

## **Presidential Threshold in The Election of The President and Vice President from A Constitution and Human Rights Perspective**

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### **Abstract**

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Art 222 Law Number 7 year 2017 concerning General Elections, regulates the provisions of the threshold where the acquisition of seats in the DPR must be 20 percent or obtain valid votes nationally as much as 25 percent then political parties can nominate and nominate pairs of presidential and vice-presidential candidates. Setting the Presidential Threshold in the election of President and Vice President in Indonesia from a constitutional and human rights perspective brings its own problems in the Indonesian constitutional system. The Presidential Threshold system does give rise to privileges for certain parties. This is because only parties that meet the threshold can compete directly in the presidential election. It is for this reason that the privileges of these major parties have given birth to political cartels. What is bad for democracy is that it eliminates equal competition for all potential candidates to contest the Presidential election. The Presidential Threshold is not justified in eliminating or emasculating the meaning of democracy which provides rights and freedoms for citizens. Among the constitutional rights include the right to vote, the right to nominate (the right to be a candidate), and the right to nominate candidates, these are rights guaranteed by the 1945 Constitution of the Republic of Indonesia which everything is reduced because of this Presidential Threshold provision.

### **1. Introduction**

Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) states that sovereignty is in the hands of the people and is implemented according to the Constitution. One form of manifestation of popular sovereignty is direct elections because the people are the holders of supreme sovereignty. The election of the president and vice president by the people directly confirms and strengthens the presidential system adopted by Indonesia so that it should create an emotional bond between the candidates and the people as voters. The people will give a direct mandate to the president and vice president elected through this general election to manage the country and prosper its citizens in accordance with Pancasila and the 1945 Constitution of the Republic of Indonesia.<sup>1</sup>

The conditions for nominating the president and vice president are regulated in Article 6A paragraph (2) of the 1945 Constitution of the Republic of Indonesia where political parties or combinations of political parties participating in the general election before the general election can nominate presidential and vice presidential candidates. This provision does not

<sup>1</sup> Dahlan Thaib, *Ketatanegaraan Indonesia: Perspektif Konstitusional* (Yogyakarta: Total Media, 2009).

impose restrictions on threshold provisions for political parties or combinations of political parties and each political party participating in the election should have the right to nominate its candidates to contest the presidential election.

Historically, the Presidential Threshold in Indonesia can be traced through various phases of the electoral process. Before the reform era, there were no specific requirements regarding the threshold for nominating presidential and vice-presidential candidates.<sup>2</sup> The electoral system was simpler and did not impose any threshold requirements. During the first post-reform election in 1999, the old system was still in use, but there were growing demands for electoral system reforms. In the 2004 elections, Indonesia held its first direct presidential election.<sup>3</sup> At that time, the threshold was established through Law No. 23 of 2003 on the Presidential and Vice-Presidential Elections, which stipulated that candidates must be nominated by political parties or coalitions of parties that had secured at least 15% of the seats in the DPR or 20% of the total valid national votes.<sup>4</sup> For the 2009 and 2014 elections, the threshold remained the same, but political parties had to be more strategic in forming coalitions to meet these requirements. In the 2019 elections, the threshold remained at 20% of DPR seats or 25% of the national valid votes. This policy has been controversial, as it is perceived to favor larger parties and make it difficult for smaller parties to nominate candidates.<sup>5</sup>

Before 2013, electoral mechanisms in Indonesia did not synchronize legislative and presidential elections. The Presidential Threshold used was based on the results of the legislative elections held in that year. Changes occurred following Constitutional Court Decision No. 14/PUU-XI/2013, which was subsequently adopted in Law No. 7 of 2017 concerning General Elections (UU No. 7/2017). Since then, the threshold for presidential elections has been based on the results of the previous legislative elections.<sup>6</sup> This threshold has been in place since 2004 and has increased steadily to reach 20% in 2009 and remains unchanged to date.<sup>7</sup>

The implementation of the 20% threshold has sparked controversy, particularly intensified by the simultaneous conduct of elections. Therefore, it is important to understand the urgency of the substance of the presidential threshold by considering the electoral model employed. From a legislative perspective, this provision aims to streamline the number of presidential candidates to prevent excessive fragmentation of votes and political instability.

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<sup>2</sup> Nico Reynaldi Hutabarat, *Politik Hukum Presidential Treshold; Studi Komprehensif Pemilihan Umum Di Indonesia*, Vol. 1 (Nico Hutabarat, 2022).

