

# Application of the Presidential Threshold Concept in the Presidential and Vice-Presidential Election System and its Impact on the Indonesian Constitutional System

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## ABSTRACT

The purpose of this study is to analyze the effectiveness of the presidential threshold concept in the election of President and vice president and its impact on the Indonesian constitutional system. The theory used is the theory of democracy compared to political parties and elections. The method used in this study uses a normative juridical approach by analyzing the laws relating to the General Election and using a qualitative approach by collecting existing data in literacy and literature. The results of the discussion show that the Presidential Threshold concept is used as an alternative in minimizing divisions in the electoral process, it can be seen from the existence of a threshold system specified in the law by directing political parties to form a coalition. However, the presidential threshold concept can have an impact on the reduction of public participation in democracy because of the threshold that is determined in the nomination process. The presidential threshold gave birth to coalitions between electoral parties in carrying out their candidates, with the existence of collusion between political parties could indicate the existence of policy transactions based on the interests of each political party.

**Keywords:** *Presidential Threshold, Political Parties, and General Elections*

## I. INTRODUCTION

In general, some views in the General Election of the President and Vice President (heads of state and their representatives) can be called democratic if they are carried out using direct elections rather than appointments made directly by the MPR, this is because in elections directly involve the people to participate in the field. In this case that the process of electing the head of state and his deputy requires a real mandate and support as one of the direct interactions between voters and those who are elected. There are at least 2 (two) reasons for the general election to be held. First, the direct election can open up the figure of the head of state and his deputy who are sensitive to the conditions of the people. Second, maintain the stability of good governance. In the concept of this view, that is the reason that the creation of a democratic state government and the building of people's sovereignty based on Pancasila and the 1945 Constitution through the election of the head of state and his representatives by general election (Moh. Mahfud MD, 2011).

An important factor that must be understood, is the concept of democracy that is present today comes from a place that has its own culture, and its way of organizing, and this concept was born with the situation they faced at that time. However, in the end, this classical concept of democracy became widespread and was used as a benchmark when measuring the quality of democracy in other countries with different cultures, different time frames, and different government administrations. Furthermore, this classical concept of democracy is associated with human rights and is placed as a nature that must exist in humans (Christiano, 2015; Dryzek, 2016). Democracy can also have a very deep influence in aspects of regional life such as policy delegation that can be mandated to the sub-district level, which is commanded by the sub-district head (Ndraha, 2019).

Although democracy has many meanings and is applied with many faces, there is a tendency that democracy refers to the equal rights that every people have to participate in decision-making (Epstein, 2011). There are various definitions of democracy, but how does the mechanism of democracy work? The relationship between elections and democracy, that elections are the embodiment of democracy has been put forward by many experts. Elections have an important role in democracy, elections are a form of democracy (Blais, Morin-Chassé, & Singh, 2017). Furthermore, it is said that democracy is a process of collecting decisions made by the people through the election mechanism (Issacharoff, 2008). What about the implementation of democracy in Indonesia? The wave of democratization reached Indonesia when the five-star President General stepped down from his position after nearly 32 years in power.

The euphoria of democratization echoes in every corner of life and is at the same time used as a panacea that is believed to be able to bring Indonesia out of the multicrisis at the end of the 2000 century. Since then, the new government regime has named itself the reform regime, which seeks to significantly change the entire life of the state in Indonesia based on principles of democracy (Purwoko, 2010). Indonesia experienced difficult times, but the monetary crisis, then the separatist movement in Aceh, the East Timor referendum, the Poso conflict, and the loss of a president who was so strong, did not make Indonesia weak. Indonesia remains consistent with implementing government administration based on the principles of democracy and maintaining the nation's dignity intact.

The Indonesian government reform regime immediately manifested democracy by holding direct presidential elections which were usually carried out through representatives at the general assembly of the People's Consultative Assembly. The People's Consultative Assembly (MPR) with a total of about 500 people will represent the people of Indonesia to determine who will become the President of the Republic of Indonesia in the next five years. The mechanism for selecting representatives is immediately revoked and replaced by direct presidential elections by the people, who get the most votes from the people, it is they (the presidential and vice presidential pairs) who become the legitimate President of the Republic of Indonesia based on the popular vote. Another characteristic of this regime is that it implements direct elections for regional leadership elections as well as direct elections for DPRD legislative candidates. Pseudo Democracy is the practice of presidential elections, regional head elections, and legislative member elections (Sulistyo, 2002).

