

The Constitutionality of the Presidential Threshold Provisions in Indonesian Election Law: A Juridical Review of Law No. 7/2017 on General Elections

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ABSTRACT

This study critically examines the constitutionality of the presidential nomination threshold provision stipulated in Law No. 7/2017 on General Elections. By conducting a juridical analysis, this research explores the legal and constitutional underpinnings of the presidential nomination threshold, which mandates a minimum percentage of parliamentary seats or popular votes for a political party or coalition to nominate a presidential candidate. The analysis explores the historical context, legislative intent and judicial interpretation of the threshold provision. It also assesses the impact of these provisions on political competition, electoral fairness and democratic representation in Indonesia. It identifies potential constitutional conflicts and proposes legal reforms to enhance the legitimacy and inclusiveness of the presidential election process. Through a comprehensive legal review, this research aims to contribute to the ongoing discourse on electoral law and democratic governance in Indonesia.

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1. INTRODUCTION

The presidential nomination threshold stipulated in Article 222 of Law No. 7/2017 on General Elections has become a contentious issue in Indonesia, sparking significant debate and controversy. The law mandates that political parties or coalitions must secure at least 20 per cent of seats in the House of Representatives (DPR) or 25 per cent of the national valid vote in the previous DPR election to nominate a presidential candidate. Proponents argue that this threshold ensures political stability and promotes strong government by simplifying the political landscape and reducing the number of

parties, theoretically favouring a more stable presidential system [1]. However, critics argue that these thresholds undermine democratic principles by limiting political competition and marginalising smaller parties. The threshold effectively excludes independent candidates and non-parliamentary parties from presidential elections, thus favouring only established and larger political parties [2]. This exclusionary practice has led to transactional politics, where coalitions are formed not on the basis of shared ideology, but rather on political expediency, further eroding the principles of free and fair elections [3]. In addition, the simultaneous organisation of legislative and

presidential elections has created confusion and blurred existing norms, as the thresholds are based on the results of previous legislative elections which may not reflect current political dynamics [1]. It has also been criticised from a human rights perspective, as it violates the right to equal opportunity in government, a principle enshrined in the 1945 Constitution [4]. Empirical evidence from previous elections, such as the 2019 election, shows that thresholds lead to a limited number of candidates, often the same as in previous elections, thus inhibiting political diversity and innovation [3].

This research aims to provide a comprehensive juridical review of the constitutionality of presidential nomination threshold provisions. It seeks to analyse the legal basis, historical context and implications of these provisions within the broader framework of electoral law and constitutional principles in Indonesia. By examining legislative intent and judicial interpretation, it seeks to uncover potential constitutional conflicts and assess the impact of thresholds on the democratic process.

The application of the presidential threshold in Indonesia, as outlined in Article 222 of Law No. 7/2017, mandates that a candidate pair must be proposed by a political party or coalition that has secured at least 20 per cent of the seats in the House of Representatives or 25 per cent of the national valid votes in the previous election [2], [3]. While this threshold aims to streamline the electoral process by reducing the number of candidates and ensuring that only those with substantial political support can compete, it has faced much criticism for potentially violating the constitutional right to equal participation in the political process. Critics argue that such thresholds effectively exclude smaller political parties and independent candidates, thereby limiting voter choice and undermining the representativeness of electoral outcomes [2], [4]. Empirical evidence from the 2019 election, which saw the same two candidate pairs as the 2014 election, suggests that the threshold fosters a political environment dominated by major parties and

transactional politics, further marginalising smaller parties and independent voices [3]. This situation is considered incompatible with the principles of honesty and fairness in elections, as well as the democratic ideals enshrined in the 1945 Constitution [2]. Moreover, from a human rights perspective, the presidential threshold policy has been criticised for violating the right to equal opportunity in governance and the principle of *hifdzu 'aql* in *maqāsid shari'ah*, which emphasises the protection of intellect and rationality in governance [4]. Comparative studies have also shown that such thresholds create inequality and restrict the political rights of citizens and parties, which suggests that electoral regulations should prioritise the interests of the people over those of the political elite [5]. Therefore, while presidential thresholds aim to simplify the electoral process, their implementation raises significant concerns for democratic representation and constitutional rights.

