

Direct Election System for President and Vice President in Indonesia Post Amendment the Constitution of 1945

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ABSTRACT

In addition to being held simultaneously in the 2019 presidential and vice presidential elections, provisions regarding the presidential threshold for political parties to nominate the pair of president and vice president are still in effect as stipulated in Article 222 of Law no. 7 of 2017 concerning Elections. Based on the research, it was found that simultaneous elections with the implementation of the presidential threshold resulted in the following (a). The occurrence of a democratic system that is not ideal, because during the nomination stage for the pair of President and Vice President, the votes used by political parties or coalitions of political parties are the votes obtained from the previous legislative elections. Meanwhile, when selecting the pair of President and Vice President, the votes used are the votes from the current year's election. (b). The existence of political parties that proposed pairs of candidates for President and Vice President did not pass or did not get seats in the elections which were held simultaneously. Meanwhile, the pair of candidates for President and Vice President he carried won the election for President and Vice President. (c). Closing the opportunity for new parties to nominate pairs of candidates for President and Vice President, even though these parties are parties that have passed the selection (verification) and have been determined as election participants by the General Elections Commission (KPU) because they do not have votes or seats as a result of having never participated in elections.

ABSTRAK

Pada pemilu Presiden dan Wakil Presiden tahun 2019 selain dilakukan secara serentak juga masih memberlakukan ketentuan tentang ambang batas minimal (*presidential threshold*) bagi partai politik untuk mencalonkan pasangan Presiden dan Wakil Presiden sebagaimana diatur dalam Pasal 222 Undang-Undang No. 7 Tahun 2017 Tentang Pemilu. Berdasarkan penelitian diperoleh hasil bahwa pemilu serentak dengan pemberlakuan *presidential threshold* berakibat sebagai berikut (a). Terjadinya sistem demokrasi yang tidak ideal, karena ketika tahap pencalonan pasangan Presiden dan Wakil Presiden, suara yang digunakan oleh partai politik atau gabungan partai politik adalah suara hasil pemilu legislative periode sebelumnya. Sedangkan ketika tahap pemilihan pasangan Presiden dan Wakil Presiden, suara yang digunakan adalah suara hasil pemilu tahun berjalan. (b). Adanya partai politik yang mengusulkan pasangan calon Presiden dan Wakil Presiden justru tidak lolos atau tidak memperoleh kursi pada pemilu yang dilakukan secara serentak tersebut. Sedangkan pasangan calon Presiden dan Wakil Presiden yang diusungnya memenangkan pemilu Presiden dan Wakil Presiden. (c). Menutup peluang bagi partai baru untuk mengusulkan pasangan calon Presiden dan Wakil Presiden, walaupun partai tersebut adalah partai yang dinyatakan lulus seleksi (verifikasi) dan ditetapkan sebagai peserta pemilu oleh Komisi Pemilihan Umum (KPU) karena ia tidak punya suara atau kursi akibat belum pernah ikut pemilu.

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INTRODUCTION

The direct election of the President and Vice President can be said to be more democratic when compared to the appointment of the President and Vice President by the People's Consultative Assembly (MPR), because the implementation mechanism involves the people directly, the President and Vice President in this case get a direct mandate and real support as a form of direct interaction between voters and the elect (Mahfud, 2011).

The general election of the President and Vice President which was conducted directly by the people began in 2004. This was due to the mandate of the 1945 Constitution which stated that the President and Vice President were elected in one pair directly by the people. And in that year, for the first time the direct election was won by the pair Susilo Bambang Yudhoyono and Jusuf Kalla through two rounds. In 2009 Susilo Bambang Yudhoyono, who was paired with Boediono, won the general election for President and Vice President. And for 2014 it was won by Joko Widodo who was paired with Jusuf Kalla. Then in the 2019 election, the Joko Widodo-Maruf Amin pair won the presidential and vice-presidential elections (Rauta, 2014).

The direct elections for the President and Vice President were in 2004, 2009 and 2014 always preceded by legislative elections (DPR, DPD, and DPRD elections), meaning that the Presidential and Vice-Presidential elections were conducted separately from the legislative elections (Indarja, 2018.) Based on the results of this legislative election, political parties or coalitions of political parties that meet the thresholds determined by law, nominate candidates for the Presidential and Vice-Presidential pairs to compete in the elections. One of the reasons why the legislative elections are held first compared to the presidential and vice-presidential elections is so that the political parties participating in the elections have sufficient time to consolidate or form a coalition with other political parties in nominating the presidential and vice-presidential pairs (Febriyanti & Pratama, 2017).

