


## The Relevance of Presidential Threshold Implementation in the 2024 Concurrent Elections

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### Abstract

The fortification of Indonesia's presidential system ensued through the amendment of the 1945 Constitution spanning from 1999 to 2002. This consolidation of the presidential system is exemplified by the discontinuation of the President's status as a mandatary of the People's Consultative Assembly, aligning with the nation's commitment to establish a democratic rule of law. The President, as the head of government, is now directly elected by the populace, with the inaugural direct presidential election taking place in 2004. Within this electoral process, a stipulated criterion known as the Presidential Threshold is applied. In the upcoming 2024 election, the maintenance of the presidential threshold dictates that a pair of presidential candidates proposed by a political party or an amalgamation of political parties must meet specific requirements. These include obtaining at least 20%

of the total seats in the Regional Representative Council (DPR) or securing 25% of the valid votes nationally in the preceding DPR member election. While the implementation of the presidential threshold in Indonesian elections has elicited both support and criticism, proponents argue that it streamlines political parties, bolstering the presidential system and fostering government stability, particularly in the interplay between executive and legislative institutions. Conversely, detractors contend that the reliance on votes from the previous election for the application of the presidential threshold in simultaneous elections warrants reconsideration.

## **Keywords**

*Presidential Threshold, Simultaneous Elections, Democracy*

## **I. Introduction**

Aristotle suggested that to realise the good life, the best way to achieve it is by the rule of law. Law is wisdom that comes from citizens. The concept of the rule of law is used as a concept of state administration based on law. Every state administration must be based on applicable law or based on the rules of the game determined and determined together. The development of the concept of the rule of law then developed not only to limit power, but also to guard the state's obligations in realising the welfare of the people. The concept of the rule of law further developed into the concept of a democratic state. Jimly Ashiddiqie emphasised that the concept of a democratic rule of law consists of elements

of the concept of democracy originating from the sovereignty of the people, as well as the concept of nomocracy originating from the enactment of law. Each of these principles can go hand in hand so that it becomes the concept of a democratic rule of law or constitutional democracy because the concept accommodates the principle of the rule of law and the principle of a democratic state. (Asshiddiqie, *Konstitusi dan Konstitusionalisme*, 2005)

The concept of a democratic rule of law is adopted by Indonesia through the affirmation of Article 1 paragraph (2) which states that sovereignty is in the hands of the people and is exercised according to the Constitution, as well as in Article 1 paragraph (3) which states that Indonesia is a state of law. In the concept of democratic government, the government is organized from the people, by the people and for the people guided by the rule of law. Legal norms are made to limit and regulate the exercise of people's sovereignty; therefore the law must be able to accommodate the interests and justice of the people. One of the forms of democratic government is through people's representative institutions and direct involvement of the people in determining state leaders.

People's participation in determining the country's leaders is realized through the implementation of direct elections. General elections are one of the important instruments in measuring the democraticity of a country. People have the right to vote or be elected in elections. Therefore, elections must become a routine tradition to determine people's representatives in the legislative and executive institutions. Elections are a means of realizing people's sovereignty in exercising their right to vote. General elections become a competition for political actors to obtain power derived from the exercise of citizens' political rights in voting.

According to A. S. S. Tambunan, elections are a manifestation of people's political rights as well as delegation of people's rights to their representatives who will run the government. Elections are an instrument of realization of realizing a democratic rule of law through a process of transfer of power that is more just, orderly, honest and transparent. The transition of power transfer is expected to be more peaceful and accountable through the implementation of elections (Fadjar, 2009; Sardini, 2011; Sitepu, 2012; Tutik, 2011).

Elections in Indonesia were first held in 1955 to elect members of the House of Representatives and members of the Constituent Assembly, and continued under the leadership of President Suharto in 1971, 1977, 1982, 1987, 1992 and 1997. After the 1998 reform, elections were held in 1999 to replace the legislative results of the 1997 elections which had not won the trust of the people. Furthermore, after the amendment to the 1945 Constitution, elections were held every five years directly to elect members of the House of Representatives, DPD, DPRD as well as the President and Vice President. Elections as one of the mechanisms for distributing citizens' human rights need to be guaranteed in accordance with a specified schedule. (Asshiddiqie, 2010)

