

**PROBLEMATICS OF THE IMPLEMENTATION OF THE  
PRESIDENTIAL THRESHOLD IN ELECTIONS**

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**ABSTRACT**

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*Problems regarding the application of the Presidential Threshold in elections are always in the spotlight when elections are approaching. But even so, there are still many ordinary people who do not understand or even do not know what the Presidential Threshold is. The purpose of this research is for readers to know and understand what the presidential Threshold is. traces and history of the application of the Presidential Threshold, and what is the controversy over the application of the presidential threshold. The research method used is Normative Juridical, namely legal research with a literary approach based on related references which aims to see what is meant by the presidential threshold and how it is regulated within the law. The data used in this study is secondary data, namely data from previous research to become a reliable reference source. The topic of discussion in this study is to discuss the meaning of the presidential threshold, how the historical development of the presidential threshold in Indonesia from the beginning was apply to date, and the controversy over the implementation of the presidential threshold in Indonesia.*

**Keywords: Problematics, Presidential Threshold, Research**

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**INTRODUCTION**

General election is an important instrument in a democratic country with a representative system. Elections are a concrete form of procedural democracy. Indonesia as a constitutional state with a democratic government recognizes elections as an important pillar of democracy which must be held democratically. Indonesia has regulated matters regarding the implementation of elections as stipulated in the 1945 Constitution of the Republic of Indonesia

Context of purifying the presidential system, however, the shift in function does not necessarily make legislators empowered in carrying out the function of forming laws. The President is still very powerful in terms of the formation of laws, especially in terms of the formation of the Perpu Determination Law, where the DPR can only accept or reject the Perpu Determination Bill submitted by the Government without the power to discuss in detail article by article contained in the bill.<sup>1</sup>

The lengthy debate regarding the election system for the President and Vice President (Pilpres) in Article 6A of the 1945 Constitution of the Republic of Indonesia (UUD 1945) required up to four years of discussion; which ultimately led to the agreement of the People's Consultative Assembly (MPR) to purify the presidential system of government. ). Article 6A(2) of the 1945 Constitution states that "a pair of presidential and vice-presidential candidates shall be proposed by political parties and/or a coalition of political parties participating in the election prior to the holding of general elections" establishes a minimum limit for political parties participating in general elections to be able to nominate president and vice president (presidential threshold) stipulated in the Presidential Election Law I;2 with the provision of obtaining at least 15 percent of the total seats in the DPR or 20 percent of valid national votes in legislative elections.

Soon we will be heading towards the Election Year which will be held in 2024. The issue of the Presidential threshold is a hot issue which is always discussed and even debated during the democratic party. Therefore, through this article, we will jointly discuss and thoroughly explore what exactly is meant by the *presidential threshold*, the traces and history of the implementation of *the presidential threshold*, the controversy over its application, and the conclusions that the author will conclude at the end of this paper.

## **METHOD**

This research is an article that discusses the presidential threshold problem in elections. This research is a research on law using the Juridical Normative method, namely library law research which is carried out by examining library materials or secondary legal data.<sup>2</sup>

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<sup>1</sup> Eka N.A.M Sihombing, Cynthia Hadita, Kewenangan Presiden Membentuk Undang-Undang Dalam Sistem Presidensial, *Reformasi Hukum*, Vol. 27, No. 1, Januari-April 2023.

<sup>2</sup>Marzuki. *Penelitian Hukum*. Jakarta: Pranamedia Group.2019.p. 181

Secondary legal materials are documents or legal materials that provide an explanation of primary legal materials such as books, articles, journals and results. Therefore this study only uses related references.

## DISCUSSION

### *Presidential threshold*

*The presidential threshold* is setting the threshold level for support from the DPR, either in the form of the number of votes ( *ballots* ) or the number of seats ( *seats* ) that must be obtained by the political parties participating in the election in order to nominate President from that political party or by a combination of political parties.<sup>3</sup> *The presidential threshold* is related to the parliamentary threshold policy which replaces the electoral threshold. This *presidential threshold* is one of the ways to strengthen the presidential system through simplification of political parties. The goal is to create a stable government and not cause the running government to experience difficulties in making policies with the legislature.

Theoretically, *the Presidential threshold* is the minimum level of support that must be obtained in order to place representatives and is generally developed in countries that use proportional representation electoral systems (Gusti, 2013). Presidential elections are determined in Article 159 paragraph (2) and paragraph (3) of Law no. 42 of 2008 uses a plurality/majority system with a two-round system variant combined with vote distribution requirements based on Article 159 paragraph (4) and paragraph (5) of Law no. 42 of 2008 based on this principle *the presidential threshold* is not in accordance with the system used in presidential and vice presidential elections.

