

Practice of Presidential Threshold in the Implementation of Presidential and Vice Presidential General Elections and Its Implications on the Political Rights of Citizens and Political Parties in Indonesia



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ABSTRACT: The presidential threshold is a rule that becomes a political requirement for a political party to carry presidential and vice presidential candidates. The existence of this rule can potentially cause restrictions on citizens in running for president and restrictions on political parties in carrying their candidates to the presidency and vice presidency. The presidential threshold journey in coloring the elections in Indonesia has also undergone material testing and a lawsuit by the Constitutional Court. Therefore, this study aims to discuss the practice of the Presidential threshold in the implementation of elections in Indonesia and its relation to the political rights of citizens and political parties in Indonesia. This study is a field research study with a study into the field and using a non-doctrinal approach that is the enactment of law. Primary Data was obtained by interview techniques to the KPU RI, political parties, and legal experts. Furthermore, the secondary data consists of primary, secondary, and tertiary legal materials. This legal research uses descriptive analysis to obtain research results. The results showed that the practice of Presidential threshold has existed since the enactment of the first presidential and vice presidential elections. The political rights of citizens and political parties do not necessarily disappear, they only become conditional. Political parties also have the same opportunity to nominate the president and vice president by carrying their own or joining and forming coalitions with other parties.

KEYWORDS: election, presidential threshold, political rights

I. INTRODUCTION

Free, honest, fair and competitive general elections are one form of realizing democracy. The experience of elections under the New Order regime has given too much of a traumatic impression to the people of Indonesia, especially those who understand the essence of democratic elections. The technique of manipulating the general election is carried out openly. The implementation of unfair campaigns, with many prohibitions, such as the prohibition of criticizing the government, questioning government policies, and discussing Pancasila, and others. Evidence that Indonesia is a democratic country can be seen in Article 6A of the 1945 Constitution of the Republic of Indonesia which regulates the direct election of the President and Vice President and also regulates the election of the Provincial and Regency/City DPRD, and the election of Governors, mayors and regents which are regulated in Article 18 Paragraphs (3) and (4).

The implementation of presidential and vice presidential elections is held every five years. Indonesia has had a new system since 2004, in which in the previous election the president and vice president were elected by the People's Consultative Assembly. This shows that the people are directly free to choose their candidate leaders. Since Indonesia citizens are free to vote for the president and vice president directly, the issue of the threshold for presidential and vice presidential candidacy always gives color when the election will be held. In 2004, the threshold for presidential candidacy was only 10 percent. Then in 2009 the threshold increased by 20 percent, and continues to this day (Abdul Ghofar, 2018).

In 2019, the democracy party, which is held every 5 years, for the first time, was carried out simultaneously to elect legislative members as well as the president and vice president on April 17, 2019. In this regard, the presidential threshold is regulated in Article 222 of Law Number 7 of 2017. The law is a political requirement for a political party that wants to carry presidential and vice presidential candidates. Article 222 of Law Number 7 of 2017 explains as follows:

“Candidate pairs are proposed by political parties or a combination 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 House of Representatives or obtaining 25 percent (twenty-five percent) of the national valid votes in the previous House of Representatives elections.”

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The article turned out to have received a lot of criticism from various elements of society, such as academics, politicians and so on. They are of the view that the existence of the presidential threshold rule is a form of restrictions on the people in choosing leaders and restrictions on political parties in carrying their candidates to become president. This shows the importance of citizens' voting rights in general elections in order to ensure the human rights of citizens as the ideal of democracy. Guarantee and protection of the rights and freedoms of citizens are the main pillars of democracy. The loss of political rights shows that the state has indirectly violated human rights, namely the right to vote and be elected.

Elections, also known as general elections, are a form of democracy for citizens and a means to ensure the rights of citizens guaranteed by the constitution, specifically the right to equal opportunities in law and government. This is as stipulated in Article 7 Paragraph (1) of the Constitution of the Republic of Indonesia of 1945 which reads "All citizens have the same position in the law and government and are obliged to uphold the law and government without exception", and Article 28D Paragraph (1) of the Constitution of the Republic of Indonesia of 1945 "Everyone has the right to a guarantee recognition, protection, and certainty of fair law and equal treatment before the law" and the principle of equal opportunity (equal opportunity principle)".

Political parties have the same constitutional right to nominate their party cadres as President and Vice President. Political parties are the main actors in democracy, which function as a bridge between the interests of the people and the interests of the state and the government. In addition to forming the framework of the government system, political parties are also a political formation system in the legislature. Both are carried out through general election procedures that contain universal democratic principles and principles.

