of Indonesia Verdict Number 010/PUU-III/2005 concerning Testing on Law Number 32 Year 2004 concerning Local Government.

[7] Mahkamah Konstitusi of Republic of Indonesia Verdict Number 010/PUU-III/2005 concerning Testing on Law Number 32 Year 2004 con-cerning Local Government.

[8] Ahmad Farhan Subhi, "Pengusulan Pasangan Calon Presiden dan Wakil Presiden Sebagai Peserta Pemilu Menurut Undang-Undang Pilpres", *Jurnal Cita Hukum*, Vol. II No. 2, December 2015, Jakarta: Faculty of Sharia and Law UIN Syarif Hidayatullah, page 347.

determining "presidential threshold" as stated in Article 9 of Law Number 42 Year 2008 petitioned. The reason to use Article 6A paragraph (5) of the 1945 Constitution which reads, "The further procedure for the implementation of the President and Vice President shall be regulated by law" as a manifestation of the mandate 1945 Constitution to form the Law can make the terms "threshold" incorrect. It is so since the article does not regulate the requirements, but rather way problems as the requirement already set in Article 6 of 1945 Constitution, can not be mixed up. A different opinion was delivered by Abdul Latif who said that the design of the Presidential threshold in Article 9 the Law Number 42 Year 2008 seemed designed to establish a more effective Presidential system. Presidential threshold is an instrument to strengthen the coalition that allows the President to have authority more effectively.[9]

The argument that the presidential threshold indicates that candidates for President and Vice President have strong and wide popular support is also seemingly inaccurate. The extensive support will be realized through the election of President and Vice President directly by the people, as the provisions of Article 6A paragraph (1) in conjunction with Article 6A paragraph (3) of the 1945 Constitution concerning the election of candidates for President and Vice President must gain more votes than fifty percent of the vote in the election with at least 20% (twenty percent) votes in each province spread across at least half of the provinces in Indonesia. The experience of the 2004 presidential election showed that the results of the presidential election is not compatible with the results of the legislative elections and the number of vote acquisition of party or coalition political parties. It happened because the pair of candidates of political parties or coalition political parties which support them and the acquisition of voice in legislative elections is smaller rather than of vote acquisition of other candidates, precisely who won Election of President and Vice-President.

Presidential threshold in the simultaeous President and Legislative General Election should be abolished because citizens have more options to select the preferred and qualified President and Vice President.[10] Article 9 of Law Number 42 Year 2008 is a political norm, because it is likely a political consensus of the major parties to reduce or even close the possibility of other political parties to nominate their partner ahead in presidential election.[11]

A constitutional law expert, Jimly Asshiddiqie, argues that Indonesia which sincerely intends to build democracy in line with the 1945 Constitution shall eliminate presidential threshold according to the rationale that requires President and Vice President election as well as the legislative elections shall be held simultaneously.[12] Similarly Saldi Isra stated that the separation of president and legislative elections and affirming the presidential threshold are tricks of major political parties in the House of Representatives. Seeing the current experience, the two regimes can be seen actually as well as a trick to strengthen the grip section of the elite political parties in the process of nominating candidates for President and Vice Pre-

[9] Abdul Latif, *"Pilpres Dalam Perspektif Koalisi Multipartai"*, Jurnal Konstitusi, Vol. 6 No. 3, September 2009, Jakarta Mahkamah Konstitusi of Republic of Indonesia, page 35.

[10] Sodikin, "Pemilu Serentak (Pileg dengan Pilpres dan Wapres) dan Penguatan Sistem Presidensial", *Jurnal Rechtsvinding*, Vol. 3 No. 1, April 2014, Jakarta: Badan Pembinaan Hukum Nasional, Kementerian Hukumdan Hak Asasi Manusia of Republic of Indonesia, page 31.

[11] Umbu Rauta, "Menggagas Pemilihan Presiden Yang Demokratis dan Aspiratif", *Jurnal Konstitusi*, Vol. 11, No. 3, September 2014, Jakarta: Mahkamah Konstitusi of Republic of Indonesia, page 609.

