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Presidential Threshold Polemic in the 2019 Election and Before the 2024 Election Contest in Indonesia

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Abstract

The application of the presidential threshold in the presidential nomination election in Indonesia gave rise to various controversies and became a topic of discussion in the country's political system. This research wants to see the presidential threshold polemic in the 2019 election and before the 2024 election contestation in Indonesia. The type of research used is normative legal research. The findings in the 2019 election of the presidential threshold polemic that occurred were a number of political parties objecting to a high threshold, restrictions on the freedom of the people/the best sons and daughters who wanted to advance in the presidential election, the public were given choices that were not varied, weakened the presidential system and contradicted the 1945 Constitution. Then the polemic leading up to the 2024 election, namely: elite candidates dominating, alternative candidates are limited, consideration of the Constitutional Court is problematic, article 222 of the law is contrary to article 6A (2) of the 1945 Constitution and democratic space is now limited.

INTRODUCTION

Reforms in the field of law that have occurred since 1998 have been institutionalized through the institution of changes to the 1945 Constitution. The spirit of the changes to the 1945 Constitution is to encourage the development of a more democratic constitutional structure. and balances), realizing the supremacy of law and justice as well as guaranteeing and protecting human rights. Equality and the availability of mutual control are the principles of a democratic state and a rule of law.¹

¹ Titik Triwulan, *Pokok-Pokok Hukum Tata Negara Indonesia Pascaamandemen UUD 1945* (Jakarta: Cerdas Pustaka Publisher, 2008), 1.

In its journey, the Indonesian people experienced a long debate in determining a new political system idea regarding the presidential threshold in the General Election (Election) in Indonesia. Complicated problems and various considerations then led Indonesia to choose one of the systems it implemented.

The definition of the presidential threshold is a nomination system carrying Presidential Candidates (Capres) and Vice Presidential Candidates (Cawapres) in General Elections in Indonesia. The Presidential threshold was initially introduced in 2004 with the aim of ensuring the efficiency of government administration in anticipating a situation where the President and Vice President are elected by a party or coalition of parties that do not have a majority in parliament².

The journey from the Presidential threshold system has experienced various changes since the Presidential election was held directly. Like in 2004 the threshold for Presidential nomination was 10%, rose in 2009 to 20% and continues³. This can be seen from Article 222 of Law (UU) Number 7 of 2017 concerning General Elections.

The general election for President and Vice President has been regulated and simplified into a new law, namely Law Number 7 of 2017 concerning General Elections. However, the contents of the regulations still more or less adopt Law Number 42 of 2008 concerning the General Election of the President and Vice President, one of the contents of which still remains regarding the Presidential Threshold. Constitutional Court Decision Number 14/PUUXI/2013 concerning the 2019 Simultaneous General Election (Pemilu) granted some of the requests except for the provisions of Article 9 of Law Number 42 of 2008 concerning the General Election of the President and Vice President regarding the Presidential Threshold which contains: "Pair of Presidential and Vice Presidential Candidates The President must be nominated by a political party or coalition between political parties participating in the election that meets the requirements for obtaining seats of at least 20% (twenty percent) of the total number of DPR seats or obtaining 25% (twenty five percent) of the total national valid votes in the DPR member election. , before the Presidential and Vice Presidential Elections are held". The Presidential Threshold then becomes a problem because political dynamics are

² Baskoro, "Presidential Threshold di Indonesia Dalam Perspektif Masalah Mursalah" *Journal Legislatif* 2, no. 2 (2019), <https://journal.unhas.ac.id/index.php/jhl/article/view/10218>.

³ Abdul Ghoffar, "Problematika Presidential Threshold: Putusan Mahkamah Konstitusi Dan Pengalaman di Negara Lain", *Jurnal Konstitusi* 15, no. 3 (2018): 480, <https://doi.org/10.31078/jk1532>.

dynamic. It is unlikely that the number of votes a political party received in the last general election will get the same number of votes in the next general election. Moreover, the urgency of setting these conditions then reduces the rights of everyone to get equal opportunities in government. Problems regarding the concept of Presidential Threshold have become more intense with the Constitutional Court Decision Constitutional Court Decision Number 14/PUU-XI/2013 in the case of reviewing Law Number 42 of 2008 concerning the General Election of the President and Vice President against the 1945 Constitution of the Republic of Indonesia which decided that the General Election of the President and Vice President would be held simultaneously with the Election of the House of Representatives or known as simultaneous elections.

