



Legal Reforms in Indonesia related to “Presidential Threshold” of Presidential Candidate in Law No. 7/2017 concerning General Elections

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ABSTRACT

The election is the manifestation of freedom in choosing the president, vice-president and legislature parliament in a country because the elections has a role as a mechanism for political change regarding the funds patterns for the direction of public policy/or regarding the circulation of the elite periodically and in an orderly manner. Indonesia itself holds the presidential and vice-presidential elections every five years that requires its citizens to vote the potential candidates for becoming the president and vice president for the next 5 years. This research aims to find out the legal reforms related to presidential nomination of presidential threshold based on Law No. 7/2017 concerning the General Elections. This research examines the law concerning presidential elections and presidential threshold based on 1945 Constitution in Indonesia to find out the president election and the obstacles in its implementation. This research indicated that it is possible that public expect more candidate than just two candidates. Then, the public will only vote for presidential candidates from the dominant political party, not the party that suits the community's needs. The result of this research can be concluded that the unnecessary presidential appointments are incompatible with the dignity of Indonesia constitution.

Keywords: Indonesian Presidential Candidate, Legal Reforms, Presidential Threshold

INTRODUCTION

General election is one of the main pillars in democratic system that directing people's opinions on a regular basis.¹ The elections are considered as one pillar from 11 pillars of democratic political system. Fundamentally, a general election is the achievement of democratic ideals that include the assurance of individual freedom and equality, notably in political right.² It means that the election is the manifestation of freedom in choosing the president, vice-president and legislature parliament in a country.

The existence of general election is the basic characteristic of a democratic nation. Although elections are not the only aspect of democracy, they are become very important part since the elections play a role as a mechanism for political change regarding the funds patterns for the direction of public policy/or regarding the circulation of the elite periodically and in an orderly manner.³ In elections, the citizens have the right to participate in politics and vote. The public participation makes elections a mechanism for choosing and delegating people's sovereignty to political parties.

It is common knowledge that Indonesia holds the presidential and vice-presidential elections every five years. In 2004, Indonesia held its first direct elections for the posts of President and Vice President. Before 2004, the National Assembly or MPR was responsible for electing the President and Vice President, and was also responsible for giving orders to President and Vice President.

Beginning in 2004, the nation's President and Vice President were directly elected by its citizens, who were fighting for sovereignty as a whole. Article 6A, paragraph 2, of the 1945 Constitution of Republic Indonesia lays out the process for choosing the president and vice president candidates, stating that "the candidates for president and vice president is proposed by a political party or coalition of political parties participating in general election before the election itself." Paragraph 2 of Article 22E of the same constitution expresses a similar viewpoint. Political parties are described as organizations that take part in general elections to select the DPR and DPRD members.

In 1945 Constitution of Republic Indonesia, it is stated in Article 6A paragraph 2 that political parties have the ability to nominate candidates for president and vice president. This happens regardless of whether a political party nominates its own candidate or cooperates with other parties that are also competing in general election. In terms of expressive verbs, the constitutional rules cannot be

¹ Achmad Edi Subiyanto, "Pemilihan Umum Serentak Yang Berintegritas Sebagai Pembaruan Demokrasi Indonesia," *Jurnal Konstitusi* 17, no. 2 (August 19, 2020): 355, <https://jurnalkonstitusi.mkri.id/index.php/jk/article/view/1726>.

² R Siti Zuhro, "Demokrasi Dan Pemilu Presiden 2019," *Jurnal Penelitian Politik* 16, no. 1 (June 28, 2019): 69, <http://ejournal.politik.lipi.go.id/index.php/jpp/article/view/782>.