The constitutional design related to the candidacy for the presidential and vice presidential elections is regulated in Article 6A Paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states, "the pair of presidential and vice presidential candidates is proposed by a political party or a combination of political parties participating in the general election before the implementation of the general election". As a result of the presidential threshold rule, in the 2014 and 2019 elections there were only 2 candidates carried by a coalition of political parties. Even in the 2019 election, there was not a single political party that reached the candidacy limit. The presidential threshold rule that limits the rights of small political parties is contrary to the essence of Indonesia's democracy, Every nation has its own conception and ideals in accordance with the reality, challenges and characteristics of the nation concerned (Yudi Latif, 2015).

The presidential threshold journey in coloring the elections in Indonesia has undergone material tests and lawsuits, which have been rejected many times by the Constitutional Court of the Republic of Indonesia, meaning that not a single lawsuit has been accepted. Until now, there have been 35 (thirty) Constitutional Court Decisions against the Presidential threshold test. Twenty-five decisions against the testing of Article 222 of Law Number 7 of 2017 and ten decisions against the testing of Article 9 of Law Number 42 of 2008. Most recently, on July 7, 2022, the Constitutional Court of the Republic of Indonesia again rejected the lawsuit filed by the DPD RI and the Moon Star Party (PBB) and on September 29, 2022, it also rejected the lawsuit of the Prosperous Justice Party.

According to Yusril Ihza Mahendra after his lawsuit was rejected by the Constitutional Court of the Republic of Indonesia on July 7, 2022, he argued that the verdict was a tragedy of democracy, in addition to that the Chairman of the Moon Star Party also argued that democracy would be increasingly threatened, with the emergence of power oligarchs as a result of Article 222 of Law Number 7 of 2017 concerning Elections (CNN Indonesia, 2022).

The same thing was also expressed by the chairman of the DPD RI, La Nyalla Mahmud Mattalitti who stated that the Presidential threshold is an entry point for Economic Oligarchs to finance presidential candidates who have to spend a huge amount of money to pay dowries for the combination of these parties. The presidential threshold shackles political parties so that they cannot nominate the best cadres because they are forced to join other political parties (CNN Indonesia, 2022).

Based on this background description, political rights are very important to be protected from acts of deprivation of rights carried out by state administrators. In addition, to realize a democratic country is not only seen from the determination of seats in parliament elected by the people, but the fulfillment of rights that have been regulated in the constitution is also undeniable. Therefore, the topic of the thesis was raised on "Presidential Threshold Practice in the Implementation of the 2019 Presidential and Vice Presidential General Elections and Its Implications for the Political Rights of Citizens and Political Parties in Indonesia

Based on this background, the author formulates several main problems that will be examined in this study. The formulation of the problem is as follows: 1. What is the practice of the presidential threshold in the implementation of general elections in Indonesia? 2. What are the implications of the presidential threshold on the political rights of citizens and political parties in Indonesia?. By answering these questions, this study aims to find out the practice of presidential threshold in the implementation of general elections in Indonesia and to analyze and find out the implications of the application of presidential threshold on the political rights of citizens and political parties in Indonesia.

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II. MATERIALS AND METHODS

This research is a field research with field studies and using a non-doctrinal approach, namely the enforcement of the law. Primary data was obtained by interviewing the KPU RI, political parties, and legal experts. Furthermore, secondary data consists of primary, secondary and tertiary legal materials. This legal research uses descriptive analysis to obtain research results.

III. RESULTS AND DISCUSSIONS

A. Presidential Threshold in the Presidential and Vice Presidential Elections in Indonesia

The presidential threshold was first implemented since the direct election of the president and vice president in 2004. The election at that time was based and carried out using two legal instruments, namely for the election of members of the DPR, DPD, and DPRD as well as for the election of the President and Vice President. Elections held under two legal instruments are only held until the election of members of the DPR, DPD, and DPRD as well as the 2014 presidential and vice presidential elections. After that, the 2019 election was held simultaneously with one legal instrument, namely Law Number 7 of 2017. The rules regarding the presidential threshold from 2004 to 2019 can be seen in the table below.

No	Year	Legal Basis	Presidential Threshold		Description
			DPR Votes	National Votes	
1	2004	Law Number 23 of 2003 Concerning Presidential and Vice Presidential Elections Article 5 Paragraph (4)	15%	20%	Elections are held in two stages
2	2009	Law Number 42 of 2008 Concerning Presidential and Vice Presidential Elections Article 9	20%	25%	Elections are held in two stages
3	2014	Law Number 42 of 2008 Concerning Presidential and Vice Presidential Elections Article 9	20%	25%	Elections are held in two stages
4	2019	Law Number 7 of 2017 Concerning General Elections Article 222	20%	25%	Elections are held simultaneously
5	2024	Law Number 7 of 2017 Concerning General Elections Article 222	20%	25%	Elections are held simultaneously