### **The Trail And Brief History of *The Presidential Threshold***

Each law (UU) has a historical aspect regarding the process and journey of a norm contained therein which was formed or maintained. During this process, there were many contradictions or differences of opinion which are commonplace in parliament. On the other hand, it is certain that there are pros and cons regarding a new regulation that will be enacted or maintained; moreover, the government and opposition parties have their own beliefs and justifications. Regarding reviewing the causes and effects of the birth of a law, it can actually be based on academic texts and comparisons of existing systems from previous years; especially when the norm is indeed the norm in a law in previous years. Regarding the provision of the presidential threshold, it has actually been in effect since 2004; while at that time it was also a momentum of great desire for the Indonesian people to hold the

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<sup>3</sup>Sigit Pamungkas, *Perihal Pemilu*, Yogyakarta: Laboratory of the Department of Government Science and Government Science, Faculty of Social and Political Sciences UGM, 2009, Pg. 19

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Presidential Election directly. In this year an independent institution was born to organize General Elections (Elections); namely the General Election Commission (KPU).

In 2004, the presidential threshold was set at 15 percent of the number of seats in the People's Representative Council (DPR); or equivalent to 20 percent of the national vote. Whereas in 2009, Article 9 of the Second Presidential Election Law stipulated a presidential threshold of 20 percent of the DPR's votes or equivalent to 25 percent of national valid votes; which at that time the election was carried out in two stages. During the implementation of the 2014 Presidential Election, the provisions for the presidential threshold continued to use the provisions contained in the Presidential Election Law II; namely 20 percent of the DPR's votes or 25 percent of the national valid votes. Furthermore, during the 2019 presidential election, regulations regarding elections are regulated by the Election Law; with provisions regarding the presidential threshold contained in Article 222 of the Election Law. The presidential threshold is set at 20 percent of the DPR's votes or 25 percent of the national valid votes with an election system that is held simultaneously and the threshold provisions are taken from the previous year (2014 general election). This is of course a very crucial differentiator shown from previous years regarding regulations regarding the presidential threshold.<sup>4</sup>

In the comprehensive text of book 10 regarding Amendments to the 1945 Constitution, there is Agun Gunanjar Sudarsa's proposal which emphasizes that Articles 37(1), (2), and (3) of the 1945 Constitution are approved and agreed to be amended because they involve the issue of changing the articles in constitution; which must be submitted by at least one-third of the total members of the MPR. Furthermore, Agun Gunanjar Sudarsa also stated that the essence of the proposal was regarding the issue of Article 6A(4) of the 1945 Constitution which at that time was still under discussion showing two alternatives; whether to be returned by the people or elected by the MPR. Regarding the proposals for Articles 37 and 6A of the 1945 Constitution, it was stated that obtaining the number one-third in a political system that adheres to a multi-party system is felt to be very difficult. Moreover, the future party system will increasingly crystallize and only legitimate parties will be able to participate and compete in subsequent election periods.<sup>5</sup>

Agun's opinion above is one of the references for maintaining the presidential threshold which explicitly states that in the future parties will

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<sup>4</sup>Ayon Diniyanto, "Mengukur Dampak Penerapan Presidential Threshold di Pemilu Serentak Tahun 2019", (2018) 1:1 *Indones State Law Rev* 83–90.

<sup>5</sup>Comprehensive Manuscript Compilation Team and Process and Results of Amendments to the 1945 Constitution, *Comprehensive Manuscripts of Amendments to the 1945 Constitution of the Republic of Indonesia Book X Amendments, Transitional Rules and Additional Rules, Revised Edition* (Secretariat General and Clerk of the Constitutional Court, 2010), p. 104-106.

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crystallize and it is assumed that the prerequisites for the Presidential and Vice Presidential Candidates package must meet the 35 percent threshold; which later this provision is expected to consolidate parties to become simpler. The prerequisite for the 35 percent presidential threshold was actually proposed and considered to create an effective presidential system; so that there are no technical difficulties in holding elections. The prerequisite for the 35 percent presidential threshold referred to at that time could of course be proposed by a political party or a coalition of political parties. However, in the elections held in 2004, the threshold requirements were implemented in stages; namely 15 percent of the parliamentary vote or the equivalent of 20 percent of the national valid votes, until the 2019 election reaches 20 percent of the parliamentary vote or the equivalent of 25 percent of the national vote.

