

# Presidential Threshold Concept In The Democratic Perspective In Indonesia.pdf

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## Presidential Threshold Concept in the Democratic Perspective in Indonesia

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14

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### Abstract

This study aims to analyze the Presidential Threshold Concept in the Democratic Perspective in Indonesia. This is because democracy currently applies the principle of popular sovereignty where the highest government is in the hands of the people in this case the people are the source of the power of a country. The concept of PT is not in accordance with the aims and objectives of democracy. This research is a normative study with a legal approach, conceptual approach, and historical approach. Based on the results of the study concluded that it is known that the Democratic System, and the determination of the Presidential Threshold in this presidential election have violated democratic values, do not provide a sense of justice in a democratic party. Presidential systems, basing presidential elections on legislative election results is an anomaly. Because, the legitimacy basis of a president in a presidential system scheme is not determined by parliamentary political formation resulting from legislative elections. Presidential institutions and parliaments in presidential systems are two separate institutions that have different legitimacy bases.

*Keywords: concept, presidential threshold, democracy*

### I. Introduction

Democracy in terms is the sovereignty of the people, what is meant in the life of the state is to refer to the system of organizing a system of government carried out with the people. According to Soekarno and Hatta, the democracy desired by the Indonesian state which at that time was being fought for independence, that is, not liberal democracy which usually sided with the strong socio-economic group.<sup>1</sup> Furthermore, Sukarno, guided democracy was a democracy led by wisdom of wisdom in deliberation / representation. Thus in a country that adheres to a democratic system, its government power is limited and the government cannot act arbitrarily to its people. The Presidential Threshold concept, the presidential nomination threshold points are the most sparking points of the debate, which finally decided 20-25%, namely 20% of the votes in the DPR or 25% of nationally legitimate votes. But there are those who argue that the provisions of the presidential nomination threshold are contrary to Article 6A paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which guarantees the right of each political party participating in the General Election to submit a candidate for the President. Politically, the presidential nomination threshold provisions will also be considered as limiting the opportunity for parties or citizens of other countries to become candidates for President.

12

Based on the description above, the main problem in this article is how the presidential threshold concept in the perspective of Indonesian Democracy. The specific objective of this research is to analyze to understand, describe and analyze matters relating to the Presidential Threshold Concept in the perspective of Indonesian Democracy and the Regulation of the Presidential Threshold on legislation in Indonesia.

<sup>1</sup> Muhammad Erwin, *Pendidikan kewarganegaraan republik Indonesia*, Edisi revisi, 3<sup>th</sup> Ptinting, Refika aditama, Bandung, 2013, p.149-150.

## II. Method

This type of research is normative legal research, which uses a normative juridical approach. The normative juridical approach is a problem approach by looking at, analyzing and interpreting theoretical matters involving legal principles in the form of conceptions, legislation, views, legal doctrines and related legal systems. This type of approach emphasizes obtaining information in the form of legal texts relating to the object under study. Namely reviewing the Constitution and statutory regulations concerning the concept of the Presidential Threshold in general elections in Indonesia. To discuss the problems contained in this thesis the author uses a normative juridical approach and empirical jurisdiction. According to Amiruddin and Zainal Asikin<sup>2</sup>, The normative juridical approach is a normative juridical analysis which essentially emphasizes the deductive method as the main handle and the inductive method as the supporting work procedure by using library materials as a research data source. The huum approach used is the legal approach (satute approach), and the conceptual approach<sup>3</sup> and case approach, historical approach.<sup>4</sup> Then to facilitate this research, the legal materials needed are primary legal material, secondary legal material, and tertiary legal material.<sup>5</sup> The legal materials are obtained through library research.<sup>6</sup> Furthermore, the analytical tool used in this study is the Legal Interpretation of Grammatical Interpretation, Systemic Interpretation, and Historical Interpretation. Because in this study contain problems about the vagueness of norms and conflicts between norms. Analyzed by describing and reviewing the library data systematically examined, using deductive methods, where in this way will be discussed problems that are general in nature towards things that are specific, then drawn a conclusion and put forward suggestions and recommendations in writing this scientific paper.

