

JURIDICAL ANALYSIS OF IMPLEMENTING THE PRESIDENTIAL THRESHOLD IN THE PRESIDENTIAL ELECTION OF INDONESIA

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ABSTRACT

Since issuing the Constitutional Court Decision Number 14/PUU-XI/2013, the general election design must be carried out simultaneously between the election of legislative members and the election of the President and Vice President (Pilpres). Article 6A Paragraph (2) of the 1945 Constitution mandates that pairs of candidates for President and Vice-President are proposed by political parties or coalitions of political parties taking part in the general election prior to implementing the general election. Accordingly, in order to strengthen the presidential system, pairs of candidates proposed in the presidential election are required to meet the "presidential threshold," which essentially limits the rights of political parties in proposing presidential and vice-presidential candidates. This study analyzes the relevance of presidential threshold requirements elections simultaneously. The research method used is normative juridical, using an approach to the application of laws and an analytical approach. This study shows that the application of the presidential threshold that must be met by political parties or a combination of political parties in carrying out the presidential and vice-presidential candidate pairs in the simultaneous general election is less relevant and limits the rights of political parties. In addition, the political party that wins the majority vote has strong dominance to pressure other parties in determining the candidate. Although it does not have high dominance, it still has substantial authority to nominate it.

Keyword: *General Election, Presidential Threshold.*

A. INTRODUCTION

Indonesia is a legal state which means that all forms of state administration must comply with legal provisions, including filling a state position¹. Therefore, the concept of the rule of law provides the basic regulatory framework for the concept of a state which is not only related to the existence of restrictions on the actions or actions of

¹ Republik Indonesia, Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Pasal 1 Ayat (1).



Juridical Analysis of Implementing The Presidential Threshold in the Presidential Election of Indonesia

the government as a state organ but also as a means of legal protection for citizens from arbitrary actions or actions of the government.²

According to A. S. S. Tambunan, as quoted by the Tutik Quarterly Point, he stated that the election to implement people's sovereignty is essentially a manifestation of the people's political rights. However, on the other hand, it is part of the delegation of people's rights to their representatives in order to administer the government.³

In any part of the world where elections are held, political parties have an important role in bridging the people's interests and power. Through elections, political parties are given the right to nominate pairs of candidates for President and Vice President⁴. However, in carrying out pairs of candidates for President and Vice President, political parties must fulfil some provisions so that not all parties can freely nominate candidates for president and vice president. In Indonesia, for example, the right of political parties to nominate candidates for president and vice president is required to meet the "presidential threshold."⁵The presidential threshold is defined as the minimum requirement for proper national vote support that must be met by political parties or coalitions of political parties in an election to nominate candidates for President and Vice President.

²Aminuddin Ilmar, *Membangun Negara Hukum Indonesia* (Cet. I; Makassar: Phinatama Media, 2014), p.2.

³ Titik Triwulan Tutik, *Konstruksi Hukum Tata Negara Indonesia Pasca Amandemen UUD 1945*, (Cet.I; Jakarta: Kencana Prenada Media Group, 2011), p. 331.

⁴ Republik Indonesia, Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Pasal 6A Ayat (2).

⁵*Presidential Threshold* bukanlah syarat mutlak dari variable (komponen) sistem pemilu, tetapi hanya variable pilihan yang boleh atau tidak digunakan. Adapun variable sistem pemilu yang bersifat mutlak, yaitu (i) *distrik magnitude*, (ii) *candidacy*, (iii) *Balloting*, (iv) *Electoral formula*. Sedangkan yang bersifat pilihan adalah *threshold dan waktu penyelenggaraan pemilu*

The implementation of the accommodation of the presidential threshold idea is contained in Article 222 of Law no. 7 of 2017 concerning General Elections⁶, which stipulates that political parties wishing to nominate presidential and vice-presidential candidates must meet the presidential threshold requirements, namely obtaining 25% (twenty-five percent) of the valid national votes in the previous DPR election or obtaining seats of at least 20% (twenty percent) of the total seats in the House of Representatives (DPR). If the political parties participating in the election do not meet the presidential threshold requirements, then to nominate the presidential and vice-presidential candidate pairs, these parties must form a coalition.

With the positiveness of the presidential threshold requirement in the 2017 election law, it is certainly contrary to Article 6A paragraph 2, which gives every political party participating in the election to nominate candidates for President and Vice President without having to meet the presidential threshold requirements. In addition, the potential also closes the door for the nation's best figures who have a track record and high electability to be nominated because the presidential threshold requirement opens the faucet for buying and selling candidates (candidacy buying) and becomes a means of legitimacy for the party winning the majority vote in getting rid of other candidates, before the election.

B. RESEARCH METHOD

This type of research is classified as normative legal research, which is interpreted as a process of activity to find the truth based on the logic of legal science from the normative side.⁷The approach used is a statutory approach and an analytical

⁶ Lahirnya UU pemilu tahun 2017 merupakan tindak lanjut atas keluarnya putusan MK No. 14/PUU/XI/2013 yang memerintahkan dilaksanakan pemilu serentak antara pemilu legislative dan pemilu presiden.

