

Civil and Political Rights in Constitutionality of Accommodation of Individual Candidates and Elimination of Presidential Thresholds from the Perspective of the 1945 Constitution

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Abstract: Indonesia will hold presidential and vice-presidential elections, however, currently, the election mechanism for presidential and vice-presidential candidates only accommodated nominations through political parties and also still uses the provisions of the Presidential Threshold. Indonesia is a country that adheres to a democratic system which of course strongly adheres to the principle of people's sovereignty which guarantees the rights of all its citizens, and should also accommodate the mechanism of presidential nomination through individual or independent channels. Thus, blocking the rights of some citizens who wish to nominate themselves through non-political party channels, indicates that democratic principles have not been implemented properly. Based on this background, the formulation of the problem, how is the accommodation of individual candidates in the presidential election and the elimination of the presidential nomination threshold in Indonesia and the solution as a democratic country from the perspective of the 1945 Constitution? The type of research used is juridical-normative research, in designing the format of the mechanism for the recruitment of candidates for president and vice president in the electoral system in Indonesia, it must be by democratic principles, this is based on the preamble of the 1945 Constitution as the highest law in Indonesia that adheres to the principle of people's sovereignty. To implement democratic principles well in general elections, Indonesia needs to apply a two-door recruitment mechanism format, which is a format that provides two kinds of doors as a nomination pathway. Based on this, it is necessary to immediately implement and realize a two-door nomination mechanism, namely through political parties and also through individual or independent channels in the Presidential Election and it is also necessary to remove the Presidential Threshold to carry out democratic elections. and justice to maintain peace and prosperity.

Keywords: Individual Candidates, Presidential Threshold, The 1945 Constitution.

1. Introduction

One of the most important elements in the nation is the leader. In Indonesia, the presidency is held by a president. The 1945 constitution of the Republic of Indonesia mandates that general elections are being held for choosing the leader of Indonesia (president and the vice president, also a member of the People's Representative Council ("DPR") and the Regional People's Representative Council ("DPD")). General elections are a procedure in which occurs a peaceful transfer of power by the ideal of the constitution [1]. As a result, general elections play an important role in the Indonesian government.

In 1998, after the reformation was done [2], there were fundamental changes in the constitution of the state of the Republic of Indonesia of the year 1945. This incident was the beginning of the process of desacralization of the constitution of the state of the Republic of Indonesia of the year 1945 which during the New Order regime still tended to be very sacred. Looking back, from 1999 to 2002, there was an amendment to the 1945 Constitution for about four years. The changes that took place had a broad impact on the constitution and state administration structure of Indonesia.

Reform has brought the agenda by promoting democracy in a constitutional life in Indonesia. Therefore, it is freedom of expression as the Indonesian people's revenge against the New Order government for carrying out an authoritarian movement and distorting freedom of expression (democracy). The rights of the people to participate in elections have been ignored because the People's Consultative Assembly (MPR) has power as the sovereignty of its people. Having this power allows the MPR to fully control the presidential election, giving the president total power. This is an example of an electoral system that appears solely as a formal agenda to carry out the mission of the 1945 Constitution. The public is outraged by this traumatic experience, and they were demanding a change to a democratic, representative, and aspirational presidential election system.

The storm of democracy that occurred in the constitutional system in Indonesia was very clearly seen after the reforms were overthrown, this was very clear in the presidential and vice-presidential election systems. After the third amendment was made, the election (presidential election) was held directly. This note is intended as a sign of progress in Indonesia's leadership election system. However, a closer examination reveals that Indonesia's system that applies to presidential elections is not democratic yet. Why is that? we can see from the side of the mechanism for the recruitment of candidate leaders, which continues to accommodate only the candidacy based on political parties. Of course, a result of this provision, closing the door to other Indonesian citizens who can lead and the desire to run for office but do not have the "vehicle" of a party. A country is considered to have a democratic system if it holds to the principle of people's sovereignty, which ensures that all the rights of its citizens are protected.

This issue is also important to study considering that there is a large public desire to be accommodated by other nomination pathway mechanisms such as the independent pathway. According to a poll conducted by the Indonesian Survey Institute (LSI) in 2007 and 2008 with a total sample of 1,300 people. As a result, the majority of Indonesians (65%) support independent candidates, while a minority (35%) do not (22 percent). With a 3% margin of error, the percentage of ups and downs is 62 percent and 68 percent respectively [3].

This issue is also important to consider the public's strong desire to accommodate other legislative control mechanisms, such as independent pathways. According to a survey conducted by the Indonesian Survey Institute (LSI) in 2007 and 2008 with a total of 1,300 samples. As a result, the majority of Indonesians (65%) support independent candidates, while the minority (35%) is not (22 percent). With a margin of 3% error, a percentage of 62 percent increase and 68 percent each [3].

