

**PRESIDENTIAL THRESHOLD IN SUMULTANEOUS
ELECTION AFTER THE ENACTMENT OF THE LAW NUMBER
7 OF 2017 ON GENERAL ELECTION**

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**PRESIDENTIAL THRESHOLD IN SIMULTANEOUS ELECTION AFTER
THE ENACTMENT OF THE LAW NUMBER 7 OF 2017 ON GENERAL
ELECTION**

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ABSTRACT

The enactment of the Law Number 7 of 2017 on General Election has created some controversies. One of those controversies is about Presidential Threshold, whether it is still needed or not as the upcoming Presidential Election and Legislative Election in General Election 2019 will be held simultaneously. This research is normative legal research with statute and comparative approaches. The result of this study shows that the Presidential Threshold in the upcoming simultaneous election in 2019 still has some problems. Firstly, the Presidential Threshold is not relevant if it is implemented in general election 2019. The second problem is the dilemma in choosing the alternative election for using Presidential Threshold. This research proposes some recommendations. First, the DPR should revise the Article 222 on the Presidential Threshold of the Law Number 7 of 2017 on General Election, regarding to the upcoming election in 2019 that will be hold simultaneous so there should be no Presidential Threshold. Second, the DPR should choose a better model of the Presidential Election whether the election is returned to the separate election as implemented in previous election or it still uses the Presidential Threshold or uses new system of simultaneous election without the Presidential Threshold.

Keywords: *General Election, Simultaneous Election, Presidential Threshold.*

1. INTRODUCTION

The enactment of the Law Number 7 of 2017 on General Election has created controversies. The main controversy actually is about Presidential Threshold. Presidential Threshold is total number of seats and votes to propose President and Vice President candidates. In order to propose pair of President and Vice President candidate, the parties or parties coalition have to reach minimum requirement of 20 per cent seats of House of People Representatives (hereinafter is referred to DPR) or 25 per cent of national votes.¹

The controversy happened because Presidential Threshold that will be applied in the upcoming general election in 2019 is going to be held in simultaneous election. If the general election in 2019 is held simultaneously the question is whether the Presidential Threshold still relevant or it should be abolished in the simultaneous election 2019. Furthermore, Presidential Threshold becomes a dilemma for politicians because when the general election is held simultaneously there should be no Presidential Threshold.²

Simultaneous election is a new thing in Indonesia triggered by the Constitutional Court (hereinafter is referred to MK). The MK verdict Number 14/PUU-XI-2013 was a result of judicial review of Article 3 Paragraph (5), Article 9, Article 12 Paragraph (1), Article 14 Paragraph (2), and Article 112 of Law Number 42 of 2008 on Presidential Election towards Article 6A Paragraph (2), Article 22E Paragraph (1) and Paragraph (2), Article 27 Paragraph (1), Article 28 D Paragraph (1), 28 H Paragraph (1), and Article 33 Paragraph (4) of the 1945 Constitution.

MK decided those articles that except Article 9 which mentioned about Presidential Threshold in the Law Number 42 of 2008 on the Presidential election. It has no legal binding as it was only based on MK decision but the Presidential Threshold concept is open legal policy.³

¹Article 222 of the Law Number 7 of 2017 on General Election.

²Sodikin, Pemilu Serentak “Pemilu Legislatif dengan Pemilu Presiden dan Wakil Presiden) dan Penguatan Sistem Presidensial”, *Journal Rechtsvinding*, Vol. 3, No. 1, Issued April 2014, ISSN 2089-9009, p.19.

³Constitutional Court Verdict 14/PUU-XI-2013.

The Presidential Threshold that will be used in the simultaneous election 2019 actually had been used in general election 2004.⁴ The using of Presidential Threshold in 2004 was still reasonable because the general election in 2004 had separated the legislative election and the Presidential election. However in the upcoming general election 2019 the Presidential and legislative election will be held at the same time or simultaneously.⁵ Therefore the idea of Presidential Threshold was ignored by some political parties because the Presidential Threshold will not be implemented properly considering that only the political parties that have adequate votes or seats in DPR can propose President and Vice President candidates⁶ while those parties with small votes and seats or the new political parties can not propose the President and Vice President candidates.⁷

The Presidential Threshold concept was supported by the Government of Indonesia because the concept of Presidential Threshold will minimize the number of President and Vice President candidates which propose by participating parties in simultaneous election and also to strengthen the Presidential system.⁸

The data of the General Election Commission (hereinafter is referred to KPU) shows that in general election 2014 there were thirty four parties registered but only ten political parties passed the verification by KPU. From the ten parties, nine political parties won the seats of DPR in the previous election and one a new political party. However from ten political parties followed the legislative election 2014 no party won 20 per cent of DPR seats or 25 per cent of national votes.⁹

The highest votes were received by *Partai Demokrasi Perjuangan Indonesia* (hereinafter is referred to PDIP) of 23.681.471 (18,95 per cent) of the national votes. This data supports Saldi Isra opinion that no room to worry

⁴Ahmad Hendra T.P, “Implikasi Pemilihan Umum Anggota Legislatif dan Pemilihan Umum Presiden dan Wakil Presiden secara Serentak terhadap Ambang Batas Pencalonan Presiden (Analisis Putusan Mahkamah Konstitusi Nomor 14/PUU-XI-2013”, *Jurnal Hukum dan Legal Opinion*, Vol. 3. No. 1, 2013, ISSN: 2527-9505, p.3.