The electoral system in Indonesia adopts candidacy requirements with a threshold system or known as *presidential threshold*. *Presidential threshold* It was first implemented in the 2004 elections. The 2004 election imposed a threshold for the election of President and Vice President is 15% of the DPR seat gain or 20% of the national valid vote in legislative elections. Furthermore, in the 2009 election, the threshold for the election of President and Vice President was raised by 20% so that the

participants in the Presidential and Vice-Presidential elections narrowed to three pairs of candidates and then only 2 pairs of candidates in the 2014 and 2019 elections. The implementation of the threshold aims to strengthen the presidential system and realize the effectiveness of governance. (Samsudin, 2020)

In the 2024 election, the threshold provision for presidential elections will still be applied even though general elections are held simultaneously. Based on Article 222 of Law Number 7 of 2017 concerning General Elections, it is stated that the pair of candidates for President and Vice President is proposed by a Political Party or Combination of Political Parties Participating in the Election who meet the requirements for obtaining at least 20% of the total DPR seats or obtaining 25% of the national valid votes in the previous DPR member election. Article 222 is one of the articles that has been requested for judicial review to the Constitutional Court. Furthermore, the Constitutional Court through Decision Number 53 / PUU-XV / 2017 stated that Article 222 of Law Number 7 of 2017 concerning Elections is constitutional. The Court in considering its decision affirmed that the provisions contained in Article 222 of Law Number 7 of 2017 concerning Elections are in accordance with the idea of strengthening the Presidential system which is the constitutional design of the Constitution of the Republic of Indonesia Year 1945. However, the Constitutional Court ruling does not explain whether the application of the presidential election threshold is still necessary or not in simultaneous elections.

## II. Method

The research method used in this study is the normative juridical method. The normative juridical method is a research method by conducting legal analysis of secondary data in the form of laws and regulations, court decisions, agreements, contracts, or other legal documents, as well as research results, study results, and other references. This study analyzes the laws and regulations of both the Constitution of the Republic of Indonesia Year 1945, the Election Law from the 2004 election to the 2024 election, the Constitutional Court Decision on Testing the Election Law, books, articles, legal expert opinions, and various other references.

## III. Presidential Threshold Provisions in the 2024 Concurrent Elections

Elections are one of the manifestations of a democratic state. Ramlan Surbakti stated that the implementation of democracy is carried out through elections to accommodate people's participation in realizing the ideal of a democratic rule of law. The implementation of elections in Indonesia is based on the provisions of Article 22E of the 1945 Constitution of the Republic of Indonesia. Constitutionally, it states that elections are held directly, generally, freely, secretly, honestly, and fairly every five years. This further confirms the concept of a democratic rule of law adopted by Indonesia. Elections in Indonesia are held to elect members of the DPR, DPD and DPRD, as well as to elect the President and Vice President. If previously the legislative elections were held first and then the election of President and Vice

President was held, starting from the 2019 election to the 2024 election, the election will be held simultaneously. (Surbakti, 2008)

The direct election system in Indonesia, which has been implemented since 2004, recognizes three threshold systems, namely: electoral threshold, parliamentary threshold and presidential threshold. This threshold can be interpreted as a minimum percentage requirement that must be obtained by election participants to get their rights in elections. The rights that can be achieved by participants in the election include the right to participate in elections, the right to obtain seats / become members in parliament, and the right to nominate pairs of candidates for President and Vice President. (Arjanto, 2022)

The regulation of the presidential threshold was first regulated in Law Number 23 of 2003 concerning Presidential and Vice Presidential Elections and most recently in Law Number 7 of 2017 concerning General Elections. Article 222 of Law Number 7 of 2017 concerning General Elections states that the pair of candidates for President and Vice President is proposed by a Political Party or Combination of Political Parties Participating in the Election who meet the requirements of obtaining at least 20% of the total DPR seats or obtaining 25% of the national valid votes in the previous DPR member election. The difference in the application of the Presidential election threshold lies in its application in simultaneous elections. If previously it was based on legislative elections that were held first even in the same election period, the 2019 and 2024 elections were based on the elections for DPR members five years earlier because the elections were held simultaneously.

