



## The Constitutional Problem of the Presidential Threshold in the General Election System of Indonesia

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### **Abstract**

The presidential succession is an important political event to circulate the most top political leader with multiplication impacts in governing a state. For this reason, the presidential election, of course, would attract a vast attention from every element of people of Indonesia, particularly the politicians and the political observers. The presidential election to seek the right man or woman for presidency office by conducting a general election based on a just legal basis and conducted according to rule of laws and democratic principles. Nevertheless, the practical problems may emerge from the certain provision of laws and their implementation since there are various opinions and interests those cause pro-and-contra and could lead to legal actions, such as claim for constitutional review to the court. The problem which was brought before the Constitutional Court (Mahkamah Konstitusi, MK) to get the provision of the presidential threshold in the Act on The General Election (Act No. 7 of 2017) reviewed because it is contrary to the Constitution of the Republic of Indonesia of 1945 (UUD 1945). Besides, the problem also related to multiplication of the presidential threshold for the process of political democratization, particularly for the presidency office circulations. A number of petitions before the Constitutional Court and various critics with opinions in the public spheres, including social media show that the provision of the presidential threshold in the Act on General Election has no clear delegation from the Constitution of 1945. Hence, this controversial provision has no strong legitimation. All political parties in DPR are recommended to allow the political experts in further discussions those to come to a new consensus with new visions of the provision of presidential threshold that does not tend to political oligarchy and dynasty.

**Keywords:** *Presidential Threshold; Constitutionality Review; General Election; Political Oligarchy*

### **Introduction**

In a democratic state, the national leadership succession is the principal and regular agenda to elect the legislative bodies members and the executive leaders those will rule the state for a certain term of offices which are stipulated by laws. These elections are conducted by an independent state commission, in Indonesia called General Election Commission (Komisi Pemilihan Umum, KPU).

The last national election carried out in 2019 where 12 political parties competed to enter into the Parliament (Dewan Perwakilan Rakyat, in short: DPR), but only six parties passed the parliamentary

threshold and have seats in DPR. The seats number of DPR is 575 and allocated to those six parties passed the parliamentary threshold (four percents), meanwhile those six other parties are ineligible to DPR. The majority seat of DPR belongs to Partai Demokrasi Indonesia Perjuangan (PDIP) with 128 seats and the remaining seats distributed to Partai Golongan Karya with 85 seats, Partai Gerindra with 78 seats, Partai Nasdem with 59 seats, Partai Kebangkitan Bangsa with 58 seats, Partai Demokrat with 54 seats, Partai Keadilan Sejahtera with 50 seats, Partai Amanat Nasional with 44 seats, and Partai Persatuan Pembangunan with 19 seats.

There are extensive news and discussions take place continuously on the presidential threshold in masa media, including social media, due to the presidential office holds the top power to rule the state. The president office holds the top powers as the head of state and the head of executive power as well as stipulated in the Constitution of the Republic of Indonesia of 1945 (UUD 1945). Meanwhile, the political parties in DPR could play a very important role in forming the parties coalition to pass this presidential threshold and then conclude the agreement on the presidential candidacy.

There is some aspirations of the political observers and politicians that arose the questions on the provision of presidential threshold those covers its constitutionality, its implications to people sovereignty, the possibility of political oligarchy and dynasty, etc. The political oligarchy and dynasty issues are related to the restraint of political right of people to participant directly in the presidential elections. Afan Gaffar stated that political open political recruitment must be applied that might result in emerging the tough political leaders those rooted in the people (Afan Gaffar, 2006: 170).

The legal basis of presidential threshold is the Article 222 of Act No. 17 of 2017 on the General Election that stipulated the provision of presidential threshold as follow: "The candidates of the president are proposed by the political party or group of political parties which was participants of general election that meet requirement at least 20 percent seat of DPR or 25 percent valid constituents votes nationally in the previous general election". This provision is viewed to restrain the political parties and its constituents in application of their political rights which is recognized by the state constitution.

The Act No. 7 of 2017 was passed by DPR during the first term of Jokowi administration where a number of political parties in DPR united by creation the coalition to supported President Jokowi's office. The political observers assumed that this threshold could be used to create political oligarchy or even political dynasty in the following terms of presidential elections as well as to restrain the participation of above mentioned.

