

Presidential Nomination in the Indonesian Legal System

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Abstract

The background to writing this article was oligarchic practices in the Presidential Election process of the Republic of Indonesia. This writing aims to determine the causes of oligarchic practices and the importance of restructuring the presidential nomination process in the General Election in Indonesia. This research uses normative juridical research by testing positive legal norms with various theories and provisions for drafting laws. From this research, it is known that the practice of oligarchy occurs because the requirement for presidential nominations must be through a political party, while the internal processes of political parties are often not transparent because decisions are often made only by elite groups or the general chairman. This is not in accordance with the spirit of deliberation and popular sovereignty as stated in the 4th Principle of Pancasila and UUD NRI 1945. Therefore, the provisions of Article 222 of Law No.7/2017 which contain provisions for presidential nomination must be made more stringent by including provisions for the nomination process that more transparent through opportunities for access and evaluation of the community as voters.

1. Introduction

The establishment objectives of Indonesia are articulated in the fourth paragraph of the Preamble of the Constitution of the Republic of Indonesia of 1945 (hereinafter referred to UUD NRI 1945). These objectives include protecting all citizens and the territory of the state, promoting welfare, fostering national intellectuality, and contributing to global order.¹ These objectives are carried out through the governance of the state based on the fundamental values of national life. These values are encapsulated in Pancasila, which serves as the foundation for all legal sources in Indonesia. Normatively, this statement is reaffirmed in the Republic of Indonesia Law Number 12 of 2011 concerning the Formation of Legislation (hereinafter referred to as Law No.12/2011). Article 2 specifically states that "Pancasila is the source of all legal sources of the state.

On the other hand, to achieve an ideal government, a governance system that does not solely rely on one authority is required. There needs to be a division of power among institutions that mutually control and balance each other (check and balances system)². However, the executive institution led by the president plays the most significant role in realizing the state's objectives. Therefore, the president must have a statesmanlike spirit oriented solely towards national interests. Article 6 paragraph (1) of the 1945 Constitution of the Republic of Indonesia has regulated the general requirements for presidential/vice-presidential candidates. Furthermore, paragraph (2) of the same article regulates other requirements stipulated in the law.

Throughout its history, the mechanism for appointing the president in Indonesia has undergone several changes. The President and Vice President of the Republic of Indonesia were first established during the session of the Preparatory Committee for Indonesian

¹ Muhammad Afdhal Askar, *BUKU HTN ISBN.Pdf*, ed. Muhammad Irfan, Pertama (Bengkalis: DOTPLUS Publisher, 2022).

² Sunarto, "Prinsip Checks and Balances Dalam Sistem Ketatanegaraan Indonesia," *Masalah-Masalah Hukum* 45, no. 2 (2016): 159, <https://doi.org/10.14710/mmh.45.2.2016.157-163>.

Independence (PPKI) on August 18, 1945. Subsequently, according to the 1945 Constitution of the Republic of Indonesia (UDU NRI 1945), the President and Vice President are appointed/established by the People's Consultative Assembly (MPR). Following the third amendment of the 1945 Constitution of the Republic of Indonesia in 2001, the President and Vice President are directly elected by the people. This provision was first implemented through direct Presidential/Vice Presidential Elections in 2004.

Through the third amendment of Article 6A clause (2) UDU NRI 1945 also stipulates that the nomination of the presidential and vice-presidential candidates is submitted by political parties or a coalition of political parties that participated in the previous general election. Furthermore, in its clause (5), it is stated that the procedure for electing the president and vice president is regulated by a specific law. Presently, the referred law is Law of The Republic of Indonesia Number 7 of 2017 concerning General Elections (hereinafter referred to Law No.7/2017)

Through Law No.7/2017, the provisions of Article 6A of UDU NRI 1945 nomination were subsequently regulated more rigorously. Article 222 specifies that a political party or a coalition of political parties as referred to is a political party or a coalition of political parties that obtained a minimum of 20% of the seats in the DPR or 25% of the valid national votes from the previous General Election. This means that not all political parties or coalitions of political parties can nominate candidates for president and vice president in the General Election.

The arrangement is known as the presidential threshold. Jimly Ashiddiqie holds the view that the presidential threshold aims to establish effective governance through significant support from the parliament. This is inseparable from the principle of the check and balances system applied in Indonesia. With the majority support of parliamentary members, the government programs can politically function effectively.

