

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

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### **ABSTRAK**

Pemberlakuan Undang-undang Nomor 7 Tahun 2017 tentang Pemilihan Umum telah menimbulkan beberapa kontroversi. Salah satu kontroversi tersebut adalah tentang sistem *Presidential Threshold*, apakah masih diperlukan atau tidak karena Pemilu Presiden dan Pemilihan Legislatif dalam Pemilihan Umum 2019 akan diadakan secara bersamaan. Penelitian ini merupakan penelitian hukum normatif dengan pendekatan statuta dan komparatif. Hasil penelitian ini menunjukkan bahwa Ambang Presiden dalam pemilu serentak yang akan datang pada tahun 2019 masih memiliki beberapa masalah. Pertama, sistem *Presidential Threshold* tidak relevan jika diterapkan dalam pemilihan umum 2019. Masalah kedua adalah dilema dalam memilih pemilihan alternatif untuk menggunakan sistem *Presidential Threshold*. Penelitian ini mengusulkan beberapa rekomendasi. Pertama, DPR harus merevisi Pasal 222 tentang Ambang Kepresidenan Undang-undang Nomor 7 Tahun 2017 tentang Pemilihan Umum, terkait dengan pemilihan yang akan datang pada 2019 yang akan berlangsung serentak sehingga seharusnya tidak ada Ambang Presiden. Kedua, DPR harus memilih model Pemilu Presiden yang lebih baik, antara pemilihan yang terpisah atau *Presidential Threshold* ataupun pemilu serentak.

**Keywords: Pemilihan Umum, Pemilu Serentak, Presidential Threshold**

### **ABSTRACT**

The enactment of the Law Number 7 of 2017 on General Election has created some controversies. One of those controversies is about Presidential Threshold, whether it is still needed or not as the upcoming Presidential Election and Legislative Election in General Election 2019 will be held simultaneously. This research is normative legal research with statute and comparative approaches. The result of this study shows that the Presidential Threshold in the upcoming simultaneous election in 2019 still has some problems. Firstly, the Presidential Threshold is not relevant if it is implemented in general election 2019. The second problem is the dilemma in choosing the alternative election for using Presidential Threshold. This research proposes some recommendations. First, the DPR should revise the Article 222 on the Presidential Threshold of the Law Number 7 of 2017 on General Election, regarding to the upcoming election in 2019 that will be hold simultaneous so there should be no Presidential Threshold. Second, the DPR should choose a better model of the Presidential Election whether the election is the separate election as implemented or the Presidential Threshold or simultaneous election.

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

## INTRODUCTION

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

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

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

MK decided those articles that except Article 9 which mentioned about Presidential Threshold in the Law Number 42 of 2008 on the Presidential election. It has no legal binding as it was only based on MK decision but the Presidential Threshold concept is open legal policy.<sup>3</sup> The Presidential Threshold that will be used in the simultaneous election 2019 actually had been used in general election 2004.<sup>4</sup> The using of

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dan Penguatan Sistem Presidensial”, *Journal Rechtsvinding*, Vol. 3, No. 1, Issued April 2014, ISSN 2089-9009, p.19.

<sup>3</sup> Constitutional Court Verdict 14/PUU-XI-2013.

<sup>4</sup> Ahmad Hendra T.P, “Implikasi Pemilihan Umum Anggota Legislatif dan Pemilihan Umum Presiden dan Wakil Presiden secara Serentak terhadap Ambang Batas Pencalonan Presiden (Analisis Putusan Mahkamah

<sup>1</sup> Article 222 of the Law Number 7 of 2017 on General Election.