Based on the survey, shows that the Indonesian agree with it. Nevertheless, the individual nomination path has not been realized because it is contrary to the provisions contained in Article 6 Paragraph (2) of the 1945 Constitution. The article states that "The pair of candidates for President and Vice President is proposed by a political party or coalition of political parties participating in the general election before the implementation of the election. general." So, based on the Article, we can conclude that there is only one way to find candidates for President and Vice President, namely by monitoring one political party. This means that anyone who wants to run for President or Vice President must go through the "vehicle" of a political party [4].

Thus, after the change in the mechanism for the one-way nomination route, the provisions of Article 6 A paragraph (2) of the 1945 Constitution apply. The sight of this mechanism can detect only one nomination route, that is, the political party line, it is likely that alternative candidacy might be eliminated. Any candidate who wants to run must be supported by their political party under this

system. As a result, candidates who are not supported by political parties will not be able to run in elections.

2. Literature Review

Article 6 A paragraph (2) of the Constitution contains "constitutional irregularities" according to the law. What is the reason? We can observe when Article 1 paragraph (2) of the 1945 Constitution (change) returns sovereignty to the people, but candidates for state leaders and their representatives are still based on political parties in terms of direct elections by the people. Because the constitutional law has returned the people's sovereignty to its owner, individual nominations or outside the acceptance of political parties must be given proportional consideration [5].

According to Prof. Jimly Asshiddiqie, a country can claim to have people's sovereignty if its constitutional life has fully embraced and anchored democratic values [6]. People's sovereignty is positioned as the most important criterion for a country that wants to embrace a democratic system because people's sovereignty is the embodiment of a democratic society where people hold the greatest power [7]. Indonesia is a country that adheres to the philosophy of sovereignty. This principle has been held by the Indonesian since the proclamation of independence and the formation of a state organization. "...Freedom of the Indonesian was later introduced into a Constitution of The Republic of Indonesia which established in the state of the sovereign of the people...", as stated in paragraph IV of the preamble to the 1945 Constitution [8]. As a result, democratic values are a non-negotiable "price set" under the Indonesian constitutional structure.

The people's political rights to participate in general elections as presidential and vice-presidential candidates are unconstitutional, according to Article 6A paragraph (2) which is contrary to the preamble and the text of the 1945 Constitution. Thus, if these rights are prevented, it is violated or contradicted the principles of the 1945 Constitution of the Republic of Indonesia as the existing democratic principles. This is by the view of Franz Magnis Suseno that what distinguishes a democratic country is the guarantee and maintenance of basic rights that are carried out properly and peacefully [9]. Based on the Article 6 A paragraph (2), has covered the right of citizens who do not have political parties to run for election. If we understand, the constitution has also provided guarantees of equality in a government and law. Thus, if this provision persists, Indonesia will not be able to become a democratic country.

Meanwhile, Ulf Sundhaussen argues that a country's political system is democratic if it fits certain criteria, one of which is that citizens have the right to vote and be elected in regular, free, and effective general elections that allow for a ruling class [10]. In this case, the terms of the recruitment mechanism which only accommodates candidates promoted by parties are contrary to this requirement for not giving equal opportunities for all citizens to be elected.

This situation could threaten the establishment of a state that has sovereignty over its people, as mandated by both the preamble of the 1945 Constitution and its body. Hence, it is necessary to reform or amend these provisions to change the implementation of the principles of democracy to be better, in which a sovereign state of the people will be created. Based on the perspective of the Indonesian constitution, the provisions of Article 6 A paragraph (2) of the 1945 Constitution after the amendment are very likely to be declared null and amended. It is because the concept of law enforcement in Indonesian constitutional law is based on the theory of Stufen Hans Kelsen. It is very important, according to the interpretation of this theory, that lower-level norms are translated consistently with higher level norms [11]. However, it is necessary to identify first the position of the 1945 Constitution in the Indonesian legal system so that its position can be known.

Mustafa Kamal Pasha explained the outbreak about the problems above, the side of constitutional law. The Preamble to the 1945 Constitution of the Republic of Indonesia has a higher position, which has been separated from the body of the 1945 Constitution itself. Thus, in other words, the body of the 1945 Constitution has a lower position than the Preamble to the 1945 Constitution. Nevertheless, it remains attached to its body in organism-to-organism causal interactions. Because the Preamble of the 1945 Constitution contains the main ideas and basic principles of the state, which must be included in the articles of the 1945 Constitution, it is considered to have an organizational causal relationship [12]. Based on the philosophical point of view, the opening of the 1945 Constitution as the highest norm is the *modus vivendi* of the Indonesian to live together in one pluralistic nation. It is also called a birth certificate because as "*modus vivendi*", the certificate contains the proclamation of the Republic of Indonesia, as well as self-identity and actions to achieve the goals of the nation and state.

Of course, if the Preamble to the 1945 Constitution is changed, the existing state of Indonesia will no longer be Indonesia whose deed was released on August 17 1945 but it was born elsewhere.