³ Jhon Retei Alfri Sandi and . Suprayitno, "Fenomena Pengawasan Pemilihan Kepala Daerah Di Kalimantan Tengah Masa Pandemi Covid-19," *Jurnal Politik Pemerintahan Dharma Praja* 13, no. 1 (June 30, 2020): 1–13, <http://ejournal.ipdn.ac.id/JPPDP/article/view/1072>.

interpreted differently with the "presidential threshold" clause or presidential nomination. To nominate president and vice president since the constitutional space of Article 6A Paragraph (2) is limited and becomes close to legal politics. In other words, the "presidential threshold" clause or presidential nomination cannot be interpreted in any other way (closed legal policy).

The derivatives of Law No. 7/2017 concerning general elections contains the principles in constitution that are the basis for organizing general elections was regulated in 2017. This law which provides legal framework for holding presidential and vice-presidential elections does not follow the standards outlined in Article 6A Paragraph 2; in fact, it minimizes and even against those standards. This law is the legal basis for conducting the elections according to Article 222 of Law No. 7/2017 concerning general elections.

In the last election in 2019, the President's criteria were 20% of the seats in Representative Council and/or 25% of the national valid votes according to Law No. 7/2017 concerning Elections. Based on the presidential threshold system in the elections that held in Indonesia, only two candidates were empirically strengthened socially and formed a segmentation in the midst of society, then the candidates for national president in the future is reduced the space for a person's candidacy.

The latest election in Law No. 7/2017 states that presidential and vice presidential candidates must have a minimum of 20% of the vote. The actual meaning of "presidential threshold" that related to the minimum number of presidential and vice presidential pairs in the general election, not the minimum number of votes required to become a presidential or vice presidential candidate.

Law No. 7/2017 about the Selection of DPR Members and the Criteria for the President and Vice President Nomination or the Criteria for the President violates Article 6A (2) of the Republic Indonesia 1945 Constitution. Every political party, including a new party, can nominate a presidency and vice-presidential candidate as long as the candidates are registered to vote. This is due to the proposal that presidential candidates from parties' coalitions nominate themselves before the election. A presidential vesting clause guarantees that no party will be compelled to support the vice president and presidential nominees of another party.

This election law actually limit and eliminate the constitutional rights of citizens to get the president they want. Due to the logic of the ordinance, the existence of a threshold rule means that party formations with a majority coalition can submit the proposals for limited presidential and vice presidential candidates, since in previous presidential and vice presidential elections in 2014 and 2019, there were always two pairs of candidates. This is certainly against the spirit and dignity of the Constitution itself.

There have been many lawsuits against the 20 percent threshold. It was recorded that there were about 7 lawsuits from the parties to the Constitutional Court. The last accusation was rejected by Constitutional Court from *Partai*

Keadilan Sejahtera on Case No. 73/PUU-XX/2022 on Thursday 29th of September 2022.

In the researchers' perspective, this threshold is contrary to the spirit of the presidential system in the constitution and the spirit of the constitution with there are several candidates who will be proposed by parties that has lower electability than the presidential candidates who do not approved by the party. This research aims to find out the legal reforms related to presidential nomination of Presidential Threshold based on Law No. 7/2017 concerning the general elections.

LITERATURE REVIEW

Election

The beginning of Indonesia's general election history was marked by the founding of the Indonesian Election Committee and General Elections Institute (LPU), which was followed by the reformation era and the foundation of the General Election Commission. However, begin with the presidential and vice-presidential elections in 2004, and the elections for the House of Representatives, the Regional Representative Council, regional leaders, general elections have become more complicated. As a result, the rules governing the general election organizers started to be created in accordance with this complexity.⁴

Modern democratic states view elections as being the primary method for establishing a state and its administration. The elections are intended to be both a tangible example of how citizens can participate in state governance and a manifestation of their inherent right to sovereignty.⁵

Because of this complexity, the general election commission must be national, permanent, and independent, according to Article 22E Paragraph (5) of the 1945 Constitution of the Republic Indonesia. According to the article's interpretation, there is no specification and only the General Elections Commission in Indonesia is authorized to arrange general elections. The General Election Commission, the General Election Supervisory Agency, and the Election of Organizer Ethics Council have the authorization to act as the sole general election organizer, according to Law No. 15/2011 which is concerned with general election organizers.⁶