The Constitutional Court (MK) has also issued decisions several times regarding the material review of the presidential threshold; including in the Decision of the Constitutional Court (PMK) No. 51-52-59/PUU-VI/2008 dated 18 February 2009, PMK No. 14/PUU-XI/2013 dated 23 January 2014, PMK No. 108/PUUXI/2013 dated 11 February 2014, PMK No. 53/PUU-XV/2017 dated 19 December 2017. All tests related to the presidential threshold state that the presidential threshold is legal and constitutional to be maintained (latest in PMK No 53/PUU-XV/2017). The Constitutional Court also stated that arrangements related to the presidential threshold were an open legal policy; which are free to be determined by the makers of the law or the legislature (in PMK No. 108/PUU-XI/2013). In PMK No. 14/PUU-XI/2013 which examines Article 3(5), Article 9, Article 12(1) and (2), Article 14(2) and Article 112 of the Presidential Election Law II, the Constitutional Court did not give a decision regarding Article 9 of the Presidential Election Law II which regulates the presidential threshold. In addition, it is very important to understand that Article 3(5) of the II Presidential Election Law regarding the implementation of two stages of the election; i.e. the presidential election was held after the election for the DPR, DPD and DPRD was given a stipulation by the MK that the article was unconstitutional. The articles granted by the Constitutional Court in PMK No. 14/PUU-XI/2013 namely Article 3(5), Article 12(1) and (2), Article 14(2), and Article 112 of the Presidential Election Law II.<sup>6</sup>

Regarding PMK No. 14/PUU-XI/2013, if it is partially considered, it will impact and disrupt the course of the 2014 elections which will soon take place at that time. two, the Constitutional Court stated that the verdict in point 1 of PMK No. 14/PUU-XI/2013 applies to the implementation of the 2019 and subsequent elections. This means that the provisions for implementing elections after PMK No.

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<sup>6</sup>Aprilian Sumodiningrat, "Meninjau Ulang Ketentuan Presidential Threshold dalam Pemilihan Presiden dan Wakil Presiden" Universitas Gaja Mada, Yogyakarta, 2021.

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14/PUU-XI/2013 is still being implemented in accordance with the law and the old provisions. Whereas the cancellation of Article 3(5) of the II Presidential Election Law by PMK No. 14/PUU-XI/2013 is used for elections in 2019 and also applies to subsequent elections. In addition, in the decision of the rank 3 PMK No. 14/PUU-XI/2013, the Constitutional Court emphasized to reject the applicant's application for other than and the rest. This was meant by the Constitutional Court that Article 9 of the Law on the Second Presidential Election, which was not included in the ruling, should be maintained.<sup>7</sup>The reason for the Constitutional Court's defense is because this is the realm of law-making; which also stipulates the conditions for obtaining political party votes as a condition for nominating a pair of presidential and vice-presidential candidates. In addition, the requirements in Article 9 of the Presidential Election Law II are an open legal policy, which in essence is not related to simultaneous elections or not.

In 2017-2018, the Constitutional Court again stipulated PMK regarding the presidential threshold provisions in the Election Law. In Decision No. 53/PUU-XV/2017, the Constitutional Court rejected the petition of the applicants. The test, which was represented by 12 people, resulted in PMK No. 53/PUU-XV/2017; which states that the authority to determine the prerequisites or thresholds for the nomination of the President and Vice President is an open legal policy. 21 Therefore, the historical aspect of implementing the presidential threshold system began with the implementation of the electoral threshold (2004 General Election); until various tests emerged related to the threshold provisions for the nomination of president and vice president, and in the end this provision has been maintained by the Constitutional Court to date.

### ***Application of the Presidential Threshold***

The issue of *the Presidential Threshold* has often become a controversial issue, because the application of *the Presidential Threshold* has always been considered as a ploy to hinder certain groups from nominating the president and vice president they want. The application of *the Presidential Threshold* is also considered to violate the rights of citizens in the 1945 Constitution where provisions regarding the rights of citizens can be seen in article 27 paragraph (1) which explains the right of citizens to vote contained in the rights of citizens guaranteed by the constitution. in the form of equality in law and government.

The Constitutional Court has emphasized that the status of the presidential threshold in simultaneous elections is constitutional so that this provision is unlikely to be changed by legislators. Moreover, politically this provision benefits the

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<sup>7</sup>M Rizky Andika Pratama Putra Effendhy & Moh Haris Lesmana, "Formulasi Konsep Single Presidential Treshold dalam Pemilu Serentak sebagai Upaya Memperkuat Sistem Pemerintahan Presidensial di Indonesia" (2019) 2:2 Legislatif 1–23.

position of parties sitting in parliament, because this norm does not allow new parties to be able to nominate the president and vice president, so that in the future it is unlikely that new parties will be born which immediately have high bargaining power in national politics, but the problem is the political interests of these political parties have in essence violated the constitutional rights of citizens and political parties which have been regulated in the 1945 Constitution, namely the right to vote for presidential candidates to contest the General Election.<sup>8</sup>

At the time of formulating the amendments to the 1945 Constitution, there were no definite provisions regarding the presidential threshold, so at that time the agreed formula was delegating to the legislature to regulate it in a law. the presidential threshold is still applicable. And vice versa, the presidential threshold can be removed if the legislators so desire.