If we classify together using the ideas of Hans Nawiasky, it will be in line with this discussion because it is the basis or basis of state legislation, the position of the 1945 Constitution can be classified as a form of *Staatgrundgesetz*. Meanwhile, because it is a fundamental norm, it can be classified as a *Staatfundamentalnorn* when compared to the Preamble to the 1945 Constitution. If we sort things according to the *Stufen Theory* hierarchy, the position of *Staatgrundgesetz* is lower than the position of the *Staatfundamentalnorn*. Article 6 A paragraph (2) of the 1945 Constitution which regulates the recruitment process for candidates for leaders and their representatives is not by the idea of people's sovereignty contained in the preamble of the 1945 Constitution. In other words, Article 6 A paragraph (2) of the 1945 Constitution contradicts the preamble that has a higher position. As a result, if Article 6 A paragraph (2) of the 1945 Constitution is related to the legal concept of *lex superior derogat lex inferior*, it can be revoked by law.

The 1945 Constitution as the basis of the Indonesian state guarantees that the rights of the people are protected. The requirements of Article 6 A paragraph (2), on the other hand, implies that the right to offer candidates for state leaders and their representatives is the "exclusive right" of the party. As a result, it violates some of these constitutional rights. Equality before the law, government, and political rights, as stated in the 1945 Constitution Article 27 paragraph (1) and Article 28 D paragraphs (1) and (3) have violated Article 28 I paragraphs (2) and (5) of the 1945 Constitution which guarantees the right to be free from discrimination and human rights are protected by the principles of a democratic rule of law. Consequently, there is no doubt that this clause is inconsistent with current human rights norms.

Therefore, the rights granted and regulated by the 1945 Constitution should not be negotiated with the rights that are regulated in the 1945 Constitution, because they have become an intrinsic element. As a result, political parties involved in the nomination of candidates for President and Vice President must also provide opportunities for citizens to become partners of the President and the Vice President without having to rely on the nomination mechanism of political parties, so no more citizen wants to nominate himself is being rejected. Thus, this article is written since we have a problem that will be studied, namely: How is the Accommodation of Individual Candidates in the Presidential Election and the Elimination of the Presidential Threshold Candidate in Indonesia?

3. Methodology

This research is a normative-legal-research, namely research that uses library materials or secondary data consisting of primary legal materials, legal materials and secondary as primary data. The nature of legal research is in line with the nature of legal science, namely prescriptive which studies the purpose of law, legal concepts, and legal norms [13]. The data used are library materials which are commonly referred to as secondary data [14]. Secondary data includes official documents, textbooks, research results in the form of reports, regulations and policies related to partnerships. The data collection technique was carried out through library research, namely by collecting secondary data by studying books, laws and regulations, MK decisions, internet media, journals, and related research results. The data analysis method uses qualitative analysis, namely the analysis of legal materials based on concepts, theories, laws and regulations, expert views in related fields, then interpreted in order to draw conclusions and suggestions from the problems of this research.

4. Finding and Discussion

4.1. Civil and Political Rights in the Democratic Constitutional Law System in Indonesia

The concept of democracy always gives its people a place in such a strategic position in the state of the administration system. Although there may be variations from country to country depending on the number of implementations. This is because there are variants related to the implementation of existing democracy, which are referred to as variants of the concept of democracy in the state, such as constitutional democracy, parliamentary democracy, guided democracy, Pancasila democracy, people's democracy, soviet democracy, national democracy, and so on [15]. The democratic ideal is closely related to the principle of popular sovereignty according to which 'the people's unified will is the supreme authority in the state'. 'The deep state' is a theme in a recent conspiracy theory according to which opaque segments of the public administration prevent the will of the people from being fully reflected in public policy and law [16].

Based on the etymology that the notion of democracy itself is related to or comes from the word "demos" which means the people and "creating" which means to rule, thus, the word democracy can be understood with the understanding of the people ruling [17]. In his book, R. Kranenburg gives the interpretation "Inleiding In De Vergelijkende Staatsrechtwetenschap," which means the way of governing by the people, according to the definition of the word democracy, which comes from two Greek words [18]. Terminologically, it provides the following explanation of democracy [19]. "A democratic political system is a system where general policies can be determined on a majority basis by representatives who are effectively supervised by the people in periodic elections based on the principle of political equality and held in an atmosphere of guaranteed political freedom."

Sidney Hook, proposed the concept of democracy as a kind of government in which government decisions are policy orientation and, more importantly, behind direct decisions based on majority rule freely and widely mandated (majority rule). As a result, the ultimate of the people's level provides provisions on the most important issues that affect their lives, which can also be included in judgments related to state policies that affect their lives [20]. As a result, democracy in the form of political ideology has five (five) criteria [21]: First, the existence of equal voting rights to determine collective decisions that have a strong binding effect; second, effective participation is the existence of equal opportunities for all citizens in the joint decision-making process; third, truth-telling is the existence of equal opportunities for everyone in assessing the course of the political and government process; and fourth, there is final control over the existing system; and fifth, coverage, is the involvement of people which can cover all adults by applicable law.

