

Implementation of the Stages of Election Nomination in Indonesia after the Abolition of the Presidential Threshold in Law Number 7 of 2017

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ABSTRACT: Indonesia has had a presidential threshold system since the 2004 general election. The presidential threshold aims to strengthen the presidential system and reduce the existence of multiparties. In practice, the application of the presidential threshold raises pros and cons where on the one hand it is intended to find competent candidates on the other hand it can hamper the rights of the community and the rights of candidates so that it is not in accordance with the principles of Indonesian democracy. Since the Constitutional Court issued Decision Number 62/PUU-XXII/2024, the presidential nomination threshold has been considered unconstitutional and legally invalid. The abolition of the presidential threshold makes the absence of vote and seat limits so that this can have an impact on the nomination process of presidential and vice-presidential candidates so that in this case certain arrangements and limits are needed in order to maintain conducive elections in Indonesia.

KEYWORDS: Presidential, Threshold, Election, Nomination

1.0 INTRODUCTION

Indonesia is a state based on law based on Article 1 paragraph 3 of the 1945 Constitution. The consequence of this provision is that the attitudes, policies and behavior of the state apparatus and the population must be based on or in accordance with the law. This provision also prevents the arbitrariness and arrogance of power both by the state and the population. Law is upheld and built according to the principles of democratic principles or popular sovereignty. The principle of the rule of law cannot be separated from the principles of democracy contained in the Constitution (Asshidiqie, 2005). The rule of law as a guiding principle of laws and regulations and court decisions will only be effective if the rule of law is a legal value or is a moral or value as something that is considered good and right by a society in a certain period of time that merges as a moral tradition of society is a shared ideal that everyone in that society has and is unconditionally accepted by the majority who participate in elections and who later determine what laws will apply (Sinaga, 2021).

A democratic state of law is characterized by the recognition and protection of human rights based on the basic principles of equality and freedom. The existence of a basic law will provide constitutional guarantees for the principles of freedom and equality. Laws made to limit and regulate the state or government can be interpreted as laws for popular sovereignty. The sovereignty and welfare of the people are crucial elements in the rule of law (Huda & Nasef, 2017). The Constitution of the Republic of Indonesia has provided a forum for popular sovereignty based on Article 1 paragraph 2 of the 1945 Constitution which reads that sovereignty is in the hands of the people and is exercised according to law. The sentence means that the people have sovereignty, responsibility, rights and obligations to democratically elect leaders who will form a government to take care of all levels of society and elect representatives of the people to oversee the course of government.

The right to vote and to be elected is one type of right guaranteed in Law No. 39/1999 on Human Rights Article 43. The article states that every citizen has the right to be elected and to vote in general elections based on equal rights through direct, general, free, secret, honest and fair voting. As a right protected by the constitution, the right to vote functions as a preservative of other rights. It is said so because with the right to vote, a citizen can determine who political leaders will make important policies related to the livelihood of the community. This means that the right to vote is the capital for the people to appoint people who will represent, voice, fight for, protect and fulfill their rights as citizens (Fahmi, 2019).

The realization of the people's sovereignty is carried out through elections as a means for the people to directly elect the president and vice president. These elections, in accordance with the mandate of Article 22E of the 1945 Constitution, must be held in a free, secret, honest and fair manner every five years. General elections in Indonesia have taken place several times since Indonesia's independence in 1945. In the implementation of these elections since 2004 in the election of the president and vice president, rules regarding the presidential threshold or the threshold for nominating the president and vice president in the election have been applied.

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The application of the presidential threshold in practice still raises pros and cons on the one hand, the application of the presidential threshold is intended to select competent prospective leaders and strengthen the presidential system, on the other hand, it can hinder the nation's best sons and daughters/young generation or competent leaders without the auspices of political parties, potentially delaying people's political awareness and participation, the helplessness of small parties in front of large parties regarding the candidate pairs that will be promoted together. Another impact is that the presidential threshold can trigger expensive political costs and lead to political oligarchy and even to the practice of KKN (Collusion, Corruption and Nepotism) (Majid & Sari, 2023).

