



QUESTIONING THE PRESIDENTIAL TRESHOLD IN A PRESIDENTIAL SYSTEM BASED ON THE PROTECTION OF CONSTITUTIONAL RIGHTS OF POLITICAL PARTIES

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Abstract

The theoretical debate on the implications of the advantages and disadvantages of the implementation of the presidential threshold in the presidential system is still a knowledge gap based on the protection of the constitutional rights of political parties. The focus of this problem; 1) What is the meaning of the Presidential Threshold relationship to the strengthening of the presidential system? 2) How to protect the constitutional rights of political parties in strengthening the future presidential system? Using normative juridical methods, with systematic and hermeneutic interpretation analysis. The results of this study show that the relationship of the presidential threshold to the strengthening of the presidential system does not guarantee the strengthening of the presidential system and instead produces a disadvantage in the form of ignoring the principles of fairness and equality, while building a future presidential threshold based on social stability restores the concept of open and transparent general elections based on democracy.

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I. INTRODUCTIONS

The 1945 Constitution amendment changed the position of state institutions and the presidential election system. After the amendment, the People's Consultative Assembly (MPR) no longer has the position of the highest institution of the state so that the presidential election is no longer carried out by the MPR but is carried out directly by the people. Along with the development of the implementation of the election, then a threshold or presidential threshold for political parties to submit presidential and vice presidential candidates emerged.

The Presidential Threshold was first formulated in Article 5 Paragraph (4) of Law Number 23 of 2003 concerning the General Election of the President and Vice President. The minimum presidential threshold is at least 15 percent of the number of seats in the House of Representatives or 20 percent of the national valid votes in the election of members of the House of Representatives. This provision was enforced in the implementation of the 2004 elections. Five years later, in the 2009 Presidential Election, based on Law No. 42 of 2008

concerning the General Election of the President and Vice President as a substitute for Law No. 23 of 2003 concerning the General Election of the President and Vice President, the presidential threshold increased by 5% from the initial 15% to at least 20% (twenty percent) of the number of seats in the House of Representatives or obtained 25% (twenty-five percent) of the national valid votes in the election of members of the House of Representatives from the previous one 20%. Although the regulation on the regulation of holding elections has changed to Law Number 7 of 2017 concerning General Elections, the presidential threshold still uses the same numbers in the 2014 and 2019 presidential elections. It may also be applied to the 2024 election if there is no revision to Article 222 of Law Number 7 of 2017 concerning General Elections.

The existence of the Presidential Threshold is one of the designs in creating coalition party groups so that a simplification of political parties is formed that can strengthen the presidential system. Although the presidential system is centered on the power of the president, in practice it still requires strong parliamentary support. To get support, the candidates will form a coalition. The coalition that is built is expected to form a majority axis so that if elected in the future, the president's work program will be easily approved by the parliament. Parliamentary support greatly affects the stability of the government in the decision-making process.

The threshold rules for presidential candidates are often sued because they are considered to have caused injustice and inequality in the presidential and vice presidential election process. The owners come from various backgrounds. Starting from individuals, members of political parties, and even from government institutions.

The systematic implementation of elections cannot be separated from Article 22E paragraph (2) of the 1945 Constitution which refers to the general election of members of the DPR, DPD, and DPRD which is held simultaneously in one contest with the election of the President and Vice President. This model has the consequence that the Presidential threshold vote used is the vote in the previous election. Thus, there is a difference in position between the new party and the old party in participating in the election contest, especially in carrying out presidential and vice presidential candidates. In fact, all political parties that are election participants should be in the same position, namely at the starting point without a vote.

The purpose of the lawmakers considered that it was necessary to create a presidential system so that the function of the state government would be strong and effective. The requirement of the presidential threshold is interpreted as a tool of legitimacy from the people

towards political parties or a combination of political parties to carry presidential candidates and vice presidential candidates (Decision Number 51-52-59/PUU-VI/2008).