The article states Candidate pairs are proposed by Political Parties or Election Contesting Political Parties that meet the requirements for obtaining seats of at least 20% (twenty percent) of the total seats in the DPR or obtain 25% (twenty five percent) of valid votes nationally on Previous elections for members of the House of Representatives⁴.

The existence of the Presidential threshold is not going smoothly. Many people, ranging from practitioners, politicians, academics and the community themselves, gave their views on the pros and cons of implementing the system. The application of the Presidential threshold is considered to greatly discriminate against the concept of democracy because not everyone has the right to run for President and limits people's rights to contribute more to democratic parties.

Those who are pro for the enactment of the Presidential threshold are of the view that it is very important to create a strong Presidential system⁵. As stated by the Minister of Home Affairs Tjahjo Kumolo, the threshold for the Presidential election is seen as a strengthening of the party. The elected president and vice president have a very strong stake or power, especially in parliament, so that the application of the Presidential will strengthen the Presidential government system.⁶

⁴ Nano Tresna Arfana, "Permohonan Uji 'Presidential Threshold' Dua Anggota DPD Tidak Dapat Diterima", <https://www.mkri.id/>, 2022.

⁵ Arif Wicaksana, "Problematika Konstitusionalitas Presidential Threshold Di Indonesia", *Jurnal Hukum Positum* 7, no. 1 (2016): 1–24.

⁶ Alfaritsi & Mulyadi, "Permasalahan Mengenai Pemilihan Umum Tentang Efektivitas Ambang Batas Presiden", *Jurnal Rechten : Riset Hukum dan Hak Asasi Manusia* 2, no 3 (2022): 1-9.

According to the Chairperson of the Regional Representatives Council (DPD) of the Republic of Indonesia (RI) LaNyalla Mahmud Mataliti there are 4 negative impacts related to the implementation of the Presidential threshold, namely Pertama, only bringing up two candidate pairs (head to head) which have the impact of problems of political division and polarization which are considered very bad for progress of this nation. Second, ignoring the potential of the nation even though this country does not expect a new, competent leader. Third, it becomes an obstacle for the public regarding awareness to participate in the world of politics, especially during election times. And fourth, small political parties (Parpol) are nothing in front of large political parties or have strong power at the time of the nomination of the Paslon. This of course will have a negative impact on the opportunities for small political cadres who want to contest the Presidential election⁷.

The emergence of the policy of implementing the Presidential threshold contains polemics or controversies in general in society and raises big question marks. First, are the Presidential election threshold rules contained in Law Number 7 of 2017 concerning Elections consistent with the constitution? Looking at the considerations of the law is the drafting of the constitution. Second, are the threshold rules in accordance with what the community wants? It should be underlined that the law has the objective of compiling the aspirations of the people⁸.

There are still many questions that arise regarding the issue of the Presidential threshold, among others, are the results of the previous election appropriate to be used as a reference for future elections? Will the political configuration remain unchanged and the electoral approach the same? Is there only one mechanism in simplifying the number of political parties and there are no other options? Are the voters aware that the results of the previous election will be used as a reference in determining tickets for the Presidential and Vice Presidential candidates in the future? Then, how can political parties that are relatively new get the most votes in the democratic party stage? What about parties that don't reach the threshold in future elections? the discussions above illustrate the complexity of the Presidential threshold in Indonesia⁹.

⁷ Fauzi, "Ketua DPD: Empat Dampak Negatif 'Presidential Threshold' UU Pemilu", <https://www.antaraneews.com/>, 2021.

⁸ A. Diniyanto, "Mengukur Dampak Penerapan Presidential Threshold Di Pemilu Serentak Tahun 2019", *Indonesian State Law Review (ISLRev)* 1, no. 1 (2018): 87–88.

⁹ Vanni Anggara, "Dinamika Presidential Threshold Dalam Sistem Presidensial Di Indonesia", *Jurnal Transformatif* 5, no. 2 (September 2019): 17–36.

Looking at the conditions and problems regarding the implementation of the Presidential threshold above, the researcher wants to see the “Polemic Presidential Threshold in the 2019 Election and Before the 2024 Election Contest in Indonesia”.