2. LITERATURE REVIEW

2.1 *Historical Context and Legislative Intent*

The presidential threshold provision in Indonesia's electoral law, as outlined in Law No. 7/2017, aims to stabilise the democratic process by preventing political fragmentation and ensuring that only candidates who have substantial political support can contest presidential elections. This legislative objective is intended to streamline government operations and avoid the pitfalls of multi-candidate competition, which often leads to fragmented mandates and unstable coalitions. However, the implementation of presidential thresholds has sparked significant controversy and criticism. Critics argue that these thresholds limit the right to equal opportunities in government and violate the principles of fair representation and political pluralism. For example, the threshold requirement of 20% of parliamentary seats or 25% of the national vote from the previous legislative election creates a barrier for new and smaller parties,

effectively reducing their chances of participating in presidential elections [1], [4]. This policy has been challenged before the Constitutional Court, but the Court has consistently upheld it, citing the open-ended authority of lawmakers based on the delegation of Article 6A Paragraph (5) of the 1945 Constitution [4]. In addition, simultaneous elections for the legislature and the executive also add complexity as the thresholds are based on the results of the previous legislative elections, which can be confusing and incompatible with the principles of direct elections [1]. Parliamentary thresholds, although intended to consolidate political parties and increase government stability, have also been criticised for undermining political diversity and inclusiveness, as they suppress small parties and limit the representation of diverse political views in the legislature [6], [7]. In addition, the threshold has encouraged political parties to recruit celebrities as vote getters to fulfil the required percentage, further complicating the political landscape [8].

2.2 *Judicial Interpretation and Constitutional Debates*

Indonesia's presidential nomination threshold provision, which requires a political party or coalition to secure at least 20 per cent of DPR seats or 25 per cent of the national valid vote in the previous election to nominate a presidential candidate, has been a contentious issue and subject to judicial review. Indonesia's Constitutional Court has consistently upheld this threshold, arguing that it is an open-ended legal policy of the legislature and essential for maintaining political stability and effective governance [4], [9]. However, this stance has faced significant academic and legal criticism. Critics argue that the threshold violates the constitutional right to equal political participation, as enshrined in the 1945 Constitution, by limiting the ability of smaller or newer political parties and independent candidates to contest presidential elections [1], [7]. The reliance of thresholds on previous election results further complicates their application,

especially in the context of simultaneous legislative and presidential elections, giving rise to ambiguity and potential incompatibility with democratic principles [1]. In addition, thresholds have been criticised for encouraging transactional politics and reducing the diversity of presidential candidates, thereby undermining the democratic process [2]. From a human rights perspective, the threshold is considered a barrier to equal opportunity in governance, violating the principles of *maqāṣid sharī'ah*, particularly *hifdzu 'aql*, which emphasises the protection of reason and rationality in governance [4], [7]. Despite the Constitutional Court's ruling, ongoing debates highlight the need for legal reforms to address these criticisms and ensure that electoral processes are better aligned with democratic values and constitutional rights [9]. The complexity and controversy surrounding the presidential threshold underlines the challenge of balancing political stability with inclusive democratic participation.

2.3 *Impact on Political Competition and Electoral Fairness*

The impact of presidential thresholds on political competition and electoral justice is multifaceted, significantly affecting the political landscape. Presidential thresholds, which require a certain percentage of votes or seats for a party to nominate a presidential candidate, often favour large, established parties, thus entrenching their dominance and marginalising smaller parties and independent candidates [4]. This creates a less competitive political environment, limits voter choice and discourages new political movements. The phenomenon of 'political cartelisation', where small parties form strategic coalitions with larger parties to survive, further undermines fair competition and equal representation, as these alliances often force smaller parties to sacrifice their political agendas [4]. In addition, parliamentary threshold policies exacerbate this problem by making it harder for small or new parties to gain representation, thereby reducing political pluralism and inclusive representation in the legislature [6]. This is

evident in the case of the United Development Party (PPP) failing to meet the threshold in the 2024 election, which highlights the barriers that smaller parties face [6]. In addition, the use of electoral thresholds in proportional elections can be exploited to increase the effectiveness of strategic campaigns, which will further make the political game unfair [10]. To mitigate these problems, alternative approaches such as second-chance voting systems have been proposed to improve electoral fairness and resistance to strategic manipulation [10]. Threshold models, which give place to policy regimes based on data rather than arbitrary decisions, offer a more objective method to address these challenges, potentially resulting in fairer policy outcomes [11]. Finally, the involvement of celebrities in politics, fuelled by the need to meet higher parliamentary thresholds, underscores the extent to which parties will seek to gain votes, often at the expense of genuine political engagement and representation [8].

3. METHODS

3.1 Research Design

This research employs a qualitative research design, using a combination of doctrinal legal research and comparative legal analysis. Doctrinal research involves the systematic analysis of legal documents, statutes, and cases to understand the principles and legal framework governing presidential nomination threshold provisions. Comparative legal analysis, on the other hand, involves examining similar legal provisions and their effects in other democratic countries to draw relevant similarities and differences. This dual approach allows for a comprehensive juridical review of the constitutionality of the presidential nomination threshold in Indonesia's electoral law.

