

Presidential Threshold in the Presidential Election: A Democratic and Constitutional Study

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Abstract— Presidential Threshold (PT) is a system the legislators have been being held as an instrument in the presidential election system since 2004. Although PT has been stated in the legal product, and justified by the Decision of the Constitution Court, it does not mean that it is a final product. As something that is always moving, it is essential to deconstruct the system. We should really do it when the 2019 General Election was simultaneously carried out. Therefore, the relevance of PT with the concurrent General Election should be re-thought. In this article, the authors would discuss two things, first, the constitutional perspective in recognizing the PT, and also the tract record of its urgency in the formulation of the direct Presidential Election system, second, the democratization aspect in the PT and the 2019 Simultaneous General Election. The research method adopted in this present research was a normative legal research type, studied using two approaches to laws namely conceptual and comparative ones. The data sources used were primary and secondary. Some conclusions are drawn from this research. Firstly, through the constitutional standpoint, the enforcement of the PT instigates a series of the state administrators who infringe upon the souls and spirits residing in the Constitution, and such overruling attitudes are full of certain political interests, as proved by the tract record of the interests in formulating the direct presidential system. Secondly, the implementation of the PT puts aside fundamental values of the democracy, since the regulators easily have disregarded the long journey of the bloody democracy, and have brought about a general election which was unjust and uncompetitive. The solution to the problem the authors try to propose is that the threshold should be removed. The authors recommend the concept “removal” means that such a threshold should be purely erased.

Keywords— *Presidential Threshold, Constitutional, and Democratization*

The overwhelming majority of politicians today are not politicians because they are important, but important because they are politicians - Greg Craven

I. INTRODUCTION

The state and nation of Indonesia have possessed a long enough and varied experiences in the Presidential and Vice-presidential elections. Once an acclamation was reached in the election when the Preparatory Committee for Indonesian Independence (PPKI) should determine who would be elected as the first president and vice president. In the Soeharto period, the President was voted through a consensus reached by the People’s Consultative Assembly (MPR). Abdurrahman Wahid was decided through voting by the MPR, and then Susilo Bambang Yudhoyono and Joko Widodo were selected through direct voting by the people.

Such a variety of presidential elections is part of the process leading to ideal election and governmental systems since a good process of election will produce a good leadership. During the post-reformation era, Abdurrahman Wahid was elected through voting by the MPR as the worst form of democracy, since the voting performed at that time proved that his leadership was easily “shaken”, where at last he was impeached from his position. This would be constitutionally evaluated and in 2004, the President and Vice-president were directly chosen by the people. At that time, a new system, called Presidential Threshold was introduced where the candidates for the President and Vice President could merely be proposed by political parties or a combination

of political parties that gained at least 15% (fifteen percent) of the number of seats in the House of Representative or 20% (twenty percent) of the nationally legitimate vote acquisition in the general election in the House of Representative (DPR). It is the milestone that the threshold history started in the electoral system in Indonesia.

At first, the Presidential Elections adopting the PT in 2004, 2009 and 2014 did not raise any problems and did not get any criticism since at that time before the Presidential Election was implemented, the elections for the members of the House of Representative, Regional Representative Council (DPD), and Local House of Representative (DPRD) were firstly carried out. It means that each political party has gained votes from the general elections for the legislative members, far before the Presidential Election is held, and the vote acquisition becomes the ticket to propose the candidates of the President and Vice President. However, problems would arise when the elections to choose the legislative and executive members are held at the same time, hour, day, month and the same years, simultaneously. From where do the parties get votes to nominate the President and Vice-president? It was this condition that would happen in the 2019 general election. A simultaneous general election, accompanied by the maintenance of the PT would cause a lot of problems, since the general elections for the members of the House of Representative and the presidential election were conducted at the same time. Logically, no basis is found

to determine 20% of the number of the seat in the House of Representative and 25% of the nationally legitimate vote acquisition since the requirement has not been possessed by the political parties that take part in the general election.

In the 2019 general election, the elections for the President and Vice President, the members of the House of Representative, the Regional Representative Council and the Local House of Representative were organized concurrently. Consequently, the requirement of the 20% PT was problematic. Some said that the 20% PT was irrational since the number of 20% refers to the results of the general elections for the members of the House of Representative and the Regional Representative Council in 2014 that had been made use of for the 2014 Presidential Election. While others insisted that the 20% PT was rational because the candidates of the President and Vice-president were nominated by political parties or a combination of political parties. From each perspective, the two views have logical arguments. What was problematic in 2019 is the first simultaneous general election. This first general election which was held for the first time might lead to the impression that the determination of the PT take sides to the interest of the parties that either agree or disagree with the PT of 20%. In this article, Presidential Threshold would be deeply discussed under the perspectives of democracy and Constitution.

