

Analysis presidential Threshold Perspective of Law Number 7 of 2017

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ABSTRACT

This study aims to analyze how the Presidential Threshold is from the perspective of Law Number 7 of 2017 in Indonesia. One of the objectives of the general election is to implement people's sovereignty and implement citizens' basic rights. With the enactment of Law Number 7 of 2017 concerning General Elections, the presidential threshold has changed to 20% of the number of DPR seats or 25% of valid votes nationally in the previous DPR member elections. The purpose of implementing a fixed threshold policy is to strengthen the presidential system, because the threshold will force political parties to carry out political consolidation so that a coalition of political parties supports the president emerges. The research method used is normative legal research, which involves collecting legal materials from various sources such as journals, books, and websites to obtain answers to the main problems that have been formulated. The results of this study indicate that the Presidential Threshold in Indonesia can also be used to strengthen the presidential system with multiple parties. Without absolute support, the President is weak in "determining" efforts to drive the wheels of government and daily development

Keywords: Presidential Threshold, General Election, Sovereignty, Law

I. INTRODUCTION

Elections can be considered as a symbol and the primary and first measure of ¹democracy. Because it can be interpreted as a reflection of the openness of the atmosphere of basic democratic values, in addition to the need for freedom of

opinion and association which are considered to reflect the opinions of citizens. With elections, citizen freedom is realized through the absorption of votes as a form of broad public participation regulated in a democratic system. It can also be said that elections are a symbol of people's sovereignty. People's sovereignty means that the people have the highest power, the people also determine the character and method of government, and the people also determine what goals are to be achieved.

A country with a large territory and a large population, it is very impossible to ask for the people's opinions one by one in determining the course of government, this is because modern society today is very busy with its activities and the level of intelligence of the people is not the same, this causes people's sovereignty to be impossible to be carried out purely, in such circumstances, people's sovereignty can be carried out by means of representation.

Harold J. Laski said that "Sovereignty is legitimate power (according to law) highest, this power includes several people or groups in the society that it controls. Law is formed because of the existence of sovereign power and the power to enforce its implementation."²

Viewed from a legal perspective, sovereignty is the highest power that a country must have. This power is as follows: First, the implementation of the law against all people (citizens) and groups within its sphere of power or internal sovereignty is implemented and determined by the highest power: Second, the highest power that is formed because of the idea of power itself or comes from within the country itself, not because of intervention from other countries or external sovereignty. Elections are a means of implementing

¹Dhurorudin Mashad, 1999, Political Corruption, Elections and Post-New Order Legitimacy, Jakarta: Pustaka Cidesindo, p. I

²CF Strong, 1958, Modern Political Constitutions. London, Sidgwick & Jackson Ltd

the principle of people's sovereignty, which is the essence of the recognition and realization of the political rights of the people and at the same time constitutes the delegation of these rights by the people to their representatives to run the government.³ Likewise, the opinion of Kusnadi and Harmaily Ibrahim who are in the same vein, said that elections are one of the most principled human rights of citizens, because in the implementation of human rights it is a must for the government to hold elections. In accordance with the principle that the people are sovereign, all of that is returned to the people to determine it. Therefore, elections are an absolute requirement for a democratic country to implement the sovereignty of the people.

One of the characteristics of a democratic country is that the country holds elections at certain times or according to a schedule they have made. Elections are essentially a recognition and manifestation of the political rights of the people and at the same time are a delegation of these rights by the people to their representatives to run the government.⁴

One of the objectives of general elections is to implement the sovereignty of the people and implement the basic rights of citizens. To determine the course of the country, the people themselves must make decisions through their representatives who sit in legislative institutions. The political rights of the people to determine the course of government and the functions of the country properly according to the Constitution (UUD) are very fundamental rights of the people. Therefore, the holding of general elections, in addition to being a manifestation of the sovereignty of the people, is also a means of implementing the basic rights of citizens themselves. For this reason, general elections are needed to elect people's representatives periodically. Likewise, in the executive field, the people themselves must elect the President, Governor, Regent, Mayor to lead the government, both at the central level, at the provincial level, and at the district/city level.