⁷ Hardijan Rusli, "Metode Penelitian Hukum Normatif", Law Review: Fakultas Hukum Universitas Pelita Harapan, Vol. V, No. 5, Maret 2006, p. 32.

Juridical Analysis of Implementing The Presidential Threshold in the Presidential Election of Indonesia

approach.⁸In collecting data, the authors use document studies by conducting library searches on laws, books, journals, legal expert opinions, and or research reports related to the minimum limit for nominations for President and Vice President in the General Election. The research approach used in this study is statutory, a conceptual approach, and an analytical approach.⁹

C. DISCUSSION

As the *staatsfundamentalnorm* (basic norms of the state) and *recht idee* (legal ideals), Pancasila has positioned itself as the nation's philosophy of life, which also animates every step or effort to find a democratic system that is suitable for the Indonesian nation.¹⁰Accordingly, as the embodiment of a democratic legal state, Indonesia chooses a republican form of government, led by the President and Vice President, who are both head of government and head of state (Article 4 Paragraph 1) who are directly elected by the people (Article 6A Paragraph (1)) of the 1945 Constitution.

Historically, the first general election in Indonesia was held in 1955 to fill seats in the House of Representatives and elect candidates for the Constituent Assembly. This body will be tasked with drafting and formulating a new constitution. Subsequently, during the Soeharto regime (election 1971-1997) and the first general election during the reformation period (Election 1999), elections were held to fill the People's Representative Council seats. In the 2004 election or the second post-reformation 1998 election, for the first time, the Indonesian people used their voting rights in addition to electing candidates for members of the House of Representatives,

⁸Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkatan*, (Cet. XVII; Jakarta: Rajawali Pers, 2006), p.15.

⁹Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkatan*, (Cet. XVII; Jakarta: Rajawali Pers, 2006), p.15.

¹⁰ Ramon Kaban, "Perkembangan Demokrasi di Indonesia", *Jurnal Perspektif*, Vol. VII, No. III, Tahun 2000, p. 158.



as well as to elect the President and Vice President directly (Election 2004). This can not be separated from the results of the third amendment to the 1945 Constitution. For more details, the author will describe how the post- 1999 general election was held.

1. Implementation of the 2004 general election

From a historical perspective, the 2004 general election was a milestone in implementing direct elections for president and vice president by the people. For the issue of the presidential threshold, each pair of presidential and vice-presidential candidates is required to be proposed by a political party or a combination of political parties that obtain 15% (fifteen percent) of the total seats in the DPR or 20% (twenty percent) of the nationally valid votes in the election General members of the House of Representatives.¹¹ However, in the transitional rules, there is a provision that specializes in the 2004 presidential and vice-presidential elections, which allows political parties to nominate pairs of candidates if they have met the requirements for obtaining votes in the legislative elections (DPR) of at least 5% (five percent) of valid national votes or 3% (three percent) of the total seats in the DPR.¹²

With the provisions mentioned above, during the presidential and vice-presidential elections in 2004, there were five pairs of contestants for the presidential and vice-presidential candidates. The five candidate pairs, namely (1) Megawati Soekarno Putri paired with Ahmad Hasym Muzadi with the supporting party from the coalition of the Indonesian Democratic Party of Struggle (PDI-P) and the Prosperous Peace Party. (2) Hamzah Haz-Agum Gumelar supported by the United Development Party (PPP), (3) Amin Rais-Siswono Yudo Husodo supported by a coalition of four

¹¹ Pasal 5 Ayat 4 Undang-Undang Republik Indonesia Nomor 23 Tahun 2003 tentang Pemilihan Umum Presiden dan Wakil Presiden

¹² Aturan peralihan Undang-Undang Republik Indonesia Nomor 23 tahun 2003 tentang Pemilihan Presiden dan Wakil Presiden

Juridical Analysis of Implementing The Presidential Threshold in the Presidential Election of Indonesia

parties, namely the National Mandate Party (PAN), the Prosperous Justice Party (PKS), the Indonesian National Party (PNI) and the United Indonesia Party, (4) Wiranto-Salahuddin Wahid supported by the Golkar Party (Golkar), and (5) Susilo Bambang Yudhoyono-Muhammad Yusuf Kalla supported by a coalition of three parties, namely Parati Demokrat, Crescent Star Party (PBB), the Indonesian Justice and Unity Party (PKPI). To see the map of votes for supporting parties in meeting the presidential threshold requirements, here is the data for each party's vote in the 2004 DPR election

Tabel 1. Results of the 2004 National Vote Gain Recapitulation And the Number of Political Party Seats Acquired in the DPR RI