The election system for heads of state and their representatives has a close relationship with the community which has an interdependence nature, this makes the connection and influences the strength of the legitimacy of the pairs of candidates for heads of state and their elected representatives. After the amendment to the 1945 Constitution, the election system for the head of state and his representatives give freedom to the people in their rights as voters or those who are elected, then regarding whether or not they are legitimate as winners in the election, a head of state and his deputy must get half the votes of the national population, as well as two tens of percent of the vote in all provinces in Indonesia (Moh. Mahfud MD, 2011).

The existence of regulation on the position of new political parties in carrying presidential candidates and their representatives is still very hotly debated. Because, in holding the 2019 general election, the results of the 2014 election became a reference in the submission of the president and his deputy by political parties. This means that political parties that are participating in the 2019 general election for the first time experience juridical problems because they are limited by binding rules based on the decision of the Constitutional Court. Of course, this problem will lead again to the original intent issue as stated in Article 6A paragraph (2) the phrase "election participant".

The intended election participants are political parties that have been declared administratively valid and have factual verification by the KPU. If using legal logic before the decision of the Constitutional Court, after being declared valid as election participants, political parties participate in legislative elections to get seats in parliament. If it gets a seat in parliament, then the threshold obtained through the election will be used for capital to find a coalition, or at least if it gets a national vote of at least 20%, the party will automatically nominate a presidential pair and their deputy. Meanwhile, in the 2019 election coalition will still be carried out by several parties that already have the basic capital, namely the threshold that has been obtained in the 2014 election. This provision certainly has implications for the position of new parties that do not yet have a threshold regarding their participation in the 2019 election event.

There is a view that the presidential and vice-presidential election process can be said to be good if the vote results are absolute from the majority of the people. The election process in 2014 reflected the denial of the empirical reality of democracy because it was not supported by a majority vote, it can be used as a reminder to the people who are not satisfied with the direct election system. However, theoretically direct elections are a consequence of the use of the presidential system. With this system, an absolute majority vote is not necessarily realized, but at least with this system, it will be elected with the support of an absolute majority vote that describes the aspirations and will of the people (Abdul Latif, 2009).

The implementation of elections in Indonesia uses the principles of LUBER-Direct, Free, General Secrets, and JURDIL-Honest and fair. These values are the embodiment of the universal classical principles of democracy. This principle is applied uniformly with the mechanism and uniform procedures for all regions in Indonesia. Elections are a benchmark for the quality of democracy in a country.

Based on the description and explanation above, the author gives a problem about how the presidential threshold is for the presidential and vice presidential elections from a juridical point of view and provides an overview of how new political parties as election participants propose the President and Vice President. So the author describes the analysis of the concept of Presidential Threshold in the General Election System for President and Vice President in Indonesia.

## **II. THEORETICAL REVIEW**

### **A. Democracy**

Antony Gidden argues that democracy makes the people the highest power holder. Because in Indonesia itself this is confirmed by the sentence sovereignty is in the hands of the people. Indonesia has certain concepts of democracy, although the concept of democracy comes from the west, these concepts include deliberations that are closely embedded in the Indonesian nation. This is confirmed by the statement from Nurcholis Madjid that the application of universal democratic ideas reflects the level of development and conditions that exist in Indonesia (Galuh Kartiko, 2009).

Thus, in simple terms, democracy can be interpreted as the people's authority to govern. To form a democratic government, it is necessary to institutionalize substantial democratic values and become institutionalized values, because it regulates how democratic values can function in a modern political system (Huda, 2018).

