

The Presidential Threshold Design in Indonesia's Electoral System: In Search of "Win-Win Situation" Among Unfinished Debates

Ridho Al-Hamdi^{1,*}, Tanto Lailam², Sakir³

^{1,3}*Department of Government Affairs and Administration, Faculty of Social and Political Sciences, Universitas Muhammadiyah Yogyakarta, Indonesia*

²*Faculty of Law, Universitas Muhammadiyah Yogyakarta, Yogyakarta, Indonesia*

*Corresponding Author: ridhoalhamdi@umy.ac.id

ABSTRACT

This paper attempts to design a relevant presidential threshold system in Indonesia's presidential election as a "win-win situation" in achieving the desirable consolidated democracy. It is an unfinished debate, mainly among the Electoral Management Bodies (EMBs), political parties, Non-Governmental Organizations (NGOs) activists, scholars, even society. Methodologically, it is qualitative research by applying the multiple case approach. To collect data, it applied a Focus Group Discussion (FGD) with the EMBs, political parties, NGOs, and scholars in five selected provinces and seven selected cities/regencies. The finding demonstrates that by employing a SWOT analysis, the negative presidential threshold trends dominate over the positive trends. The high percentage of the presidential threshold tends to have no compatibility with the embedded democracy framework. Thus, the removal of the application of the presidential threshold is appropriate for Indonesia's presidential election. As an alternative solution, the presidential candidate is nominated by political parties that succeeded in surpassing the parliamentary threshold with two prerequisites: a maximum of 4% for the parliamentary threshold and the absence of simultaneous elections.

Keywords: *Presidential threshold, Indonesian election, embedded democracy, a win-win situation*

1. INTRODUCTION

In the democratic state, the election is frequently being the primary indicator of its achievement. The fundamental principle of democratic life is that each citizen has sovereignty and the right to actively engage in the political process, as evidenced in free and fair elections. Therefore, there are four indicators in reaching a successful election: elected officials, inclusive suffrage, the right to candidacy, and free and fair organized elections. It is part of the "embedded democracy" concept, which was initially introduced by Merkel et al. to describe democratic consolidation. It is where stable constitutional democracies are embedded in two ways. Internally, the specific interdependence of the different partial democratic regimes secures their normative and functional existence. Externally, these partial regimes are embedded in spheres of enabling conditions for democracy that protect it from outer and inner shocks and destabilizing tendencies.^{1,2,3}

In Indonesia, the growth of democracy and elections in the post-New Order regime in 1998 was fast, starting with establishing direct presidential and regional elections as the spearhead of democracy. It was then strengthened by simultaneous national and regional elections. The simultaneous national elections are a means of people's sovereignty to elect the House of Representatives (*DPR*), the Regional Representative Council (*DPD*), the Provincial Legislative Council (*DPRD Provinsi*), the Municipal/Regencies Legislative Council (*DPRD Kabupaten/Kota*), and

the president and vice-president, which are held directly, publicly, freely, confidentially, honestly, and fairly. The development of separate elections into simultaneous national elections was established by the Decree of Constitutional Court No. 14/PUU-XI/2013 regarding the Judicial Review of Act No. 42/2008 concerning the General Election of President and Vice President towards the 1945 Constitution, supported by two main issues. *First*, the norm, which stipulates that the enforcement of the presidential and vice-presidential elections is held after the general elections for the *DPR*, *DPD*, *DPRD Provinsi*, and *DPRD Kabupaten* members, is contained in Act No. 42/2008 on the Presidential Election Article 3 Paragraph (5). *Second*, the norms related to the procedures and requirements for nominating the presidential and vice-presidential candidates are in Act No. 42/2008 Article 9 Article 12 Paragraph (1) and paragraph (2), Article 14 Paragraph (2), and Article 112.^{4,5}

The main points of the decisions include, *first*, Article 3 Paragraph (3): "The presidential and vice-presidential elections are held after the general elections of *DPR*, *DPD*, and *DPRD* members"; *second*, Article 12 Paragraph (1) and Paragraph (2): "Paragraph (1), a political party or a coalition of political parties can announce their presidential and/or vice-presidential candidates in the legislative election campaign that elect *DPR*, *DPD*, and *DPRD*"; Paragraph (2), "the presidential and vice-presidential candidates announced by political party or coalition of political parties, as referred to in Paragraph (1), should have obtained a written approval from the candidates." *Third*, Article 14 Paragraph (2): "The

registration period, as referred to in Article 13, is no later than seven days after the national stipulation of the legislative election results”; *fourth*, Article 112: “The voting for the presidential and vice-presidential elections is organized no later than three months after the announcement of the election results of *DPR*, *DPD*, *DPRD Provinsi*, and *DPRD Kabupaten/Kota*.”