<sup>3</sup> Rifka Anindya And Muhammad Ulul Albab Musaffa, "Presidential Threshold: Pengaruh Penerapannya Dalam Perkembangan Demokrasi Indonesia," *In Right: Jurnal Agama Dan Hak Azazi Manusia* 10, No. 2 (2021): 269–87.

<sup>4</sup> Sultoni Fikri, Baharuddin Riqiey, And Miftaql Janah, "Problematika Konstitusionalitas Presidential Threshold Di Indonesia," *Jurnal Hukum Positum* 7, No. 1 (2022): 1–24.

<sup>5</sup> Ahmad Shirotol, "Polemik Presidential Threshold Dalam Pemilu 2019 Dan Sebelum Kontestasi Pemilu 2024 Di Indonesia," *Innovative: Journal Of Social Science Research* 3, No. 3 (2023): 11356–63.

<sup>6</sup> Alfa Fitri Dan Wicipito Setiadi, "Presidential Threshold Dalam Pemilihan Umum Serentak: Kemunduran Demokrasi Konstitusional?," *Legislasi Indonesia* 19, No. 1 (2018): 69.

<sup>7</sup> Abdul Ghoffar, "Problematika Presidential Threshold: Putusan Mahkamah Konstitusi Dan Pengalaman Di Negara Lain," *Jurnal Konstitusi* 15, No. 3 (2018): 481.

The threshold also encourages parties to form coalitions, thereby building stronger and more stable political support for presidential candidates. Moreover, this system tends to strengthen major parties as they have more resources to meet the threshold requirements, while smaller parties often need to join larger coalitions. By limiting the number of candidates, the electoral process becomes more efficient and aids voters in decision-making.

Article 222 of Law No. 7/2017 regulates the threshold requirement, where a political party must secure 20% of seats in the DPR or obtain 25% of valid votes nationally to nominate and propose presidential and vice-presidential candidates.<sup>8</sup> This Presidential Threshold provision has stirred controversy, pointing towards oligarchic practices and favoring bourgeois interests. Simultaneous elections do not necessitate the Presidential Threshold requirement. This is because legislative and presidential elections are conducted concurrently. If elections that were traditionally separate are now simultaneous, the application of the Presidential Threshold should be irrelevant since legislative and presidential elections are conducted simultaneously. The Presidential Threshold provision is highly relevant if elections are not conducted simultaneously, allowing the results of legislative elections to serve as the basis for applying this threshold.

The Presidential Threshold provision has been repeatedly challenged in the Constitutional Court on various grounds, yet the court has consistently rejected these challenges because the Presidential Threshold is considered an open legal policy. It is intriguing to examine the Presidential Threshold in presidential and vice-presidential elections from the perspectives of constitutionality and human rights.

## **2. Methods**

This type of research is normative legal research with a statutory approach and a conceptual approach. The types and sources of legal materials consist of primary legal materials, secondary legal materials and tertiary legal materials. techniques for collecting legal materials by studying statutory regulations and literature study. Legal material analysis techniques use prescriptive analysis techniques.<sup>9</sup>

## **3. Results and Discussion**

The rule of law is a state system that is regulated based on applicable law, which is just and structured in a constitution, where all people in the country, both those who are governed and those who rule, must obey the law, so that everyone is treated equally, regardless of differences in color. skin, race, gender, religion, region and belief, and government authority is limited based on the principle of distribution of power. The government is not arbitrary and does not violate the people's rights, therefore the people are given roles according to their abilities and roles in a democratic manner.<sup>10</sup>

Elections are an important instrument in a democratic country with a representative system. Elections are a real manifestation of procedural democracy. Indonesia is a rule of law

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<sup>8</sup> Ridho Al-Hamdi, Tanto Lailam, And Sakir, "The Presidential Threshold Design In Indonesia's Electoral System: In Search Of 'Win-Win Situation' Among Unfinished Debates," *Proceedings Of The International Conference On Sustainable Innovation Track Humanities Education And Social Sciences (Icsihees 2021)* 626, No. Icsihees (2022): 21-30.

<sup>9</sup> Soejono Soekanto, "Metode Penelitian Hukum," 2003.