The Constitutional Court's Decision No. 14/PUU-11/2013 on simultaneous elections, which makes the holding of elections in 2019 a requirement, aims to reduce state financing of election administration, minimize high-cost politics for

⁴ Muhammad Wahdini, "The Effectiveness of Simultaneous Election 2019: Evaluation Through the Simultaneous Election 2024," *Jurnal Bina Praja* 14, no. 1 (April 29, 2022): 123–134, <https://jurnal.kemendagri.go.id/index.php/jbp/article/view/1106>.

⁵ Prasetio et al., "Problems of Democratic and Dignified Election in Indonesian Simultaneously Electoral Era," *International Journal of Criminology and Sociology* 9 (2020): 1701–1708.

⁶ Herie Saksono, "Digital Pilkada: Have Local Elections (Pilkada) Been Affected by Digitalization? Attainment, Challenges, and Policy Solutions," *Jurnal Bina Praja* 12, no. 2 (December 16, 2020): 287–299, <http://jurnal.kemendagri.go.id/index.php/jbp/article/view/782>.

election participants, as well as the politics of money that involve voters, abuse of power or prevent the bureaucracy, and organize government work schemes.

The political parties' willingness to form long-term alliances to increase their influence in powerful state institutions would be impacted by the simultaneous elections. The Indonesian Presidential System is then anticipated to benefit from the elections.

In addition, elections and democracy serve the following purposes, such as (1) as legitimacy politics; (2) as necessary politics for government and systems to obtain sources of power and political strength; and (3) as representation of the people. Based on hypothetical perspectives from institutionalization politics and consolidation of democracy in Indonesia, the national election has several advantages, such as (1) the national election aims to create congruent result election; (2) the national election creates coalition-based policy; (3) the national election develops the quality of political parties for become more democratic; and (4) the national election has a potential to minimize the conflict of defender party or the enthusiasm of party supporters will be focused on other worthwhile initiatives that help to institutionalize party politics.⁷

Representative Threshold

Theoretically, the threshold in electoral system is the minimum support limit owned by every political party in order to get its representative seat in parliament. There are two types of thresholds in elections, called parliamentary threshold and presidential threshold. The parliamentary threshold is the minimum percentage of total vote that must be obtained by every political party that has been legally participating in the election that can be included in number of seats for parliament.⁸

Each nation's laws governing the legislative threshold are typically affected by the culture and history of that nation. When it comes to the application of the legislative threshold, there is no official size for a nation. Since there is no set limit for every country, various references to parliamentary threshold in various countries show various variables. This absolute cap is not predicated on the requirement that every nation adhere to it.

In Indonesia, the parliamentary threshold is a threshold requirement for political party votes to be included in parliament. Then, after the total number of votes for each political party is full, it will be divided by the number of votes nationally. This clause, which was implicitly stated in Article 202 of Law No. 10/2008 about General Elections for Members of the People's Representative

⁷ Kadir Johnson Rajagukguk, Sofjan Aripin, and Heri Wahyudi, "Simultaneous General Election: It Is Fair for Democracy in Indonesia," *JIP (Jurnal Ilmu Pemerintahan) : Kajian Ilmu Pemerintahan dan Politik Daerah* 6, no. 1 (July 26, 2021): 56–64, <https://governmentjournal.org/index.php/jip/article/view/186>.

⁸ Idrus, "Setting The Parliamentary Threshold (PT) in The Context of Law Number 7 of 2017 Concerning General Elections Based on People's Sovereignty Article 1 Paragraph (2) of The 1945 Constitution of The Republic of Indonesia," *Al Ahkam* 18, no. 1 (2022).