In its development, this understanding subsequently gives rise to other issues within the Indonesian government. The most apparent aspect is the emergence of oligarchic practices carried out by political party coalitions in the mechanism of presidential elections. The people, as the holders of sovereignty, are provided with very limited choices through candidates who are solely agreed upon and politically determined by parties or political party coalitions. Additionally, political agreements are often made behind closed doors by party elites, disregarding democratic mechanisms.

Actually, there are already several research articles discussing the presidential candidacy in Indonesia with the "presidential threshold" mechanism. First, Christopher Joshua Lefrandt Thanos in his journal titled "Legal Review Regarding The Threshold of Presidential and Vice Presidential Candidacy According To Law Number 7 of 2017 concerning General Elections in 2020"³, This article explains that Constitutional Court Decision No. 53/PUU-XV/2017 has strengthened the constitutionality of Article 222 of Law No.7/2017. In that Constitutional Court Decision, it is explained that the provision of the presidential threshold, which requires the nomination of presidential and vice-presidential candidates by political parties participating in the previous elections, is not discriminatory because every political party participating in the previous elections has the equal right to nominate presidential and vice-presidential candidates. However, based on the Author's research, Article 222 of Law No.7/2017 still remains discriminatory because it is related to the provision of "20% of seats in the DPR or 25% of the valid national votes from the previous elections" that must be owned

³ Pondaag Thanos, Rumokoy, "TINJAUAN YURIDIS MENGENAI AMBANG BATAS PENCALONAN PRESIDEN DAN WAKIL PRESIDEN MENURUT UNDANG-UNDANG NOMOR 7 TAHUN 2017 TENTANG PEMILIHAN UMUM," *Lex Administratum* VIII, no. 3 (2020): 48-57, <https://editorialindonesia.com/2017/07/21/ini-arti->.

by the proposing party. This provision does not provide "equal opportunity" for all political parties participating in the previous elections. Political parties with seats in the DPR have a greater chance of nominating presidential and vice-presidential candidates compared to parties without seats in the DPR. Non-parliamentary parties will struggle to meet the requirement of "25% of valid national votes from the previous elections" as referred to in Article 222 of Law No.7/2017. Therefore, the presidential threshold provision in Article 222 of Law No.7/2017, which requires "20% of DPR seats or 25% of valid national votes from the previous elections," should be eliminated.

Secondly, the research conducted by Widya Hartati and Ratna Yuniarti, titled "Mechanism of Democratic and Constitutional Nomination and Appointment of the President and Vice President" in 2020. By exploring the principles of popular sovereignty enshrined in the constitution, according to the article, the mechanism of presidential candidacy can be pursued through individual channels.⁴ However, the author's research findings indicate that presidential nominations still occur through political parties.

Thirdly, the article written in 2019 by Anang Dony Irawan titled "Determination of the Presidential and Vice Presidential Nomination Threshold in Indonesia in the Simultaneous General Election of 2019"⁵ advocates for the elimination of the presidential threshold stipulated in Article 222 of Law No.7/2017. The article argues that the presidential threshold is no longer relevant in the 2019 elections due to the simultaneous conduct of legislative and presidential elections. Additionally, the provision closes the opportunity for new political parties to participate in the presidential and vice-presidential nominations. Although both advocate for the removal of the presidential threshold in Article 222 of Law No.7/2017, the findings of the author differ. The author contends that the nomination of the president and vice president should still be carried out by political parties that participated in the previous elections. This is based on the provision in Article 6A paragraph (2) of UUD NRI 1945, stating that the nomination of the president is done by political parties participating in the previous election. The selection of candidates must be conducted openly and democratically, akin to the presidential candidate convention mechanisms employed by the Party of Functional Groups (Golkar) in 2004 and the Democratic Party in 2013.

This article aims to demonstrate that Article 222 of Law No. 7/2017 is philosophically contradictory to Pancasila. In addition to disregarding the people's sovereignty inherent in the second principle, the presidential threshold provision also neglects the democratic values contained in the fourth principle of Pancasila. The people no longer have full sovereignty in determining their own leadership. Furthermore, certain provisions in the centralistic party laws provide opportunities for decision-making within the party's internal affairs to be carried out only by a few individuals or elite groups. Therefore, this article will also present a new alternative for the presidential nomination system in Indonesian elections.

2. Methods

This article is written using the juridical normative research method. The research is conducted by examining legal norms with theories within the field of law.⁶ As a juridical normative study, this writing does not present primary data obtained empirically. Therefore,

⁴ Widya Hartati and Ratna Yuniarti, "Mekanisme Pencalonan Dan Pengisian Jabatan Presiden Dan Wakil Presiden Yang Demokratis Dan Konstitusional," *Media Keadilan: Jurnal Ilmu Hukum* 11, no. 1 (2020): 76, <https://doi.org/10.31764/jmk.v11i1.2158>.