## III. Result And Discussion

### 3.1 Democracy in Indonesia

Democracy is a form of political government whose governmental power comes from the people either directly (direct democracy) or through representation (representative democracy). The term originates from the Greek word democracy (people's power), which is formed from the words demos (people) and *kratos* (power), referring to the political system that emerged in the middle of the 5th and 4th century BC in the Ancient Greek cities, especially Athens.<sup>7</sup> It can be interpreted in general that democracy is a government of the people, by the people and for the people. Such is a simple understanding of democracy, which is known to almost everyone.

The concept of democracy as a form of government, but the use of this concept in modern times began since the revolutionary upheaval in Western society at the end of the 18th century. In the mid-20th century in the debate about the meaning of democracy three general approaches emerged. As a form of government, democracy has been defined based on the source of authority for the government, the goals served by the government and the procedures for forming a government.<sup>8</sup>

Democracy emphasizes the will, opinions and views of the people, the style of democratic government is chosen through agreement by consensus. So that a strong democracy is a democracy that comes from the people's conscience to achieve justice and people's welfare.<sup>9</sup> Like a system, democracy also has its own concepts, characteristics, models and mechanisms. All of which constitute a unity that can explain the meaning, purpose and practice of a democratic system.

The concept of democracy is identical to the concept of popular sovereignty, in this case the people are the source of the power of a country. So, the main goal of democracy is to provide the greatest happiness to the people. If there is an implementation of a democracy which turns out to be detrimental to the masses, but only benefits certain people, then this is the implementation of a misdirected democracy. The sovereignty of

<sup>2</sup> Amiruddin dan zainal asikin, *Pengantar Metode Penelitian Hukum*, 8<sup>th</sup> Printing, Rajawali pers, Jakarta, 2014, p. 163.

<sup>3</sup> Amiruddin & Zainal Asikin, *Pengantar Metode Penelitian Hukum (Revised Edition)*, Rajawali Pers, Jakarta, 2016, p. 164

<sup>4</sup> Fajar Muchti dan Yulianto Achmad, *Dualisme Penelitian Hukum Normatif & Empiris*, Pustaka Pelajar, Yogyakarta, 2009, 185-192.

<sup>5</sup> *Ibid*, , 155.

<sup>6</sup> Muh. Risnain, Konsep Penguatan Kewenangan Komisi Pengawas Persaingan Usaha Sebagai Lembaga Quasi-Peradilan Dalam Membangun Perekonomian Nasional Yang Sehat Dan Adil, *Jurnal IUS*, Vol. VI, Nomor 2 (Agustus 2018), , 221.

<sup>7</sup> Azumardi Azra, *Demokrasi, Hak Asasi Manusia, dan Masyarakat Madani*, Prenada Media, Jakarta, 2005, p. 125.

<sup>8</sup> Samuel P. Huntington, *Gelombang Demokratisasi Ketiga*, Jakarta, Midas Surya Grafindo, 1997, p. 4.

<sup>9</sup> Zakaria Bangun, *Demokrasi dan Kehidupan Demokrasi di Indonesia*, Bina Media Perintis, Medan, 2008, p. 2.

the people in a democratic system is reflected in the expression that democracy is a system of government of the people, by the people and for the people (government of the people, by the people for the people).<sup>10</sup>

The “from the people” system of government (government of the people) is that a system of government where power comes from the people and government executives are elected from and by the people through a general election. In this case, the existence of a government chosen by the people formed a legitimacy towards the authority of the government concerned. The “government by the people” system of government, which means that a government is run in the name of the people, not in personal names or in the name of the personal impulses of the elite holders of power. In addition, the government “by the people” also means that every formulation and amendment to the Constitution and the law are also carried out by the people either directly (for example through a referendum system), or through people’s representatives in parliament who have previously been elected by the people through a general election.