3.2 Data Collection

The data for this study was collected from primary and secondary sources. Primary sources include Indonesian laws, specifically Law No. 7/2017 on General Elections, and decisions of the Indonesian Constitutional

Court. Secondary sources consisted of academic journal articles, books, legal commentaries and comparative studies of electoral systems and presidential thresholds in other countries. In addition, parliamentary records and legislative debates were also reviewed to gain insight into the legislative intent behind the threshold provision. Primary sources include Law of the Republic of Indonesia No. 7/2017 on General Elections, Constitutional Court decisions related to the presidential nomination threshold, as well as parliamentary records and legislative debates. Secondary sources include academic journal articles and books on Indonesian electoral law and constitutional principles, comparative legal studies of presidential nomination thresholds in other democracies, as well as legal commentaries and expert opinions.

3.3 Data Analysis

Data analysis was conducted in several stages: first, doctrinal analysis examined primary legal documents to identify the provisions of Law No. 7/2017 related to the presidential nomination threshold, including its legislative history and rationale in parliamentary debates. Second, judicial interpretation reviews Constitutional Court decisions to understand how the Court has interpreted the relevant issues, taking into account considerations, constitutional principles and dissenting opinions. Third, comparative analysis examines the implementation of presidential nomination thresholds in countries such as Germany, South Korea and New Zealand to identify challenges and best practices for reform in Indonesia. Finally, thematic analysis coded and organised the data into themes such as constitutional rights, democratic participation, political stability and electoral justice to identify recurring patterns and legal principles.

4. RESULTS AND DISCUSSION

4.1 Doctrinal Analysis of Law No. 7/2017

Doctrinal analysis of Law No. 7/2017 shows that the presidential threshold

provision mandates that a political party or coalition must secure at least 20% of the seats in the House of Representatives (DPR) or obtain 25% of the national vote in the previous legislative election to nominate a presidential candidate. This requirement is intended to streamline the electoral process by reducing the number of candidates, ensuring that only those with significant political support can compete.

4.2 Juridical Interpretation by the Constitutional Court

Indonesia's Constitutional Court has upheld the constitutionality of presidential thresholds in several judgements, arguing that they promote political stability and effective governance. In Decision No. 53/PUU-XV/2017, the Court stated that the threshold helps avoid excessive fragmentation of political power, which can lead to unstable governing coalitions. However, the Court also recognised the dissenting opinion that the threshold may limit democratic participation and voter choice.

4.3 Comparative Analysis

Comparative analyses with countries such as Germany, South Korea and New Zealand provide insights into how different thresholds impact political systems:

4.3.1 Germany

The 5% threshold for parliamentary representation in the Bundestag is an important mechanism designed to prevent excessive fragmentation by discouraging splinter parties, while still allowing significant political forces to gain representation. This threshold has proven effective in maintaining a stable political environment, as it prevents the growth of small parties that could complicate governance [12]. However, these thresholds have faced legal challenges and criticisms, particularly regarding their impact on minority vote representation. For example, the basic mandate clause and minority clause have been deemed to undermine the intent of the threshold, leading to calls for their removal and suggesting reforms such as a second vote to balance representation [12]. In

addition, the current size of the Bundestag, bloated by overhang and compensatory mandates, has been declared unconstitutional several times, prompting discussions on electoral reform to reduce its size and increase efficiency [13]. Gender equality is another important issue, with the underrepresentation of women highlighting the political empowerment gap. Although gender parity laws have been proposed and even implemented at the state level, they have faced constitutional challenges, and the Federal Constitutional Court has not mandated such laws at the federal level, despite international support for gender quotas [14]. The Bundestag, as the only directly elected political institution in Germany, plays a central role in the country's parliamentary democracy, balancing the dualism between the ruling majority and the opposition to ensure representation and legitimacy [15]. This complex interplay between legal, political, and structural factors underscores the ongoing challenges and debates surrounding the 5% threshold and broader electoral reforms aimed at improving the functionality and representativeness of the Bundestag in a future-orientated manner [16].

4.3.2 South Korea

South Korea's political landscape has undergone a significant transformation, particularly in its approach to preventing fragmentation while encouraging political diversity and democratic inclusiveness. Initially, the country maintained a high threshold to prevent political fragmentation, a strategy that was part of a broader effort to stabilise the nascent democracy and ensure effective governance. However, over time, this threshold was lowered to accommodate a more diverse and inclusive political environment. This shift is evident in the evolution of South Korea's political system, which has transitioned through various phases, from 'illiberal democracy' to 'participatory democracy' [17]. The movement towards inclusiveness is also reflected in the increased role of civil society and the diversification of political voices, as

various groups, including political parties and civil society, now have multiple channels to express their views [18]. Despite these positive changes, the political system still faces challenges, such as divisive identity politics and abuse of power, which some argue contribute to the 'decay of democracy' [17]. In addition, the presidential system, often criticised for concentrating excessive power in the hands of one person, has become a focal point in debates about political stability and inclusiveness [19]. Civil service systems have also played an important role in this transformation, with efforts to ensure fair recruitment and improve the competitiveness of public officials, thus contributing to more inclusive and efficient governance structures [20]. Nonetheless, political instability remains a concern, as shown by recent analyses predicting an increase in such instability [21].