Vote Ranking	Political Parties	Votes		Number of seats in DPR RI
		Amount	Percentage	
1	Partai Golongan Karya	24.480.757	21,58	128
2	Partai Demokrasi Indonesia Perjuangan	21.026.629	18,53	109
3	Partai Kebangkitan Bangsa	11.989.564	10,57	52
4	Partai Persatuan Pembangunan	9.248.764	8,15	58
5	Partai Demokrat	8.455.225	7,45	57
6	Partai Keadilan Sejahtera	8.325.020	7,34	45
7	Partai Amanat Nasional	7.303.324	6,44	52
8	Partai Bulan Bintang	2.970.487	2,62	11
9	Partai Bintang Reformasi	2.764.998	2,44	13
10	Partai Damai Sejahtera	2.414.254	2,13	12
11	Partai Karya Peduli Bangsa	2.399.290	2,11	2
12	Partai Keadilan dan Persatuan Indonesia	1.424.240	1,26	1
13	Partai Persatuan Demokrasi Kebangsaan	1.313.654	1,16	5
14	Partai Nasional Banteng Kemerdekaan	1.230.455	1,08	1
15	Partai Patriot Pancasila	1.073.139	0,95	0
16	Partai Nasional Indonesia Marhaenisme	923.159	0,81	1
17	Partai Persatuan Nahdlatul Ummah Indonesia	895.610	0,79	0
18	Partai Pelopor	878.932	0,77	2
19	Partai Penegak Demokrasi Indonesia	855.811	0,75	1
20	Partai Merdeka	842.541	0,74	0
21	Partai Sarikat Indonesia	679.296	0,60	0
22	Partai Perhimpunan Indonesia Baru	672.952	0,59	0
23	Partai Persatuan Daerah	657.916	0,58	0
24	Partai Buruh Sosial Demokrat	636.056	0,56	0



Total	113.462.414	100	550
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Source: Central Bureau of Statistics, 2004 Legislative Election Results¹³

Table one above shows how the map of political party vote supports fulfilling the presidential threshold requirements in proposing pairs of presidential and vice-presidential candidates for the 2004 election. (1) Megawati Soekarno Putri, paired with Ahmad Hasym Muzadi, who was supported by a two-party coalition, received support 18.5% (eighteen points five percent) votes nationally valid or got 109 seats in DPR. From this vote, the PDI-P actually fulfilled the presidential threshold requirements but still chose to form a coalition with the Prosperous Justice Party, which received only 2.13% (two-point thirteen percent) of valid national votes or only 12 seats in the DPR.

The Hamzah Haz-Agum Gumelar pair was promoted by the United Development Party (PPP) and did not choose to form a coalition with any party, because PPP in a normative calculation as stated in the transitional provisions of the Presidential Election Law, has been fulfilled, namely obtaining national legal support of 8.15% (eight points five). twelve percent) or 58 seats in the DPR. Likewise with Wiranto-Salahuddin Wahid, who was promoted by the Golkar Party, which did not choose a coalition with any party because they felt confident as the party that won the 2004 legislative elections with the number of valid national votes supporting 21.58% (twenty one point five eight per cent) or 128 seats in the DPR.

To compare, the Amin Rais-Siswono Yudo Husodo is backed by a coalition of four parties, the National Mandate Party (PAN), with a total of 6.4% (six points 44%) or 52 seats in the DPR, the Prosperous Justice Party (PKS) with 7, 34% (seven-point thirty-four per cent) or 45 seats in the DPR, the Indonesian National Party (PNI) with 0.81% (zero point eight one per cent) votes or one seat in the DPR, and the United Indonesia Party.

¹³<http://partai.info/pemilu2004/hasilpemilulegislatif.php>, accessed on May 30, 2020.

Juridical Analysis of Implementing The Presidential Threshold in the Presidential Election of Indonesia

Susilo Bambang Yudhoyono - Muhammad Yusuf Kalla is supported by three parties, namely the Democratic Party with 7,45% (seven-point four-five percent) or 57 seats in the DPR the Crescent Star Party (PBB) with the number of valid vote supports. 2, 62% (two point six two percent) or 11 seats in the DPR, and the Indonesian Justice and Unity Party (PKPI) with 1,26% (one point twenty-six percent) valid votes or only getting one seat in the DPR. DPR.

With the existence of five contestants for the presidential and vice-presidential candidate pairs in the 2004 general election, the implementation had to take two rounds, because in the first round of the 2004 presidential election. However, the pair Susilo Bambang Yudhoyono - Muhammad Yusuf Kalla were superior to the other pairs, in the percentage of votes, there was no pair Candidates with more than 50% vote support include the pair Susilo Bambang Yudhoyono - Muhammad Yusuf Kalla. Therefore, in the absence of a winner in the first round of presidential elections, the second round of presidential elections must be carried out by reducing the number of participants from five candidate pairs to only two pairs of candidates, namely the pair of candidates who received the first and second-highest number of votes. From this narrowing of candidate pairs, those entitled to take part in the second round of presidential elections are the pair Susilo Bambang Yudhoyono - Muhammad Yusuf Kalla and the pair Megawati Soekarno Putri with Ahmad Hasym Muzadi.