[12] Jimly Asshiddiqie, 4 January 2013, *"Kalau Serius Bangun Demokrasi, Presidential Threshold Ditiadakan"*, available on http://www.rmol.co/read/2013/01/04/92669/JimlyAsshiddiqie;-Kalau-Serius-Bangun-Demokrasi,-Presidential-Threshold-Ditiadakan-, accessed on January 10th 2016.

sident.[13] Considering the condition that legislative elections and President and Vice President election shall be conducted simultaneously, the question of threshold for nominating candidates for President and Vice President (Presidential threshold) becomes irrelevant.[14]

Presidential threshold in the President and Vice President general elections are used not only in terms of determining the selected pair but also as a prerequisite in the nomination. Article 9 of Law Number 42 Year 2008 concerning President and Vice President General Election determines that candidates for President is proposed by a Political Party or Coalition of Political Parties that meet the requirements, ie to gain seats at least 20% (twenty percent) of the total seats in DPR or 25% (two twenty-five percent) of national valid votes in the election of members of Parliament, before the implementation of the Presidential election. These provisions of Article 101 replace the Temporary provisions of Law Number 23 Year 2003 con-cerning General Election of President and Vice President applied previously in 2004 General Election by requiring the House of People's Re-presentative's seats at least 3% (three percent) or the acquisition of national valid votes amounted to 5% (five percent) and Article 5 paragraph (4) of Law Number 23 Year 2003, which requires the House of People's Representative's seats at least 15% (fifteen percent) or national valid vote acquisition of 20% (twenty percent). The percentage of these thresholds became one of the requirements that must be met for a political party or coalition of political parties to be able to propose candidates in the Presidential election. The author beileves the provisions of the percentage requirement for nominating a president and vice president spark a problematic conflict of norms. Reviewing the provisions of the 1945 Constitution, Article 6A paragraph (2) aims to determine the nomination of candidates for President and Vice President conducted by a political party or coalition political parties listed as participants in the legislative elections and it is not determined formally the existence of preconditions percentage which should be fulfilled. The Setting of percentage requirement for nominating the President and Vice President as stipulated in Article 9 of Law Number 42 Year 2008 gives the impression of a conflict of norms vertically due to the aforementioned article of the requirement of candidates from what has been specified in the 1945 Constitution. Therefore, provisions of Article 9 of Law Number 42 Year 2008 is appropriately cancelled by the Constitutional Court. Likewise, Husnu Abadi argued that according to the existence of implementation minimum threshold (presidential threshold) in nominating the pair of President and Vice President in the elections and legislative elections which were conducted simultaneously is irrelevant as it has lost its rationale.[15] Implementation of Presiden-tial threshold in simultaneous legislative elec-tions and the presidential election is not pos-sible to political parties participating in the election years running. Presidential threshold can only be used by parties participating in the legislative elections in previous period.[16]

The term of *presidential threshold* consists of presidential and threshold. Etymologically presidential term comes from the president, which according to Black Law Dictionary

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[13] Saldi Isra, 25 April 2014, *"Menggadaikan Suara Rakyat"*, Available on http://www.saldiisra.web. Id/index. php/tulisan/artikel-koran/11-artikelkompas/261-menggadaikan-suara-rakyat.html, accessed on March 15th 2016.

[14] Janpatar Simamora, "Menyongsong Rezim Pemilu Serentak", *Jurnal Rechtsvinding*, Vol. 3 No. 1, April 2014, Jakarta: Badan Pembinaan Hukum Nasional, page 15.

[15] Husnu Abadi, "*Presidential Threshold* Sebagai Instrumen Proteksi", *Jurnal Mahkamah*, Vol. 6 No. 1, April 2014, Pekanbaru: Faculty of Law UIR, page 31.

[16] Bagus Anwar H, "Politik Hukum Sistem Pemilu Legislatif dan Presiden Tahun 2009 dan 2014 Dalam Putusan Mahkamah Konstitusi", *Jurnal Hukum Ius Quia Iustum*, Vol. 21 No. 4, October 2014, Yogyakarta: Faculty of Law UII, page 577.

is the chief executive of a nation, especially in the form of democratic governance.[17] While the threshold is derived from the English meaning doorstep or threshold,[18] while Indonesian dictionary which defines threshold as the level of acceptable limits or tolerance.[19]

