

**RESEARCH ARTICLE**

# PARLIAMENTARY THRESHOLD AND POLITICAL RIGHTS LIMITATION

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## ABSTRACT

Parliamentary threshold or political party threshold to occupy the people's representatives in parliament is a provision that has been regulated in the law. Article 414 paragraph (1) of Law Number 7 of 2017 concerning General Elections regulates the existence of a parliamentary threshold. This means that the parliamentary threshold is legal. Especially based on legal considerations of the Constitutional Court in the Constitutional Court Decision Number 3 / PUU-VII / 2009 and Constitutional Court Decision Number 20/PUU-XVI/2018, the parliamentary threshold is an open legal policy so that it can be said to be constitutional. But in reality, the application of the parliamentary threshold limits political rights. The limitation of political rights occurs to participants and voters in the General Election.

Keyword: *Parliamentary Threshold; General Election; Political Rights*

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## INTRODUCTION

Indonesia is a democratic country based on the 1945 Constitution. Article 1 paragraph (2) of the 1945 Constitution states that sovereignty is in the hands of the people and is carried out according to the Constitution. Then Article 1 paragraph (3) states that the State of Indonesia is a state of law. Article 1 paragraph (2) of the 1945 Constitution deals with democracy and paragraph (3) relates to the rule of law. This means that these two verses can be said to be a democratic rule of law. One of the consequences of implementing a democratic rule of law is one of which is to carry out general elections or elections based on the law. This condition has been carried out in Indonesia by holding elections every five years according to the mandate of Article 22E of the 1945 Constitution (Muhtada & Diniyanto 2018: 83-91).

In addition to holding elections as a manifestation of a democratic rule of law. Indonesia also guarantees human rights for all Indonesian citizens. The guarantee is even stated directly in the constitution, the 1945 Constitution. The existence of guarantees of human rights by the state has indeed made the country fulfill the indicator as a state of law according to Julius Stahl (Muhtada & Diniyanto 2018: 89). These conditions are normative and in practice there are problems when they have entered the operational level. Parliamentary ownership implemented in Indonesia through regulations on general elections has in fact come face to face with guarantees of human rights (Arifin & Lestari 2019). Parliamentary threshold is one of the concepts of simplification of political parties through the election system. But in reality, the parliamentary threshold can actually threaten human rights, especially related to political rights restrictions. This research will discuss related to parliamentary threshold and restrictions on political rights.

## METHOD

This research uses normative legal research and analyze the issue related to parliamentary threshold and restrictions on political rights from various laws and regulations in Indonesia and some legal theories. The problems analyzed on this paper are concerning (1) what is the regulation on parliamentary threshold in Indonesia? and (2) how relevant is the parliamentary conference with restrictions on political rights?

## REGULATION OF PARLIAMENTARY THRESHOLD IN INDONESIA

Arrangements related to parliamentary threshold are made in Law Number 7 of 2017 concerning General Elections. Article 414 paragraph (1) of Law Number 7 of 2017 concerning General Elections states that Election Contesting Political Parties must meet the threshold of vote acquisition of at least 4% (four percent) of the total number of valid votes nationally to be included in the determination of seats for DPR members. This means that normatively and based on the decision of the Constitutional Court Number 20 / PUU-XVI / 2018 there are actually no problems including from the perspective of the constitution in which there is a regulation of political rights. However, empirically or in reality on the ground, it cannot be ascertained whether the parliamentary threshold is not contrary to political rights, especially the political rights of participants and voters in the General Election.

Therefore, it is necessary to study more closely related to the parliamentary threshold based on an analysis of political rights of participants and voters in the General Election which is strengthened by experience in the field and theories about political rights. Field experience regarding the application of the parliamentary threshold is not easy to prove that the parliamentary threshold violates the political rights of participants and voters in the General Election. Still by looking at the data on the implementation of parliamentary threshold in Indonesia during the three times of the General Elections, namely in 2009, 2014 and 2019, it can be said that the parliamentary threshold successfully eliminated participants in the General Election, namely political parties to send legislative candidates in parliament (Hakim 2018; Rakhmatulloh 2014; Adelia 2018: 146-159; Farisa 2019).