The general election which is conducted separately between the legislative election and the election for the President and Vice President is considered to have many negative impacts, including in terms of cost, time and energy in holding the election (Haris, *et. al.*, 2014). In addition, the legislative elections and the presidential and vice-presidential elections which are conducted separately (legislative elections are held first), are politically the will of the big parties to be able to nominate their candidates and to suppress or get rid of the smaller parties by making conditions the minimum threshold for the nomination of a pair of President and Vice President (Aryani & Hermanto, 2018).

However, the presidential and vice-presidential elections in 2019 were different from the previous year's elections where the presidential and vice-presidential elections were held simultaneously. This is as a result of the decision of the Constitutional Court No.14/PUU-XI/2013 which decided that the presidential and vice-presidential elections which were conducted separately (not simultaneously) with the legislative elections were contrary to the Constitution of 1945 or unconstitutional (Subiyanto, 2020).

Based on the decision of the Constitutional Court, Law no. 7 of 2017 concerning General Elections, which stipulates that the Legislative elections and the Presidential and Vice-Presidential elections are conducted simultaneously. However, even though the two elections are held simultaneously, the minimum threshold requirement for the nomination of a presidential and vice-presidential pair by a political party or coalition of political parties (presidential threshold) is still applied. This is certainly not commonplace and reduces the existing democratic system in Indonesia (Fitri & Setiadi, 2022).

II. RESEARCH METHOD

This type of research is normative juridical with a statutory approach and analyzed descriptively qualitatively. The data used is secondary data consisting of books, journals and laws regarding the presidential election, namely Law no. 23 of 2003, Law no. 42 of 2008 and Law no. 7 of 2017.

III. RESULT AND DISCUSSION

1. The General Elections for President and Vice-President are Conducted Not Simultaneously with Legislative Elections

a. Election of President and Vice President in 2004

The presidential and vice-presidential elections in 2004 were the first direct elections for president and vice president. This Presidential Election is regulated by Law no. 23 of 2003 concerning the General Election of President and Vice President. In Article 5 paragraphs (1) and (5) it is stated that the participants in the presidential and vice-presidential elections are pairs of candidates proposed in pairs by a political party or a coalition of political parties who obtain at least 15% (fifteen percent) of the total seats in the DPR or 20% (twenty percent) of the valid votes nationally in the election for members of the DPR (Law no. 23 of 2003). However, in the 2004 presidential and vice presidential elections, this provision has not been enforced but uses the transitional provisions of Article 101 which states that specifically for the 2004 presidential and vice presidential elections, political parties or coalitions of political parties that meet the requirements for obtaining votes in the elections for members of the DPR are at least 3% of the total seats in the DPR or 5% of the valid votes nationally can nominate a candidate pair (Law no. 23 of 2003). Meanwhile, in the Legislative election, the minimum requirement for obtaining votes for a political party to obtain a seat in the DPR is not regulated in Law no. 12 of 2003 concerning the General Elections for DPR, DPD and DPRD, which regulates that participation in the next election must obtain a minimum of 2% or 3% of the seats in the Provincial DPRD or Regency/Municipal DPRD (Law no. 23 of 2003).

The general election for the President and Vice President must always be associated with the legislative election because the pairs of candidates for President and Vice President are nominated by a political party or coalition of political parties that obtain a certain number of votes or seats. In the 2004 elections, the Legislative elections were held first and then the Presidential and Vice-Presidential elections (Suwandi, 2014).

Based on the results of the 2004 legislative elections, there are 7 political parties that meet the minimum threshold or presidential threshold of 3% (three percent) of seats in the DPR or 5% (five percent) of the national valid votes, as follows (The Indonesian General Elections Commission, 2022) :

- 1) Party of Golongan Karya
- 2) Party of Demokrasi Indonesia Perjuangan
- 3) Party of Kebangkitan Bangsa
- 4) Party of Persatuan Pembangunan
- 5) Party of Demokrat
- 6) Party of Keadilan Sejahtera
- 7) Party of Amanat Nasional.

