

Consideration of Threshold Determination for President Candidate and Vice President Candidate in Indonesia

Anang Dony Irawan ^{1*} Al Qodar Purwo Sulisty ²

^{1, 2} Law Faculty, Muhammadiyah University of Surabaya, Indonesia

*Corresponding author. Email: anangdonyirawan@fh.um-surabaya.ac.id

ABSTRACT

The purpose of this research found out how to determine the threshold for president candidate and vice president candidate in Indonesia as an effort to realize sovereign voters. This research was juridical normative with a statutory approach. From the results of the research, it was found that there was a legal imbalance that required political parties to nominate pairs of candidates for president and vice president based on the acquisition of seats or the acquisition of valid national votes. The resulting conclusion is the determination of the threshold for the nomination of president and vice president in the 2019 simultaneous general elections and subsequent general elections based on seats or the acquisition of valid national votes for political parties after the implementation of the legislative general election. The resulting recommendation was the abolition of the legal rules governing the requirements for submitting presidential candidate and vice-presidential candidate in general elections in Indonesia for political parties by amending law number 7 in 2017 concerning general elections.

Keywords : *General Election, President and Vice President, Political Party, Threshold.*

1. INTRODUCTION

General election is an element in realizing a democratic state with a system of representation. General Election is an important instrument in a democratic country that adheres to a representative system[1]. The real form of procedural democracy is through General Elections. Indonesia as a country based on law by realizing a democratic government recognizes that General Election is an important pillar in democracy that must be held in a democratic atmosphere. We certainly already know that General Elections in Indonesia have been regulated in the 1945 Constitution.

As a means to be able to participate directly in choosing and determining the choice of their leaders, the people channel their aspirations directly through General Elections which are held every 5 (five) years in accordance with constitutional mandate. General election can never be separated from the process of perfection at every stage of its implementation. From several general elections in Indonesia, it can be seen how the learning process for democracy remains something that always gets attention to be able to walk towards the estuary of democracy with integrity.

In Article 1 paragraph (2) of the 1945 Constitution, the results of the amendments state that sovereignty is in the hands of the people and is carried out according to the Constitution. As a democratic country, it can be said that elect and be elected in the General Election is a deviation from the sovereignty of

the people that are part of the human rights of every citizen[2].

Constitutional Court Decision No. 14 / PUU-X / 2013 in the matter of judicial review of Law No. 42 of 2008 concerning the General Election of President and Vice President is final. A decision stating that the General Election and the subsequent General Elections in 2019 can be held simultaneously. This causes the holding of General Elections in Indonesia can have a political impact, both nationally and regionally. A decision that brings its own impact and challenges for the Indonesian in improving a better general election system.

When it comes to general elections that cannot be separated from the organizers of the general election. Since the organizers of the general election are formed to be responsible for the successful implementation of the general election at each stage, starting from the preparation, implementation, and reporting of the stages of the general election. General election organizer is an institution that organizes general elections consisting of the general election commission, general election supervisory body, and the honorary board of general election organizers as a unitary function of the general election organizer to elect members of the people's representative council, members of the regional representative's council, president and vice president. Moreover, the election the legislative council members directly by the people. The election organized by an Election Commission which is national, permanent and independent.

In the General Election of 2014, the implementation of the legislative elections held in advance. The next presidential election can be held 3 (three) months later. The legislative general election was held on April 9 2014, while the presidential election was held on July 9 2014. Of course, in the nomination of the presidential candidate and the vice-presidential candidate, they await the results of the votes acquired by the supporting political parties, because the candidate pairs are proposed by the political parties or combined political parties participating in the general elections who meet requirements for obtaining seats at least 20% (twenty percent) of the total seats in the Legislative Assembly or obtaining 25% (twenty five percent) of the national valid votes in the general elections for members of the Legislative Assembly, prior to the implementation of the general elections for president and vice president.