⁵ Anang Dony Irawan, "PENENTUAN AMBANG BATAS PENCALONAN PRESIDEN DAN WAKIL PRESIDEN DI PEMILU SERENTAK 2019," *Jurnal Ilmu Hukum* 3, no. 2 (2020): 1-13, <https://ejournal.lppmunsera.org/index.php/ajudikasi/article/view/1888/1326>.

⁶ Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram University Press, 2020).

this research solely relies on secondary data consisting of primary, secondary, and tertiary legal materials. Primary legal materials are derived from legislative regulations, secondary legal materials from literature such as books and legal journals. The nature of this research is descriptive, describing the research findings summarized in this article, and it uses a historical approach to examine the principle of people's sovereignty within Pancasila, which should be a guide in the presidential nomination mechanism.

3. Results and Discussion

3.1 The Practice of Oligarchy and the Unconstitutionality of Presidential Candidacy in the Republic of Indonesia

Oligarchy is one form of a political system used to govern a country. Simply put, oligarchy can be defined as a political system controlled by a group of individuals.⁷ In governance, this group compromises and formulates policies within a country. Normatively, the oligarchic system is slowly being abandoned in many countries. The reason behind this is the emergence of the democratic ideology that positions the people as the highest authority. In Indonesia, this is normatively recognized through Article 1, paragraph (2) of UUD NRI 1945, which states that the state's sovereignty resides in the hands of the people and its implementation follows the provisions of the constitution.

In addition to the aforementioned regulations, in the Indonesian Presidential Election, another regulation that must be considered is Article 27 paragraph (1) of UUD NRI 1945. This provision states that every citizen is equal before the law and government. Apart from being the foundation of rights, there is a phrase that elucidates the obligation to uphold the law and government without exception.

Considering these rules, the presidential election system in Indonesia ideally needs to be re-examined. The presidential threshold as defined in Law No.7/2017 should be declared legally as something unconstitutional. Article 222 of Law No.7/2017, which requires a political party or a coalition of political parties to have 20% of seats in the DPR or 25% of the national valid votes to nominate a president, contrary to the provisions of Article 1 paragraph (2) and Article 27 paragraph (1) of the UUD NRI 1945. However, as a fundamental state norm⁸, UUD NRI 1945 should serve as the foundation for the establishment of legal norms beneath it.

Denial and the unconstitutional nature of Article 222 of Law No.7/2017 regarding UUD NRI 1945 can be explained in several aspects. Firstly, in choosing the holder of the highest governmental authority, sovereignty fundamentally no longer resides in the hands of the people as intended in Article 1 paragraph (2) of UUD NRI 1945. In this case, sovereignty rests in the hands of political party oligarchs where the people do not have access to determine presidential candidates in a general election. This can normatively be found in Article 223 paragraph (1), which stipulates that presidential and/or vice-presidential candidates are chosen internally within the party. Although this provision also requires the party's mechanism to be conducted openly, in practice, such a mechanism is not entirely transparent. The internal mechanisms of the party are in accordance with the party's articles of association and bylaws, which are guaranteed by Law Number 2 of 2008 (hereinafter referred to as Law No.2/2008) as amended by Law Number 2 of 2011 (hereinafter referred to as Law No.2/2011)

⁷ Intan Rachmina Koho, "Oligarki Dalam Demokrasi," *Lensa* 4, no. 50 (2021): 60-74, <https://doi.org/https://doi.org/10.58872/lensa.v15i1.6>.

⁸ Jampatar Simamora, "Mengkaji Substansi UUD NRI Tahun 1945 Dalam Hakikatnya Sebagai Hukum Dasar Tertulis," *Jurnal Legislasi Indonesia* 12, no. 3 (2015): 5.

concerning political parties, the decision-making process for determining presidential and vice-presidential candidates is often left to specific party elites or structures".⁹

Secondly, the presidential threshold in Article 222 of Law No.7/2017 has also exceeded the provisions of Article 6A paragraph (2). The provision only states that the nomination for president and/or vice president is carried out by a political party or a coalition of political parties. The threshold, set at 20% of seats in the DPR or 25% of the valid national votes from the previous election, may narrow the opportunities to achieve equality in law and government as referred to in Article 27 paragraph (1) of UUD NRI 1945. However, this article also reminds all parties to uphold the law and government without exception.

