

Hukum dan Politik: Studi Ambang Batas Presiden dalam Pemilu 2019

Law and Politics: Study of the Presidential Threshold in the 2019 General Election of Indonesia

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Diterima: 25 September 2020; Direvisi: 7 Februari 2021; Disetujui: 7 Maret 2021

ABSTRAK

Penelitian ini dimaksudkan untuk menunjukkan bahwa sistem pemilu Indonesia selalu mengalami dinamika yang pesat dalam pengembangan kebijakan. Penelitian ini menggunakan metode penelitian hukum normatif dan dikombinasikan dengan empiris. Penelitian normatif terfokus pada aturan dan acuan positif normatif. Sementara empiris, lebih fokus pada data lapangan yang diambilkan dari dinamika ide dan gagasan di lapangan. Pendekatan historis kemudian dikombinasikan untuk menajamkan analisa dan pembacaan masalah secara lebih kritis dan evaluatif. Khususnya di dalam perdebatan di Panitia Khusus untuk persiapan regulasi tentang Presidential Threshold. Hasil penelitian menunjukkan bahwa keputusan ambang batas presiden 20% dalam penyelenggaraan Pilpres 2019 mengandung substansi hukum ortodoks. Hal ini karena secara politik hukum pembentukannya (UU No. 7 Tahun 2017) sarat dengan kepentingan politik praktis partai yang berkuasa. Partai yang terdiri dari 6 fraksi memberikan opini dominan yang condong ke ambang batas 25%-30% yang disarankan pemerintah, sedangkan 4 fraksi lainnya tidak setuju dengan ambang batas pencalonan yang tinggi, karena konsep pemilu harus memberikan ruang bebas bagi masing-masing partai untuk mencalonkan calon presidennya. Pemerintah memiliki agenda sendiri untuk melanjutkan dan memperpanjang presiden yang ada saat ini dan mencegah kemungkinan untuk orang lain. Oleh karena itu, untuk melindungi agenda, diusulkan ambang nominasi yang tinggi. Melalui analisis isi regulasi tersebut dapat dikatakan bahwa ambang batas yang tinggi memiliki konsekuensi logis dalam penyelenggaraan pemilu yang menciptakan lingkungan pemilu yang tidak substansial dan membuat iklim politik di Indonesia tidak seimbang.

Kata kunci: Hukum otoriter, hukum dan politik, substansi ortodoks, presidential threshold

ABSTRACT

This study is intended to indicate that Indonesia's electoral system always experiences rapid dynamics in policy development. This study uses empirical normative legal research or a legal research method that uses a set of regulation relating to general elections and the rules of making positive law as reference of norms. Empirical research is also used to observe the results of human behavior in the form of physical archives. The methods are combined with the historical approach: an approach that is carried out by analyzing the debate arguments that occurred in the special committee meeting (Panitia Khusus) of the Election Draft Bill. The result of this research is the decision of the presidential threshold of 20% in the holding of presidential elections of 2019 contains the orthodox legal substance. This is because politically the law of its formation (Law No. 7 of 2017) is full of practical political interests of the ruling parties. Parties consisting of 6 factions gave a dominant opinion which leaned towards the 25% -30% threshold suggested by the government, while the other 4 factions do not agree with the high nomination threshold, because the concept of election must provide free space for each party to nominate their respective presidential candidates. The government had its own agenda to continue and extend the existing incumbent president and prevent the possibility for others. Therefore, in order to protect the agenda, high nomination threshold was proposed. Through content analyses of the regulation it can be stated that the high threshold has logical consequences for holding elections which create an insubstantial election environment and make the political climate in Indonesia unbalanced.

Keywords: Authoritarian law, law and politics, orthodox substance, presidential threshold

INTRODUCTION

General elections must be held periodically, this is due to several reasons, namely, *first*, people's opinions on election policies always change according to the demands of the time. This is because socio-cultural developments always demand changes in the latest circumstances. *Second*, some aspects affect internally and externally. Externally this is influenced by changes in the international world and internally is changed in political will and conditions within the country itself. *Third*, it is influenced by demographic factors or the increasing number of adult residents who already have constitutional political rights (Asshiddiqie, 2008).

The implementation of the general election was originally intended to elect legislative members namely (DPR, DPD, and DPRD). After the 4th

amendment of the 1945 Constitution, there was a change to the institutional system that was originally the president appointed by the MPR to be a direct election system by the people. This direct democracy is called by Abraham Lincoln as "government of the people, by the people, and for the people" (Bastian, Luckham, & Goetz, 2003). It is the amendment that describes partially about democracy as well as a logical consequence of the democratic state itself (Oetama, 2001).

The practice of holding presidential and vice-presidential elections which began in 2004 until 2014 is conducted periodically or in the time after the legislative elections. There may be a grace period created to make the results of legislative elections (parliamentary threshold) become a reference/ticket to nominate a presidential candidate with a predetermined threshold.

Normatively, this can be seen in the provisions of Article 222 of Law Number 7 of 2017 concerning election which states that a candidate pair is proposed by a political party or a combination of political parties participating in the General Election that meets the requirement of obtaining seats in the DPR at least 20% or obtaining a valid national vote as much as 25% in legislative elections. With this periodic mechanism, it can guarantee a balanced supporting axis between incumbent and opposition, so that when the government runs, it will not be one of the more dominant institutions and negate the system of checks and balances (Wisnewski, 2014).