Moreover, the Act of Presidential Election Article 3 Paragraph (5), Article 12 Paragraph (1) and Paragraph (2), Article 14 Paragraph (2), and Article 112 are declared contrary to the 1945 Constitution and have no legal binding force. The decision implies that separate elections are contrary to the 1945 Constitution and re-establish the electoral order, as initiated in the amendments of the 1945 Constitution, namely “simultaneous elections”. However, considering the arrangement of the electoral system and the electoral legal culture, simultaneous elections have been held in the 2019 election and further elections.

In a *quo* decree, based on the Act of Presidential Election Article 9, “the candidates are proposed by a political party or a coalition of political parties participating in the general election that fulfill the requirements, which obtain seats at least 20% of the total seats in House of Representatives or 25% of the valid national votes in the parliamentary elections, before the implementation of the presidential and vice-presidential election.” (*Hereinafter referred to as presidential threshold*). It is a regulation regarding the requirements for earning votes for political parties to propose their presidential and vice-presidential candidates. It is a legislator authority, yet still based on the regulation in the 1945 Constitution. It indicates that the Constitutional Court turns over the presidential threshold to legislators (open legal policy); whether the presidential threshold can be implemented depends on the political will of legislators.

The Constitutional Court’s decision is an interesting issue to discuss because it escorts the pace of a more democratic Indonesian constitutional development. As a democratic institution, the Constitutional Court has the authority to organize democratization and electoral system leading to the idealization through decisions on the judicial reviews. It cannot be denied that in 2004, 2009, and 2014 presidential elections conducted after the legislative elections, a political fact was found that to gain supports as a presidential candidate to reach the presidential threshold, he/she was forced to do political negotiations and bargaining with political parties, which dramatically affects the government development in the future. In fact, the negotiations and bargaining are more tactical and momentary than strategic and long-term due to an equal line of long-term political party struggles.

Furthermore, the presidential election enforcement should be connected to the design of a governmental system based on the 1945 Constitution, namely a presidential government system. One of the agreements and objectives of the Working Committee of People’s Consultative Assembly (*Badan Pekerja MPR*) when discussing the amendment of the 1945 Constitution between 1999 and 2002 was to strengthen the presidential system. It becomes the basis for a good, effective, and efficient presidential government system

implementation. Nevertheless, the amendment results of the 1945 Constitution have not yet contained the characteristics of a presidential government system, so that the president is sometimes fixated on the political interests of a political party, political power to grant seats in parliament, and others. Regarding that circumstance, there is a reconstruction to conduct a simultaneous election to strengthen the presidential government system.

With the simultaneous national election mechanism, many benefits can be obtained to reinforce the government system. (a) The government system is strengthened through a political separation (decoupled) between the executive and legislative functions, balancing each other. The officials in these both power branches are formed independently at the same time, so there is no conflict of interests or potential hostage-taking, which can foster transactional politics. (b) One of the weaknesses of the decoupling system has the potential to create a tendency for divided or split government caused by the head of government being unable to dominate the majority votes in parliament. However, this is a reality that should be accepted, which is assuredly balanced with implementing a principle that is not bringing down each other between the parliament and the government. (c) The impeachment system can only be implemented with strict regulations, namely the existence of criminal reasons, not political reasons. (d) To maintain the climate and dynamics of ‘public policy debate’ in parliament, it should be possible for political party members to have a different point of view from their party in fighting for people interests, and the ‘party recall’ policy should be abolished and replaced with ‘constituent recall’. Therefore, the decision to implement a simultaneous election system in 2019 can be used as a momentum to strengthen the government system. It becomes the main agenda after the formation of the post-election government resulting from the 2014 election so that the 2014-2019 period can be adequately utilized for a more productive and efficient democratic consolidation and the strengthening of the presidential government system.⁶