Based on the provisions regarding the presidential threshold, several judicial reviews have actually been conducted MK, including Decisions Numbered 66, 68, and 70 of 2021, as well as Decisions Numbered 5, 6, and 7 of 2022. In its rulings, the MK has declared that the presidential threshold as intended is constitutional because it constitutes an open legal policy. The open legal policy is interpreted as the freedom granted to legislators to establish specific norms within a law as long as they comply with constitutional provisions (UUD NRI 1945).¹⁰ The presidential threshold is considered an open legal policy based on Article 6A (paragraph 5), which stipulates that provisions regarding the procedures for electing the president are regulated through legislation.¹¹

The implementation of the presidential threshold is based on several considerations. These considerations include political party support for the government, the selection process for presidential and vice-presidential candidates, parliamentary support, and the reduction of party fragmentation.¹² However, in its development, with the implementation of simultaneous elections combining the Presidential Election and Legislative Election, those arguments have become irrelevant.

Political support for the president through political parties with seats in the parliament no longer holds measurable impact if the foundation is based on having 20% of seats in DPR and/or 25% of the national valid votes from the previous election. It becomes ambiguous when a newly elected president in simultaneous elections expects political support from members of political parties whose terms have ended. It's possible that the party's number of seats in the DPR might decrease or their national valid votes may not be as high as in the previous election.

3.2 Rearranging the Mechanism of Presidential Nomination in Indonesia

Considering the aforementioned aspects, ideally, a reformation of the presidential election system in Indonesia should be pursued. Normatively, this restructuring can commence by reinterpreting the provisions of UUD NRI 1945 by legislators and the MK. The approach involves reinstating an agreement on implementing sovereignty mechanisms in line with Pancasila and UUD NRI 1945, aiming to achieve an effective government.

⁹ Haryanto, *Elit, Massa, Suatu Bahasan Pengantar*, ed. Devananta Rafiq, 1st ed. (Yogyakarta: PolGov, 2017).

¹⁰ Iwan Satriawan and Tanto Lailam, "Open Legal Policy Dalam Putusan Mahkamah Konstitusi Dan Pembentukan Undang-Undang," *Jurnal Konstitusi* 16, no. 3 (October 8, 2019): 573, <https://doi.org/10.31078/jk1636>.

¹¹ Putra Perdana Ahmad Saifulloh, "Penafsiran Pembentuk Undang-Undang Membentuk Kebijakan Hukum Terbuka Presidential Threshold Dalam Undang-Undang Pemilihan Umum Yang Bersumber Dari Putusan Mahkamah Konstitusi," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 11, no. 1 (n.d.): 153, <https://doi.org/10.33331/rechtsvinding.v11i1.867>.

¹² Sri Warjiyati, "Urgensi Presidential Threshold Dalam Sistem Pemilihan Umum Serentak Di Indonesia," *Prosiding Nasional* 1, no. 1 (2020): 180.

It's important to recall that Pancasila and the 1945 Constitution are the fundamental legal sources of the nation. This can be found in Article 1, paragraph (3) of the People's Consultative Assembly Decree No.III/MPR/2000 concerning the Sources of Law and the Hierarchy of Legislation.¹³ This statement is further reiterated through Article 2 of Law No.12/2011. In that article, it is stated that Pancasila is the source of all legal sources in Indonesia. The placement of Pancasila as the source of all legal sources is in line with the preamble UUD NRI 1945. Consequently, any content in legislation subsequently created in Indonesia must not contradict Pancasila, as it serves as the foundation and ideological basis, as well as the philosophical cornerstone of the state

The presidential threshold of 20% of the seats in the DPR or 25% of the valid national votes from the previous election is evidently not in line with the Fourth Principle of Pancasila. The issue of "people's sovereignty" in determining presidential and vice-presidential candidates often does not adhere to the principles of deliberation (democratic) and openness.¹⁴ Decisions regarding presidential and vice-presidential candidates within the internal party mechanisms are not only entrusted to the party chairman and/or party elites. This phenomenon is evident in the selection of the presidential candidates for the Indonesian Democratic Party of Struggle (PDIP)¹⁵ and the Party of Functional Groups (Golkar) Party for the 2024 Election.¹⁶

The mechanism that is not truly open is not in line with the fifth principle of Pancasila, which embodies the idea of social justice for all Indonesian people. Every citizen who has rights according to the law lacks the opportunity to participate in the government in accordance with the mandate of Article 27 paragraph (1) and Article 28D paragraph (3) of UUD NRI 1945. The process of nominating presidential and vice presidential candidates becomes unjustifiable to the public, making these nominations events solely attended by political elites rather than events legally involving the people's participation.¹⁷ Furthermore, this situation increasingly becomes a problem as party elites are often perceived as not siding with the interests of the people.¹⁸ However, Article 6A of UUD NRI 1945 and Article 222 of Law No.7/2017 stipulate that the nomination of the president and vice president can only be carried out by political parties.