The presidential threshold is an issue that always arises before the general election, if you look back, the submission of a judicial review regarding the presidential threshold has been carried out many times by parties who do not agree with the provisions, even though there is not a single lawsuit granted by the Constitutional Court. The petitioners argued that the phrase "the requirement of obtaining at least 20% (twenty percent) of the total number of seats in the DPR or obtaining 25% (twenty-five percent) of the national valid votes in the previous DPR elections" could narrow the choice of presidential and vice-presidential candidates because those who could become candidates were only those pairs who had the support of the parties that occupied the most DPR seats so that in this case the people could not choose candidates according to their wishes.

Until recently in 2025, a lawsuit regarding Article 222 of Law Number 7 of 2017 was granted by the Constitutional Court and decided that the article concerned was unconstitutional and invalid under the law.

Based on the problems raised, the authors take several problem formulations that will be discussed, namely: 1) How is the threshold system for nominating the president and vice president in Indonesia? and 2) How is the ideal concept of the stages of election nomination in Indonesia after the elimination of the presidential threshold in Indonesia in Law Number 7 of 2017?

2.0 METHOD

The research method used is the normative juridical method, namely library research which includes research on legal principles, comparative law, legal history, research on legal systematics and vertical and horizontal synchronization. Normative legal research is research to understand the relationship between legal science and positive law so that a review of legal elements is needed. In this research several approaches are used, namely invitation (statute approach), conceptual approach (conceptual approach) (Soekanto, 2006).

3.0 DISCUSSION

3.1 Threshold System for Nomination of President and Vice President in Indonesia

Election issues are expressly regulated in Article 22E of the Constitution of the Republic of Indonesia which reads as follows:

- (1) General elections shall be conducted directly, generally, freely, secretly, honestly, and fairly every five years. fair every five years.
- (2) General elections shall be held to elect members of the House of Representatives People's Representative Council, Regional Representative Council, President and Vice President, and Regional Representative Council. Regional People's Representatives.
- (3) Participants in general elections to elect members of the House of People's Representatives and members of the Regional People's Representative Council are political parties.
- (4) Participants in the general election to elect members of the Regional Representatives Council is an individual.
- (5) General elections are organized by an election commission which is national, permanent, and independent. national, permanent, and independent.
- (6) Further provisions concerning general elections shall be regulated by law.

These provisions are explained again in Constitutional Court Decision Number 3/PUU-VII/ 2009 which provides electoral signs including:

- a. Elections are held periodically every five years
- b. The principles of elections are Luber and Jurdil (Direct General Free Secret and Honest Fair)
- c. The purpose of the election is to elect members of the DPR, DPD, and DPRD, the President and Vice President d. Election participants include political parties and individuals
- e. About the election organizer

Matters related to the electoral system, electoral districts, participant requirements and so on are delegated to the legislator to determine legal policy. Such legal policies can be made to the extent that not contradict the principles of popular sovereignty, equality, justice and non-discrimination as stipulated in the 1945 Constitution (Gaffar, 2012).

In addition to being regulated in Article 22 E of the 1945 Constitution, election-related arrangements are also contained in several articles such as Article 6A of the 1945 Constitution and Article 18 paragraph 4 of the 1945 Constitution. Article 6A of the 1945 Constitution regulates the election of presidential and vice-presidential candidates with the following wording:

- (1) The President and Vice President shall be elected in one pair directly by the people.

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- (2) Candidate pairs for President and Vice President shall be nominated by a political party or a coalition of political parties participating in the general election before the general election.
- (3) The pair of candidates for President and Vice President who get more than fifty percent of the total votes in the general election with at least twenty percent of the votes in each province spread across more than half of the total provinces in Indonesia, shall be inaugurated as President and Vice President.
- (4) In the event that no candidate pair for President and Vice President is elected, the two candidate pairs who receive the first and second highest number of votes in the general election shall be directly elected by the people and the pair who receives the most popular votes shall be inaugurated as President and Vice President.
- (5) The procedures for the implementation of the election of the President and Vice President shall be further regulated by law.