Council, Regional Representative Council, and Regional People's Representative Council, was applied in the 2009 General Election. These guidelines such following below:

1. Political parties participating in general election must meet the threshold for obtaining votes of at least 2.5% of the total valid votes nationally as the requirements for including in the determination of Representative Council seats acquisition.
2. As referred to in Paragraph (1) does not apply in determining the seat acquisition for provincial local legislature and regency/municipal local legislature.

While the threshold for political parties to nominate members of parliament in some countries ranges widely, ranging from 2% to 5%, this number cannot be explained in cases where it has been decided by parliament, which is the embodiment of the will of the people.

The determination of the 2.5% figure in Indonesia is taken into consideration by a number of parties; in this case, the participation of political party members is unconstitutional.⁹

Presidential system

In a presidential system of government, the president serves as both the head of state and the head of government, with the ministers serving as his or her assistants. Indonesian ministers are therefore chosen by and answerable to the president. The DPR cannot topple the president and disband the cabinet, and the president cannot oust the parliament, according to the Indonesian constitution, which further balances the government's and respective positions of Representative Council.¹⁰

Presidential positions are essential, institutionally, more comparative advantage than other governmental bodies for the executive to be in charge. The presidential system basically wants the president not to rely on the support of the legislature in governing. This understanding reinforces the executive's position as an institution with a strong and effective influence over the people.

In a presidential system, the independence of the legislature serves as the foundation and the most crucial issue is the president's ability to lead. The president is a strong and reliable executive power holder, according to the inherent logic of the presidential system, though. The president does not have total power, despite this strong and steady power. The idea is that the president alone possesses entire

⁹ Sunny Ummul Firdaus, "Relevansi Parliamentary Threshold Terhadap Pelaksanaan Pemilu Yang Demokratis," *Jurnal Konstitusi* 8, no. 2 (May 20, 2016): 91, <https://jurnalkonstitusi.mkri.id/index.php/jk/article/view/825>.

¹⁰ Anita Indah Widiastuti, "Multi-Party In Presidential System In Indonesia: What Does Democracy Mean?," *The Indonesian Journal of International Clinical Legal Education* 2, no. 4 (2020): 517–526.

executive authority, which does not necessitate legislative approval. This is in line with Alexander Hamilton's belief that the president should be chosen directly by the people in order to ensure that the executive can act decisively.

Because of his reliance on the legislature, Indonesian president has a strong and steady executive power, it means that he effectively controls all executive powers. The standard for constitutionalizing the system for becoming more consistent is the presidential system's guiding concept. The inability to precisely elaborate the principle into the constitution is the issue that the Indonesian presidential system has.¹¹

Although purification has been implemented, the Indonesian presidential system is still inconsistent. The Indonesian presidential system is an interesting matter to be discussed since generally, any country uses a presidential government system only have two parties competing, such as United States, this is closely related to ensuring the strength of the government. When the elected president is from the Democratic Party, the Republican party will automatically become an opposition, and vice versa for the implementation of checks and balances process by the executive and legislative body¹²

According to Tomsa,¹³ the Indonesian presidential government system also became stagnant. He stated that the government system in Indonesia was complex, in which the president had to balance between his popularity as head of state and party leader or political actor who had the highest decision in his party.

RESEARCH METHODOLOGY

Normative legal research is research that focuses on positive legal norms by using secondary data as main data and primary data as supporting data.¹⁴ In addition, normative legal research includes research on legal principles, legal systematics, legal history, and comparative law.¹⁵ This method used to find a legal rules, legal principles and law doctrines that resulting in the form of argument,

¹¹ Kuswanto Kuswanto, "Consistency of the Presidential System in Indonesia," *Sriwijaya Law Review* 2, no. 2 (July 31, 2018): 170, <http://journal.fh.unsri.ac.id/index.php/sriwijayalawreview/article/view/67>.