⁵*Ibid.*

⁶Ahmad Hendra T.P, *Op.Cit.*, p.4.

⁷*Ibid.*

⁸Shinta Dwi Kartika, “*Presidential Threshold* dalam Revisi UU Pilpres”, *Info Singkat Hukum*, Vol. 5 No. 14, 2013, p.2.

⁹*Ibid.*

the considerable number of President and Vice President candidates to be proposed by the political parties in the upcoming simultaneous general election.¹⁰

Based on the explanation above, it can be outlined that the application of Presidential Threshold for the upcoming general election in 2019 will still create controversy because some politicians argue that the Presidential Threshold is not relevant anymore to be used in simultaneous election. Therefore in this matter the government should take a good solution in order not to cause a harm towards any people.

2. RESEARCH METHODS

2.1 Type of Research

This research is normative legal research. Normative legal research is a scientific research procedure to find the truth based on legal scientific logic in terms of its normative.¹¹ This research also uses comparative approach. Comparative approach is a research methodology in the social sciences that aims to make comparison across different countries or cultures.¹² The writer chooses to compare the system of Presidential Threshold in Indonesia with the Presidential Threshold in the Philippines and the United States of America.

2.2 Type of Data

The data used in this research is secondary data. The secondary data consist of primary legal material, secondary legal material, and tertiary legal material.¹³

¹⁰ *Ibid.*

¹¹ Mukti Fajar ND, 2010, *Dualisme Penelitian Hukum Normatif dan Empiris*, Yogyakarta: Pustaka Pelajar, p.154.

¹² Johny Ibrahim, 2006, *Teori dan Metodologi Penelitian Hukum Normatif*, Malang, Bayu Media, p. 297.

¹³ Mukti Fajar ND, *Op.Cit.*, p.156.

2.3 Technique of Collecting Data

The method of data collection in this research is through library research by literature learning.¹⁴ In this method, the data were gathered from journals, books, papers, legislation, and encyclopedia.

2.4 Data Analysis

This research used systematic descriptive qualitative approach. Systematically means the writer is analyzed based on Constitution, Legislation, and other theory which are related with the issue on the implementation of Presidential Threshold Concept after the enactment of the Law Number 7 of 2017 on General Election.

3. DISCUSSION

A. Presidential Threshold in the Simultaneous Election after the existence of the Law Number 7 of 2017 on General Election.

1. Presidential Threshold after the Enactment of General Election Law Number 7 of 2017.

There are some laws regulating about general election in Indonesia namely the Law Number 42 of 2008 on Presidential Election, the Law Number 8 of 2012 on Legislative Election, and the Law Number 15 of 2011 on General Election Implementer but these three laws have been abolished and unified into a new law namely the Law Number 7 of 2017 on General Election. The latest Law has been enacted on August 15, 2017, after it is signed by the President Joko Widodo. This law consists of 573 articles, explanation and 4 attachments.¹⁵

There are some problems or crucial issues being discussed during the deliberation of the bill of this Law such as the Presidential Threshold, parliamentary threshold, general election with open list

¹⁴ Zainuddin Ali, 2009, *Metode Penelitian Hukum*, Jakarta: Sinar Grafika, p.9

¹⁵ Humas Sekretariat Kabinet Negara Republik Indonesia, 2017, "Inilah Undang-undang Nomor 7 tahun 2017 tentang Pemilihan Umum", available at <http://setkab.go.id/inilah-undang-undang-nomor-7-tahun-2017-tentang-pemilihan-umum-2/>, accessed on Thursday, March 15, 2018, at 01:12 PM.

system, district magnitude, and the conversion of vote method of the *saint league*³¹ or the *hare quata*.

First, Presidential Threshold is the requirement to propose President that political parties or coalition of parties should have 20 per cent of DPR's seats or 25 per cent of national votes in the prior election. Second, parliamentary threshold is the minimum share of the primary vote which a candidate or political party requires to achieve before they entitle to any representation in a legislature that should be increased from 3,5 per cent to 4 per cent of the national votes. Third, the general election uses open list system. Fourth, it is about district magnitude¹⁶ that based on the Article 22 Paragraph (2) of the Law Number 8 of 2012 on Legislative Election stated that the total of DPR seats provided in each electoral district at least 3 seats and at most 10 seat. Fifth, is about the conversion of vote method of the *saint league* or the *hare quata*.¹⁷

The previous general election law actually is different from the latest general election law. In the previous general election, the law was separated in three different laws namely the Law Number 42 of 2008 on Presidential Election, the Law Number 8 of 2012 on Legislative Election, and the Law Number 15 on General Election Organizer, while in the latest general election law those separated laws were unified into a single law. Even though this new law has already enacted, many politicians still disagree with the content of this law especially on Article 222 that mention about Presidential Threshold.