The table has explained the legal basis and the number of presidential threshold votes. The 2004 presidential and vice presidential elections applied the presidential threshold of 15% of the votes of the House of Representatives or 20% of the valid votes nationally obtained by political parties or a combination of political parties in the House of Representatives elections. The presidential and vice presidential elections from 2004 to 2024 use the same number of presidential thresholds, namely 20% of the votes of the House of Representatives or 25% of the valid votes nationally obtained by political parties or a combination of political parties in the House of Representatives elections. In addition, there is one legal basis that regulates the two presidential and vice presidential elections. Law Number 42 of 2008 concerning the General Election of the President and Vice President was used as the legal basis for the presidential and vice presidential elections in 2009 and 2014 (Ayon Dinianto, 2018). That is the history of setting the presidential threshold in Indonesia since the presidential and vice presidential elections began to be held directly until 2024.

B. Implications of the Presidential Threshold in Indonesia

The application of the presidential threshold was first formulated in Law Number 23 of 2003 concerning the General Election of the President and Vice President, but the law is now no longer in effect. After that, the formulation of the presidential threshold was again formulated in Article 222 of Law Number 7 of 2017 concerning General Elections. This rule is the basis for implementing the presidential threshold in the 2019 election (Sultoni Fikri, et.al., 2022).

Seeing the conditions in society that reap pros and cons related to the presidential threshold, those who are against have the initiative to test the constitutionality of article 222 of Law No. 7 of 2017. According to them, article 222 is contrary to the 1945 Constitution, namely article 6A paragraph 2 where the conditions for running for President are very clearly regulated in that article. Not only civil society took the initiative to test the constitutionality of the article, but also members of the Regional Representative Council also participated in testing the constitutionality of the article (Sultoni Fikri, et.al., 2022).

It is undeniable that the practice of the presidential threshold in Indonesia has received rejection from various elements of society. That until now there have been 35 (thirty-five) Constitutional Court Decisions on the Presidential threshold test. Twenty-

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five decisions against the testing of Article 222 of Law Number 7 of 2017 and ten decisions against the testing of Article 9 of Law Number 42 of 2008. The following is the decision on Article 222 of Law Number 7 of 2017.

<i>Number</i>	<i>Decision</i>	
1.	44/PUU-XV/2017	NOT ACCEPTED
2.	53/PUU-XV/2017	REJECTED
3.	59/PUU-XV/2017	NOT ACCEPTED
4.	70/PUU-XV/2017	NOT ACCEPTED
5.	71/PUU-XV/2017	NOT ACCEPTED
6.	72/PUU-XV/2017	NOT ACCEPTED
7.	49/PUU-XVI/2018	REJECTED
8.	50/PUU-XVI/2018	NOT ACCEPTED
9.	54/PUU-XVI/2018	REJECTED
10.	58/PUU-XVI/2018	NOT ACCEPTED
11.	61/PUU-XVI/2018	NOT ACCEPTED
12.	92/PUU-XVI/2018	NOT ACCEPTED
13.	74/TREE-XVIII/2020	NOT ACCEPTED
14.	66/PUU-XIX/2021	NOT ACCEPTED
15.	68/PUU-XIX/2021	NOT ACCEPTED
16.	70/PUU-XIX/2021	NOT ACCEPTED
17.	5/PUU-XX/2022	NOT ACCEPTED
18.	6/PUU-XX/2022	NOT ACCEPTED
19.	7/PUU-XX/2022	NOT ACCEPTED
20.	16/PUU-XX/2022	RECALLED
21.	8/PUU-XX/2022	NOT ACCEPTED
22.	11//PUU-XX/2022	NOT ACCEPTED
23.	42/PUU-XX/2022	NOT ACCEPTED
24.	52//PUU-XX/2022	NOT ACCEPTED
25.	73/PUU-XX/2022	REJECTED

Source: processed from various sources

From the table above, it appears that there are 4 decisions that have been rejected, namely Decision Number 53/PUU-XV/2017, Decision Number 49/PUU-XVI/2018, Decision Number 54/PUU-XVI/2018, and Decision Number 73/PUU-XX/2022. Various arguments to reject the presidential threshold have been submitted to the Constitutional Court. The author chose a sample of the Constitutional Court's decision on Article 222 of Law Number 7 of 2017 because it is more relevant at this time than the test of Article 9 of Law Number 42 of 2008 which is no longer in force. Next is about the reasons contained in the 4 decisions.

