

Juridical Analysis of the Presidential Threshold in Indonesia

¹Farah Syah Reza & Andi Tenri Sapada
Universitas Muslim Indonesia

¹Correspondent E-mail: farahsyahreza@umi.ac.id

ABSTRACT

This study aims to determine the juridical fundamentals and analyze the constitutionality of the provisions of the Presidential Threshold against the 1945 Constitution. The type of research used is normative or doctrinal legal research using a comparative law approach. The method of analysis in this study is to use qualitative analysis. The study results indicate that the Presidential Threshold mechanism in Indonesia has had juridical fundamentals from 2004 until now. In this case, it includes Article 6A section (2) and section (5) of the 1945 Constitution, Article 5 section (4) and Article 101 of Law No. 23 of 2003, Article 9 of Law No. 42 of 2008, to Article 222 of Law No. 7 of 2017. However, Article 222 of Law No. 7 of 2017 is a closed legal policy and not an open legal policy. Therefore, the Presidential Threshold mechanism regulated in Articles of Law up to Article 222 of Law no. 7 of 2017 can be judged unconstitutional or contrary to the 1945 Constitution. Based on this conclusion, it is suggested that the Constitutional Court consider the juridical language of Article 6A section (5) of the 1945 Constitution. In this case, Law No. 7 of 2017 does not contradict the 1945 Constitution. In addition, it is also recommended for Legislators to make amendments to Law No. 7 of 2017. Furthermore, it is hoped that Legislators will consider increasing the Parliamentary Threshold as an effort to strengthen the presidential system in Indonesia.

Keywords: *The 1945 Constitution; Candidacy; Juridical Analysis; Presidential Threshold.*

Submitted: September 11, 2021

Accepted: November 27, 2021

Published: November 30, 2021

Doi: <https://doi.org/10.56087/aijih.v24i2.287>

INTRODUCTION

As a democratic state, Indonesia as based on Article 1 section (2) of The 1945 Constitution of the Republic of Indonesia (hereinafter referred to as The Constitution of 1945), which regulates that “Sovereignty is in the hands of the people and is implemented according to this Constitution”. The constitutional implication of the article requires that all State and government affairs must be carried out through democratic means, including the implementation of General Election (Election).

Before the third amendment to The Constitution of 1945, the people did not directly elect the President and Vice-President in Indonesia.¹ In this case, based on Article 6 section (2) of The Constitution of 1945, which regulates that “*the President and the Vice-President are elected by the People’s Consultative Assembly with the most votes*”. Because the People’s Consultative Assembly elects the President, the President is fully responsible to the People’s Consultative Assembly, and the People’s Consultative Assembly has the authority to dismiss the President.² In addition, the presidential election is considered undemocratic and tends to be politicized. Therefore, the People’s Consultative Assembly amended the Constitution of 1945 to strengthen the presidential system and improve the quality of democratization of the presidential election in Indonesia.³

The aspiration to strengthen the presidential system is manifested in the results of the third amendment, where the inclusion of Article 6A section (1) of the 1945 Constitution regulates that “*the President and Vice-President are elected directly as a pair by the people*”. It means that the people must directly elect the President to create a strong presidential system.

Article 6A section (1) of the 1945 Constitution has been implemented since the 2004 Election. One of the new things found in the 2004 Election was enacting rules regarding the threshold mechanism. In simple terms, the threshold is the minimum limit of support or votes that participants must have to obtain certain rights in elections. In terms of its functions and uses, the threshold’s application is to reduce the number of election participants, reduce the number of political parties in representative institutions, and reduce the number of political parties in nominating the President and Vice-President.

The threshold for the nomination of President and Vice-President is known as the Presidential Threshold.⁴ The Presidential Threshold is defined as the threshold for obtaining votes or obtaining seats that political parties must get in the Legislative Election to nominate candidates for President and Vice-President.⁵ The provisions regarding the Presidential Threshold always change every time an election is held. The conditions regarding the Presidential Threshold have been amended several times during the Presidential and Vice-Presidential Elections.

¹Abdullah, D. (2018). Implementasi Konsep Kedaulatan Rakyat setelah Perubahan UUD 1945 dalam Pengisian Jabatan Presiden. *Jurnal Hukum Positum*, 3(2), p. 153.