The simultaneous election system design has been embedded in the Indonesian Constitutional System, but it still leaves the issue of political practice by still presenting the presidential threshold in Act No. 7/2017 Article 222 with an elevated percentage. “*The candidates are nominated by a political party or a coalition of political parties as election contestants that fulfill the requirements to obtain seats of at least 20% of the total seats in the House of Representatives or 25% of the valid national votes in the national parliamentary election.*”⁷

This presidential threshold implicitly aims to perpetuate the authority of big political parties and force new and small political parties to form a coalition with big political parties. It means that small and big political parties whose existence is guaranteed in the constitution do not have the same rights in nominating presidential candidates. Moreover, small and new political parties do not have the option to nominate alternative presidential candidates. The presidential threshold eventually has many problems. It can reduce the meaning of ‘equality before the law and government’ for the political

parties participating in the election and affect the presidential system run by the president and vice president. The strengthening of the presidential system in the simultaneous election decision will always be tainted by substandard practices from political parties carrying presidential candidates, both in the form of providing seats in the government and finding political parties that are used as a milestone to pursue and run their objectives smoothly and coupled with a weak opposition party system.

To unravel these tangled threads, it is necessary to examine the implications of the presidential threshold in Indonesia's presidential system. For this reason, the purpose of this study is to figure out a 'win-win situation' among the unfinished debates about the threshold for presidential candidacy in Indonesia's presidential election. Therefore, the main question is: How is the presidential threshold design in Indonesia's presidential election that strengthens the embedded democracy values?

2. THEORETICAL FRAMEWORK

2.1. The Concept of the Presidential Threshold

Conceptually speaking, the presidential threshold is the minimum level of support a candidate pair needs to earn representation⁸ to nominate themselves. If such a pair cannot accumulate the support, it is not admitted by the applied system to run for the contest.⁹ It is, indeed, aimed at reducing the number of contestants. The regulations regarding the presidential threshold can be seen in two Acts. *First*, Act No. 23/2003 concerning the Presidential and Vice-Presidential Election Article 5 regulates that "the candidates for president and vice president can be nominated by a political party or a coalition of political parties that obtain at least 15% of the total parliamentary seats or 20% of the valid national votes in the legislative election."¹⁰ *Second*, Act No. 42/2008 concerning the Presidential and Vice-Presidential Election Article 9 stipulates that "the president and vice president candidates can be nominated by a political party or a coalition of political parties that can fulfill the requirement, obtaining the seats of at least 20% of the total parliamentary seats or 25% of the valid national votes of the legislative election, conducted before the presidential and vice-presidential election".⁵

Act No. 42/2008 Article 9 concerning the Presidential and Vice-Presidential Election was reviewed by the Constitutional Court. Then, in the Decree of Constitutional Court No. 14/PUU-XI/2013, Article 9 is the regulation for requirements in obtaining votes to nominate presidential and vice-presidential candidates, which is the authority of legislators, but it still refers to the 1945 Constitution (open legal policy). It means that the Constitutional Court submits the presidential threshold regulation to the legislators to decide whether the presidential threshold can be applied relying on the legislators' political will.^{5,4}

The presidential threshold regulations are handed over to legislators, called "open legal policy" in legal parlance. The concept of the open legal policy is a new thing and is relatively unknown to others. The term 'policy' broadly known in a

public policy study is communitarian, public policy, and social policy. The term 'policy' implies 'free or open' because principally, the notion of the policy refers to the flexibility of officials or authorized parties to do certain things whose implementation might not be or has not been clearly regulated by the government in the legislation. Hence, it is different from the notion of 'policy' in the field of law.¹¹

In the national legal system, the legal policy is an act of legislators in determining a subject, an object, an act, an event, and/or a consequence regulated in the Acts. Thus, the term 'open' in the notion of "open legal policy" means freedom for legislators to take a legal policy. Nevertheless, it is still based on the constitution and does not violate or contradict the constitution. The open legal policy can be implemented in texts with broad meanings, while it cannot be reinterpreted in texts with clear meanings. An example of open legal policy is an interpretation of Article 18 Paragraph (4): "A governor, regent, and mayor respectively become the heads of government in the province, district, and city who are elected democratically."

Based on Ajie's study, legislators are given the freedom to stipulate rules, prohibitions, obligations, or limitations contained in a legal norm that is being made and is a policy chosen by legislators as long as the norm: *first*, does not contradict clearly to the 1945 Constitution; *second*, does not exceed the legislator's authority (*détournement de pouvoir*); *third*, does not include in a power abuse (*willekeur*).¹² It indicates that the decisions of the Constitutional Court, turning over the presidential threshold, can be justified, but the Constitutional Court did not give feedbacks towards the presidential threshold implication in the election; even, the high percentage can violate constitutional rights of political parties who participate in the election. Nonetheless, the Constitutional Court still provides a limitation that the presidential threshold must refer to the constitution.