That in Decision Number 53/PUU-XV/2017 there is a reason that the presidential threshold is irrelevant and expired when applied to the 2019 elections, the presidential threshold is contrary to the logic of the simultaneous elections, the presidential threshold discriminates against new parties to be able to carry a presidential candidate/vice presidential candidate, the presidential threshold creates political bargaining (transactional politics), the presidential threshold is contrary to the 1945 Constitution because it damages the Presidential system, and the presidential threshold is contrary to the 1945 Constitution because it damages the presidential system, and the presidential threshold is contrary to the presidential system. The threshold eliminates the evaluation function of an election, the results of the 2014 Legislative Election as a condition for submitting the 2019 presidential / vice presidential candidate have mixed up the votes of voters and the presidential threshold is not an open legal policy (Decision Number 53/PUU-XV/2017).

Furthermore, the reason in Decision Number 49/PUU-XVI/2018 is the candidacy threshold requirement that has the potential to eliminate the potential for the birth of alternative presidential and vice presidential candidates, which has actually been anticipated very completely even through the second round of the Presidential Election system, The requirements for proposing presidential candidates by political parties are very complete regulated in the 1945 Constitution, therefore it should be a closed legal policy not an open legal policy (disagreeing with the open legal policy), and the calculation of the presidential threshold based on the results

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of the previous House of Representatives elections is irrational and therefore the phrase Article 222 of the General Election Law is contrary to Article 6A Paragraph (2) of the 1945 Constitution (Decision Number 49/PUU-XVI/2018).

Meanwhile, the reason in Decision Number 54/PUU-XVI/2018 is that the presidential threshold is contrary to the Values of Pancasila which cannot be separated from the Preamble to the 1945 Constitution and is not in accordance with the principle of honesty in the implementation of elections because the people (voters) are lied to and do not know that their choice in the 2014 legislative election is used as a threshold requirement for the party to propose the 2019 presidential / vice presidential candidate (Decision Number 54/PUU-XVI/2018).

Finally, the reason in Decision Number 73/PUU-XX/2022 is that this application basically has the ultimate goal of reducing the presidential threshold of 20% of the House of Representatives seats or 25% of the national vote, with the main argument narrowing the restrictions on the implementation of open legal policy through the interval range of threshold numbers, strengthening the presidential and democratic system, and determining the interval range of threshold numbers based on scientific studies through the calculation of the Effective Numbers index of Parliamentary Parties (ENPP). In addition, the existence of the presidential threshold is something that is urgently needed in strengthening the presidential system, so that the presidential and vice presidential nominations are submitted by significant parties in parliament, then the elected president and vice president receive adequate support in parliament. Even so, support for the president and vice president must certainly be proportional, while still opening up opportunities for the opposition to make checks and balances (Decision Number 73/PUU-XX/2022).

But until now, there are several reasons that have been rejected and not accepted by the Constitutional Court for the request for judicial review regarding the presidential threshold rules contained in article 222 of Law Number 7 of 2017 in terms of the nomination of presidential and vice presidential candidates must meet 20 percent of the votes for House seats or 25 percent of the national valid votes from the previous election.

All Court decisions related to the issue of the threshold for the nomination of presidential and vice presidential candidates by political parties or a combination of political parties, basically the Court states that the threshold for the nomination of the President and Vice President is constitutional, while with regard to the size or size of the presidential threshold percentage, it is an open legal policy in the realm of law-making. The definition of open legal policy in the view of the Constitutional Court is a policy regarding the provisions in certain articles in the law which is the authority of the lawmakers (Iwan Satriawan & Tanto Lailam, 2019).

The establishment of the Court is based on the need to strengthen the Presidential system of government based on the 1945 Constitution so that it can realize an effective government. In the Court's view, the election of the President and Vice President needs to be designed to support the strengthening of the Presidential system of government, not only related to the legitimacy of the elected President and Vice President, but also in relation to the institution of the House of Representatives so that it will encourage the effectiveness of political processes in the House of Representatives to be simpler and more efficient in the framework of checks and balances proportionally. In this framework, the existence of a threshold requirement for the nomination of the President and Vice President by political parties or a coalition of political parties is one way to balance the relationship between the President and the House of Representatives proportionally in a presidential system of government that upholds Indonesia's democratic values and the constitutional rights of citizens and it does not contradict the constitution (Decision Number 73/PUU-XX/2022).

C. Implications of the Presidential Threshold on the Political Rights of Citizens and Political Parties

Political rights are rights that all citizens are legally entitled to, these political rights aim to achieve, obtain power and position for the needs of the citizens themselves. The political rights of citizens have been affirmed in the constitution, namely Article 43 Paragraph (1) of the Law on Human Rights which reads:

Every citizen has the right to be elected and vote in general elections based on equal rights through direct, public, free, confidential, honest, and fair voting in accordance with the provisions of laws and regulations.