Herz and Carter conceptualize that democracy as a governmental organization that can be characterized by the following principles [22]; First, there are restrictions on government action in protecting individuals and groups by arranging for periodic, orderly, leadership changes. and peace, and through effective forms of representation; second, there is an attitude of tolerance towards contradictory differences of opinion; third, the existence of equality in the eyes of the law by realizing an attitude of submission to the rule of law without discrimination; and fourth, the existence of equality in the eyes of the law by realizing an attitude of submission to the rule of law without; Fifth, by providing freedom of opposition and participation to social organizations, political parties, communities, and individuals, as well as public opinion infrastructure such as the press and mass media; sixth, by respecting the right of people to express their opinion, even if it is wrong and unpopular; and seventh, by fostering an attitude of respect for the rights of existing minorities and individuals by prioritizing the use of forum discussion.

According to Mayo [23], the ideals that must be fulfilled in the criteria of democracy are as follows: First, by solving all problems peacefully and by being institutionalized. Peaceful conflict resolution); second, by guaranteeing peaceful change in a society that lives in a changing society (peaceful change in a changing society); third, with an orderly succession of rulers; fourth, by limiting the use of violence to the bare minimum (minimum of coercion); fifth, with a reasonable acknowledgment and assumption that there are differences or diversity in the existing community environment by reflecting the diversity of community philosophies (minimum of coercion); and fifth,

Jimly Asshiddiqie offers a more participative conception of democracy as the power exercised by, for, and for the people [24]. This means that the authority is recognized as coming from the people, and it is the people who can determine, direct, and run the wheels of state life. The entire administrative system that exists in this country is probably basically designed for the people themselves. The state can be described as good, and ideally, it should be kept together by the people in the sense of involving the whole community in the fullest sense.

Thus, based on the discussion related to the conception of democracy above, it is clear that democracy is fundamentally very closely related to the conception of the sovereignty of a people. Bagir Manan, in this connection, explained that a democratic country is a country that can place its highest power to the people themselves. This explanation provides a clear understanding that indicates a relevant relationship between people's sovereignty and democracy. People's sovereignty is seen as a prerequisite for a country adopting a democratic system.

It is important to define the notion of sovereignty before discussing the relationship between democracy and sovereignty. The word sovereignty in English has the same meaning as the Dutch word *Sovereiniteit*, which means supremacy. Since sovereignty concerns the greatest power that governs the country, it may be related to power. Supremacy, as the highest authority in a country, is subject to three conditions [25]:

- a. Round, should not be divided, thus, is the highest power in the state.

- b. Original, Higher powers cannot be chosen by the highest powers.
- c. Perfect has no limits and no more power above it that limits it.

Jean Bodin was the first to bring up the idea of sovereignty, which said that sovereignty is the highest power over the people and its people who are not limited by law, and this supreme power belongs to the State. By that definition, Bodin is a pioneer in the theory of state sovereignty. The position of the state is above all, even above the law, because the law is made by the state. Sovereignty, according to Rousseau, is founded on the general will (*volonte general*) and is demonstrated through law based on empathy, as follows:

- a. Imprescriptible means sovereignty belongs to the people at all times, which does not decrease or increase, not a right or something that can be lost or drowned, but a higher power that is permanent, such as the rise and fall of the people.
- b. Indivisibility is that the existing sovereignty, such as the state or the people that implement and holds all the terms of sovereignty, cannot be divorced.
- c. Unite is the belief that the spirit of those who have the right to rule but do not want to be ruled is one, and that this unity can be seen in the making of laws and the administration of justice.
- d. Inalienability is that the existing sovereignty cannot be exchanged, pledged, or bestowed; sovereignty belongs to the state and is passed down from generation to generation; this trait is inherent in the essence of sovereignty.

Rousseau also argues that people's sovereignty has two assumptions in its implementation, the people who are not citizens on the one hand and the guidance that all existing powers should be identical to the will of the people on the other. Thus, a country does not have the right to place any obligations or restrictions on its people, without mutual consent. The people have full authority in determining themselves, thus nothing has authority over the people [26].

If we consider it in the context of the existing state, we may agree that sovereignty currently gives the greatest authority to control the government of the state to the people, and the people can decide for themselves how they should be governed. The issue of public sovereignty according to the Indonesian constitutional system, as stated in Article 1 paragraph (2) of the third amendment to the 1945 Constitution. Textually, the provisions of the article imply that the realization of people's sovereignty can only occur if it is carried out by the mandatory requirements of the 1945 Constitution. People's sovereignty must be regulated and subject to constitutional limitations. As the result, the constitution has supremacy over the sovereignty of the people, and this section can be considered to include the notion of constitutional democracy.