In addition to the periodic elections to stabilize stable political conditions, a threshold mechanism for presidential nominations or presidential thresholds that has been used in the 2014 elections has also been created. However, it becomes a problem if the periodic elections become simultaneous and use high thresholds in presidential nominations. This will have an impact on the political intensity and the tug of war in the election will occur, even it will have an impact on the decline in the quality of democracy in the election. This provision can be seen in the decision of the Constitutional

Court Number 14 / PUU-XI / 2013, which decadently requires the legislative elections to be held simultaneously in conjunction with the presidential election.

Hence, some problems come: *first*, the simultaneous holding of elections using the concept of the high presidential threshold will cause uncertainty. That is from which percentage of presidential threshold to nominate presidential candidates will be taken. If the determination of the nomination threshold is based on the previous year's legislative elections it will credit the possibility of new parties or parties that were not previously included to be able to enter parliament.

Second, the problem that will arise if a high threshold is applied by simultaneous elections is the possibility of a dominant coalition against parties whose presidential candidates win the presidential election. In the sense of the loss of opposition as a counterweight to the power, because if the elections are simultaneous, parties will automatically vote in coalition with the winning party. *Third*, this concept will have the effect of dividing the supporters who are divided into only two camps. This is because with the high threshold *mutatis mutandis* will create only 2 presidential candidates in the election contestation (Budiardjo, 2003). Furthermore, the intensity or pressure on supporting fanaticism is not broken down and is focused on just two presidential candidates. Thus, in turn, it will decrease; the important role of law as a tool to translate the political situation and interests into good ideas for democratic development.

There were several studies related to this research. Lytha Dayanara (2017) wrote The Relevance of the System in the Simultaneous Election Implementation Model. The content of this thesis is merely to discuss the relevance of the system in Indonesia to hold simultaneous elections. While in this article, the writers discuss the politics of law or the interests that cause the emergence of rules regarding the presidential threshold in the holding of simultaneous elections. Mirza Nasution (2015) wrote Political Law in the

Indonesian Constitutional System. The writing discusses the political state of law, the legal system and the politics of legislation in Indonesia. While this article focuses more on the politics of law that arises in making rules related to the presidential threshold. In the journal written by Ayon Diniyanto (2018) under the title of Measuring the Impact of Implementing the Presidential Threshold in the 2019 Simultaneous Elections, can be found the discussion on the impact of implementing the presidential threshold which is held in simultaneous elections. It is explained that Indonesia is holding simultaneous elections for the first time. Hence the journal emphasizes the negative things that will occur if elections are held simultaneously. The difference is that the researchers in this article responds more to the impact caused by the abuse of legal politics in making rules related to the presidential threshold.

RESEARCH METHOD

Content analysis of legal drafts in the series of deliberations in the People Representative Assembly (Dewan Perwakilan Rakyat/DPR) will be done. This discussion is the main reference in deciding legal products that may have certain characteristics. Conceptually the process of debating a draft will determine characteristics of legal products. For this reason, the discussion will focus and conclude the underlying legal politics of the presidential threshold.

The using of Political Interests Theory is inevitable in this research. Political interests are interests created by humans in regulating relationships between one another (Budiardjo, 2007). In the interaction between one another, political interests are contained in a political system. Interest in any system can be described as input and output. The input itself represents the demands and aspirations of the community as well as support from the community, these inputs are then processed into policies and regulations.

Gabriel A. Almond emphasized that political interests have a strong relationship with the political process which begins with the inclusion of demands that are articulated and aggregated by political parties, so that these special interests become a more general policy proposal, and are subsequently

incorporated into the policy-making process that is carried out by the legislative and executive bodies (Yana, 2016). Thus, political interests are closely related to political infrastructure activities such as pressure groups and political parties as well as the political superstructure such as the executive and legislative branches. According to Abercrombie, Hill, and Turner, the study of the political process focuses on the activities of parties and interest groups, internal organizations, the nature of political decision-making, and the roles and backgrounds of politicians (Oman, 2016). The Interest groups are represented by the political parties which involve in the debate of the Bill.

RESULT AND DISCUSSION

Legal Politics in Forming Legal Products

Political law is the process of policy formation that occurs within a state institution authorized to form policies and regulations, to achieve the expected and desired goals of the state. The formation process will later produces a product of policies and regulations aimed at public interest (Soedarto 1983). Sunaryati Hartono holds a view regarding legal politics and is outlined in her book entitled Political Law Towards a National Legal System. In the book, legal politics is seen as a tool or a way to realize the ideals of the nation which are conveyed and outlined in the formation of national law through the government (Hartono, 1991). Abdul Hakim G Nusantara focuses legal politics into national legal politics. According to him, national legal politics is the effort of the government of a country that wants to implement nationally a legal policy (Thohari and Syaukani, 2006).

National legal politics has several characteristics including consistency in the implementation of existing law, revitalization of laws that aim to replace laws that are considered obsolete with laws that adjust the times, reinforce the function of legal institutions as well as coaching members, and emphasize the views of policymakers into legal awareness in society (Thohari and Syaukani 2006).

Essentially, several important points or points form the basis of the

implementation of national legal political development. *First*, the foundation which is based on the norms of national and state life as well as the law with the spirit of Pancasila (ideal foundation). Second is the operational foundation, this foundation has several characteristics, i.e (Rahardjo, 2006):

1. A law that provides justice and prosperity, meaning that the law must be used as a tool or a means of renewal for the benefit of the people's welfare. Therefore, the formation of law must be harmonious and adapt to the concept of the welfare state, because the law is for humans.
2. The creation of a strong democracy because of the law is formed here to strengthen democracy and must be based on a concept that emphasizes the sustainability of democracy and has the mindset of grounding democratic idealism in political life, therefore a legal foundation is needed that holds fast to democratic goals with the support of strong moral content.
3. Laws that guarantee the basic rights of citizens. The point is that the law created must prioritize human rights.
4. The law aims to guide the Unitary Republic of Indonesia. In the formation of law, the creation of an increasingly strong NKRI is the basic foundation that must be present in the drafting of legislation.
5. Single diverse law; in the formation of law, one must pay attention to various kinds of differences, such as socio-cultural diversity and the many groups that exist, by sticking to the basis of the state and the priority of national unity.
6. Laws were created to protect the nation and spill the blood of Indonesia.