According to the provisions of the 1945 Constitution, in essence, every citizen has the right to express his opinion both orally and in writing, which is then called political rights. With the enactment of political rights in Indonesia, every citizen has the aspiration to participate directly in government power. In addition, political rights given by the state to citizens aim to prevent the government from arbitrarily exercising its power so that there is no violation of citizens' rights and also provide equal opportunities in government (Adrianus Bawamenewi, 2019).

The political rights of citizens can be implemented or realized in the form of:

1. The right to vote and be elected
2. The right to participate in government activities
3. The right to express an opinion
4. Right to be appointed to government office
5. The right to establish political parties and so on
6. The right to assemble, to associate.
7. The right to express views or thoughts about politics.

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The International Convention on Civil and Political Rights or commonly known as (ICCPR) is appropriate for Indonesia as one of the countries that sides with the convention to implement and comply with the rules contained in the ICCPR, which has been in force since October 28, 2005. The ICCPR is an international treaty that is legally binding on countries that are parties to be required to respect human rights regulated in the Human Rights Act. In the context of political rights or the right to vote and vote, the Universal Declaration of Human Rights expressly sets out in Article 21 (Ian Brownli, 1993) as follows:

1. Article 21 Paragraph (1)
Everyone has the right to participate in the government of his own country, either directly or through the free representation of representatives
2. Article 21 Paragraph (2)
Everyone has the same right to be appointed to a position in the government of his country.
3. Article 21 Paragraph (3)
The will of the people must be the basis of government power; This will must be expressed in the election, periodic elections that are honest and conducted according to the universal and equal suffrage, as well as by secret ballot or by means that guarantee the freedom of expression

Thus, it can be ensured that every citizen has the same rights and position in the government which is carried out through a democratic general election process that is not discriminatory against certain things. By paying attention to the articles of political rights contained in the Indonesia constitution and the ICCPR which are then outlined in binding regulations in Indonesia, it proves the atmosphere of euphoria towards freedom, justice, welfare and equality which are the basic values of humanity. However, this atmosphere does not necessarily guarantee freedom and equality because there are still full restrictions on certain things to participate in politics (Hilmi Ardani Nasution & Marwandianto, 2019)

As we know that political rights are divided into two, namely the right to vote and also the right to vote. The right to vote is a basic right of every individual or citizen that must be guaranteed to be fulfilled by the State. The provisions regarding this are regulated in the 1945 Constitution:

1. Article 1 Paragraph (2)
Sovereignty is in the hands of the people, and is fully exercised by the People's Consultative Assembly
2. Article 2 Paragraph (1)
The People's Consultative Assembly consists of members of the House of Representatives and members of the Regional Representative Council who are elected through general elections and further regulated by law.
3. Article 6A Paragraph (1)
The President and Vice President are elected in one pair directly by the people.
4. Article 19 Paragraph (1)
Members of the House of Representatives are elected through general elections.
5. Article 22C Paragraph (1)
Members of the Regional Representative Council are elected from each province through general elections

While the right to be elected is expressly regulated in the 1945 Constitution, as follows:

1. Article 27 Paragraphs (1) and (2)
 - a) All citizens have the same position in the law and government and are obliged to uphold the law and government without exception.
 - b) Every citizen has the right to a decent job and livelihood for humanity.
2. Article 28
Freedom of association and assembly, expressing thoughts orally and in writing and so on is stipulated by law.
3. Article 28D Paragraph (3).
Every citizen has the right to equal opportunities in government
4. Pasal 28A Import (3).
Everyone has the right to freedom of association, assembly and expression.

The determination of the candidacy threshold, especially for the president, known as the presidential threshold of 20% for seats in the House of Representatives and 25% of the national valid votes, cannot be separated from the right to be elected and voted. Pros and cons regarding whether or not it is effective in terms of strengthening the presidential system began to emerge due to the use of the presidential threshold in general elections. The initial purpose of the rule was to set a threshold as a method to select potential presidential and vice presidential candidates to compete in the upcoming elections. However, this rule is now seen as a deviation from the principle of democratic equality. The deviation of the principle of equality in question is to allow an exclusive agreement between the elites of political parties without involving the general public. Therefore, the people's sovereignty to participate is not fully respected and even tends to castrate their political rights to be able to nominate or vote for candidates (Abdul Munawarman & Anggun Novita, 2021).