II. PRESIDENTIAL THRESHOLD ARRANGEMENT DYNAMIC

The law number 23 year of 2003 on General Election is the basic law created by the legislators to provide the 2014 Direct General Election with a legal umbrella. The concept of PT is stated in the article 5, verse (4) of the quoted law that: "Candidate Pairs as referred to in Paragraph (1) may only be nominated by a political party or coalition of political parties which obtains at least 15% (fifteen percent) of the number of DPR seats or 20% (twenty percent) of the national valid votes in the election for members of the DPR. The application of PT is aimed at generating the candidates of the President and the Vice President who gain strong supports from the people, so that they will be able to carry out the functions of the government power to attain the national objective as stated in the 1945 Constitution. It is represented through political parties obtaining 20% of the valid national votes or 15% of the number of DPR seats."¹

Further, to fulfill the needs for executing a democratic general election and evaluating the 2004 general election, the legislators revised the legal umbrella on general election into the Law no. 42 year of 2008 on the President and Vice President General Election. The concept is asserted in the article 9 of the quoted law: "Candidate Pairs may only be nominated by a political party or coalition of political parties of the general election participants that fulfill the requirement of at least 20% (twenty) of the number of DPR seats or 25% (twenty five) of the national valid votes in the election for the members of the DPR before the general election of the

President and Vice President is held. In this law, some advancement in PT occurs where in the previous law (2004) the PT was 15% of the number of DPR seats and 20% of the valid national votes.

In 2013, a group of people among others Effendi Ghazali, tested the constitutionality of the 2008 Law on the General Election of the President and Vice President in the Constitutional Court. It is through the Decision of the Constitutional Court 14/PUU-XI/2013, it is mandated that the 2019 General Election would be executed concurrently to elect legislative and executive members. The Constitutional Court affirmed that the determination of PT in the General Election is under the open legal policy. To implement the general election needs and the follow up to the decision made by the Constitutional Court, the legislator revised the legal umbrella for the previous general election into the law no. 7 of the Indonesian Electoral Law of 2017. The concept of PT is still maintain, where the article 7 stipulates that: Candidates pairs may only be nominated by a political party or coalition of political parties of the general election participants that fulfil the requirement of at least 20% (twenty percent) of the number of seats of DPR or 25% (twenty five percent) of the valid national votes for the elections of the previous members of DPR. No change in quantity occurs in the threshold between this law and the previous one (2008). The formal purpose attained by the legislators serving as the basis for the consideration in the application of the law (2004) is identical. The PT as the requirement for nominating the President and Vice President is intended to affirm a strong and effective presidential system, but to realize the effectiveness of the government, a basis of support from the House of Representative as the element of the state organizers possessing an equal position with the President is called for.²

III. THE TRACK RECORD OF THE INTEREST IN THE EMERGENCE IN PRESIDENTIAL THRESHOLD

Legal norm as the political product cannot be separated from the interests of the political parties and their leaders. In each formed norm, a necessity is the light from the interest of the actors forming it, this also happens when one views the reality of the of PT norm. It is still "thick" in our mind of how the interest war among the legislators happens. Tjahyo Kumolo as the representative of the government, and the fraction of Indonesian Democratic Party of Struggle (PDI-P) are the parties that greatly maintain the enforcement of PT in the Presidential Election in 2019. PDI-P as the representation of the House of Representative, and Tjahyo as the representation of the government, who was also from PDI-P and dominated the executive seats, consistently, harmoniously and cohesively support the existence of PT. Due to the cohesiveness and firmness, Tjahyo Kumolo loudly gave an ultimatum that he would walk-out from the discussion of the law if his proposal to maintain PT would not be fulfilled. This

¹ General explanation of the Law No. 23 Year of 2003 on General Election. p. 2

² Ae Priyono. Usman Hamid. *Merancang Arah Baru Demokrasi Indonesia Pasca Reformasi*, Jakarta: Kepustakaan Populer Grammedia. 2014. p. 2

article would show what is actually the tract-record of the political party (PDI-P) in the dynamic of the legal formulation of the direct Presidential vote from the amendment of the 1945 Constitution up to now.