In the second round of the 2004 presidential election, the pair Susilo Bambang Yudhoyono - Muhammad Yusuf Kalla outperformed the pair Megawati Soekarno Putri with Ahmad Hasym Muzadi and was declared the winner of the 2004 presidential election. The number of votes from the two pairs of candidates, namely Susilo Bambang Yudhoyono - Muhammad Yusuf Kalla, received the popular vote of 69,266,350 or 60.62% (sixty-point six-two percent) of the valid votes nationally. As for



Mubarika Rahmayanty, Irfan Amir

the candidate pairs, Megawati Soekarno Putri and Ahmad Hasym Muzadi, only 44,990,704 votes were obtained or only 39.98% (thirty-nine point nine percent) of the valid national votes. If these results are mapped at the provincial level, out of 32 provinces in Indonesia, the pair Susilo Bambang Yudhoyono - Muhammad Yusuf Kalla excel in 28 provinces, while the pair Megawati Soekarno Putri and Ahmad Hasym Muzadi only excel in 4 provinces.

By looking at the results of the 2004 presidential election and associated with the presidential threshold requirement in the presidential system, it can be illustrated that the election of the pair Susilo Bambang Yudhoyono - Muhammad Yusuf Kalla as president of Indonesia positioned him as a minority president who, in terms of political power in parliament, practised a presidential system of government with only initial support. 11, 33% of the vote in the DPR. In addition, from the point of view of the implementation of the five contestants for the presidential and vice-presidential candidate pairs in the 2004 general election, it can be seen how the influence of the presidential threshold requirement in narrowing the number of candidate pairs so that in its implementation, the presidential and vice-presidential elections in 2004 must take place with a two-round system so that the 2004 election costs also cost up to Rp. 3.32 Trillion.¹⁴

2. Implementation of the 2009 general election

The 2009 general election was based on a new law. For the presidential and vice-presidential elections, the juridical basis refers to the Law of the Republic of Indonesia Number 48 of 2008 concerning the General Election of the President and Vice President. As for the legislature's election, it refers to the Law of the Republic of Indonesia Number 10 of 2008.

¹⁴<https://www.liputan6.com/news/read/49363/biaya-pemilu-2004-mencapai-rp-332-triliun>, diakses hari Rabu, 2 Juni 2021 pukul 07.49 Wita

Juridical Analysis of Implementing The Presidential Threshold in the Presidential Election of Indonesia

In the juridical instrument of the 2009 general election, there is a new legal provision that accommodates the idea of Parliamentary Threshold and Presidential Threshold but, on the one hand, still maintains the Electoral Threshold in legislative elections because it is still considered effective. The electoral threshold is defined as a condition determined for political parties participating in the current election (now) to be included in the next election. Therefore, with the electoral threshold, political parties participating in the 2004 elections can be included and determined to be participants in the 2009 elections without factual verification by the KPU with the stipulation that after the 2004 elections, political parties participating in the 2004 elections at least get at least 3% (three percent) of the DPR seats or obtain at least 4% (four percent) of the number of seats in the Provincial DPRD spread over at least (half) of the number of provinces throughout Indonesia, or obtain at least 4% (four percent) of the total seats in $\frac{1}{2}$ (four percent) half) the number of districts/cities throughout Indonesia.¹⁵

For political parties that do not meet the requirements as mentioned above, to become participants in the 2009 general election, they can choose the following methods, such as (i) joining a political party that meets the electoral threshold requirements, (ii) joining other parties that do not meet the electoral threshold requirements. Threshold, which then uses the name and image of one of the parties to join so that it meets the minimum number of seats, (iii) joins another party that does not meet the electoral threshold and then forms a new party with a new name and image so that it meets the minimum number of seats or has met the minimum number of seat requirements for verification by KPU as stipulated in the law.

The accommodation of the Electoral Threshold in the 2009 legislative general election had an impact on the number of political parties participating in the election.

¹⁵ Republik Indonesia, Undang-Undang Republik Indonesia Nomor 10 Tahun 2008 tentang Undang-Undang Pemilihan Legislatif Pasal 315.

As a result, the number of political parties participating in the 2009 general election was 34 political parties with details of 18 new political parties that passed factual verification by the KPU and 16 political parties participating in the 2004 elections, which automatically passed the verification because they met the Electoral Threshold provisions. Moreover, below, the following is a recapitulation of the vote acquisition of 9 political parties participating in the 2009 general election, which had the highest votes.