In the nomination process in the 2004 presidential election, there were 6 (six) pairs of presidential and vice-presidential candidates who met the requirements for the number of seats or votes, as follows (The Indonesian General Elections Commission, 2022):

- 1) Wiranto and Solahuddin Wahid
- 2) Megawati Soekarno Puteri and Hasyim Muzadi
- 3) Amin Rais and Siswono Yudohusodo

- 4) Susilo Bambang Yudoyono and Jusuf Kalla
- 5) Hamzah Haz and Agum Gumelar
- 6) Abdurrahman Wahid and Marwah Daud Ibrahim

In the verification process by the General Elections Commission (KPU), the couple Abdurrahman Wahid and Marwah Daud Ibrahim were aborted by the KPU because they were deemed not to meet the health requirements which were physically and mentally incapable of carrying out their duties and obligations as President and vice president if later elected, so that there are 5 candidates left. In the presidential and vice presidential elections in 2004 which were participated by these 5 (five) pairs, the results of the votes were as follows (The Indonesian General Elections Commission, 2011):

- 1) Wiranto and Solahuddin Wahid (22.15%)
- 2) Megawati Soekarno Puteri and Hasyim Muzadi (26.61%)
- 3) Amin Rais and Siswono Yudohusodo (14.66%)
- 4) Susilo Bambang Yudoyono and Jusuf Kalla (33.57%)
- 5) Hamzah Haz and Agum Gumelar (3.01%)

Due to the absence of a pair that obtained 50% of the votes plus one or more than 50%, a second round of elections was held for pairs of candidates ranked 1 and 2 (Law No. 23 of 2003). The results of the second round of the presidential and vice-presidential elections are as follows (The Indonesian General Elections Commission) :

- 1) Megawati Soekarno Puteri and Hasyim Muzadi (39.38%)
- 2) The couple Susilo Bambang Yudoyono and Jusuf Kalla (60.62%)

Thus, the pair Susilo Bambang Yudoyono and Jusuf Kalla who won the general election of President and Vice President in 2004 and were appointed as President and Vice-President of the Republic of Indonesia for the period 2004 - 2009.

b. General Election of President and Vice President in 2009.

The Presidential and Vice-Presidential elections in 2009 are regulated by Law no. 42 of 2008 concerning the General Election of President and Vice-President. Article 9 states that the pairs of candidates for President and Vice President are proposed by political parties or coalitions of political parties participating in the general election who meet the requirements for obtaining seats of at least 20% (twenty percent) of the total seats in the DPR or obtaining 25% (twenty five percent) of valid national votes in the election of members of the DPR before the implementation of the Presidential and Vice-Presidential elections (Law no. 42 of 2008). While the minimum requirements for political parties to obtain seats in the DPR are regulated in Article 5 of Law no. 10 of 2008 concerning General Elections for members of the DPR, DPD, and DPRD which states that political parties participating in the election must meet the threshold for obtaining votes of at least 3.5% (three point five percent) of the number of valid votes nationally, to be included in the determination acquisition of seats in DPR, Provincial DPRD and Regency/Municipal DPRD (Law no. 10 of 2008).

Likewise in the 2009 elections, the Legislative elections were held first and then the Presidential and Vice-Presidential elections. Based on the results of the 2009 legislative elections, only one political party succeeded in fulfilling the requirements to nominate a presidential and vice-presidential pair as stipulated in the law, namely the Democratic party with 20.85% of the votes or 148 seats (26.43%). Thus, other political parties wishing to nominate a pair of President and Vice President must join other political parties.

