

# Application of Presidential Threshold In Indonesia And Comparison With Several Countries

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## ABSTRACT

A country is said to be a modern country is the large number of people's participation in regulating and running their country, as well as the existence of general elections in selecting candidates for people's representatives to occupy positions from state positions, therefore each country must have its own arrangements regarding how to obtain a position and the duration of a person or more. in occupying these positions, one of which is the position of president and vice president whose terms of office and the pattern of carrying them often differ between countries, in Indonesia, President Have a Power More than Parliament, Therefore someone or more who wants to hold the office of president and vice president needs to get more than twenty percent of the votes in the seats The House of Representatives, However Not All Countries implement the presidential threshold with a vote of twenty percent the parliament. But it could be more and there are even some countries don't use this system? And the method I used in this research is Normative Type with conceptual approach and case analysis, because as we known in this world theres a much country who Not applied presidential Threshold system, so in this research I found the country who applying presidential threshold and the reason that county not use that system.

**Keyword:** *President, Presidential Threshold, Democracy and Presidential System.*

## 1. INTRODUCTION

In the modern world, or we could say in Democracy is a system that is essentially considered capable of rising after being lost for thousands of years. However, nowadays the revival of the system has become a major current that has swept the world so that it can now be said to be a very popular system. (Feldman, 2008). Literally the democratic system can be run if a community gets a vote or is elected by the people so that it can run a country, this can be interpreted that anyone can become a state official, as long as they are legally elected according to the provisions or applicable laws. Basically, democracy is interpreted differently as a mutual agreement, which can be used as a rule or procedure for playing by all parties, in its making democracy in the end is *aconsensus*, where the consensus must be contained in a legal product. A legal product that should be produced through a consensus that is formed through representatives who are usually considered as a form of people's sovereignty. Classical thinkers such as Montesquieu have long discussed the procedure for interpreting popular sovereignty as a basic law. (Fitra Arsil, 2017.)

In the discussion of people's sovereignty, it is deemed necessary to establish procedures The implementation of it and the law governing the interpretation mechanism of the people's sovereignty is a fundamental form of government, therefore it is an important part of a country in the form of a republic, in this case Montesquieu calls it Fundamental Law in Republics. (Montesquieu baron de 1689-1755, 1823).



Because democracy is an interpretation of people's sovereignty, general elections need to elect one or more people to carry out the task of running the government system. In Indonesia, general elections are held every five years, where the elections are held in order to elect representatives of the people to fill the legislative and executive positions. The election is carried out freely, meaning that the community can independently choose anyone who is deemed worthy to fill the position. Given the direct election from year to year there is always the issue of the threshold regarding the requirements to nominate a pair of presidential and vice presidential candidates, For example in the 2004 general election where the required threshold was 10% (Ten percent) and increased to 20% (twenty percent) in 2009 and continues to this day. However, this has resulted in a polemic for some circles, some who support that the application of the threshold is needed in order to create a strong presidential system, making it easier for candidates who have been elected to carry out their work programs in the future.

Among the figures who support the existence of this system is Tjahjo Kumolo, where he said that "the presidential Threshold cannot be made to 0 percent" there are those who support that the application of the threshold is necessary in order to create a strong presidential system, making it easier for elected candidates to carry out their work programs in the future. Among the figures who support the existence of this system is Tjahjo Kumolo, where he said that "the presidential Threshold cannot be made to 0 percent" there are those who support that the application of the threshold is necessary in order to create a strong presidential system, making it easier for elected candidates to carry out their work programs in the future. Among the figures who support the existence of this system is Tjahjo Kumolo, where he said that "the presidential Threshold cannot be made to 0 percent" (Febryan A, 2022).

On the other hand, there are also parties who reject the presidential threshold because they think that the threshold will have an impact on limiting public participation in proposing themselves as president and vice president, whereas in a democratic country anyone is guaranteed political rights and can participate in government as long as it is in accordance with the rules. Constitution.

## **2. RESEARCH METHODS**

This Research, The type of the research that will be used its legal research, This Type of journal research it's a Normative type which is alswo as known library research or a document study because in this research is conducted only at the written regulations and others legal materials.