²Ristiawati, R. (2018). Pertanggungjawaban Presiden Menurut Sistem Ketatanegaraan setelah Perubahan UUD 1945. *Badamai Law Journal*, 3(1), p. 164.

³Wiyono, S., et al. (2020). The Effectiveness of Presidential Cabinet in a Multi-Party System in Indonesia. *European Journal of Political Science Studies*, 4(1), p. 17.

⁴Muzakkir, A. K., et al. (2021). Pembatalan Pembahasan Rancangan Undang-Undang tentang Penyelenggaraan Pemilihan Umum dan Keterkaitannya pada Pemilihan Umum Tahun 2024. *Pleno Jure*, 10(1), p. 62.

⁵Suparto, S. (2018). Presidential Threshold Between the Threshold of Candidacy and Threshold of Electability. *Jurnal Cita Hukum*, 6(1), p. 99.

The Presidential Threshold provision in the Presidential and Vice-Presidential Elections in 2004 was 3 percent. Furthermore, the Presidential Threshold in the 2009 election increased to 20% and continued until the 2019 Presidential and Vice-Presidential Elections. Based on Article 222 of Law of the Republic of Indonesia Number 7 of 2017 on General Election (hereinafter referred to as Law No. 7 of 2017), regulates that:

“The pair of candidates are proposed by political parties or coalitions of political parties which are participants in the general elections who meet the requirements for obtaining seats of at least 20% (twenty percent) of the total seats in the House of Representatives or obtaining 25% (twenty-five percent) of the national valid votes in the previous general election for members of the House of Representatives.”

Those who are pro against the above provisions consider the Presidential Threshold of 20% to create a more muscular presidential system. In this case, it will make it easier for the selected candidates to carry out their work programs in the future. In addition, the Presidential Threshold of 20 % is considered to reduce the number of pairs of candidates in the Presidential and Vice-Presidential Elections. Meanwhile, those who reject or oppose the implementation of the Presidential Threshold of 20% consider this provision as an anti-democratic form and can reduce the people’s right to obtain the President they want. In addition, it can close the opportunity for political parties that have minimal seats in parliament to nominate a pair of Presidential and Vice-Presidential candidates.

The implementation of the Presidential Threshold in Indonesia has been reviewed several times by the Constitutional Court. There are at least 4 (four) Decisions of the Constitutional Court on the implementation of the Presidential Threshold, namely Decision of the Constitutional Court No. 51-52-59/PUU-VI/2008, Decision of the Constitutional Court No. 14/PUU-XI/2013, Decision of the Constitutional Court No. 53/PUU-XV/2017, and Decision of the Constitutional Court No. 49/PUU-XVI/2018. This decision indicates that the judicial review of the implementation of the Presidential Threshold has not yet received the approval of the Constitutional Court.

Based on the description of the background above, this study aims to determine the juridical fundamentals of the Presidential Threshold in Indonesia from 2004 to 2017. Furthermore, to analyze the constitutionality of the provisions of the Presidential Threshold against the 1945 Constitution.

METHOD

The type of research used is normative or doctrinal legal research using a comparative law approach. The sources of legal materials used consist of:⁶

1. Primary legal materials, namely binding legal materials. In this case, in the form of laws and regulations, jurisprudence, treaties, and other crucial legal materials.
2. Secondary legal materials, namely materials that explain primary legal materials obtained from library studies. In this case, in the form of literature related to research problems.
3. Tertiary legal materials, namely materials that provide information and explanations about primary legal materials and secondary legal materials. In this case, in the form of legal dictionaries, newspapers, and encyclopedias.

The technique used in collecting research materials is library research, including collecting, reading, and browsing many journals, books, laws and regulations, scientific works, literature from the internet, and other materials. In this case, it is related and can support this research's preparation. All data that has been collected will then be classified and analyzed to produce conclusions from the materials obtained according to the problems discussed. The method used in data analysis is qualitative analysis, which describes quality data in regular, coherent, logical, non-overlapping, and effective sentences. In this case, to facilitate the analysis and interpretation of data.

RESULT AND DISCUSSION

A. Juridical Fundamentals on Presidential Threshold in Indonesia

1. Presidential Threshold in the 1945 Constitution

Article 6A of the 1945 Constitution does not regulate the Presidential Threshold. However, based on Article 6A section (2) of the 1945 Constitution, regulates that:

"The pair of candidates for President and Vice-President is proposed by political parties or coalitions of political parties which are participants in the general elections prior to the holding of general elections."