The provisions in Article 414 paragraph (1) of Law Number 7 of 2017 concerning General Elections and Government Regulation in Lieu of Law Number 1 of 2022 concerning Amendments to Law Number 7 of 2017 concerning General Elections which regulate the parliamentary

threshold have the potential to harm the Applicant's right to obtain a seat at the People's Representative Council (DPR) of the Republic of Indonesia (RI) if the Applicant's vote acquisition in each electoral district does not meet the requirements. Thus, the Applicant has the potential to experience the loss of constitutional rights, namely the right to receive recognition, guarantees of legal protection and fair legal certainty and equal treatment before the law as stipulated in Article 28D of the 1945 Constitution. So that Article a quo (Article requested by the Applicant Article 414 paragraph (1)) is contrary to the 1945 Constitution.

The articles that are being judicially reviewed are Article 173 paragraph (3) and Article 222 of Law Number 7 of 2017 concerning General Elections. Article 173 paragraph (1) and Article 173 paragraph (3) of the a quo Law provide 2 options for political parties to become participants in the 2019 election, namely Article 173 paragraph (1) along the phrase "Has been determined" and Article 173 paragraph (3) for Political Parties that are participants in the 2014 Election are directly determined as election participants while Article 173 paragraph (1) along the phrase "Passed Verification" by the KPU for Political Parties that are legal entities Political Parties undergo a verification process before being determined as Election Participants. The options provided are discriminatory against Political Parties that have just become legal entities.

Article 222 of Law No. 7 of 2017 concerning General Elections states that "Candidate Pairs are proposed by Political Parties or Coalitions of Political Parties Participating in the Election 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 valid votes nationally in the previous DPR member election."

The provisions of the Article on the requirements for obtaining votes for Political Parties as a requirement to nominate Presidential and Vice Presidential Candidate Pairs are the authority of the legislators" as an Open Legal Policy, but not unanimous and complete as an Open Legal Policy from all the will of the people's representatives in the Indonesian House of Representatives. The determination of the Open Legal Policy of Article 222 of the a quo Law is clearly a political manipulation and tug of war of the interests of the Opposition Political Parties in the Indonesian House of Representatives, Political Parties supporting the Government, and the Government. This Application describes the Open

³ASS Tambunan, 2005, Military Law: An Introduction, STHM Military Law Study Center (Karim, 1991)(Anshori, Juni, 2017, 19)(Kartawidjadja, 2016), Jakarta.

⁴M. Rusli Karim, 1991, Competitive Democratic Elections, Yogyakarta: Tiara WacanaYogya, p. 2

Legal Policy of Article 222 of the a quo Law which is clearly contrary to the 1945 Constitution of the Republic of Indonesia.

The articles tested in the Judicial Review are Article 173 paragraph (1), Article 173 paragraph (3), and Article 222 of Law no. 7 of 2017 with the touchstone of the Constitution Article 6A paragraph (2), Article 22E, Article 27 paragraph (1), Article 28, Article 28C paragraph (2), Article 28D paragraph (1) and paragraph (3), and Article 28I paragraph (2).

II. RESEARCH METHODS

The type of research that the author uses is normative legal research or legal research. normative Which putla was A building system norm. As for types of data in researchlawnormativethis usesdatasecondary. WhereIn this method, the author examines data through literature studies, namely journals, books, websites and intermediary media. other Which become material discussion writer. In study law normative, the author compiles the research systematically and logically. This means that there is a relationship between one legal material and another to get a general picture of the research results.

III. FORMULATION OF THE PROBLEM

Based on the background above, the author identifies the problem of how to analyze the Presidential Threshold from the perspective of Law Number 7 of 2017 .

IV. RESULTS AND DISCUSSION

A. Presidential Threshold in Indonesia

Presidential Threshold is an additional provision regarding the regulation of the requirements for nominating President and Vice President in Article 6A paragraph (2) which states that , "The Presidential and Vice Presidential candidate pairs are proposed by political parties or a coalition of political parties participating in the election before the election is held." Textually, Article 6A paragraph (2) of the 1945 Constitution of the Republic of Indonesia provides an opportunity for all political parties participating in the election to nominate President and Vice President. This is because political parties are

pillars of democracy and as a liaison between the government and its citizens .⁵

Presidential Threshold is a requirement for a presidential candidate to be elected president, not a requirement for support in the nomination. And this has been implemented in various countries in the world in the state system. This opinion was put forward by According to J. Mark Payne. For example, to be elected president and vice president must obtain vote support: in Brazil 50 percent plus one, in Ecuador 50 percent plus one or 45 percent as long as it is 10% different from the strongest rival; in Argentina 45 percent or 40 percent as long as it is 10% different from the strongest rival and so on .⁶