Table 2. Results of the 2009 General Election National Vote Recapitulation and the Number of Political Parties Seats gained in the DPR RI

No.	Political Parties	Votes (%)	Amount Seats
1.	Partai Demokrat	20.85	148
2.	Partai Golongan Karya	14.45	107
3.	Partai Demokrasi Indonesia Perjuangan	14.03	94
4.	Partai Keadilan Sejahtera	7.88	57
5.	Partai Amanat Nasional	6.01	45
6.	Partai Persatuan Pembangunan	5.32	35
7.	Partai Kebangkitan Bangsa	4.94	31
8.	Partai Gerakan Indonesia Raya	4.46	26
9.	Partai Hati Nurani Rakyat	3.77	17

Source: Central Bureau of Statistics, 2009 Election Results¹⁶

Looking at the results of the recapitulation of the vote acquisition for legislative members in the 2009 general election and related to the presidential threshold provisions which require that pairs of presidential and vice-presidential candidates must be carried by a political party or a combination of political parties that have at least 20% of the total seats in the DPR or obtain votes at least 25% (twenty-five percent) of the number of valid national votes, it can be seen that no political party can nominate a presidential candidate, except by forming a coalition with other parties.

With the implementation of the presidential threshold, fewer pairs of candidates participated in the 2009 election than the pairs of presidential and vice-

¹⁶<https://www.bps.go.id/statictable-hasil-pemilu-tahun-2009.html>, accessed on May 30, 2020.

Juridical Analysis of Implementing The Presidential Threshold in the Presidential Election of Indonesia

presidential candidates in the 2004 presidential election. For the 2009 presidential election, only three pairs of candidates were promoted by a coalition of political parties participating in the election, such as the pair Susilo Bambang Yudhoyono. - Boediono with the main supporting parties from the Democratic Party, the United Development Party (PPP), and the Prosperous Justice Party (PKS). The Muhammad Yusuf Kalla-Wiranto pair with two supporting parties, namely the Golkar Party and the People's Conscience Party (Hanura), and the Megawati Soekarno Putri-Prabowo Subianto pair promoted by the coalition of the Indonesian Democratic Party of Struggle and the Greater Indonesia Movement Party (Gerindra).

With three pairs of presidential and vice-presidential candidates participating in the presidential and vice-presidential election contests, the Susilo Bambang Yudhoyono-Boediono pair were able to gain majority support from the people compared to the other two pairs of candidates. The percentage of vote acquisition reached 60.8% (sixty-point eight percent) of valid national votes so that the presidential election only lasted one round.

3. Implementation of the 2014 general election

The juridical basis for holding the 2014 general election is also inseparable from the practice of disassembling the design of the general election system. However, what has changed is only related to the juridical basis for implementing legislative elections. The juridical basis for holding the presidential election is still based on the previous law (2009 presidential election). However, there is one thing that needs to be known together that in 2003 the Constitutional Court decided that the holding of legislative elections and presidential elections, which were held separately, was an election management practice that was not following the constitutional mandate, therefore through its decision, the court ordered that legislative and presidential elections be held separately. As a result, presidential elections are held simultaneously (simultaneously). However, due to the close distance between the issuance of the



Mubarika Rahmayanty, Irfan Amir

Constitutional Court's decision and the 2014 election schedule, the implementation of the Constitutional Court's decision was only realized in the 2019 simultaneous elections.

As the author described above, the legislative and presidential elections held as previously practised (2004 and 2009 elections) were constitutional and did not conflict with the constitution. Therefore, the 2014 election comprises two before the presidential election is held. A legislative election is held in order to determine which political party taking part in the election meets the presidential threshold requirements. It can carry the presidential and vice-presidential candidate pairs, both individually and individually alone or in a coalition with other political parties. Regarding the presidential threshold requirement in the 2014 presidential election, it is the same as the presidential threshold in the 2009 presidential election, namely the presidential and vice-presidential candidate pairs must be carried by a political party or a combination of political parties that have at least 20% of the total seats in the DPR or obtain at least 25 votes. % (twenty-five percent) of the number of valid national votes shows that no political party can nominate a presidential candidate except by forming a coalition with other parties.

Moreover, the following result from the votes obtained by ten political parties participating in the 2014 election that succeeded in sending their representatives to sit in the DPR because they met the parliamentary threshold of 3.5% while the other two parties, the Crescent Star Party (PBB) and the Justice and Unity Party (PKPI) had to be eliminated because unable to meet the requirements of the parliamentary threshold. The Parliamentary Threshold is defined as the minimum requirement of nationally valid vote support obtained by political parties participating in the election to be included in the DPR distribution. For the 2014 legislative elections, the parliamentary threshold is set at 3.5%.