The 2009 General Election, out of the 38 political parties participating in the General Election, the parliamentary threshold was able to eliminate 29 political

parties participating in the General Election to put the legislative candidates in parliament. The 2014 General Election consisting of 12 political parties participating in the General Election. Parliamentary threshold succeeded in tackling two political parties from being able to sit in parliament. The current general election is 2019 with 16 political parties participating in the General Election. Parliamentary threshold succeeded in overthrowing 3 political parties not to sit in parliament. Even the application of the parliamentary threshold in the 2019 General Election was able to issue one incumbent political party in parliament not to sit in parliament again (Hakim 2018; Adelia 2018: 146-159; Rakhmatulloh 2014; Farisa 2019).

The empirical experience is very interesting if analyzed from the perspective of the political rights of election participants. Political parties that have a voice in the community are apparently unable to penetrate the parliamentary threshold so that they cannot position legislative candidates in parliament. Even though every political party that participates in the General Election always gets votes. In fact, there are political parties that have a voice almost close to the parliamentary threshold. This means that there are voices from the community that are wasted in vain. For example, the Perindo Party, which this year gained 2.67% of the vote, is equivalent to 3,738,320 votes. Such a large vote must in fact be removed (discarded) when determining the members of the House of Representatives in parliament. Imagine if six political parties that did not pass the parliamentary threshold were merged. There are about more than 10 million votes wasted because they cannot be included in the determination of members of the House of Representatives (Farisa 2019).

This means that more than ten million people who participated in the General Election yesterday did not have a political party in the parliament. The aspirations of the people intended to be conveyed to the chosen political parties could not be realized. Because the political parties chosen does not pass the parliamentary threshold. This context clearly causes losses for participants and voters in the General Election. First, losses for participants in the General Election in this case political parties. Political parties that do not pass the parliamentary threshold are disadvantaged because they cannot bring aspirations to parliament from the constituents who have voted. Then, the constituency votes that have been obtained by political parties with hard work will also be lost in vain. That was because the political party did not pass the parliamentary threshold.

Second, losses for voters in the General Election in this case or the public. People who vote for political parties but do not pass the parliamentary threshold are clearly disadvantaged. Losses obtained include:

1. People's voice is wasted because the party chosen does not pass the parliamentary threshold.

2. The public cannot channel their aspirations in parliament according to their wishes based on the political party program.
3. The community is disadvantaged because they cannot position legislative candidates in the House of Representatives. Though the candidate has a vote equal to one seat in the House of Representatives. Because political parties that are vehicles do not pass the parliamentary threshold, the legislative candidate also cannot sit on the House of Representatives. This is clearly detrimental to participants in the General Election, namely voters as constituents who choose and hope for the candidates and the intended legislative candidates.

The experience of applying parliamentary threshold in the field which in reality caused losses for participants and voters in the General Election. Based on political rights, it clearly violates the political rights of participants and voters in the General Election. The basis of the analysis that the parliamentary threshold violates political rights other than based on experience is the 1945 Constitution. Article 28C paragraph (2) of the 1945 Constitution states that every person has the right to advance himself in fighting for his collective rights to develop his community, nation and state. The context advancing itself, fighting for the collective right to develop society, nation and state is directly related to the General Election.

The purpose of the community to vote in the General Election is to convey aspirations such as advancing themselves and fighting for their rights (to choose) in order to develop society, nation and state. If voters cannot make this happen because the political parties and / or elected legislative candidates do not qualify for parliament because of the parliamentary threshold, the parliamentary threshold can be said to have violated Article 28C paragraph (2) of the 1945 Constitution. Theoretically it is clear that the parliamentary threshold that can frustrate political parties and / or candidates for legislative members sitting in parliament is in violation of Article 28C paragraph (2) of the 1945 Constitution. Facts on the ground also show that political parties and / or legislative candidates did not qualify for parliament because of the parliamentary threshold. Even though many legislative candidates have the votes equivalent to one seat in parliament. However, due to the parliamentary threshold they must be eliminated from the determination to sit in parliament.