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Another effect of the Presidential threshold itself is that it will only present the same presidential candidate without allowing the presence of other candidates. For example, in the 2014 and 2019 elections, only Prabowo and Jokowi were presidential candidates. On the contrary, the election law should actually facilitate the emergence of alternative leader candidates who aim to increase the participation and quality of leaders. But we see that the right to be a candidate has been limited by the presidential threshold regulation which has the potential to violate the constitutional guarantee of the freedom of citizens to build society and the state. In fact, the application of democratic electoral principles does have its limitations, however, the meaning of democracy that guarantees the rights and freedoms of citizens cannot be reduced by these restrictions. The right to vote, the right to be a candidate, and the right to propose a candidate are some of the rights guaranteed by the 1945 Constitution. If the purpose of running the presidential threshold is to improve the presidential system of government, then holding simultaneous elections is a step in that direction (Abdul Munawarman & Anggun Novita, 2021).

The latest regulation regarding the threshold for the nomination of presidential and vice presidential pairs is Article 222 of Law Number 7 of 2017 concerning General Elections which contains the Presidential threshold requirement of 20% support for the House of Representatives (DPR) seats or 25% of the national valid votes for the House of Representatives (DPR) Election, as stated in the article which reads:

Candidate pairs are proposed by Political Parties or Coalitions 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 House of Representatives or obtaining 25% (twenty-five percent) of the valid votes nationally in the previous election for members of the House of Representatives.

As stated in the explanation above, the presidential threshold has the potential to be contrary to Human Rights (HAM), especially the political right to vote and be elected in elections. Considering the meaning of Human Rights (HAM) itself which is a set of rights that are inherent in human beings from birth as a gift from God Almighty (A. Ubaedillah, 2003). Therefore, to find out more about whether the regulation completely eliminates political rights or is contrary to the constitution, the author has collected several informants from election organizers and political parties.

Based on the results of the researcher's interview with Joko Santoso, as the chairman of the Semarang City Gerindra DPC and also the Semarang City DPRD, the opinion that there is a rule regarding the presidential threshold made to have a meaning contained in it. Imagine if the candidacy for president and vice president is not limited by the presidential threshold rule, meaning that all citizens can register to be the candidate. This makes the ballot too many choices so that the public does not focus on their choice and the public cannot understand more deeply about the candidate's background. Precisely with the presidential threshold rule, political parties can develop because the party's cadre regeneration is going well. If this rule is eliminated, the role of political parties will also disappear. In fact, the constitution has mandated that the candidacy of the president and vice president must be through a political party or a combination of political parties (Joko Santoso, 2022).

The same thing was also expressed by Suharsono as the chairman of the Semarang City PKS DPD and the Semarang City DPRD, Suharsono argued that the right of citizens in general elections is the right to be elected and vote according to the legal mechanism. These rights have their limits and regulations, not the freest rights as possible. So if the law has certain provisions in this case the presidential threshold, then actually all citizens have the right and can run for President and Vice President, but in fulfilling these rights must go through the political party route. In essence, political rights in the sense that the right to be elected and vote are not reduced nor restricted, all rules regarding these rights have been regulated in the law and do not violate the 1945 Constitution (Suharsono, 2022).

The statements of the two informants show that there is a common view regarding the presidential threshold rule. The political rights of citizens, namely the right to vote and vote, have not been reduced, meaning that citizens' rights are still protected by the constitution. If a citizen wants to run for President and Vice President, it is required to go through a political party or a combination of political parties. Therefore, the political rights of citizens, especially the right to be elected in candidacy, will be fulfilled.

If we understand, the candidacy of the President and Vice President independently which is from the non-party group cannot be done. Since the beginning of the Indonesia constitution, namely the 1945 Constitution, it has mandated that the candidacy of the Presidential and Vice Presidential pairs must be through a political party or a combination of political parties, as stated in Article 6A paragraph (2) of the 1945 Constitution. The presidential threshold is not present to reduce these political rights, but it is a rule that is further regulated in the requirements for presidential and vice presidential candidacy.

The existence of the constitutional mandate and the presidential threshold rule, does not necessarily mean that citizens' political rights to run for president and vice president are simply lost. All citizens have the same opportunity to run for office, but by meeting certain criteria and requirements or mechanisms in the election. Citizens who want to run for office are required to have the support of a political party or a coalition of political parties to meet the threshold set in article 222 of law number 7 of 2017 concerning general elections.

The role of political parties is so important that it is often assumed that there will be no democracy without political parties. This is because, in addition to the institution of general elections, the executive, legislative, judiciary, and a free press, the formation of political parties is one of the important components in building a democratic system (Syamsuddin Haris, 2014). It can be seen that

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the position of political parties is very important in a democratic system, without a strong political party, there will be no strong democratic tone (Sebastian Salang, 2007).