These foundations become the main axis in forming a legal product. The formation of legal products cannot be separated from nuances that are full of interests. In another view, the formation of law that has the interests of lawmakers can be dissected through political configurations. In *Raison D'atre*, the political configuration can be interpreted as the political will that exists and influences decisions on regulation-making. The formation of this regulation is in the realm of legislative institutions whose existence is

inseparable from various political wills. The concept of lawmaking is procedurally formed based on the political interests of various factions in the People Representative Institution (Dewan Perwakilan Rakyat/DPR) that affect the characteristics of legal products. (Marpaung, 2012). Factually, each legal norm is a transformation of a particular political configuration, so that its characteristics will affect the quality of a legal product (MD, 1993). For this reason, the making of regulations must be aimed at the ideal law and by the mandate of the constitution.

The political configuration exists as a representative of a structure, political views and political system whose existence is evidence that the country adheres to a political-democratic or authoritarian system (MD, 2006). A country that adheres to a democratic political system can be seen from the application of the rule of law, freedom of opinion, and people's participation. This will have logical consequences that the law will be responsive (Mayo, 1960). Whereas a state that has an authoritarian political system will have an impact on political structures that are fascist-conservative, meaning that political attitudes that are always taken are top to down so that it will limit people's freedom of opinion or in the sense of a political structure built to be conservative and orthodox (Dahrendorf, 1986). Both schemes are not absolute because democratic political systems can produce orthodox legal character both formally and materially (Anggoro, 2019).

To achieve the true essence of the law and achieve the welfare of the people, the formulation of rules through legislation systems is mandatory (Courtney and Smith 2010). For this reason, the practice of governing the government must create the quality of national law in achieving legal objectives, namely certainty, justice, and expediency. These goals are the responsibility of members of the DPR, DPD, DPRD, and the Government.

Issues of Election and the Determination of Presidential Threshold

The debate is the first round of a political process that revolves on every crucial issue, in which decisions on these crucial issues become an important

element for the continuation of political parties in the next election. The tug of war on several crucial issues that will receive special attention is evidence that the strong competition for power between factions since the beginning of the discussion at the special committee level. Initially, in the 4th Special Committee Meeting on February 13, 2017, the crucial issue was based on the Inventory List compiled by the Parliament as well as from the government which was agreed in 16 points. Then, this crucial issue increased to 18 crucial issues when the Special Committee member of the *Golkar* faction expressed their views on the urgency of the gender issue in this discussion. The addition of this crucial issue occurred at the 4th Working Meeting on February 13, 2017. Finally, after lobbying between factions, it was agreed to classify important issues at the 5th working meeting, on February 16, 2017, from 18 important issues to 5 issues to facilitate discussion and sharpen the comments.

Related to 5 crucial issues (Kami 2017) *The first* is a discussion of the legislative election system. in this case, the government takes a stand by proposing a limited open proportional system through Article 138 paragraphs 2 and 3 of the Election Bill. An open proportional representation system is a consideration to encourage candidates to compete in mobilizing mass support for their victory (Halim 2015). This can be categorized as a breakthrough, in which this system has never been practiced during the General Elections in Indonesia. *Second*, related to parliamentary threshold. According to the government in the Special Committee meeting, one of the objectives of the application of this rule is to create a simple multiparty system. The debate that arises related to the logic of government is not the number of political parties participating in the General Election which must be limited but rather the ideal number of political party forces, which needs to be empowered and streamlined in the DPR.

Third, presidential threshold, this issue is about the threshold for political parties that want to carry a presidential candidate. *Fourth*, regarding the electoral districts (electoral districts). Related to the discussion of this

issue, there is one important point that arises, namely regarding the structuring of electoral districts that occur in the 2019. Election is the magnitude of electoral district or district magnitude (Zuhri 2018).

Fifth the conversion of votes into seats. The debate related to the conversion of votes includes two general system choices that apply in the world namely; (a). *hare quota*; the method of converting votes into chairs using the formula, the total number of valid votes divided by the number of seat allocations that must be filled. To convert votes into chairs through this method, some stages must be carried out. (b) *Saint laque*: it means that every political party participating in the election must meet the specified vote threshold, parties that do not meet the threshold will not be included in determining seats in the People Representative Assembly (*Dewan Perwakilan Rakyat/DPR*) (Zuhri, 2018). From these 5 points, it becomes a conclusion that the implementation of the General Election was carried out simultaneously.

These points become the main reasons for determining the final discussion of the Election Bill. The discussion took place at the Special Committee meeting of the Election Draft Bill with the agenda of deciding on the special committee recommendations that later the results of the decision would be brought to the plenary meeting for endorsement. However, the DPR Special Election Bill Committee had a meeting on Thursday night July 13, 2017. But again failed to decide on the 5 crucial issues.