Based on the decision that the constitutional court number 14/PUU-XI/2013, the implementation of the General Election and subsequent General Elections in 2019 can be different from the previous general elections for the legislative election and the presidential and vice-presidential elections that are held simultaneously. Candidate pairs are proposed by political parties or combined political parties participating in general elections who meet the requirements for obtaining seats of at least 20% (twenty percent) of the total seats in the Legislative Assembly or obtaining 25% (twenty five percent) of valid votes nationally in the general election of members.

Judging from the provisions on the threshold for the nomination of the presidential and vice-presidential pairs, which is commonly known as the presidential threshold is not possible for a political party to nominate a pair of presidential candidates and vice-presidential candidates, because the legislative leader and presidential elections are held simultaneously. Moreover, the nomination of pairs of presidential candidates and vice-presidential candidates depends on political parties. Constitutionally, Article 6A paragraph (1) states that the president and the vice president are elected in one pair directly by the people.

With the existence of these regulations, the people are not given the space to nominate the desired pairs of presidential and vice-presidential candidates as a manifestation of the rights of Indonesian citizens guaranteed by the constitution. Since the principle of democracy provides basically the freedom and space for all people to be able to build a state and/or government[3]. This is different from the president and vice president were elected for the first time through the preparatory committee for Indonesian Independence on August 18, 1945.

Restrictions presidential candidate filing spouse and vice president through candidate a presidential

threshold by political parties have also restrict people to nominate its leader desired.

2. RESEARCH METHOD

The research method used a normative juridical approach that emphasized the positive legal interpretation and analysed using library materials, written legal norms. It was viewed by the nature of the writing that used the method was descriptive-analytical to describe the symptoms in society and the problems. It can analyse and provide a solution. In based on general data and information, including the approach to laws and regulations, namely reviewing laws relating to legal issues that can be discussed here. In addition, references from several legal books and journals that can support this writing are also used in laws and regulations, theories and doctrines, and expert opinions.

Basically, this research used normative juridical research or in accordance with the laws and regulations in force in Indonesia. The research found out how to determine the threshold for the nomination of the Presidential and Vice-Presidential Candidates in the Presidential and Vice-Presidential Elections to make voters' sovereignty. Based on the description of the background above and the many problems that existed the regarding the threshold for submitting pairs of presidential candidates and vice-presidential candidates in the general election in Indonesia, the problem can be formulated as follows: "Consideration of Threshold Determination for President Candidate and Vice President Candidate in Indonesia"

3. DISCUSSION

The decision of the constitutional court of the republic of Indonesia number 14/PUU-XI/2013 in the case of judicial review of law number 42 of 2008 concerning the general election of the president and vice president which was final, causing the holding of the 2019 general election and subsequent general elections to be held simultaneously, namely the legislative election and the election of the president and vice president. Of course, holding simultaneous general elections in 2019 can have a political impact, both nationally and regionally. A decision that can bring its own impact and challenges for the organizers of the general election in improving a better general election system.

General elections are the most important institution for the fulfilment of the three basic principles of democracy in a government in the form of a republic, namely the sovereignty of the people, the legitimacy of government and the regular change of government. General Elections as the embodiment of democracy are considered as an ideal means or mechanism in the framework of a peaceful and orderly transition of power. With the general elections, it is expected that the process of devolution of power within a country can be able to run well[4].

The principle of democracy in government law is realized any provisions governing the right to participate in the decision-making process established by the government (the democratization of decision-making)[5]. The part that is often forgotten is the form of participatory democracy in the government decision-making process[5]. Since the embodiment of democracy is from the people, by the people, and for the people.

Indonesia as a country that adheres to a presidential system of government, where the head of state and head of government are held by the President. In carrying out his duties the President is assisted by one vice president. The presidential system in force and enforced in the United States, which has lasted for more than two hundred years, deserves to be used as a benchmark (parameter), at least as a comparison, for the existing presidential system. in any country, outside the United States[6].