### **B. Political Party**

In the territory of a country, the existence of politics greatly determines the law of a particular country because basically law is a political product. In this reform era, political parties with democracy can be said to be like two sides of a coin that cannot be separated and have a position and role in each system. Both have a strategic position in carrying out the role of government, and not a few say that party politics has the most dominant role in determining democracy in a country. Therefore, the party becomes an important pillar in strengthening institutionalization in a government to run a democratic political system (Jimly Asshiddiqie, 2005).

The existence of political parties is one of the markers that a country can be said to be a (procedurally) democratic country. The higher the level of public awareness of politics makes political parties grow and develop so that the existence of political parties is expected to be able to accommodate all the needs that exist in society. This is by the definition of a political party itself, which is an organized organization or group and its members have the same values, ideals, and orientation towards a better direction, and to achieve political power by seizing political positions and by using constitutional means. in carrying out each of its policies (Budiardjo, 2007).

Political parties are different from movements, a movement usually uses politics to make a change to an existing order in society, and some even want to create a new social order. Political parties are also different from pressure

groups or what is often referred to as interest groups. Interest groups only aim to obtain certain interests by influencing decisions, usually, these groups are outside political parties and are in community groups (Huda, 2018).

### **C. General Election**

One of the important things in ensuring the sovereignty of the people is that the people have the right to choose and determine who will run the government and oversee the running of the government. The right to vote is realized through the means of general elections. So, holding a general election is a manifestation of popular sovereignty. General elections are held within a certain period of time periodically (regularly) in order to elect and determine who sits in the government (president and vice president) and in the legislative (members of the DPR). Therefore, general elections are fundamental for every country. The participation and participation of the people in general elections is the root of the legitimacy of state power. (Bryan A., 1999). Elections are also an important arena for ensuring political equality between citizens, both in access to government positions and in the value of votes and freedom in political rights (David Bentham and Kevin Boyle, 2000). Elections are also an important arena for ensure political equality between citizens, both in access to office government and in the value of their votes (Dieter Nohlen, 1993).

## **III. RESEARCH METHODS**

The method used in this study uses a normative analysis approach by analyzing the law and relating it to the symptoms that exist in the election process. In addition, this research is qualitative, and the data collection process uses a literature study, namely by collecting data from books, journals, laws, and other scientific works that are considered related to this research.

## **IV. RESEARCH RESULTS AND DISCUSSION**

### **A. Entry of Threshold**

Threshold regulation can be divided into 3 categories, including the electoral threshold for this category explaining the requirements for political parties to participate in the election, the requirements that must be passed are passing administrative verification and passing factual verification in the management of political parties. Then the parliamentary threshold category is an explanation of the requirements for political parties as eligible participants in obtaining seats in parliament by calculating the percentage using the arrangements regulated in the law. Finally, the presidential threshold category is an explanation of the requirements for political parties to participate in the election of the head of state and their representatives which are carried out by submitting each candidate by a single political party that is considered to have met the threshold requirements or has formed a coalition of political parties.

In Law no. 42 Th. 2008 concerning the Presidential and Vice Presidential Elections, it has provided stipulations that the political parties or coalitions that have carried the presidential and vice presidential candidates are political

parties or coalitions that have met the presidential threshold. This provision has been stated in more detail in Article Nine with the percentage, which is at least 20 percent of the seats obtained from the number of seats in the DPR or 25 percent of the national valid votes in the election for members of the DPR, with the time before the presidential election and his representatives are held.

The theoretical understanding of the party teaches about the role of a broker between the community and the government. In carrying out its role, the party not only functions to articulate and aggregate the interests of the community but is also required to carry out the functions of socialization and political communication, recruitment, and policy making. However, the political reality of the New Order showed that these functions were almost entirely taken over by the government bureaucracy so that the only function left for the party was the function of legitimacy. This means that the party's presence is nothing more than a justification for the current power. However, theoretically, the input function in a political system consists of demand and support (Syamsudin Haris, 1991).

