

The Dynamics of Indonesian Presidential Threshold: A Legal Perspectives

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Abstract: Indonesian government was the result of a combination of presidential and parliamentary systems. According to the 1945 Constitution of the Republic of Indonesia, implementing a presidential system recognizes the President as an executive leader who is directly elected by the people. The election of the President and Vice President has an important role in government. To strengthen the presidential system, there steps were taken, such as setting thresholds in Article 222 of Law No. 7 of 2017 concerning public participation. This article described the requirements that must be met by political parties in nominating the President and Vice President based on Article 6A paragraph (2) of the 1945 Constitution. The minimum limit of votes that must be obtained by election participants to obtain certain rights in elections is called the threshold. The presidential threshold allows political parties to nominate candidates for President and Vice President as long as they come from political parties that won at least 20% of seats or 25% of valid votes nationally in previous legislative elections. This writing uses a normative juridical strategy and integrates conceptual methods by referring to laws, journals, books, and related research. The purpose of this writing is to identify regulations related to the Presidential Threshold in the context of organizing the vote for the President and Vice President based on Law No. 7 of 2017.

Keywords: Presidential Threshold, Votes, Presidential System, Parliamentary System.

Introduction

In democratic countries, citizens hold political power, which means that the government is formed by the people, run by the people, and aims at the interests of the people. Indonesia is one of such countries that adopt democratic principles and hold people's votes as the best method for choosing their leaders. This concept is regulated in Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states that the people have power that is exercised in accordance with the state constitution. The principle of popular sovereignty which involves the participation of the people in the election of leaders can be implemented via a voting process in accordance with the provisions described

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in the contents of Article 22 E of the 1945 Constitution of the Republic of Indonesia. There is a strong link between citizens' voices and democracy. The process of voicing is the concrete implementation of political instruments that involve citizen participation. The voice of the people has a significant role as a form of implementing democracy because the people's voice is evidence that a country is trying to implement a procedural democracy. Therefore, the implementation of the people's vote must be carried out in accordance with the rules stipulated in the 1945 Constitution.

It is undeniable that democracy is the foundation as well as the best form of the state administration system. In the principle of popular sovereignty, the people are considered the main authority in a country. To ensure the continuity of government power, elections are held regularly to implement true democracy and government that fully serves the interests of the people, while operating more efficiently and effectively.

General elections are the method used to carry out the process of selecting people's delegates who represent them in people's representative institutions. The implementation of the people's vote is generally determined by representative institutions, political parties, as well as the political structure that operates in a country. Elections are also a forum for political officials to fight for power with the participation of the people in making and choosing decisions to channel their civil and political rights. Therefore, it is necessary to have regulations to create leaders who have high quality and are in accordance with the expectations of the community, one of the methods used is through the application of thresholds system.

The threshold refers to the minimum number of votes that must be obtained by election participants so that they are eligible to obtain certain rights in the implementation of the election. The implementation of this threshold system in elections is seen as an option or choice from a complex multi-party system. With this threshold, the hope is that it will reduce the number of political parties. The presence of a large number of political parties can hinder the effectiveness of the government system. With the participation of many political parties in the voting process, the formation of a coalition to nominate the president as well as his deputy becomes increasingly complicated. This can hinder the government formed from the coalition, in carrying out the national agenda effectively, they must take into account various diverse interests. Therefore, there is a need for a way to reduce the number of election participants in Indonesia by implementing a threshold system. Of course, over time, the provisions regarding this threshold must also be explained coherently and follow the development of political law and describe the main objectives of the existence of this presidential threshold.