According to the authors, the use of term threshold in this case to interpret the presidential threshold as a percentage requirement for nominating the President and Vice President raises confusion and misguiding. Minimum percentage requirements as stipulated in Article 9 of Law Number 42 Year 2008 is not intended as a threshold that must be met to determine who the pair of elected President and Vice President. Supposedly the presidential threshold is defined as a threshold election not threshold nomination as well as the applicable threshold in election political parties to gain seats in the House of Representatives or parliamentary threshold. Criteria for percentage of 20% (twenty percent) of the House of People's Representative's seats or 25% (twenty five percent) of the acquisition of national valid votes in Article 9 of Law Number 42 Year 2008 is intended to determine the terms of contestation, not as a condition of election. The percentages asserted as a requirement of contestation do not necessarily make it as threshold. In comparison to the application of threshold consequently intended as a requirement election as implemented in Article 208 of Law Number 8 Year 2012 in which a political party can put its candidates or to get a seat in the House of Representatives if it meets the institutional percentage of 3.5% (three point five percent) or known as parliamentary threshold.

According to the authors, if it is consistent with terminology of threshold, then the actual provisions of Article 6A paragraph (3) of the 1945 Constitution in conjunction with Article 159 paragraph (1) of Law Number 42 Year 2008 can be referred as presidential threshold. Article 6A paragraph (3) of the 1945 Constitution in conjunction with Article 159 paragraph (1) determines the threshold more than 50% (fifty percent) of votes in the general election of President and Vice President by at least twenty percent of the vote in each province spread across more than half of the provinces that must be met in order to be designated as an elected candidate. These formal threshold becomes minimum level of support that must be met by a couple of candidates to be designated as the President and Vice President-elect. According to Zainal Arifin Mochtar in A. Hendra stated that a presidential threshold was not threshold to nominate candidates for president but election the President as applied in most countries in the world, 50% + 1.[20] In comparison, Article 97 of the Constitution of Argentina (Section 97 Constitution of Argentina) also formally determines the magnitude threshold votes presidential elections ie more than 50% to be met by a couple of candidates in the first vote (first ballot) to be designated as a couple elected and no implementation minimum of threshold requirement in the nomination.[21]

In many countries, there is no implementation threshold requirements nomination of president and vice president to the political par

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[17] Henry Campbell Black, 1968, *Black's Law Dictionary-Definitions of the Terms and Phrases on American and English Jurisprudence, Ancient and Modern (Revised Fourth Edition),* St. Paul Minn: West Publishing Co., page 1348.

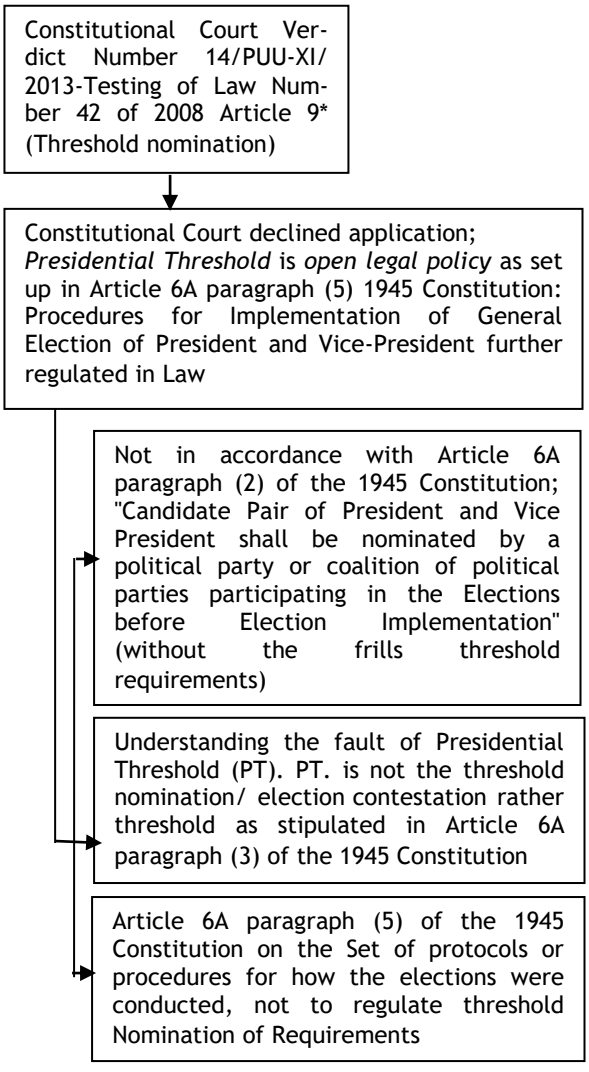
[18] John M. Echols dan Hassan Shadily, 1995. *Kamus Inggris Indonesia (An English Indonesia Dictionary)*, Jakarta: Gramedia, page 589.