In the connection between democracy and people's sovereignty, Jimly Asshiddiqie stated that the elements or characteristics of democracy must be able to include an understanding of people's sovereignty, namely that in essence the highest power that exists is fully in the hands. from the people, and can be carried out by and for the people, and by keeping it open to the greatest part of the population. As a result, we can see that the idea of sovereignty is a manifestation of today's democracy. As a result, it would be relevant if we claimed that both had very close and inseparable relationships because democracy could not exist without the sovereignty of the people.

According to Satya Arinanto, the concept of democracy in Indonesia is generally related to a democratic culture based on Pancasila and the 1945 Constitution [27]. Its implementation can be carried out on a form of government that sets policy on a decision, either directly or indirectly, that is approved by the majority of the community. The implementation is illustrated through the relationship between the executive and the legislative in a policy aimed at the people. Based on the explanation on the theoretical basis, Next, we will consider the accommodation of individual candidates in the presidential election as well as the elimination of the threshold for presidential candidacy.

4.2. Accommodation of Candidates in Presidential Elections and Elimination of Thresholds for Presidential Candidacy

Since the policy regarding this system will be drawn up within the framework of laws and regulations, the ideal form of the candidacy system for presidential and vice presidential candidates must be determined in a straight line by the principles and principles contained in the preamble. The 1945 Constitution is the highest norm in Indonesia. This is important considering that Indonesia adheres to the *Stufenbau* Hans Kelsen law philosophy in making laws and regulations. Because the Preamble of

the 1945 Constitution is the highest norm by the notion of popular sovereignty, the ideal form of the system must be adjusted to democratic values.

It is undeniable that democracy is like a wave that washes away the sands of the continents of the world. The sweeping wave of democracy finally took place in Indonesia, in the vortex of the third wave that began in the 90s when the supremacy of socialism fell to pieces in Eastern Europe and the Soviet. The most important indicators of the democratization process include the Suharto government, the multi-party elections that began in 1999, and the freedoms that have been maintained since President BJ Habibie [28]. However, long before that, the concept of democracy in Indonesia was already known in all Indonesian constitutions. All of these constitutions clearly and explicitly stipulate "democracy" as its fundamental principle [29].

A study report funded by UNESCO in the early 1950s which includes more than a hundred western and eastern experts stated that democracy is the most appropriate and ideal basis and system for all political organizations and organizations, which has an impact on the fast wave of democracy. None of these academics responded with a negative response. Consequently, the outcome of these study is very important for future studies about democracy. Meanwhile, British Prime Minister Winston Churchill said, "It has been said that democracy is the worst form of government except for all the others that have been tried".

Regarding the concept of democracy and its characteristics, we can find various opinions of experts or literatures. However, in simple terms, almost all experts define democracy as the "government of the people, by the people, and for the people" Regarding to the characteristics of a democracy, some "democratic theorists" said that one of the most important characteristics of democracy is the succession of leadership. In modern countries, the succession of leadership is carried out in a general election process. Among them, we can mention Gwendolen M. Carter, John H. Herz, and Henry B. Mayo. Carter and Herz consider a peaceful change of leader accompanied by an effective people's representation as one of the main criteria of democracy. While Henry B, Mayo requires regular changes as an important criterion of democracy.

Elections are one of the most basic elements of democracy and can be used to measure the democratic progress of a country. There are at least three characteristics that can be used as a basis for assessing how effectively democracy functions in a country, according to Ahmad Rozak. The three characteristics are as follows: first, elections are widely regarded as a key mechanism for changing governments around the world. Second, the formation of state power, especially state power, is carried out in a distributed manner to avoid the concentration of power on one side or in one region. Third, people's control, namely symmetrical and well-connected power relations, through the establishment of checks and balances for the executive and legislative authorities.

In essence, as stated by various democratic thinkers above, Indonesia has fulfilled the qualities of a democratic state because, in Indonesia, elections are held every five years for a change of government. However, the problem is that the general election system in Indonesia still does not follow good democratic norms. This can be observed in the law governing the candidacy of president and vice president, which only allows candidacy through political parties, thus limiting the rights of people who wish to nominate themselves through non-political channels. In fact, in a democratic government, guaranteeing and protecting individual rights is a key concept that must be followed. In addition, elections are one of the benchmarks used to assess how effectively democracy is running; if this trend continues, the speed of growth and development of democracy in the Indonesian constitutional system will be hampered.

Further on the principles of democracy, we can see the following expert opinions Bingham Powell Jr. as quoted by Dahlan Thaib said that the principles of a democratic political life include [8]:

- a. Claimed that the government represents the people is the legal basis for the government;
- b. Control for those who make negotiations (bargaining) to obtain legality is carried out through competitive elections. According to Nohlen, there are three types of elections, namely: 1) competitive elections based on a democratic system, 2) semi-competitive systems based on an authoritarian system, and 3) non-competitive elections based on a totalitarian system;
- c. Usually, people who have grown up can participate in the election process, either to become voters or to be elected;
- d. In conducting elections, voters vote without coercion and secretly;
- e. Leaders and the community feel the basic rights they have.