Democracy is a belief in justice for all Indonesian people, not an import cap *Volksouvereiniteit* or other belief, but a true Indonesian belief. This belief must be the watchword of the parties in Indonesia and must be the basis of the composition of an independent Indonesia in the future.<sup>11</sup> The fundamentals of democracy found in the association of indigenous life in Indonesia we use as our joint politics. But we are aware of the exchange of times, realizing that the basics that were previously inadequate are now in order to develop an independent Indonesia based on democracy. Therefore, the original principles must be matched with the will of the present life, must be brought to a higher level. In short, the circle is expanded, and the goal continues.<sup>12</sup> So, in the original association of Indonesia, democracy is only found below. The above government is solely based on autocracy. Those who do arbitrarily are not controlled by the people. Therefore, if Indonesia wants to get a government based on democracy, we should not look back, we must continue “genuine democracy” which is a strong democracy based on popular sovereignty, so that there are regulations for people’s government for Indonesia in general. Now it is evident that the theory of popular sovereignty which is the basis of our people’s politics does not conflict with “genuine democracy in Indonesia”.<sup>13</sup>

The sovereignty of the people gives high power to the people, but also places the greatest responsibility. The basis of a fair government is that who gets his power is responsible. Even though the people now get power according to the sovereignty of the people, the people are also responsible.<sup>14</sup> Government based on people’s sovereignty is essentially stronger, because it is upheld by shared responsibility.<sup>15</sup>

Democracy (government by the people) originally in Greek thought means a form of politics in which the people themselves possess and carry out all political power.<sup>16</sup> Democracy can be interpreted by a state where sovereignty is in the hands of the people, the highest authority is in a joint decision of the people, the people in power, the people’s government and the power of the people. The most important principle of democracy is citizenship. This includes the right to get equal treatment with other people, about joint choices and obligations of the authority to carry out these choices to be responsible and open access to all people. On the contrary, this principle also imposes an obligation on the people to respect the legitimacy of deliberate collective choices and the right of the authorities to act with authority to encourage the effectiveness of these choices, and to protect the country from threats to sustainability Democracy has become the mainstream of the country modern country.

Democracy stands based on the principle of equality, namely that every citizen has the same rights and position in Government, therefore every citizen has the same power to govern. It is this people’s power that is the source of legitimacy and the legality of state power. Indonesia uses a Proportional Representation System in carrying out elections. In this system the competition is the party, while the candidate is only listed in the list made by his party. Individuals or voter communities cast their votes directly for one party and participate in determining who is elected depending on the vote of the most votes. But what happened in Indonesia, competition between parties was getting worse, even though this competition was the main

<sup>10</sup> Munir Fuady, *Konsep Negara Demokrasi*, Revita aditama, Bandung, 2010, p. 29.

<sup>11</sup> Mohammad Hatta, *Demokrasi Kita, Pikiran-pikiran tentang demokrasi dan berkedaulatan rakyat*, Segarsy, Bandung, 2008, p. 41.

<sup>12</sup> *Ibid*, p. 42.

<sup>13</sup> *Ibid*, p. 46.

<sup>14</sup> *Ibid*, p. 56.

<sup>15</sup> *Ibid*, p. 57.

<sup>16</sup> Lorens Bagus, *Kamus Filsafat*, Gramedia Pustaka Utama, Jakarta, 2002, p.154.



feature of a democratic electoral system. The openness of political discussion has increasingly developed, but unfortunately this openness is not followed by tolerance for differences of opinion which ultimately lead to conflict, division between citizens, and of course money politics.

Democracy in Indonesia itself experiences dynamics with its own patterns and characteristics. Positioned as the third largest democracy in the world besides the United States and India, experiencing a period of 'third wave democratization' with Malaysia, the Philippines and Thailand, Indonesia entered a phase of significant change in its politics and government.<sup>17</sup> For more than ten years since the beginning of Indonesia's democratization took place, Indonesian democracy tended to be slow to achieve 'stability'. However, compared to Southeast Asian countries and other developing countries, Indonesia is a country with the most widespread development of political openness.<sup>18</sup>

Indonesia also became a country without a military coup or bloody rebellion. Even until the last post-reform election, Indonesia has never fallen back on an authoritarian system.<sup>19</sup> This is an indication that Indonesia tends to develop with the system. According to Ikrar Nusa Bhakti,<sup>20</sup> in the writings of Farahdiba Rahma Bachtiar, Indonesia experienced four phases towards its maturity as an established democracy, namely pre-transition, liberalization, democratic transition and the last and still proceeding to this day namely the consolidation phase of democracy.