The presidential threshold in Act No. 23/2003 and Act No. 42/2008 is different, but in the 2004 presidential election, Susilo Bambang Yudhoyono was elected, nominated by the *Partai Demokrat* (Democratic Party), which merely obtained 10%. It reveals that the low percentage of the presidential threshold can promote an alternative candidate who will possibly be elected as the president based on people's choices.¹⁰ Furthermore, the presidential threshold in the 2009 and 2014 elections was regulated in Act No. 42/2008, stipulating that political parties require 20% of the total parliamentary seats or 25% of the valid national votes. For instance, *Partai Demokrat* was strong enough to nominate its candidate in the 2009 election. However, it failed to nominate its candidate in the 2014 election. It was caused by the lack of the collected votes.⁵

In the 2019 election, according to Act No. 7/2017 Article 222, "the candidates are nominated by a political party or a coalition of political parties participating in the election by fulfilling the requirement of 20% of the total parliamentary seats or 25% of the valid national votes in the previous legislative election."⁷ Thus, the contestation has incumbent candidates, namely Joko Widodo, and Prabowo Subianto. It signifies that the regulation was deliberately used to block

alternative candidates promoted by small political parties. According to Effendi Gazali, the initiator of the simultaneous election, implementing the presidential threshold seems to limit contestants from participating in the 2019 presidential election. As a result, there were only two candidates; even everything they had worked on was wrecked by the presidential threshold because it seemed like an attempt to ban the nation's best sons and daughters from being involved in the presidential election. In addition, there was a possibility to limit to one competitor and find out the weakest competitor.¹³

2.2. Simultaneous Election and the Presidential System

In the human rights view, an election is one of the citizens' fundamental human rights. Therefore, it is a must for the government to conduct an election that is appropriate with the principle in which the people are sovereign, so everything must be returned to a citizen to decide. In the 1945 Constitution, an election is a political process in the state's life to form the state institution and elect state officials as citizen sovereignty bearers carried out periodically (five years). According to Asshiddiqie, the importance of elections being conducted periodically is due to several reasons. First, citizens' aspirations regarding various aspects of living together in a dynamic society develop from time to time. Second, besides the people's opinions that can change from time to time, the condition of living together in society can also change, either due to international dynamics or domestic factors, and both because of a human internal and external factor. Third, changes in people's aspirations can also possibly happen because of the increase in population number. They, especially novice voters, do not assuredly have the same attitude as their parents. Fourth, an election is necessarily held regularly to ensure a change of the state leadership in both executives and legislatives.¹⁴

To ensure the realization of an election that is truly in line with a democratic principle, its implementation should be held by using a good system in which there are some parts as subsystems, such as an electoral regulation, electoral process, and electoral law enforcement. The electoral regulation is all regulations of the applicable and current election, binding and becoming a guideline for the EMBs, candidates, and voters in doing their roles and functions. The electoral process is all activities directly related to implementing an election referring to legal and technical legislation. Meanwhile, electoral law enforcement is the law enforcement towards election rules, whether political, administrative, or criminal. The fulfillment of three parts of the election can determine how far the system capacity can bridge the goal achievement and electoral process, where each part cannot be separated since it is intact unity.¹⁵

To actualize an electoral regulation, electoral process, and electoral law enforcement, structuring an electoral system is done, namely a simultaneous election. A simultaneous national election is a means of people's sovereignty to elect members of DPR, DPD, DPRD Provinsi, DPRD Kabupaten, and president and vice president, held directly, publicly,

freely, confidentially, honestly, and fairly. Furthermore, there are some advantages in the enforcement of a simultaneous presidential and legislative election. It is more efficient, so the financing of its implementation saves more state money coming from taxpayers and exploitation of natural resources results and other economic resources. It will increase a state's ability to achieve state goals as mandated in the Preamble of the 1945 Constitution, which fosters citizens' general welfare and prosperity. In addition, the citizen's right to vote in the simultaneous national election is related to the citizen's right to build a map of checks and balances of the presidential government with their beliefs.

