

CHAPTER TWO

LITERATURE REVIEW

A. Presidential Threshold

Presidential Threshold is the minimum percentage of votes or seats owned by political parties or parties coalition to propose a President and Vice President candidate in Presidential election. In the upcoming 2019 election, the participant of Presidential election should fulfill the requirements of the 20 per cent of DPR's seats or 25 per cent of national votes.¹¹ Presidential Threshold has been used since 2004 and was regulated in the Law Number 23 of 2003 on the Presidential Election with the minimum percentage of 3 per cent of DPR's seats or 5 per cent of national votes.

However, in 2009 and 2014 the Presidential Threshold was regulated by Article 9 of the Law Number 42 of 2008 on Presidential Election with the 20 per cent DPR's seats or 25 per cent of national votes.¹² Furthermore, after the enactment of the Law Number 7 of 2017 on General Election on August 15, 2017 the Presidential Threshold is regulated by Article 222 of this law.

The Presidential Threshold policy is actually related to the Parliamentary Threshold which was previously named as Electoral

¹¹Article 222 of the Law Number 7 of 2017 on General Election.

¹²Rahmat Muhajir Nugroho, "Pemilu Serentak Tanpa *Presidential Threshold*" Seminar Nasional & Call For Papers: Pemilu 2019 Momentum Penguatan Demokratisasi Indonesia yang Berintegritas, Fakultas Hukum Universitas Muhammadiyah Ponorogo. p.3.

Threshold that has the percentage of 3,5 per cent.¹³ Electoral threshold is minimum percentage of primary vote which the candidate or political parties are required to achieve before they entitled to any representation in a legislature.¹⁴

Actually there are some advantages and the disadvantages of Presidential Threshold concept. The advantages of the Presidential Threshold i.e. First, it is to strengthen the Presidential system. Second, it simplifies the political parties because with Presidential Threshold concept the political parties becoming parties coalition. Third, it has more diverse Presidential candidates.¹⁵

Among the disadvantages of the Presidential Threshold are;

- (1). There is no guarantee of the consistent seats and votes result in general election 2019 from the political parties that participating in the previous general election 2014.
- (2). New political parties cannot participate in Presidential election in the upcoming general election 2019.
- (3). It has few President and Vice President alternative.
- (4). There is no guarantee for the consistency in supporting the political parties that propose the President candidates.

¹³Lutfhil Ansori, 2017, "Telaah terhadap *Presidential Threshold* dalam Pemilu Serentak 2019", *Jurnal Yuridis*: ejournal.upnjv.ac.id, Vol. 4 No. 1, Issue 6, 2017, ISSN 1693-4458, p.5.

¹⁴*Ibid.*

¹⁵Muhammad Siddiq Armia et al, 2016, "Penghapusan *Presidential Threshold* sebagai Upaya Pemulihan Hak-hak Konstitusional", *Petita*: jurnal.ar-raniry.ac.id, Vol. 1 No.2 Issue 5, 2017, p.134.

B. Presidential Electoral System

Presidential election is held every five years. The last one was conducted in 2014. The upcoming one is in 2019. The voting age is 17 year old. However, married persons regardless of age can vote. Presidential electoral system is based on Article 6A Paragraph (1) of the 1945 Constitution. Direct Presidential election besides encourages people participation to use political right, it is also considered as democratic mechanism for representing people's awareness.¹⁶

The Indonesian people for the first time chose their President through direct elections in 2004. Before this year, the President and Vice President were elected and chosen by MPR. However, the President and Vice President intermission chosen by MPR is perceived less democratic; then it makes the aspiration to choose President and Vice President directly by the people. This direct Presidential election will conduct check and balances between legislative and executive agencies.¹⁷

¹⁶ Gusliana, 2003, *Sistem Pemilihan Presiden dan Wakil Presiden Secara Langsung dan Pengaruhnya Terhadap Sistem Pemerintahan di Indonesia*, Yogyakarta: Perpustakaan Pusat UGM, p.1

¹⁷ Facts and Details, 2013, "Elections in Indonesia", Facts and Details, available at http://factsanddetails.com/indonesia/Government_Military_Crime/sub6_5a/entry-4062.html, accessed on Thursday, May 10, 2018, at 5:26 PM.

