

# Reconstruction Of The Protection Of Constitutional Rights Of Political Parties In The Presidential Threshold System

Sukma Aristya<sup>1\*</sup>, Andina Elok Puri Maharani<sup>2</sup>

<sup>1</sup> Sebelas Maret University, Central Java, Indonesia.

<sup>2</sup> Faculty of Law Sebelas Maret University, Central Java, Indonesia

\* Corresponding Author:

Email: [sukmaristya28@gmail.com](mailto:sukmaristya28@gmail.com)

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## Abstract.

*The presidential threshold is considered to have no normative problems, but when viewed in practice, there are substantive problems. This is because the Presidential Threshold is the nomination threshold as stipulated in Article 222 of Law Number 7 Year 2017 concerning General Elections. This raises big questions about the General Election as a means of organizing democracy, because parties that do not have the number of seats as mentioned cannot propose a pair of candidates for President and Vice President so that it has the potential to limit democratic rights while in the 1945 Constitution of the Republic of Indonesia does not provide restrictions on each political party to propose a pair of candidates for President and Vice President as contained in Article 6A paragraph (2) of the 1945 Constitution of the Republic of Indonesia.*

**Keywords:** *Presidential Threshold, Election, Constitutional Rights, Protection and Reconstruction.*

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## I. INTRODUCTION

Elections as one of the means of channeling sovereignty, in essence, is the recognition and realization of the political rights of the people as well as the delegation of political rights to the person elected as a representative to run the government<sup>1</sup>. Therefore, the filling of the position of President and Vice President is a social contract between the elected and the electors so that the elected President and Vice President get support from a real mandate from the direct election mechanism by the people's will (*volonte generale*) to exercise government power<sup>2</sup>. The general election mechanism is always changing in every period of power, where the Legislative Elections and the Presidential and Vice Presidential Elections in 2019 are held simultaneously based on the Constitutional Court's decision Number 14/PUU-XI/2013 which states "...the simultaneous holding of the Presidential Election and the Election of Members of Representative Institutions is reasonable according to the law". The Constitutional Court's decision is considered to have no contribution to the development of the quality of democracy, because what has changed in the general election mechanism after the Constitutional Court's decision is that the elections are held simultaneously and the threshold for proposing candidates for President and Vice President by political parties that have 20% and 25% of the results of the previous legislative elections. The Presidential Threshold is considered to have no normative problems, but when viewed in its practical form, the author considers that there are substantive problems.

Because the Presidential Threshold is the nomination threshold as stipulated in Article 222 of Law Number 7 Year 2017 concerning General Elections: "Candidate pairs proposed by a political party or a combination of political parties participating in the elections that meet the requirements of obtaining at least 20% (twenty percent) of the total number of DPR seats or obtaining 25% (twenty-five percent) of the national valid votes in the previous elections for DPR members." The article concludes that it is political parties that determine the nomination of candidates for President and Vice President, meaning that any form of party as long as it has 20% or 25% of the total number of seats can propose candidates for President and Vice President. This raises a big question about General Elections as a means of organizing democracy, because parties that do not have the number of seats as mentioned cannot propose a pair of candidates for President and Vice President, which has the potential to limit democratic rights, while the 1945 Constitution of the Republic of Indonesia does not provide restrictions on each political party to propose a pair of candidates for President and Vice President as contained in Article 6A paragraph (2) of the 1945

Constitution of the Republic of Indonesia: "Candidates for President and Vice President are proposed by political parties or a coalition of political parties participating in the general election before the general election is held.

"The presidential threshold was originally used to see the level of party competition for seats in electoral districts in a proportional electoral system. This concept links district magnitude and party seat acquisition formula with the quota method. Law is the basic principle that regulates all the organization of the life of society, nation and state, which in this case is the implementation of the mandate of Article 1 paragraph (3) of the 1945 Constitution. Because of the juridical consequences of this, the entire exercise of state power, both the power to formulate laws and regulations and various other exercises of power in state regulations must be based on legal and constitutional provisions in order to protect the constitutional rights of political parties. So, in this case the legal protection of the constitutional rights of political parties becomes a very important urgency. Legal protection is the protection of dignity, as well as recognition of human rights owned by legal subjects based on legal provisions from arbitrariness or as a collection of rules or rules that will be able to protect one thing from another. the principle of legal protection against government actions rests and stems from the concept of recognition and protection of human rights, including constitutional rights.