On the other hand, political anomalies will affect the situation if the President and Vice President who are directly elected by the people do not have a dominance of support because the political party that occupies the president does not dominate the parliamentary representatives. Thus, the argument for strengthening the presidential system by imposing the Presidential Threshold does not really guarantee the realization of a stable government system after the election. Especially considering that voters actually vote based on the name of the candidate, not looking at the political party that supports them.

The following paper tries to review the presidential threshold system in the paradigm of lawmakers, whether the presidential threshold system is effective in prioritizing certainty and usefulness in the implementation of effective elections. This paper begins with a review of the presidential threshold paradigm based on the meaning of the Presidential Threshold relationship to the strengthening of the presidential system and how to protect the constitutional rights of political parties in strengthening the presidential system in the future.

II. RESEARCH METHODS

This research specifically focuses on the study of the Constitutional Court's decisions and academic texts in laws that discuss the existence of the Presidential Threshold.

The type of research chosen in writing this article is normative juridical, namely studying the concept of law as a written regulation contained in the law that regulates the Presidential Threshold or court decisions (Constitutional Court decisions). The author uses a research approach in the form of a legal approach, namely by looking at written legal rules regarding the provisions of the Presidential Threshold. In addition, a conceptual approach is also used, namely by examining the concept of positive law related to the Presidential Threshold problem.

III. DISCUSSION

3.1 The Relationship of the Presidential Threshold to the Strengthening of the Presidential System

In the Constitution, Article 6A paragraph (2) only states that "The pair of presidential and vice presidential candidates is proposed by a political party or a combination of political parties participating in the election before the implementation of the election." In language,

it can be understood that the existence of this article provides an open space for all political parties participating in the election to nominate the president and vice president. The presidential *threshold* provision is an additional rule regarding the regulation of the requirements for nominating the president and vice president.

Although the presidential system is centered on presidential power, In the ongoing state practice, it is not easy for the government to make decisions quickly on all policy plans that need parliamentary approval because it fails to control the majority of parliamentary support. Members of parliament who come from political parties who are part of the pillar of democracy that can connect their citizens with the state government. Therefore, the presidential threshold is a hope that the government can run stably because the government has no difficulty in taking policies that depend on the blessing of parliament (Rianisa Mausili, 2019: 34).

The setting of the presidential threshold is a systematic effort used in order to strengthen the presidential system(Wahyuni et al., 2020 : 42). In addition, according to the Constitutional Court in consideration of decision No. 14/PUU-XI/2013, a strong presidential system is formed from a strong coalition. The existence of political parties that are quite diverse certainly has an influence on efforts to realize the presidential system. To strengthen the presidential system, political parties must form forces by forming coalitions. This is what then gives rise to the design *Presidential Threshold* to encourage the formation of Presidential / Vice Presidential candidate pairs from coalitions built between political parties.

The design of holding legislative elections that were previously carried out before the presidential election was used as a benchmark for parliamentary strength (Sodikin, 2014 : 26). The conduciveness of government in the presidential system of government is highly dependent on the strength of parliament. Important parliamentary support in the decision-making process gave rise to the "threshold" so that presidential candidates seek support first. The party that carries the president must be a party that is able to provide a large amount of support (Saraswati, 2012: 138). Thus, the president-elect's work program can be easily approved by the parliament (Ghoffar, 2018).

Checks and balances in dynamics The working relationship between the President and Parliament tends to be conflictual. To overcome this, it is not uncommon for the president to be involved in compromise and accommodation (Efriza, 2018:7). Even in certain situations,

the party supporting the president can have an unharmonious relationship with the president. In this condition, *Presidential Threshold* It is unable to guarantee as a tool for transforming the desired change in government stability, and instead weakens the presidential system of government because the President has to compromise with the legislature both from the opposition and the coalition (Anggara, 2019). To maintain government stability, it is not uncommon for the president to launch tactical efforts that are transactional with political parties so that they are able to gain support in parliament. However, the support and simplification of political parties by forming coalitions on the basis of certain interests does not give birth to long-term coalitions because they will disappear if there are no longer interests that are the reason for the survival of a coalition.