Article 18 paragraph 4 of the 1945 Constitution states that Governors, Regents and Mayors as heads of provincial, regency and municipal governments, respectively, are democratically elected. The provisions on elections in the 1945 Constitution are intended to provide a strong legal basis for elections as a means of realizing popular sovereignty. There are two functions of general elections. First, as a procedure and mechanism for converting voters' votes (votes) into seats (seats) of state organizers of the legislative and/or executive institutions at both the national and local levels. Such processes and mechanisms are called stages of organizing elections. From the electoral law, which contains the elaboration of democratic principles such as electoral principles, elections with integrity, and fair elections, parameters for organizing democratic elections will be formulated.

Second, as an instrument to build a democratic political system, namely through the consequences of the electoral system on various aspects of a democratic political system. The electoral system consists of absolute elements such as the size of the electoral district, participants and nomination patterns, election models and election formulas. It is called an absolute element because without one of these elements the other three elements will not be able to convert voters' votes into seats. The two optional elements of representation thresholds and the timing of different types of elections are categorized as optional because the other four electoral system elements can still convert a voter's vote into a seat, and either or both will be used. to achieve other goals that cannot be achieved by other elements of the electoral system (Pahlevi, 2012).

Elections are the parameters of a democracy. In order for elections to be a parameter of democracy, several conditions are needed, namely: First, the implementation of elections that take place democratically will strengthen the legitimacy and public trust in the government that is formed. Conversely, if elections do not run democratically, legitimacy and trust in the government resulting from the election will be weakened. Second, the potential for conflict due to dissatisfaction with the election results can be minimized because the electoral process can be transparently accounted for to the public. Finally, in some situations, fair elections can encourage increased political participation, because fraud that previously triggered public apathy can be overcome. There is another opinion regarding democratic elections, namely according to Butler's opinion that democratic elections must fulfill the following aspects:

1. All adults have voting rights
2. Regular elections within a set time limit
3. All seats in the legislature are subject to election and competition
4. No substantial group is denied the opportunity to form parties and field candidates.
5. Electoral administrators must 'act fairly': no legal exceptions, no violence, no intimidation to candidates to introduce views or voters to discuss them.
6. Votes are cast freely and secretly, counted and reported honestly, and converted into legislative seats as prescribed by regulations.
7. Election results are kept in the office and the remainder are kept until the election results are obtained.

A democratic election is one that encourages people's political participation, is transparent where everyone without exception has the right to vote, elections are regulated by a certain time limit, based on the principle of *luber jurdil* and not controlled by a certain substantial group. These criteria can be associated with the presidential threshold that has been applied in Indonesia since the elections in 2004, 2009, 2014, 2019 and then the elections in 2024. With these benchmark criteria, the application of the presidential threshold in Indonesia has the potential to close the opportunity for new political parties to participate in the nomination process, even though the purpose of applying the presidential threshold is to maintain the presidential and multiparty system in Indonesia.

The reason for the application of the presidential threshold rule was enacted with a number of objectives: First, to strengthen the presidential system. In the presidential system, the president and vice president who have been directly elected by the people will have a strong political position. This makes the president and vice president unable to be dismissed easily for political reasons.

Second, the implementation of the presidential threshold is for the effectiveness of governance. If the system is not implemented, then it is possible for the elected president and vice president to be carried by a party or coalition of political parties whose number of seats not a majority in parliament. If that happens, then it is likely that the president and vice president as an executive institution will have difficulties in running the government because they are disturbed by the majority coalition in parliament. Finally, the

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reason for implementing the presidential threshold is to simplify the multiparty system through natural selection (Hapsari & Saraswati, 2023).

The application of the presidential nomination threshold in the presidential and vice presidential elections was first regulated in Law Number 23 Year 2003 concerning Presidential and Vice Presidential Elections in Chapter II article 5 paragraph (4): "Candidate pairs as referred to in paragraph (1) can only be proposed by a political party or a coalition of political parties that obtain at least 15% (fifteen percent) of the total number of DPR seats or 20% (twenty percent) of the nationally valid votes in the elections for DPR members."