<sup>2</sup> Sodikin, Pemilu Serentak “Pemilu Legislatif dengan Pemilu Presiden dan Wakil Presiden)

Presidential Threshold in 2004 was still reasonable because the general election in 2004 had separated the legislative election and the Presidential election. However in the upcoming general election 2019 the Presidential and legislative election will be held at the same time or simultaneously.<sup>5</sup> Therefore the idea of Presidential Threshold was ignored by some political parties because the Presidential Threshold will not be implemented properly considering that only the political parties that have adequate votes or seats in DPR can propose President and Vice President candidates<sup>6</sup> while those parties with small votes and seats or the new political parties can not propose the President and Vice President candidates.<sup>7</sup>

The Presidential Threshold concept was supported by the Government of Indonesia because the concept of Presidential Threshold will minimize the number of President and Vice President candidates which propose by participating parties in simultaneous

election and also to strengthen the Presidential system.<sup>8</sup>

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

The highest votes were received by *Partai Demokrasi Perjuangan Indonesia* (hereinafter is referred to PDIP) of 23.681.471 (18,95 per cent) of the national votes. This data supports Saldi Isra opinion that no room to worry the considerable number of President and Vice President candidates to be proposed by the political parties in the upcoming simultaneous general election.<sup>10</sup>

Based on the explanation above, it can be outlined that the application of Presidential Threshold for the upcoming

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Konstitusi Nomor 14/PUU-XI-2013”, *Jurnal Hukum dan Legal Opinion*, Vol. 3. No. 1, 2013, ISSN: 2527-9505, p.3.

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

<sup>6</sup> Ahmad Hendra T.P, *Op.Cit.*, p.4.

<sup>7</sup> *Ibid.*

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

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

general election in 2019 will still create controversy because some politicians argue that the Presidential Threshold is not relevant anymore to be used in simultaneous election. Therefore in this matter the government should take a good solution in order not to cause a harm towards any people.

## RESEARCH METHODS

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

The data used in this research is secondary data. The secondary data

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

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

consist of primary legal material, secondary legal material, and tertiary legal material.<sup>13</sup> The method of data collection in this research is through library research by literature learning.<sup>14</sup>

## DISCUSSION

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

There are some problems or crucial issues being discussed during the deliberation of the bill of this Law such as the Presidential Threshold, parliamentary

<sup>13</sup> Mukti Fajar ND, *Op.Cit.*, p.156.

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

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

threshold, general election with open list system, district magnitude, and the conversion of vote method of the *saint league*<sup>31</sup> or the *hare quata*.

First, Presidential Threshold is the requirement to propose President that political parties or coalition of parties should have 20 per cent of DPR's seats or 25 per cent of national votes in the prior election. Second, parliamentary threshold is the minimum share of the primary vote which a candidate or political party requires to achieve before they entitle to any representation in a legislature that should be increased from 3,5 per cent to 4 per cent of the national votes. Third, the general election uses open list system. Fourth, it is about district magnitude<sup>16</sup> that based on the Article 22 Paragraph (2) of the Law Number 8 of 2012 on Legislative Election stated that the total of DPR seats provided in each electoral district at least 3 seats and at most 10 seat. Fifth, is about the conversion of vote

method of the *saint league or the hare quata*.<sup>17</sup>

According to Feri Amsari,<sup>18</sup> Article 222 of the Law Number 7 of 2017 on General Election is in contradiction to the Article 6A Paragraph (2) of the 1945 Constitution. Article 6 A Paragraph (2) of the 1945 Constitution stated that the pairs of candidates for the President and Vice President shall be proposed prior to the holding of general elections by political parties or coalitions of political parties which are participants in the general elections. Meanwhile, Article 222 of the Law Number 7 of 2017 on General Election requires the Presidential Threshold should fulfill 20% of DPR's seats or 25 per cent of national votes in the previous election.<sup>19</sup>

Moreover, Article 222 of Law Number 7 of 2017 on General Election also contradicts to Article 22 E Paragraph 1, Article 22 E Paragraph 2, Article 27

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

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

<sup>18</sup> Feri Amsari is Legal Activist and also lecturer in Andalas Univeristy.

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

Paragraph 1, Article 28 D, and Article 28 D Paragraph 3 of the 1945 Constitution. Hence many experts claim that Article 222 is no longer relevant to be used in simultaneous election in 2019.<sup>20</sup>

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

Indonesia applies Presidential system which focuses on the position of President as the Head of Government and also the Head of State. The President and Vice President are elected once in every five years.<sup>23</sup>

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

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

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

<sup>20</sup> *Ibid.*

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

<sup>22</sup> *Ibid.*

<sup>23</sup> Article 1 of the Law Number 42 of 2008 on Presidential Election.