After the amendment to the Indonesian Constitution, the use of thresholds in the voting system includes two more things, the minimum limit of votes for participation in the upcoming general election (Electoral Threshold) and the minimum limit of votes for a political party to get a position in the Parliament (Parliamentary Threshold). In addition, there is also the lowest threshold for

support that must be obtained for the political faction that advocates for the presidential and vice-presidential candidate pairs. In 2004, the threshold requirement for nominating a president and vice president was 10%. Some changes occur in line with provision 98 of Law No. 42 of 2008 concerning the votes resulting in the change of requirements, in which the threshold was increased to 20%. This change was later confirmed by Law No. 7 of 2017 concerning General Elections (Ghoffar, 2018). In Law No. 7 of 2017 concerning the voting system, there is a provision in Article 222 which stipulates that presidential elections have a threshold requirement of 20%. If a political party or a coalition of political parties submits a pair of candidates, they are required to take part in the general election if they meet the requirements to get at least 20% of the seats in the DPR or valid national votes in the people's votes for members of the DPR in the previous period.

With the presence of a threshold system in the election system, it was believed that this step can reduce the excessive number of political parties and strengthen the Indonesian government system. Threshold determined the presidential candidate as well as his deputy. It should be noted whether this presidential threshold is in accordance with the principles of the Constitution of the Republic of Indonesia, also considering the guaranteed security of freedom and the dignity of the people of the country. In addition, the Constitution must also guarantee certain legal protection, fair recognition, and equal treatment before the law, as well as the principle of non-discrimination in any form. All of these are steps that implement people's sovereignty in accordance with the provisions of the 1945 Constitution of the Republic of Indonesia.

Methods

The focus of this paper is the presidential threshold in Indonesia. This writing used the normative legal method, focusing on the analysis of statutory rules. The normative legal approach refers to legal regulations as well as values in society. The legal information used in this research is library references such as books, research, and scientific journals.

Results and Discussion

General Elections in Indonesia

The concept of democracy is closely related to the implementation of general elections. In the context of democracy, elections have a significant role as one of the main procedures. Democracy can be defined as a form of government that is carried out by the people and also aims at the needs of society. Underlined the importance of the voice of the people as a mechanism that embodies the sovereignty of the people as the highest authority in a country. In an effort to strengthen the role of the people as the main ruler in the country, general elections are held as action is taken.

After the Reformation era, Indonesia held a direct popular vote in determining the president as well as his deputy in 2004. The election was won

by Susilo Bambang Yudhoyono and Jusuf Kalla. Before being changed, the system for determining the president as well as the vice president was determined in the 1945 Constitution and involved the People's Consultative Assembly (MPR). Article 6 paragraph 2 of the 1945 Constitution before being amended states that "the President and Vice President determined by the MPR based on a majority vote". According to this rule, presidential elections are conducted through the intermediary of the People's Representative Council (DPR). However, after experiencing the changes, the people immediately have the highest power and can choose the president without going through the MPR. This amendment marked the shift from a quasi-presidential system into a pure presidential system with a direct election (Hanan, 2014).

The people's voting process is used to determine individuals who will occupy certain political positions. People's sovereignty can be realized through general elections involving various positions, such as village heads, people's representatives at all levels of government, as well as the president and vice president. Elections implement the legitimacy of people's power by delegating some powers and rights to people's delegates who serve in parliament and government (Jurdi, 2018). Elections are also a forum for the people to participate in electing members of the parliament by giving their voting rights. In fact, this also shows that there are concrete efforts to achieve democracy. Therefore, elections can be understood as political institutions or processes that facilitate the formation of a government that represents the will of the people. Elections are also referred to as the arena of the political market, meaning that elections function as a bridge that connects individuals or communities with election participants, so that a social contract is created between them (Indrawan, 2022). The general election process, according to the regulations contained in Law Number 7 of 2017, can be characterized as a mechanism in which the people have the direct, open, independent, protected, equal, and honest right to determine their representatives in the People's Representative Council as well as in the Regional Representative Council, the President, and Vice President.

The voice of the people has a very significant role in the context of democracy. In Indonesia, the General Election Commission of the Republic of Indonesia determines the elective areas that use the electoral system in legislative elections. The results of this legislative election become a requirement or guide for political parties in submitting presidential and vice-presidential candidates in the presidential election, this is also known as the presidential threshold. The presidential threshold requirements are criteria met by political factions in order to be able to nominate presidential and vice-presidential candidates (Al-Fatih, 2022). Requirements for the presidential threshold in the general election process are a major concern for political parties, government, academics, and society. The government continues to strive to strengthen the presidential system, including by setting the threshold in clause 222 of the General Election Law No.7 of 2017. However, there are concerns that the presidential threshold in the Indonesian government system can lead to

deviations, irrationality, and irrelevance (Mausili, 2019). If a political party or coalition of parties has won as low as 20% of the seats or 25% of the national valid vote in the previous election, they have the opportunity to put forward candidates for president as well as vice president as candidates.