## II. METHODS

The type of research is normative legal research or also commonly referred to as library legal research. This kind of research is research conducted by examining library materials or secondary data. Through this normative legal research, the author will examine the problems faced, namely those related to the protection of the constitutional rights of political parties against the presidential threshold system and the restoration of the constitutional rights of political parties in order to achieve democracy by using secondary data<sup>3</sup>, both primary legal materials and secondary legal materials, which will ultimately be able to provide answers to the problems faced by the author. The approaches used in this legal research are statute approach, comparative approach and conceptual approach<sup>4</sup>. This approach is carried out by examining various regulations or laws related to legal issues or problems at hand and looking at existing legal comparisons governing the Presidential Threshold to form an argument to answer legal issues related to the restoration of the constitutional rights of political parties to the Presidential Threshold system. The data used in this research is secondary data in the form of library materials which include official documents, library books, laws and regulations, scientific works, articles and documents related to the substance of the research. Secondary data consists of primary legal materials, secondary legal materials, and tertiary legal materials.

The data collection technique used in this legal research is a literature study or document study. This literature study is often referred to as library research. Literature studies are carried out by collecting various laws and regulations, literature books, and other documents that are relevant to the legal issues at hand. The legal material is then studied, reviewed, researched and interpreted matters relating to the object of research in order to answer the problems faced, namely related to the protection of the constitutional rights of political parties to the Presidential Threshold system in Indonesia<sup>5</sup>. The data analysis technique used in this legal research is to conduct legal interpretation of various laws and regulations related to the problems or legal issues studied in this legal research. The interpretation used is grammatical interpretation and teleological interpretation. This legal interpretation is expected to be able to get an accurate analysis. Grammatical legal interpretation is a legal interpretation carried out by interpreting the meaning of words or terms contained in a law<sup>6</sup>.

## III. RESULT AND DISCUSSION

Political parties, as the infrastructure of power that dominates the role in the success of the government, have difficulties in reaching the arena of the battle for the presidential seat. The problem is that the threshold required by the 1945 Constitution is quite complex. Article 6A paragraph (2) of the 1945 Constitution states that pairs of presidential and vice-presidential candidates are proposed by a political party or a coalition of political parties participating in the general election before the implementation of the general

election. This formulation implies that a presidential and vice-presidential candidate pair can become a participant in the general election of the president and vice president if it is nominated by a political party or a coalition of political parties, but the constitution does not provide provisions on which political party or coalition of political parties can nominate a presidential and vice-presidential candidate pair in the general election of the president and vice president. The decision of the Constitutional Court that continues to strengthen the presidential threshold in the 2019 presidential election results in the absence of political parties that can automatically nominate presidential and vice presidential candidates. This is related to the absence of parties that automatically reach 20 percent of DPR seats and 25 percent of the national vote from the 2014 legislative elections. Article 9 of Law No. 42/2008 clearly states that a party or coalition of political parties that achieves 20 percent of DPR seats and 25 percent of the national vote can nominate presidential and vice-presidential candidates.