1. Framework for the protection of equal rights of political parties in strengthening the presidential system

Since its appearance, *the presidential threshold* has been sued to the Constitutional Court. The following are some of the arguments of the judicial review applicant regarding the relationship between the Presidential Threshold and the Presidential System in testing the constitutionality of the provisions of Article 222 of Law Number 7 of 2017 has been carried out with various arguments, including;

1. The *threshold requirement* (obtaining seats/national valid votes for legislative elections) is used as a condition for proposing a presidential candidate/vice presidential candidate in inverse proportion to the logic of the presidential system because there will be a bargaining position between supporters so that it can weaken the position of the president as the holder of government power (44/PUU-XV/2017)
2. Threshold is contrary to the logic of election simultaneity and gives rise to transactional politics; (53/PUU-XV/2017)
3. A threshold that can lead to the simplification of political parties to strengthen the presidential system does not guarantee long-term coalition building. Especially considering that in simultaneous elections, the threshold used is the result of the previous House of Representatives election as a threshold. In fact, the nomination of presidential candidates based on the results of the previous election does not

necessarily have any relationship with the coalition of presidential supporters in the House of Representatives in the future (59/PUU-XV/2017)

4. The threshold should not be applied because the president is responsible to the people, not to the House of Representatives (70/PUU-XV/2017)

If referring to Decision Number 51-52-59/PUU-VI/2008, it emphasizes that the provisions regarding the presidential threshold are *open legal policies*. The term *open legal policy* can be interpreted as a freedom that can be exercised by the lawmakers to decide how the law will be formed.

The Constitutional Court handed over the setting of the presidential threshold in the legislation process carried out by the Government and the House of Representatives as the authorized institution in forming laws. From the decision, it can be understood that actually the application of the presidential threshold as a condition for proposing the President and Vice President is not an obligation but its existence does not violate the constitution. This means that if the lawmakers are willing to remove the presidential threshold requirement, it also does not violate the constitution. Therefore, whether or not the presidential threshold is regulated in the presidential and vice presidential elections is actually still constitutional. As confirmed by Iwan Satriawan and Tanto Lailam (Satriawan & Lailam, 2019) that as an open legal policy, lawmakers are free to make choices and pour them into the agreed legislation process.

The Constitutional Court, in its decision, remains consistent in deciding on every presidential threshold material test that the setting of *the presidential threshold* is not contrary to the constitution. The presidential threshold, which is not listed in detail in the 1945 Constitution, is considered by the Constitutional Court judges to be *an open legal policy*.

The freedom granted by the 1945 Constitution to lawmakers has two sides that have two opposite conditions. On the one hand, it is not regulated *presidential threshold* in the 1945 Constitution provides broad or flexible opportunities for state administrators to regulate it. However, on the other hand, the concept of freedom that can be exercised by the lawmakers can potentially cause new problems because it has a vulnerable point in utilizing this authority so that it is abused because *Open Legal Policy* This means legalizing the

superiority of law-making institutions. The lawmakers can still consider the results of their legislation (constitutional) even though there have been many rejections (Mantara Sukma, 2020 : 2)

Open legal policy which gave birth to a legal product It cannot be separated from every interest, of course. (Mantara Sukma, 2020 : 4) *Presidential threshold* Of course, it cannot be separated from the interests of certain people or groups who will certainly benefit greatly because of their existence. But keep in mind that open legal policy does not mean unlimited freedom but has certain parameters so that it is free from arbitrariness in the name of *Open Legal Policy*. The parameters include: 1). Every legislation process does not have to be in accordance with the nation and state as stated in the fourth paragraph of the 1945 Constitution; 2). The process and content of legislation reflect the values of Pancasila; and 3) protection of human rights and equality before the law. If the policy taken is not in accordance with these parameters, it can be canceled by the Constitutional Court which is authorized by the 1945 Constitution to test the law against the 1945 Constitution (Ajie, 2016). However, on several occasions, it is precisely in the legislative process that produces legal products that it is contrary to the principles of democracy that rely on justice and equality so that it can lead to the failure of the realization of a "living constitution" in the national legislation system (Satriawan & Lailam, 2019 : 562).