Development of Presidential Threshold Provisions in Indonesia

The threshold is the end of the limit that can still be tolerated or allowed, which is ultimately applied in general elections as one of the key strategies for counting votes and determining the proportional allocation of representative seats. In the beginning, the threshold was only used to see the potential and possibility of parties that could compete to be able to get a proportional election system that regulates seats in the electoral district. This method, which is called a quota within the threshold, connects the size of the electoral district to obtain party seats using a certain method.

The views of experts regarding the threshold calculation formula are expressed as follows: the threshold can be found by dividing 100% by the voting area plus one ($\text{threshold} = 100\% : \text{electoral area} + 1$). As an illustration, if the voting place has 24 seats, then the threshold will be 4%. Therefore, this is what is meant by the threshold.

After the amendments in the 1945 Constitution, the determination of the president and vice president was carried out directly by the people. According to the election regulations, the political factions of the presidential and vice-presidential candidates must meet the threshold requirements specified in the election law. These requirements include the acquisition of votes and a minimum number of DPR seats of 20% for political factions or coalitions of political parties (Ansori, 2017).

In the developmental democracy of voting in Indonesia, every form of general election has a threshold. Requirements such as the Electoral Threshold must be completed by political coalitions to ensure their participation in the people's voting system. Apart from that, there is also a Parliamentary Threshold which functions as a limit in gaining seats in the central parliament. There is also a Presidential Threshold which is a requirement for vice-presidential candidates as well as vice-presidents to participate in the general elections in the 2004 elections. Indonesia applies the first threshold, namely the Electoral Threshold which was ratified in 1999. This threshold is a requirement so that parties can get votes or seats to be able to participate in the next general election. This regulation is contained in Law No. 3 of 1999 regarding the voice of the people. In Law Number 3 of 1999, it is stated that political parties must meet certain requirements to be able to take part in the next people's vote. The requirement is to have a limit of 2% of the total seats in the DPR, or at least 3% of the total seats in DPRD I or DPRD II, at least half of the province and half of the number of districts/cities throughout Indonesia, based on the results of the people's vote. The provisions also explain in provision 143 Paragraph (1) of Law No. 23 of 2003 which explains in more detail the Electoral Threshold (Shunas and Fatimah, 2022).

In 2009, there was a significant change in the general election system in Indonesia which resulted in the implementation of arrangements for the Parliamentary Threshold and the Presidential Threshold. Even so, the system still maintains the Electoral Threshold as an effective mechanism for filtering political parties participating in elections in that year. Amendments to Law No. 42 of 2008 concerning General Elections for the President as well as the Vice President led to an increase in the threshold of 5% from the 2004 presidential election to 20%. According to Article 9 of Law No. 42 of 2008, "candidates must be submitted by a political party or coalition of political parties that meet the requirements to get at least 20% of the total seats in the DPR or win at least 25% of the national vote in the election of members of the DPR before the Presidential and Vice-President Elections are held."

In the 2014 presidential election, there was no change in the presidential election threshold. To be able to nominate a president and vice president, political parties or coalitions of political parties must meet the requirements set out in Article 9 of Law Number 42 of 2008. One of the conditions is to have at least 20% of the seats in the DPR or 25% of nationally valid votes in elections previous legislature.

In the 2019 presidential election, there was no change to the presidential election threshold. However, there has been a change in the legal basis to become Law Number 7 of 2017 concerning General Elections. Article 222 of the law states that "A person who becomes a candidate must have the support of a political party or coalition of political parties that meet the minimum requirement of having 20% of seats in the DPR or 25% of national valid votes in the previous legislative election." In the 2004, 2009, and 2014 presidential elections, prior to the implementation of the presidential elections, the results of the legislative elections held in the same year were based on the number of seats in the DPR and valid votes nationwide. In all three elections, legislative elections took place several months before the presidential election. However, in the 2019 presidential election, the application of thresholds in obtaining DPR seats and valid votes nationally was based on the results of the previous DPR member elections (Setiawan, 2023).