4.3.3 New Zealand

The assertion that mixed proportional representation systems with low thresholds balance stable government and broad political representation, thus providing a model for inclusiveness and effectiveness, is nuanced and requires careful consideration of a range of factors. Mixed electoral systems, which combine majoritarian elections with proportional representation (PR), are often praised for their potential to combine the advantages of both systems. However, empirical evidence suggests that these systems do not always achieve the desired balance. For example, research shows that mixed systems can lead to higher disproportionality and increased volatility compared to pure PR systems, which can undermine the stability and institutionalisation of party systems, especially in young democracies [22]. In addition, the application of parliamentary thresholds, although low, poses significant challenges for small or new parties, potentially limiting political pluralism and reducing the diversity of political views represented in the legislature. This can result in political discontent and undermine the legitimacy of the political system, as seen in the case of the United Development Party

(PPP) which failed to meet the threshold in the 2024 elections [6]. Furthermore, in authoritarian regimes, mixed parallel electoral systems are often manipulated by ruling elites to maintain and strengthen their power, instead of promoting inclusiveness and effectiveness. These systems allow authorities to control a majority of parliamentary seats even as electoral competition increases, thus consolidating authoritarian regimes rather than fostering a truly inclusive political environment [23].

4.4 Impact on Political Competition and Electoral Fairness

Indonesia's presidential threshold disproportionately favours large, established parties and marginalises smaller parties and independent candidates. This has led to strategic coalitions that often undermine the political agenda of smaller parties. The phenomenon of 'political cartelisation' undermines fair competition and equal representation, as smaller parties must ally with larger entities to remain politically viable.

DISCUSSION

Constitutional Principles and Democratic Participation

This analysis demonstrates the tension between presidential threshold provisions and constitutional principles on democratic participation. While the threshold aims to promote political stability, it potentially violates citizens' rights to participate equally in the political process. Article 6A of the 1945 Constitution guarantees the right of every citizen to run for public office, and an excessively high threshold could be seen as a barrier to that right.

Legislative Intent and Political Stability

The legislative intent behind the threshold is to create a more controlled and stable political environment by reducing the number of presidential candidates. This objective is based on the belief that fewer and more widely supported candidates will result in clearer electoral outcomes and stronger governments. However, this must be balanced against the need for inclusiveness

and broad representation in a democratic society.

Lessons from Comparative Analysis

Comparative analysis underlines the importance of finding a balance between stability and inclusiveness. The German experience shows that high thresholds can be adjusted to increase representation, while the reduction of thresholds in South Korea resulted in greater political diversity. New Zealand's mixed-member proportional system shows that it is possible to achieve both stable government and broad political representation.

Impact on Electoral Justice

The current presidential threshold in Indonesia tends to entrench the dominance of the major parties, limiting political competition and voter choice. This can lead to voter disenfranchisement and undermine the representativeness of electoral outcomes. To ensure electoral fairness, it is necessary to reconsider threshold levels to allow for a more diverse and competitive political landscape.

Potential for Reform

Based on the above findings, several reforms can be considered to improve the constitutionality and democratic nature of presidential nomination threshold provisions:

- a. Lowering the threshold to a more manageable level would allow for greater political diversity and inclusiveness while maintaining a degree of stability.
- b. Adopting a mixed-member proportional representation system, similar to New Zealand's, could

balance the goals of stability and inclusiveness, encouraging greater political representation and effective governance.

- c. Establish a mechanism to periodically review threshold provisions to ensure they remain aligned with democratic principles and the evolving political landscape.

5. CONCLUSION

Analysis of the presidential nomination threshold provision in Law No. 7/2017 demonstrates the delicate balance between political stability and democratic participation. The threshold simplifies the electoral process and prevents political fragmentation, but also challenges political inclusiveness and equality. Judicial interpretation emphasises stability, but dissent is concerned about democratic rights. Countries such as Germany, South Korea and New Zealand show that stability and broad political representation can be achieved by adjusting thresholds. The threshold in Indonesia favours major parties, limiting political diversity and voter choice, so reforms such as lowering the threshold, adopting alternative electoral systems and conducting periodic reviews are needed. These reforms will increase democratic participation, political representation and maintain political stability. With the right balance, Indonesia can ensure an electoral system that supports inclusive and representative democracy.

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