## **3. RESULT AND DISCUSSION**



### **Separation of power in a presidential system**

Law is a product that cannot be separated from the life of the state, with the aim of regulating and bringing order to society in an organization or state. A modern state today as we know it needs to contain provisions regarding power and ways to limit that power. This provision in this case is called the separation of powers. The separation of powers is intended to limit someone in power in order to prevent corrupt or arbitrary power from occurring. Through the concept of separation, power is distinguished and separated into several different functions.(Asshiddiqie, 2006.)

Among preventing the occurrence of power that gives birth to such arbitrariness is to separate it into three parts which are called the Legislative, Executive and Federative. John Locke in his work *Two Treaties On Civil Government*, puts Democracy or sovereignty as a mandate from the people to carry out the function of legislation or forming legal products. Because considering that in a republic country, there is no written decision that can be made without the approval of the institution (Legislative).(Locke et al., 2003)

Therefore, the Legislature, which has considerable power because it can determine a rule or legal product that has an impact on the pattern of people's life behavior, needs to be limited, in this regard. Locke concluded that the thing that needs to be limited in this case is in the form of legal content. According to him, although in essence the legislative decision represents the voice of the people who have voted for it, it does not make the institution able to make decisions as it pleases, therefore restrictions need to be made.

In a country that adheres to a presidential government system, the distribution of power between state institutions is intended to create a balance or pattern *Check And Balance* The presidential system is also known as a system that separates the power of the main institutions in the *Trias politica* pattern, so this system is commonly known as a system of separation of powers or (*Seperated of Powers*). In this system, general elections cannot be separated from the pattern of parliamentary and presidential elections, therefore the general election between the legislative and executive does not give legitimacy to other institutions or mutual independence. Thus these two powers cannot overthrow each other. Or in other words that the House of Representatives cannot overthrow a president who is in office, or the President cannot overthrow the House of Representatives.

The rules regarding filling and obtaining votes in this system can usually be found in the Constitution, which is the supreme Law or according to Hans Kelsen as *Staatsfundamental Norm*, referred to as the Basic Norm in a sovereign state. However, in his interpretation of the practice of the presidential system, it can't necessarily be said to be successful, especially in Latin American

states, where it seems that this goal is not always successful.(Fitra Arsil, 2019.) Therefore, the presidential system is seen as a factor causing political instability.

Based on this rule, the experts actually formulate that it is further than the characteristics categorized in the presidential system of government. Wuest describes the characteristics of presidential systems in several categories.

1. It is based upon the separation of powers principle
2. The executive has no power to dissolve the legislation nor must he resign when he loses the support of the majority of its membership.
3. There is no mutual responsibility between the president and his cabinet the later is wholly responsible to the chief executive.
4. The executive is chosen by the electorate. (Shepherd & Witman, 1963.)

#### **Powers of the President according to the 1945 Constitution of Indonesia**

The President is someone who is elected through general elections to exercise executive power which is limited by law, the President in the true sense does not refer to people or legal subjects, but in this case refers to positions obtained based on general elections, when viewed again in the structure Indonesian administration The president is regulated in the highest law or constitution, which means that the president has broad and important powers in exercising his power.

In the Interpretation of the 1945 Constitution of Indonesia The President's powers include:

- a. The power to administer the government is the power of the president as the holder of the highest power in the government (Article 4 Paragraph (1, 2) of the 1945 Constitution.
- b. The power in the field of legislative regulations, namely the president's power in submitting draft laws and discussing them with the DPR, the power to form government regulations in lieu of laws (Article 5 paragraph (1,2) and Article 22 of the 1945 Constitution of the Republic of Indonesia
- c. The power in the judicial field where the president can grant clemency and amnesty which takes into account the considerations of the Supreme Court and in granting amnesty and abolition, the President takes into account the considerations of the House of Representatives, Article 14 paragraphs (1, 2) of the 1945 Constitution of the Republic of Indonesia
- d. Power in foreign affairs where the president has the power to make treaties with other countries, the power to declare war with other countries, the power to declare peace with other countries, and the power to appoint ambassadors or consuls. Article 11 paragraphs (1, 2, 3) and Article 13 of the 1945 Constitution of the Republic of Indonesia

- e. The power to declare danger means that the president based on his authority can declare danger without the approval of the House of Representatives Article 12 of the 1945 Constitution.
- f. The President has supreme power over the Army, Navy and Air Force. Article 10 of the 1945 Constitution.
- g. The power to inaugurate other officials under the President. Article 23F paragraphs (1, 2) and Article 24 paragraphs (1, 2 and 3).(Undang Undang Dasar, 1945).