In the 2009 general election for President and Vice President, 3 pairs of candidates participated, as follows (The Indonesian General Elections Commission, 2022) :

- 1) Megawati Soekarno Puteri and Prabowo Subianto
- 2) Susilo Bambang Yudoyono and Boediono

3) Jusuf Kalla and Wiranto

The results of the general elections for President and Vice President at that time were as follows:

- 1) Megawati Soekarno Puteri and Prabowo Subianto (26.79%)
- 2) Susilo Bambang Yudoyono and Boediono (60.80%)
- 3) Jusuf Kalla and Wiranto (12.41%)

Thus, based on Law no. 42 In 2008 (Law no. 42 of 2008), the pairs of Susilo Bambang Yudoyono and Boediono won the general election for President and Vice President and were appointed as President and Vice President for the period 2009 – 2014.

c. General Election of President and Vice President in 2014

The presidential and vice-presidential elections in 2014 are regulated by Law no. 42 of 2008 concerning the General Election of President and Vice President. There are no changes to the law or the same as the presidential and vice-presidential elections in 2009, the nomination threshold is fixed, it is proposed by a political party or a combination of political parties that obtain seats at least 20% (twenty percent) or 25% of seats in the DPR (twenty five percent) of valid national votes in legislative elections (Law no. 42 of 2008). Meanwhile, the minimum requirement for a political party to obtain a seat in the DPR is regulated in Article 208 of Law no. 8 of 2012 concerning General Elections for Members of DPR, DPD and DPRD which states that political parties participating in the election must meet the threshold for obtaining votes of at least 3.5% (three point five percent) of the number of valid votes nationally to be included in the determination of seat acquisition. members of DPR, Provincial DPRD and Regency/Municipal DPRD (Law no. 8 of 2012).

Based on the results of the 2014 legislative elections, there is not a single political party that meets the presidential nomination threshold as determined by law, including the winning party in the legislative elections, namely PDI-P which only received 18.95% of the vote, so it had to join another party.

The presidential and vice-presidential elections in 2014 were only followed by two pairs of candidates, which are as follows (The Indonesian General Elections Commission, 2022):

- 1) Joko Widodo and Jusuf Kalla
- 2) Prabowo Subianto and Hatta Rajasa

Based on the implementation of the presidential and vice-presidential elections, the following results were obtained:

- 1) Joko Widodo and Jusuf Kalla (53.15%)
- 2) Prabowo Subianto and Hatta Rajasa (46.85%)

Thus, based on Law no. 42 In 2008 (Law no. 42 of 2008), the pair Joko Widodo and Jusuf Kalla won the election and were appointed as President and Vice President for the period 2014 – 2019. As is well known, the presidential and vice-presidential elections as well as legislative elections from the 2004, 2009 and 2014 periods were not conducted simultaneously, even though they were held in the same year. Legislative elections are held first, then a few months later the Presidential and Vice-Presidential elections are held. Thus, the results of the legislative elections are known and determined by the General Elections Commission (KPU). Based on the results of the legislative elections, political parties conduct explorations to cooperate in nominating pairs of President and Vice President, especially for parties that independently do not meet the presidential threshold as regulated in the provisions of the Act (Ansori, 2019).

2. Implementation of Presidential and Vice-Presidential Elections Conducted Simultaneously with Legislative Elections

a. General Election of Presidents and Vice President in 2019

The implementation of the presidential and vice-presidential elections in 2019 is different from the previous elections. If the elections in 2004, 2009 and 2014 were conducted after the Legislative elections (not simultaneously), then in the 2019 elections the Presidential and Vice-Presidential elections were held simultaneously with the Legislative elections. This is due to the Constitutional Court Decision No. 14/PUU-XI/2013 which decides that the Presidential and Vice-Presidential Elections with Legislative General Elections must be held simultaneously or simultaneously. This is in line with the provisions of Article 22E paragraphs (1) and (2) of the Constitution of 1945 post-amendment. However, what is of common concern is that the presidential nomination threshold, which is a requirement for political parties or coalitions of political parties to nominate their partners in the presidential and vice-presidential elections, has not been annulled by the Constitutional Court on the grounds that it is the domain of the legislators, namely the government and the DPR to regulate it so that the Constitutional Court cannot cancel it (Sukimin, 2020). The implementation of the presidential threshold in the presidential and vice presidential elections simultaneously with the legislative elections, it is clear that the implementation is for political parties or coalitions of political parties participating in the election that have seats in the DPR (meeting the parliamentary threshold) in the previous period because it is not possible to apply a presidential threshold in the presidential election and Vice President who will run because the elections are held simultaneously (Ernasari & Rakhmatika, 2021).