The political oligarchy is based on political configuration in DPR that tends to divided into three groups, where PDIP as ruling party with a majority vote in DPR, as if become the centripetal factor for other parties those have no choice to take lead in any coalition. The second group of parties consist of National Democratic (NasDem) Party, Democratic Party (PD), and Justice Welfare Party (PKS) that is going to nominate Anies Baswedan for presidency office. The third potential group of parties might approach Prabowo Subianto, the boss of Gerindra Party with 78 seats in DPR and would likely nominate this former president candidat to the next presidency office. In the political oligarchy the decision primarily made by a few parties or politicians in the ruling circle.

The distribution of seats in the parliament shows the political configuration which then appear in the grouping of coalition that enable the coalition to make important decision such as nominating a electable figure to president candidacy. The presidential election process is of two stages, the first is the role of the political party with majority seats (votes) is to nominate the presidents candidacy, and the second is the technical process conducted by the Commission of Election (KPU through collecting and determine the validity of people votes.

## ***Problems Statement***

The provision of the presidential threshold in Article 222 of Act No 7 of 2017 has been criticised sternly by civil society elements, particularly the political observers and politicians. The problems are as follow: First, how do people respond to the problem of the presidential threshold stipulated in the Article 222 of Act on General Election (No. 7 of 2017)? Second, what are the implications of this provision of the presidential threshold in the political oligarchy and legacy of political dynasty?

## ***Methodology***

The way of data gathering for this legal research are the selection of secondary data through library research and online data in the form of the audio-visual. The approach applied is statute approach which selection the relevant provisions in the legal documents as the research object to be analysed. Analysis of these data using specific legal intrepertation that frequently applied in legal research.

## ***Data and Discussions***

The requirement of having 20 percents seat of DPR by a political party or a group of political parties or having 25 percents popular votes nationally is known as the presidential threshold for nominating a president candidacy in the presidential elections. This provision is deemed to restrict the political right or the constitutional right of the citizens to participate in the real democratic process through vote pro the presidential candidacy.

However, the position of the president and vice-president in the governmental system is absolutely strong, de jure and de facto, since they are elected directly by the majority of people in the general election. Jimly Ashiddiqy added that they are could not empeach on the political basis, except on the basis of law infringements (Jimly Ashiddiqy, 2006: 122).

The eligibility of the presidential candidats is heavily political content which determines the necessary conditions for presidential candidacy nomination at the time of the legislative body enacting the related provision by members of political party or group of political parties those participated in the previous presidential election

The provision of the presidential threshold above mentioned can be found in Article 222 of Act on General Election (Act No. 7 of 2017) as follow: "The pair (of president and vice-president candidat) is proposed by political party or group of political parties which were participants of the election that meets the requirement of seats ar least 20 percent of DPR sestis or at least 25 percent of valid votes nationally at the previous legislative election." This important provision has drawned a great numbers of public attentions with vast controversy.

Prior to the Act No. 7 of 2017, the Act No. 42 of 2008 also criticised and filed to be reviewed before the Constitutional Court to be reviewed its constitutionality. The problem of constitutionality of both acts has been examined and reviewed before the Constitutional Court (Mahkamah Konstitusi) by the constitutional judges, but these efforts do not answer the problem of inconstitutionality of presidential threshold nomination. More than 30 petitions has been filed to the court, but all petitions was rejected on different legal basis. (See: "Babak Baru Putusan Presidential Threshold", news. detik.com/kolom/d-6329205)

This situation also criticised sternly by a number of academicia, political observers, and law practitioners mainly via various panel discussions which then uploaded in the social media, mostly youtubes and instagrams. The famous discussion forum is, inter aliia, Jakarta Indonesia Lawyers Club

(ILC) constitutes an open forum to discuss a number of public interests, including the presidential threshold. For example, Rocky Gerung and Boni take different opinions concerning this presidential threshold where they brainstormed intensively in an ILC forum. Both of them expressed the different arguments according to respective ideas and visions about the presidential threshold in connection with political right of the citizens and the future of the state (Rokcy vs Boni Soal Parliamentary Threshold 20%: Upaya Menyelamatkan Ideologi Negara").