The story of Indonesia as a democracy is unique because Indonesia has an identity as a developing country and a collective identity as a Southeast Asian country. As a developing country, Indonesia shows that economic progress can be in line with progress in the political field. As for those who experienced 'the third phase of democratization' as well as Indonesia, it turned out that they were still stagnant in transforming. Whether it is still weak in the legality, pattern or performance of the political system that is still closed and limited, or the structure is still the same. While Indonesia's democracy, although still has many weaknesses, continues to transform in a better direction. It can be seen from various sides, starting from the pattern of political and government systems that increasingly reach the 'right' point, state institutions, law and representation that are constantly monitored and reformed, the oversight function of the media, community organizations and information disclosure and enforcement is running law.<sup>21</sup>

In addition, the maturity of Indonesia's democratization cannot be separated from the support of international parties and Indonesia's own efforts to play a role and maintain its identity as a democratic country in the international sphere. Indonesia became the initiator in many activities both at regional and international levels related to democracy. In the era of Megawati Sukarnoputri's leadership, Indonesia encouraged ASEAN reforms and became the initiator of the human rights commission. During SBY's leadership, Indonesia increasingly proved its commitment to democracy even beyond regional boundaries by carrying out unilateral actions such as the Democracy Forum. At the time of the Bali Concord II, Indonesia became a driver in the ASEAN Charter in 2007 by making the issue of human rights a fundamental principle in ASEAN. So that the ASEAN human rights body was formed which was formed in 2009.<sup>22</sup> Being a democratic country for Indonesia is also not an easy matter if you look at cultural and religious factors in a pluralistic society. Having a population of 230 million people, 85% of whom are Muslims make Indonesia the country with the largest Muslim population in the world.<sup>23</sup> Indonesia is also the most diverse country in terms of culture and language. There are around 400 local / regional languages for the entire territory of Indonesia outside the Papua region<sup>40</sup> and there are around 300 ethnicities living on 17,508 islands in Indonesia.<sup>24</sup> Indonesia is also a model for countries in the world, especially among developing countries and

<sup>17</sup> Farahdiba rahma bachtiar, "Pemilu Indonesia: kiblat negara demokrasi dari berbagai representasi", *Jurnal Politik Profetik* Volume 3 Nomor 1 Tahun 2014, FISIP UNHAS, 2014, p. 11.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

<sup>20</sup> Ikrar Nusa Bhakti. *The Transition to Democracy in Indonesia: Some Outstanding Problems*. Dalam *in the Asia Pacific: A Region in Transition*, ed. Jim Rolfe. (Honolulu: *The Asia Pacific for Security Studies*) p. 200. See Jurnal Farahdiba Rahma Bachtiar. "Pemilu Indonesia: kiblat negara demokrasi dari berbagai representasi", *Jurnal Politik Profetik* Volume 3 Nomor 1 Tahun 2014, FISIP UNHAS, 2014

<sup>21</sup> *Ibid.*, p. 12-13.

<sup>22</sup> *Ibid.*, p. 12.

<sup>23</sup> Michael Buhler. *Islam and Democracy in Indonesia Insight Turkey*. (Insight Turkey: Vol. 11 / No. 4 / 2009) p. 51, See Jurnal Farahdiba rahma bachtiar. "Pemilu Indonesia: kiblat negara demokrasi dari berbagai representasi", *Jurnal Politik Profetik* Volume 3 Nomor 1 Tahun 2014, FISIP UNHAS, 2014.

<sup>24</sup> *Ibid.*

Asian countries. Indonesia takes a leading role towards existing democracies. The notion that Islam and democracy are not compatible proved not to be proven in the case of Indonesia. During this time culture or religion was considered to hinder the process of democratization and became a justification for the political system in Arab countries. Indonesia with the majority of its Muslim community is able to apply a model of democracy that is even more democratic compared to countries that are considered as initiators of democracy.