After entering the final phase of the discussion on the Election Bill, crucial issues that became a long debate in the Special Committee meeting on the holding of the General Elections, in turn, were now able to map the political support of the factions in the DPR into five issue packages. The five crucial issues became the focus of the Election Bill because the discussion did not reach an agreement at the special committee level. The five crucial issues offered by the special committee in 5 packages that can be selected by political parties in the DPR include see table 1:

Table 1. Package of issues in plenary meeting

PACKAGE A		PACKAGE B		PACKAGE C		PACKAGE D		PACKAGE E	
<i>Presidential threshold:</i>	20-25 percent	<i>Presidential threshold:</i>	0 percent	<i>Presidential threshold:</i>	10-15 percent	<i>Presidential threshold:</i>	10-15 percent	<i>Presidential threshold:</i>	20-25 percent
<i>Parliamentary threshold:</i>	4 percent	<i>Parliamentary threshold:</i>	4 percent	<i>Parliamentary threshold:</i>	4 percent	<i>Parliamentary threshold:</i>	5 percent	<i>Parliamentary threshold:</i>	3.5 percent
Election open	System: open	Election open	System: open	Election open	System: open	Election open	System: open	Election open	System: open
DPR electoral district:	3-10	DPR electoral district:	3-10	DPR electoral district:	3-10	DPR electoral district:	3-8	DPR electoral district:	3-10
Voice Conversion: Pure Saint Lague	Conversion: quota hare	Voice conversion: quota hare	conversion: quota hare	Voice conversion: quota hare	conversion: quota hare	Voice Conversion: Pure Saint Lague	Conversion: quota hare	Voice conversion method: quota hare	conversion method: quota hare

Source: Minutes of Special Committee Meeting on Election Implementation Bill (data after processing)

Reading from the Table 1 from the debates that took place at the Special Committee meeting, 5 factions chose Package A, namely the PDIP faction, the Golkar faction, the PPP faction, the Nasdem party faction, and the Hanura party faction. While the other 5 factions, namely the Gerindra party, the Demokrat party, the PAN faction, the PKB faction, and the PKS faction, have not yet decided on one of the 5 packages offered by the Election Bill Special Committee. Finally, the Special Committee agreed on the decision on the 5 packages of issues of the Election system to be brought to the DPR's plenary session. By looking at the political map of the votes of these factions, the winner will likely be Package A, with the following counts table 2:

Table 2. Map of Political Support Plenary Meeting of Election Draft (Before Lobbying)

NO	SUPPORT PACKAGE A	SEAT	REFUSE PACKAGE A	SEAT
1	PDI Perjuangan	109	Gerindra Party	73
2	Golkar Party	91	Demokrat party	61
3	PPP	39	PAN	48
4	Nasdem Party	36	PKB	47
5	Hanura Party	16	PKS	40
	TOTAL	291	TOTAL	269

Source: Minutes of Special Committee Meeting on Election Implementation Bill (data after processing)

From the data that has been presented in the Table 2, with the acquisition of 291 votes in the voter group A package supporters of the

presidential threshold option 20% of the number of seats in the DPR or 25% of the acquisition of valid votes have won the battle and have concluded that package A is the choice that will be applied to concurrent elections. This indicates that the mechanism used in the simultaneous election is not much different from the mechanism applied in the implementation of the 2009 and 2014 elections.

The difference related to the determination mechanism is only in the parliamentary threshold which has a weighting of 3.5%, while the weight in package A has increased to 4%, and another difference that arises is the reuse of the pure *Sainte Lague* conversion method, it is the same as the mechanism used in The 2009 Election, while in the 2014 Election using the *quota hare* vote conversion method, the calculation method is using the formula V (vote / total valid votes) divided by S (seat/number of seat allocations), then the number of votes for a political party in an electoral area divided by the results of the calculation of the price of one seat, if there are still seats that have not been divided, another stage is carried out by distributing seats that have not been divided to parties that have the remaining majority of votes in sequence.

The option of determining the presidential threshold 20% of the number of seats in the DPR or 25% of the acquisition of valid votes is also offered in the Package E option, but in the package E option there is a difference that lies in the parliamentary threshold whose determination rises to 4% in Package A and remains 3.5% in Package E. The next difference is in the pure *saint lague* system in Package A while in package E that is used for voice conversion is the *quota hare* system. Previously the PDIP faction with the most votes in parliament preferred the adoption of the voice conversion method using the *quota hare* method and tended to choose Package E, but the strong choice of the Golkar faction on the pure *saint lague* voice conversion method, made the PDIP fraction through government mediation, softened to merge to choose Package A.

Package A, which was originally proclaimed and offered as an option by

the government, has a lot of support from factions in parliament almost certain to win. Although it has not yet become an official decision, the Minister of Home Affairs welcomed the increased support for package A which received new political support from the PPP faction and the Hanura party faction, where initially package A was only supported by the PDIP faction, the Golkar faction, and the Nasdem party faction. This concludes that among the 560 seats in the DPR, 291 seats or more than fifty percent outside the support of the government chose the mechanism to regulate Law No. 7 of 2017 concerning elections using package A.

At the same time, there were still factions that had not yet pursued a single political choice, namely the Democrat party faction which was still adamant with the rejection of the options contained in package A, while the Gerindra faction, PKB faction, PKS faction, and PAN faction were still divided between Package C choices and Package D. If all of these factions join in only one decision, the votes still cannot beat the votes obtained by supporters of package A. Especially if the PKB faction crosses over and participates in choosing Package A, which in the history of the PKB faction's habits has always been supporting the government in policymaking.

