



Presidential Threshold Seen from Perspective Constitutional Democracy

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Abstract

This study is intended to discuss and compare the presidential threshold in the perspective of constitutional democracy. The president is the head of government who is directly elected by the people. The election of president and vice president is one of the prerequisite procedures for the successful implementation of a country's government. In accordance with the basis of the 1945 Constitution that Indonesia is based on a constitution that contains democratic principles, it is implied in Article 6A of the 1945 Constitution, then the requirements are regulated in Law No. 7 of 2017. In simultaneous elections, the constitutional right of every citizen to nominate himself as president and vice president, which is implied in Article 222 of the Election Law is considered to limit the constitutional rights of every citizen.

Keywords: *Presidential Threshold; Constitution; Simultaneous General Election*

Introduction

Indonesia is a unitary state which in terms of its single composition, which means a state that is not composed of several countries and there is only one government, namely the central government has the highest power and authority in the field of state government in determining government policies at the center or policies in the regions.¹ Article 1 paragraph (2) of the 1945 Constitution states that "The implementation of Sovereignty is in the hands of the people and is carried out according to the Constitution". In the affirmation that the implementation of people's sovereignty is carried out by the people themselves, provided that they must not violate the Constitution². Thus, the sovereignty of the people and the law are placed parallel and side by side so that the principles of a Democratic State (Constitutional Democracy) are adhered to. Democracy is a form of government system in which all citizens have equality in decision making for the advancement of social life which allows the practice of

¹ Soehino, 2013, Ilmu Negara, Yogyakarta: Liberty, hlm. 224

² Undang-Undang Dasar Negara Republik Indonesia 1945

political freedom that is very free, honest, fair. democracy, that the real owner of the highest power is the people in which that power must be based on the people, by the people, and for the people³.

In the 1945 Constitution, the purpose of the state is to protect the entire Indonesian nation and the entire homeland of Indonesia and to promote public welfare, educate the nation's life, and participate in world order based on independence, eternal peace and sovereign social justice for the Indonesian people. One of the manifestations of a democratic country is the holding of general elections (elections). The general election is an ideal and maximum picture for a modern democratic government. In addition, general elections are considered as a democratic procedure that makes democratic parties aim to establish sovereign state power over the people and deliberation and representation based on the 1945 Constitution.⁴

In the history of democracy, Indonesia has a long history of conducting general elections as a process and act of the amendment to the 1945 Constitution. Article 6A paragraph (1) is one of the most influential changes in the history of general elections for president and vice president which is packaged in the formation of the Act. 23 of 2003, Law 42 of 2004, Law 42 of 2008, Law 7 of 2017 concerning General Elections. The results of the democratic changes in the prodak amendments to the 1945 Constitution change the spirit of a more democratic government structure that complements and controls each other, guarantees all human rights and realizes the supremacy of the constitution.

The important point in this case is that the presidential and vice presidential candidates are given the right to nominate their respective presidential and vice presidential candidates, but in carrying out the president and vice president there are several things that each political party must fulfill. which will carry out the implementation of the PILPRES which is the Presidential Threshold.⁵

Basically, the implementation of the Presidential Threshold in the nomination of president and vice president as an executive agency, which is decided by the legislature is very contrary to the goals and ideals of democracy. In a constitutional democracy, the application of the threshold for the nomination of President and Vice President is as stated and explained in Article 6A of the 1945 Constitution.⁶

Therefore, this study aims to analyze in depth the application of the presidential threshold in the nomination of president and vice president from the perspective of constitutional democracy in the implementation of simultaneous general elections.

Methods/Ideas

The research conducted by this author uses descriptive qualitative research methods, which aims to make researchers know about the implementation of normative legal policies that apply in the law and make an approach by comparing theories can explain what is about an event or situation. According to Peter Mahmud Marzuki, legal research is a process to find the rule of law, legal principles, and legal doctrines in order to answer the legal issues faced. the completeness of normative material is the most important support regarding conformity between various regulations.⁷ In conducting this research, the author uses a normative doctrinal method approach. These variables are the targets in this study. An understanding of the law is needed in addition to the assistance of other sciences outside of law itself which is directly related to the context of the concept Presidential Threshold Seen from the Perspective of Constitutional Democracy.