According to Feri Amsari,¹⁸ Article 222 of the Law Number 7 of 2017 on General Election is in contradiction to the Article 6A Paragraph (2) of the 1945 Constitution. Article 6 A Paragraph (2) of

¹⁶ The district magnitude refers to the number of legislative seats assigned to a district, ranging anywhere from the exclusive use of single-member districts to a system where the entire country functions as a single district. District magnitude is the primary determinant of an electoral system's ability to translate votes cast into seats won proportionally.

¹⁷ Indah Mutiara Kami, 2017, "Sudah disahkan, ini 5 isu Krusial di UU Pemilu", Detik News, available at <https://news.detik.com/berita/d-3568067/sudah-disahkan-ini-5-isu-krusial-di-uu-pemilu>, accessed on March 20, 2018, at 01:30 PM.

¹⁸ Feri Amsari is Legal Activist and also lecturer in Andalas Univeristy.

the 1945 Constitution stated that the pairs of candidates for the President and Vice President shall be proposed prior to the holding of general elections by political parties or coalitions of political parties which are participants in the general elections. Meanwhile, Article 222 of the Law Number 7 of 2017 on General Election requires the Presidential Threshold should fulfill 20% of DPR's seats or 25 per cent of national votes in the previous election.¹⁹

Moreover, Article 222 of Law Number 7 of 2017 on General Election also contradicts to Article 22 E Paragraph 1, Article 22 E Paragraph 2, Article 27 Paragraph 1, Article 28 D, and Article 28 D Paragraph 3 of the 1945 Constitution. Hence many experts claim that Article 222 is no longer relevant to be used in simultaneous election in 2019.²⁰

2. Simultaneous Legislative Election and Presidential Election.

General Election is one of the ways to elect the representative of the people who will have a position in the House of Representative body.²¹ From the first general election until now there have been a lot of changes of policies to find an ideal electoral system for our country. This Electoral system was very affected by individual point of view or the society point of view. General election is an indicator of democratic system because the society can participate in choosing their representative to lead the Government and the country.²²

Indonesia applies Presidential system which focuses on the position of President as the Head of Government and also the Head of State. The President and Vice President are elected once in every five years.²³ Article 22 E Paragraph (1) of the 1945 Constitution stated that

¹⁹ Bayu Hermawan, 2017, "Pakar: Pasal 222 Undang-undang Pemilu Bermasalah", *Republika News*, available at <http://www.republika.co.id/berita/nasional/politik/17/10/24/oybv23354-pakar-pasal-222-uu-pemilu-bermasalah>, accessed on Thursday, April 26, 2018, at 1:06 PM.

²⁰ *Ibid.*

²¹ Abdul Bari Azed, 1987, "Hukum dan Pembangunan" available at <http://jhp.ui.ac.id/index.php/home/article/view/1304/1226>, accessed on Monday, March 5, 2018, at 9:35 PM.

²² *Ibid.*

²³ Article 1 of the Law Number 42 of 2008 on Presidential Election.

“General elections shall be conducted in a direct, general, free, secret, honest, and fair manner once every five years.”

President and Vice President election is held within 5 years which is different from the Legislative Election as regulated in Article 3 Paragraph 5 of the Law Number 42 of 2008 on Presidential Election. After the amendment of the 1945 Constitution there are three groups of General Election namely President and Vice President Election, Legislative Election, and Regional Head Election.²⁴

In fact within 5 years there had been seven General Elections that can be implemented. i.e. the first round of President and Vice President Election; the second round of President and Vice President Election; the Legislative (DPR, DPD, & DPRD) Election; the first round of Governor Election; the second round of Governor Election; the first round of Regent/Mayor Election; and the second round of Regent/Mayor Election.²⁵

This situation makes the society or the voters felt bored and the political parties and politicians felt wasting time to manage the people or the society and also the constituents. Those elections do not only loose the state budget but also causes political expenditure that should be handled by the politicians.²⁶

Due to the complexity of the General Election in Indonesia, hence the idea of simultaneous election was proposed firstly by Jusuf Kalla²⁷. The purpose of simultaneous election is to decrease and simplify the General Election implementation that was implemented within the whole of 5 years.²⁸ The simplification of Legislative Election and Executive Election can save a lot of money. Moreover simultaneous election will grant more benefit than harm which are as follow:

- a) in the initial preparation of the simultaneous election, political parties will be “forced” to create a coalition for proposing the Presidential candidate before the election started. Therefore, there

²⁴ Didik Supriyanto, 2015, *Pemilu Serentak dalam Sistem Pemerintahan Indonesia*, Jakarta Pusat: Pusat Pengkajian, Pengolahan Data dan Informasi (P3DI), p.iii.