Thus the power of the president can be said to be very important in carrying out government power, but the discussion regarding the president does not stop at the power of the president, but the discussion related to the president is still said to be very broad, one of which is related to the nominations for president and vice president, and the threshold for nominations for president and vice president. president or known by the term *Presidential Threshold*.

#### **Regulations related to Presidential Threshold in Indonesia**

The feature of a presidential system of government is that elections are held and the highest head of government is with the president. Meanwhile, the power of the president cannot be exercised based on the free will or the will of the state official who is holding the position, but that power is limited by constitution or constitution.(Zamroni, 2015).

In addition to regulating the term of office of the president and also the length of time in his term of office, the constitutional limit is not only limited to the arrangements as stated in it, but also the rules regarding the acquisition of votes or the minimum requirements for the nomination of president and vice president based on the number of votes in parliament or the votes declared. valid nationally obtained from each political party or a combination of political parties. Regulations related to the Presidential Threshold are further regulated in Law Number 7 of 2017 concerning General Elections, in article 222 which states that "A pair of candidates is proposed by a political party or coalition of political parties participating in the general election who fulfills a minimum of 20% (twenty percent of the total) seat votes. ) of the number of seats in the DPR or obtain 25% (twenty five percent) of the nationally valid votes in the previous election for members of the DPR.(Undang Undang Dasar 1945).

The regulation related to the presidential threshold that has been determined previously is a further elaboration in article 6A paragraph (2) of the constitution which states that "The pair of presidential candidates and vice presidential candidates is proposed by a political party or a combination of political parties participating in the general election before carrying out the General Election".in this case the provisions in article 6A paragraph (2) do not rationally determine the number of votes received as a condition for the nomination of president and vice president, while in Law no. 7 of 2017 concerning General Elections, regulations regarding the number of votes are

explicitly regulated. So to respond to things like this, the Constitutional Court stated that the rules or regulations related to these two laws are Open Legal Policy.(Diniyanto, 2018).

The implementation of the Presidential Threshold is not only happening now, however, the implementation has occurred in the first general election in 2004. The general election at that time was held to determine or choose two instruments, while the instruments in question were the instrument, DPR, DPRD, DPD and presidential and vice presidential elections.

After that in the 2019 general election, the only legal instrument used was Law No. 7 of 2017, this is because the 2019 general election was held or held simultaneously, while the simultaneous purpose is, the general election of the DPR, DPRD and The DPD and the president and vice president are conducted at the same time.

### **Impact on the Implementation of Presidential Threshold in Indonesia**

In the world of law, the application of a rule or norm, will inevitably lead to a cause and effect, as for the resulting cause and effect that can be accepted by everyone or even rejected. *Presidential threshold* not only always associated with a threshold, but always associated with the pattern or concept itself in a democratic country. Based on the previous statement above, we can see that the presidential threshold has not yet arrived at what is meant, or has not been accepted by all. In the circles, we can realize this by the continuous emergence of petitions for the application of this Presidential Threshold in the Constitutional Court.

The impact felt by the Presidential threshold is not felt directly by the public, but it is felt very significantly by political parties, in Law Number 7 of 2017 concerning General Elections, it expressly states that what is meant by presidential threshold is the vote obtained by 20% of the DPR and votes with 25% valid Nationally owned by the Combined political party or a political party. This is because it was taken by the previous election, namely elections in 2014.

When viewed in the 2014 people's representative election, none of the political parties received a valid vote of 20% for the DPR and 25% nationally, this has an impact that no single political party or combination of political parties can nominate the President and vice president. that causes great losses to political parties, political parties in this case are directly harmed by the constitution, even though the guarantee to propose pairs of presidential and vice presidential candidates is guaranteed by the constitution. In article 6A (2) of the 1945 Constitution, the existence of a presidential threshold makes the presence of political parties injured. Various patterns of thresholds that have been applied to general elections in Indonesia are arguably not quite successful in creating simplification of decision making in Indonesia, The implementation of the presidential threshold for the acquisition of political parties in the next general election can be said to have failed in its implementation. The threshold that has been imposed since the first era in the Indonesian Reformation encourages political parties to carry out Merger or Bottom Up so that



it is not like the general election in the previous era (the new order), when the state decided to merge political parties so that there were only two political parties and groups. Work. However, in reality, parties that do not meet the Electoral Threshold, instead of joining other parties, only change their party names slightly and re-enter the next general election.