[19] Departement of National Education, 2011, *Kamus Besar Bahasa Indonesia*–Pusat Bahasa (Fourth Edition), Jakarta: Gramedia Pustaka Utama, page 48.

[20] Ahmad Hendra, *"Implikasi Pemilihan Umum Anggota Legislatif dan Pemilihan Umum Presiden dan Wakil Presiden", Jurnal Hukum Legal Opinion*, Vol. 1 Edition 3, June 2013, Palu: Faculty of Law Universitas Tadulako, page 5.

[21] IGN Agung Sayoga Raditya, November 26th 2016, "*Rethinking Ketentuan Presentase Sebagai Syarat Pencalonan Presiden dan Wakil Presiden Di Indonesia"*, available on http://id.portalgaruda.org/?ref=profile&id=354186, accessed on March 5th 2016.

Figure 1. The Scheme of Analysis Result of Mahkamah Konstitusi of Republic of Indonesia Verdict Number 14/PUU-XI/2013 concerning Testing on Law No. 42 of 2008 concerning on The General Election of President and Vice President Linked to the Presidential threshold:



Note *) The pair of candidates proposed by political parties or coalition of political parties participating in the election that meets the requirements of seats at least 20% of the total seats in House of People's Representative or 25% of the national valid votes in the election mem-bers of the House of People's Represent-ative, before the election of President and Vice President

ty or coalition of political parties bearers as happened in Indonesia. More emphasis to the personal requirements of presidential candidates, as one example is France. In French presidential election system implements this type of scrutin uninominal majoritaire a deux tours, where the elections were conducted in two rounds. Elections will only last one round if there are candidates who get a vote of 50% + 1 vote (unanimity). However, if no candidate obtain the absolute vote, then the elections were held in two rounds. Two candidates who get the most votes will proceed to the second round. In the second round, the candidate who gets the most votes will become president.[22] Scheme analysis of the Constitutional Court decision related to the presidential threshold can be described as follows in Figure 1.

Conclusion

In the Constitutional Court Verdict Number 14/PUU-XI/2013 about judicial review of Law Number 42 Year 2008 concerning the general election of the President and the Vice President, the Constitutional Court refused to cancel Article 9 that regulates the presidential threshold, arguing that the legal policy of the law maker based on Article 6A paragraph (5) of the 1945 Constitution which reads "The management implementation of the Presidential and Vice-President election more regulated in Law". Argumentation of the Constitutional Court judges is not appropriate because Article 6A paragraph (5) regulates its governance (implementation process of the stages) not a requirement for Candidate Pair of President and

[22] Hana Maulida, 1 Oktober 2012, *"Pemilu Eksekutif dan Legislatif Di Perancis Serta Hubungan Kedua Pemilu Tersebut"*, available on http://www.slide.share.net/MaulidaHanah/makalah-pranata-pemilu-perancis, accessed on 3 March 2016.

Vice President to become participants in the elections. In addition Article 9 of Law No. 42 of 2008 potentially extends the norms as stipulated in Article 6A paragraph (2) of the 1945 Constitution that pair of President and Vice President shall be nominated by a political party or coalition political parties participating in the election before the election without any other frills (the existence of threshold). In many countries there is no implementation threshold requirements nomination of president and vice president to the political party or coalition of political parties bearers as happened in Indonesia. The requirement largely focuses on personal requirements of presidential candidate. Therefore, according to the author, Article 9 of Law Number 42 Year 2008 that regulates presidential threshold should be canceled. The use of the term presidential threshold has been misguided, so it creates confusion. The meaning of presidential threshold should be the threshold of election of candidates for President and Vice President as stipulated in Article 6A paragraph (3) of the 1945 while the threshold for general elections as contained in Article 9 of Law Number 42 Year 2008 was the presidential candidacy threshold.

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