<sup>10</sup> Munir Fuady, *Teori Negara Hukum Modern (Rechtstaat)* (Bandung: Refika Aditama, 2011).

country with a government Democrats recognize elections as an important pillar of democracy that must be held democratically. Indonesia has regulated implementation matters elections as stipulated in the 1945 Constitution of the Republic of Indonesia.<sup>11</sup>

The holding of Simultaneous General Elections in 2024 will bring ongoing homework regarding the polemic regarding the threshold number of candidates for President and Vice President (Presidential Threshold). Open legal policy of making laws that sets a threshold of at least 20% of the number of seats in the DPR or obtaining 25% of valid votes nationally in the previous DPR election

Philosophically, the threshold rules for presidential candidacy or Presidential Threshold it was enacted with a number of objectives. One of them is *First* is to strengthen the presidential system. *second*, application Presidential Threshold is for the effectiveness of government administration.<sup>12</sup> If this system is not implemented, the elected President and Vice President could be carried by a party or coalition of political parties whose number of seats is not a majority in parliament, finally, Presidential Threshold is to simplify the multiparty system through natural selection. This means that parties that do not qualify for parliament will automatically no longer exist and they will most likely be passive and will disband by themselves.

Draft Presidential Threshold is one way to strengthen the presidential system through simplifying political parties. The aim is to create a stable government so that the government can run and not experience difficulties in making policies with the legislative body when running the government in the future.<sup>13</sup> Presidential Threshold is also considered not to be in conflict with the 1945 Constitution of the Republic of Indonesia. This is because Presidential Threshold does not negate the principle of popular sovereignty and is not discriminatory because it applies to all political parties.<sup>14</sup>

According to the Constitutional Court's assessment through decision Number 3/PUU-VII/2009 implementation Presidential Threshold This is a more democratic policy because it will not threaten the existence of political parties in nominating pairs of candidates for President and Vice President. Likewise, according to Constitutional Court Decision Number 14/PUU-XI/2013 provisions regarding Presidential Threshold considered an open legal policy (*open legal policy*) from the legislators. The term open legal policy can be interpreted as freedom for legislators to take legal policies.<sup>15</sup>

Article 7 of the 1945 Constitution of the Republic of Indonesia states that the President and Vice President hold office for five years and thereafter can be re-elected to the same position, for only one term of office. Changing the President is a process that generally occurs

<sup>11</sup> Lutfil Ansori, "Telaah Terhadap Presidential Threshold Dalam Pemilu Serentak 2019," *Jurnal Yuridis* 4, No. 1 (2017): 16.

<sup>12</sup> Saldi Isra, *Pemilu Dan Pemulihan Daulat Rakyat* (Jakarta: Themis Publishing, 2017).

<sup>13</sup> Dwi Rianisa Mausili, "Anomali Presidential Threshold Dalam Sistem Pemerintahan Indonesia: Reduksi Parlemeter Dalam Sistem Presidensil Indonesia.," *Jurnal Bappenas* 2, No. 1 (2019): 34.

<sup>14</sup> Juniar Laraswanda Umagapi, "Wacana Penghapusan Presidential Threshold," *Info Singkat: Kajian Singkat Terhadap Isu Aktual Dan Strategis*, March 2022.

<sup>15</sup> Rizki Bagus Prasetio And Febri Sianipar, "The Relevance Of The Application Of The Presidential Threshold And The Implementation Of Simultaneous Elections In Indonesia," *Jurnal Penelitian Hukum De Jure* 21, No. 2 (2021): 267.

in every country that implements a republican system. This process shows a country from its previous leaders, or is also a process of people's awareness to elect a person or party that is considered capable of accommodating their aspirations.<sup>16</sup>

At the beginning of its implementation, *Presidential Threshold* regulated in Law Number 23 of 2003 concerning the General Election of President and Vice President (hereinafter referred to as Law No. 23/2003). In its development, in the period 2004, 2009 and 2014 Presidential Threshold became something that was implemented regularly after the legislative elections in the same year.<sup>17</sup>

Then in the enactment regime of Law Number 42 year 2008 concerning the General Election of the President and Vice President, Article 9 provides an explicit provision that states that in essence the candidate pair for President and Vice President is nominated by a political party or combination of political parties that meets the requirements for obtaining seats of 20% of the number of parliamentary seats in the DPR or 25% from valid national votes in the DPR member elections, which are carried out before the Presidential and Vice Presidential Elections.