Furthermore, based on Article 6A section (5) of the 1945 Constitution, it regulates that *"the procedures for holding the election of the President and Vice-President is further regulated by law"*.

⁶Qamar, N. & Rezah, F. S. (2020). *Metode Penelitian Hukum: Doktrinal dan Non-Doktrinal*. Makassar: CV. Social Politic Genius (SIGn), p. 99.

The meaning of the above provisions gives the Government and the House of Representatives constitutional authority to make more comprehensive rules regarding the procedures for holding the election of the President and Vice-Presidential. However, the Law also regulates the Presidential Threshold. In this case, the Presidential Threshold is a condition for political parties to propose a pair of candidates in the General Election of the President and Vice-President.⁷

2. Presidential Threshold in Law No. 23 of 2003

Presidential Threshold, as based on Article 5 section (4) of Law of the Republic of Indonesia Number 23 of 2003 on the General Election of the President and Vice-President (hereinafter referred to as Law No. 23 of 2003), regulates that:

“The pair of candidates as referred to in section (1) can only be proposed by political parties or coalitions of political parties that obtain at least 15% (fifteen percent) of the total seats in the House of Representatives or 20% (twenty percent) from the acquisition of valid votes nationally in the general election for members of the House of Representatives.”

However, in the transitional provisions as based on Article 101 of Law No. 23 of 2003, regulates that:

“Specifically for the Presidential and Vice-Presidential General Election in 2004, political parties or coalitions of political parties that meet the requirements for obtaining votes in the general election for members of the House of Representatives are at least 3% (three percent) of the total seats in the House of Representatives or 5% (five percent) of the national valid votes in the general election for members of the House of Representatives in 2004 may propose a Pair of Candidates”

Based on the above provisions, the Presidential and Vice-Presidential Election uses a presidential threshold system for the first time. In addition, for the first time, the Presidential and Vice-Presidential were directly elected by the people. The elections, which were held on July 5, 2004, were followed by 5 (five) pairs of candidates for President and Vice-President, namely:

- 1) Wiranto-Salahuddin Wahid was supported and proposed by coalitions of political parties consisting of the Golkar Party, PPK, PPNU, and the Patriot Pancasila Party. In this case, it was obtaining accumulated 24.00% of total seats and 24.61% of valid national votes in the general election for members of the House of Representatives;

⁷Mas'udah, A. (2020). The Presidential Threshold as An Open Legal Policy in General Elections in Indonesia. *Prophetic Law Review*, 2(1), p. 43.

- 2) Megawati Soekarnoputri-Hasyim Muzadi was supported and proposed by coalitions of political parties consisting of the PDI-P and PDS. In this case, it was obtaining accumulated 22.18% of total seats and 20.45% of valid national votes in the general election for members of the House of Representatives;
- 3) Amien Rais-Siswono Yudo Husodo was supported and proposed by coalitions of political parties consisting of the PAN, PKS, PBR, PNIM, PPDI, PBSO, PNBK, and PSI. In this case, it was obtaining accumulated 20.73% of total seats and 20.01% of national valid votes in the general election for members of the House of Representatives;
- 4) Susilo Bambang Yudhoyono-Muhammad Jusuf Kalla was supported and proposed by coalitions of political parties consisting of the Democratic Party, PBB, and PKPI. In this case, it was obtaining accumulated 12.18% of total seats and 11.34% of valid national votes in the general election for members of the House of Representatives; and
- 5) Hamzah Haz-Agum Gumelar was supported and proposed by PPP. In this case, obtaining 10.55% of total seats and 8.16% of valid national votes in the general election for members of the House of Representatives.

The Presidential and Vice-Presidential Election in 2004 was held in two rounds. The second round was held on September 20th, 2004. In this case, the pair of candidates Susilo Bambang Yudhoyono-Muhammad Jusuf Kalla, won with 69,266,350 votes or 60.62% of 114,257,054 valid votes in the Presidential and Vice-Presidential Election in 2004.