The long marathon process of political debate and communication has still not found common ground and has not provided clear results related to the use of mechanisms applied about Law No. 7 of 2017 on Elections. According to the mechanism in effect, the session was later suspended for lobbying. Political concessions made through the lobby remained unsuccessful so that after the plenary session reopened, decisions regarding package choices were not obtained. However, along with the lengthy pause of the meeting, it succeeded in changing the political map marked by the inclusion of PKB faction votes through intensive lobbying. They participated in choosing package A. The PKB faction joined the support of package A, then the calculation is as follow table 3:

Table 3. Map of Political Support in the Plenary Meeting

NO	SUPPORT PACKAGE A	SEAT	REFUSE PACKAGE A	SEAT
1	PDI Perjuangan	109	Gerindra Party	73
2	Golkar Party	91	Demokrat party	61
3	PPP	39	PAN	48
4	NASDEM	36	PKS	40
5	Hanura Party	16		
6	PKB	47		
	TOTAL	338	TOTAL	222

Source: Minutes of Special Committee Meeting on Election Implementation Bill (data after processing)

After a long process of voting finally, the victory was aimed at supporters of package A which was initially headed by the PDIP faction. Feeling to get political support from six factions in the DPR related to the number of factions that voted for package A, the PDIP faction suggested voting to be carried out because the meeting had taken a lot of time and had already made many decisions. This step of the PDIP faction can be said to be a form of political victory after successfully uniting the political support of the party supporting the government, while in discussions at the Special Committee level their political views often differ.

While the attitude of the PAN faction that supports package B can be said to be not directly proportional to the other government supporting factions. Political attitudes that are different from other governments are also often shown by the PAN faction in several previous cases. For example in the case of the rejection of the Regulation of mass organizations issued by the government, in which the PAN faction was the only faction of the government coalition that rejected the central government regulations of mass organizations issued by the government. Such conditions are indeed common in the existence of political support in a presidential system, because political support is not permanent, but rather the calculation of interests.

The discussion on the presidential threshold which was applied to the General Election was the discussion that drew the most attention of all factions in the DPR. Because until the deadline the DPR held a plenary session to agree on the Election Implementation Bill, discussions about the Presidential Threshold had failed several times to reach a decision.

The cause of the failure to reach the decision was the many tug-of-war interests, all factions still did not agree on the amount of the Presidential Threshold number that would later be used in the 2019 Presidential Election. If it is examined more fundamentally and deeper, the decision is not reached because each faction has different interests.

Tables 1, 2 and 3 from the facts and data presented by the researcher in those tables, it may be related to the theory of political interest as stated above: political interest is behind the legal policy (Shidarta, 2012). Because basically in the making and ratification of the Election Bill, there is political intrigue that prioritizes the interests of the party elite rather than the interests of the community, the data that has been presented prove that there is a policy behind the legal policy in the discussion of the Election Implementation Bill, especially in discussions related to percentages. presidential threshold of 20%. This happens considering how important it is to fight for seats at the executive level.

How important power is in the executive sphere in the implementation of the 2004 and 2009 Presidential Elections which were carried out after the Election for Members of Representative Institutions, according to the Constitutional Court it was found political facts that to get support for the election as President and the support of the DPR in the administration of government, if elected a Presidential candidate must have political negotiations and bargaining (bargaining) in advance with political parties which will greatly affect the running of the wheels of government in the future (Prasetyoningsih, 2014). In fact, these negotiations and bargains are tactical and momentary in nature rather than strategic and long-term, for example due to the long-term similarity of lines of struggle for political parties. Therefore, the President in fact becomes very dependent on political parties so that it can reduce the President's position in exercising government power according to the presidential government system. Thus the implementation of the Presidential Election must avoid the occurrence of political negotiations and

bargains that are tactical in nature for the sake of the moment, so as to create negotiations and strategic coalitions of political parties for the long term interests.

Before the Bill on Elections was finalized in a plenary session with all members of the DPR, the bill was discussed beforehand at a meeting attended by a special committee. In the Special Committee meeting related to the Election, Bill was attended by each representative from each faction. Each faction was represented by several faction members with varying amounts of each faction, in addition to being attended by representatives of each faction that had been designated as members of the Special Committee, this meeting was also attended by several representatives from the government, namely the Minister of Home Affairs (MENDAGRI) along with their ranks, the Minister of Law and Human Rights (MENKUMHAM) and their ranks, the Minister of Finance (MENKEU) and their ranks. Apart from being attended by representatives from the government, this meeting was also attended by members of the Regional Representative Council.