In the 2019 presidential election, threshold provisions or Presidential Threshold This is regulated in Art 222 of Law Number 7 of 2017 which states that Candidate Pairs are proposed by Political Parties or Associations of Political Parties Contending in the Election that meet the requirements for obtaining seats of at least 20% (twenty percent) of the total number of seats in the DPR or obtaining 25% (twenty five percent) of the valid votes legally. National election in the previous DPR member elections.

Some say 20% Presidential Threshold is irrational because the minimum requirement of 20% refers to the results of the 2014 DPR and DPRD member elections which were used for the 2014 Presidential Election so it is considered contrary to the principle one person, one vote, one value (OPOVOV). Meanwhile, on the other hand, they insist that 20% of the PT is rational because the candidate pairs for President and Vice President are supported by political parties or coalitions of political parties. From each perspective, both views have logical arguments.<sup>18</sup>

Presidential Threshold is one of the articles in the Election Law which is often challenged at the Constitutional Court, but the lawsuits fail, either rejected or not accepted by the MK. The last lawsuit that the Constitutional Court did not accept was the decision in case Number 74/PUU-XVIII/2020. The lawsuit was filed by Rizal Ramli and Abdulrachim Kresno, both of whom were declared to have no legal standing.

In this lawsuit, 12 previous lawsuits were also explained which were rejected and not accepted by the MK. The lawsuits are related to Article 222 of Law Number 7 /2017 which regulates the questions Presidential Threshold. Both those who specifically challenge Article

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<sup>16</sup> Sodikin, "Pemilu Serentak (Pemilu Legislatif Dengan Pemilu Presiden Dan Wakil Presiden) Dan Penguatan Sistem Presidensial," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 3, No. 1 (2014): 67.

<sup>17</sup> Hezron Sabar R T Faisal H, Hananto W, "Analisis Yuridis Putusan Mahkamah Konstitusi Nomor 53/Puu-Xv/2017 Berkaitan Dengan Penolakan Uji Materi Presidential Threshold Dalam Pengusulan Calon Presiden Dan Wakil Presiden Pemilihan Umum Serentak 2019," *Jurnal Novum* 5, No. 2 (2019): 106.

<sup>18</sup> Setiadi, "Presidential Threshold Dalam Pemilihan Umum Serentak: Kemunduran Demokrasi Konstitusional?"

222 and those included in the lawsuit points of Law Number 7/2017. The following is a list of lawsuits regarding the threshold provisions or Presidential Threshold which have been submitted to the Constitutional Court, namely:

1. Decision Number 44/PUU-XV/2017  
Applicant: Habiburokhman  
Status: Unacceptable
2. Decision Number 53/PUU-XV/2017  
Applicant: Idaman Party  
Status: Partially Granted (Rejected)
3. Decision Number 59/PUU-XV/2017  
Applicant: Effendi Gazali  
Status: Partially Rejected (Unacceptable)
4. Decision Number 70/PUU-XV/2017  
Applicant: Crescent Star Party Central Leadership Council  
Status: Unacceptable
5. Decision Number 71/PUU-XV/2017  
Applicants: 1. Hadar Nafis Gumay; 2. Yuda Kusumaningsih; 3. Association for Elections and Democracy (PERLUDEM), et al  
Status: Unacceptable
6. Decision Number 72/PUU-XV/2017  
Applicant: Mas Soeroso  
Status: Unacceptable
7. Decision Number 49/PUU-XVI/2018  
Applicants: 1. Muhammad Busyro Muqoddas; 2. Muhammad Chatib Basri; 3. Faisal Batubara; 4. Hadar Nafis Gumay; 5. Bambang Widjojanto; 6. Rocky Gerung; 7. Robertus Robet; 8. Angga Dwimas; 9. Amsari Ferry; 10. Hassan; 11. Muhammadiyah Youth Central Management; 12. Association for Elections and Democracy (PERLUDEM);  
Status: Completely Rejected
8. Decision Number 50/PUU-XVI/2018  
Applicant: Nugroho Prasetyo  
Status: Unacceptable
9. Decision Number 54/PUU-XVI/2018  
Applicants: 1. Effendi Gazali; 2. Reza Indragiri Amriel; 3. Khoe Seng Seng; 4. Usman  
Status: Completely Rejected
10. Decision Number 58/PUU-XVI/2018  
Applicant: Muhammad Dandy  
Status: Unacceptable
11. Decision Number 61/PUU-XVI/2018  
Applicant: 1. Sri. Sudarjo; 2. Dianul Hayezi  
Status: Unacceptable
12. Decision Number 92/PUU-XVI/2018

Applicant: Deri Darmawansyah

Status: Unacceptable

13. Decision Number 74/PUU-XVIII/2020

Applicant: 1. Rizal Ramli 2. Abdulrachim Kresno

Status: Unacceptable.