3. Presidential Threshold in Law No. 42 of 2008

Presidential Threshold in Law of the Republic of Indonesia Number 42 of 2008 on the General Election of the President and Vice-President (hereinafter referred to as Law No. 42 of 2008) was changed to a higher percentage than the provisions in Law No. 23 of 2003. In this case, as based on Article 9 of Law No. 42 of 2008, regulates that:

“The pair of candidates are proposed by political parties or coalitions of political parties which are participants in the general elections who meet the requirements for obtaining seats of at least 20% (twenty percent) of the total seats in the House of Representatives or obtaining 25% (twenty-five percent) of the national valid votes in the general election for members of the House of Representatives, before the implementation of the General Election of the President and Vice-President.”

Based on the above provisions, the General Election of the President and Vice-President were two times that used this Law No. 42 of 2008. *First*, the 2009

elections was followed by 3 (three) pairs of candidates for President and Vice-President, namely:

- 1) Megawati Soekarnoputri-Prabowo Subianto was proposed by coalitions of political parties consisting of PDI-P and Gerindra Party. In this case, it was obtaining accumulated 21.43% of total seats and 18.47% of national valid votes in the general election for members of the House of Representatives;
- 2) Susilo Bambang Yudhoyono-Boediono was proposed by coalitions of political parties consisting of Democratic Party, PKS, PAN, PPP, and PKB. In this case, it was obtaining accumulated 56.61% of total seats and 45.00% of national valid votes in the general election for members of the House of Representatives; and
- 3) Muhammad Jusuf Kalla-Wiranto was proposed by coalitions of political parties consisting of the Golkar Party and Hanura Party. In this case, it was obtaining accumulated 21.96% of total seats and 18.22% of national valid votes in the general election for members of the House of Representatives;

The Presidential and Vice-Presidential Election in 2009 were held in one round, namely on 8 July 2009. In this case, the pair of candidates Susilo Bambang Yudhoyono-Boediono, won with 73,874,562 votes or 60.80% of the 121,504,481 valid votes in the Presidential and Vice-Presidential Election in 2009.

Second, the 2014 elections was followed by 2 (two) pairs of candidates for President and Vice-President, namely:

- 1) Prabowo Subianto-Hatta Rajasa was proposed by coalitions of political parties consisting of the Golkar Party, Gerindra Party, PAN, PKS, and PPP. In this case, it was obtaining accumulated 52.14% of total seats and 47.46% of national valid votes in the general election for members of the House of Representatives; and
- 2) Joko Widodo-Muhammad Jusuf Kalla was proposed by coalitions of political parties consisting of the PDI-P, PKB, NasDem Party, and Hanura Party. In this case, it was obtaining accumulated 36.96% of total seats and 39.98% of national valid votes in the general election for members of the House of Representatives;

The Presidential and Vice-Presidential Election in 2014 were held in one round, namely on 9 July 2014. In this case, the pair of candidates Joko Widodo-Muhammad Jusuf Kalla, won with 70,997,833 votes or 53.15% of 133,574,277 valid votes in the Presidential and Vice-Presidential Election in 2014.

4. Presidential Threshold in Law No. 7 of 2017

Law No. 7 of 2017 is the latest regulation related to elections ratified at the plenary meeting of the House of Representatives. The Presidential Threshold in Article 222 of Law No. 7 of 2017 has not changed based on the previous Law, namely Law No. 42 of 2008. On the other hand, the Presidential and Vice-Presidential Elections were held in conjunction with the 2019 Legislative Elections. In this case, the implementation of the Presidential Threshold for the Presidential and Vice-Presidential Elections in 2019 still refers to the 2014 Legislative Elections.

Based on Article 222 of Law No. 7 of 2017, the Presidential and Vice-Presidential Elections in 2019 were followed by 2 (two) pairs of candidates for President and Vice-President, namely:

- 1) Joko Widodo-Ma'ruf Amin was proposed by coalitions of political parties: the PDI-P, Golkar Party, PKB, NasDem Party, PPP, and Hanura Party. In this case, it was obtaining accumulated 60.18% of total seats and 61.26% of valid national votes in the general election for members of the House of Representatives; and
- 2) Prabowo Subianto-Sandiaga Salahuddin Uno was proposed by coalitions of political parties consisting of the Gerindra Party, Democratic Party, PAN, and PKS. In this case, it was obtaining accumulated 39.82% of total seats and 36.37% of national valid votes in the general election for members of the House of Representatives.

The Presidential and Vice-Presidential Election in 2019 were held in one round, namely on 17 April 2019. In this case, the pair of candidates Joko Widodo-Ma'ruf Amin, won with 85,607,362 votes or 55.50% of 154,257,601 valid votes in the Presidential and Vice-Presidential Election in 2019.