²⁵ *Ibid.*

²⁶ Didik Supriyanto, *Op.Cit.*, p.iv.

²⁷ Jusuf Kalla is The former Vice President in 2009 and the Vice President of this year.

²⁸ *Ibid.*

- will be no “bargaining coalition” based on the result of legislative election, as if the elections are held separately. The coalition will be based on the similarity of platform and program, not from political interest, and once the result of the election is published, it will be easier for the chosen President to decide on his own policy since he will not be forced by the alliance party with different program;
- b) by implementing simultaneous election, voter’s participation will be increased. By still implementing separate election, voters will not vote in Presidential election if their candidates have been eliminated in the legislative election. With simultaneous election, there will be no elimination of legislative candidate;
 - c) according to political experts, simultaneous election will trigger coattail effect, in which the voters will vote for executive and legislative from a same party. This will bring benefits for Indonesia since the chosen President will be supported by legislative from his own party in parliament. Therefore, executive’s program and policy will be easier to be approved by the legislative. Furthermore, there will be little to no effort from legislative to distract executive’s incumbency. In brief, simultaneous election will bring strong synergy between executive and legislative.

Ultimately, simultaneous election will benefits from financial perspective since there will be no double funds for two elections, which the people all know that election funds are massive. For instance, the budget for 2014 election was exceeded IDR 16 trillion, which will be better to be spent for developing other vital sectors.²⁹

However the idea of Jusuf Kalla to simplify both elections was not responded by the politicians. The idea of simultaneous election was arisen again by Effendi Ghazali³⁰ though the judicial review to the Constitutional Court on January 10, 2013 together with other issues in the Law Number 42 of 2008 on Presidential Election.

²⁹ Gabriella Oroh, 2018, “Benefit of Simultaneous Election in Indonesia” available at <http://imansjahputra.com/articles-and-publications/r/benefits-of-simultaneous-election-in-indonesia>, accessed on Thursday, May 31, 2018, at 1:11 PM.

³⁰ Effendi Ghazali is Indonesian politicians and also Professor of Universitas Indonesia.

Effendi Ghazali proposed judicial review towards five articles namely Article 3 Paragraph (5), Article 9, Article 12 Paragraph (1), Article 14 Paragraph (2), and Article 112 of Law Number 42 of 2008 on Presidential Election towards Article 6A Paragraph (2), Article 22E Paragraph (1) and Paragraph (2), Article 27 (1), Article 28 D Paragraph (1), 28 H Paragraph (1), and Article 33 Paragraph (4) of the 1945 Constitution.

After more than a year of the constitutional court examination to this case, the Constitutional Court on January 23, 2014 finally decided that the articles and the paragraphs including the Article 3 (5), Article 12 paragraph (1) and paragraph (2), Article 14 paragraph (2), and Article 112 of Law No. 42 Year 2008 regarding the General Election of President and Vice President have been considered “against” the 1945 National Constitution of the Republic of Indonesia. Due to this argument, the constitutional court issued the Verdict No. 14 / PUU-XI / 2013 on a simultaneous election.³¹

However, the issuance of this decision raised many criticisms as the 1945 National Constitution has no detail and explicit statement on a simultaneous election. According to Hamdan Zoelva from the Bulan Bintang Party, the simultaneous election has not yet been regulated in the Law. This opinion was shared by other parties’ members such as Effendy Yusuf and Tjetje Hidayat. Tjetje Hidayat infact argued that the election of President and Vice President included in the general election was wrong. For Tjetje, there is no connection between the general election and the Presidential election. Hence the election should be separated.³²

The view given by Tjetje was also supported by LT Sutanto and FX. Sumitro. They said that the Presidential election and the general election need to be separated in terms of time and/or pattern. This is because each type of election has different target. The President election

³¹ Zainal Arifin Hoesein, 2015, “Analysis of the Constitutional Court Decision on a Simultaneous Election in Indonesia”, *Scientific Research Journal (SCIRJ)*, Volume III, Issue III, March 2015 6 ISSN 2201-2796, p.6

³² *Ibid.*

aims to choose the President, while for the legislative election aims to select the party members who will become the member of Parliament.³³

Furthermore, there is difference opinion from Arif Mudatsir Mandan, the member of *Partai Persatuan Pembangunan* (hereinafter referred as PPP). According to him, there is no problem with the simultaneous election as long as there are rules that support this election. To Patrialis Akbar, from the *Partai Amanat Nasional* (hereinafter referred as PAN), agreed with the simultaneous election as there has been no restriction to hold a simultaneous election in the national constitution. Therefore, a simultaneous election has been no problems with these two parties.³⁴

The decision made by the Constitutional Court on a simultaneous election has confirmed a constitutional moral values (moral goodness) and gives a new awareness and understanding the philosophical importance of developing and practicing the rule of law and constitutional norms in the life of the state in Indonesia. Therefore, the understanding of the Court Verdict No. 14 / PUU-XI / 2013 concerning the simultaneous election can be interpreted in the sense of strengthening the practice of political life, especially in elections and constitutional rights of citizens in terms of the source of law and the constitution.