Compared to other countries, Indonesia has a strong foundation as a democratic country. These material facts can be found in the political system and the Indonesian government where Indonesia is a Republican Representative. Unlike Malaysia and Thailand, for example, the president in the Indonesian constitutional system is the head of state and head of government. The Indonesian Constitution, the 1945 Constitution of the Republic of Indonesia (the 1945 Constitution) became the legal foundation that separated the legislative, executive and judicial powers limitedly. In addition, the existence of clear and binding rules and regulations is the basis of legitimacy that Indonesia does indeed stand with a democratic system. Not only based on procedural matters, but also on substantial matters such as minority and women's representation, media openness, group freedom and human rights guaranteed by the state. The legitimacy exists as it does with developed countries such as Britain and Australia. In Australia for example, Labor Party policies require women to be elected first to fill at least 40 percent of the seats that are 'winnable' in general elections.<sup>25</sup> Whereas in Indonesia, the legalization of women's involvement is contained in the seats of the seats prepared specifically for women by 30%. The quality of democracy in Indonesia by looking at the results achieved in people's lives is certainly still far from the goals of democracy that are prosperous and fulfill individual rights.<sup>26</sup> Political parties also experience the process of democratization in their own bodies. This process is called internal democracy. After this condition is reached, the political parties that have won the election will participate in supporting the democratic process and will not pose a threat to the democratic institutions. A democratic system requires all political parties to always implement internal democracy. This must also be enacted so that the operation of an internal democracy does not depend on goodwill ('goodwill') of the party leader. Because if not, democracy will be threatened.

Internal democratization guarantees open dialogue in the process of forming political will. In a political party there must be a free electoral system that allows the change of members to be fair and accountable to public courts. Party leaders and functionaries have a tendency to gather power within their political parties and to fight for power outside the party. Well-functioning internal democracy will offset this trend and keep the organizational structure open to democratic control and the participation of its members and provide an opportunity for civil society to influence it.<sup>27</sup> Political parties compete in democratic elections to convince the people that the results of democracy bring better access to education and standards of public education, independent courts, and communication, all of which are useful for economic growth. Democracy is still the main choice in organizing governance today, although it is recognized that the democratic system in administering many weaknesses includes the polarization of power by the majority even though the group is not significant in meeting the requirements of good governance.<sup>28</sup> Today's democracy applies the principle of popular sovereignty where the highest government is in the hands of the people.<sup>29</sup>

After a long time, the Indonesian people held several electoral activities better known as the "party of democracy" which was the last time in 2014 for legislative elections and presidential elections. In the upcoming elections in 2019 the implementation of the election has the latest regulations, namely the issuance and promulgation of Law Number 7 of 2017 concerning Elections as a form of substantive refinement of Law No. 42 of 2008 concerning the General Election of the President and Vice President, Law Number 8 of 2012 concerning General Elections of Members of the People's Legislative Assembly, Regional Representative Council and Regional People's Representative Council, and Law Number 15 Year 2011 concerning General Election Organizers.<sup>30</sup> Democracy in Indonesia is a democracy that is framed by

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<sup>25</sup> *Ibid*, p. 13

<sup>26</sup> *Ibid*, p. 13-15.

<sup>27</sup> Thomas Meyer, "Peran Partai Politik dalam Sebuah Sistem Demokrasi: Sembilan Tesis Demokrasi dalam Parpol (*Internal Democracy*)", Cetakan Ketiga, Friedrich-Ebert-Stiftung (FES), Jakarta, 2012, p. 34-35

<sup>28</sup> Imam mahdi, *Hukum Tata Negara Indonesia*, Teras, Yogyakarta, 2011, p. 205.

<sup>29</sup> Eddy Purnama, *Negara kedaulatan Rakyat*, Nusamedia, Bandung, 2007, p. 27.