Starting from the decision Number 14/PUU-XI/2013, the implementation of constitutional elections has been successfully restored to the spirit of the Constitution, especially Article 22E paragraph (2) of the 1945 Constitution, which is held every five years (simultaneously) to elect (at once) members of the DPR, DPD, DPRD, as well as the President and Vice President. The design of simultaneous elections actually makes parties that competed in the previous elections get the advantage of vote savings that can be used in the upcoming elections. This creates legal uncertainty about the concurrency because the threshold for supporting the candidacy of the President and Vice President uses votes from the previous election. The consequence of holding elections simultaneously should be that political parties should be in the same position, namely zero votes.

The dynamics of politics that occurred, the idea of *the Presidential Threshold* which refers to the results of the previous legislative elections does not guarantee strengthening the presidential system. The acquisition of parliamentary votes can be different from the results

of the presidential election that is being held. For example, the elected president comes from the supporting party group which at the time of the previous election was a majority coalition but during the legislative election it actually became a minority group in parliament. This will certainly affect the stability of the government because the president-elect will face a majority group that was not previously part of his winning group in the presidential election.

Therefore *Open Legal Policy* It must be returned to the spirit of constitutional principles so that lawmakers do not just make legal products in the legislative process. In the legislative process, the basis and purpose must be clear and not violate constitutional rights. If it turns out that there is no constitutional need but it has the potential to be disruptive constitutional rights, then it can be ascertained that the basis and purpose behind the legislation process are only for the benefit of a few (Ajie, 2016 : 115).

Political parties that form coalitions to meet the Presidential Threshold in carrying Presidential and Vice Presidential Candidate Pairs automatically simplify the party system. However, this situation does not necessarily form a coalition that guarantees the strength of the presidential system because the dynamics of the relationship between political parties in the coalition can determine the harmony of a coalition. Based on the experience of constitutional practice, after the implementation of the presidential election, parliamentarians from coalition parties often clash with the government. This means that coalition members cannot guarantee the strengthening of the presidential system of government, which in fact has been made as strong as possible by the constitution without having to force the existence of a *Presidential Threshold*.

The existence of the presidential threshold certainly provides limits for every political party that wants to propose a presidential candidate. On the other hand, if the presidential threshold provision is abolished, political parties have the same position before the law and do not prohibit the formation of coalitions. This means that the constitutional right of political parties to propose presidential candidates can be realized.

The choice of a coalition can actually be made without coercion through the presidential threshold as the entrance to the presidential election contest. If the goal is stability in the presidential system, then political parties can choose to form a coalition to nominate the President/Vice President or form a coalition at the time of cabinet preparation or even coalition in certain situations. In this situation, the President and the parties supporting

the government can accept the request of other political parties to form a coalition to support the government.

The implementation of the presidential threshold contains the consequence of losing the opportunities and rights of citizens through political parties that do not meet the specified number to submit their candidates. Therefore, it should be noted, in accordance with democratic principles, in determining the conditions for presidential candidacy, it must not harm certain groups of society, especially minorities. Given that *the Presidential Threshold* for strengthening the presidential system has not proven to be effective, the existence of *the Presidential Threshold* can actually be a consideration for changes in the future.

IV. CONCLUSION

In fact, the relationship between the Presidential Threshold and the Strengthening of the Presidential System does not guarantee the strengthening of the presidential system and instead produces a disadvantage in the form of ignoring the principles of fairness and equality. The development of the presidential threshold for the future must embrace the interests of the people openly and beneficially. The author is limited to a conceptual approach, hoping that there will be follow-up researchers to provide a wealth of presidential threshold knowledge.

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