PDI-P is a political party winning the 1999 general election, which then became the party with the greatest number of seats namely 153 seats in the DPR-RI in the general election. However, it turned out that the party's achievement was inconsistent where in the presidential election at that time the MPR elected Abdurahman Wahid as the President, and Megawati as the Vice President on the basis of the voting system. The reality was greatly reacted by her supporters; in Bali and also in Solo, a lot of her followers protested the result. Such a gripping situation was also felt in the parliament meeting room. The members of MPR at that time was really worried with further violation that may endanger the continuation of reformation and the unitary state of Indonesia. The reaction was caused by the supporters who had a high expectation that Megawati would win the presidential election since their party had accomplished the triumph in the election.

The reality was in line with the attitude of PDI-P in determining the presidential election in the amendment of the 1945 Constitution. During an ad-hoc committee meeting, institutionally the PDI-P explicitly did not intend to have a direct presidential election since it would produce an elected president without any majority support that might affect his/her legitimacy. This concern, which is also the solution to the problem, had actually been shown by Syafrudin Bahar that a president should be supported by 50% provinces plus one so that the legitimacy would be stronger. This proposal was the pioneer of the second round presidential election (article 6A [3] of the 1945 Constitution), if in the first round the candidates have not gained any majority votes. However, the opinion was repudiated by PDIP that suggested that if in the first round a majority vote was not reached, the presidential election would be handed over MPR to elect who would be decided as the President.³

The discussion of this direct presidential election took a long time where one of the reasons is that PDI-P as the greatest party in MPR at that time consistently rejected the second round presidential election that would be still elected by the people. PDI-P considered that MPR still became the highest state institution as the manifestation of the whole Indonesian people, a place that unites the whole political powers and elements of groups existing in the people. It is the view which is proposed by the founders of the nation. PDI-P defended this vision, since it has a long historical root that has existed since the establishment of Indonesian National Party (PNI) in 1927 where the nationality stream has greatly affected its outlook.

Although PDI-P was lost in the 1999 MPR election, an indirect presidential election would give more advantages viewed from the conflict management aspect. PDIP had so a greatly strong desire to the indirect presidential election that this resulted in an analysis that what is PDI-P worried about is

not the system, but the possibility that Megawati would be lost if a direct president election was conducted. The situation at that time was almost deadlock. Jacob Tobing, Megawati's right-hand man working on the Constitution' amendment, was the figure behind the agreement of the direct presidential election. In a dissertation written by Valina Singka Subekti, Valina stated that she directly interviewed with Jacob Tobing. He explained that at last PDI-P accepted the direct election, after it really felt sure that this system would succeed in getting the majority support. He explained that this system would be able to be used as a tool to simplify the party system in Indonesia in a natural way. He also elucidated that after 3 or 4 times of direct elections were conducted, it would produce $\frac{3}{4}$ great parties in Indonesia.⁴ But it should be noted that the emergence of great political parties turned out being supported by the system created by ourselves. It could be proved from the fact that in the journey leading to the 2019 presidential election, there were two parties (PDIP and Gerindra (Great Indonesia Movement Party)) as the driving force that united small parties.

It is the tract record of the great interest of PDI-P as the majority party at that time, where the support from the people and the simplification of the political system were two reasons why the party rejected a direct presidential election. The attitude has been consistently taken by this party up to now, a "narration" of supporting the majority becomes the main key to this party to defend the PT where the reason is that the system may bear the majority support to the parliament. At the best knowledge of the authors, it is an anomaly. Why? If we trace back the historical journey of the Constitution establishment, principally to resolve any concern with whether a majority support exists or not, the existence of the presidential threshold is solved by the second round. On the basis of the treatise of the discussion session of Article 6A in general, and especially verse (2), the fractions or the members of MPR who talked to the threshold, and also the stipulation in the article 6A verse (5), have tightly locked any addition of the requirements in the submissions of candidates, unlike personal prerequisites that in the discussion, intentionally given authorities to the laws to give some additional limitations, instead of those stated in the norm of the Constitution. Within the limits of proper reasoning, the desire to restrict any candidacy did not arise at all in the amendment, what emerged at that time is how to get some majority support from the people and it would be final in the second round presidential election.⁵ Simply, PT is just a political trick under the name of merely majority support of the people. The history of the journey has become the basis adopted by the party in its behavior up to now to maintain its way to gain the chair of President through the PT instrument.

³ Valina Singka Subekti. *Menyusun Konstitusi Transisi: Pergulatan Kepentingan dan Pemikiran dalam Proses Perubahan UUD 1945*. Jakarta: PT. Rajagrafindo Persada. 2007. p. 304

⁴ *Ibid.* p. 306.