³ Jimly Asshiddiqie, 2014, *Konstitusi dan Konstitusionalisme Indonesia Ed.II*, Jakarta: Sinar Grafika, hlm. 58

⁴ A. A. Sahid Gatara, 2008, *Ilmu Politik memahami dan menerapkan*, Bandung: Pustaka Setia, hlm. 207

⁵ Pasal 6A ayat (2) Undang-Undang Dasar Negara Republik Indonesia

⁶ *Ibid*

⁷ Peter Mahmud Marzuki, 2008, *Penelitian Hukum, Cet 2*, Jakarta: Kencana, hlm. 29

Methods/Ideas

I. History of the Implementation of Presidential Threshold in Indonesia

Presidential Threshold has two meanings, the first version is defined as a minimum limit of votes or seats from the support of the DPR. From the second Presidential Threshold, it is explained in the book *Democracies in Development: Politics and Reform in Latin America* which means one of the conditions in the election of president and vice president⁸. From the definition of the Presidential Threshold described above, the context applied in Indonesia is in the first sense.

According to the view of Ghofridus Goris Seran in the book "Dictionary of Popular Elections: General Vocabulary, Indonesia's Experience in Other Countries" states that the President Threshold means a threshold of vote acquisition to nominate president and vice president which must be obtained by political parties which is a threshold requirement. that must be met by political parties to nominate a presidential candidate.⁹From the history of general elections in Indonesia, the application of the threshold or often referred to as the Presidential Threshold often changes. The following is a table in which the Act that regulates the Presidential Threshold in the general election:

2004 election	2009 election	2014 election	2019 election	Election 2024
UU no. 23 of 2003 (Article 5)	UU no. 42 of 2008 (Article 9)	UU no. 42 of 2008 (Article 9)	UU no. 7 of 2017 (Article 222)	UU no. 7 of 2017 (Article 222)

*First*The Presidential Threshold is formulated in Law Number 23 of 2003. The setting of the threshold is contained in Article 5 paragraph 4 of Law Number 23 of 2003 which reads "The pair of presidential and vice-presidential candidates can be proposed by a political party or coalition of political parties that obtains at least - at least 15% of the total number of seats in the DPR or 20% of the national valid votes in the election for members of the DPR. The birth of the Presidential Threshold regulation regulated in the article was the first time it was applied in the direct presidential election in 2004.¹⁰

Second, in the amendment to the Presidential Threshold which initially referred to Law Number 23 of 2003 then referred to the validity of Law Number 42 of 2008 which is regulated in article 9 which reads "The pair of presidential and vice presidential candidates is carried by a political party or a coalition of political parties. election participants who meet the requirements for obtaining seats at least 20% of the total number of seats in the DPR or obtaining 25% of the national valid votes in the election for members of the DPR, prior to the implementation of the general election for President and Vice President. From the validity of the law, it becomes a problem where the threshold for presidential candidacy is considered to deviate from the presidential scheme. Basically the Presidential scheme which ensures that the executive and legislative institutions are two different elements and in practice different legitimacy.¹¹

Third,In the 2014 general election regarding the Presidential Threshold, it was still based on Law Number 42 of 2008 which was regulated in article 9 which before the election was held, the Constitutional Court issued a decision Number 14/PUU-XI/2013.

⁸ Gotfridus Goris Seran, 2013, *Kamus Pemilu Populer: Kosa Kata Umum, Pengalaman Indonesia dan Negara Lain*, Yogyakarta: Graha Ilmu

⁹ *Ibid*

¹⁰ Undang-Undang Nomor 23 Tahun 2003 pasal 5

¹¹ Undang-Undang Nomor 42 Tahun 2008 pasal 9

Fourth, In the 2019 General Election which is regulated in Law Number 7 of 2017 the points contained in the Law are that simultaneous general elections will be held in 2019 which is in accordance with decision number 14/PUU-XI/2013. The implementation of the Presidential Threshold as a condition for the nomination of president and vice president should no longer be used. Basically the purpose of the Presidential Threshold is as an infrastructure for the incorporation of political parties in the support of the majority vote¹².