According to Prof. Jimly Asshiddiqie[6], there are at least nine characteristics of a presidential system of government as follows:

1. There is a clear separation of powers between the executive and legislative branches of power;
2. The President is the sole executive. The executive power of the President is not divided and there are only the President and the Vice President;
3. The Head of Government is at the same time the Head of State or vice versa the Head of State is at the same time the Head of Government;
4. The President appoints ministers as assistants or as subordinates who are responsible to him;
5. Members of parliament may not hold executive positions and vice versa;
6. The President cannot dissolve or force the parliament;
7. If the parliamentary system applies the principle of parliamentary supremacy, then in the presidential system the constitutional supremacy system applies. Therefore, the executive government is accountable to the constitution;
8. The executive is accountable to the sovereign people;
9. Power is dispersed in a decentralized manner as in a parliamentary system which is centralized in the parliament.

Thus, from a constitutional point of view the existing configuration in Indonesia is democracy. Whatever the qualifications of the government system that can be given (whether presidential or parliamentary or quasi-presidential/parliamentary), the principle on which it is based is democracy[7]. The embodiment of democracy in the general election must at least meet the following elements:

- 1) A rational democratic system. In general elections, there is a need for an appropriate nomination and

election system, an effective and efficient electoral system and so on.

- 2) A rational political party. Political parties must have good internal competition commitments and procedures that are offered to the people to be elected, not on the basis of family, money owners, or image.
- 3) The candidates can be selected rationally. The candidates chosen in the general election have high quality and noble character, not those who have a lot of imagery by selling their looks in the media or just having high electability based on survey results.
- 4) A smart voter. Voters must be given education and enlightenment so that they become smart voters who are able to distinguish which candidates are good candidates and which are just political adventurers.
- 5) A rational democratic culture. To get a rational democratic culture does take time, but it needs to be consciously nurtured continuously[8].

Despite the determination of the presidential threshold not regulated in the constitution, Indonesia refers to democratic and constitutional principles in state administration practice. Voters exercise their right to vote after the data is entered in the voter data managed by the general elections commission. The presidential threshold determination based on the results of the votes obtained by the political parties participating in the general election which of course cannot be separated from the accuracy of the data on the users of the right to vote. Political parties as a form of representation of people's participation are expected to carry out a balance function in overseeing the running of the government. The balance function is realized by checks and balances, namely the balance between the executive and the legislature.

a. Manifestation of Democracy in Indonesia Through General Elections

Indonesia as a country that adheres to a representative democratic system has made a rule that in an effort to create a democratic country, a general election process is carried out which is held every 5 (five) years in accordance with the mandate of the constitution, the Law 1945 Constitution of the Republic of Indonesia.

General elections are one of the joints for the establishment of a democratic political system. Therefore, the aim of the elections is to implement the principles of democracy by choosing representatives in the board of representatives, in order to include the people in state affairs[2].

At the very least, a general election was born of the conception and the great idea of Democracy means referring to John Locke and Rousseau, the guarantee of freedom, justice and equality for individuals in all fields. In a democracy, there are values of participatory

and sovereignty upheld and should be run by private citizens and state instrument both at the legislative, judicial and executive[9].

The existence of public participation in the general election is necessary, in view of the public has the right to vote that is not can be represented by others. The right to vote is granted to every citizen guaranteed by law. This right is the constitutional right of every citizen who has met the requirements for his name to be included in the Voters List. In terms of compiling the Voter List, the General Election organizer performs several stages of updating voter data by coordinating with related parties to produce accurate and quality data. From this accurate and quality voter data, it is hoped that elections in Indonesia can be better, fairer and with integrity.

The involvement of the people in the general election process is a basic political right guaranteed by the constitution. The right to participate in the administration of government either directly or indirectly. The right to participate in the government directly, for example, the right to be elected as a member of a political institution, namely the people's representative institution and a member of the cabinet, the right to become the head of government and regional head. The right to participate in government indirectly is the right to elect members of representative institutions and to elect regional heads and to elect heads of state in a republican state[10]. The democratic principles laid down by Rousseau are as follows:

1. The people are sovereign; it means that the people have the highest power in the state. Because this principle is a democracy, it means that the people govern themselves. Here the people are both subordinate and superior;
2. Each person must be respected according to his/her dignity as a human being. Because it is the right to exist of every human being so it must be guaranteed; and
3. Every citizen has the right to participate in building life together in the state, namely having public rights. Public rights of man can only be eliminated if the norms of public life are violated by it[11].