⁵ Ziffany Firdina. *Perubahan Makna Pasal 6A Ayat (2) UUD 1945*. Jurnal Konstitusi, Volume 10, No. 4, December 2013. p. 670.

IV. PRESIDENTIAL THRESHOLD IN THE CONSTITUTIONAL FRAMEWORK

Constitution is the highest level of the legal product of a state. Besides serving as the guide in the organization of a state, Constitution also occupies the position as the soul of the nation, formalized in the form of a written text. The 1945 Constitution of the Republic of Indonesia has provided the people with guide in the implementation of the Presidential Election in Indonesia. The stipulation is asserted in Article 6A, number [2] of the 1945 Constitution that: The pairs of candidates for President and Vice-President shall be proposed prior to the holding of general elections by political parties or coalitions of political parties which are participants in the general elections. This explains that each political party which is the participant in the general elections possess equal rights and opportunities to propose its pairs of candidates for President and Vice President. If it is carefully observed from the historical aspect and also from the original intent of the texts, the article affirms that each political party owns (constitutional) right to propose its Candidates for President and Vice President (*constitutional right*).⁶

Dealing the relation between PT and the 2019 general election, within the limits of natural reasoning, some deviations in translating the constitutional values into political agenda have occurred. **Firstly**, when we examine the practices of the presidential administration in the new order era, some important lessons may be gained. In the new order era, some hegemony and monopoly of political parties power occurred, where there were some political parties (namely Golkar). The existing system did not open any room for others to compete in the national political constellation healthily and justly. At that time, although the President served as the mandatory position of MPR and was elected by MPR, but the composition of MPR resulted in an unhealthy condition since it was monopolized by some certain political parties. The condition is not different from that at present. The legislative composition is still at the second rank in determining who becomes the candidate for President. Another similarity is that there is a monopoly of the majority power to fill in the market for the candidate for president and this condition closes the opportunity of small parties to propose their candidates although they have figures appropriate as the candidates for president. The closing of a track for small political parties is the same as that in the new order era, it is closed through the system and is legitimated through legal products (laws). In articulating the meaning of the presidential election in the Constitution we should not separate it from our understanding of the Constitution.

Constitution serving as the basis of values in implementing democratic general elections intends the same treatment for the whole participants of general elections. Unjust treatment is felt by small and new political parties. For new political parties, they cannot join in the competition in the

political constellation conducted once in five years and they cannot propose any candidates for presidents until they reached the number of the parliamentary threshold. This may omit political parties' rights to propose candidates for President and Vice President where the rights are insured in the 1945 Constitution of the Republic of Indonesia. It means that the presidential nomination in 2018 could merely be conducted by the great political parties, or the coalition of political parties such as National Awakening Party (PKB) (18.95%), Party of Functional Group Golkar (14.75%), Great Indonesia Movement Party (Gerindra) (11.81%), Democratic Party (Demokrat) (10.19%).⁷ It is one of the facts of the happening of the monopoly in the candidates market done by great political parties and this locks any opportunities for small and new political parties. The descriptions of the legislative composition which still occupies the second rank and the overriding treatment in general election and the closure of chances of new and small political parties in the 2019 general election are evidence that the present political practice is the same with that in the new order era. The legislators, as the institution that translates the intend of the Constitution into the laws, should really understand that the Constitution in the transitional period is often formed as the response to anything reflecting the pas injustice, and this can be used as a valuable lesson in the future constitutional system instead being repeated. In Jon Elster's words: constitutions are usually adopted in response to severe injustices or widely perceived emergences.⁸

Secondly, some deviations and misunderstandings of the threshold in the Constitution occur. Why? Constitution has provided some stipulations of the threshold to become a President. Referring to the idea proposed by Pipit R. Kartawidjaja citing that of J. Mark Payne et all in their books *Democracies im Development: Politics and Reform in Latin America*, when one is talking about PT in general elections, what is assumed is the prerequisite for a candidate for president who wants to be elected as president. For example in Brazil the threshold is 50% plus one, in Equador 50% plus one or 45% as long as the difference is 10% from the strongest candidate; in Argentina, 45% ,or 40% provided that the difference is 10% from the strongest competitor. Viewed from the substantive meaning of PT in practices in some countries above, it can be asserted that PT is a requirement for a candidate for president to be elected to become the president, instead of the prerequisite for the candidate for president and vice president. For the countries adopting the presidential system, what is meant by PT is the enforcement of a minimum threshold for the presidential electability. In other words, the context of the PT implementation, if the term is employed, is not intended to limit the presidential nomination, but to determine the percentage of minimal votes for the nomination of the candidate for president.⁹ It is what the

⁶ Muhammad Mukhtarrija, I Gusti Ayu Ketut Rachmi Handayani, Agus Riwanto. *Inefektifitas Pengaturan Presidential Threshold dalam Undang-Undang Nomor 7 Tahun 2017 tentang Pemilihan Umum*. Jurnal Hukum Ius Quia Iustum No. 4 VOL. 24 OCTOBER 2017: 644 – 662. P. 112

⁷ Survey Rumah Pemilu. *Pemilihan Umum 2014*. <https://rumahpemilu.com/laporan/referensii.pdf>. accessed on August 2, 2018.