## **B. Presidential Election Dynamics and Development in Indonesia**

The roll-out of the reformation era has become a new breath for Indonesia's democratization process. The dim of healthy political competition during the New Order became a fundamental benchmark for renewing the legitimacy of democracy. Democracy must avoid two excesses, namely the spirit of inequality that conveys people to aristocracy or monarchy; and the extreme spirit of equality which brings people to despotic power because the difficulties that arise are only solved by conquest. One way to understand the process of developing politics is by identifying the internal process, both in the institutionalization of political activity, the legitimacy in the political system, observing political consensus, the balance of power between government institutions, and so on. (Arbi Sanit, 1985)

Each party has its presidential electors in each state. They are generally people who are considered very loyal to their respective parties so that they are trusted as presidential voters in their respective states. Presidential elections in the states thus elect only the presidential electors and not the president. However, most states name the presidential candidates, and some only mention the names of the presidential electors (Bambang Cipto, 2007).

Strengthening the government system has also become an interesting discourse when formulating a government system that will be chosen as a political path in Indonesia. This condition was reflected in the discussion of the first amendment to the 1945 Constitution in the 1999 MPR Working Body. Almost 100% of the votes that developed at that time supported the presidential cabinet system as stated in the 1945 Constitution. There were no strong voices who wanted to return to the parliamentary cabinet system. Even if there are critical thoughts, it is only limited to the statement that the 1945 Constitution does not adhere to a purely presidential cabinet system, but adheres to a quasi-presidential, because the president is still responsible to parliament (Taufiqurrohman Syahuri, 2011).

This is what generally happens during parliamentary democracy. This happens because in the process of forming the executive it is not enough only with political parties that hold majority power. As a result, coalitions must be

made at every cabinet formation. The government after the 1955 General Election was a coalition of several political parties. However, each party can carry out what is called political blackmailing. In a sense, if the wishes of a party are not fulfilled, then it will easily withdraw support for the coalition and join the opposition to carry out a vote of no confidence. As a result, there is rarely a long-lived cabinet, and political stability is very low. That is the political reality that occurs in a parliamentary government (Afan Gaffar, 2000).

### **C. Application of Presidential Threshold in 2019 Election**

Quality general elections will be better able to implement the principle of people's sovereignty which is one of the main pillars of the main idea underlying the formation of the state. Thus, the quality of general elections is closely related to the political development of the nation as a whole. Political power should not be seen solely as a struggle between competing forces for control of state power, but that power should be based on high political ethics and a commitment to the interests of all the people.

Indonesia adheres to an extreme multiparty system so that it is very difficult for political parties to get votes of >20% support that coalitions are a political way to combine forces so that the ability of political parties in the election of heads of state and their representatives can run massively to collect significant votes. Second, initial support can be used as a bargaining position to move the party machine in carrying out political consolidation so that the interests of parties who propose candidates for head of state and their representatives run simultaneously to win the celebration of the presidential election as a guarantee for political parties to maintain electability and acceptability in the five-year political stage.

This practice is common in election mechanisms that are not carried out simultaneously. Because the essence of the threshold in the presidential election is to bridge the interests of the president when he is elected later. As a result, the process of lobbying the president to the legislature will be easier and the president will feel more confident when running the wheels of government. Although this is considered a theoretical view, it does not always go hand in hand with the political dynamics that occur. The number of combinations of political parties in the government causes the president to be held hostage and constrained by the interests of the coalition parties that have won him so that the president does not stand alone, all the interests of the coalition parties are mixed in every presidential policy. That is why the existence of a threshold is not a guarantee for the running of the government system. The existence of elections that are not based on openness and maturity in giving opportunities to other parties causes government distortions and unhealthy administrative practices.

The Constitutional Court interprets that the presidential threshold is constitutional. The author concludes that it is natural that the presidential threshold is an open legal policy and its implementation is also carried out when the general election is not held simultaneously in other words the votes obtained in the legislative elections become the benchmark for the requirements to nominate candidates for head of state and their representatives. However, the arguments from constitutional judges with dissenting opinions can be used as rationalizations for the 2019 election.

Actually, in this application, the Constitutional Court must take on the role of determining the urgency of the presidential threshold in the 2019 election. Because the authority of the legislators can only determine the percentage of the presidential threshold, not determine whether or not there is a presidential threshold. The Constitutional Court, which is the guardian of democracy, should stand as a mediator and have constitutional authority in making decisions or solutions to organize a healthy democracy. Regarding the presidential threshold, it is very sensitive to the interests of the parties participating in the general election, let alone talking about the hegemony of big parties.