The presidential and vice-presidential elections in 2019 use Law no. 7 of 2017 concerning Elections. Article 222 stipulates that a pair of candidates is proposed by a political party or a coalition of political parties participating in the general election who meet the requirements for obtaining seats of at least 20% (twenty percent) of the total seats in the DPR or obtaining 25% (twenty five percent) of the national valid votes in the previous parliamentary elections (Law no. 42 of 2008).

The presidential and vice-presidential elections in 2019 were only participated by two pairs of candidates, as follows (The Indonesian General Elections Commission, 2022) :

- 1) Joko Widodo and Ma'ruf Amin
- 2) Prabowo Subianto and Sandiaga Uno

Based on the implementation of the presidential and vice-presidential elections, the following results were obtained:

- 1) Joko Widodo and Ma'ruf Amin (53.15%)
- 2) Prabowo Subianto and Sandiaga Uno (46.85%)

Thus, based on Law no. 7 of 2017, pairs of Joko Widodo and Ma'ruf Amin won the election and were appointed as President and Vice President for the period 2019-2024.

The implications of the use of the presidential threshold in elections that are conducted simultaneously between the presidential and vice-presidential elections and the legislative elections include;

- 1) The occurrence of a democratic system that is not ideal in carrying out elections in Indonesia. During the nomination stage for the presidential and vice-presidential pairs, the votes used by political parties or coalitions of political parties are the votes from the previous period's legislative elections. Meanwhile, during the election stage for the pair of President and Vice President, the votes used are the results of the current year's election.
- 2) There are political parties that propose pairs of candidates for President and Vice President who actually do not qualify or do not get seats in the elections that are held simultaneously. Meanwhile, the pair of presidential and vice-presidential candidates he carried won the presidential and vice-presidential elections. This happened to the Hanura party. Where the Hanura party proposes an elected partner; Joko Widodo-Maruf Amin, while his own party did not pass the parliamentary threshold so it did not have representation in the DPR RI. Thus,

automatically the Presidential and Vice-Presidential Pair for the 2019-2024 period will not receive support from members of the DPR from the Hanura party, this will certainly reduce the political power of the Government. Ideally a political party or coalition of political parties whose pairs of candidates for President and Vice President win the presidential and vice-presidential elections, he also gets a seat in the parliament (DPR).

- 3) Closing the opportunity for new parties to nominate pairs of candidates for President and Vice President, even though the party is a party that has passed the selection (verification) and is designated as a participant in the 2019 election by the KPU, because it has no votes or seats and has never participated in an election. This happened to the party of Perindo, the party of Garuda, the party of PSI and the party of Berkarya.

IV. CONCLUSION

From the results of the discussion, it can be concluded that Indonesia has carried out 4 (four) direct elections for President and Vice President by the people until now. Of the 4 presidential and vice-presidential elections, there are differences in the 2019 elections. In that year, the presidential and vice-presidential elections were held simultaneously with legislative elections (elections for members of the DPR, DPD, DPRD). This is different from the previous 3 elections; in 2004, 2009 and 2014, in which the Presidential and Vice-Presidential elections were held after the Legislative elections or not simultaneously. In the 2019 Presidential and Vice-Presidential elections, apart from being conducted simultaneously, the provisions regarding the presidential threshold as regulated in Article 222 of Law no. 7 of 2017 concerning Elections. The implications of this provision are: (a). The occurrence of a non-ideal democratic system, because during the nomination stage for the presidential and vice-presidential pairs, the votes used by political parties or coalitions of political parties are the results of the previous period's legislative elections. Meanwhile, during the election stage for the pair of President and Vice President, the votes used are the results of the current year's election. (b). The existence of political parties that proposed pairs of candidates for President and Vice President did not qualify or did not get seats in the elections that were held simultaneously. Meanwhile, the pair of presidential and vice-presidential candidates he carried won the presidential and vice-presidential elections. (c). Closing the opportunity for new parties to nominate pairs of candidates for President and Vice President, even though the party is a party that has passed the selection (verification) and is designated as an election participant by the General Elections Commission because it has no votes or seats because it has never participated in an election.

Candidates for President and Vice President in the upcoming elections do not need to use the minimum presidential nomination threshold, meaning that all political parties that pass verification and are designated as election participants can automatically nominate pairs of candidates for President and Vice President. However, it is necessary to tighten both in the process of forming political parties and in the verification process.

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