Most recently, there were 3 new lawsuits submitted to the Constitutional Court related to Article 222 of Law Number 7/2017. The plaintiffs are Gatot Nurmantyo; Bustami Zainudin and Fachrul Razi; and Ferry Joko Yuliantono. All of the above claims are declared unacceptable. It's become a long list that the lawsuit concerns Presidential Threshold which was rejected by the Constitutional Court.

According to data received by Kompas, from the Head of the Public Relations and Domestic Cooperation Section of the Constitutional Court, Fajar Laksono, the Constitutional Court has decided on 21 cases of judicial review of the threshold requirements for presidential and vice presidential nominations or Presidential Threshold for five years, namely from 2017 to February 2022. In total in five years, 17 applications could not be accepted, while three others were rejected and one case was stopped because the applicant died. Finally, on April 21, the Constitutional Court decided not to accept the lawsuit filed by 6 residents of Bandung City and one resident of Bogor, case number 20/PUU-XX/2022 submitted by 4 applicants, and number 21/PUU-XX/2022 submitted by 5 members of DPD RI.<sup>19</sup>

One of the reasons why the lawsuit regarding Presidential Threshold This is always rejected by the Constitutional Court because this is an open legal policy, This means that the provisions are handed over to the legislators, in this case it is handed over to the DPR and the President. *Open legal policy* in the MK's view is a policy regarding provisions in certain articles in the law which are the authority of the law makers.<sup>20</sup>

Presidential election with Presidential Threshold in 2004, 2009 and 2014 it did not cause problems and did not attract strong criticism, because at that time before the presidential election was held, elections for members of the DPR, DPD and DPRD were first held. This means that each political party has already collected votes from the legislative elections, which were held long before the Presidential Election was held, and these votes became tickets to nominate President and Vice President.

It will be a problem, when the legislative and executive elections are held at the same time, at the same hour, day, month, year, from which party gets the votes to nominate President and Vice President. That is what happened in the 2019 election, with the implementation being Simultaneously, defend Presidential Threshold, will create problems, because the elections for members of the DPR and President will be held simultaneously.<sup>21</sup>

Logically, there is no basis for using 20 percent of the number of seats in the DPR and 25 percent of the valid national vote, because political parties participating in the election do not

<sup>19</sup> "Gugatan Pks Terhadap Presidential Threshold Agar Bisa Usung Capres Sendiri," Kompas.Com, 2022.

<sup>20</sup> Iwan Satriawan Dan Tanto Laila, "Open Legal Policy Dalam Putusan Mahkamah Konstitusi Dan Pembentukan Undang-Undang," *Jurnal Konstitusi* 16, No. 3 (2019): 564.

<sup>21</sup> Dan Poppilea Erwinta Asep Wijaya, Rosmini, "Problematika Hukum Penerapan Presidential Threshold Dalam Pemilihan Umum Di Indonesia," *Risalah Hukum* 16, No. 1 (2020): 48.

have these requirements. For the 2019 general election, the presidential, DPR and DPD elections were held simultaneously. Because it is held simultaneously, the requirements Presidential Threshold 20 percent becomes problematic.

That Presidential Threshold 20 percent is irrational. Because the 20 percent figure refers to the results of the 2014 DPR and DPD general elections which were used in the 2014 Presidential election. On the other hand, those who agreed with 20 percent Presidential Threshold That's rational, because the person nominating the president and vice president is a political party or a combination of political parties.

Viewed from their respective perspectives, both opinions use arguments that are logically sound. The problem is, 2019 was the first simultaneous general election. Since this is the first time, it's up to you to decide Presidential Threshold It seems that it is directed towards the interests of each party who agrees or rejects the 20 percent figure.