Constitutional Court Decision No. 14/PUU-X/2013 in the matter of judicial review of Law No. 42 of 2008 on General Election of President and Vice President of the ruling is final. The decision states that the general election and the subsequent general elections in 2019 can be held simultaneously. The holding of simultaneous general elections will certainly have a political impact, both nationally and regionally. The decision of the constitutional court certainly brings its own impact and challenges for the Indonesian in improving a better general election system. The purpose of the research found out how to determine the threshold for the nomination of president and vice

president in the simultaneous general elections and subsequent general elections in 2019 as an effort to realize sovereign voters.

General election as a constitutional mandate which is held every 5 (five) years is a manifestation of a state ideal. Indonesia as a state of law which has been affirmed in the Elucidation of the 1945 Constitution, has consequences in which every attitude, policy, and behaviour of the State apparatus and the population must be based on and in accordance with the law. In fact, this provision is to prevent the occurrence of arbitrariness and arrogance of power, whether carried out by state apparatus or residents[12].

In general, a democratic government system always contains the most important and basic elements, namely[13]:

- (1) Citizen involvement in political decision-making.
- (2) A certain degree of equality among citizens.
- (3) A certain degree of freedom or independence recognized and used by citizens.
- (4) A system of representation.
- (5) A majority rule electoral system.

From the elements above, it can be seen that the democracy has characteristics can be used as the basis for running a democratic system where citizens should be involved in making political decisions, either directly or indirectly through elected representatives. By involving citizens in political decision-making, the smooth running of the state government process can be guaranteed.

The Decree of the People's Consultative Assembly Number VI/MPR/2001 concerning the Ethics of National Life. According to International IDEA[14] in 2002, General elections can be said to be democratic if they have at least 16 standards. Based on those standards, Indonesia can be said to have met all the elements. Thus, it can be interpreted that the general election in Indonesia is an embodiment of people's sovereignty that the law is used as a framework, involves the participation of its citizens in conveying aspirations to form a good government based on the provisions of the applicable laws and regulations, and the press and election observers are given the opportunity to see and covers the holding process the general election.

b. Decision of the Constitutional Court Number 14/PUU-XI/2013 Changes the Implementation of General Elections in Indonesia

Starting from the general election in 2019 which was held differently from the previous general elections from 1955 to 1999. The sovereignty is in the hands the people, and is carried out entirely by the People's Consultative Assembly And the President and Vice President are elected by the People's Consultative Assembly with the majority of votes.

In a process like this there is a subjective right of a group of voters who are larger or smaller, namely

what is called the right to vote, and there are subjective rights of a few people who are elected, namely the right to become a member of parliament, the right to jointly speak and decide in parliament. All of these rights are political rights[15].

Since the general election in 2004, the President and Vice President was directly elected by the people in one pair. The legal umbrella for implementing the constitutional mandate is the issuance of Law Number 23 of 2003 concerning the elections general President and Vice President as a means of implementation the sovereignty of the Unitary State of the Republic of Indonesia based on Pancasila and the Constitution of the Republic of Indonesia Year 1945 to elect the President and Vice President.

Through the Act for the first time in respect of nomination couples The President and Vice President are determined through a threshold. Pairs of candidates can only be proposed by a political party or a coalition of political parties that obtain at least 15% (fifteen percent) of the total seats in legislative assembly or 20% (twenty percent) of the nationally valid votes in the general election for members of the legislative assembly. For the first time the presidential and vice-presidential election system was carried out directly by the people in the general election in 2004.

Gotfridus Goris Seran (p. 557) defines the Presidential Threshold as the threshold for obtaining votes that must be obtained by political parties in a general election to be able to propose presidential candidate. For example, the presidential and vice-presidential elections in 2009, pairs of candidates for president and vice president were proposed by a political party or a combination of political parties that have at least 25% of the seats in the legislative assembly or 20% of the national valid votes in the legislative general election[16].