Fifth, In the upcoming 2024 general election, it is regulated in Law Number 7 of 2017 article 222 which reads "The pair of presidential and vice presidential candidates is carried by a political party or a combination of political parties participating in the election that meets the requirements for obtaining seats of at least 20% of the total seats in the DPR, or obtain 25% of the national valid votes in the election for members of the DPR, prior to the implementation of the general election for President and Vice President"¹³

II. Presidential Threshold Provisions in the Implementation of Simultaneous General Elections

In the decision number 14/PUU-XI/2013, which was proposed by Effendi Gazali, which for the implementation of simultaneous elections was partially granted by the Constitutional Court, namely Article 3 Number (5), Article 12 Number (1) and (2), Article 14 Number (2) and Article 112 of Law Number 42 of 2008 concerning the General Election of the President and Vice President. The point in the decision is that the Constitutional Court decides that the general election will be held simultaneously in the 2019 general election and beyond. The purpose of the general election being held simultaneously is that the legislative and executive elections are held simultaneously.¹⁴

The panel of judges of the Constitutional Court did not grant the request for the cancellation of Article 9 stating "The pair of Presidential and Vice Presidential Candidates are carried by political parties or coalitions of political parties participating in the election who meet the requirements for obtaining seats of at least 20% of the total seats in the DPR or obtaining 25% of the national valid votes in the election. elections for members of the DPR, prior to the implementation of the general election for President and Vice President". The problems that become the basic points of the law that must be faced in the implementation of the general election which will be held simultaneously by applying the threshold or presidential threshold.¹⁵

Legal norms in terms of constitutional democracy in the application of the presidential threshold in the judicial review of Law number 42 of 2008 with the 1945 Constitution, in its application the problematic problems that have become controversial are:

- a) In holding the general election, the president and vice president state that the legal norms in the implementation of the general election for members of the DPR, DPD, and DPRD are regulated in Article 3 of the Presidential Election Law.
- b) The requirements for the nomination of president and vice president are regulated in article 9, article 12, article 14, article 112 of the Presidential Election Law.

In the Decision of the Constitutional Court Number 44/PUU-XV/2017 (Not accepted), which was submitted by brother Habiburokhman, he submitted a judicial review of article 222, with the petitioner's argument that there was a change in the implementation of the general election from not concurrent to simultaneous elections. So that the Presidential Threshold requirement is considered to violate

¹² Undang-Undang Nomor 7 Tahun 2017

¹³ Undang-Undang Nomor 7 Tahun 2017 pasal 222

¹⁴ Putusan Mahkamah Konstitusi Nomor 14/PUU-XI/2013;

¹⁵ *Ibid*

presidential norms so that it weakens the president's power as the holder of power. According to the test materials of Article 4 paragraph (1), Article 6A paragraph (2), Article 6A paragraph (5), Article 28D paragraph (1) of the 1945 Constitution in the submission of the judicial review of Article 222, the applicant is of the opinion that Article 222 does not have a valid legal basis. certain that limiting new or old political parties cannot nominate candidates for president or vice president with the existence of a Presidential Threshold.¹⁶

In the Decision of the Constitutional Court Number 70/PUU-XV/2017 (Not accepted), which was submitted by the Nulan Bintang Party, the applicant submitted a judicial review on the grounds that the presidential threshold was contrary to the election model being held simultaneously. And the applicant does not agree with the PMK opinion which postulates the Open legal Policy which in its application is contrary to morality, injustice, in the presidential system stating that the threshold has nothing to do with strengthening the presidential system.¹⁷

After the latest constitutional court decision number 74/PUU-XVII/2020 that the constitutional court is of the opinion that the application of the presidential threshold is legal and does not violate the constitution with the consideration that lawmakers have the authority to make policies in certain articles that are legally regulated in law with the agreement of political parties which is called an open legal policy, in other words, the implementation of the Presidential Threshold is fully under the authority of the legislators.¹⁸

III. Open Legal policy in determining the Presidential Threshold

In the application of the norms referred to as the presidential threshold, namely the threshold where before the presidential general election the vote for political parties as a condition to nominate as one of the presidential and vice presidential candidates, from the opinion of the judges of the constitutional court, it is considered that an open legal policy is based on the 1945 Constitution.¹⁹

The Constitutional Court argues for an open legal policy in which the legislator has the authority to take policies in certain articles that are legally regulated in law with the agreement of political parties called open law policies in other words that the implementation of the presidential threshold is fully authorized by lawmakers. The Constitutional Court is often deceived by the notion of negative legislature and positive legislator²⁰.