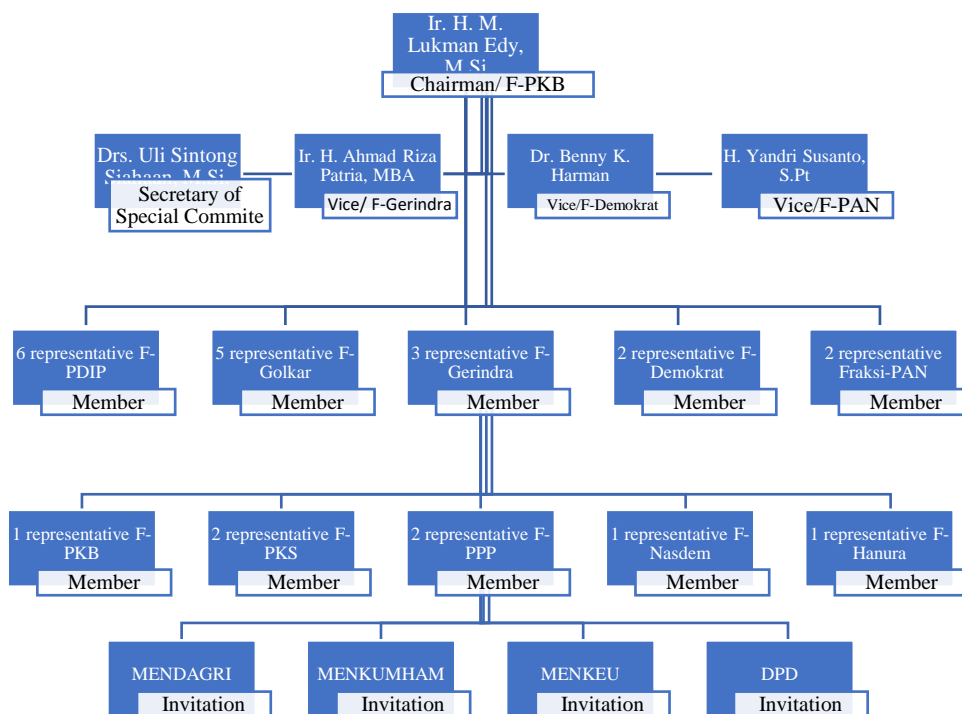


Figure 1. Special Committee on the discussion of the Election Draft Bill

In this figure 1, it is clear that the Special Committee on the discussion

of the Election Draft Bill contains 30 representatives from each party faction in the DPR. In the Special Committee, the discussion of this bill was chaired by representatives of the PKB faction accompanied by several representatives namely from the Gerindra faction, the Demokrat faction, and the PAN faction. In addition to the chairman and his representatives, the Special Committee also has members from the PDIP faction of 6 people namely; Arif Wibowo, HR Erwin Moeslimin Singajuru, SH, MH, Triemedy Panjaitan, SH, MH, Diah Pitaloka, S. Sos., Esti Wijayati, and Drs. Sirmadji, M.Pd., Golkar faction 5 people namely Rambe Kamarul Zaman, M.Sc., MM, Agung Widyantoro, SH, M.Sc., Dr. Ir. Hetifah Sjaifudin, MPP, H. Ahmad Zacky Siradj, and Agun Gunanjar Sudarsa, M.Sc., 3-person Gerindra faction Ir. Endro Hermano, MBA, H. Moh Nizar Zahro, S.H., Supratman, S.H., M.H., 2-person Demokrat faction Didik Mukrianto, S.H., Ir. Fandi Utomo, 2-person PAN faction H. Totok Daryanto, S.E., Viva Yoga Mauladi, M.Si., 1-person PKB faction Neng Eem Marhamah Zulfa Hiz, S.Th.I., 2-person PKS faction Drs. Al Muzzammil Yusuf, M.Si., Sutriyono, S.Pd., M.Si., 2-person PPP faction Dr. H. Mz. Amirul Tamim, M.Si., Ahmad Baidhowi, 1-person Nasdem faction Johnny G. Plate, S.E, 1-person Hanura faction Rufinus Hotmaulana Hutahuruk.

With the many representatives of members from various factions in the Election Bill meeting, the determination related to the presidential threshold became a discussion that was colored by a lot of debate, it arose because of differences in interests of each faction. The interests of each faction in determining the presidential threshold can be classified into 3 groups, namely the threshold percentage of 20-30 percent, 0% or no threshold and the group taking the middle path is 10-15 percent.

The first classification that requires a high threshold with a range of 20-30 percent was conveyed by the Golkar party faction. In this case, the Golkar party faction wanted a presidential threshold percentage of 20-25 percent, this was also the same as the request of the PDI-P party faction who wanted the percentage reached 20-25 percent and the percentage was followed by several

factions such as the Hanura faction and the Nasdem party faction. Instead of following the four parties with a scale by the request from the government which is 20-25 percent, the PPP party faction wants a presidential threshold percentage with a higher amount of 30%,

Furthermore, the second classification does not want a threshold or 0% presidential threshold. The faction that took a stand in this classification first was the Gerindra party faction. In this case, the Gerindra party faction established itself that if elections were held simultaneously then the threshold for presidential nomination or the presidential threshold would be irrelevant. In addition to the Gerindra party faction, the faction that does not want a threshold in the holding of simultaneous elections is the PKS faction. It is also guaranteed by representatives from the Democrat faction, these three factions are equally disapproving of a presidential threshold or 0% threshold if the election is held simultaneously.

The third classification is the classification of faction groups that choose the magnitude of the presidential threshold is in the middle between the first classification with the second one. The factions in this group do not want a threshold amount that reaches 20-30 percent, because according to him the threshold is too large. This group does not want also if the Presidential Election does not use a threshold amount, because it is feared the quality of the President obtained is inadequate. In this classification, there are 2 factions, namely the PAN fraction and the PKB faction. Both parties want a threshold amount in the Presidential Election in the range of 10-15 percent. For more details, the last position of each faction is listed in the following Figure 2:

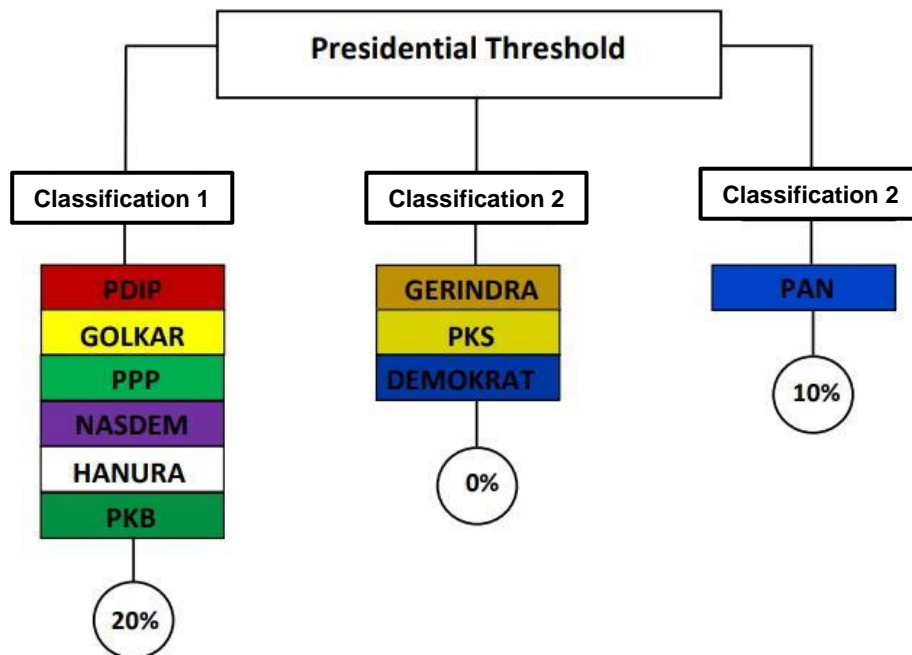


Figure 2. Presidential Election

Source: Minutes of Special Committee Meeting on Election Implementation Bill (data after processing)

Law and Authoritarianism in the Presidential Threshold Regulation

The discussion on the presidential threshold in a special committee meeting on the Election Implementation Bill has an element of interest from each faction. The determination of the presidential threshold is dominated by factions who want a high percentage of nomination limits. It was proven in the minutes of the meeting that 6 factions agreed with the government's proposal of 25% and some even reached the 30% limit. The remaining 3 factions want no limit in presidential nominations or 0% and one faction wants a 10% threshold.

Contextually, the agreement can be seen in several debates that took place at the 6th Working Meeting on Friday, February 17, 2017. At the debate there was one important point that must be considered, from the representatives of the factions. The majority of the factions voiced the same votes related to the percentage of presidential threshold. The majority of the factions gave the same decision regarding this matter, namely approving

proposals from the government. Golkar Party faction led by H. Rambe Kamarul Zaman, M. Sc., MM. Golkar faction expressed its attitude to agree with the government with a presentation size of 20-25%. In his view, Golkar considers that simultaneous elections are a direct order from the constitution, so that the terms and standards must be determined by the legislature (open legal policy).

Furthermore, the PPP Faction (Dr. H. Mz. Amirul Tamim, M.Sc) in his political view provided two conceptually options, namely the presidential threshold with a percentage of 0% and 25-30%. This is because if you want each party to nominate their respective candidates, they must be based on normative provisions for each party entitled to nominate a presidential candidate. On one hand, if the presidential threshold percentage is set at 25-30%, the concept is normative that every party that has a seat in the DPR has the right to nominate a presidential candidate. This means that to use the presidential threshold, parties must meet the national primary threshold provisions.

The next view was conveyed by F-PKB (Dra. Hj. SITI MASRIFAH, MA) which was grammatically interpreted that the FKB faction considered that if the presidential threshold provisions were too high and had an impact on the inability of new parties to participate in the presidential election constellation, then it could not blame the verdict, Constitutional Court.

"If so, if it is possible to fight that this is not considered not to violate the results of the Constitutional Court's Decree, the PKB believes that agreeing with the government's proposal, at least the threshold follows the parliamentary threshold, then, yes ('Risalah Rapat Pansus RUU Penyelenggaraan Pemilu, 2017)."

For the attitude expressed by the Nasdem Party Faction (Drs. T. Taufiqulhadi, M.Sc.), giving an agreed view with the government, which is 25% without giving a logical argument or argument that can be justified. "If Nasdem agrees with the government, then we think that at least twenty percent of the total number of seats in the DPR or get twenty-five percent of the national legitimate votes. Like the government that is the attitude of Nasdem ('Risalah Rapat Pansus RUU Penyelenggaraan Pemilu, 2017). The same attitude without

argumentation was also carried out by F-PDIP (Arif Wibowo) and F-Hanura (Rufinus Hotmaulana Hutahuruk) to directly agree with the provisions set by the government, which is 25%.

Based on the attitudes and arguments of the factions, the overall agreement was agreed upon by the government. Agreements by some of the actors forming these regulations conceptually can be categorized as political forming of regulations. Before there were written rules, there was a political intention to achieve a goal. More clearly about the agreement before the formation of rules can be seen in the opinion of Spencer A. Overton regarding political law, namely:

"Some problems involve the structure of institutions that regulate political activities such as allocating responsibility among federal, state, and local officials and between different branches and agencies within each level of government; varying standards (or a lack of standards) stemming from decentralization (for example, different localities resolving similar disputes or multiple federal agencies investigating the same set of allegations); delegating discretion to private actors such as political parties (for example, by allowing them to challenge voters at the polls); capture agency; and review of agency decisions. Other challenges stem from rulemaking and adjudication, such as the adequacy of notice and process, the clarity and administration of legal directives, and the balance between consistency and flexibility in decision making " (Overton, 2013).

In his view, Overton stated universally that there are factors that determine a legal policy. This factor can be seen from the cultural conditions of a region or the will of political parties that have their respective interests. These factors will form regulatory standards that vary according to the interests behind the formation of the policy (Overton, 2013).

Furthermore, according to Michael Bayles, political and legal relations can be simplified into 3 factors, (Bayles, 1982):

1. A legal order can be empirically dependent upon a political order, a view held by all people who believe effectiveness is a necessary condition for the existence of a legal system
2. A legal order can be normatively dependent upon a political order or a

political order that meets certain moral conditions such as consent or an internal morality.