The provisions in this kind of regulation have been regulated in Article 6A paragraph (3 and 4) of the 1945 Constitution in Indonesia, namely that the Presidential and Vice Presidential candidate pair 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 provinces in Indonesia, are inaugurated as President and Vice President. The candidate pair who get the first and second most votes in the general election are elected directly by the people and the pair who get the most votes are inaugurated as President and Vice President. So, the meaning of the Presidential Threshold as a requirement for support for presidential/vice presidential candidacy regulated in the election law which was later declared valid by the Constitutional Court is actually an error and deviation .

After the emergence of the Constitutional Court Decision Number 14/PUU-XI/2013, the government finally made changes to the rules regarding the upcoming Presidential and Vice Presidential election system. Not long after, Law Number 7 of 2017 concerning Simultaneous General Elections between the legislative and executive was formed, this will automatically change the presidential threshold. In the previous regulation, the executive election was carried out after the legislative election with a gap of between two to three months, for the measure of

⁵LutfilAnshori. 2017. Review of *Presidential Threshold* in the 2019 Simultaneous Elections, *JurnalYuridis*, Vol. 4, Number 1, June, 2017, 19.

⁶Pipit R. Kartawidjaja. 2016. *Strengthening the Presidential System*. Jakarta: Election and Democracy Syndicate.

proposing presidential and vice presidential candidates, the legislature can also take votes during the legislative election. But with the birth of Law Number 7 of 2017 concerning General Elections, the election of executives and legislatures is carried out simultaneously together at one time. Well, this will also change the Presidential Threshold.

Constitutional Court Decision Number 53/PUU-XV/2017 states in Article 222 of Law Number 7 of 2017 concerning Elections which regulates the requirements for the Presidential Threshold, namely, the Presidential and Vice Presidential Candidate Pairs are proposed by Political Parties or a Coalition of Political Parties Participating in the Election that meet the requirements for obtaining at least 20% (twenty percent) of the total number of seats in the DPR or obtaining 25% (twenty five percent) of valid votes nationally in the previous DPR member elections, and this is constitutional because this provision is needed to provide certainty of parliamentary support for the president as one of the requirements for the stability of the president's performance. The Presidential Threshold functions to strengthen the presidential system.

Presidential Threshold is one way to strengthen the presidential system through the simplification of political parties. The goal is to create a stable government and make it easier to make policies with the legislative body.

B. Law Number 7 of 2017

Government Regulation in Lieu of Law Number 1 of 2022, Concerning Amendments to Law Number 7 of 2017, namely about General Election About is the latest regulation related to elections that was ratified in a plenary session of the People's Representative Council (DPR) of the Republic of Indonesia in the early hours of July 21, 2017.⁷ This legal instrument contains 573 explanatory articles, 4 appendices, and is fragmented into several books; Book One on General Provisions, Book Two on Election Organizers, Book Three on Election Implementation, Book Four on Election Violations, Election Process Disputes, and Election Result Disputes, and Book Five on Election Crimes, and

⁷Law Number 7 of 2017 concerning the Presidential and Vice Presidential Elections, State Gazette (Indonesia, Undang Undang Nomor 7 tahun 2017) of the Republic of Indonesia 2017 Number 182. (Republik Indonesia, 2008)

Book Six on Conclusion. This law was enacted by the Minister of Law and Human Rights.

In relation to the threshold for political parties or coalitions of political parties to nominate presidential or vice presidential candidates, this law states that presidential and vice presidential candidates are proposed in 1 (one) pair by a political party or coalition of political parties that meets the requirements of obtaining at least 20% (twenty percent) of the total number of seats in the Indonesian House of Representatives or obtaining 25% (twenty five percent) of valid votes nationally in the previous DPR member elections. As referred to in the law, Political parties or coalitions of political parties may only nominate 1 (one) pair of candidates in accordance with the internal mechanisms of political parties and/or coalition deliberations of political parties conducted democratically and openly. This is clearly regulated in Article 221 – Article 223 of Law No. 7 of 2017 which reads:

Article 221: Presidential and Vice Presidential candidates are proposed in 1 (one) pair by a Political Party or a Coalition of Political Parties.