However, there is other crucial issue beside simultaneous election namely Presidential Threshold that will be applied in the simultaneous election. Effendi Ghazali has already proposed judicial review about Presidential Threshold together with the simultaneous election. Nevertheless, MK has rejected the judicial review on Presidential Threshold. After the rejection of judicial review towards Article 9 about Presidential Threshold by MK, on December 13, 2013 Yuzril Ihza Mahendra³⁵ also proposed his judicial review on the same issue to MK.

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ Yuzril Ihza Mahendra is Indonesian Advocate and also the scholars of Constitutional Law, He is also the leader of PBB party.

Yuzril proposed judicial review towards Article 3 Paragraph (4), Article 9, Article 14 Paragraph (2), and Article 112 of the Law Number 42 of 2008 on Presidential Election against the 1945 Constitution. The application of Yuzril Ihza Mahendra was also rejected by MK with the similar reason as MK rejection to the judicial review that applied by Effendi Ghazali on Article 9 of the Law Number 42 of 2008.³⁶

Some other political members also proposed the Judicial Review of the Presidential Threshold as regulated in Article 222 of the Law Number 7 of 2017 on General Election. Habiburokhman³⁷ for example filed his Judicial Review with the Registration Number 44/PUU-XV/2017, then Effendi Ghazali Number 59/PUU-XV/2017, after that Hadar Nafis³⁸ with his Registration Number 71/PUU-XV/2017, moreover Mas Soeroso³⁹ with Registration Number 72/PUU-XV/2017, and furthermore. Besides, Idaman Party also did the same with Registration Number 53/PUU-XV/2017.⁴⁰ From the five Judicial Reviews that had been proposed, nothing was accepted by MK. It still declined the Judicial Review on Presidential Threshold.

According to Tjahjo Kumolo, the minister of domestic affairs, the purpose of Presidential Threshold existence is actually to strengthen the Presidential system. Thus, Presidential Threshold is needed to create effective Presidential election.⁴¹

Famous scholars and politicians disagree on the Presidential Threshold that applied in the simultaneous election 2019. If the General Election will be held simultaneously, the Presidential Threshold actually is no longer relevant to be applied. According to Saldi Isra, the

³⁶BBC, 2014, "MK Tolak Gugatan Yuzril Ihza Mahendra", BBC News, available at http://www.bbc.com/indonesia/berita_indonesia/2014/03/140320_mk_tolak, accessed on Monday, March 5, 2018, at 10:00 PM.

³⁷ Habiburokhman is Indonesian Advocate and also the politician from Gerindra, he is also the head of DPP in Gerindra.

³⁸ Hadar Nafis Ali is the head of General Election Commission.

³⁹ Mas Soeroso is Entrepreneur that proposed the Judicial Review of Presidential Threshold to MK.

⁴⁰ Estu Suryowati, 2018, "Perkumpulan Untuk Pemilu dan Demokrasi (Perludem) : Logika MK Mbingungkan Tolak Uji Materi *Presidential Threshold*", Kompas News, available at <https://nasional.kompas.com/read/2018/01/11/12441361/perludem-logika-mk-mbingungkan-tolak-uji-materi-Presidential-threshold>, accessed on Friday, March 9, 2018, at 3:50 PM.

⁴¹ Fabian Januarius Kuwando, 2017, "Ini Alasan Pemerintah Dorong *Presidential Threshold* 20% - 25%", Kompas News, available at <https://nasional.kompas.com/read/2017/05/05/08553451/ini-alasan.pemerintah.dorong.Presidential.threshold.20-25.persen>, accessed on Thursday, April 26, 2018, at 10:46 PM.

Presidential Threshold can be abolished; it was proven by the Legislative Election in 2014 that there were 34 parties that registered to KPU. However only 10 parties that passed the requirements and from the 10 parties no party won the 20 per cent of DPR's seats.

The highest votes was acquired by *Partai Demokrasi Perjuangan Indonesia* (PDIP) which reached 18,95 per cent with the total votes of 23.681.471 votes.⁴² Though it should not to be worry if there is no Presidential Threshold, the Presidential candidate will be considerable.

According to Djayadi Hanan, executive director of Saiful Mujani Research and Consulting (SMRC), simultaneous election has potential to abolish the Presidential Threshold.⁴³

There are two mistakes of Presidential Threshold that applied in general election based on the Law Number 7 of 2017 on General Election, namely: first, it makes the legislative election as the requirements of Presidential Election; second. it makes the legislative election result as the requirement to propose Presidential candidate in the Presidential election. According to Djayadi the consequence of the existence of the Presidential Threshold is the new political parties cannot propose the Presidential candidate and it will contradict to Article 6A Paragraph 2 of the 1945 Constitution.⁴⁴

Furthermore, according to Heriyanto from *Partai Idaman*, Article 222 which stated about Presidential Threshold is discriminative and can no longer be used in the simultaneous election 2019. However MK still assumed that Presidential Threshold was not contrary with the 1945 Constitution and in line with the Presidential system.