Other advantages are that the simultaneous election can save the budget; it helps the government realize and fund other programs that benefit many people. If the democracy implementation runs without considering a balance between the costs incurred and the benefits obtained, this circumstance will create a democratic deficit. Thus, the simultaneous election is effective in terms of the time allocation and the energy required. On the other side, separate elections seem time-consuming and need a large amount of performance. Although some argue that the simultaneous election can reduce money politics,¹⁶ the 2019 election could not confirm this argument. Conversely, the last election provided many cases of vote-buying among candidates, voters, and the EMBs.

The electoral system also depends on the government's stability on the people's direct support for several basic reasons (*raison d'être*). First, the president who is elected through a presidential election will get more mandate and support. Second, the presidential election automatically avoids political intrigues in the electoral process with a representative system. Third, the presidential election will provide broad opportunities to people to make a choice directly without representing others. Fourth, the elections can consider several powers in the administration, especially in establishing the mechanism of 'checks and balances' between the president and the parliament because citizens elect them.¹⁷ Therefore, it is urgent to re-design the presidential election in Indonesia to strengthen the embedded democracy values. Many regulations of its implementation were not appropriate with people's needs and contradicted democracy principles.¹⁸ Additionally, the deepening of democracy can be viewed as an effort to realize effective governance; therefore, the state and society should work together.¹⁹

According to the 1945 Constitution, a president holds government authority in the presidential government system. First, it becomes the head of state and the symbol of national unity. Second, the president is not only determined by most voters but also the minimum support of 50% of votes in each province spread over half the number of provinces in Indonesia to be sworn as president. Third, the president appoints and dismisses the state ministers. Fourth, the president is directly elected by people for a five-year term and after that can be re-elected in the same position for one term. Fifth, the president can be dismissed during his/her term by the People's Consultative Assembly, suggested by DPR because of specific reasons limitedly stipulated in the 1945

Constitution if he/she has been proven to violate the law based on the court decision in the Constitutional Court, such as a betrayal, corruption, bribery, other serious crimes, or despicable acts, and/or if he/she has no longer met the requirement as a president. Therefore, the 1945 Constitution places the president in a strong position. During the term, *DPR* cannot overthrow him/her, except that there are reasons limitedly determined in the 1945 Constitution. Sixth, in relation to *DPR*, the president's position aligns with the checks and balances principle. In some instances, the president policies should consider the *DPR* approval, such as doing an ambassador appointment and acceptance from other countries, declaring war, making peace and agreements with other countries, making international agreements that give fundamental consequences for citizens' life related to the state budget, and requiring amendments or formations of Acts. To carry out their authority to form Acts, *DPR* should work together with the president to jointly approve the Acts. Regarding the State Revenue and Expenditure Budget (*APBN*), the president submits the *APBN* draft to discuss together, and *DPR* can approve it. If the *APBN* draft is not approved, the president carries out the previous *APBN*. Based on this government system, the president's position generally does not depend on the presence or absence of *DPR* support. Hence, there are some acts and policies that need the *DPR*'s consideration. However, the supports are essential to run the effectiveness of government carried out by the president.²⁰

3. RESEARCH METHOD

This paper applied the qualitative method^{21,22,23,24,25} by utilizing the multiple case study approach.^{26,27} The case study can be constructed as an intensive investigation that describes one or more cases within a tied case or multiple cases through in-depth data collection by gathering various sources.^{28,29,27,26} To collect data, this paper used documentary,^{28,29,27,26} focus group discussion (FGD), and in-depth interviews.^{30,25,22,31,23,27} FGD and in-depth interviews were conducted with 150 respondents, spreading into four different institutions: the Election Commission (KPU), the Election Supervisory Body (Bawaslu), political parties, and academicians or Non-Government Organizations (NGOs) activists. It took approximately four months, between March and June 2021. Moreover, the documentary was carried out before, during, and after the field research. Supporting data from credible online news and relevant references were also utilized in this article. After data were collected, the last step was analysis into four steps: reducing data, displaying data, drawing and verification, and conclusion.^{32,28}

About the research location, the researchers decided on five provinces and seven regencies/cities across Indonesia. The selection of these locations was based on a sevenfold consideration: many cases on electoral fraud, the rampant money politics, many cases on the death of the Electoral Management Bodies (EMBs), capital of the state, special autonomy regions, and the electorate base in the 2019 election. Based on such considerations, this research selected five provinces: Aceh, Jakarta, West Java, East Java, and South Sulawesi. Meanwhile, Banda Aceh City, Central

Jakarta City, Bandung City, Indramayu Regency, Surabaya City, Bangkalan City, and Makassar City were selected as regency and municipal representatives.