⁸ Bagir Manan dan Susi Dwi Harjanti. *Memahami Konstitusi: Makna dan Aktualisasi*. Jakarta: PT. Raja Grafindo Persada. 2015.p. XII

⁹ Allan Fatchan Gani Wardhana . *Menggugat Presidential Threshold*. <https://news.detik.com/kolom/d-4081785/menggugat-presidential-threshold>. Accessed on August 2, 2018.

authors intend that there is some divergence in interpreting the intention of the Constitution.

Thirdly. One of the agenda for living the constitution is through the judge's decision, in this case is the decision of the Constitutional Court. The Court, through its decision No. 14/PUU-XI/2013, gave a credential to carry out a simultaneous general election in 2019. Although this Court did not abrogate the stipulation of PT in the Law year of 2008 on General Elections, but a full enforcement of the simultaneous general election *mutatis mutandis* applies for PT,¹⁰ therefore, PT is not used anymore in the general election. Why? Since the concept of PT is from the legislative votes, where the elections for the legislative members should be committed before the Presidential Election is held. Hence, when the General Elections are concurrently held, automatically, the concept in the Article 9 is null and void. Although the Court in its considerations affirms that PT in the legal field is open in nature, but any decision shall be made on the basis of a proper legal logic and basis. It means that the formulation of the Presidential Election in the future would be inseparable from the existence of the simultaneous general elections as mandated by the decision. Consciously or unconsciously, a greatly fundamental shift of the past PT into that applied in the 2019 general election occurred. In the previous general elections, PT was taken through the legislative votes conducted before the Presidential Election, but it is still in one year period, but then it shifted into the legislative votes from the previous "general elections" namely the 2015 general elections. The alteration of the concept clearly show that in any legal formation, it would be full of and viscous of the nuance of certain interests.

Fourthly. PT is retested in its constitutionality in the Constitutional Court through its decision no. 53/PUU-XV/2017 that rejected the request of the applicant to annul the article 222 of the Law on General Elections on PT. One of the considerations presented by the Constitutional Court is that the PT system is part of the reinforcement in the presidential system. In the authors' opinion, the argumentation, theoretically and practically viewed from constitutionality, is improper and irrelevant. The authors propose the following reasons:

1. It is correct that the form of government as mandated by the 1945 Constitution is the presidential government.¹¹ President and DPR, in the presidential system, possess a balanced bargaining position since both own a direct legitimacy with a consequence that it would produce a divided government: the legislative institution is dominated by one or more political parties different from the political party holding the executive power. But according to Jose Cheibub, divided government is not something that certainly happens in the presidential

government where one of the reasons is when the elections for the President and for the legislative members are conducted at the same time.¹² Why? Because in a simultaneous general elections no party is able to assure that a party may concurrently dominate the majority of executive and legislative powers, and the president is not held hostage by political contracts such as those happen if the general elections are not held at simultaneously.

2. The practice of the constitutionality has proved it, for example something that happened in 2009. At that time SBY (Susilo Bambang Yudhoyono) won the Presidential Election, but his supporting parties are the minority ones in DPR, at last he made a coalition with Golkar when he formed a cabinet, although in the process of the general elections, Golkar was his competitor. The presidential nomination is not based on the parliamentary formation, since both of them got some legitimacy from different paths, and legitimately, they possessed an equal position from the people.¹³
3. Essentially, the number reaching 20% in PT will not ensure anything to realize some stabilization of the presidential system. The abolishment of PT in simultaneous general elections is aimed at making use of the coattail effect theory. In this theory it is stated that after the candidates for President and Vice President are elected, the voters tend to choose political parties or coalitions of political parties that nominated the president they elected.¹⁴ If political parties nominate the pairs of candidates for president and vice president the people like, automatically the people will also choose the political parties. Shugar's statement on the coattail effect theory shows that it will be reached if general elections are carried out instantaneously. For instance, general elections started having been concurrently applied since 1994 and has succeeded in stabilizing and making it effective the government, so that for 1 years later, Brazil gains the world economic power.¹⁵ The coattail effect theory in simultaneous general elections would omit the arrangement of PT. The president elected through the concurrent general elections without PT will possess strong political power and will not be held hostage by any political dowry from the coalition of the supporting parties.
4. The political parties of the general elections participants will focus their attention on offering their ideologies and preparing the pairs of candidates for presidents and vice presidents the people like as early as possible. The people's tendency to elect the candidates for the pair of president and vice president and the same parties will create a strong presidential government system. Political parties from the elected candidates will become the

