

## **LEGAL REFORMS IN INDONESIA RELATED TO "PRESIDENTIAL THRESHOLD" OF PRESIDENTIAL CANDIDATE IN LAW NO. 7 OF 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 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. 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 number 7 of 2017 concerning the General Elections. 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. This research showed that it is possible that public expect more candidate than just two candidates. And the public will only vote for the presidential candidate by dominant party, not the party in accordance with citizens' need. From this research, it can be concluded that the unnecessary presidential appointments are incompatible with the dignity of Indonesia constitution.

**Keywords:** *Indonesian Presidential Candidate, Legal Reform, Presidential Threshold*

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### **INTRODUCTION**

One of the main pillars in democratic system is the existence of a mechanism for directing people's opinions on a regular basis through general elections that held regularly. 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. It means, the election is the manifestation of freedom in choosing the president, vice-president and legislature parliament in a country.

The basic characteristic of a democratic country is the existence of general elections (elections). 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. 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 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 UU No. 7 of 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 UUNo. 7 of 2017 concerning "general elections".

In the last election in 2019, the President's criteria were 20% of the seats in DPR and/or 25% of the national valid votes according to Law No. 7 of 2017 concerning Elections. From 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 Law No. 7 of 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 of 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 29<sup>th</sup> 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 number 7 of 2017 concerning the General Elections.

## **METHOD**

Normative legal research is research that focuses on positive legal norms by using secondary data as main data and primary data as supporting data. Also, normative legal research includes research on legal principles, legal systematics, legal history, and comparative law. It is a method to find a legal rules, legal principles and law doctrines that resulting in the form of argument, theory and new concept. 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.

## **RESULTS 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, are:

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 Number 7 of 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. Regarding the presidential threshold itself, it is a concept that aims to propose qualified candidates for President and Vice President.

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 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. Also, 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.

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.

### **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. Otherwise, the presidential elections will be held simultaneously with parliamentary elections, especially the election of legislative members.

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 DPR 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's possible that public expect more candidate than just two candidates. And the public will only vote for the presidential candidate by dominant party, not the party in accordance with citizens' need. Thus, the unnecessary presidential appointments are incompatible with the dignity of our constitution.

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