The pros and cons of implementing the presidential threshold are surging along with the 2024 election. Will the 2024 election still use the presidential threshold system or remove this provision. Of course, both contain advantages and disadvantages in its implementation. Therefore it is necessary to study in depth to continue to use the presidential threshold or to abolish this presidential threshold.

There are several advantages in using the presidential threshold in the 2024 election.

1. the application of the presidential threshold in elections can create strong President and Vice President figures, because the elected President and Vice President will have a large base of political support in parliament, so that the administration of government can run effectively and stably. To a certain degree, this condition can strengthen the presidential system adopted by Indonesia.
2. Removing the presidential threshold as a condition for candidacy for the Presidential and Vice-President elections can cause parliament to tend to be dominant, thus weakening the presidential system.
3. the application of a presidential threshold that remains high forces political parties or coalitions of political parties to seriously select candidates for President and Vice President, so that a qualified President and Vice President will emerge.
4. the application of the presidential threshold will give birth to a coalition to strengthen the implementation of government, so that it will build an effective government.
5. The presidential threshold in the submission of presidential and vice presidential candidates is intended to simplify the party system.

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<sup>8</sup> Ahmad Gelora Mahardika, Potensi Pelanggaran Hak Konstitusional Dalam Pemilu serentak Menggunakan Sistem Presidential Threshold, Difersi Jurnal Hukum, Vol 5 No 1, april 2019

Post-election political parties will form two axes, namely the government axis as bearers and the opposition axis. So that in parliament there will only be two powers and political parties will be affiliated with other parties. With this model, the president's performance as an executive in terms of governance will be more effective.

Behind the advantages of using the presidential threshold implementation in the 2024 simultaneous elections, there are also many weaknesses, including:

1. with the existence of a coalition of political parties in carrying the candidates for President and Vice President, it is very vulnerable to exchange of interests (transactional politics). To a certain degree a coalition of political parties like this will actually weaken the presidential system, because the President is held hostage by the political parties in his coalition.
2. Applying the presidential threshold will limit political parties that have just participated in the 2019 simultaneous general elections from being able to form a coalition to nominate candidates for President and Vice President, because they do not yet have a parliamentary threshold. This can eliminate the right of political parties to nominate candidates for President and Vice President, which in fact is guaranteed in the 1945 Constitution of the Republic of Indonesia.
3. From a constitutional perspective, some argue that the application of the presidential threshold is in conflict with the 1945 Constitution of the Republic of Indonesia. The presidential threshold is considered to have eliminated the meaning of recognition, guaranteed protection and fair legal certainty, as well as equal treatment for every citizen before the law. Furthermore, the provisions concerning the mechanism for the requirements for the nomination of the pair of President and Vice President on the grounds that it is a way to form an effective government and as a solution in the context of simplification or rationalization of political parties, have eliminated the rights of citizens to choose intelligently and efficiently "political efficiency".<sup>9</sup>

In addition to that, Article 28D paragraph (1), which explains the right to receive recognition, guarantees, protection and fair legal certainty and equal

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<sup>9</sup> Lutfil Anshori, Telaah Terhadap Presidential Threshold Dalam Pemilu Serentak 2019, Jurnal Yuridis, June 2017



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treatment before the law. As well as Article 28 D paragraph (3), which explains the right to equal opportunity in government. These rules regarding human rights are a form of embodiment of people's sovereignty as regulated in Article 1 paragraph (2) and Article 6A paragraph (1). Thus, it can also be concluded that the authority of each political party participating in the general election to nominate pairs of candidates for President and Vice President in the General Election is one form of implementation of the rights of citizens, considering that the participants in the Presidential Election are the individual candidate pairs themselves as guaranteed in Article 27 paragraph (1) of the 1945 Constitution, namely "all citizens have the same position before law and government and are obliged to uphold that law and government without exception". Likewise in Article 43 of Law Number 39 of 1999 concerning Human Rights it has been determined that:

- a) Every citizen has the right to be elected and vote in General Elections based on equal rights through direct, public, free, secret, honest and fair voting in accordance with the provisions of the laws and regulations.
- b) Every citizen has the right to participate in the government directly or through a freely chosen representative, in the manner determined by the laws and regulations.

## CONCLUSION

The implementation of *the Presidential Threshold* has through such a long journey, starting from the 2004 election to 2019, various *Presidential Threshold regulations* have been made one after another, however, it still reaps controversy from various parties indicating that the presidential nomination threshold rule, aka *Presidential Threshold*, really needs to be reviewed again by the authorized institution and of course by people who are experts in their field. Because we will soon be entering an election year, this issue must receive special attention from related parties so that the election that will be held does not harm anyone and runs objectively and opens the widest possible opportunities for the nation's best sons and daughters to be able to nominate themselves as presidential or vice presidential candidates.

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