B. Constitutionality of Presidential Threshold against the 1945 Constitution

The Constitution (The 1945 Constitution) is the state's basic norm, the highest source of law in a country.⁸ As the highest source of law, the constitution is the rule that inspires all the formation of laws and regulations under it.⁹ This case includes forming laws as rules that are hierarchically under the constitution. The content of the law regulates orders and further elaboration of the constitution's contents. Therefore, the law must not conflict with the constitution at the time of its formation.

⁸Sudrajat, T. (2018). Harmonization of Regulation Based on Pancasila Values Through the Constitutional Court of Indonesia. *Constitutional Review*, 4(2), p. 314.

⁹Nail, M. H., et al. (2019). The Legal Meaning and Position of Pancasila as the Source of Legislation Formation in Indonesia. *Journal of Law, Policy and Globalization*, 90, p. 55.

Hans Kelsen introduced the “*stufenbau*” theory or hierarchy of laws and regulations.¹⁰ The theory explains that the legislation as a whole is like a pyramid. The basic norms at the top of the pyramid are universal and abstract.¹¹ So that the further down, the more diverse and more concrete.¹²

The hierarchy of laws and regulations in Indonesia as based on Article 7 section (1) of Law of the Republic of Indonesia Number 15 of 2019 on Amendment to Law Number 12 of 2011 on Legislation Making (hereinafter referred to as Law No. 15 of 2019), regulates that the types and hierarchy of Legislation are as follows:

- a. the 1945 Constitution of the Republic of Indonesia;
- b. the People’s Consultative Assembly Decision;
- c. Law/Government Regulation in Lieu of Law;
- d. Government Regulation;
- e. Presidential Regulation;
- f. Provincial Regulation; and
- g. Regency/Municipal Regulation.

The above provisions position the 1945 Constitution as the highest in Indonesia’s hierarchical order of laws and regulations. Furthermore, based on Article 10 section (1) point a of Law No. 15 of 2019, regulates that “*Material content of a Law contains further regulation of the provisions of the 1945 Constitution of the Republic of Indonesia*”.

The purpose of the above provisions is that the 1945 Constitution as a legal policy must be used as the basis for legislators to form and regulate the material content of the law. Likewise, with the Election Law, its formation must be consistent and not contradict and not conflict with higher legal norms, namely the 1945 Constitution.

However, Law No. 7 of 2017 raises the pros and cons and debates, especially related to the article regarding the provisions on the Presidential Threshold. Law No. 7 of 2017 is considered unconstitutional or contrary to the 1945 Constitution. The implementation of this system is regarded as an attempt to block the potential of Small Parties. In this case, implementing the requirements for obtaining seats of at least 20% of the total seats in the House of Representatives or obtaining 25% of the valid national votes closes the opportunity for small parties to propose candidates for Presidential and Vice-Presidential.¹³ Implementation of the

¹⁰Zalewska, M. (2018). The Metaphorical Aspect of Hans Kelsen’s Pure Theory of Law. *Principia, Uniwersytetu Jagiellońskiego*, 65, p. 202.

¹¹Riofrío, J. C. (2019). Kelsen, the New Inverted Pyramid and the Classics of Constitutional Law. *Russian Law Journal*, 7(1), p. 115.

¹²Ali, A. (2009). *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicialprudence): Termasuk Interpretasi Undang-Undang (Legisprudence)*. Jakarta: Kencana Prenada Media Group, p. 62.

¹³Armia, M. S., et al. (2016). Penghapusan *Presidential Threshold* sebagai Upaya Pemulihan Hak-Hak Konstitusional. *Petita: Jurnal Kajian Ilmu Hukum dan Syariah*, 1(2), p. 86.

Presidential Threshold based on Article 222 of Law No. 7 of 2017 resulted in only 2 (two) candidates in the 2019 Presidential and Vice-Presidential Elections.