Conceptually, the ideal Presidential election uses two round system (TRS). If the first round does not make any sense as expected so both the candidates with the first and second most polls in the first round election follow and elected by people directly in the second round, and the couple with the most polls will be inaugurated as the President and Vice President.¹⁸

Furthermore, the direct Presidential election besides using the TRS it is also using the Presidential Threshold that every political party should fulfill the requirements of 20% of DPR's seats or 25% of national votes.¹⁹

C. President and Vice President Bodies

President and Vice President bodies are two of the state institutions that exist in the 1945 Constitution.²⁰ President and Vice President are the constitution obligatory. President is the position or name used by the leader of organization, company, university, or a country.²¹ Specifically the terms of "President" used by the head of state or country especially the Republic country whether it is through direct or indirect general election.²²

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ Suradji et al., 2006, *Pengkajian Hukum Masalah Presiden dan Wakil Presiden Secara Langsung*, Jakarta: Pengayoman, p.79.

²¹ Putra Astomo, 2014, *Hukum Tata Negara dan Negara*, Yogyakarta: Thafa Media, p. 159.

²² Sudarsono, 2009, *Kamus Hukum*, Jakarta: Rineka Cipta, p. 370.

Under the 1945 Constitution, the Indonesian President has tremendous power; the President is the supreme commander of the armed forces with the authority to promote and demote military officers. Previously, the power to elect the President was subjected to the MPR and was not placed in the hands of the people through direct election.²³

After the amendment, the President and Vice President are elected by vote of the citizen for five-year terms. Prior to 2004, the President and Vice President were chosen by MPR. The President of Indonesia is directly elected for five-year terms, and is the head of state, commander-in-chief of Indonesian armed forces and responsible for domestic governance and policy making and foreign affairs. The President appoints a council of ministers who does not have to be elected by members of the legislature.²⁴

According to Article 4 of the new amended Constitution, the President of the Republic of Indonesia shall hold the power of government in accordance with the Constitution. President as the head of government has an authority in legislation process. The Constitution states that the DPR “Holds the power to make laws”, with the qualification that the DPR must reach “joint approval” with the President (Articles 20 (1) and (2) of the new Constitution. It is promulgated in the Constitution that the President has the right to

²³ Masnur Marzuki, 2016, *Introduction to Indonesian Constitutional Law*, Yogyakarta: FH UII, p.93

²⁴ *Ibid.*

submit Bills to DPR. Before the constitutional amendments, the power to make laws resided with the President alone.

The amended 1945 Constitution finally maintains that the President and Vice President hold the fixed term of five years and can only be re-elected for another term. It means that a candidate is only being able to be voted for the President and Vice President for maximum of 10 years consecutively.²⁵

Article 8 of the 1945 Constitution says, “Should the President die, resign or be unable to perform his duties during his term of office, he shall be succeeded by the Vice President until the expiry of his term of office.”

In the event of a vacancy of Vice President seat, it is regulated in the Constitution that “if the office of Vice President becomes vacant, the MPR shall hold a session within sixty days to elect a Vice President from two candidates proposed by the President.” In the both position is vacant, Article 8 Paragraph (3) regulates that “if the President and Vice President should die, resign, be removed from office, or become unable to perform their duties during their term of office, at the same time, the joint executors of Presidential duties shall be the Minister for Foreign Affairs, the Minister for Internal Affairs, and the Minister of Defense. Within thirty days, the MPR must hold a session to elect a President and a Vice President from two pairs of Presidential and Vice Presidential

²⁵ *Ibid.*

candidates proposed by the political parties or groups of political parties whose Presidential and Vice Presidential candidate pairs received the first and second highest number of votes in the previous general election, for the remaining of the current term of office.”