In a book entitled "Indonesian Politics Transitioning Towards Democracy" Affan Ghaffar points out several principles of democracy, as follows [30]:

- a. There is accountability on the part of officials, meaning that those who are elected must be responsible for their positions;
- b. In a democracy, there must be a peaceful change of power.
- c. Accepting political open, which means that everyone has the right to participate in a competition to occupy a certain position, provided that they have previously fulfilled the requirements to nominate themselves and be elected by the people;
- d. Regular elections with the aim that all citizens who are deemed eligible can take part in the general election by exercising their right to vote and be elected for it;
- e. Have and enjoy the basic rights, namely the rights that every citizen has without distinction. Freedom of expression, freedom of assembly and association, and the right to enjoy news and information are examples of essential rights.

Meanwhile, Robert Dahl stated that there are seven indicators regarding democracy, including the following:

- a. Elected politicians have constitutional authority over policy decisions made by the government.
- b. Officials elected and dismissed without coercion in free and fair elections;
- c. The majority of people are entitled to run for public office whose candidates will be selected in this election;
- d. Almost every adult has the right to vote in presidential elections;
- e. Citizens have effectively enforced the right to freedom of expression, particularly political expression, which includes criticism of officials, government actions, and dominant political, economic, and social institutions and ideas;
- f. They also have access to alternative sources of information that are not controlled by a government or single organization;
- g. Finally, people have an effectively enforced right to organize and join independent organizations, such as political parties and interest groups, that seek to govern through elections and other peaceful ways.

We hope that the existing election system does not deviate from the principles of democracy, thus we can conclude that relating to the criteria and principles of democracy formulated by the experts above, which will become the common ground and the basis for making a system for nominating candidates for leaders and their representatives in the election system in force in Indonesia, among others [31]:

- a. by ensuring the right of citizens to participate in passive voting. Passive voting is the right of citizens to be elected to certain positions;
- b. Ensure equal opportunities for all eligible citizens to run.
- c. Can accommodate diverse candidates to achieve an open system of political acceptance;
- d. Increase the level of competition in elections.

The application of the system through the candidacy of another route, namely the two-door route which is a system of procuring two types of doors as a nomination, can be used to apply the four sets above. Political parties open the first door, while individual channels open the second door. Candidates sponsored by the political parties participating in the election can be placed at the first door. Meanwhile, the second door is reserved for non-party candidates who wish to nominate themselves [33]. The relevance of the two-door route nomination system with the 4 sets above can be explained as follows:

- a. With the availability of a two-door candidacy route, the passive rights of citizens are guaranteed, meaning that citizens who are not nominated by political parties can still use their rights independently;
- b. With the availability of a two-door candidacy route, the state can provide equal opportunities for every citizen to nominate themselves as a candidate for president and vice president;
- c. The availability of a two-door candidacy procedure will provide a wider selection of candidates, and the general election will be more competitive.

Adopting the two-door candidacy system, the result will create a democratic election environment. Since it will provide a wider selection of applicants, the system will provide more competitive competition. This method will certainly make individuals pickier in choosing candidates. Meanwhile, political parties are required to be more active in developing their candidates and improving themselves so that they can carry out their full responsibilities in the democratic political system [33]. The results are that the election will find the next president and vice president who are qualified with credibility, honesty, and a high concern for the people. Furthermore, the requirements for the nomination of President and Vice President in holding presidential elections in Indonesia still refer to the Presidential Threshold for Presidential and Vice-Presidential Candidates which was amended in 1945.

The Act number 42 the Year 2008 is one type of legal policy issued by the government regarding the percentage threshold regulation, with the aim that the presidential government system in Indonesia can well-run. The Percentage Threshold Provision, on the other hand, has prompted submissions to the Constitutional Court to review many provisions in Law Number 42 of 2008 which contradict the 1945 Constitution of the Republic of Indonesia (MK). The Constitutional Court issued several verdicts until the last verdict of the Constitutional Court Number 14/PUU-XI/2013 which granted the Simultaneous General Elections in Indonesia by 2019, and in that verdict, the Court ruled on the article regarding the determination of the threshold, in this case, the Court agrees that the threshold provisions is an open legal policy that forms laws to determine the procedure for holding a good general election, and in that decision, the Court decides on the article regarding the determination of the threshold, in this case, the Court sets the argument [34].

There are several reasons submitted to the Constitutional Court of the Republic of Indonesia against the Presidential Threshold in Law Number 7 of 2017 concerning Elections [35]; These reasons include irregularities in the determination of the Presidential Threshold in force, especially the results of the 2014 legislative elections. Considering that the results of the current election are used to determine the procedure for nominating the president and vice president in 2014, it can be concluded that Indonesia is the only country in the world that stipulates the Presidential Threshold system based on previous election results.