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

<sup>25</sup> *Ibid.*

political expenditure that should be handled by the politicians.<sup>26</sup>

Due to the complexity of the General Election in Indonesia, hence the idea of simultaneous election was proposed firstly by Jusuf Kalla<sup>27</sup>. The purpose of simultaneous election is to decrease and simplify the General Election implementation that was implemented within the whole of 5 years.<sup>28</sup> The simplification of Legislative Election and Executive Election can save a lot of money.

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

However the idea of Jusuf Kalla to simplify both elections was not responded by the politicians. The idea of simultaneous election was arisen again by

Effendi Ghazali<sup>30</sup> though the judicial review to the Constitutional Court on January 10, 2013 together with other issues in the Law Number 42 of 2008 on Presidential Election.

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

However, the issuance of this decision raised many criticisms as the 1945 National Constitution has no detail and explicit statement on a simultaneous election. According to Hamdan Zoelva from the Bulan Bintang Party, the simultaneous election has not yet been

<sup>26</sup> Didik Supriyanto, *Op.Cit.*, p.iv.

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

<sup>28</sup> *Ibid.*

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

<sup>30</sup> Effendi Ghazali is Indonesian politicians and also Professor of Universitas Indonesia.

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

regulated in the Law. This opinion was shared by other parties' members such as Effendy Yusuf and Tjetje Hidayat. Tjetje Hidayat infact argued that the election of President and Vice President included in the general election was wrong. For Tjetje, there is no connection between the general election and the Presidential election. Hence the election should be separated.<sup>32</sup>

The view given by Tjetje was also supported by LT Sutanto and FX. Sumitro. They said that the Presidential election and the general election need to be separated in terms of time and/or pattern. This is because each type of election has different target. The President election aims to choose the President, while for the legislative election aims to select the party members who will become the member of Parliament.<sup>33</sup>

Furthermore, there is difference opinion from Arif Mudatsir Mandan, the member of *Partai Persatuan Pembangunan* (hereinafter referred as PPP). According to him, there is no problem with the simultaneous election as long as there are rules that support this election. To Patrialis Akbar, from the

*Partai Amanat Nasional* (hereinafter referred as PAN), agreed with the simultaneous election as there has been no restriction to hold a simultaneous election in the national constitution. Therefore, a simultaneous election has been no problems with these two parties.<sup>34</sup>

However, there is other crucial issue beside simultaneous election namely Presidential Threshold that will be applied in the simultaneous election. Effendi Ghazali has already proposed judicial review about Presidential Threshold together with the simultaneous election. Nevertheless, MK has rejected the judicial review on Presidential Threshold. After the rejection of judicial review towards Article 9 about Presidential Threshold by MK, on December 13, 2013 Yuzril Ihza Mahendra<sup>35</sup> also proposed his judicial review on the same issue to MK.

Yuzril proposed judicial review towards Article 3 Paragraph (4), Article 9, Article 14 Paragraph (2), and Article 112 of the Law Number 42 of 2008 on Presidential Election against the 1945 Constitution. The application of Yuzril

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

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

Ihza Mahendra was also rejected by MK with the similar reason as MK rejection to the judicial review that applied by Effendi Ghazali on Article 9 of the Law Number 42 of 2008.<sup>36</sup>

Some other political members also proposed the Judicial Review of the Presidential Threshold as regulated in Article 222 of the Law Number 7 of 2017 on General Election. Habiburokhman<sup>37</sup> for example filed his Judicial Review with the Registration Number 44/PUU-XV/2017, then Effendi Ghazali Number 59/PUU-XV/2017, after that Hadar Nafis<sup>38</sup> with his Registration Number 71/PUU-XV/2017, moreover Mas Soeroso<sup>39</sup> with Registration Number 72/PUU-XV/2017, and furthermore. Besides, Idaman Party also did the same with Registration Number 53/PUU-XV/2017.<sup>40</sup> From the five

Judicial Reviews that had been proposed, nothing was accepted by MK. It still declined the Judicial Review on Presidential Threshold.