4. FINDINGS AND DISCUSSION

4.1. *The Implication of the Presidential Threshold on the Presidential System*

Principally, to create a strong presidential system, it has been regulated in the 1945 Constitution by presenting an elected president through quite serious requirements. Article 6A Paragraph (3) states that "the presidential and vice-presidential candidates who obtain the votes more than 25% of the total votes in the election with at least 20% of votes in each province spread over half the number of provinces in Indonesia are finally appointed as president and vice president." This regulation also becomes a threshold for presidential legitimation so that the president has an entire people's mandate.

In addition, the previous article, Article 6A Paragraph (2), stating that "the candidates of the president and vice president are nominated by a political party or a coalition of political parties participating in the election before its implementation," cannot decide whether there is the presidential threshold in the presidential election. Article 6A Paragraph (2) provides the constitutional right to political parties and a coalition of political parties participating in the presidential election. Hence, one of the characteristics of the presidential system guaranteed by the 1945 Constitution is to conduct the presidential election that must not require the presidential threshold. It emerges because there is a demand to maintain a harmonious relationship between the president and *DPR*, although a good relationship can be created after the presidential election.

The presidential threshold is designed to build a more effective presidential system. The practice shows that the Indonesian president and vice president have not adequately controlled the government without any strong coalitions in the last five years. The threshold (20% or 25%) is not one of the instruments to strengthen the coalition allowing the president to have effective authority.³³ On the other hand, the weakness of ignoring the presidential threshold is that the elected presidential and vice-presidential candidates are more likely to come from small political parties with few or no representatives in the parliament. It implies that the elected president will find it difficult to gain legislature's support and create an unstable government. If the presidential threshold is still applied, it fosters qualities of presidential and vice-presidential candidates because through the selection process done by political parties, ignoring the threshold can impact the executive leadership does not get support from the legislature.³⁴

Moreover, there are positive impacts if the presidential threshold is still implemented. 1) The legislators tend to be dominant if the presidential threshold is abolished. It can weaken the presidential system. 2) If the presidential threshold is high, it forces a political party and a coalition of

political parties to strengthen the presidential system and select the president and vice president candidates. 3) There will be a coalition strengthening the government implementation and, in turn, building an effective government. 4) The presidential threshold is utilized to simplify political parties in the context of nominating the president and vice president candidates.³⁴

Another view is that the Constitutional Court does not cancel the presidential threshold to promote the presidential and vice-presidential candidates. At the limit of reasonable thought, by reinstating the notion of simultaneous election in Article 22E Paragraph (1) and (2) of the 1945 Constitution, the minimum threshold becomes irrelevant. It means that all political parties eligible to participate in the election can nominate presidential and vice-presidential candidates as regulated in the 1945 Constitution Article 6A Paragraph (2). If such parties can promote their candidates, the number of candidates is increasing. To improve the additional number of candidates, the requirements of participating in the election should be easier and looser than this existing regulation.³⁵

4.2. A SWOT Analysis of the Presidential Threshold

Conceptually, SWOT is a regular method usually employed to evaluate policies, programs, and activities in government institutions, business sectors, even non-profit organizations. It consists of four primary indicators: strengths, weaknesses, opportunities, and threats. In this paper, there are two types of SWOT analysis: the analysis of the application of the presidential threshold and the analysis of the absence of the presidential threshold.

4.2.1. A SWOT Analysis of the Application of the Presidential Threshold

Strengths. There is a fivefold strength if the presidential threshold is applied in Indonesia's presidential election. First, the high percentage of the presidential threshold can minimize the number of candidates so that it eases the EMBs to organize the election administratively, and, in turn, it reduces the financial budget. Second, it makes the effectiveness of the government coalition and the political stability, including the absence of the polarization among society. Third, it can simplify the number of political parties, including its political fragmentation, by still accommodating a constitutional justice for voters and candidates who will be elected. Fourth, it strengthens the democratic and presidential systems because there is representative support from the number of candidates for their candidacy. Fifth, it affects the emergence of excellent capabilities and can genuinely represent people's aspirations.