Article 222: Candidate pairs are proposed by political parties or coalitions of political parties participating in the election who fulfill the requirements of obtaining at least 20% (twenty percent) of the total number of seats in the DPR or obtaining 25% (twenty five percent) of valid votes nationally in the previous DPR member election.

Article 223: (1) The determination of presidential and/or vice presidential candidates is carried out democratically and openly in accordance with the internal mechanisms of the relevant political party. (2) Political parties may make agreements with other political parties to carry out a merger in proposing candidate pairs. (3) Political parties or coalitions of political parties as referred to in paragraph (2) may only nominate 1 (one) candidate pair in accordance with the internal mechanisms of the political party and/or the deliberations of the coalition of political parties carried out democratically and openly. (4) Presidential and/or vice presidential candidates who have been proposed in one pair by a political party or coalition of political parties as referred to in paragraph (3) may not be nominated again by other political parties or coalitions of political parties.

4.1 Presidential Threshold Analysis Perspective of Law No. 7 of 2017

Law Number 7 of 2017 concerning General Elections (Law No. 7 of 2017 concerning Elections) is a legal instrument drafted for the

implementation of elections in Indonesia in the future, namely the 2019 elections and beyond. The background to the birth of Law No. 7 of 2017 concerning Elections is the Constitutional Court Decision Number 14/PUU-XI/2013, this decision is the final result of a lawsuit by Indonesian citizens who filed a judicial review of articles in Law No. 42 of 2008 concerning the Election of President and Vice President against the 1945 Constitution of the Republic of Indonesia. Constitutional Court Decision Number 14/PUU-XI/2013 stated that the separation of the implementation of the Election of Members of the DPR, DPD, and DPRD and the Election of President and Vice President was unconstitutional, so that in the 2019 Election, the implementation of the 2 (two) Elections must be simultaneous.

With the Constitutional Court (MK) Decision, it has brought consequences to various aspects of the implementation of the 2019 Election, one of which is the legal aspect. The refinement and unification of Law Number 42 of 2008 concerning the Election of President and Vice President, Law Number 8 of 2012 concerning the Election of Members of the People's Representative Council (DPR), Regional Representative Council (DPD) and Regional People's Representative Council (DPRD), and Law Number 15 of 2011 concerning the Organizers of the General Election in one Law is one of the efforts that will be prepared immediately so that the implementation of the 2019 simultaneous Election has a strong legal basis and refers to the constitution.

The Presidential Threshold was first born during the 2004 election marked by Law No. 23 of 2003 concerning the Election of President and Vice President. At that time, the Presidential Threshold provision was at least 15% (fifteen percent) of the number of DPR seats or 20% (twenty percent) of the national valid votes in the DPR member election. Over time, the Presidential Threshold provision has changed to at least 20% (twenty percent) of the number of DPR seats or obtaining 25% (twenty five percent) of the national valid votes in the DPR member election.⁸In the

⁸Law Number 42 of 2008, (RI, 2010)(Streb, 2016)political parties participating in the Election that have at least 20% of the total number of seats in the DPR or obtain at least 25% of the total number of valid national votes in the DPR member election can propose presidential and vice presidential

implementation of legislative elections and presidential elections, there is a grace period, so political parties that do not get enough votes can form a coalition with other political parties to nominate their candidates .

Meanwhile, in the 2019 election, the presidential election and legislative election were held simultaneously in one day, and the provisions of the Presidential Threshold in accordance with Article 222 of Law No. 7 of 2017 concerning General Elections, namely "Political Parties participating in the Election that meet the requirements for obtaining at least 20% (twenty percent) of the number of seats in the DPR or obtaining 25% (twenty five percent) of valid votes nationally in the DPR member election previously". This means that the votes that must be obtained by a political party (parpol) are 20% in the DPR seats in one day, if it is not enough then the votes used are the votes obtained in the previous presidential election, namely in 2014. This has become a debate in the legal world, how can the votes that have been used in the 2014 election now be used again. If the results of the 2014 election are used, what will happen to the political parties that have just registered for the election, does that not hinder the rights of the political party itself?