The 2024 presidential and vice presidential elections will be determined by the legal policy of the lawmakers in designing the presidential election model. First, if the lawmakers maintain the presidential threshold, then the position of new parties will experience alination in the struggle for the Presidential seat, because the presidential threshold will be measured by the 2019 election votes or party management as stipulated in the Law. The reason is that to obtain the legitimacy of the elected president, it is necessary to have a vote base of either political parties that meet the number of votes of 20% or a coalition of parties to meet the threshold. This can guarantee the president and vice president in the government and parliament regarding the formulation of policies that are formulated in a formal mechanism in full. Second, if the presidential threshold is removed, then all political parties (new and old political parties) as election participants have the right to propose presidential and vice presidential candidates without exception. This provision can open the widest possible faucet for political parties to reach the presidential arena. The composition of the government cabinet and the coalition in parliament will be determined by each political party after the simultaneous general elections are held. In a multiparty system, often parties that do not get the majority of votes in the election will consolidate with other parties in order to propose presidential and vice presidential candidates. The multi-party system has both advantages and disadvantages. The advantages may be more related to the quality aspect, where the number of parties is expected to better represent the aspirations of the people who are so varied.

However, this plus has consequences that in turn can be considered as weaknesses, namely that the voters' votes will be distributed to many parties, making it difficult to expect the emergence of a single party that controls a single majority with the support of at least half of all constituents, even though the emergence of a single majority is needed to legitimize a democratic government<sup>7</sup>. The meaning of "sovereignty is in the hands of the people" is that the people have sovereignty, responsibility, rights and obligations to democratically elect leaders who will form a government to manage and serve all levels of society, as well as elect representatives of the people to oversee the running of the government who are able to represent the will and ideals of all levels of the nation's people<sup>8</sup>. Textually-grammatically, Article 6A Paragraph (2) of the 1945 Constitution of the Republic of Indonesia becomes the constitutional basis for political parties to propose presidential and vice-presidential candidates individually or by a combination of political parties participating in the elections. Another reason that political parties have the right to propose presidential and/or vice-presidential candidates is that philosophically-conceptually, political parties are the pillars of democracy and the link between the state government (the state) and its citizens (the citizens)<sup>9</sup>. Thus, based on the construction of the electoral system, the mandate to nominate the president and vice president is given to all political parties registered as election participants before the elections are held. Political parties determine the presidential and vice-presidential candidate pairs, the owner of the original power has given delegation to political party organs having the constitutional right to propose the candidate pairs, before direct elections are held as referred to in Article 6A paragraph (2), namely "presidential and vice-presidential candidate pairs are proposed by a political party or a coalition of political parties participating in the general election before the implementation of the general simultaneous elections should have restored the constitutional rights of political parties in proposing Presidential candidates.

This is in accordance with other nomination channels outside the political party channels that cannot be realized because they are hampered and hindered by the provisions of Article 6 paragraph (2) of the 1945 Constitution which is a basic norm in statutory instruments, which clearly states that the President and Vice President candidates can only be proposed by a political party or a coalition of political parties. Article 6A paragraph (2) of the 1945 Constitution confirms the use of a one-door nomination mechanism. This mechanism only recognizes a single nomination path, namely the political party path, thus closing the possibility of nomination paths through other doors such as independent (individual) paths. According to this mechanism, every candidate must be nominated by a political party. Consequently, candidates who are not nominated by a political party will not be able to participate in the general election. The assumption is that if a political party is legally a participant in the elections, it has the right to nominate a pair of candidates for President and Vice President without the need for a presidential threshold<sup>10</sup>.

The application of the threshold only benefits the major parties to have control of carrying the desired pair of candidates for President and Vice President, while small or medium parties will find it difficult to avoid the practice of transactional politics in return or support for small or medium parties. In full control of large political parties that have more power, it will potentially perpetuate oligarchic political efforts, stop political regeneration and seize the people's democratic space<sup>11</sup>. The purpose of the Presidential Threshold itself is to make it easier for the president to execute multiparty<sup>12</sup>, so that there will be many parties that can live and can have representatives in parliament. Incentives for parties to merge even minority parties, as long as they pass the threshold, can survive politically<sup>13</sup>. The combination of the Presidential Threshold system and the Proportional Election system with the Opened List variant is further exacerbated by the simultaneous election system based on Constitutional Court Decision Number 14/PUU- XI/2013, which was interpreted due to the implications of political and legal mobility in the inaugural special committee meeting in October 2016<sup>14</sup>. Thus, the idea of implementing an effective Presidential Threshold in General Elections is needed to support and strengthen the presidential system and democracy in Indonesia, through the following ways:

a. Simultaneous Presidential Threshold system, but Closed Election system.