Article 222 of Law No. 7 of 2017, which regulates the Presidential Threshold, has contradicted Article 6A section (5) of the 1945 Constitution. Article 6A section (5) of the 1945 Constitution orders further regulations regarding the procedures for holding the election of the President and Vice-President into Law. Meanwhile, Article 222 of Law No. 7 of 2017 instead regulates the requirements for political parties in proposing the pair of candidates for President and Vice-President. As for submitting for the team of candidates has been held in Article 6A section (2) of the 1945 Constitution. Therefore, Article 222 of Law No. 7 of 2017 is considered a contradiction against Article 6A section (5) and section (2) of the 1945 Constitution. In this case, the Presidential Threshold provision indirectly blocks several political parties from proposing the pair of candidates for their President and Vice-President.

The implementation of the Presidential Threshold in Indonesia has been reviewed several times by the Constitutional Court. There are at least 4 (four) Decisions of the Constitutional Court on the implementation of the Presidential Threshold, namely Decision of the Constitutional Court No. 51-52-59/PUU-VI/2008, Decision of the Constitutional Court No. 14/PUU-XI/2013, Decision of the Constitutional Court No. 53/PUU-XV/2017, and Decision of the Constitutional Court No. 49/PUU-XVI/2018. However, the Constitutional Court has always believed that implementing the Presidential Threshold in Law Number 7 of 2017 does not conflict with the 1945 Constitution to date.

The decision of the Constitutional Court No. 51-52-59/PUU-VI/2008 rejects the request for testing the Presidential Threshold, arguing that the provisions regarding the Presidential Threshold are considered an open legal policy. The open legal policy is a new term in Indonesian laws and regulations. In law, the concept of open legal policy is relatively new and was not known before. So far, the term policy is more widely known in public policy studies. A law-making policy is said to be open when the 1945 Constitution as a higher legal norm does not regulate or provide clear limits on what and how certain materials must be regulated by law.¹⁴

In several of its decisions, the Constitutional Court stated that there are provisions (norms) open legal policies. When a legal norm is included in the category of open legal policy, then the norm is in an area of constitutional value or according

¹⁴Wibowo, M. (2015). Menakar Konstitusionalitas Sebuah Kebijakan Hukum Terbuka dalam Pengujian Undang-Undang. *Jurnal Konstitusi*, 12(5), p. 199.

to the 1945 Constitution.¹⁵ Legal Considerations of the Constitutional Court in Constitutional Court Decision No. 51-52-59/PUU-VI/2008 on the judicial review of the Article regarding the Presidential Threshold, provides an interpretation that:¹⁶

“In its function as a guardian of the constitution, the Court is not possible to revoke the Act or some of its contents. In this case, if the norm is an open delegation of authority, it can be determined as a legal policy by the legislators. Even if the content of a law is considered not good, the Court still cannot cancel it. Because what is considered not good does not always mean unconstitutional unless the legal policy violates morality, rationality, and intolerable injustice.”

However, Article 222 of Law No. 7 of 2017 is not an open legal policy because Article 6A section (2) of the 1945 Constitution regulates the requirements for proposing the pair of candidates for President and Vice-President in Indonesia. In this case, legislators are not given the freedom to handle other matters in Law No. 7 of 2017 other than those mandated by Article 6A section (5) of the 1945 Constitution. This case ensures the implementation of Article 6A section (1) of the 1945 Constitution. In contrast, Article 222 of Law No. 7 of 2017 regulates the Presidential Threshold provisions, contradicting the requirements mandated by Article 6A section (2) of the 1945 Constitution.

Furthermore, Article 222 of Law No. 7 of 2017 is a closed legal policy and not an open legal policy. The close legal policy is when the 1945 Constitution has provided clear limits on what and how a material must be regulated into Law. Article 6A section (2) of the 1945 Constitution has held the requirements for proposing Presidential and Vice-President candidates by political parties. Therefore, Law No. 7 of 2017 may no longer contain provisions contradicting the provisions mandated by Article 6A section (2) of the 1945 Constitution.

Article 222 of Law No. 7 of 2017 proved to limit the choice of the pair of candidates. In this case, 2 (two) Elections in a row were only able to produce 2 (two) candidates for President and Vice-President, which were dominated by old faces. Presidential and Vice-Presidential Elections with 2 (two) pairs of candidates have also been proven to increase the intensity of community conflict during elections. The Presidential and Vice-Presidential Elections in 2014 and 2019 have created sharp societal divisions between supporters from both sides of the pair of candidates for President and Vice-President.