<sup>30</sup> Natasha Camilla Hufadzah, "Quo Vadis: Penetapan Parliamentary Threshold Dan Presidential Threshold Dalam Undang-Undang Nomor 7 Tahun 2017 Tentang Pemilu", Jurnal Mahasiswa, FH UNPAD, Bandung, 2017, p. 11.



constitutional norms. Therefore, for democracy to rotate according to the axis of the constitution, democracy must be maintained. The implementation of constitutional democracy is seen in general election activities, the formation of rules and the implementation of the authority of state institutions.

Seeing the description above, that Democracy which has the people's power based on deliberation. So, people's sovereignty means that power for the government of the State is in the people. The people are sovereign, powerful to determine how they should be governed. But the people's verdict which can be a government regulation for all people is a decision that is determined by way of consensus in negotiations that are regular in their form and way.<sup>31</sup> Thus, people's sovereignty is power exercised by the people or in the name of the people on the basis of deliberation.

### 3.2 Presidential Threshold in the Democratic Perspective

The existence of the State of Indonesia as a legal state is regulated in Article 3 Paragraph 1 of the 1945 Constitution (UUD 1945) which explains that Indonesia is a country based on the rule of law and adheres to the principle of the rule of law which provides an explanation that everything is taken making policies, decisions and actions by the government must be based on the highest rules in the country.<sup>32</sup>

Constitution is the supreme law of a country (supreme law of the land), 2 theoretically, a constitution is a social contract of the people in a country.<sup>33</sup> Indonesia has a social contract in the form of the Constitution of the State During the 1945 Constitution, there were changes in the contents of the 4 (four) Basic Laws, and caused a significant change in the constitutional structure, with the new official name of the State Constitution The Republic of Indonesia in 1945 (UUDNRI 1945). This includes arrangements regarding the conditions for nominating the President and Vice President as stipulated in the provisions of Article 6A paragraph (2) which states that: "The pairs of candidates for President and Vice President are proposed by political parties or a combination of political parties participating in general elections before the general election".<sup>34</sup>

From the textual side, as stated in Article 6A paragraph (2), it can be concluded that the 1945 Constitution of the Indonesian Republic of Indonesia provides space for political parties participating in the general election to nominate the President and Vice President, provided that the political party is a participant in the election. However, in Law Number 42 of 2008 concerning the General Election of the President and Vice President, precisely through the provisions of Article 9 it is stated that: Candidate pairs are proposed by political parties or a combination of political parties which obtain at least 20% (fifteen percent) of the number of seats DPR or 25% (twenty percent) of legitimate national votes in the election of DPR members, before the election of the President and Vice President. Amid the debate over the need to revise the Presidential Threshold, it seems that parliamentarians, political observers, and many others are only focused on the numbers. Parliament assumed the higher the Presidential Threshold the safer the president from the disruption of "opposition Senayan". In addition, the parliament only considers how many candidates for President-candidate Vice President in the presidential election. But Parliament ignored the negative impact that could potentially disrupt the performance of the elected president. They did not reflect on the experience of the Presidential election in 2009 in which candidates were required to seek political party support to fulfill the Presidential Threshold.<sup>35</sup>

The support of political parties to the candidate pairs is certainly not free. Supporting political parties ask for maximum compensation for their support. Meanwhile, for example, the number of ministerial seats and strategic posts of government and State-Owned Enterprises (BUMN) is limited. As a result, not yet submitting the registration form to the KPU, the Presidential candidates and Vice-President candidates have been entangled in attracting political-economic interests with parties who are willing to sign their proposal.<sup>36</sup> With the compromise actually the President has castrated his own prerogatives long before he made his oath

<sup>31</sup> Mohammad Hatta, *Op. cit.*, p. 55.

<sup>32</sup> Ade Fadillah Fitra, "Analisis Yuridis Ketentuan Presidential Threshold Berdasarkan Undang-Undang Nomor 42 Tahun 2008 Tentang Pemilihan Umum Presiden Dan Wakil Presiden", *JOM, Fakultas Hukum Volume IV Nomor 2 Oktober 2017*. Riau, 2017, p. 3-5

<sup>33</sup> Ni'matul Huda, *Pengantar Hukum Tata Negara*, Bumi Aksara, Jakarta, 2005, p.73

<sup>34</sup> Ade Fadillah Fitra, *Op. cit.*, p. 2.