Juridical Analysis of Implementing The Presidential Threshold in the Presidential Election of Indonesia

Table 3. Results of the 2014 General Election National Vote Recapitulation And the Number of Political Parties Seats gained in the DPR RI

No.	Political Parties	Votes (%)	Amount Seats (%)
1.	Partai Demokrat	10.19	10.89
2.	Partai Golongan Karya	14.75	16.25
3.	Partai Demokrasi Indonesia Perjuangan	18.95	19.46
4.	Partai Keadilan Sejahtera	6.79	7.14
5.	Partai Amanat Nasional	7.59	8.75
6.	Partai Persatuan Pembangunan	6.53	6.96
7.	Partai Kebangkitan Bangsa	9.04	8.39
8.	Partai Gerakan Indonesia Raya	11.81	13.04
9.	Partai Hati Nurani Rakyat	5.26	2.86
10.	Partai Nasdem	6,72	7, 11

Source: Central Bureau of Statistics, 2014 Election Results¹⁷

From Table 3 above, the results of the legislative elections in the 2014 general election show that none of the political parties that meet the presidential threshold requirements and can nominate a candidate pair, the political parties participating in the election are required to form a coalition between parties in order to nominate a candidate pair. From the coalition between parties participating in the election, only two coalition axes were formed: the Indonesian Democratic Party of Struggle (PDIP), Nasdem Party, Hanura Party, PKB and PKP, which formed the Great Indonesia coalition with the candidate pair of Joko Widodo-Muhammad Jusuf Kalla. This is because, on the national political stage, Joko Widodo was initially not a national political figure and the head of a political party like the presidential candidates in the previous elections. Meanwhile, Muhammad Jusuf Kalla is the former chairman of the Golkar Party and was elected vice president during the Susilo Bambang Yudhoyono administration.

The Gerindra, PAN, Golkar, PKS, and PBB parties chose to form a joint coalition and called it the Red and White coalition. In contrast to the presidential and vice-presidential candidates from the Great Indonesia coalition, the Red and White coalition carries the Prabowo Subianto-Hatta Rajasa pair, which are both heads of

¹⁷<https://www.bps.go.id/statictable-hasil-pemilu-tahun-2009.html>, accessed on 21 Juni 2020.

Mubarika Rahmayanty, Irfan Amir

political parties, namely Prabowo Subianto as chairman of the Gerindra Party and Hatta Rajasa as chairman of the National Mandate Party (PAN).

From holding the presidential and vice-presidential elections held in 2014, the results show that the candidate pairs proposed by the coalition parties who come from the party chairman's background do not guarantee to win the election. This is evident from the victory of the Joko Widodo-Muhammad Jusuf Kalla pair, who did not serve as party chairman at all. Nevertheless, this pair succeeded in obtaining the support of the people's vote with a percentage of 53.15% (fifty-three-point one five percent) votes.

4. Implementation of 2019 general election

In contrast to the design for holding elections in 2004, 2009, and 2014 elections, organizing the 2019 elections were carried out simultaneously between the legislative and presidential elections. The juridical basis is the Constitutional Court Decision Number 14/PUU-XI/2013, which was then followed up with the issuance of the Law of the Republic of Indonesia No. 7 of 2017 as the basis for holding the 2019 simultaneous elections. However, in the Election Law, the provisions regarding the presidential threshold are still accommodated and maintained through the provisions stipulated in Article 222, stipulating that the previous election results (2014 election) become the reference for the presidential threshold requirement general election simultaneously.

As affirmed in Article 222 of the Election Law, the normative provisions of the presidential threshold have violated the rights of public politics because this provision will nullify the opportunity for national political figures to be promoted by political parties not meet the presidential threshold requirements. According to Effendy Ghazali's view in his petition for Judicial Review at the Constitutional Court, he stated that in the context of a democratic system and political choices, the people should be presented with various choices of leaders, so the people can choose those candidate leaders who are considered to have electability, integrity and qualified capacity as

Juridical Analysis of Implementing The Presidential Threshold in the Presidential Election of Indonesia

leaders. Therefore, it is not even limited to the people's political choices through the presidential threshold scheme. In addition, the presidential threshold regarding the results of the 2014 legislative elections is also not relevant to be applied to the 2019 simultaneous elections because it will violate public political rights. Therefore, the public will never know if the votes they gave in the 2014 legislative elections will be used for political purposes in the 2019 simultaneous elections.¹⁸

As the interpreter and protector of the constitution in its decision, the Constitutional Court rejected the Judicial Review application submitted by Effendi Ghazali. The basis for the court's refusal is because it considers the presidential threshold to be an open legal policy area for forming laws (open legal policy) that aim to strengthen the presidential system. The point is, with the presidential threshold requirement in the election of the president and vice president, it provides a guarantee for the candidate pair that there will be support for political power in the DPR if elected, and of course, will provide strong political support in organizing the wheels of government. In essence, the presidential threshold aims to avoid the election of a minority candidate pair who does not have a strong political support base in the DPR because the risk of the government, if the president comes from a minority candidate pair, will certainly have negative implications for the discussion and approval of government programs in the DPR.¹⁹ For more clarity in understanding this issue, we must see how the results of the legislative elections would be if they were carried out separately from the presidential election. Furthermore, the following is the percentage of the general election results for legislative members in the 2019 general election.