¹⁵Sukma, G. G. M. (2020). *Open Legal Policy* Peraturan Perundang-Undangan Bidang Politik dalam Putusan Mahkamah Konstitusi (Studi terhadap Putusan MK Bidang Politik Tahun 2015-2017). *Lex Renaissance*, 5(1), p. 9.

¹⁶*Vide* Decision of the Constitutional Court Number 51-52-59/PUU-VI/2008, p. 187.

On the other hand, Law No. 7 of 2017 also regulates simultaneous elections between legislative and executive elections. If it is related to the Presidential Threshold requirement, simultaneous election implementation can no longer be relevant. The Presidential Threshold requirement based on the general election for members of the House of Representatives five years ago can block, amputate, or violate the rights of new political parties to propose the pair of candidates for their President and Vice-President. Therefore, Article 222 of Law No. 7 of 2017 should be repealed and declared ineffective.

Indeed, Law No. 7 of 2017, specifically related to Article 222 of Law No. 7 of 2017, which regulates the Presidential Threshold, allegedly contradicts several provisions or articles mandated in the 1945 Constitution. However, only the Constitutional Court can decide a law is considered unconstitutional or contrary to the 1945 Constitution or vice versa.¹⁷

CONCLUSIONS AND SUGGESTIONS

Based on the results and discussion above, it can be concluded that the Presidential Threshold mechanism in Indonesia has had juridical fundamentals from 2004 until now. In this case, it includes Article 6A section (2) and section (5) of the 1945 Constitution, Article 5 section (4) and Article 101 of Law No. 23 of 2003, Article 9 of Law No. 42 of 2008, to Article 222 of Law No. 7 of 2017. Furthermore, Article 222 of Law No. 7 of 2017 is a closed legal policy and not an open legal policy. Therefore, the Presidential Threshold mechanism regulated in Articles of Law up to Article 222 of Law no. 7 of 2017 can be judged unconstitutional or contrary to the 1945 Constitution. However, the Constitutional Court believes that the Presidential Threshold mechanism does not conflict with the 1945 Constitution. Based on this conclusion, it is suggested that the Constitutional Court consider the juridical language of Article 6A section (5) of the 1945 Constitution so that Article 222 of Law No. 7 of 2017 does not contradict Article 6A section (2) of the 1945 Constitution. In addition, it is also recommended for Legislators to make amendments to Law No. 7 of 2017, where the Legislators removed Article 222 of Law No. 7 of 2017 regarding the Presidential Threshold mechanism. Furthermore, it is hoped that Legislators will consider increasing the Parliamentary Threshold. In this case, the political consequences of a state with a multi-party system can cause problems that disrupt government stability. So that rising the Parliamentary Threshold is an effort to strengthen the presidential system in Indonesia.

¹⁷Yasin, I. F. (2018). Keadilan Substantif dalam *Ultra Petita* Putusan Mahkamah Konstitusi. *Justicia Islamica: Jurnal Kajian Hukum dan Sosial*, 15(1), p. 18.

REFERENCES

The 1945 Constitution of the Republic of Indonesia.

Abdullah, D. (2018). Implementasi Konsep Kedaulatan Rakyat setelah Perubahan UUD 1945 dalam Pengisian Jabatan Presiden. *Jurnal Hukum Positum*, 3(2), 142-155. doi: <https://doi.org/10.35706/positum.v3i2.2898>

Ali, A. (2009). *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicialprudence): Termasuk Interpretasi Undang-Undang (Legisprudence)*. Jakarta: Kencana Prenada Media Group.

Armia, M. S., et al. (2016). Penghapusan *Presidential Threshold* sebagai Upaya Pemulihan Hak-Hak Konstitusional. *Petita: Jurnal Kajian Ilmu Hukum dan Syariah*, 1(2), 84-89.

Decision of the Constitutional Court Number 51-52-59/PUU-VI/2008.

Decision of the Constitutional Court Number 14/PUU-XI/2013.

Decision of the Constitutional Court Number 53/PUU-XV/2017.

Decision of the Constitutional Court Number 49/PUU-XVI/2018.

Law of the Republic of Indonesia Number 23 of 2003 on the General Election of the President and Vice-President (State Gazette of the Republic of Indonesia of 2003 Number 93, Supplement to State Gazette of the Republic of Indonesia Number 4311).

Law of the Republic of Indonesia Number 42 of 2008 on the General Election of the President and Vice-President (State Gazette of the Republic of Indonesia of 2008 Number 176, Supplement to State Gazette of the Republic of Indonesia Number 4924).