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*

and promise of office. As a result, the factor of professionalism was displaced by pragmatic political interests.

Broadly speaking, a presidential government system is a system of government where the executive position is not responsible to the people's representative body, in other words executive power is outside the direct (parliamentary) supervision.<sup>37</sup> In this type the executive position does not depend on the people's representative body, as for the legal basis of executive power returned to the election of the people.<sup>38</sup> Mulyana W. Kusuma<sup>39</sup> in the writings of Ade Fadillah Fitra, asserting that democratic countries do not recognize Presidential Threshold in their constitutional practices, but the presidential nomination is regulated in a closed election, half closed, and open or half open to form a coalition of political parties carrying presidential candidates.<sup>40</sup> The Indonesian state administration system that adopts the principles of constitutional democracy, respect for human rights, the principle of due process of law (principle of legality), and sovereignty are in the hands of the people carried out based on the constitution. On that basis, the administration of state government must respect these principles and be based on the majority based on the constitution. In addition, the Presidential Threshold must be seen from due process of law which implies that there is no legal process, political process, or democratic process that is not based on applicable legal and constitutional provisions.<sup>41</sup>

Indonesia is a country that adheres to a presidential government system, especially since the amendments to the 1945 Constitution, strengthening the presidential government system is one of the main agendas of the 1945 Constitution amendment. The Republic of Indonesia Representative (DPR RI), Regional Representative Council (DPD) and Regional People's Representative Council (DPRD) contained in Article 22 E (2) of the 1945 Constitution. The existence of an outline Presidential Threshold provision may not all political parties participating in the Election candidate from his own party because since the enactment of the Presidential Threshold since the 2004 election not a single party has been able to reach this threshold. So that in practice what happens, every political party can be coalition in carrying out its candidates. The enactment of the Presidential Threshold in the electoral system in Indonesia in the presidential government system raises various problems and debates. On the one hand it states that with the Presidential Threshold provision it will strengthen the position of the President as a characteristic of the presidential government system, on the other hand, on the other hand, the Presidential Threshold provisions actually weaken the president's position in a sense that is not in line with presidential spirit. The birth of the threshold presidential formula in the electoral system in Indonesia was originally intended as a strengthening of the presidential government system itself, that the emphasis was placed on the President as an executive institution with the legislature as the controller.

The 1945 constitution of the Republic of Indonesia in the amendment has determined that the Indonesian government system is a pure presidential system.<sup>42</sup> It can be seen that the President and Deputy are directly elected by the people, which means the President is no longer responsible to existing state institutions including parliamentary institutions. Article 6A paragraph (2) of the 1945 Constitution shows that it is the political parties that select candidates for President and Vice President and political parties that have an important role in the democratic process. Political parties that obtain a majority vote in parliament or control the parliament cannot overthrow the President and Vice President, even though the political party supports it. From the political aspect for five years his office was inviolable, this was what became known as the five-year government system called fixed executive as the provision of Article 7 of the 1945 Constitution.

<sup>37</sup> Titik Triwulan tutik, *Pokok-Pokok Hukum Tata Negara Pasca Amandemen UUD 1945*, Jakarta, Cerdas Pustaka, 2008. p. 151

<sup>38</sup> Moh. Mahfud MD, *Membangun Politik Hukum, Menegakkan Konstitusi*, Rajawali Press, Jakarta, 2010, p. 72-73.

<sup>39</sup> Mulyana W. Kusuma, lihat dalam Ade Fadillah Fitra, "Analisis Yuridis Ketentuan Presidential Threshold Berdasarkan Undang-Undang Nomor 42 Tahun 2008 Tentang Pemilihan Umum Presiden Dan Wakil Presiden", JOM, Fakultas Hukum Volume IV Nomor 2 Oktober 2017. Riau, p. 5.

<sup>40</sup> *Ibid*, p. 5.