The simultaneous Presidential Threshold system of government will be stable and effective when combined with a Closed Election system, which will result in a one-party government or coalition of parties that can be aligned with the executive. If a presidential candidate is elected, he or she has the prerogative to determine the composition of the legislature. Thus, the president does not need to compromise or negotiate with other parties. The president can claim that the majority of the people have given him the full right to rule (Majoritarian Democracy)<sup>15</sup>. In other words, in the General Election there is no longer a distinction between the General Election of the President and Vice President and the Legislative General Election or two elections, because they have blended into one, namely this Closed System, which is carried out simultaneously which will elect a party which includes the President, Vice President and legislative members. The existence of this system also does not conflict with the 1945 Constitution and Law Number 7 of 2017 concerning General Elections so that it can be implemented.

This system can be said to be the same as the district election system or at least close to it. Where the actor, namely the political party that gets the most votes, has the right to control the government, in this case determining the President and Vice President and most of the Legislative Members, and others as political actors who lose and get few votes are only entitled to fill a few legislative seats or not at all so that indirectly the losing party is forced by the system to become a systemic opposition to the government. This type of democracy tends to be straightforward in making public policies in government, because there is no need to accommodate the political interests of the losing political actors. As a result, this type of democracy tends to be low-cost and does not cause political uproar between the executive and the legislature<sup>16</sup>. The benefits of this system will simplify the party system, reduce the budget for organizing general elections, and strengthen the party system. Where political parties will compete in improving their good name. So that if later there is a mistake in the elite or members of the political party in office, then the political party is responsible for its name. And minimize the existence of coalitions<sup>17</sup>.

b. The General Election uses the Presidential Threshold system and the Open Election system, but is carried out in stages (two stages).

The application of this system actually restores the spirit of General Elections in Indonesia before the Constitutional Court Decision Number 14/PUU-XI/2013. Although its application consumes a lot of budget funds in just one day, this district system regulates that the candidate who gets the most votes will be the winner, even though the difference with other candidates is only small<sup>18</sup>. Votes in favor of other candidates will be considered lost and cannot help their party to get the number of votes of their party in other districts. General elections using the Open Proportional Presidential Threshold system that is implemented in stages do not castrate the political rights of citizens or certain political parties. The existence of the Presidential Threshold has the aim of strengthening the presidential system<sup>13</sup>, one of which is to harmonize executive and legislative policies. When using the Simultaneous General Election system, the purpose of the existence of the Presidential Threshold will be lost because in Simultaneous Elections, no single party can guarantee that a party can simultaneously control the majority of executive and legislative power. According to J. Mark Payne<sup>19</sup>, when discussing the Presidential Threshold in elections, what is meant is the requirement for a presidential candidate to be elected president.

For example in Brazil, 50 percent plus one. Judging from the substantive meaning of the Presidential Threshold in practice in several countries, it can be emphasized that the Presidential Threshold is a requirement for a presidential candidate to be elected president and not a requirement for nomination as President and Vice President. In countries that adhere to the presidential system, what is meant by the Presidential Threshold is the imposition of a minimum threshold for presidential electability. In other words, the context of the implementation of the Presidential Threshold, if this term is to be used, is not to limit the nomination of the president. Rather, it is in order to determine the minimum percentage of votes for the election of presidential candidates. Although the implementation of the use of this system is impossible because the Constitutional Court's decision is final and binding, the simultaneous elections using the presidential threshold are far more detrimental than the previous elections (2014 elections). The implementation of the presidential threshold system in stages (two stages) provides benefits in the form of being able to accommodate the existence of small parties and provide opportunities (political rights) for new voters.

c. The General Election uses an Open Election system, simultaneously with a 0% (Zero Percent) presidential threshold.