Such conditions based on field facts and theories in the constitution have concluded that the Constitutional Court's decision on the parliamentary threshold does not conflict with the 1945 Constitution is not an absolute truth. Even if it is studied more deeply to the conditions of the field and related to the existing theories in the constitution. Parliamentary threshold has apparently violated the constitution in particular Article 28C (2) of the 1945 Constitution in which there are political rights of participants and voters in the General Election.

## RELEVANCE OF PARLIAMENTARY THRESHOLD WITH RESTRICTIONS ON POLITICAL RIGHTS

The next analysis that needs to be examined is the existence of a parliamentary threshold in Law Number 7 of 2017 concerning General Elections. Identification related to the existence of a parliamentary threshold in Law Number 7 of 2017 concerning General Elections is to determine the extent to which the parliamentary threshold correlates with political rights. Given the parliamentary threshold is closely related to General Election which is nothing but a political system. The question is whether the existence of a parliamentary threshold in Law Number 7 of 2017 concerning General Elections does not limit political rights especially the political rights of General Election participants?

These questions must be answered to provide assurance that the regulation and application of the parliamentary threshold does not conflict with the political rights of participants in the General Election. Normatively and visibly, the parliamentary threshold can be said not to conflict and does not limit the political rights of participants in the General Election. The basis of the statement is the legal consideration of the Constitutional Court in the Constitutional Court Decision Number 20 / PUU-XVI / 2018 as mentioned earlier that the parliamentary threshold is an open legal policy and constitutional as long as it does not conflict with people's sovereignty, political rights and rationality.

Unfortunately, in the ruling the Constitutional Court does not provide definitions or clarity related to what political rights should not be challenged by the parliamentary threshold. The Constitutional Court only gives general matters which must not be violated by the parliamentary threshold. There is no clarity regarding what kind of political rights not to be violated by the parliamentary threshold raises more severe questions. The previous Constitutional Court ruling namely Constitutional Court Decision Number 3 / PUU-VII / 2009 related to the parliamentary threshold also did not provide clarity about political rights that should not be violated by the parliamentary threshold.

One of the legal considerations in the Constitutional Court Decision Number 3/PUU-VII/2009 is that the parliamentary threshold can be made to provide restrictions as long as it is still in accordance with the constitution. While the Constitutional Court stated that the parliamentary threshold does not conflict with the constitution. This means that the political rights that have been regulated in the constitution according to the Constitutional Court are not violated or limited by the existence of a parliamentary threshold. The following is one of the judges'

considerations in Decision Number 3 / PUU-VII / 2009 (in Bahasa Indonesia as original judgment):

*“Menimbang bahwa dengan demikian dapat disimpulkan bahwa lembaga legislatif dapat menentukan ambang batas sebagai legal policy bagi eksistensi Partai Politik baik berbentuk ET maupun PT. Kebijakan seperti ini diperbolehkan oleh konstitusi sebagai politik penyederhanaan kepartaian karena pada hakikatnya adanya Undang-Undang tentang Sistem Kepartaian atau Undang-Undang Politik yang terkait memang dimaksudkan untuk membuat pembatasan-pembatasan sebatas yang dibenarkan oleh konstitusi. Mengenai berapa besarnya angka ambang batas adalah menjadi kewenangan pembentuk Undang-Undang untuk menentukannya tanpa boleh dicampuri oleh Mahkamah selama tidak bertentangan dengan hak politik, kedaulatan rakyat, dan rasionalitas. Dengan demikian pula, menurut Mahkamah, ketentuan mengenai adanya PT seperti yang diatur dalam Pasal 202 ayat (1) UU 10/2008 tidak melanggar konstitusi karena ketentuan Undang-Undang a quo telah memberi peluang bagi setiap warga negara untuk membentuk partai politik tetapi sekaligus diseleksi dan dibatasi secara rasional melalui ketentuan PT untuk dapat memiliki wakil di DPR. Di mana pun di dunia ini konstitusi selalu memberi kewenangan kepada pembentuk Undang-Undang untuk menentukan batasan-batasan dalam Undang-Undang bagi pelaksanaan hak-hak politik rakyat”.*