Mark N. Hagopian said that a political party is an organization formed by using direct power or people's participation in elections to influence the form and character of public policy based on certain ideological principles and interests (Ichlasul Amal, 1996). Political parties initially aim to bring together diverse groups of people who share the same vision and mission to consolidate their perspectives. From this, it can be explained that a political party is an organized group whose members have orientations, values, and ideals. The goal of political parties is to realize these ideals through the implementation of a constitutional program to obtain political power and political position (Miriam Budiarto, 2008).

The definition of a political party according to Article 1 number 1 of Law Number 2 of 2011 concerning Amendments to Law Number 2 of 2008 concerning Political Parties is an organization that is national in nature and was formed by a group of Indonesia citizens voluntarily on the basis of the same will and ideals to fight for and defend the political interests of members, society, nation and state, as well as to maintain the integrity of the Unitary State of the Republic Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

Political parties are specifically mentioned four times in the 1945 Constitution, namely:

1. Article 6A Paragraph (2)

Presidential and Vice Presidential candidate pairs are proposed by political parties or a combination of political parties participating in the general election before the implementation of the general election.

2. Article 8 Paragraph (3)

If the President and Vice President die, resign, are dismissed, or are unable to perform their duties during their term of office at the same time, the acting presidential duties are the Minister of Foreign Affairs, the Minister of Home Affairs, and the Minister of Defense jointly. No later than thirty days thereafter, the People's Consultative Assembly shall hold a session to elect the President and Vice President from among the two pairs of candidates for President and Vice President proposed by a political party or a combination of political parties whose pairs of candidates for President and Vice President won the first and second most votes in the previous general election, until the end of their term of office

3. Pasal 22A Import (3)

Participants in the general election to elect members of the House of Representatives and members of the Regional House of Representatives are political parties.

4. Article 24C Paragraph (1)

The Constitutional Court has the authority to adjudicate at the first and last level whose decision is final to test the law against the Constitution, decide disputes over the authority of state institutions whose authority is granted by the Constitution, decide the dissolution of political parties and decide disputes about the results of general elections.

The rights of political parties have been regulated in Article 12 of Law Number 2 of 2011. The rights of the political party are:

1. Obtain equal, equal, and fair treatment from the state;
2. Organize and manage the household of the organization independently;
3. Obtain copyright on the name, emblem, and image mark of a political party in accordance with laws and regulations;
4. Participate in general elections to elect members of the House of Representatives, Regional House of Representatives, President and Vice President, as well as regional heads and deputy regional heads in accordance with laws and regulations;
5. Forming factions at the level of the people's consultative assembly, the people's representative council, the provincial people's representative council, the regency/city regional people's representative council in accordance with laws and regulations;
6. Submit candidates to fill the membership of the House of Representatives and the Regional House of Representatives in accordance with laws and regulations;
7. Propose the interim replacement of its members in the House of Representatives and the Regional House of Representatives in accordance with laws and regulations;
8. Propose the dismissal of its members in the House of Representatives and the Regional House of Representatives in accordance with laws and regulations;
9. Propose pairs of presidential and vice presidential candidates, candidates for governor and deputy governor, candidates for regents and deputy regents, and candidates for mayor and deputy mayor in accordance with laws and regulations;
10. Forming and owning a political party wing organization; and
11. Obtain financial assistance from the state revenue and expenditure budget/regional revenue and expenditure budget in accordance with laws and regulations.

Related to the presidential threshold, a group of people or political parties has the potential to lose their political rights. Moreover, the potential loss of these rights is to new political parties that have not yet gained seats in the House of Representatives and political parties that have participated in the election but have not reached the parliamentary threshold. Assuming we see Article 6A paragraph

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(2) of the 1945 Constitution textually means that every political party should be able to propose a pair of candidates for President and Vice President, including political parties that have just participated in the election. However, the ability of each party to propose candidates for President and Vice President can be limited by the provisions of the presidential threshold. Therefore, new political parties are forced to support existing candidates and vice presidents because they do not have the political power to express their desires or aspirations due to their positions that do not allow and do not meet the requirements to nominate. Actually, the meaning of the threshold or threshold in question is the minimum percentage rule for the election of the President and Vice President, not the threshold for candidacy. Regarding the provisions of the limit for determining the election of the president and vice president, it has been regulated in Article 6A paragraph (3) of the 1945 Constitution which explains that the presidential and vice presidential pairs, who get more than 50 percent of the total votes in the election with at least 20 percent of the votes in each province in more than half of the number of provinces in Indonesia, are inaugurated as President and Vice President.

If examined more deeply, the presidential threshold rule is actually related to the parliamentary threshold policy that replaces the electoral threshold. This 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 not cause the running government to experience difficulties in making policies with the legislature. However, 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 threshold of the presidential threshold should not harm certain groups of people, especially minorities. The determination of the presidential threshold must pay attention to the diversity of society reflected in political aspirations (Lutfil Ansori, 2017).