The type of research used is normative legal research. Approach to legal provisions or statutory regulations is used to see and determine the suitability between regulations and the reality that occurs. As previously mentioned, this research focuses more on a normative legal approach, where the main sources are primary legal materials and secondary law, collecting legal materials related to Presidential election preparations as well as literature studies related to the Presidential threshold.

THE POLEMIC ON THE IMPLEMENTATION OF THE PRESIDENTIAL THRESHOLD IN THE 2019 ELECTION

The rule of law is a state system that is regulated based on applicable law, which is fair and structured in a constitution, where all people in the country, both those who are governed and those who rule, must obey. to the law, so that everyone is treated equally, regardless of differences in skin color, race, gender, religion, region and belief, and Authority government is limited based on the principle of distribution of power, so that government is not arbitrary and does not violate the people's rights, therefore to the people given roles according to their abilities and roles in a democratic manner.¹⁰

General elections (elections) are an important instrument in a democratic country which adheres to a representative system. Elections function as a filtering tool for "politicians" who will represent and carry the voice of the people in institutions representative. Those who are selected are considered to be people or groups who are has the ability or obligation to speak and act on its behalf a larger group through a political party (parpol). Therefore, there is Political parties are a necessity in modern democratic political life. It is intended to activate and mobilize the people, to represent them particular interests, providing a way of compromise for opposing opinions, as well as providing a means of legal and peaceful succession to political leadership.¹¹

Article 7 of the 1945 Constitution of the Republic of Indonesia states that: “The President and Vice President hold office for five years and afterward, he can be re-elected to

¹⁰ Munir Fuady, *Teori Negara Hukum Modern (Rechtstat)* (Bandung: Rafika Aditama, 2011), 157-158.

¹¹ Moh. Mahfud MD, *Politik Hukum di Indonesia* (Jakarta: Rajawali Pers, 2017), 3.

the same position, only for one term of office”. Changing the President is a process that commonly occurs in every country that implements a republican system. This process shows a country from previous leaders, or is also a process of people's awareness of choose a person or party that is considered capable of accommodating their aspirations.¹²

Article 1 TAP MPR Number VIII/MPR/1973 states that General Elections held based on Pancasila Democracy as a means of implementing the principles people's sovereignty in the Republic of Indonesia. In Article 1 paragraph (1) TAP MPR Number VII/MPR/1978 also emphasized that General Elections are a means of implementation the principle of popular sovereignty based on Pancasila. Both in Article 1 paragraph (1) TAP MPR Number IV/MPR/1983 and Article 1 paragraph (2) TAP MPR Number III/MPR/1988, matters which the same is confirmed again. This means legally, General Elections in Indonesia It is intended as a means of implementing popular sovereignty.¹³

Initially, the Presidential Election with Presidential Threshold in 2004, 2009 and 2014 did not cause problems and did not attract harsh criticism, because at that time Before the Presidential election is held, the DPR members are first elected, DPD and DPRD. This means that every political party has already collected the votes from the legislative elections, which were held long before the Presidential election was held, and Those votes obtained become tickets to nominate President and Deputy President.

It will be a problem when the legislative and executive elections are held on one time, at the same hour, day, month, year, from where the party is bagging the votes to nominate President and Vice President, That's what occurred in the 2019 elections, with simultaneous implementation, maintaining The Presidential Threshold will create problems because of the implementation of the Election members of the DPR and the President are held simultaneously.

Logically, there is no basis for using 20 percent of the number of seats in the DPR and 25 valid percent of votes cast nationally, because that requirement is not met by political parties participating in the election. For the 2019 general election, Presidential election, DPR, DPD is held simultaneously. Because it was held simultaneously, then The Presidential Threshold requirement of 20 percent is problematic. That The Presidential Threshold of 20 percent is

¹² Sodikin, ““Pemilu Serentak (Pemilu Legislatif Dengan Pemilu Presiden Dan Wakil Presiden) Dan Penguatan Sistem Presidensial,”” *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 3, no. 1 (2014).