From nine judges of MK only two judges that have dissenting opinion they were Saldi Isra and Suhartoyo. Both of the judges thought

⁴²Ihsanuddin, 2018, "Melihat Peta Politik Pilpres 2019 Pasca Putusan MK Soal *Presidential Threshold*", Kompas News, available: <https://nasional.kompas.com/read/2018/01/11/16080101/melihat-peta-politik-pilpres-2019-pascaputusan-mk-soal-Presidential>, accessed on Thursday, March 29, 2018, at 11:01PM.

⁴³Bayu Hermawan, 2017, "Pakar:*Presidential Threshold* tak ada dalam Pemilu Serentak", Republika News, available at <http://nasional.republika.co.id/berita/nasional/politik/17/11/14/ozew8z354-pakar-Presidential-threshold-tak-ada-dalam-pemilu-serentak>, accessed on Thursday, April 26, 2018, at 11:18 PM.

⁴⁴*Ibid.*

that Presidential Threshold is not relevant and unconstitutional and also injure the new political parties which cannot propose their President candidate. In addition, Suhartoyo said that the United States of America applied Presidential system as their governance system and do not use the Presidential Threshold.⁴⁵

B. Comparative Survey on Presidential Threshold in Some Countries.

1. Presidential Threshold in the Philippines.

The Philippines governance system is Presidential system and governmental powers are divided into the executive, legislative, and judicial branches. Based on Article 1 Section 1 of the 1987 Constitution of the Republic of the Philippines stated that “the Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them”. President is the head of state and vested with all executive powers of the government. The President is chief administrator of the bureaucracy with general supervision over local governments, as well as the chief legislator, responsible for the introduction of the legislative agenda at the beginning of each congressional session.⁴⁶

Philippines also uses simultaneous election but in Presidential candidacy; there is no requirement of Presidential Threshold. Every political party is allowed to propose Presidential candidate.

The Philippines is basically a democratic country. It means that the candidate with the most votes wins the election and also uses the run off system to elect the President with a minimum threshold of 50 per cent of the majority. In pre-election survey 2016 each candidate for President was preferred by only about 20 per cent of voters. Then, in the first round of election 2016, there was no candidate got more than 50 per cent votes.⁴⁷

⁴⁵ *Ibid.*

⁴⁶ Benjamin Reilly, 2016, “Electing a President: Picked by Some, Rejected by Many”, Rappler News, available at <https://www.rappler.com/nation/politics/elections/2016/125133-reilly-Presidential-elections-run-off>, accessed on Friday, April 28, 2018, at 2:41 PM.

⁴⁷ Candidate 1 got 19%, candidate 2 got 7,5 %, candidate 3 got 36,7%, candidate 4 got 8,5%, and candidate 5 got 28,3%. When none of candidate got more than half of votes, two candidates with the highest votes will go for a second round.

The most common method for the second round of voting is a straight contest between the top two highest voters from the first round. It creates a true majority result, in that one of the two candidates will necessarily achieve more than 50 per cent of votes and can be declared as the winner.⁴⁸

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⁴⁸ *Ibid.*

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The most common method for the second round of voting is a straight contest between the top two highest voters from the first round. It creates a true majority result, in that one of the two candidates will necessarily achieve more than 50 per cent of votes and can be declared as the winner.⁵¹

The first step is started from primary and caucuses election. In the Primary election, the party members vote in a state election for the candidate they want to represent them in general election, while in caucuses, party members meet, discuss, and vote for who they think would be the best party candidate. The meetings take place in schools, restaurants, churches and other public buildings, but also in private homes.

Second step is National Conventions and General Election. After the first step of primaries and caucuses, each major party, Democrat and Republic move into second step of national convention and also general election to elect the Presidential candidate. In national convention, the party of the Presidential candidate announces its choice for Vice President. Then the Presidential candidates campaign throughout the country to gain the support of the society, after the single candidate is chosen from each political party. Then in election day, the people in each state deliver their vote.⁵²

The next step is Electoral College. Unlike in other state's election, in the United States of America, the President and Vice President are not elected directly by the people. Instead, they're chosen by "electors" through a process that is called Electoral College. Electoral College actually is a group of people appointed by each state who formally elect the President and Vice President of the United States of America.

There are 538 electors in each Presidential election; the 538 electors actually consist of 435 representatives, 100 senators, and 3 electors from district of Colombia. Then electoral votes are allocated among the states based on the Census. Every state is allocated a

⁵¹ *Ibid.*

⁵² USA Government, *Op.Cit.*

number of votes equal to the number of senators and representatives in its United States of America Congressional delegation—two votes for its senators in the United States of America Senate, plus a number of votes equal to the number of its members in the United States of America House of Representatives.