¹⁸Kompas. "Effendi Ghazali Ajukan Uji Materi soal "Presidential Threshold"", <https://nasional.kompas.com/read/2017/09/18/23255461/effendi-ghazali-ajukanuji-materi-soal-presidential-threshold>, accessed on may 30,2020

¹⁹Rahmat Teguh Santoso Gobel, "Rekonseptualisasi Ambang Batas Pencalonan Presiden dan Wakil Presiden (*Presidential Threshold*) Dalam Pemilu Serentak", *Jurnal Jambura Law Review UNG*. Volume 1, Nomor 1, 2019, p. 96-97.



Table 4. Results of the 2014 General Election National Vote Recapitulation

Dan Jumlah Perolehan Kursi Partai Politik di DPR RI

No.	Political Parties	Votes (%)	Amount Seats (%)
1.	Partai Demokrasi Indonesia Perjuangan	19.33	22.30
2.	Partai Gerakan Indonesia Raya	12.57	13.59
3.	Partai Golongan Karya	12.31	14.81
4.	Partai Kebangkitan Bangsa	9.69	10.10
5.	Partai Nasional Demokrat	9.05	10.28
6.	Partai Keadilan Sejahtera	8.21	8.54
7.	Partai Demokrat	7.77	9.41
8.	Partai Amanat Nasional	6.84	7.67
9.	Partai Persatuan Pembangunan	4.52	3.31
10.	Partai Persatuan Indonesia	2.67	0
11.	Partai Berkarya	2.09	0
12.	Partai Solidaritas Indonesia	1.89	0
13.	Partai Hati Nurani Rakyat	1.54	0
14.	Partai Bulan Bintang	0.79	0
15.	Partai Garuda	0.50	0
16.	Partai Keadilan dan Persatuan Indonesia	0.22	0

Source: Central Bureau of Statistics, 2009-2019 Election Results²⁰

Based on table 4 above and concerning the Constitutional Court decision in Case Number 14/PUU-XI/2013, the results show that the presidential threshold requirement cannot be met by political parties participating in the election unless they form a coalition. Furthermore, suppose the submission of candidate pairs is not based on the results of the 2019 legislative elections (see table 4) but is still based on Article 222 and the Court Judge's Decision, which is based on the 2014 legislative elections. In that case, there is no political justice for the new parties participating in the simultaneous general election in proposing a pair of candidates and seem forced to join and join the coalition of parties formed based on the 2014 election. Likewise, with the opportunities for national leaders, because the presidential threshold provision has

²⁰<https://www.bps.go.id/statictable/pemilu-legislatif-tahun-2004-2019.html>, accessed on 20 Juni 2020.

Juridical Analysis of Implementing The Presidential Threshold in the Presidential Election of Indonesia

the potential to nullify the opportunity for the nation's best figures to be nominated so that this condition will, of course, lead to hidden transactional politics in the bargaining of the paircandidate to be proposed.

Refly Harun responded to this issue by stating that the presidential threshold requirement is a political ploy of the major parties, and its application does not follow proper logic. The reason for this is seen in the written Constitution (UUD 1945), in which the elected president's election was determined by 50% (fifty per cent) of the votes plus one and distributed over 20% (20%) of the province. Additionally, he considered the statement that the minimum limit was applied to strengthen the presidential system to be unproven.²¹

Political analyst Rocky Gerung also emphasized that the presidential threshold requirement had expired. PDIP politician Ardian Napitupulu conveyed another case that the threshold application was not the first time in general elections in Indonesia but had been implemented in previous general elections. The only difference is that the general election is carried out simultaneously between the presidential and vice-presidential elections.²²Tjahjo Kumolo also said that in the election of candidates for President and Vice President, they must obtain genuine support from the legislature members through political parties to create a strong regime.²³

²¹ Reporter Kompas, "Pengamat: Presidential Threshold Konspirasi Jahat Partai Besar", accessed on July 20, 2020.

²² Aditya Mardiasuti, detikNews, "Pro-Kontra Ambang Batas Capres 2019", accessed on July 16, 2020.

²³ Febian Januarius Kuwado, "Ini Alasan Pemerintah Dorong Presidential Threshold 20-25 Persen", Kompas.com, accessed on June 4, 2020



Mubarika Rahmayanty, Irfan Amir

By its previous decision (MK Decision No. 50/PUU-XII/2014), which later became PKPU Number 5 of 2019²⁴, the Constitutional Court affirmed that Article 159 Paragraph (1) of the Law of the Republic of Indonesia Number 42 of 2008 concerning Presidential Elections and The Vice President is conditionally unconstitutional, as long as the presidential election is only followed by two pairs of candidates for President and Vice President. In the sense that if two pairs of candidates only follow the presidential and vice-presidential elections, the KPU will be officially inaugurated and do not apply the requirement of a 20% (twenty percent) vote distribution percentage in each province, but only by looking at the 50% (five) votes. twenty percent) plus 1 (one).