Legal considerations and decisions of the Constitutional Court related to the parliamentary threshold actually does not describe what political rights should not be challenged by the parliamentary threshold. The Constitutional Court is limited to justifying the position of the parliamentary threshold that does not conflict with the constitution automatically does not conflict with political rights. Considering that political rights are regulated in the constitution, the 1945 Constitution. The next question is had the mandate of the Constitutional Court's decision been carried out that the parliamentary threshold does not limit political rights?

The Constitutional Court's decision may be considered correct, but has the Constitutional Court's decision related to the parliamentary threshold been implemented and does the empirical level of the application of the parliamentary

threshold really does not limit political rights? The question will be answered by the presence or absence of restrictions on political rights in the parliamentary threshold in Law Number 7 of 2017 concerning General Elections.

It cannot be assumed that in reality based on facts in the field and theories that exist in the constitution. It is stated that the parliamentary threshold is contrary to Article 28C paragraph (2) of the 1945 Constitution is a matter that needs to be further studied and debated. But the facts on the ground which are proven by historical data have provided an illustration that there are losses of political rights and even constitutional rights for General Election participants due to the parliamentary threshold. This means that the parliamentary threshold really limits political rights, especially participants and voters in the General Election. The question is the extent of the provisions on limiting political rights in the parliamentary threshold. If referring to the previous description, it can be said that the limitation of political rights contained in the parliamentary threshold is to target the participants and voters in the General Election.

Furthermore, the losses incurred by participants and voters in the General Election due to the existence of parliamentary threshold are not just one loss but more than one. The disadvantages for participants in the General Election are political parties that do not pass the parliamentary threshold, namely (1) cannot bring the aspirations of the constituents who have elected them and (2) the loss of votes of constituents who have voted. These two losses are the political rights of political parties. Absorption and aspirations of the community are the rights of political parties as a buffer of democracy. Regarding the loss of votes for political parties is clearly a loss of political rights for political parties. Political parties are entitled to get votes from the public and there should not be any instrument that removes the votes. Given the vote is the most basic political rights.

Then the losses for voters in the General Election. People as voters who have the right to vote are clearly disadvantaged by the existence of a parliamentary threshold. People who are disadvantaged by the existence of a parliamentary threshold are people who elect political parties and / or candidates for legislative members but do not qualify because of the parliamentary threshold. Losses obtained by the community in the presence of such things as:

1. The loss of people's votes in vain because for voters who vote for political parties with gains below the parliamentary threshold.
2. voters cannot channel their aspirations in parliament according to their wishes based on the political party program because it is constrained by the parliamentary threshold.
3. the community is disadvantaged because they cannot position candidates for the legislative members in the House of Representatives. Even if the votes of



the elected legislative candidates are equal to one of the seats in the parliament. However, due to the existence of a parliamentary threshold, political parties do not qualify, so automatically candidates for legislative members from political parties also do not qualify.

The losses suffered by participants and voters in the General Election due to the existence of the parliamentary threshold are actually restrictions on political rights carried out by the parliamentary threshold. Considering that this time the parliamentary threshold is regulated in Act Number 7 of 2017 concerning General Elections, the limitation of political rights in the parliamentary threshold is in Act Number 7 of 2017 concerning General Elections. This means that Law Number 7 of 2017 concerning General Elections is involved in limiting the political rights of participants and voters.