In relation to that matter, there should be an appropriate mechanism adhering to the principles of justice, democracy, and transparency. For instance, every political party endorsing presidential and vice-presidential candidates should conduct an open recruitment/selection process that can be participated in and witnessed by the public. Every citizen, according to the law, is free to compete by presenting their visions and missions in realizing the national goals.

¹³ Rifa Daullah et al., "PANCASILA SUMBER DARI SEGALA SUMBER HUKUM," *Jurnal Gema Keadilan* 9, no. 2 (2022).

¹⁴ Moh Mahfud, *Membangun Politik Hukum, Menegakkan Konstitusi* (Jakarta: Rajawali Press, 2010).

¹⁵ Muhammad Ali, "Pernyataan Lengkap Megawati Capreskan Ganjar Dan Menangkan Pemilu 2024," 2023, <https://news.detik.com/pemilu/d-6684775/pernyataan-lengkap-megawati-capreskan-ganjar-dan-menangkan-pemilu-2024>.

¹⁶ Fauzi Lamboka, "Airlangga_ Rakernas Golkar Beri Mandat Ketua Umum Tentukan Capres - ANTARA News," 2023, <https://www.antaraneews.com/berita/3571035/airlangga-rakernas-golkar-beri-mandat-ketua-umum-tentukan-capres>.

¹⁷ Agus Riewanto, "REKONSTRUKSI DISAIN PENCALONAN PRESIDEN DAN WAKIL PRESIDEN DALAM PEMILU SERENTAK YANG DEMOKRATIS (Evaluasi Pencalonan Capres/Cawapres Pemilu Tahun 2019)," no. 2 (2019): 1-20, <https://nasional.kompas.com/read/2018/03/12/23291591/>.

¹⁸ Abubakar E Hara, "The Difficult Journey of Democratization in Indonesia," *Contemporary Southeast Asia* 23, no. 2 (2000): 307-26.

The democratic and open process should ideally provide strong legitimacy for the elected president and vice president. Moreover, these principles can help prevent societal division. This notion aligns with Muhammad Hatta's idea of using the term "meeting" as a place for the people to consult on all collective matters.¹⁹

To support this, the following steps need to be taken:

- a. Article 6A clause (5) UUD NRI 1945 should no longer be interpreted by the lawmakers and the Constitutional Court as the basis for implementing the presidential threshold. The phrase "implementation procedure" should be understood solely as the election process. Thus, Article 6A clause (2) of UUD NRI 1945 can be executed purely and consistently.
- b. Article 6 clause (2) UUD NRI 1945, which stipulates that the requirements for presidential and vice-presidential candidates regulated further in the Law should be construed differently from candidacy requirements (threshold).
- c. The provision on the presidential threshold as outlined in Article 222 of Law No.7/2017 should be abolished. Political parties participating in previous elections should have equal opportunities without being restricted by threshold provisions.
- d. Article 223 of Law No.7/2017, which regulates the determination of presidential and/or vice presidential candidates, is implemented in an "open and democratic" manner and is no longer adjusted to the "internal mechanisms of political parties." The phrase "internal mechanisms of political parties" should be removed and replaced with the mechanism of "presidential/vice presidential candidate conventions of the party" with the involvement of the general public as participants in the contestation of presidential and/or vice presidential candidates from each party.
- e. To realize the objectives and fulfill the functions of political parties, Law No.2/2008 should more rigidly regulate norms. There should be provisions ensuring that democratic principles can operate openly and be overseen by the public, Including filing lawsuits in the judiciary against party decisions regarding the nation's fundamental interests and livelihoods.

4. Conclusions

The practice of oligarchy in the presidential nomination process in Indonesia occurs due to the existence of the presidential threshold requirement in Article 222 of Law No.7/2017. This provision results in the presidential and vice-presidential nomination process in Indonesia no longer aligning with the principle of popular sovereignty. As a result, presidential and vice-presidential candidates endorsed by political parties may not necessarily possess the ability and experience to lead the country. Therefore, there is a need for a reconfiguration of the presidential and vice-presidential nomination process, such as through a convention mechanism as previously conducted by the Party of Functional Groups (Golkar) for the 2004 General Elections and the Democratic Party for the 2014 General Elections.

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¹⁹ Miriam Budiardjo, *Masalah Kenegaraan*, 2nd ed. (Jakarta: Gramedia, 1977).

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