In the context of constitutional reviews, for instance, let us take the Case No. 52/PUU-XX/2022 that filed by DPR and Partai Bulan Bintang (PBB) which have basis of arguments that Article 222 of Act No 7 of 2022 is contrary to the Article 1 (2) of UUD 1945 which stated that the sovereignty is on the hand of the people and implemented in accordance with the acts. Besides, Article 6A stipulated that the president and vice-president is one pair and elected directly by the people. From these legal facts the petitioners assumed that the presidential threshold provision is unconstitutional and might be intended to the aim at restricting or for the presidential candidacy buying practice.

On the other hand, the Constitutional Court considers that the presidential threshold provision is the open legal policy based on the constitutional delegation authority from provision of Article 6(5) of UUD 1945 to Article 222 of Act No. 7 of 2017. This court statement was opposed by some petitioners and other persons like Rocky Gerung who stated that "the presidential threshold is the poison of democracy" (Rocky Gerung Official, "Presidential Threshold adalah Racun Demokrasi"). The other opinions emerged outside political parties those indicated the possibility of developing political oligarchy to keep the political power on the hands of little group. Meanwhile, Jimly Ashiddiqy also indicated that the existence of presidential threshold is likely arose as the implication of the remaining feudalism culture in Indonesia and the wishes of some influential politicians to save the political legacy to their dynasty to be in the power (AkbarFaizalUncensored, "Prof Jimly Ashiddiqy Terdapat Bukti-Bukti Baru Bahaya Syarat Presidential Threshold 20 Persen").

This point not only indicated, but also become the convince of many individuals, including the political scientists. Sigit wrote that the number of parties influences the coalition goals and every coalition actor posses a specific goal, except dual-parties coalition. According to him, the coalition is to maximise the benefits, to prioritise one issue, some actors considers that the victory is more important than others, and when the situation is not profitable he turns out. (Sigit Pamungkas, 2011: 83).

Meanwhile, Heywood points out that the groups, interests, and movements play important roles in the democratic process and cogs within the machinery of government (Heywood, 2019: 465). This phenomenon worth invite the debates amongst those who have attention for the betterment of political process and political justice in Indonesia by creating the just laws, particularly harmonization of the legislative products and the constitutional value and justice.

## **Conclusion**

The provision of presidential threshold restricts the opportunity of political parties in nominating the presidential candidacy and rose ineffectivity of people sovereignty in the presidential election. This provision would lead to emergence of the political parties oligarchy and legacy of dynasty possibility amongst the ruling parties.

The renunciation of provision of presidential threshold should be done constitutionally and as soon as possible to respond and respect the political rights of the people of the Republic of Indonesia. The role of the civil society is important to control the political process that guarantee the respect to people sovereignty.

## References

- Afan Gaffar (2006). *Politik Indonesia: Transisi Menuju Demokrasi*. Yogyakarta: Pustaka Pelajar.
- Heywood, A (2019). *Politics*. 5th Ed. London: Red Globe Press.
- Indonesia, Undang-undang Dasar Negara Republik Indonesia Tahun 1945.
- Indonesia, Undang-undang tentang Pemilihan Umum (UU No. 17 Tahun 2017), LN RI Tahun 2017 No. 182, TLN RI No. 6109.
- Jimly Ashiddiqy (2006). *Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi*. Jakarta: Mahkamah Konstitusi Republik Indonesia.
- Sigit Pamungkas (2011). *Partai Politik: Teori dan Praktik di Indonesia*. Yogyakarta: Institute for Democracy and Welfarism.
- AkbarFaizal Uncensored. "Prof. Jimly Terdapat Bukti-Bukti Baru Bahaya Syarat Presidential Treshold (PT) 20%". <http://yout.ube/REp/G2yWu2xk>.
- Indonesia Lawyers Club. "Rokcy vs Boni. "Soal Parliamentary Threshold: 20% Upaya Menyelamatkan Ideologi Negara!"". <http://yout.ube/jZmPS9JQ3wQ>.
- Rocky Gerung Official. "Presidential Threshold 20 Persen adalah Racun Demokrasi". ([http://yout.ube/AFriTMrg\\_F4](http://yout.ube/AFriTMrg_F4)).

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