¹³ Jimly Asshiddiqie, *Gagasan Kedaulatan Rakyat Dalam Konstitusi Dan Pelaksanaannya Di Indonesia: Pergeseran Keseimbangan Antara Individualisme Dan Kolektivisme Dalam Kebijakan Demokrasi Politik Dan Demokrasi Ekonomi Selama Tiga Masa Demokrasi, 1945-1980-An* (Jakarta: Ichtiar Baru van Hoeve, 1993), 84.

irrational. Because the 20 percent figure refers on the results of the DPR and DPD general elections in 2014 which have been used in the 2014 Presidential election.

The application of the Presidential threshold in the Presidential nomination election in Indonesia gave rise to various controversies and became a topic of discussion in the country's political system. The Presidential election threshold refers to the requirement for the number of votes, or the percentage of voters that a Presidential candidate or party must receive to run for president.

Talking about the application actually raises some debate or polemic. First, around the nomination threshold and election threshold. In Indonesia, these two things are all scrutinized in Article 6A of the 1945 Constitution. Article 6A paragraph 2 of the 1945 Constitution is a threshold for candidacy stating that the pair of candidates for President and Vice President must be nominated by the party or coalition of parties participating in the election. So as long as he is a political party or a combination of political parties participating in the election then that is called the threshold for becoming a candidate. Meanwhile, the eligibility threshold is stated in Article 6A paragraph 3 regarding pairs of candidates who obtain more than fifty percent of the vote in elections and at least twenty percent in each half of Indonesia's provinces are sworn in as President and Vice President. Therefore, both the nomination threshold and the election threshold in the Constitution are followed, so that in Article 6A paragraph 5 it should only be procedural.¹⁴

The application of the Presidential threshold has made a number of political parties object to this regulation. They considered that the threshold was relatively high, had an impact on undemocratic elections, limited Indonesia's best sons or daughters who wanted to advance or enter the Presidential race and also that the people were faced with choices that were not varied. This is because the requirements to advance in the contest are hampered by thresholds and these conditions are considered to be complicated.

The debate around the Presidential threshold has been raging for several years, with some suggesting that it is a political game being played by the major parties in an attempt to block the emergence of other Presidential and Vice Presidential candidates from various parties. If the Presidential threshold is abolished, it could give rise to alternative candidates, making it

¹⁴ Wicaksana, "Problematika Konstitusionalitas Presidential Threshold Di Indonesia", *Jurnal Hukum Positum* 7, no. 1, (2016): 1-24.

difficult for voters or the public to vote and potentially causing voter polarization and even abstentions.

Besides the Presidential threshold debate which presents advantages, the threshold also presents weaknesses, namely: First, coalitions of political parties with Presidential and Vice Presidential candidates are very prone to exchange of interests. Such conditions actually weaken the Presidential system, and the President will be stranded by political parties that are members of a coalition. Second, the maneuvers carried out by new political parties to participate in the 2019 simultaneous election contestation were slightly hampered because they had not yet reached the rules for implementing the Presidential threshold. This then made the new political parties lose their right to nominate candidate pairs which incidentally had been stipulated in the 1945 Constitution of the Republic of Indonesia. Third, from a constitutional aspect, some parties considered that this should not be done because it contradicted the 1945 Constitution. This condition was considered to have obscured the meaning of recognition, protection and certainty of just rights¹⁵.

Various attempts have been made to eliminate the implementation of this Presidential threshold. One of them is the Constitutional Court's judicial review of article 222 of Law Number 7 of 2017 concerning Elections but the result is still zero. If examined step by step, removing this threshold will give political parties the right to come forward in supporting the candidate they nominate. The terms “coalition” or “political party coalition” no longer exist, so that this system is also able to maintain democratic values and the people have many choices. In this way, social divisions can be overcome. Ultimately, this is about maturing Indonesia's democracy and strengthening the nature of elections.

THE POLEMIC ON THE IMPLEMENTATION OF THE PRESIDENTIAL THRESHOLD AHEAD OF THE 2024 ELECTION CONTEST

Ahead of the upcoming 2024 election, the re-implementation of the Presidential election will become a widespread debate in society and among interest groups. The issue of the Presidential election threshold is a debatable topic and may undergo changes in the future through changes to laws or amendments to the constitution.

¹⁵ Lutfil Ansor, “Telaah Terhadap Presidential Threshold Dalam Pemilu Serentak 2019”, *Jurnal Yuridis* 4, no. 1 (2016): 15–27.