However, in countries with a presidential system like the United States, Brazil, France, Peru, Mexico, Colombia, and Kyrgyzstan, the concept of a threshold is unknown. They adopt an open nomination system without requiring specific endorsements.<sup>22</sup> Nevertheless, their governance systems remain stable, as exemplified by the United States. The approach in the United States does not implement a presidential threshold. Candidates from both major and minor parties can run for president as long as they meet registration requirements and gain support from party delegates at the national convention. Consequently, this system allows a diverse range of candidates from various parties, yet in practice, it is dominated by two major parties (Democrats and Republicans). Independent candidates or those from smaller parties rarely succeed in winning presidential elections.<sup>23</sup> On the other hand, Brazil also employs a two-round system in presidential elections. Candidates can advance if nominated by a political party or coalition of registered political parties. If no candidate secures more than 50% of the vote in the first round, the top two candidates advance to the second round. This system is similar to that of France, permitting more candidates in the first round and ensuring majority support for the winner in the second round. However, major party coalitions remain dominant due to their greater resources to support their candidates.<sup>24</sup>

In Indonesia, however, the implementation of the Presidential Threshold closes off opportunities for small political parties, thereby creating a mismatch with the essence of Indonesian democracy. Every nation has its own conception and aspirations that align with its conditions, challenges, and characteristics. Indonesia, as a nation comprising diverse minority groups (in terms of race, ethnicity, religion, and others), has agreed to form a unified state where the government should accommodate all societal aspirations, including those of minority groups. Conceptually, Indonesia holds strong national principles and visions.

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<sup>22</sup> Abdul Ghoffar, "Problematika Presidential Threshold: Putusan Mahkamah Konstitusi Dan Pengalaman Di Negara Lain," *Jurnal Konstitusi* 15, No. 3 (2018): 480-501.

<sup>23</sup> Josef Mario Monteiro, "Presidential Threshold And Parliamentary Threshold Setting In Elections," *Journal Of Progressive Law And Legal Studies* 1, No. 02 (2023): 75-87.

<sup>24</sup> Sinta Devi Ambarwati, M Roziq Saifulloh, And Stella M S Aritonang, "Reconstruction Of The Presidential Threshold System In The Election System In Indonesia:(Comparative Study Of The Presidential Threshold System Of Indonesia And Brazil)," *Jurnal Hukum Lex Generalis* 1, No. 5 (N.D.): 80-95.



Indonesia's national vision not only seeks to unite the diversity of its society into a new political community but also aims to provide possibilities for diverse communities to maintain their roots in tradition and history.<sup>25</sup>

The Presidential Threshold, which sets the minimum requirement for presidential and vice-presidential candidates at 20% of the party's votes or coalition of political parties, significantly impacts the proliferation of corrupt practices carried out by dominant political parties. This phenomenon occurs because large parties often have greater access to state resources and networks that can be utilized for corrupt purposes. According to a report by the Regional Representative Council of the Republic of Indonesia (DPD), this rule triggers high political costs and fosters political oligarchy by sponsoring figures to become president. After their sponsored leader is elected, the interests of these oligarchs must be accommodated, thereby compromising the interests of other stakeholders and leading to practices of corruption, collusion, and nepotism (KKN).<sup>26</sup>

At the same time, according to an interview with Philips J. Vermonte Centre for Strategic and International Studies (CSIS) executive director in The Jakarta Post report, a higher threshold has led to polarization among the Indonesian society, as evident in the presidential elections of 2014 and 2019. A survey indicates that Indonesian society has become more polarized based on their presidential candidate preferences due to the availability of only two pairs of candidates.<sup>27</sup>

The logic of the threshold as a step to select parties in the party system simplification mechanism is actually also irrelevant, this is because the function of the party system simplification mechanism has been carried out by the KPU through verification of political parties participating in the election, through this KPU verification it produces political parties that have been selected. Then this political party will nominate presidential and vice presidential candidates in the presidential election that is being held. Here the role of the KPU is clear as an institution that determines which parties have met the requirements as election participants and which parties have not. Removal Presidential Threshold as the threshold for nominating President and Vice President does not violate the constitution, there is no reason to be afraid of eliminating this rule, so this aspect needs to be taken into consideration when revising Law Number 7 year 2017 for election events in 2024.<sup>28</sup>

Existence Presidential Threshold currently as a stunting of the principles of equality and democracy. The undermining of the principle of equality in question is opening up opportunities for the emergence of closed transactions carried out by political party elites without involving the wider community. So that the people's sovereignty to be able to

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<sup>25</sup> Yudi Latif, *Negara Paripurna Historitas Rasionalista, Dan Aktualisasi Pancasila* (Jakarta: Pt Kompas Gramedia Pustaka Utama, 2011).