<sup>41</sup> Shanti Dwi Kartika, *Presidential Threshold dalam Revisi UU Pilpres*, Jurnal Info Singkat Vol. V, No. 14/II/P3DI/Juli/2013, Center for Assessment, Data & Information Processing (P3DI) General Secretariat of the Indonesian Parliament, 2009. p. 2.

<sup>42</sup> Ade Fadillah Fitra, *OP, cit.*, p. 6.



According to Jazuli Juwaini<sup>43</sup> confirms that there are at least four arguments underlying the birth of the Presidential Threshold, namely:

1. The need to build a strong presidential system from the beginning of the nomination. Support from political parties is needed as much as possible starting from the election process.
2. The need to build effective governance. With a minimum of 20% support in the DPR, it is hoped that the policies that the elected president and vice-president will take will later get strong support in parliament.
3. Presidential Threshold is also intended to simplify the party system. The coalition tradition is also believed to be in accordance with Indonesian political culture that emphasizes collectivism or mutual cooperation.
4. Presidential Threshold is intended to select candidates for president and vice president from the beginning (such as a preliminary election) before the election.

The phenomenon that occurs in the relationship between *das sollen* (which is expected) and *das sein* (which is in reality) that is implemented is not as expected, especially in presidential strengthening. Seeing the reality in the practice of implementing the Presidential Threshold is not fully in line with the spirit of implementing presidential government. The Presidential Threshold provisions which mean that the aim of strengthening the presidential government system in practice is not effective, the reasons for the following authors are explained based on several facts which prove the ineffectiveness of the Presidential Threshold provisions for the implementation of presidential government.

The enactment of the Presidential Threshold in the electoral system in Indonesia in the presidential government system raises various problems and debates. On the one hand it states that with the Presidential Threshold provision it will strengthen the position of the President as a characteristic of the presidential government system, on the other hand, on the other hand, the Presidential Threshold provisions actually weaken the president's position in a sense that is not in line with presidential spirit. The birth of the threshold presidential formula in the electoral system in Indonesia was originally intended as a strengthening of the presidential government system itself, that the emphasis was placed on the President as an executive institution with the legislature as the controller. The amendment to the 1945 Constitution has determined that the Indonesian government system is a pure presidential system. It can be seen that the President and Deputy are directly elected by the people, which means the President is no longer responsible to existing state institutions including parliamentary institutions.<sup>44</sup> The Presidential Threshold provisions which mean that the aim of strengthening the presidential government system in practice is not effective, the reasons for the following authors are explained based on several facts which prove the ineffectiveness of the Presidential Threshold provisions for the implementation of presidential government.

#### IV. Conclusion

Today's democracy applies the principle of popular sovereignty where the highest government is in the hands of the people in this case the people are the source of the power of a country. So, the main goal of democracy is to provide the greatest happiness to the people. The concept of the Presidential Threshold is not in accordance with the aims and objectives of Democracy and simultaneous elections in Indonesia, this provision also violates the principle of electoral justice, where each election participant has the same candidacy rights. Enacted in the Presidential Threshold made new political parties that were not yet participants of the 2014 General Election automatically lose the right to nominate pairs of candidates for president and vice president. Fair is one of the principles that must exist in the implementation of elections as stated in Article 22E paragraph (1) of the 1945 Constitution. General elections are carried out directly, publicly, freely, secretly, honestly and fairly every five years. The Democratic System, and the establishment of the Presidential Threshold in this presidential election violated democratic values, did not give a sense of justice in the party of democracy. The Government and Parliament of the Republic of Indonesia must review the implementation of elections simultaneously which uses the Presidential

<sup>43</sup> Jazuli Juwaini, *Presidential Threshold vs hak rakyat*, dikutip dalam Jurnal Ade Fadillah Fitra, "Analisis Yuridis Ketentuan Presidential Threshold Berdasarkan Undang-Undang Nomor 42 Tahun 2008 Tentang Pemilihan Umum Presiden Dan Wakil Presiden", JOM, Fakultas Hukum Volume IV Nomor 2 Oktober 2017. Riau, p. 7.

<sup>44</sup> *Ibid.*

Threshold concept for elections in the future. Where the State of Indonesia is a follower of the democratic system.

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