According to Joko Santoso, the rights of political parties in the presidential threshold rules must be reduced, especially for small parties that have few votes, especially those that do not pass parliament. But all through the process, if the party has an extraordinary cadre who has the potential to advance in the candidacy of President and Vice President, then how can the party try to form a coalition with other parties. So, if there are citizens who want to run for president but do not have a party, they will have difficulties (Joko Santoso, 2022). Because Article 6A of the 1945 Constitution requires presidential candidacy through political parties.

In contrast to Joko Santoso, Suharsono argued that the presidential threshold rule contained in law number 7 of 2017 is a political product, so the existence of the rule is considered to create quality democracy. Of course, from election to next election, there must be an improvement in the quality of the process and from the election results. This is an evaluation to the people's representatives in parliament together with the government in order to create a better election and it is necessary to carry out an evaluation from the previous year. Therefore, the presidential threshold was born as a form of evaluation of the last election. All need to adjust whether it is a citizen or a political party, because the vehicle of this rule is the vote of the political party and the seat of the political party in the general election (Suharsono, 2022)

The author analyzes that the presidential threshold rule reduces the rights of political parties to nominate for President and Vice President, but not in the sense of eliminating. Especially for the rights of new small parties or old parties that have not been able to enter parliament. This rule should be fulfilled by all parties who want to nominate the Presidential and Vice Presidential pairs, there is no special discrimination against certain parties and there is no special privilege for certain parties. Although new parties or old parties that do not meet these rules can form a coalition with other parties to support their candidates, the party that sits in Senayan has its own advantages because it meets the parliamentary threshold. So in relation to the right of political parties, they actually still have the same opportunity to nominate the president and vice president by joining and forming a coalition with other parties.

When running presidential and vice presidential elections, Indonesia generally has a filter if the election is carried out without the presidential threshold rule, namely the two-round system election mechanism. So no matter how many parties put forward candidates to compete in the general election, there are only two pairs of candidates with the most votes who advance in the next round to choose the presidential winner. We understand that using this two-round system will cause complexity in implementation, both operationally and administratively. Moreover, the trigger for the flourishing of political parties is only oriented towards the struggle for power, not the strengthening of the democratic system. This is what causes the misalignment of the ideals of simplifying political parties.

IV. CONCLUSIONS

The practice of the presidential threshold has existed since the enactment of the first presidential and vice presidential elections, namely in the 2004 general election. In the 2019 election, the figure was still the same, even though the law has been replaced with Law Number 7 of 2017. Article 222 states that candidate pairs are proposed by political parties or a combination of political parties participating in the election and have met the requirements to obtain at least 20% of the number of seats in the House of Representatives or 25% of the national valid votes in the previous general election of members of the House of Representatives. In the 2019 election, the legislative election and the presidential election were held simultaneously while maintaining the presidential threshold system. The simultaneity of the election in 2019 is based on Article 167 paragraph 3 of Law Number 7 of 2017 concerning Elections. Meanwhile, in 2019, the presidential threshold was used from the beginning along with the legislative election by referring

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to the results of the 2014 election. Regarding the existence of new political parties, they are still given the right to carry presidential and vice presidential candidates by being affiliated with a party or a coalition of supporting political parties, so that after the election a new political party can determine the position of its party in parliament, whether it is in the opposition to the government or a supporter of the elected president and vice president.

It is undeniable that the practice of the presidential threshold in Indonesia has received rejection from various elements of society. That until now there have been 35 (thirty-five) Constitutional Court Decisions on the presidential threshold test. All court decisions related to the issue of the threshold for the nomination of the President and Vice President by political parties or a coalition of political parties, basically the Court states that the threshold for the nomination of the President and Vice President is constitutional, while with regard to the size or size of the presidential threshold percentage, it is an open policy in the realm of law-making. The definition of open legal policy in the view of the Constitutional Court is a policy regarding the provisions in certain articles in the law which is the authority of the lawmakers. The implications of the Presidential threshold on the political rights of citizens and political parties do not necessarily lose these rights, but these rights become conditional. Citizens have the same opportunity to run for President and Vice President, but of course they must go through the requirements and election mechanism. Citizens must have the support of a political party or the support of a coalition of political parties as mandated by Article 6A of the 1945 Constitution. Meanwhile, for political parties in the candidacy of President and Vice President, especially new political parties or parties that do not meet the parliamentary threshold, they still have the same opportunity to run for office by joining and forming coalitions with other parties. Apart from the advantages and disadvantages of these rules, if the general election is held without the presidential threshold rule, then the two-round system election mechanism will be carried out. No matter how many candidates there are in the election, in essence, they will choose only two pairs of candidates to determine who will be the winner.

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