This can be seen from the many requests for judicial review of the rules regarding the threshold for Presidential nominations coming to the Constitutional Court. Ikhwan Masyur Situmeang who works as a State Civil Apparatus (ASN) is testing Article 222 of Law Number 7 of 2017 (Election Law) which is considered to limit the number of Presidential candidates running in the 2024 election¹⁶.

The Petitioner, in his petition registered under number 7/PUU-XX/2022, argued that Article 222 of the Election Law is contrary to Article 6A(2) of the 1945 Constitution. Article 222 of the Election Law states: "*Candidate pairs are proposed by political parties or coalitions of political parties participating in the election. who fulfills the requirement of obtaining at least 20% (twenty percent) of the seats in the DPR or obtains 25% (twenty five percent) of valid votes nationally in the previous election for members of the DPR*". According to the applicant, Article 222 of the Election Law contradicts Article 6A of the 1945 Constitution because Article 6A of the 1945 Constitution does not mention the nominal threshold for the percentage of Presidential candidates¹⁷.

Then in Article 222 stipulates the Presidential election threshold as a threshold that actually limits the number of Presidential candidates. Therefore, the interpretation of Article 222 is not in accordance with Article 6A of the 1945 Constitution. There is no percentage in Article 6A of the 1945 Constitution. Article 222 of the Election Law also has an impact on the fact that the public does not have the opportunity to judge the candidates for state leadership put forward by the political parties participating in the election. Moreover, these threshold rules could have implications for the future of democracy and to allow them to rule would mean leaving oligarchic politics in their own hands¹⁸.

Another polemic that could occur ahead of the 2024 Election reflects the various problems with applying the Presidential threshold, namely the dominance of candidates from the elite: the Presidential nomination threshold can make the Presidential election contestation likely to be dominated by candidates from the elite, limiting alternative candidates: the Presidential threshold can limit the number Presidential candidate who can run in the election. This makes it difficult for alternative candidates who are not yet popular to rise. Consideration

¹⁶ Lutfil Aansor, "Aturan Presidential Threshold Dinilai Batasi Jumlah Calon Presiden", <https://www.mkri.id/>, 2022.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

of the Constitutional Court: the decision of the Constitutional Court in rejecting the application for judicial review of the Presidential threshold rules is a note for the legislators in determining the number of the Presidential threshold in the future, Consistency with the 1945 Constitution: some applicants argue that article 222 The Election Law does not have consistency with Article 6A of the 1945 Constitution because it does not mention the nominal percent threshold for Presidential candidacy, Limitations on democratic space and participation: The Presidential threshold is considered to hamper the interests of voters to get many alternative Presidential candidates. This limits and disrupts the space for democracy and participation. Inconsistencies and loopholes: The implementation of the Presidential threshold has also created several irregularities and loopholes in the Presidential election system.

The application of the Presidential threshold also raises debate in the system that we have so far adhered to. In a democratic system, the application of this threshold makes people reluctant to participate in the political process and reduces political awareness of related issues and weakens checks and balances in Indonesia.¹⁹ Looking at this as a whole, the application of the Presidential threshold in Indonesia has become a controversial and polemical issue, with some arguing that it is necessary to ensure political stability and others arguing that it limits democracy and political participation.

CONCLUSION

The implementation of the Presidential threshold still raises various polemics starting from the 2019 and 2024 elections. The polemic that occurred in the 2019 elections, namely: The application of the Presidential threshold has raised objections to a number of political parties because the threshold is relatively high, which has an impact on undemocratic elections, limits Indonesia's best sons or daughters who want to advance or enter the Presidential election, the public is given a choice of candidate pairs that are not varied, weaken the Presidential system and go backwards with the 1945 Constitution. Meanwhile, ahead of the 2024 Election the same polemic will also repeat itself such as the domination of candidates from the elite, restrictions on alternative candidates, issues of consideration of the Constitutional Court, Consistency with the 1945 Constitution related to Article 222 of the Election Law is contrary to Article 6A(2) UUD 1945 and Restrictions on democratic space and participation.

¹⁹ Fauzi, "Ketua DPD: Empat Dampak Negatif Presidential Threshold UU Pemilu."

ADDITIONAL SECTIONS

We realize that this paper is still far from perfection, therefore all input and criticism from the author will be received and thanked. Finally, I hope this paper can provide benefits to the world of education and parties related to this research. Thank you all for your attention and help.

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