3. Lesson Learned from the Philippines and the United States of America.

The Philippines and the United States of America are democratic state which applied Presidential system as its governance system. Both of states are similar to Indonesia that applied Presidential system as the governance system. It means that the states focus on President as the head of state. Therefore states actually have similarities and also differences.

The Philippines already held their Presidential election for 16 times, but with the concept of simultaneous election; it was started the first time in 2016. Indonesia will also hold simultaneous election in 2019 for the first time. Meanwhile, the United States of America has been implemented their election for 58 times but without simultaneous election. The Presidential election process in this country is actually different. The Philippines and the United States of America have already used automatic election system and Indonesia still using manual system.

Furthermore, Indonesia applies the Presidential Threshold for Presidential candidate requirement while the Philippine and the United States does not use Presidential Threshold in proposing the President candidate.

The Philippines Presidential election actually used run off system that also applied in Indonesia. However the Philippines does not use Presidential Threshold to propose the Presidential candidate.

All political parties can propose their own Presidential candidate in the Presidential election. Meanwhile, the United States of America also does not recognize Presidential Threshold as it is applied in Indonesia.

In the United State, the Presidential candidate from each party will be selected through the primaries and caucuses electoral college and national convention as well. Then, the President and Vice President will be

elected through the Electoral College by the electors which their numbers are depend on the number of electors which represent each state.

The lesson learned from the Philippines and the United States of America election is that the Presidential election system have been applied to bring a peaceful, clean, orderly, and expeditious process of democracy and to strengthen the democracy.

In the Philippines case, the Presidential election may run to achieve the goal of democracy without having the Presidential Threshold. This practice gives more political party to nominate their Presidential candidacy.

On the other hand, in the United State of America, with more established democracy, without Presidential Threshold, the election approximately only produce two candidacy from two dominant political party. In addition, in the United State of America also can nominate independent candidate.

Accordingly, based on that experience, Indonesia may consider to question the importance of Presidential Threshold. In fact, Presidential Threshold is not relevant with the idea of giving opportunity to have more candidacies, if the election is done simultaneously.

D. Alternative Election to Replace the Presidential Threshold System

The upcoming general election in 2019 will be implemented simultaneously. In this simultaneous election, the political parties automatically should conduct coalition to propose candidate in Presidential Election 2019. There is no political party that can propose the Presidential candidate individually. Because based on the result of legislative election in 2014, there is political party that reach 20 per cent of DPR's seats or 25 per cent of national votes of the requirements to propose President candidate is from the previous Legislative Election in 2014.⁵³

⁵³ Ihsanuddin, 2018, "Melihat Peta Politik Pilpres 2019 Pasca Putusan MK soal *Presidential Threshold*", Kompas News, available at <https://nasional.kompas.com/read/2018/01/11/16080101/melihat-peta-politik-pilpres-2019-pascaputusan-mk-soal-Presidential>, accessed on Thursday, March 29, 2018, at 11:01 PM.

The Legislative Election result in 2014.

Source: KPU of the Republic Indonesia.

1. Jumlah Suara Sah Seluruh Partai Politik : 124.972.491
2. Prosentase Ambang Batas : 3,50%

NO PARTAI	PARTAI POLITIK	JUMLAH PEROLEHAN SUARA SAH	PROSENTASE PEROLEHAN SUARA SAH
1	2	3	5
1	Partai NasDem	8.402.812	6,72%
2	PARTAI KEBANGKITAN BANGSA	11.298.957	9,04%
3	PARTAI Keadilan Sejahtera	8.480.204	6,79%
4	PDI Perjuangan	23.681.471	18,95%
5	PARTAI GOLONGAN KARYA	18.432.312	14,75%
6	PARTAI GERINDRA	14.760.371	11,81%
7	PARTAI DEMOKRAT	12.728.913	10,19%
8	PARTAI AMANAT NASIONAL	9.481.621	7,59%
9	PARTAI PERSATUAN PEMBANGUNAN	8.157.488	6,53%
10	PARTAI HATI NURANI RAKYAT	6.579.498	5,26%
14	PARTAI BULAN BINTANG	1.825.750	1,46%
15	PARTAI Keadilan dan Persatuan Indonesia	1.143.094	0,91%
J U M L A H		124.972.491	100,00%

Hence, that is why in the upcoming General Election 2019, the political party should conduct party coalition that refer to the result of the election 2014 to propose the President candidate in Presidential Election.