This happened in the 2019 simultaneous general elections, where two pairs of candidates only followed the election of presidential and vice-presidential candidates. Rahmawati et al. also sued at the Supreme Court with Case Number 44P/HUM/2019, asserting that the results of the vote recapitulation from the KPU were invalid. The plaintiff argues that this violates Article 6A of the 1945 Constitution of the Republic of Indonesia and Law No. 7 of 2017 concerning General Elections. Under Article 3 Paragraph (7), PKPU Number 5 of 2019 states that if there are only two (two) pairs of candidates who receive the most votes, they will be inaugurated as President and Vice President. Despite this, the regulation does not have any binding legal force because it does not change the existing statutory regulations, the Law of the Republic of Indonesia No. 7 of 2017 concerning General Elections.²⁵

According to Suteki, there is a legal principle that the court's decision must be correct (*res judicata pro veritate habetur*), so the Supreme Court's decision Number

²⁴Tentang Penetapan Pasangan Calon Terpilih, Penetapan Calon Terpilih, Penetapan Perolehan Kursi, dan Penetapan Calon Terpilih dalam Pemilihan Umum.

²⁵ Putusan Mahkamah Agung Nomor 44P/HUM/2019 tentang Keabsahan Hasil Pemilu Presiden dan Wakil Presiden, p. 55-57.

Juridical Analysis of Implementing The Presidential Threshold in the Presidential Election of Indonesia

44P/HUM/2019 cannot annul the decision of the Constitutional Court Number 50/PUU-XI/2014. Hence, the lawsuit of Rahmawati et al. has legal consequences for the results of the 2019 Presidential and Vice-Presidential elections.²⁶

In a country that adheres to a presidential system, such as Indonesia, the existence of a presidential threshold rule that must be met does not provide justice to new political parties. So then, this action does not fulfil justice as stated by Allah in QS.

An-Nisa: 58:

إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا
بِالْعَدْلِ إِنَّ اللَّهَ نِعِمَّا يَعِظُكُمْ بِهِ إِنَّ اللَّهَ كَانَ سَمِيعًا بَصِيرًا ﴿٥٨﴾

Translation:

Indeed, Allah commands you to render trusts to whom they are due and when you judge between people to judge with justice. Excellent is that which Allah instructs you. Indeed, Allah is ever Hearing and Seeing.

This will narrow the opportunities for political parties and lead to transactional politics in determining the presidential and vice-presidential candidate pairs. Besides that, there is also the potential to raise nonvoters (abstaining) because they feel that the candidates for President and Vice President presented by political parties are not following what voters want; one of the contributing factors is that voters do not believe in political parties that carry candidates for President and Vice President.²⁷ Finally, citizens also need to have their voices heard in government processes, management, and day-to-day administration of the state.²⁸

²⁶ Reporter Telusur.co.id, "Penalaran Hukum Putusan MA NO.44P/HUM/2019 Terkait Keabsahan Hasil Pilpres 2019", accessed on 11 Agustus 2020 pukul 21:45 WITA.

²⁷ Bismar Arianto, "Analisis Penyebab Masyarakat Tidak Memilih dalam Pemilu", Jurnal Ilmu Politik dan Ilmu Pemerintahan, Vol. I, No. I, Tahun 2011, p. 59.

²⁸Samodra Wibawa, *Mengelola Negara*, (Cet.I; Yogyakarta: Penerbit Gava Media, 2012), p. 40-41.

D. CONCLUSION

In the presidential and vice-presidential general election system design, one variable that must be met before an election is held in the presidential threshold requirement that must be met by political parties or a combination of political parties that carry out the 2019 simultaneous general elections onwards. Article 222 of Law Number 7 of 2017 concerning General Elections stipulates that political parties or coalitions of political parties taking part in the general election that meet the requirements for obtaining seats at least 20% (twenty percent) of the total seats in the House of Representatives or getting 25% (twenty percent) five percent) of the valid national votes in the previous general election for House of Representatives members are entitled to nominate a president and vice-president candidates.

Thus, political parties that do not meet the minimum threshold or presidential threshold are not entitled to nominate candidates for President and Vice President unless in coalition with other parties. The impact is that besides limiting the rights of political parties in proposing candidates, it also eliminates the opportunity for the shop of the nation to be nominated by parties that do not meet the presidential threshold requirements so that this condition will also affect the emergence of transactional politics in determining pairs of presidential and vice-presidential candidates.

b. Suggestion

The presidential threshold for the nomination of President and Vice President should be abolished in the upcoming simultaneous general elections because implementing the Presidential threshold will limit the political rights of a person or political party that has not had a vote in the previous general election. If the minimum limit is still held, it will not be applied to the simultaneous general election between the legislature and the President and Vice President. However, legislators should look for more rational material to prevent conflicts that arise in the community and not at 20% (twenty percent) or 25% (twenty-five percent).

Juridical Analysis of Implementing The Presidential Threshold in the Presidential Election of Indonesia



Mubarika Rahmayanty, Irfan Amir

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Mubarika Rahmayanty, Irfan Amir

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