However, in practice, the 2004 presidential election did not use this threshold because in CHAPTER XIV Transitional Provisions Article 101 of Law Number 23 Year 2003 stipulated: "Specifically for the 2004 Presidential and Vice Presidential Elections, a political party or a coalition of political parties that meet the requirements of the vote acquisition in the House of Representatives Elections of at least 3% (three percent) of the total number of seats in the House of Representatives or 5% (five percent) of the national valid vote acquisition from the 2004 House of Representatives Elections may propose a Candidate Pair".

In Article 9 of Law Number 42/2008 on Presidential and Vice-Presidential Elections, the threshold rose to 20% of the total number of DPR seats or 25% of the total national valid votes in the DPR elections. This rule continues in the 2014, 2019, and 2024 presidential elections with the legal basis of article 222 of Law Number 7/2017 on Elections which stipulates that a political party or a coalition of political parties must pocket 20% of DPR seats or 25% of the national valid votes in the previous election to be able to carry a presidential and vice-presidential candidate pair (Soeoed, 2023).

Thus, the regulation regarding the presidential nomination threshold is regulated by several laws such as Article 5 paragraph 4 of Law Number 23 of 2003 concerning Presidential Elections, Article 9 of Law Number 42 of 2008 concerning Presidential Elections and Law Number 7 of 2017 concerning General Elections. In terms of the decisions of the Constitutional Court, there are also several decisions that examine the provisions of the threshold, but the decisions were not granted for various reasons such as the court considered that the establishment of the presidential threshold did not provide any restrictions on the number of participants in the presidential election, that the existence of the presidential threshold did not eliminate the rights of the petitioners to gain equal access in the elections and did not eliminate the rights of new candidates or alternative candidates to become candidates and the absence of constitutional losses from the petitioners.

The 1945 Constitution does not explicitly regulate the threshold for nominating a president and vice president. The Constitution only regulates the threshold of victory as stated in Article 6A paragraph (3), which requires a candidate pair to obtain more than 50% of the votes nationally and at least 20% of the votes in more than half of the provinces in Indonesia. Meanwhile, the provisions regarding the presidential nomination threshold are regulated in detail in laws that regulate the technical implementation of elections, such as Law No. 23 of 2003, Law No. 42 of 2008, and Law No. 7 of 2017 concerning General Elections. Furthermore, for further arrangements regarding the threshold provisions, there are regulations from the General Election Commission as the election organizer in Indonesia in determining the stages and requirements for presidential and vice-presidential candidates in the elections.

The stages of nomination of presidential and vice-presidential candidates are also regulated in General Election Commission Regulation Number 19 of 2023 concerning the Nomination of Participants in the General Election of President and Vice President. The stages of nomination are regulated in Article 3, which states that the stages of nomination of presidential and vice-presidential candidates include: registration of prospective candidate pairs, verification of documents of prospective candidate pairs and determination and drawing of candidate pair serial numbers. Article 6 determines that the nomination requirements for presidential and vice-presidential candidates must meet the following criteria:

- (1) Candidates for president and vice president are nominated in 1 pair by a political party participating in the election or a Joint Political Party Participating in the Election.
- (2) Election Participating Political Parties and/or a Joint Association of Election Participating Political Parties that can propose a candidate pair must meet the requirements of obtaining seats of at least 20% of the total number of DPR seats in the previous DPR elections or obtaining valid votes of at least 25% of the total valid votes nationally in the previous DPR elections.
- (3) The amount is determined by a KPU Decree

The provisions in the General Election Commission Regulation follow the provisions in Law Number 7 of 2017 concerning General Elections. According to the regulation, the threshold applied is at least 20 percent of the number of DPR seats in the previous election or at least 25% of the total national valid votes. In its development, the provisions regarding the presidential nomination threshold were abolished by the Constitutional Court Decision, which was submitted by several students.