The analysis is not based on opinion but based on facts on the ground and supported by the theories contained in the 1945 Constitution. The results of the analysis were contrary to the decision of the Constitutional Court regarding the parliamentary threshold. Considering the Constitutional Court's decision regarding the parliamentary threshold is final and binding. In fact, there are no more legal efforts to eliminate the parliamentary threshold that clearly violates the political rights of participants and voters in the General Election. Based on instructions from the Constitutional Court in legal considerations in the Constitutional Court's decision regarding the parliamentary threshold. The Constitutional Court stated that the parliamentary threshold is an open legal policy.

This means that the parliamentary threshold is an absolute policy that can be regulated by legislators in this case the House of Representatives and the Government. This condition is a gap to eliminate the parliamentary threshold in the General Election system in Indonesia. The number of losses suffered by participants and voters in the General Election due to the parliamentary threshold. It is time for the parliamentary threshold to be abolished. Political efforts are a way to eliminate the existence of a parliamentary threshold. Lawmakers must be aware that the parliamentary threshold brings harm to the political rights of participants and voters in the General Election. Therefore, legislators must immediately eliminate the existence of parliamentary threshold.

The loss of the parliamentary threshold signals the loss of provisions for limiting political rights caused by the parliamentary threshold. The absence of a parliamentary threshold can cause guarantees of the political rights of participants and voters in the General Election will remain alive. The question is that if the parliamentary threshold is removed, can the legal politics of the parliamentary threshold as described previously be realized? Given the parliamentary threshold legal politics are very important for the government system in Indonesia.

This question has successfully confronted political rights and the stability of the government system. Conditions like this are certainly very difficult to remember both are very important. But as a country that is consistent with the implementation of the constitution, the state must choose whether it is more concerned with political rights or the government system. Referring to the Preamble of the 1945 Constitution, in fact the most important thing to be prioritized is political rights. The initial sentence of the Preamble of the 1945 Constitution which states that actually Independence is the right of all nations means that political rights are the main compared to the government system. Independence for all nations is impossible if people are not sovereign and independent. Therefore, the sovereignty of the people or the independence of each individual must be realized first. The sovereignty and independence of political rights is one part of the realization of people's sovereignty and individual independence.

This means that political rights are the most important in a country. Without political rights, surely it will be difficult to realize the independence of the country and the people. Likewise with the government system in a country. Without sovereign political rights, it will be difficult to create a stable and democratic system of government. A government system that is not based on the foundation of freedom of political rights gives birth to an authoritarian system of government. Although the government system uses parliament or presidential and even semi. If it is not preceded by a sovereign political right for the people, then the system of government will tend to be authoritarian.

This can be seen in various countries that are authoritarian and implement all governance. The country succeeded normatively and even constitutionally run the government system. However, because in that country there is no sovereignty of political rights owned by the people, the government system that is run tends to be authoritarian. Therefore, in the context of the Indonesian State, popular sovereignty and political rights are fundamental and must be carried out first. If this has been successfully implemented and realized, then the formulation of the format of the government system and even the strengthening of the government system can be done quickly.

Strong foundations in a country will produce strong pillars. Political rights are one of the foundations in a country. This is clearly won in the Second Value of Pancasila which states that humanity is just and civilized. The interpretation of fair and civilized humanity is also included in the sovereignty of the people in political and state rights which must treat justice fairly and civilized. There should be no discrimination against political rights between the people of Indonesia. Then the government system can be said as one of the pillars of the country. Therefore, it needs to be reiterated that political rights must be obtained from the government system.

This means that eliminating losses due to the parliamentary threshold must take precedence over realizing the political policy of the parliamentary threshold.

## CONCLUSION

The existence of parliamentary threshold in General Election turns out to create a dilemma. Parliamentary threshold regulated in Article 414 paragraph (1) of Law Number 7 of 2017 concerning General Elections is indeed legal and constitutional. But in reality, the implementation of the parliamentary threshold actually has a negative impact on participants and voters. The negative impact is the limitation of political rights in the General Election. The limitation of political rights causes losses for participants and voters. The limitation of political rights in question can also be said to be contrary to Article 28C paragraph (2) of the 1945 Constitution.

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