The use of the system as conceptualized above is an alternative that should be applied in the 2019 elections. This is because the implementation of simultaneous elections applies *Mutatis Mutandis* to the Presidential Threshold, so that the Presidential Threshold can no longer be used in the 2019 elections. This is because the concept of the Presidential Threshold contained in the formulation of Article 9 of the 2008 Election Law is to take the presidential threshold from the legislative votes. Where the legislative elections are held first before the presidential election. When the elections are held simultaneously, the concept contained in Article 9 is automatically null and void. Of the nine Constitutional Court judges, there were two judges who filed a Dissenting Opinion related to the Constitutional Court's decision on the judicial review of Article 222, namely Saldi Isra and Suhartoyo. Both agreed that the Presidential Threshold provision in Article 222 was "deleted". In line with this, Former Chairman of the Constitutional Court (MK) Jimly Asshiddiqie argues that because there is a change in time management, namely simultaneous elections, the most ideal is that there is no longer a threshold or threshold of 0% (Zero Percent)<sup>20</sup>.

Constitutional practice has proven that the existence of a presidential threshold system in the form of a 20 percent threshold cannot guarantee the stabilization of the presidential system, for example in 2009. In the 2009 general election, Susilo Bambang Yudhoyono won the presidential election. But his supporters were minority parties in the DPR. Eventually, he entered into a coalition with Golkar in the formation of the cabinet, although in the electoral process, Golkar was his competitor. The determination of the president was not based on parliamentary formations, because both received legitimacy from different channels. In terms of legitimacy, both have a strong position, namely from the people<sup>21</sup>. The implementation of one of the three system concepts above, if carried out correctly, is in line with the principles of elections, namely independent,

honest, fair, legally certain, orderly, open, proportional, professional, accountable, effective and efficient. Article 3 of the General Election Law, can be a solution to the problems of elections that still occur until this moment, including the efficiency of election time, election budget, fulfillment of political rights to be elected and vote, and the harmony of relations between the executive and the legislative<sup>22</sup>.

#### IV. CONCLUSION

The protection of the constitutional rights of political parties against the presidential threshold system in Law Number 7/2017 concerning General Elections of the President and Vice President can be seen from several indicators which can then be concluded that the implementation of the presidential threshold system only benefits large parties to have control of carrying out the desired Presidential and Vice Presidential candidate pairs, while small or medium parties will find it difficult to avoid transactional political practices in exchange for or support from small or medium parties. In full control of large political parties that have more power, it will have the potential to perpetuate oligarchic political efforts, stop political regeneration and seize people's democratic space. things that need to be considered and that need to be addressed from the implementation of the presidential threshold system in Indonesia and provide several alternatives to improve the implementation of the presidential threshold system in Indonesia such as: General Elections using the Presidential Threshold system simultaneously, but using a Closed Election system. The simultaneous Presidential Threshold government system will be stable and effective when combined with a Closed Election system, where this method will be able to produce a one-party government or a coalition of parties that can be aligned with the executive.

General elections can also be carried out using the Presidential Threshold system and the Open Election system, but carried out in stages (two stages). The application of this system actually restores the spirit of General Elections in Indonesia before the Constitutional Court Decision Number 14/PUU-XI/2013. Although its application consumes a lot of budget funds in just one day, this district system regulates that the candidate who gets the most votes will be the winner, even though the difference with other candidates is only small. Votes in favor of other candidates will be considered lost and cannot help their party to gain the number of votes of their party in other districts. Finally, the General Election uses an Open Election system, simultaneously with a presidential threshold of 0% (Zero Percent). Implementation of one of the three system concepts above if carried out properly as the principles of elections, namely independent, honest, fair, legally certain, orderly, open, proportional, professional, accountable, effective and efficient. Article 3 of the General Election Law, can be a solution to the problems of elections that still occur until this moment, including the efficiency of election time, election budget, fulfillment of political rights to be elected and vote, and the harmony of relations between the executive and the legislature.

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