3.2 Ideal Concept of Election Nomination Stages in Indonesia After the Abolition of Presidential Threshold in Law Number 7 Year 2017

The threshold was previously regulated in Article 222 of Law Number 7 of 2017, where a presidential or vice-presidential candidate pair could be nominated by a political party or a coalition of political parties participating in the election that met the requirements of obtaining a minimum of 20 percent of the total DPR seats or 25 percent of the national valid votes in the previous

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DPR election. The provision was removed since the Constitutional Court Decision Number 62/PUU-XXII/2024. The Constitutional Court considered that the presidential nomination threshold as intended in Article 222 of Law Number 7 of 2017 was considered contrary to the 1945 Constitution as well as the political rights and sovereignty of the people.

Based on the decision, the Court's consideration of removing the threshold for nominating the president and vice president is as follows:

1. That the presidential and vice-presidential nomination thresholds are considered to violate morals, are irrational, and cause injustice. This provision makes it difficult for small parties to nominate candidates, even though they have qualified cadres. As a result, nominations are closed and people's choices are limited. According to the petitioners, this rule is not in accordance with the wishes of the framers of the Constitution and does not have a strong academic basis, especially since elections are now conducted simultaneously.
2. There are several countries in the world that adhere to a presidential and multiparty system that do not adopt a threshold system for nominating a candidate pair for the presidency and vice-presidency. The threshold used only for the minimum requirements for the electability of candidate pairs, which in Indonesia is regulated Article 6A paragraph (3) of the 1945 Constitution of the Republic of Indonesia. Meanwhile, with regard to candidate requirements are not related to the minimum percentage that must be to nominate a candidate, but is limited to the personal requirements of the presidential candidate, for example presidential candidate, for example regarding citizenship, domicile requirements or other personal requirements that in Indonesia have been determined. Other personal requirements that in Indonesia have been determined and delegated by Article 6 of the 1945 Constitution of the Republic of Indonesia. These countries are the United States, Brazil, Kyrgyzstan, Colombia, Mexico, Peru and Uruguay.
3. Based on the minutes of discussion of Article 6A paragraph (2) of the 1945 Constitution, a political party or a coalition of political parties participating in the elections has the constitutional right to propose a pair of candidates for president and vice president. However, using the results of the previous parliamentary elections as a condition for nominating candidates is considered unfair. This provision eliminates the right of new parties that qualify as election participants to nominate the president and vice president. Thus, the phrase in Article 222 of Law 7/2017 regarding the requirement of 20% of DPR seats or 25% of national valid votes, basically closes the right of parties that do not meet these requirements to propose candidate pairs.
4. Based on Article 6A of the 1945 Constitution, the presidential threshold has the potential to ignore the spirit of the constitution. Article 6A paragraph (3) provides space for more than two pairs of candidates, reflecting the diversity of the Indonesian nation. However, with a threshold, the number of candidates is limited and people's choices are narrower. This can reduce people's political rights, including the right to vote and the right to be elected. Therefore, the Court must prioritize the protection of citizens' constitutional rights by ensuring open and fair elections. Providing more alternative presidential and vice-presidential candidates is part of realizing the sovereignty of the people as stipulated in Article 1 paragraph (2) of the 1945 Constitution. Rules that limit people's choices can be considered contrary to the principle of popular sovereignty.
5. The Court holds that the presidential and vice-presidential nomination threshold stipulated in Article 222 of Law No. 7 of 2017 not only violates political rights and the sovereignty of the people, but also contradicts morality, common sense, and justice. Therefore, the Court deems it necessary to shift its perspective from previous decisions. The core issue is not merely the percentage figure, but the very existence of the threshold itself, which contradicts Article 6A paragraph (2) of the 1945 Constitution. Accordingly, the petition claiming that the presidential threshold provision is unconstitutional and no longer legally binding is considered valid.

The Court states that in order to file a petition for judicial review of a law, the petitioner must have legal standing in accordance with the provisions of Article 51 paragraph (1) of the Constitutional Court Law and the Court's jurisprudence, which must be able to explain the qualifications and constitutional losses directly experienced. Regarding the testing of Article 222 of Law 7/2017, the Court has consistently emphasized that only two parties have legal standing, namely:

1. A political party or coalition of political parties participating in the election; and
2. Citizens who have the right to be elected and supported by political parties to run for President/Vice President.