On the basis of the results showed that the legislative general election in 2014 as the basis for the nomination of the presidential and vice-presidential candidates for the presidential general election in 2019 is something that should not be done, because the results of the legislative general election in 2014 have been used as the basis for the nomination of the presidential and vice-presidential candidates in 2014. Based on the decision of the constitutional court number 14/PUU-XI/2003 which is the basis for holding the general election in 2019 states in its decision that the legislative general election and the presidential general election can be held simultaneously since the general election and the general election in 2019 onwards.

It is unfortunate to use the results that showed the legislative general election in 2014 as the basis for submitting the threshold for nominations for the presidential and vice presidential candidate pairs in the general election in 2019 that the implementation for the

election of candidates for members of the legislative assembly, regional representatives council, provincial regional people's representative council, and regional people's representative council regency/city simultaneously with the election of presidential candidates and vice presidential candidates. Indeed, general elections in 2004, 2009 and 2014, the legislative general election was carried out before the presidential general election.

Presidential Threshold is a concept that aims to propose qualified candidates for President and Vice President. This proposal made by political parties or coalition of political parties responsible for the presidential couple and vice President promoted[17]. With this policy is a legal policy that is open or delegate authority to open that can be specified as a legal policy by forming Act[17].

In this process, it is actually a separate note, because if the researchers look further, voter data also affects vote acquisition in the legislative election. Is the data used for the general election in 2014 still relevant to be used in the general election in 2019? It is unlikely that there can be significant changes to voter data over the next 5 years. If the 2014 voter data were used as the basis for voter data in 2019, it would be found that the number of voters increased or even decreased.

It is impossible for the presidential threshold to be implemented in the simultaneous general election in 2019, because it is impossible to know the votes acquired in the legislative general election. The presidential threshold arrangement in the recently passed general election law which stipulates that the presidential threshold for the general election in 2019 is based on the results of the general election in 2014 that cannot be justified[18].

Since in the general election in 2014 that there was a long series of processes involved. Starting from the registration of participants in the general election, candidate registration, campaigning, voting and counting votes, disputes over the results of the votes in the constitutional court, until then becoming the final result showed that the general election in 2014 which is no longer relevant to the results showed the general elections in 2014 to be used the simultaneous general elections in 2019.

The legislators (Legislative Assembly) must rethink the presidential threshold because it can limit the people from getting more and better alternatives[17]. In addition, new parties participating in the general election in Indonesia are closed from being able to nominate their pairs of presidential candidates and vice-presidential candidates because they do not meet the provisions of article 222 of law number 7 of 2017 concerning general elections, which until now have not been amended.

Although not entirely, this logic also applies when the legislative general election is made a

requirement for the presidential election in Indonesia. However, in a pure parliamentary system, a party or coalition of parties nominates and elects the executive (Prime Minister), while in the Indonesian system until 2014, a party or coalition of parties, due to certain results from the legislative general election, nominates the executive (President), then allows the people to choose. This means that the granting of a mandate from the people to the President is not direct, but through the first granting of a mandate to the new legislature (the content of the legislature is a political party). Thus, the legislative general election model which is a prerequisite for the presidential election makes the logic of the presidential system impure[19].

4. CONCLUSION

From the above discussion, it is concluded that in determining the threshold for the nomination of president and vice president in the simultaneous General Elections and subsequent general elections in 2019 based on the acquisition of seats or the acquisition of valid national votes for political parties as a result of the legislative general elections that is irrelevant. This clearly closes the people's desire for more choices of candidates for better state leaders. Moreover, political parties that do not get enough votes and seats in the house of representatives in the legislative general election and new political parties can also not be able to nominate pairs of presidential candidates and vice-presidential candidates in the simultaneous general elections in 2024 later.

The resulting recommendation is the abolition of the legal rules governing the requirements for submitting a pair of candidates for president and vice president in simultaneous general elections in Indonesia for political parties based on the results of the previous general election as regulated in law number 7 of 2017 concerning general elections. This is intended so that there is no term "castrated" democracy. Provisions based on vote gain in determining the next presidential threshold with the simultaneous general election system in legislative elections and executive elections with the aim of restoring people's sovereignty to elect their candidate leaders.

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