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

Famous scholars and politicians disagree on the Presidential Threshold that applied in the simultaneous election 2019. If the General Election will be held simultaneously, the Presidential Threshold actually is no longer relevant to be applied. According to Saldi Isra, the Presidential Threshold can be abolished; it was proven by the Legislative Election in 2014 that there were 34 parties that registered to KPU. However only 10 parties that passed the requirements and

<sup>36</sup>BBC, 2014, "MK Tolak Gugatan Yuzril Ihza Mahendra", BBC News, available at [http://www.bbc.com/indonesia/berita\\_indonesia/2014/03/140320\\_mk\\_tolak](http://www.bbc.com/indonesia/berita_indonesia/2014/03/140320_mk_tolak), accessed on Monday, March 5, 2018, at 10:00 PM.

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

<sup>38</sup> Hadar Nafis Ali is the head of General Election Commission.

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

<sup>40</sup> Estu Suryowati, 2018, "Perkumpulan Untuk Pemilu dan Demokrasi (Perludem) : Logika MK Mbingungkan Tolak Uji Materi *Presidential Threshold*", Kompas News, available at <https://nasional.kompas.com/>

read/ 2018/ 01/ 11/ 12441361/ perludem-logika- mk- mbingungkan- tolak- uji- materi- Presidential- threshold, accessed on Friday, March 9, 2018, at 3.50 PM.

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

from the 10 parties no party won the 20 per cent of DPR's seats.

The highest votes was acquired by *Partai Demokrasi Perjuangan Indonesia* (PDIP) which reached 18,95 per cent with the total votes of 23.681.471 votes.<sup>42</sup> Though it should not to be worry if there is no Presidential Threshold, the Presidential candidate will be considerable. According to Djayadi Hanan, executive director of Saiful Mujani Research and Consulting (SMRC), simultaneous election has potential to abolish the Presidential Threshold.<sup>43</sup>

There are two mistakes of Presidential Threshold that applied in general election based on the Law Number 7 of 2017 on General Election, namely: first, it makes the legislative election as the requirements of Presidential Election; second. it makes the legislative election result as the

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

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

requirement to propose Presidential candidate in the Presidential election. According to Djayadi the consequence of the existence of the Presidential Threshold is the new political parties cannot propose the Presidential candidate and it will contradict to Article 6A Paragraph 2 of the 1945 Constitution.<sup>44</sup>

From nine judges of MK only two judges that have dissenting opinion they were Saldi Isra and Suhartoyo. Both of the judges thought that Presidential Threshold is not relevant and unconstitutional and also injure the new political parties which cannot propose their President candidate. In addition, Suhartoyo said that the United States of America applied Presidential system as their governance system and do not use the Presidential Threshold.<sup>45</sup>

The Philippines governance system is Presidential system and governmental powers are divided into the executive, legislative, and judicial branches. Based on Article 1 Section 1 of the 1987 Constitution of the Republic of the Philippines stated that "the Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority

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

<sup>45</sup> *Ibid.*

emanates from them”. President is the head of state and vested with all executive powers of the government. The President is chief administrator of the bureaucracy with general supervision over local governments, as well as the chief legislator, responsible for the introduction of the legislative agenda at the beginning of each congressional session.<sup>46</sup>

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

The most common method for the second round of voting is a straight contest between the top two highest

voters from the first round. It creates a true majority result, in that one of the two candidates will necessarily achieve more than 50 per cent of votes and can be declared as the winner.<sup>48</sup>

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

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

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<sup>48</sup> *Ibid.*

<sup>49</sup> Benjamin Reilly, 2016, “Electing a President: Picked by Some, Rejected by Many”, Rappler News, available at [https:// www. rappler. com/ nation/ politics/ elections/ 2016/ 125133- reilly- Presidential-elections-run-off](https://www.rappler.com/nation/politics/elections/2016/125133-reilly-Presidential-elections-run-off), accessed on Friday, April 28, 2018, at 2:41 PM.