¹⁰ Ganjar Prima Anggara, M. Ali Safa'at, Tunggul Anshari. *Transformasi Model Pemilu Serentak Di Indonesia Tahun 2019 Pasca Putusan MK Nomor 14/PUU-XI/2013*. Jurnal fakultas hukum Universitas Bawijaya, 2017. p. 7.

¹¹ Pippa Norris classifies the presidential government in Indonesia as *Presidential Republic* marked by *unified executive* (head of state and of government), directly elected by the people with a permanent position (except *impeachment*), and the cabinet is under the control of the government. In *Driving Democracy: Do Power-Sharing Institutions Work?*, Cambridge, UK: Cambridge University Press, 2008. Pp. 134-135

¹² Jose Antonio Cheibub. (2007) *Presidentialism, Parliamentarism, and Democracy*, Cambridge, UK: Cambridge University Press.

¹³ Janedri M. Ghaffar. *Presidential Threshold*. Harian Seputar Indonesia, dated on June 27, 2017.

¹⁴ Usep Hasan Sadikin, *Paradoks Pemilu Serentak Indonesia*, <http://www.rumahpemilihan umum.org/id/paradoks-pemilihan-umum-serentak-indonesia/>. Accessed on July 24, 2018

¹⁵ See the Decision of the Constitutional Court of the Republic of Indonesia No. 14/PUU-XI/2013. p. 81.

parties that win the general elections in the legislative institutions so that the formed government will be stable.¹⁶

Fifthly, the enforcement of PT in the 2019 general elections, would not give any sense of justice for young voters. Young voters are any citizens with new rights for vote in 2019, meaning that they just grew up and in 2014 they had not got their rights for vote and did not give any votes in the percentage of PT in 2014. This also shows that our state failed in realizing the equality before the law principle as mandated in Article 28 of the 1945 Constitution.

V. PRESIDENTIAL THRESHOLD IN THE DEMOCRATIZATION FRAMEWORK

General elections are not merely routine procedures that should be carried out in any democratic countries. The implementation of general elections is the least prerequisite of the democratic procedure or as the conceptual core of democracy.¹⁷ Democracy used as the basis of loving together in a state is the expression of the implementation of the people's sovereignty in the state administration. Democracy has a crucial meaning for the people since by democracy, the people's right to determine the operation of their own government may be assured through the implementation of direct, general, free and secret general elections. From the perspective of democracy, the implementation of the 2019 general elections adopting PT is like tearing the skin of the democracy itself, since we perpetuated the action (of PT) under the name of democracy.

Ramlan Subakti proposes seven criteria for free and just general elections in the realm of democracy, one of which is free and just competition among the contestants. He explains that one of the dimensions in organizing general elections is a competition or a conflict to obtain seats. To have ordered general elections, their implementation should be based on the law with a high certainty level. To reach democratic general elections, the laws governing them should be the translation of the democratic general elections principles: direct, general, free, secret, just and fair, transparent and accountable. Hence, the second criterion of just and integrated general elections is the legal certainty which is formulated on the basis of the democratic general elections principle. In order to have state administrator selected from parties, or the best candidates, free and just competitions among the candidates to assure the people to elect them should be held. The contestants should depart and compete from the same point, so that those that would be elected are the best. Therefore, the criteria of just and integrated general elections are free and just competitions among the contestants.¹⁸ This condition would not be realized

in the 2019 general elections since equal opportunities for new political parties were not opened in the elections. Bingham Powell in his book *Contemporary Democracies: Participation, Stability, and Violence* states that a democratic political system is marked by the following characteristics: legitimacy of power is gained through competitive and just general elections. Robert Dahl also affirms that there are 11 pillars of democracy, one of which is a political system that guarantees a just competition to gain power.¹⁹

Dealing with healthy competition, the criteria of democracy apply for any healthy and free competitions among the elements of society, the elements of society and the elements of state, among elements in the state. Consequently, some clashes in political interests and values might happen as long as they will destroy the political system. The situation surrounding the competition is the one full of freedom and respects one another so that the competition, borrowing from Lewis Cossers' term, is positioned as positive functional conflicts.²⁰ But competitions with such functions will never be realized, since any political engineering created by PT, will not give any rooms and freedom for elements of the people to join in the contestations in the Presidential Elections because they are blocked by the requirements stipulated in the law (PT).