The loss of the nomination for the head of state and their representatives is a consequence of the presidential threshold provisions that are accepted as simultaneous election organizers for the DPR, DPD, and heads of state and their representatives, thus eliminating restrictions for political parties in submitting candidates in the 2019 election. In 2014, it is clear that this will be problematic again regarding the constitutionality of the 2019 presidential election. The legitimacy of the 2019 presidential election will be questioned, because how can the 2019 presidential election be faced based on support for the 2014 legislative election results? The impact will lead to the election of the president and vice president until the inauguration process.

#### **D. Compatibility of Application of Presidential Threshold for Election 2019**

Regarding the 2019 presidential election, two opinions are still developing. The first opinion states that every party participating in the election can nominate a presidential and vice-presidential candidate. Many think that the presidential threshold is no longer relevant to be applied to the 2019 presidential election. In particular, the simultaneous election is one of the goals, eliminating the threshold for presidential nominations, because of the simultaneous holding of the presidential and legislative elections. Indeed, the Constitutional Court's decision did not mention the abolition of the presidential threshold provision. But the implication is that it automatically knocks down the presidential threshold.

According to Irman Putra Sidin, if the DPR and the government insist on including the presidential threshold, the chances of the Constitutional Court canceling it are quite high. Nevertheless, there is also a view that the presidential threshold provision can be applied to the 2019 presidential election. Opinions were among others conveyed by PDI-P politician, Ahmad Basarah, that the DPR and the government still have the right to determine the threshold for submitting presidential and vice presidential candidates (presidential threshold). The reason is that the Constitutional Court's decision only combines the implementation of the legislative and presidential elections. In considering it, the decision of the Constitutional Court stated that the matter of the presidential threshold was left to the legislators. This means that the presidential threshold requirement in the 2019 presidential election can still be determined again by the DPR together with the government from the 2014 election results (M Alfian Alfian, 2016).

This is the point of contact for the author to emphasize the power of major parties to maintain the presidential threshold, which is difficult to renegotiate. The high ego and do not want to be rivaled is an unhealthy political

phenomenon, like a cat in a sack. It is undeniable why then until now the presidential threshold is still a frightening specter for small political parties and newcomer political parties. Even though in the 2014 election, no political party received >20% of the votes, the indications of setting the threshold in the presidential election are still dominantly played by major parties. Because, the logical consequence that will occur if all political parties have the opportunity to nominate their respective candidates can be reciprocal, namely large political parties can become small and vice versa. This will happen if there is a submission by a large party against a candidate for head of state and his deputy and can be matched by a candidate from a small party or a new party. That is why the big parties are afraid if the faucet for participation in the presidential election is opened as wide as possible to all political parties (old political parties and new political parties).

## V. CONCLUSIONS

The application of the presidential threshold in elections needs to be re-examined and a redefinition of the threshold should be carried out to legitimize the election of the head of state and their representatives. This can be done for lawmakers by taking into account several reasons, as follows:

The presidential threshold can only be applied when general elections are not held simultaneously. This means that the election of the president and vice president is carried out after the election of members of the DPR, DPD, and provincial/district/city DPRD. So that it is not effective if it is carried out in the simultaneous election process. If the threshold is understood as the validity of the election of the president and vice president, it should be emphasized again that the determinant of the legitimacy of the president and vice president is Article 6A: (3 and 4). Exactly there is pure legitimacy for the elected President and Vice President. Therefore, the threshold needs to be redefined. This means that the threshold is not due to the presidential threshold, but to the approach to which the elected President and Vice President can meet the requirements of a 20% win for each province as initial capital to strengthen the position of the elected president and vice president to move the wheels of government.

In addition, the presidential threshold concept has an impact on the reduction of public participation in democracy because of the threshold that is determined in the nomination process. Presidential Threshold gave birth to coalitions between electoral parties in carrying out their candidates, with the existence of such collusion between political parties it can be indicated that there are policy transactions based on the interests of each political party.

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