¹² Moh. Ilham A. Hamudy and M. Saidi Rifki, "Strengthening the Multi-Party Presidential Government in Indonesia," *Politik Indonesia: Indonesian Political Science Review* 4, no. 2 (July 25, 2019): 208–232, <https://journal.unnes.ac.id/nju/index.php/jpi/article/view/18447>.

¹³ Dirk Tomsa, "Regime Resilience and Presidential Politics in Indonesia," *Contemporary Politics* 24, no. 3 (May 27, 2018): 266–285, <https://www.tandfonline.com/doi/full/10.1080/13569775.2017.1413502>.

¹⁴ Endah Triwulandari and Edy Tarsono, "Socio-Juridic Analysis of Abortion According to Article 75 of Law Number 36/2009 Concerning on Health and Law Number 35/2014 Concerning on Child Protection," *IUS POSITUM (Journal of Law Theory and Law Enforcement)* 1, no. 2 (2022): 43–59, <https://journal.jfpublisher.com/index.php/jlte/article/view/68>.

¹⁵ Nurul Qamar, "Theory Position in the Structure of Legal Science," *SIGn Jurnal Hukum* 3, no. 1 (September 11, 2021): 52–64, <https://jurnal.penerbitsign.com/index.php/sjh/article/view/v3n1-4>.

theory and new concept.¹⁶ This research examines the law concerning the presidential elections and presidential threshold based on 1945 Constitution in Indonesia to find out the president election and the obstacles in its implementation.

RESULT AND DISCUSSION

Parliamentary threshold

The selection criteria is the minimum number of votes for political party must be obtained in order to send its representatives to representative institutions. On the other hand, there is a different threshold that used as a percentage requirement for a party to participate in general election. The parliamentary threshold, on the other hand, is the requirement (percentage) for a party to be in parliament (in terms of parliamentary seats). Most of the time, this is displayed as a percentage of the votes counted, or in some places, as the minimum number of seats. The representative or parliamentary obstacles are a technical part of the voting system in countries that have implemented the representative states.

The main purposes of using the representative threshold or also known as the Parliamentary Threshold such following below:

1. Limiting the number of political parties that will join the parliament when they do not get many vote from citizens. The minimum politicians in parliament, the better the parliament's performance itself.
2. Observing the political parties that will elected in general election. Due to the large number of political parties involved, it raises the cost in organizing the elections and confuses the citizens about how to vote.

The rules regarding elections were then re-arranged in Law No. 7/2017 concerning general elections called the presidential threshold that limit the minimum seat acquisition or votes for a party or coalition for they can nominate pairs of candidates for President and Vice President. Based on the presidential threshold itself, it is a concept that aims to propose qualified candidates for President and Vice President.¹⁷

More specifically, the presidential tip is related to the congressional tip, which selects the voter list. By making political parties is easier to understand, the presidential threshold is one way to strengthen the presidential system. The goal is for a government that operates well in the legislature perspective. Refly Harun stated that the law and criteria for nominating presidential candidates were not based on good arguments. Instead, using the threshold to elect candidates for

¹⁶ Theresia Anita Christiani, "Normative and Empirical Research Methods: Their Usefulness and Relevance in the Study of Law as an Object," *Procedia - Social and Behavioral Sciences* 219 (May 2016): 201–207, <https://linkinghub.elsevier.com/retrieve/pii/S1877042816300660>.

¹⁷ Putri Lina W, "Presidential Threshold Terhadap Pemilihan Presiden Dan Wakil Presiden Republik Indonesia Dalam Sistem Ketatanegaraan," *Jurnal Ilmiah Mahasiswa Fakultas Hukum Unimal* Vol 1, no. No. 1 (2020): 21 (38-58), <https://ojs.unimal.ac.id/jimfh/article/view/2542/1561>.

president and vice president is seen as a big move in political party. The use of Presidential Barriers inhibition by Presidential Election Law is impractical since 1945 Constitution states that the President is elected by a majority of 50% plus one vote from 20% of the states. There is also no evidence that the presidential standards makes presidential systems becomes stronger.