Petitions filed by individual citizens or legal entities that do not meet these qualifications are considered not directly constitutionally disadvantaged so that the petition cannot be accepted (*niet ontvankelijke verklaard*). In addition, the Court also emphasized that the presidential threshold regulation is part of the open legal policy which is the authority of the legislator. The Court cannot invalidate such norms as long as they are not manifestly contrary to the constitution, moral values, common sense, or the principles of justice that cannot be tolerated. Therefore, in this case, the Court should declare that the Plaintiffs have no legal standing and their petition is inadmissible.

As a final and binding decision, the Court's ruling declares that the provision in Article 222 of Law No. 7 of 2017 regarding the presidential threshold is unconstitutional and therefore has no binding legal force. As a consequence of this ruling, adjustments are

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required in related laws governing electoral matters, particularly Law No. 7 of 2017, as well as related regulations such as those issued by the General Elections Commission (KPU) regarding the requirements for presidential and vice-presidential candidacy.

The abolition of the presidential threshold has significant implications, particularly the absence of a regulation or threshold regarding seat or vote acquisition (Wahyuni, 2025). The nomination of presidential and vice-presidential candidates will no longer have specific limits, potentially opening the door for political dynasties to gain power. Although there are many advantages to the abolition of the presidential threshold, challenges arise from the abolition of the system such as the complexity of elections with many names on the ballot paper.

According to Yulianta Saputra, S.H., M.H., C.M., a lecturer in the law program at UIN Sunan Kalijaga Yogyakarta, these problems can be overcome by the government setting strict administrative requirements, such as collecting signatures and support from a minimum number of voters or through public debates to ensure the candidates are of the highest quality. In addition to further regulation, the public also needs to get political education in order to choose the right candidate, which requires a joint commitment from the government, the community, political parties and related stake holders (Saputra, 2025).

An operational regulation regarding the abolition of the presidential threshold was also expressed by Prof. Jimly Asshiddiqie, who stated that a specific regulation is needed to determine how many pairs of presidential and vice-presidential candidates can qualify to participate in the presidential election. Candidates nominated by political parties must go through a democratic internal process. Political parties should be required to hold conventions to select the best candidates, and this process could involve forming an independent assessment team composed of academics, civil society representatives, and others (Thea, 2025).

Prof. Jimly's view is also supported by Titi Anggraini, who emphasized the importance of implementing conventions to filter presidential and vice-presidential candidates, and the need to regulate the boundaries within which political parties may collaborate. Based on the details above, the author argues that there are several important arrangements related to the presidential threshold in the amendment to the general election law:

1. The existence of a clause or article that regulates the screening mechanism based on direct public support or public testing so that the proposed presidential and vice-presidential candidates are suitable.
2. The existence of articles regulating the proportionality of party coalitions in supporting presidential and vice presidential candidates to close the possibility of monopoly / dominance of the coalition
3. The existence of an article regulating the necessity for a party to carry out a party convention procedure before proposing presidential and vice presidential candidates so that it can be used as an open democratic channel whose purpose is to open a democratic channel so that the public can see the quality of candidates
4. The General Election Commission must create an application for verification of Identity Cards in a fast and transparent manner where the public can input data into the system.

Therefore, further regulation is still needed to achieve the democratic goals intended by the removal of the presidential threshold. Such regulations are necessary to prevent this process from becoming a breeding ground for elites and oligarchy.

4.0 CONCLUSIONS

Indonesia has implemented the presidential threshold mechanism in its presidential and vice-presidential elections up until the 2024 election. The Constitutional Court later ruled that Article 222 of Law No. 7 of 2017 on Elections is unconstitutional and thus invalid, effectively abolishing the presidential threshold. The elimination of the presidential threshold serves as a guarantee of citizens' constitutional rights. However, it also brings consequences that must be considered, such as the absence of a requirement regarding vote or seat thresholds and the lack of limitations on presidential and vice-presidential candidacy. Therefore, it is necessary to establish regulations to govern this matter in order to safeguard the proper conduct of elections in Indonesia.

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