Provisions for the Presidential Threshold in Law No. 7 of 2017 on Elections

In 2019, when the Legislative Election and Presidential Election were held simultaneously and still followed the rules regarding the presidential threshold, Law Number 7 of 2017 was implemented. The implementation of simultaneous elections is explained in Article 167 paragraph (3) of Law Number 7 of 2017 concerning Elections which states that "Voting is carried out simultaneously on national holidays or days designated as national holidays". Provisions regarding the presidential threshold are regulated in Article 222 of Law Number 7 of 2017 concerning Elections.

Law Number 7 of 2017 explains the provisions regarding the presidential threshold in Article 6A paragraph (2) of the 1945 Constitution. The article states that political parties participating in general elections must nominate pairs of

candidates for President and Vice President before the general election started. There is a difference between Article 6A paragraph (2) in the 1945 Constitution and Article 222 in Law Number 7 of 2017 concerning General Elections. The difference lies in the fact that Article 6A paragraph (2) in the 1945 Constitution does not specifically contain requirements other than proposals from political parties. Meanwhile, Article 222 in Law Number 7 of 2017 concerning General Elections clearly states the number of votes relating to the nomination of president and vice president.

Another difference between the 2014 Presidential Election and the 2019 Presidential Election regarding the implementation of the presidential threshold is the time of implementation. In the 2014 election, the presidential threshold was applied after the results of the legislative elections before the presidential election had been observed. However, in the 2019 election, the presidential threshold was applied from the start together with the legislative general election, taking into account the results of the previous 2014 general election.

Law Number 7 of 2017 has several important points, one of which is the implementation of the Presidential Threshold system. The Presidential Threshold is the minimum threshold at which a political party or coalition of political parties can nominate a candidate for president or vice president in a general election. According to Article 222, a political party that wins at least 20% of the seats in the DPR or 25% of the national valid votes has the opportunity to be considered as a presidential candidate. If parties do not reach that threshold, they must form a coalition with other parties to meet the threshold requirements necessary to nominate a president and vice president. The requirement is a minimum of 20% of the seats in the DPR or 25% of the valid national votes. In Article 222 and Article 223 paragraph (2) of Law No. 7 of 2017, it is explained that political parties can make agreements with other political parties in the framework of proposing Candidate Pairs through a merger.

With the presidential threshold setting in this situation, independent or non-party presidential and vice-presidential candidates in Indonesia do not have the opportunity to participate in general elections and make contributions and resulting in major parties and coalitions of parties that can enter into and nominate presidential and vice-presidential candidates. One of the objectives of the existence of this presidential threshold is to be able to find qualified presidential candidates as well as deputy candidates. However, it seems that the implementation of the presidential threshold in Indonesia is still not optimal due to the large number of political parties with varying numbers of votes and seats.

Conclusion

Based on what has been described above regarding several constitutions and related articles the presidential threshold in Indonesia continues to develop and expand in its legal politics, many changes are related to the amount of the percentage of nominations for the President as well as the Vice President. Political organizations here are more seen fighting for their interests, which is

very far from the goal of the presidential threshold so this has made Indonesia unable to implement the presidential threshold properly. The existence of such a high percentage of the vote, namely 20%, means that smaller parties must still be able to compete in coalitions to reach this threshold. The presidential threshold over time is only considered to strengthen some of the elite parties. This percentage also makes political rights and democratic rights disparate, also because it considers the minority party and the majority vote party. The president, who should have fought for democracy and the rights of citizens to be able to vote, was immediately undermined by the provisions of the presidential threshold which were dominant only in political parties. So it can be concluded that the development of thresholds in Indonesia has not been effective enough and able to strengthen the presidential system due to the many things that are considered not in accordance with the principles or the constitution itself.

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