VI. IMPACTS OF THE PRESIDENTIAL ELECTION ADOPTING PRESIDENTIAL THRESHOLD ON THE PEOPLE

Presidential election that maintained PT in 2019 would give the following impacts:

1. It is a necessity that the 2019 Presidential Election would be dominated by great political parties. This happened since the threshold applied is the one from the 2014 general elections. When such a domination occurs, the market for the candidates for president would be mostly occupied by two candidates, not more.
2. A great polarization results in a low social cohesion. Due to the existence of PT, the third axis of the political powers would be difficult to establish. One of the impacts that must be felt for the life of nation and state was the polarization among the people that had been

¹⁶ *Op.cit.* Muhammad Mukhtarrija, I Gusti Ayu Ketut Rachmi Handayani, Agus Riwanto. p. 660

¹⁷ Marco Bunte dan Andreas Ufen. *Democratization in Post Suharto Indonesia. Routledge Contemporary Southeast Asia Series London* dan New York 2009. Dalam Gufroni. *Relasi Pemilu Dan Demokrasi Berdimensi Transedental*. <https://www.rmol.co/read/2018/02/25/328062/Relasi-Pemilu-Dan-Demokrasi-Berdimensi-Transedental>. Accessed on August 8, 2018.

¹⁸ Ramlan Subakti. *Pemilu Berintegritas dan Adil*. Harian Kompas. Dated on February 14, 2014.

¹⁹ Robert Dahl, *Polyarchy: Participation and Opposition*, New Haven, CT: Yale University Press, 1971; Freedom House, *Freedom in the World: The Annual Survey of Political Rights and Civil Liberties*, Lanham, MD.: Rowman & Littlefield, 2005; Paula Becker and Jean-Aime A. Raveloson, *What is Democracy?*, Friedrich Ebert Stiftung, 2008; Larry J. Diamond, and Marc Platter (ed), *Democracy: A Reader*, Baltimore, Md.: The Johns Hopkins University Press, 2009; Gerardo Munck, *Measuring Democracy: A Bridge Between Scholarship and Politics*, Baltimore, Md.: The Johns Hopkins University Press, 2009; Jargen Moller and Svend-Erik Skaaning, "Beyond the Radial Delusion: Conceptualizing and Measuring Democracy and Non-democracy," *International Political Science Review*, Volume 31, Number 3 June 2010, p. 261-284. In Ramlan Subakti, Didik Supriyanto, Hasyim Asy'ari. 2011. *Merancang Sistem Politik Demokratis Menuju Pemerintahan Presidensial yang Efektif*. Jakarta: Kemitraan bagi Pembaruan Tata Pemerintahan. p. 11.

²⁰ *Jurnal Demokrasi dan Pemilu*. [www.kpu.go.id/.../Pilkada_dan_Politik_Uang_\(KPU_Kabupaten_Ponorogo\)](http://www.kpu.go.id/.../Pilkada_dan_Politik_Uang_(KPU_Kabupaten_Ponorogo)). Accessed on August 8, 2018.

divided into two opposite political power groups. The polarization certainly would impact on the degrading social cohesion. In the daily social media, it is easy for us to find the two groups to scold and scorn one another, spread untruth, write improper words such *Cebong* (the name for supporters of Jokowi), and *Kampret* (aspersion for supporters of Prabowo), and the like. The reality is the evidence of great polarization. What then proves that the 2015 PT really causes polarization? Saiful Mujani Research and Consulting (SMRC) conducted a survey asking who would be the most proper person who would become the vice president for Joko Widodo in the 2019 General Elections. The results of the survey showed a fantastic number that 66.9% respondents agreed with these two figures to unite in the presidential election.²¹ When the data are wisely read using *argumentum a contrario* (reversed), the survey actually shows that the people were really bored with the contestation between the two groups. Since in the 2014 Presidential Election PT was adopted, the result is that the two figures should face head to head in the presidential competition.