Mahfud MD, The legislator's negative is that the judges of the constitutional court have the right not to accept the norms proposed by the applicant in the judicial review of the 1945 Constitution and to allow the norms that have been agreed upon by the DPR to remain in effect and to use the benchmarks of the 1945 Constitution as Original intent. While positive legislators are state institutions that are given the authority to make and ratify legal norms or products²¹.

¹⁶ Putusan Mahkamah Konstitusi Nomor 44/PUU-XV/2017.

¹⁷ Putusan Mahkamah Konstitusi Nomor 70/PUU-XV/2017.

¹⁸ Putusan Mahkamah Konstitusi Nomor 74/PUU-XVII/2020

¹⁹ Iwan Satriawan dan Tanto Lailam. 2019, Open Legal Policy dalam Putusan Mahkamah Konstitusi dan Pembentukan Undang-Undang. Jurnal Konstitusi, Volume 16, Nomor 3.

²⁰ Dr. Martitah, M. Hum., 2013, Mahkamah Konstitusi Dari Negative Legislature ke Positive Legislature?, Jakarta: Penerbit Konstitusi Press.

²¹ *Ibid*

IV. Presidential Threshold from the Perspective of Constitutional Democracy

The provisions for the application of the threshold for the nomination of president and vice president are considered too simplistic, there are still many contents adopted from Law 42 of 2008 with the validity of Law Number 7 of 2017 concerning General Elections article 222.

In this provision, the application of the Presidential Threshold is contrary to the principles of constitutional democracy in which in a constitutional democracy every citizen's rights are guaranteed. These rights include:²²

- a. Right to nominate
- b. Right to choose
- c. Right to nominate candidates

In the national legal system, the judicial review on the constitutionality of law is used as an instrument to control the balance of national laws ratified by the DPR and the President, which is called the judicial review on the constitutionality of law. According to Fajrul Falaakh's view, the constitutional review or enforcement of the constitution is that the law or legal product that regulates actions must be in accordance with and not violate the constitution.

Political dynamics raise dynamic problems and are considered irrelevant to the existence of the Presidential Threshold. The vote acquisition in the last general election is less likely to get the same vote as the results of the upcoming elections and castrates the opportunity for minority party rights which are considered new with the results of the previous general election. The urgency of the Presidential Threshold is considered to cut the constitutional rights of every citizen to fill the government, of course there is no opportunity for independent presidential and vice presidential candidates. Basically the Presidential Threshold is used to sort out qualified presidents and vice presidents. However, these legal products are considered to castrate the principle of equality in democracy.

Castrating the principle of equality in democracy in question is to provide opportunities for the creation of an illicit transaction carried out by political party officials without the involvement of community elements. Therefore, eliminating the sovereignty of the people to participate in political activities in the nomination of president and vice president in a fair, free and open manner in accordance with the mandate of Article 6A of the 1945 Constitution.1945.

Conclusion

Referring to the decision of the court which looked at Open legal policy In the implementation of the Presidential Threshold, it is considered a structured action in deciding the implementation of the real threshold in simultaneous general elections so that it is considered beneficial to the political parties in power, in fact the policy is contrary to democratic norms and democratic ideals which resulted in a total failure to realize a just, honest constitution. and varies in national legalization systems.

So that the implementation of elections in 2019, 2024 and beyond that the holding of simultaneous general elections does not eliminate the legal norm of the presidential threshold. In the implementation of simultaneous elections, the application of the presidential threshold norm is no longer effective and is contrary to institutional democracy. Another consequence of the implementation of the

²² Syamsyuddin Haris, 2012, Salah Kaprah Presidential Threshold, Salah Kaprah Presidential Threshold, dari <https://nasional.sindonews.com/berita/683795/18/salah-kaprah-presidential-threshold> diakses pada 26 Februari 2022

Presidential Threshold is that it does not provide alternative presidential candidates, and it is contrary to the election law which basically provides facilities to provide alternative choices for presidential and vice presidential candidates so that electoral competition increases, so that people can choose presidential and vice-presidential candidates. more quality. For this reason, the Presidential threshold must consider the right of every political party to nominate presidential and vice presidential candidates in the general election contestation which is guaranteed by the Constitution so that democratic setbacks do not have a negative impact on the essence of democracy itself.

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