3. Either an empirical or normative relationship can be the basis for an analytic relationship so that the concept of a legal system logically depends on an effective or moral political order.

The first factor empirically allows for the relationship between law and politics through political orders (political orders) (Bayles, 1982). These political orders are carried out by individuals or groups who assume that effectiveness is necessary for the existence of the legal system. The second factor assumes that legal orders are normatively dependent on political orders, meaning that formally the rules that are formed are following the morals desired by the political orders of legislators. The third factor, both the effectiveness and morale can be the basis for determining policy formation (Thompson, 2000).

In discussing the determination of the presidential threshold at the limited meeting in 2017, it is clear that the dominance of parties that want a percentage of 20% has a relation in terms of strengthening the position of one of the presidential candidates, both effectively and morally (Thompson, 2000). The agreement to determine the presidential threshold by the 6 factions is systematically the same goal, namely to create overpower candidates in the presidential election (Mainwaring et al., 1997). There is almost no substantial debate on the determination of the presidential threshold. This is because in general the dominant factions choosing a high percentage want to strengthen presidential system and a small political party cannot necessarily be able to carry a pair of presidential candidates. According to the factions that agreed 20%, the presidential threshold wanted high filtering (high standard) (Fogg, 2002) in elections, even though these standards have political interests for incumbent candidates.

This is in Bruce Cain's opinion "A narrow focus on election law prompts us to overlook non-selection governance issues, such as pay-to-play rules,

government transparency, lobbying regulation, and legislative ethics committees" (Cain, 2012). This means that in matters of election policy the riskiest thing to happen is the existence of supply and demand between the authorities and the stakeholders.

If we look at the objectives of election based on the process and its results, according to *Perhimpunan Pemilu dan Demokrasi* (PERLUDEM), the objectives of the election are (i) making it easier for voters to vote, (ii) simplifying the implementation schedule, (iii) saving state funds, and (iv) balancing the burden of the organizer. Whereas in terms of results, the objectives of the election are (i) increasing voter participation and control of elected candidates, (ii) creating an effective presidential government system, (iii) simplifying the party system in the DPR and DPRD, and (iv) strengthening and democratizing political parties. These objectives must be written down in an explanation of the law, so that they are read as electoral designs that will facilitate the formulation of articles and paragraphs (Perludem, 2020).

While normatively, the objectives of the election regulation can be seen in article 4 of Law Number 7 of 2017 concerning Elections, namely:

The Election Arrangement aims to:

- a. strengthen the democratic state system;
- b. realize fair and integrity elections;
- c. ensure consistency in the regulation of the electoral system;
- d. provide legal certainty and prevent duplication in directing elections, and
- e. realize effective and efficient elections.

Based on the above points of objectives of the election, in determining the presidential threshold, it seems do not describe the essence of the objectives of the election regulations. This causes intrigue and problems in a structured and massive way: starting from the initial stage of the disproportionate candidacy, because the simultaneous election model that uses a split ticket cannot provide a leader candidate who should be able to appear more. In terms of effectiveness, it was not created because after the

election, the political situation was destructive and political monopoly became very high.

Furthermore, at the level of the presidential government system, what is desired is a balance between parliament and the executive. Whereas essentially a presidential system in Indonesia requires a balanced and controlled government (checks and balances) (Aritonang, 2010). Factually, the application of the presidential threshold creates an unbalance government because the executive position is more dominant in running the government. The condition in the parliament which should be the people's watch tool has become one direction with the president's policy and even seems not to look at the people as their constituents (Soetjipto, 2014). This is also caused by simultaneous elections which provide very short pauses to form coalitions in government. So that the parties will automatically join the bearer party that has a high parliamentary threshold and incumbent candidates who have above average electability.

Based on this answer a pattern of legal political relations that emerged in the formation of the presidential threshold percentage applied to the holding of simultaneous elections. The high percentage of presidential threshold becomes a benchmark that the rules have original intensities which are contrary to responsive legal rules, which is rooted in four basic steps such as ideological footing, normative footing, constitutional footing and moral footing (Tanya, 2011). Instead, it is more inclined to the political intrigue that prioritizes the interests of the government elite rather than the interests of society which should be the main value in the formation of responsive laws. Based on the perspective of legal politics, the non-fulfillment of the values contained in the formation of responsive law shows that the formation of the law is conservative or orthodox, it is related to other variables, namely the authoritarian political system.

CONCLUSION

The presidential threshold legal politics have the characteristics of

authoritarian law. This is because in the discussions at the Special Committee on the Election Implementation Draft Bill related to the formation of the presidential threshold tend to be led by the domination of incumbent government, instead of to strengthen democracy or strengthen the presidential system. In the discussion of the special committee meeting, there were also political interests of the authorities to maintain the power of the ruling party and incumbent government. The political politics of determining the presidential threshold also contradicts the principle of effective and proportional election objectives, because the presence of a presidential threshold with a high percentage of up to 20% creates a gap in political rights or democratic rights between parties with majority votes and minority parties.

The authoritarian legal characteristics of the presidential threshold discussion have hurt the electoral system and democracy in Indonesia. This can be described based on several things: *first*, the number of digits of presidential threshold which has been determined before the holding of the Special Committee on Election Implementation Bill on the presidential threshold. *Secondly*, the magnitude of the presidential threshold percentage up to 20% results is in high political intensity. This arises as a result of the small number of candidates who can participate in the Presidential Election contestation. *Third*, there is an inconsistency of political willingness in the Special Committee on Election Implementation Bill related to the determination of the presidential percentage threshold.

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