

## Application of The Presidential Threshold in Holding Simultaneous National Elections

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**Abstract:** Article 6A paragraph (1) of the 1945 Constitution explains "The president and vice president are elected in one pair directly by the people" and Article 6A paragraph (2) states that legal subjects who can nominate pairs of presidential and vice presidential candidates are political parties/aggregation of political parties. . The current mechanism for direct election of the president and vice president by the people is regulated in Law Number 7 of 2017 concerning General Elections which also contains the system for administering elections. Article 222 of Law Number 7 of 2017 provides conditions for political parties and a combination of political parties participating in the election to be able to nominate a pair of presidential and vice-presidential candidates who obtain 20% of the DPR seats or 25% of the national DPR election votes, which is then known as the presidential threshold. The existence of the presidential threshold norm has the consequence that the political parties participating in the election are not automatically able to nominate pairs of presidential and vice presidential candidates.

**Key Words:** Threshold, President, General Election.

### 1. INTRODUCTION:

The difference in treatment of the *presidential threshold* can be said to be a discriminatory rule and not in line with Article 27 Paragraph (1) of the 1945 Constitution. The subject specified in Article 6A paragraph (2) is a political party participating in the election, so all parties should Both "new" political parties that have been declared election participants and "old" political parties that have also been declared election participants can both put forward candidates for president and vice president either alone or together. result, the *threshold* based on data or calculations taken in the previous election gives different treatment to "new" political parties that did not contest the previous election so that they cannot exercise their rights to propose candidates for president and vice president.

In reality, the Constitutional Court as *the guardian of the constitution* in several decisions including Decisions Number 53/PUU-XV/2017 and 70/PUU-XV/2017 refused to state that setting the threshold (*presidential threshold*) as a norm violates the constitution (*unconstitutional*) because is an open policy. No matter how bad the rules made by legislators as long as they are an open policy (*open legal policy*), the Constitutional Court is unlikely to cancel them.

### 2. THEORITICAL FRAMEWORK:

#### a. Theory of Legal Purposes

The concept of legal objectives is justice, benefit, and legal certainty.

#### b. Political Theory of Law

Padmo Wahjono said that legal politics is the basic policy that determines the direction, form, and content of the law to be formed[1].

#### c. Constitutional Theory

According to KC Wheare, the constitution is a written document that explains the entire system of government of a country, the set of rules that form and regulate government.[2]

#### d. Theory of Hierarchy

Norms Basic norms which are the highest norms in a system of norms are no longer formed by a higher norm, but those basic norms are determined in advance by society as a basic norm which is a hanger for the norms below it, so that a norm the basis is said to be pre-supposed.[3]

- e. Democratic Theory of General Elections  
General elections are closely related to a democratic system in which the government comes from the people, for the people and by the people.
- f. Theory of Rationality  
This theory focuses on determining individual choices (*individual methodological*).

### 3. LITERATURE REVIEW:

The purpose *business judgment rule* limits of authority and is carried out with great care and good faith.[4]

The David H. Balley stated that the focus of corruption lies in the existence of an element of abuse of authority which results in financial losses to the State and society.[5]

### 4. METHOD:

The method used in this study is a normative juridical approach, which is an approach that is focused on studying and researching legal material with reference to legal norms contained in laws and regulations, court decisions and legal norms that exist in society.[6]

### 5. DISCUSSION:

Reconsidering the ideal form of implementing the simultaneous general elections is the abolition of setting the *presidential threshold*. However, the legislators have a different opinion so that they make the norm of Article 222 which contains the setting of *presidential thresholds*.

### 6. ANALYSIS:

#### A. Presidential and Vice Presidential Nomination Thresholds in Simultaneous Elections

The design of the application of the *presidential threshold* in Article 222 of the Election Law, appears to be inconsistent and tends to collide, plus the holding of presidential elections in countries with presidential governments, especially and especially in the United States, is not well known. the term *presidential threshold*. It can be concluded that *the presidential threshold* as a norm is a modification instrument made by legislators in Indonesia only and is not a principle or basic characteristic in a presidential system of government.

#### B. Rationality of the Nomination Thresholds for President and Vice President

Norm *presidential threshold* in Article 222 of Law Number 7 of 2017 concerning General Elections is an irrational legal norm because it crashes and conflicts with the values in the basic rules of the constitution starting from Article 6A paragraph (2) concerning the constitutional rights of political parties to election parties, Article 28D paragraph (1) regarding equal treatment before the law and norm *presidential threshold* will also violate the principles of democratic elections that the constitution aspires to.

#### C. Constitutionality of the Application of the Nomination Thresholds for President and Vice President In the Simultaneous Election

With the holding of presidential and vice-presidential elections simultaneously with legislative elections, there is no longer a constitutional need to standardize and apply thresholds for presidential and vice-presidential candidacy. Coupled with *the "confession"* of the Constitutional Court saying that the *presidential threshold* norm is a bad norm, then why do we still maintain bad norms which also have the potential to violate the constitution. For this reason, the role of experts and law academics is needed to assist legislators in exploring, studying in order to find formulations, *designs* or designs that are appropriate and relevant for the vision and spirit of purifying the presidential government system in amendments to the 1945 Constitution in terms of holding general elections norm *presidential threshold*.

## 7. CONCLUSION:

From the discussion as explained earlier, several conclusions can be drawn, including:

- The threshold for presidential and vice presidential candidacy (*presidential threshold*), in essence, is the threshold level required by political parties or a combination of political parties participating in elections in the form of votes or seats in the legislature, to be able to nominate and/or propose pairs of presidential candidates and vice President.
- The reason for the normalization of *the presidential threshold* is to strengthen and purify the presidential system of government in Indonesia which is a political law from changes to the 1945 Constitution (amendments of 1999-2002).
- Norm *presidential threshold* is an unconstitutional norm.

## REFERENCES:

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