Furthermore, the actuality of the results of the 2014 election cannot be separated from the long and convoluted nomination process that starts from registration, continues with campaigning, and ends with the process of determining the winner of the election in various conditions and circumstances. Finally, the coercive character of the results of the 2014 elections, which were held consecutively, could hinder new political parties from submitting candidates for leader and deputy leader in the 2019 elections.

The applicant proposed a new legal breakthrough for democracy in Indonesia based on the Constitutional Court Decision No. 14/PUU-XI/2013 which partially allowed many case. The Constitutional Court has expressly overturned the Presidential Threshold rule in Indonesia's electoral system with this decision. Previously, it was seen as a means of preventing small parties from gaining power. The reason is that the DPR requirement of 25% (percentage) of national valid votes and 20% (percentage) of the number of seats, will eliminate the ability of small parties to put forward presidential and vice-presidential candidates in pairs.

Determination of the Presidential Threshold, for those who support the regulation of the 20 percent threshold as a means of preserving and strengthening the current presidential system. The current mechanism that can provide solutions for political parties that can still participate in the next election cycle is one of the most important factors. In addition, they are indirectly involved in the process of regulating the implementation of democratic freedoms which are not absolute. Last, by getting a minimal push to sit in parliament as a means to ensure that the president and vice president are going to be elected. As a result, with this minimal assistance, it can at least affect stability, to continue the wheels of government in the realm of the executive. Although there are still shortcomings in the implementation of the Presidential Threshold, the attitude of the representatives of the parliament in revising the regulation remains unchanged.

The basis for enforcing the presidential threshold is to achieve good governance by the elected presidential candidate, simplification of the party and screening the candidates for President and Vice President are also not necessarily correct. This is because before proposing candidates from each political party, the KPU first will select all candidates for President and Vice President, this is a form of simplification of the party system.

In fact, in a presidential government system, the principle of holding presidential and vice-presidential elections does not require a quota of seats in parliament [36]. This explains why the presidential threshold requirements for the nomination of pairs of presidential and vice-presidential candidates are not by government principles. The separation of executive and legislative institutions (the executive is not dependent on the legislative) is a fundamental basis of the presidential government system [37]. Given the importance of holding democratic and fair presidential elections to provide equal opportunities in the eyes of law and politics. Therefore, it is necessary to implement and realize the acceptance of individual candidates in the Presidential Election and the Elimination of the Presidential Threshold.

5. Conclusion

To find the ideal form of the presidential and vice-presidential nomination system, it must be determined in a straight line by the principles contained in the preamble to the 1945 Constitution which is the highest norm of Indonesia. However, the current presidential and vice-presidential nomination system, which only accepts nominations through political parties, has restricted the rights of some citizens who want to run through non-political or individual channels. In fact, in a democratic country, providing guarantees and protection of the rights of citizens is a fundamental principle that must be obeyed. Indonesia needs to implement a two-doors nomination system, which presents two types of doors as a nomination route so that democratic principles in elections can be implemented properly. Political parties are the first door, and independent (individual) channels are the second door. The first door is reserved for candidates supported by the political party that running for the election. Meanwhile, the second door is for non-party candidates who want to run for themselves. A more democratic electoral atmosphere will be created by implementing this two-door nomination system. Since it will present more diverse candidates, the system will present more competitive competition.

Furthermore, the Presidential Threshold provisions for presidential and vice presidential candidates are still used in the presidential and vice presidential nomination system in the holding of presidential elections in Indonesia (Presidential Threshold). This shows that the principles of democracy have not been implemented properly and are also not in line with the actual principles of the presidential system of government adopted by Indonesia, because the presidential system of government does not require a quota of seats in parliament to hold presidential elections and the Vice President [37]. This explains that the presidential threshold requirement for the nomination of pairs of presidential and vice-presidential candidates is not by the principles of the government system. For this reason, it is necessary to immediately implement and realize a two-door nomination system, namely through political parties and through an individual in the Presidential Election, and also the Elimination of the Presidential Nomination Threshold to carry out democratic and fair elections to maintain peace and prosperity.

References

- [1] M. R. Karim, *Competitive Democratic Elections*. Yogyakarta: PT. Tiara Wacana Yogya, 1991.
- [2] O. Sirot, H. T. Atmaja, "Reformasi in 1998: Its Role and Impact on Solo," *Journal of Indonesian History*, vol. 9, no. 2, pp. 100, 2020.
- [3] Prayudi, "Considering Individual Candidates in the Presidential Election," *Jurnal Politica*, vol. 2, no. 1, 2011.
- [4] R. R. Dahlia, "Media Oligarchy in the Vortex of Presidential and Vice-Presidential Elections of the Republic of Indonesia 2019 to 2024," *Journal of Politik dan Pemerintahan*, vol. 2, no. 1, pp. 65-81, 2020.
- [5] N. Huda, *The 1945 Constitution and the Re-Amendment Idea*. Jakarta: Rajawali Press, 2008.
- [6] J. Asshiddiqie, *Constitutional law*. Yogyakarta: Islamic University of Indonesia Press, 2005.
- [7] B. Manan, *People's Sovereignty, Human Rights and the Rule of Law*. Jakarta: Gaya Media Pratama, 1996.
- [8] D. Thaib, *Sovereignty of the People, State of Law and Constitution*. Yogyakarta: Liberty, 1999.
- [9] F. M. Suseno, *Seeking Figures of Democracy; Philosophical Study*. Jakarta: Gramedia Pustaka Utama, 1995.
- [10] R. E. S. Fatah, *Problems and Prospects of Democracy in Indonesia*. Jakarta: Ghalia Indonesia, 1994.