The Constitutional Court in its decision No. 3/PUU-VII/2009, stated that the implementation of the Presidential Threshold is a democratic policy because it does not threaten the existence of political parties in nominating presidential and vice presidential candidates. The Presidential Threshold is considered not to be in conflict with the 1945 Constitution of the Republic of Indonesia because it does not ignore the principle of people's sovereignty, and is not discriminatory because it applies to all political parties.⁹Although in the 1945 Constitution of the Republic of Indonesia the Presidential Threshold is considered not to be in conflict with this, the implementation of the Presidential Threshold still

candidate pairs. This Law is the reference for the 2014 election.

⁹Constitutional Court of the Republic of Indonesia . 2010. Comprehensive Manuscript of Amendments to the 1945 Constitution of the Republic of Indonesia Background, Process and Results of Discussions 1999-2002 (Jakarta: Secretariat General and Registrar's Office of the Constitutional Court, 2010), 239.

has the consequence of the loss of opportunities and rights of citizens through political parties that do not meet the target numbers determined to nominate their candidates. Therefore, it should be noted, in accordance with the principles of democracy, in determining the amount of the Presidential Threshold, it must not harm certain community groups, especially minorities. The determination of the Presidential Threshold must take into account the diversity of society as reflected in political aspirations¹⁰.

In the Academic Manuscript of the Draft Law on General Elections, it is explained that there are several considerations regarding maintaining or eliminating the threshold. If it is removed, it is possible that all political parties participating in the election can nominate their candidates. In this case, it means that if there are 15 political parties participating in the election, then 15 people will advance as presidential candidates. A policy like this will provide an opportunity for equal rights for every political party that wants to nominate a Presidential and Vice Presidential Candidate. So what will emerge later is, if the president-elect does not have a vote in the DPR or has only a few votes in the DPR, it could make it difficult for him to get support in parliament so that the potential for political hostages against the president is greater.

Furthermore, with the implementation of Presidential Threshold in Indonesia, can also be used to strengthen the presidential system with multi-party. Without absolute support, the President is weak in "determining" efforts to drive the wheels of government and daily development. The President needs majority support in parliament. With this "threshold" system, it is expected to guarantee the simplification of the number of political parties in the future. So the higher the threshold, it is assumed that the faster the efforts to achieve simplicity in the number of political parties.¹¹

¹⁰Matthew Justin Streb, 2013, Law and Election Politics: The Rules of the Game, New York, Routledge, in Muhammad Siddiq Armia et al., "Elimination of the Presidential Threshold as an Effort to Restore Constitutional Rights", *Petita*, Volume 1 Number 2, (October 2016), p. 135

¹¹Jimly Asshiddiqie. 2017. "Strengthening the Presidential Government System" Scientific Oration at the 47th Anniversary of Jember State University, Jember, Monday, November 14, 2011,

According to the author, The Presidential Threshold in Law No. 7 of 2017 concerning Elections must continue to exist. Why? Because if we want to realize a presidential system and direct democracy based on the 1945 Constitution of the Republic of Indonesia, elections must continue to be held routinely according to schedule. In a presidential system, there are several elements that must be met if a country adopts this system. Among others, the President is elected by the people, the President serves as head of state and head of government simultaneously. And the President and parliament cannot overthrow each other. In addition, direct presidential elections are also mandated in the 1945 Constitution of the Republic of Indonesia Article 6A paragraph (1) which reads "The President and Vice President are elected in one pair directly by the people". So, with the Presidential Threshold in the election, the position of the president becomes stronger, because the people's support is more than 50% nationally and must reach 20% in half of all provinces in Indonesia, this is in accordance with the 1945 Constitution of the Republic of Indonesia Article 6A paragraph (3).

V. CONCLUSION

With the enactment of Law Number 7 of 2017 concerning General Elections, the presidential threshold has changed to 20% of the number of DPR seats or 25% of valid votes nationally in the previous DPR member elections. The purpose of implementing the permanent threshold policy is to strengthen the presidential system, because the threshold will force political parties to carry out political consolidation so that a coalition of political parties supporting the president will emerge. If the threshold is removed, then the president is elected from a party that gets few votes either from DPR seats or valid national votes, then one of the obstacles that will occur is that the president will find it difficult to get parliamentary support in the government which could result in political hostages getting bigger.

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