The parties that are pro with Government consist of PDI, Golkar, Nasdem, PKB, PPP, Hanura, and PAN. When these parties conduct a coalition, they already reached 68,9 per cent. However the group of opposition parties that consist of Gerindra, and PKS only 20,1 per cent and it will already fulfill the requirements of 20 per cent to propose the President and Vice President. It is important to note that there is still one political party that considered as the neutral party, that is Demokrat. If Demokrat become part of the coalition between one of the both party, the amount of the percentage will increase.⁵⁴

According to some politicians, Presidential Threshold is no more relevant if it is implemented in General Election 2019. According to

⁵⁴ *Ibid.*

Fadhli Rahman,⁵⁵ there are some reasons of Presidential Threshold is no longer needed. First, the General Election result in 2014 has already applied in Presidential Election in 2014. Second, the General Election result in 2014 obtained from the long process with the voters registration, campaign and many others. Third, if the election uses the result of General Election 2014, there will be new political party that will not participate in General Election 2019. Automatically the new party will lose their rights to propose Presidential candidate. So the existence of Presidential Threshold is basically in contrary with Article 6 A Paragraph 2 of the 1945 Constitution which stated that “the pairs of candidates for President and Vice-President shall be proposed prior to the holding of general elections by political parties or coalitions of political parties which are participants in the general elections.”⁵⁶

Constitutionally there is no certain legal basis about Presidential Threshold regulation. It seems that this Presidential Threshold concept is such a political interest for some political parties. This Presidential Threshold is actually created to strengthen the Presidential system, simplifies the general election, saves the state financial, and also limits the President candidate for not causing the considerable of President candidate.⁵⁷

When the upcoming General Election will be held simultaneously, there will be new challenges. One of the challenges is the problem over Executive and Legislative relation. The example of the case of Executive and Legislative relation problem was happened in Brazil. According to J Mark Payne,⁵⁸ when Brazil held simultaneous election in 1994 the election result always congruent

⁵⁵ Fadhli Rahman is Indonesian politicians.

⁵⁶ BBC, 2017, “Penetapan Ambang Batas Pencalonan Presiden 20% Dianggap Tak Relevan”, BBC News, available at <http://www.bbc.com/indonesia/indonesia-40673199>, accessed on Sunday, March 25, 2018, 6:36 PM.

⁵⁷ Rahmat Muhajir Nugroho, *Op. Cit.*, p.7.

⁵⁸ J. Mark Payne is a lawyer in Greensboro, North Carolina focusing on various areas of law. Contact J. Mark Payne in Greensboro, NC for specific legal needs on legaldirectories.com.

The term refers to the power of a popular candidate to gather support for other candidates running on the same party ticket. Winning candidates are said to have coattails when they drag candidates for lower office along with them to victory.

because the Executive and Legislative always was lead by the same political party. Therefore simultaneous election will cause *coattail effect*.⁵⁹

There are two alternatives for choosing Presidential Threshold as the concept election to be applied in simultaneous election. First, return to the system of general election in 2014 when legislative and Presidential election were conducted in separate time. Separate election will determine a concrete result of legislative election which gives political parties have a right to propose the Presidential candidate in the election. When using the result of the previous legislative election, it causes the fair result and the condition. Second, the Presidential Threshold should be abolished in the simultaneous general election because it is not relevant anymore and all of the parties can propose their Presidential candidate without worrying about the Presidential Threshold

Furthermore, in this matter, Indonesia need more designs of simultaneous election and also the scheme of national and local simultaneous election. It means that the national simultaneous election is to elect the President and Vice President, DPR and DPD, while the local simultaneous election is to elect the Governor, Regent, DPRD Province, and DPRD regency or city. Even if the General Election is held simultaneously, there are two types of elections .i.e. national and local Simultaneous Election, and it will give a half year between national and local Election.⁶⁰

⁵⁹ The term refers to the power of a popular candidate to gather support for other candidates running on the same party ticket. Winning candidates are said to have coattails when they drag candidates for lower office along with them to victory.

⁶⁰ Saldi Isra, *Op. Cit.*, p.xxvii

4. CONCLUSION AND RECOMMENDATIONS.

4.1 Conclusion.

Based on the previous discussion in Chapter IV, the researcher comes to the conclusions that:

1. The Presidential Threshold in Article 222 of the Law Number 7 of 2017 on General Election is not relevant if it is implemented in general election 2019. It is because of Presidential Threshold makes the legislative election result in 2014 as the requirements of Presidential election; hence the consequence of the existence of the presidential threshold is that the new political parties cannot propose the presidential candidate.
2. There are two alternatives for choosing Presidential Threshold as the concept of election that will be applied in simultaneous election. First, return to the system of general election in 2014 when legislative and Presidential elections were conducted in separated time. Second, the Presidential Threshold should be abolished for the simultaneous general election as it is not relevant anymore and all of the parties can propose their Presidential candidate without worrying the Presidential Threshold.

4.2 Recommendation.

Based on the problem that has been discussed, there are some recommendations which can be proposed to the Indonesian Government especially the House of Representative and President as follows:

1. The DPR should revise the Article 222 on the Presidential Threshold of the Law Number 7 of 2017 on General Election. Regarding the upcoming election in 2019, there should be no Presidential Threshold.
2. The DPR should choose for a better model of the Presidential Election whether the election is returned to the separate election as implemented in previous election or still uses the Presidential

Threshold or uses the newest system of simultaneous election without the Presidential Threshold.

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