<sup>26</sup> Dewan Perwakilan Daerah Republik Indonesia, "Kutip Pernyataan Ketua Kpk, Lanyalla: Presidential Threshold Sumber Korupsi" (Jakarta, 2022), <https://www.dpd.go.id/daftar-berita/kutip-pernyataan-ketua-kpk-lanyalla-presidential-threshold-sumber-korupsi>.

<sup>27</sup> Ghina Ghaliya, "House Factions Suggest Lower Presidential Threshold" (Jakarta, 2020), <http://bit.ly/tjp-android%0aios>: <http://bit.ly/tjp-ios>.

<sup>28</sup> Abdul Munawarman Dan Anggun Novita, "Analisis Terhadap Presidential Threshold Dalam Kepentingan Oligarki," *Jurnal Rechten: Riset Hukum Dan Hak Asasi Manusia* 3, No. 2 (2021): 26.

participate is not fully granted and even tends to castrate political rights to be able to nominate or choose presidential candidates freely.

Other impacts caused by implementation Presidential Threshold itself is that it will only give rise to presidential candidates "you again, you again" without being able to come up with alternative candidates. Even though Law Number 7 year 2017 should actually facilitate the emergence of alternative leadership candidates so that electoral competition increases. Including increasing participation and the quality of leaders. The right to nominate (the right to be candidate) has been restricted through regulations Presidential Threshold which infringes the meaning of citizens' freedom to build society and the state as guaranteed by the constitution.

Indeed, in implementing elections, democratic principles certainly have limitations. However, these limitations are not justified in eliminating or emasculating the meaning of democracy which provides rights and freedoms for citizens. Among the constitutional rights include, among others, the right to vote (*the right to vote*), right to nominate himself (*the right to be candidate*), and the right to nominate candidates (*the right to propose candidate*) is a right guaranteed by the 1945 Constitution of the Republic of Indonesia.<sup>29</sup> When the core of running Presidential Threshold As a process to strengthen the presidential system of government, simultaneous elections have actually become a step towards this mission.

#### 4. Conclusions

The regulation of the Presidential Threshold in Indonesia's presidential and vice presidential elections from the perspective of the constitution and human rights raises significant issues within Indonesia's constitutional system. The current application of the Presidential Threshold is viewed by some as disrupting democracy and creating polarization in Indonesia by limiting the number of presidential candidates, leading to multiple challenges of its constitutionality in the Constitutional Court. Moreover, the formulation of this provision is deemed to contradict citizens' political rights under the 1945 Constitution and is considered lacking a legal basis in the constitution. On the other hand, the Presidential Threshold system does confer advantages to certain political parties, as only those meeting the threshold can compete directly in presidential elections, thereby fostering a political cartel among major parties. Detrimentally to democracy, this undermines equal competition among all potential candidates in presidential elections. The Presidential Threshold cannot be justified in diminishing or restricting the essence of democracy, which grants rights and freedoms to citizens. Among these constitutional rights include the right to vote, the right to be a candidate, and the right to propose candidates, all guaranteed by the 1945 Constitution, all of which are diminished due to this provision of the Presidential Threshold. These rights are integral to human rights that must be upheld and protected. Legally, the implications of the Presidential Threshold, including the rights to vote, be a candidate, and propose candidates, are not accommodated, although presidential and vice presidential elections are concurrently held with legislative elections, rendering this provision irrelevant.

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<sup>29</sup> Anang Dony, Irawan Al, And Qodar Purwo, "Consideration Of Threshold Determination For President Candidate And Vice President Candidate In Indonesia" 590 (2021): 184-89.

Thus, at this juncture, the article proposes four reformative steps for consideration. Firstly, removing or lowering the presidential threshold would broaden opportunities for small and independent parties to participate in electoral contests, thereby strengthening political pluralism. Secondly, adopting a two-round election system as implemented in France and Brazil would enable more candidates to participate in the first round while ensuring the final winner secures majority support in the second round. Thirdly, enhancing regulations to anticipate political polarization by enforcing stricter rules to control identity politics and promoting campaigns focused on policies and programs. Lastly, increasing transparency and oversight throughout the nomination and election processes is necessary to mitigate the risks of transactional politics and corruption that could undermine the integrity of the democratic system.

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## 6. Reference

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