Parliamentary Formation

In theory, the politics of parliamentary formation after the general election has no correlation with the legitimacy of the president in presidential system. In the presidential system, the presidential system and parliamentary system are two different institutions that have different legitimacy bases. Then, when there are simultaneous elections without a presidential threshold requirement for the presidential and vice-presidential candidates, the presidential system in government will remain strong and run well. On the other hand, the president's reasons in creating the good government and how to choose the next presidential and vice-presidential candidates are not all correct. The parties that will elected for president and vice-president must go through a rigorous selection process, and the parties that pass this process will elect themselves for president and vice-president.¹⁸

According to the principles of presidential form of government, presidential limits for nominations for presidential and vice-presidential candidates are different (the executive branch independent of legislative branch) and (executive branch independent of legislative branch). Commonly, the countries with presidential systems is applied the minimum standards for presidential elections. In other words, the presidential threshold is not limited to determining the minimum number of eligible voters for the presidential election.

The 1945 Constitution of Republic Indonesia always contradicts the presidency, and the dignity of presidential system from Indonesia has no correlation with the elections nowadays. The simultaneous voting system used in the 2019 elections still requires limiting the number of presidential and vice- presidential candidates based on the total number of general elections, which be the first in history. However, there is a gap between the unity of presidential system and presidential election, which makes it more difficult to build a genuine system. This change makes the president must always rely on the congress' vote. The approval of a congress vote is not a precise process, especially how it affects to president's moves and political choices of vice presidential candidate. The turn of imprisoned president is a threshold that forces the president to follow political rules that can strangle the institution and lead him to perform the government on which he fully depends.

¹⁸ Sodikin, "Pemilu Serentak (Pemilu Legislatif Dengan Pemilu Presiden Dan Wakil Presiden) Dan Penguatan Sistem Presidensiil," *Jurnal Rechtsvinding* 3, no. 1 (2014).

The obstacle in presidential democratic system

The lack of seriousness and contradictions in the institutionalization of presidential democratic system can be seen in the laws which often overlap, but also in electoral administration system, especially since the constitution was adopted in 2004. For example, the 2004 and 2009 congressional elections preceded the presidential and vice-presidential elections, but the constitutional orientation of the changes strengthened the presidential system. As a result of the election of a presidential democratic system, the presidential elections must precede the parliamentary elections. On the other hand, the presidential elections will be held simultaneously with parliamentary elections, especially the election of legislative members.¹⁹

The requirements of presidential nomination mechanism are not limited for political parties themselves, but also reflect the presidency practice with a congressional nuance. Since the presidential institution and the Representative Council are two separate institutions with different legitimacy political bases and are not mutually dependent or determined by the outcome of the general election, the presidential candidates are, in fact, determined by political organization of the national parliament within the framework of a presidential system.

CONCLUSION

The threshold for presidential candidacy clearly illustrates the parliamentary atmosphere that reflect the two parliaments and President are two different institutions and not determined by the parliament. Then, the lawsuits by parties, institutions and individuals should be granted by Constitutional Court, especially the petition for a lawsuit from Justice Party in Case No. 73/PUU-XX/2022. Even the case No. 5/PUU-XX/2022, 6/PUU-XX/2022, 7/PUU-XX/2022, 66/PUU-XIX/2021, 68/PUU-XIX/2021, 70/PUU-XIX/2021, and previously rejected by the Court.

It is possible that public expect more candidate than just two candidates. Then, the public will only vote for presidential candidates from the dominant political party, not the party that suits the community's needs. Therefore, the unnecessary presidential appointments are incompatible with the dignity of our constitution.

¹⁹ Syamsuddin Haris et al., *Pemilu Nasional Serentak 2019*, Cetakan I. (Yogyakarta: Pustaka Pelajar, 2016).

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