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This does not necessarily stop there, but other problems will attend, one of which is related to the new political party. As for the new political parties, they cannot nominate pairs of presidential and vice presidential candidates because the new political parties have not received valid votes as stipulated previously in the vote acquisition in the DPR. the pair of president and vice president is also an act that can be said to be futile. This is in contrast to the old political parties which have obtained 20% and 25% valid votes nationally, so that the old political parties can nominate pairs of presidential and vice-presidential candidates. From this point of view, we can see that there is no element of justice between the old political parties and the new political parties. even though in the constitution each party has the same position. Whereas the constitution explicitly states that political parties and coalitions of political parties can nominate a presidential and vice-presidential pair.

For this reason, political parties are directly affected. As a result of the implementation of the Presidential threshold, new political parties cannot automatically nominate pairs of presidential

and vice presidential candidates independently, and new political parties cannot nominate presidential and vice presidential pairs independently even though they have formed a coalition with other parties.(Diniyanto, 2018). Although the disadvantage of new political parties is that they cannot nominate pairs of presidential and vice presidential candidates because they have not yet received 20% of the DPR's votes and 25% of the valid national votes.

However, the disadvantage of implementing the presidential threshold is not only having an impact on new political parties, but also old political parties, if it is seen that it is true that old political parties can propose pairs of presidential and vice presidential candidates independently or in coalition, but if they can propose pairs of presidential and vice presidential candidates, the old political parties may not be absent or neutral in the presidential and vice presidential elections, if the old political parties can nominate pairs of presidential and vice presidential candidates.

But in the end, if the old political party does not comply with the proposal, then the consequence or consequence is that the political party will not be able to participate in the general election in the next five years. The losses referred to in the previous discussion can also be felt by the people, in the sense that the people are at the same time taking shelter in a political party. The losses are caused by the implementation of the presidential threshold. Thus, it can be understood that the Presidential threshold has not yet been fully accepted by the Indonesian people.

The presidential threshold is currently being rejected by some politicians because it is considered that the system is not appropriate, so it often causes controversy. The controversy was caused by the existence of several requirements for the presidential nomination, even though the general election was held directly and simultaneously with the first stage of the presidential election and the election of the People's Representative Council. Thus, the votes that are used as the basis for calculating the fulfillment of the threshold are not possible for political parties to gain votes in the legislative elections that year, but the numbers obtained by political parties in previous general elections are no longer considered actual.(Arsil, 2019) Although there are often controversies about presidential system thresholds, the main goal is to create effectiveness and stability for the presidential system.

### **Application of Presidential Threshold in other Countries.**

#### **1. Brazil**

Is part of a country in Latin America, Brazil is also one of the countries that adheres to a presidential system of government, so that government power is also carried out and led by a president, as for becoming a president in this country a candidate must obtain a vote of 50% plus one (1 ) in the Brazilian Constitution especially in Chapter“V”, whose regulation is related to political parties, does not mention the presidential threshold or the threshold for presidential



candidacy, but in the chapter it only regulates the establishment, consolidation, merger and dissolution of political parties based on overall or national sovereignty.

Based on the contents of the constitution, all political parties are considered entitled to nominate pairs of candidates for president and vice president. This does not stop there, even presidential candidates who run independently are considered normal and appropriate or legal or legally or constitutionally, even though they give as much space as possible to candidacy for president and vice president, but in fact in 2018 Brazil managed to record that as many as 13 presidential candidates participated in the presidential nomination. (Restiyani & Isharyanto, 2020)

Provisions on Chapter "V" the Brazilian constitution requires that at least to win a candidate running for president, at least he must obtain a vote of 50% (fifty percent) plus one, after being elected and concurrently with the completion of administrative matters or requirements, the pair of presidential and vice presidential candidates is officially determined. as president and vice president. However, if there is no winner or no number of votes is considered a majority, the presidential election will be held again or a second round of elections. After twenty days after the announcement of the results of the first round.