3. The degradation of the public trust to the elected president would occur, since all political parties of the general elections participants could not join in the presidential election market. It means that no various choices are available for the people. When the people's desire to vote diverse alternatives is hindered, in the limit of a natural reasoning, the system of PT has forced the people to elect unintended candidates. When this happens, the public trust to the leaders during the post general election would degrade. An issue of this public trust is very crucial in the future. Kenneth A Bollen,²² once put forward an idea which is called "abortion capacity," an ability to gain any power to govern with the support from the members of the society. Therefore, public trust and support are the main capital, without which it can be like human beings without souls.
4. The level of the people's political awareness would be low. PT brings some consequences namely the limited number of candidates for president in the general election. This would give bad impacts on the people's political awareness level, since there would be two candidates for president, then the electoral system would not be able to engineer the people to be observant to the candidates. It is different supposed that the number of the candidates is higher, where the people would be trained to be alert in evaluating and elect the candidates. The candidates would also be forced to show their whole abilities to attract the people's attention. This condition certain could be the media to improve their political awareness.²³ Political

awareness is part of the indicators of the citizens' political participation system. In the democracy sphere, the participation should be provided by giving a certain frequency of opportunities for the voters to show the evaluation towards the leaders they would elect either directly or indirectly (political accountability).²⁴ It is such frequency that was not made available in the engineering of PT in the 2019 general elections. According to Miriam Budiardjo, the higher the level of the people's political participation, the better the level of the democracy will be. whereas, low participation is considered as a bad sign, since it means that the citizens do not respect to the constitutionality problems. This will cause the bureaucratic webs of those holding power will not be responsive to the people's needs for aspiration, necessity, and request.²⁵

VII. CONCLUSION

The paper concluded that, in the perspective of democracy: the enforcement of PT does not open a room for just competitions among the general election contestants, new political parties are unable to give any contributions to the competition of the general elections, and this condition is worsen by coalitions of political parties which are not based on the sameness of vision-missions, but on pragmatic considerations, namely what percentage of votes belongs to the political parties to support PT (like the Crescent Star Party (PBB) which was absent since it did not votes in the 2014 general elections). This condition even would give great impacts on unhealthy coalitions, because the necessity for the elected President would be held hostage with the political contracts with the members of the coalitions. This would end in two things, first, PT would damage the democratization climate in Indonesia in all lines, second, an electoral justice in the 2019 Presidential Elections would be realized.

In the perspective of Constitution: the interpretation of the *original intent* stated in the article 6A of the 1945 Constitution that no room is for any multi PTs, so that if this is forced, PT would be in opposition to the Constitution. PT is also not an open legal policy, since a new policy may said to be open legal policy if the norm would not abolish any constitutional rights in the Constitution, while in the stipulation of PT, it proves that it eradicates new political parties' rights to nominate their best candidates. The stipulations in PT that are clearly in line with the Constitution certainly would bring negative impacts on the people as the holders of the sovereignty. Moreover, PT would not offer any rooms for new figures, and PT causes some enormous polarization between the two groups, which at last decreases an unavoidable low social cohesion.

²¹ Haifa Salsabila. *SMRC: 66,9 Persen Masyarakat Setuju Jokowi-Prabowo Berpasangan*. <http://news.metrotvnews.com/politik/ZkeQ3ork-smrc-66-9-persen-masyarakat-setuju-jokowi-prabowo-berpasangan>. Accessed on July 24, 2018.

²² In Nuruddin. *Pakta Integrita Untuk Pemimpin Berkualitas*. *Harian Seputar Indonesia* dated on July 16, 2018.

²³ Annisya Rosdiana, Dian Susanthy. (2014). *Pemilu Lima Kotak Dampak Putusan MK atas UU Pilpres dan Masa Depan Kepemimpinan Indonesia*. *Beastudi Indonesia-Dompot Dhuafa Divisi Pendidikan Dompot Dhuafa*.

²⁴ Ramlan Surbakti. Didik Supriyanto. Hasyim Asy'ari. (2011). *Merancang Sistem Politik Demokratis Menuju Pemerintahan Presidensial yang Efektif*. Jakarta: Kemitraan bagi Pembaruan Tata Pemerintahan. p. 11.

²⁵ Rais, Amin, dkk. *Mendayung diantara HAM dan Demokrasi*, SEMA UMS, Surakarta, 1995. In Muhammad Nasir Badu, *Demokrasi dan Amerika Serikat Democracy and the United States of America*. The *POLITICS: Jurnal Magister Ilmu Politik Universitas Hasanuddin* Volume 1, Number 1, January 2015.

For the future solution, Indonesia should adopt a “no threshold system”, meaning that the system should be a pure system without any threshold. As a result, any political parties, big or small, will be able to nominate the best figures of leaders. Such a general election system certain will produce a high-quality government and figures of leaders resting on a just general election principle.

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