The simultaneous election was held as a follow-up to the Constitutional Court Decision Number 14/PUU-XI/2013. This

decision is a decision on the application for examination of Law Number 42 of 2008 concerning Presidential and Vice Presidential Elections. The Court, in its consideration, interpreted that the definition of general elections contained in Article 22E paragraph (2) of the Constitution of the Republic of Indonesia Year 1945 includes the election of the President and Vice President held simultaneously both Presidential Elections and Legislative Elections. The implication of the Constitutional Court Decision Number 14/PUU-XI/2013 is the holding of simultaneous general elections starting from the 2019 elections. (Laksono, 2019 )

The application of the threshold for the election of the President and Vice President in the 2024 election is regulated in Articles 222 to Article 225 of Law Number 7 of 2017 concerning General Elections. The essence of these provisions includes:

- a. The mechanism for nominating Presidential and Vice Presidential candidates through the internal nomination mechanism of political parties needs to be carried out in a democratic, quality and integrity manner.
- b. Political parties that can carry Presidential and Vice Presidential Candidates are those that meet the requirements of obtaining at least 20% of the total DPR seats or obtaining 25% of the national valid votes in the previous DPR member election.
- c. Political parties that have not met the threshold can merge (coalition) in proposing Presidential and Vice Presidential Candidate Pairs.

The application of the threshold for the election of the President and Vice President can be seen from various perspectives. On the one hand, the implementation of the presidential threshold can strengthen the presidential system with



the synergy between political power in parliament and political power in the executive branch. Especially if the pair of candidates is carried by a coalition of political parties, there will be a simplification of political parties on the axis of power, both legislative and executive. But on the other hand, the changes in political power in a five-year period must be very dynamic, so the electoral threshold based on the previous five-year election cannot accurately describe political power. Coalitions of political parties as a consequence of applying thresholds can also give rise to transactional politics and "power sharing". In addition, the public has no hope in the presence of alternative candidates outside the power of major political parties.

#### IV. The Relevance of the Presidential Threshold System in Concurrent Elections

Article 1 paragraph (2) of the Constitution of the Republic of Indonesia Year 1945 states that sovereignty is in the hands of the people and is exercised according to the Constitution, and in Article 1 paragraph (3) states that Indonesia is a state of law. The formulation of the article reflects that Indonesia is a democratic state of law. In the concept of democratic government, government is organized from the people, by the people and for the people guided by the rule of law. Indonesia also adheres to a presidential system of government where the President holds power over the government. The presidential system of government is characterized by the President as the head of government as well as the head of state directly elected by the

people. Executive and legislative powers have equal degrees as representatives of the people and are directly responsible to the people. (Isra, 2018)

General elections in Indonesia are held to elect members of the legislature and the President and/or Vice President. The implementation of elections in Indonesia is based on the provisions of Article 22E of the 1945 Constitution of the Republic of Indonesia. The constitution has guaranteed citizens the constitutional right to participate in elections. In addition, the people also have the freedom to associate and express opinions. Freedom of association can be realized through participation in political parties. Political parties as organizations have a position as a means to approach their goals that are material and ideal. Political parties then become a means for people to express ideals, visions, and ideas in gaining power. (Manan, 2014)

Direct elections were held for the first time in 2004. Since 2004, the electoral system in Indonesia has implemented a presidential threshold. According to the Big Dictionary of English and Indonesian, the term presidential comes from the word president. The president himself is defined as the head of government of a nation, especially in a democratic government. Threshold itself has a threshold definition, which is a limit level that is still acceptable.

The regulation of the presidential threshold was first regulated in Law Number 23 of 2003 concerning Presidential and Vice Presidential Elections and most recently in Law Number 7 of 2017 concerning General Elections. Article 222 of Law Number 7 of 2017 concerning General Elections states that the pair of candidates for President and Vice President is proposed by a Political Party or Combination of Political Parties Participating in

the Election who meet the requirements of obtaining at least 20% of the total DPR seats or obtaining 25% of the national valid votes in the previous DPR member election. The Presidential Threshold can then be interpreted as a rule of game tool that determines which political party can carry the presidential and vice presidential pair candidates in the election.

The issue of pros and cons to the application of the presidential threshold is actually not a question of applying the threshold, because in fact the application of this threshold has been implemented since the 2004 election. The pros and cons occur when the presidential threshold is applied to simultaneous elections, where the threshold basis is based on the votes obtained in the legislative elections five years earlier. Of course, in a period of five years, the political situation must have changed a lot because politics is dynamic. In addition, it can be predicted that the power holder in a country will not change much in the 2 election periods.