Law of the Republic of Indonesia Number 12 of 2011 on Legislation Making (State Gazette of the Republic of Indonesia of 2011 Number 82, Supplement to State Gazette of the Republic of Indonesia Number 5234).

Law of the Republic of Indonesia Number 7 of 2017 on General Election (State Gazette of the Republic of Indonesia of 2017 Number 182, Supplement to State Gazette of the Republic of Indonesia Number 6109).

Law of the Republic of Indonesia Number 15 of 2019 on Amendment to Law Number 12 of 2011 on Legislation Making (State Gazette of the Republic of Indonesia of 2019 Number 183, Supplement to State Gazette of the Republic of Indonesia Number 6398).

Mas'udah, A. (2020). The Presidential Threshold as An Open Legal Policy in General Elections in Indonesia. *Prophetic Law Review*, 2(1), 37-58. doi: <https://doi.org/10.20885/PLR.vol2.iss1.art3>

- Muzakkir, A. K., *et al.* (2021). Pembatalan Pembahasan Rancangan Undang-Undang tentang Penyelenggaraan Pemilihan Umum dan Keterkaitannya pada Pemilihan Umum Tahun 2024. *Pleno Jure*, 10(1), 54-67. doi: <https://doi.org/10.37541/plenojure.v10i1.560>
- Nail, M. H., *et al.* (2019). The Legal Meaning and Position of Pancasila as the Source of Legislation Formation in Indonesia. *Journal of Law, Policy and Globalization*, 90, 52-70. doi: <https://doi.org/10.7176/JLPG/90-08>
- Qamar, N. & Rezah, F. S. (2020). *Metode Penelitian Hukum: Doktrinal dan Non-Doktrinal*. Makassar: CV. Social Politic Genius (SIGn).
- Riofrío, J. C. (2019). Kelsen, the New Inverted Pyramid and the Classics of Constitutional Law. *Russian Law Journal*, 7(1), 87-118. doi: <https://doi.org/10.17589/2309-8678-2019-7-1-87-118>
- Ristiawati, R. (2018). Pertanggungjawaban Presiden Menurut Sistem Ketatanegaraan setelah Perubahan UUD 1945. *Badamai Law Journal*, 3(1), 145-178. doi: <http://dx.doi.org/10.32801/damai.v3i1.5918>
- Sudrajat, T. (2018). Harmonization of Regulation Based on Pancasila Values Through the Constitutional Court of Indonesia. *Constitutional Review*, 4(2), 301-325. doi: <https://doi.org/10.31078/consrev426>
- Sukma, G. G. M. (2020). *Open Legal Policy* Peraturan Perundang-Undangan Bidang Politik dalam Putusan Mahkamah Konstitusi (Studi terhadap Putusan MK Bidang Politik Tahun 2015-2017). *Lex Renaissance*, 5(1), 1-19. doi: <https://doi.org/10.20885/JLR.vol5.iss1.art1>
- Suparto, S. (2018). Presidential Threshold Between the Threshold of Candidacy and Threshold of Electability. *Jurnal Cita Hukum*, 6(1), 95-108. doi: <https://doi.org/10.15408/jch.v6i1.4414>
- Wibowo, M. (2015). Menakar Konstitusionalitas Sebuah Kebijakan Hukum Terbuka dalam Pengujian Undang-Undang. *Jurnal Konstitusi*, 12(5), 196-216. doi: <https://doi.org/10.31078/jk1221>
- Wiyono, S., *et al.* (2020). The Effectiveness of Presidential Cabinet in a Multi-Party System in Indonesia. *European Journal of Political Science Studies*, 4(1), 14-25. doi: <http://dx.doi.org/10.46827/ejps.v4i1.904>
- Yasin, I. F. (2018). Keadilan Substantif dalam *Ultra Petita* Putusan Mahkamah Konstitusi. *Justicia Islamica: Jurnal Kajian Hukum dan Sosial*, 15(1), 13-26. doi: <https://doi.org/10.21154/justicia.v15i1.1252>
- Zalewska, M. (2018). The Metaphorical Aspect of Hans Kelsen's Pure Theory of Law. *Principia, Uniwersytetu Jagiellońskiego*, 65, 185-206. doi: <https://doi.org/10.4467/20843887PI.18.008.9891>