Brazil does not have a threshold setting in its constitutional system, but the presidential election is regulated in such detail that the time and day of the election are also regulated, Article 77 of the Brazilian Constitution, it is stated that the presidential and vice presidential elections will be held on the first Sunday of the month to be exact October. (Ghoffar, 2018)

## **2. United States of America**

As one of America's superpowers, it also has its own presidential system or model, but so far the Presidential Threshold arrangement does not exist or is not regulated by the American Constitution, for example in 2016 the presidential and vice presidential candidate pairs between Hillary Clinton, Tim Kaine from the Democratic party (Democratic Part) against Donald Trump, Mike Pence from the Republican party (Republic Party), besides that there are also pairs from third parties (The Third Party) which are usually filled by independent parties. For example, Jill Stein, Ajamu Baraka from the Green party and Gary Johnson's partner, Bill Weld of the Libertarian party. If you add up a total of 24 Candidates registered on the ballots in several states.

A number of candidate pairs, making America a country that opens and maintains the value of democracy, even the tradition of democracy in this country has survived for 250 years. (Nainggolan & Muhamad, 2020) In America, the process of electing the president and vice president is referred to as the Electoral College where the election is carried out by a group of people who come from political parties, called the Electors, the number of Electors is equal to the number of the House of Representatives with the Senate but the House of Representatives and the Senate cannot become an Elector.



In America alone, general elections are carried out through several phases.

1. *Convention*, namely the determination of candidates who will fight in the general election
2. Campaign, where the activity is carried out to campaign or promote goals in print or digital mass media.
3. *Vote*, where the election was carried out 2 times, namely the election was carried out by the community and then by the Elector.
4. *Inauguration*, the inauguration of the elected president and vice president. (Doris Febriyanti & M. Jerry Pratama, 2017)

The nomination of a presidential candidate is a first step for the implementation of Democracy in the United States, where nominations The president is determined by elites from political parties who represent some or all of the states, but currently the election process in the United States is very time-consuming and requires high costs.

Currently the presidential nomination is determined by sworn delegates who are elected through a pre-election, the first step in the presidential nomination begins with the early primary election in Iowa and New Hampshire, the implementation of the pre-election takes place in both states in February, while preliminary elections in other states will be held in March and June.

This preliminary election is interpreted as a significant step towards the presidential election process because in this process it is what determines whether a presidential candidate will continue the election in another state with a wider coverage area or not. It is therefore not surprising that many pairs of candidates who have lost the general election in Iowa and New Hampshire have chosen to step down rather than resume as candidates for president. (Aisah Putri Budiarti, 2013)

Therefore, even though America does not apply a threshold, the process to determine each one to advance in the presidential nomination takes a long time or stages. Unlike in Indonesia, the US presidential and vice-presidential pair hold positions for four years. (Debora, 2020)

### **3. Colombia**

In this country the president is declared as the party who has the highest authority in exercising his power. A person who is elected as a president and vice president will carry out his duties for 5 years, by obtaining a vote of 50% (fifty percent) plus one vote which is declared a valid vote based on the calculation results. The election is carried out directly and confidentially. However, if there is no pair of presidential and vice-presidential candidates who get 50% (fifty percent) of the votes plus one, the second and third rounds of elections will be held. will be held three weeks later after the first round is carried out. After obtaining a valid vote of 50% plus one, the pair of presidential and vice presidential candidates is officially declared a president.

However, if during the second round of the presidential and vice presidential candidate pairs there is no way or there is a vacancy in re-election, then the candidate pair will be replaced by a new candidate promoted by the political party. If there is a vacancy for less than 2 weeks before the second round of voting, the second round will be postponed for another 15 days. In 2018, there were three pairs of candidates who would participate in the presidential nomination, including Ivan Duque, Gustavo Petro and Sergio Fajardo. (Sekarwati, 2018) None of the three candidates received an absolute majority of votes, therefore the election process will be held again through a second round of elections.

#### **4. CONCLUSION**

The Presidential Threshold is basically a system that is needed to create an effective and stable system, but the application of this system is not necessarily justified, because it is true that indirectly the existence of this threshold can reduce the participation of the people who will take part in nominate himself deemed fit by the constitution.

Therefore, the presidential threshold should need to be compiled or re-examined whether the system is in accordance with existing democratic values or is it the other way around, the aim of which is to maintain democratic values in a country, because when talking about democracy it is not only about general elections. only, but opening up space for anyone to participate in politics is also part of existing democracy.

Today, the Presidential threshold is essentially unjustified and of course the application of this system globally also many countries that do not use the system, which instead prefer independent candidates to nominate themselves as pairs of presidential and vice presidential candidates, even the United States which is the mecca of Even modern democracies do not apply thresholds.

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