- [11] J. J. Rousseau, *Du Contract Social (Perjanjian Sosial)*. Jakarta: Visimedia, 2007.
- [12] M. K. Pasha, *Pancasila, the 1945 Constitution and its Implementation Mechanism*. Yogyakarta: Mitra Gama Widya, 1998.
- [13] P. M. Marzuki, *Legal Research*. Jakarta: Golden, 2014.
- [14] S. Soekanto, and S. Mamudji, *Normative Legal Research: A Brief Overview*. Jakarta: PT Raja Grafindo Persada, 2015.
- [15] M. Koesnardi, and B. R. Saragih, *State Science*. Jakarta: Gaya Media Pratama, 1988.
- [16] L. Bechman, "Popular sovereignty facing the deep state. The rule of Recognition and The Powers of the People," *Critical Review of International Social and Political Philosophy*, vol. 24, no. 7, 2021.
- [17] H. C. Handoyo, *Constitutional Law, Citizenship and Human Rights*. Yogyakarta: Atma Jaya University Press, 2003.
- [18] K. Poerbopranoto, *Democratic Government System*. Bandung: Eresco, 1987.
- [19] M. Mahfud, *Law and the Pillars of Democracy*. Yogyakarta: Gama Media cooperate with the Foundation of Adikarya IKAPI dan The Ford Foundation, 1999.
- [20] D. Noer, *Introduction to Political Thought*. Jakarta: CV. Rajawali, 1983.
- [21] R. A. Dahl, *The Dilemma of Pluralist Democracy: Between Autonomy and Control*. Jakarta: Rajawali Press, 1985.
- [22] G. M. Carter, and J. Herz, *The Role of Government in Today's Society, in Miriam Budiardjo, State Issues*. Jakarta: Gramedia, 1982.
- [23] H. B. Mayo, *An Introduction to Democratic Theory*. New York: Oxford University Press, 1960.
- [24] E. Z. Zukaya, *Citizenship Education for Higher Education*. Yogyakarta: Paradigma, 2000.
- [25] M. Yamin, *Proclamation and Constitution of the Republic of Indonesia*. Jakarta: Ghalia Indonesia, 1982.
- [26] F. M. Suseno, *Political Etic*. Jakarta; Gramedia Pustaka Utama, 1999.
- [27] S. Arinanto, *Law and Dem*. Jakarta: Ind-Hill-Co, 1991.
- [28] J. J. Prihatmoko, *The 2004 Election and Consolidation of Democracy*. Semarang: LP2I Press, 2003.
- [29] M. Mahfud, *Democracy and Constitution in Indonesia; The Study of Political Interaction and State Administration Life*. Jakarta: PT Rieneka Cipta, 2000.
- [30] A. Goffar, "Dispute on Presidential: Decisions of the Constitutional Court and Other Countries' Experiences," *Journal of Contitution*, vol. 15, no. 3, 2018.
- [31] R. N. Arfani, *Contemporary Indonesian Democracy*. Jakarta: PT. Raja Grafindo Persada, 1996.
- [32] M. F. S. Widodo, et al., "Judicial Review regarding the Presidential Threshold at the Constitutional Court in the Optics of Human Rights," *Verfassung: Journal of Contitutional Law*, vol. 1, no. 2, 2022.
- [33] A. Fitri, and W. Setiadi, "Presidential Threshold in Simultaneous General Elections: Setback of Constitutional Democracy?" *Journal of Indonesia Legislation*, vol. 19, no. 1, 2022.
- [34] A. Ghaffar, *Indonesian Politics Transition Towards Democracy*. Yogyakarta: Pustaka Pelajar, 2004.
- [35] E. H. Abra, "Unfair Presidential Treshold in Indonesia Constitution" *Journal of Bawaslu Kepulauan Riau*, vol. 3, no. 2, 2021.
- [36] D. Hanan, "Strengthening Multiparty Presidentialism in Indonesia: Simultaneous Elections, Electoral Systems, and Party Systems," *Journal Paramadina University*, vol. 13, pp. 1451–1475, 2016.
- [37] Widaningsih, "Juridical Implications of the Constitutional Court's Decision on the Implementation of the 2019 Simultaneous General Elections," *Journal Cakrawala Hukum*, vol. 19, no. 1, 2014.