election and also uses the run off system to elect the President with a minimum threshold of 50 per cent of the majority. In pre-election survey 2016 each candidate for President was preferred by only about 20 per cent of voters. Then, in the first round of election 2016, there was no candidate got more than 50 per cent votes.<sup>50</sup>

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Second step is National Conventions and General Election. After the first step of primaries and caucuses, each major party, Democrat and Republic move into second step of national convention and also general election to elect the Presidential candidate. In national convention, the party of the Presidential candidate announces its choice for Vice President. Then the

Presidential candidates campaign throughout the country to gain the support of the society, after the single candidate is chosen from each political party. Then in election day, the people in each state deliver their vote.<sup>52</sup>

The upcoming general election in 2019 will be implemented simultaneously. In this simultaneous election, the political parties automatically should conduct coalition to propose candidate in Presidential Election 2019. There is no political party that can propose the Presidential candidate individually. Because based on the result of legislative election in 2014, there is political party that reach 20 per cent of DPR's seats or 25 per cent of national votes of the requirements to propose President candidate is from the previous Legislative Election in 2014.<sup>53</sup>

<sup>50</sup> Candidate 1 got 19%, candidate 2 got 7,5 %, candidate 3 got 36,7%, candidate 4 got 8,5%, and candidate 5 got 28,3%. When none of candidate got more than half of votes, two candidates with the highest votes will go for a second round.

<sup>51</sup> *Ibid.*

<sup>52</sup> USA Government, *Op.Cit.*

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

## The Legislative Election result in 2014.

Source: KPU of the Republic Indonesia.

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

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

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

The parties that are pro with Government consist of PDI, Golkar, Nasdem, PKB, PPP, Hanura, and PAN. When these parties conduct a coalition, they already reached 68,9 per cent. However the group of opposition parties that consist of Gerindra, and PKS only 20,1 per cent and it will already fulfill the requirements of 20 per cent to propose the President and Vice President. It is

important to note that there is still one political party that considered as the neutral party, that is Demokrat. If Demokrat become part of the coalition between one of the both party, the amount of the percentage will increase.<sup>54</sup>

According to some politicians, Presidential Threshold is no more relevant if it is implemented in General Election 2019. According to Fadhli Rahman,<sup>55</sup> there are some reasons of Presidential Threshold is no longer needed. First, the General Election result in 2014 has already applied in Presidential Election in 2014. Second, the General Election result in 2014 obtained

<sup>54</sup> *Ibid.*

<sup>55</sup> Fadhli Rahman is Indonesian politicians.

from the long process with the voters registration, campaign and many others. Third, if the election uses the result of General Election 2014, there will be new political party that will not participate in General Election 2019. Automatically the new party will lose their rights to propose Presidential candidate. So the existence of Presidential Threshold is basically in contrary with Article 6 A Paragraph 2 of the 1945 Constitution which stated that “the pairs of candidates for President and Vice-President shall be proposed prior to the holding of general elections by political parties or coalitions of political parties which are participants in the general elections.”<sup>56</sup>

## CONCLUSION

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

1. The Presidential Threshold in Article 222 of the Law Number 7 of 2017 on General Election is not relevant if it is implemented in general election 2019. It is because of Presidential Threshold makes the legislative election result in

2014 as the requirements of Presidential election; hence the consequence of the existence of the presidential threshold is that the new political parties cannot propose the presidential candidate.

2. There are two alternatives for choosing Presidential Threshold as the concept of election that will be applied in simultaneous election. First, return to the system of general election in 2014 when legislative and Presidential elections were conducted in separated time. Second, the Presidential Threshold should be abolished for the simultaneous general election as it is not relevant anymore and all of the parties can propose their Presidential candidate without worrying the Presidential Threshold.

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

1. The DPR should revise the Article 222 on the Presidential Threshold of the Law Number 7 of 2017 on General Election. Regarding the upcoming

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

election in 2019, there should be no Presidential Threshold.

2. The DPR should choose for a better model of the Presidential Election whether the election is returned to the separate election as implemented in previous election or still uses the Presidential Threshold or uses the newest system of simultaneous election without the Presidential Threshold.

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