Based on Article 222 of Law Number 7 of 2017 concerning General Elections, the presidential threshold provides space for Political Parties or Combinations of Political Parties that obtain at least 20% of the total DPR seats or obtain 25% of the national valid votes in the previous DPR member election to be able to nominate candidates for President and Vice President. But automatically the provisions of the article do not give small parties or minority votes a chance. The application of the threshold for presidential and vice presidential nominations can limit the right of citizens to be able to nominate for president and vice president because they are constrained by the threshold of obtaining at least 20% of the number of seats in the DPR. Even though the facts show that to reach the 20% figure is not an easy thing, even some

major political parties must first coalition with each other to reach the 20% number.

This threshold provides an unfavorable position for parties that have not met the threshold provisions. These parties do have the option of joining each other or coalition, but this is still considered detrimental to the constitutional rights of citizens guaranteed by the constitution. In addition, the combination of political parties is also not easy to do when each political party has different ideologies and vision and mission from one another. Thus, the public has no choice with the presence of alternative candidates outside the power of major political parties. This is certainly prone to conflict with democratic principles. Power controlled by a political party or a combination of certain political parties can give rise to an oligarchic form of government. Transactional governance can also occur because there is a division of power or division of office for coalition parties. Eventually, only certain parties can nominate Presidential and Vice Presidential Candidates. In fact, elections are a democratic event where people can cast their votes and have the opportunity to elect the nation's leaders. Ideally, elections are held in a quality and integrated manner to accommodate the interests of all people above the interests of certain groups.

The implementation of the presidential threshold is believed to strengthen the presidential system with the synergy between political power in parliament and political power in the executive institution. Especially if the pair of candidates is carried by a coalition of political parties, there will be a simplification of political parties on the axis of power, both legislative and executive. With the existence of a coalition of political parties, this can realize political stability because the political power between

the Legislature in parliament and the Executive and its cabinet becomes balanced. The use of presidential thresholds or non-fixed opens up opportunities for parties to conduct transactional politics in coalitions. Ineffectiveness in the administration of government with a presidential system is not only due to factors of multiparty party systems alone, but also concerns the behavior and individual character of legislative and executive candidates. However, the application of the presidential threshold under the pretext of strengthening the presidential system needs to be reconsidered in its application in simultaneous elections. Although this provision has been repeatedly submitted for judicial review to the Constitutional Court and the Court stated that the presidential threshold is constitutional and in accordance with the idea of strengthening the Presidential system which is the constitutional design of the 1945 Constitution of the Republic of Indonesia. However, the Constitutional Court ruling does not explain whether the application of the presidential election threshold is still necessary or not in simultaneous elections. So that the relevance of the implementation of the presidential threshold based on the previous five-year election needs to be reconsidered in the implementation of the 2024 election

## V. Conclusion

The application of the threshold for the election of the President and Vice President is still constitutional because it is in accordance with the idea of strengthening the presidential system. The presidential system of government will become stronger because the political struggle is only divided between coalition parties and opposition parties. Political stability will also be better maintained

due to the balanced composition of power between the Executive and the Legislature. It is hoped that a stronger and more stable presidential system can realize security and improve people's welfare. The presidential threshold is the initial determinant of political party competition in nominating President and Vice President. Indeed, the purpose of implementing this threshold aims to create more conducive political competition. However, the application of the presidential election threshold based on Article 222 of Law Number 7 of 2017 concerning Elections still needs to be considered if applied in simultaneous elections. First, the presidential threshold must still be supported by the existence of internal mechanisms of political parties in determining pairs of candidates who still pay attention to the constitutional right to participate in elections. Second, this simplification of political parties causes only 2 pairs of presidential and vice presidential candidates to participate in the election. Of course, this causes people not to have many choices or alternative candidates to choose from. If the Presidential and Vice Presidential candidates do not succeed in attracting popular votes, this can increase the potential for abstention among voters. Finally, if the threshold of at least 20% of the number of DPR seats or obtaining 25% of the national valid votes in the DPR elections is based on the previous five years of elections, this is considered irrelevant considering that in five years there can be very dynamic political developments.

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