Weaknesses. Five main weaknesses can be presented here. First, the high percentage of the presidential threshold causes limited candidates, and in turn, it does not recruit other potential candidates with no political parties' support. The impact is that the candidates are old and oligarchical. It also restricts the people's choices and makes a horizontal polarization before, during, and after the election among society for a long time, whether based on the religious or tribal issue. The case of the 2019 presidential election is tangible proof. Second, the high presidential threshold

requires a big coalition among political parties to nominate the approved candidate. It potentially causes the dismantled coalition. Third, the big coalition affects the money politics transaction among political parties. Fourth, it is not friendly to small political parties because they have no freedom to nominate their candidates and, in turn, need to join the existing big coalition. Fifth, it capitalizes on the constitution and is no longer relevant since applying the simultaneous election.

Opportunities. If the presidential threshold is applied, unacknowledged candidates can be minimized. It is caused by the fact that if such a threshold is eliminated totally, there is a probability of the emergence of unexpected candidates who may be financed by the financial owner (Indonesian term is "cukong"), and the elected president is friendly to the *cukong*.

Threats. Four threats can be found. First, there are horizontal conflicts among societies and political parties, obstructing constitutional values. It seems to affect physical and non-physical conflicts among them at the grassroots. Second, political stability is disturbed if merely a few candidates are contested. Third, the oligarchy influence inside the political parties is stronger, and somehow, their existence cannot be identified by the regulation. It eventually makes major political parties act arbitrarily. Fourth, it fades the ideology of political parties.

4.2.2. A SWOT Analysis of the Absence of the Presidential Threshold

If the presidential threshold is not applied in the Indonesian presidential election, it has some *advantages*. First, all political parties can propose their candidates. Many potential candidates can emerge to the public. Those candidates can represent various segments of society. Second, society has various alternative candidates to vote for the best candidate based on their preferences. Meanwhile, the *disadvantage* is taking a high political cost among candidates, political parties, and voters. It affects the large of the ballot paper and the hubbub of the election.

Afterward, the absence of the presidential threshold gives a *chance* to any citizens who are capable of creating a better Indonesia in the future to be the presidential candidate. It also allows major, medium, and small political parties to promote and nominate their candidates in the presidential election contest. In the meantime, if the presidential threshold is absent, many unrecognized presidential candidates can *jeopardize* the national stability and the constitution. Many stakeholders will propose to amend the UUD 1945 Constitution, mainly regarding the possible nomination of independent candidates.

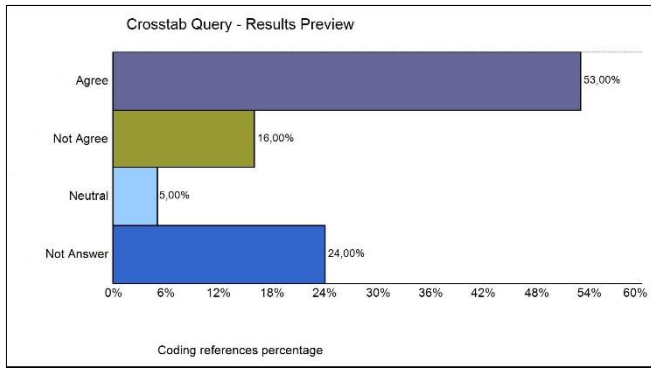


Figure 1. The Respondents' View on the Application of the Presidential Threshold in Indonesia

Source: It was processed by the NVivo 12+ Platform.

Figure 1 demonstrates that most respondents agreed to apply the presidential threshold in Indonesia's presidential election. However, their proposal of the presidential threshold varied, ranging between 0% and 20%. A few proposed more than 20%. Therefore, although most respondents stated their agreement to such an application, a comprehensive analysis is needed to be contextualized in Indonesia's consolidated democracy.

4.3. The Compatibility of the Presidential Threshold and Embedded Democracy: A Proposed Design

This paper adopts the framework of embedded democracy to ensure the compatibility of the presidential threshold in Indonesia's presidential election. The embedded democracy is explored in the five partial regimes. The first is the *electoral regime* characterized by elected officials, inclusive suffrage, the right to candidacy, and free and fair organized elections. The second is *political liberties* with freedom of press and freedom of association. The third is *civil rights*, where the state or private agents should protect individual liberties from rights violations and guarantee equality before the law. The fourth is the *division of powers and horizontal accountability* through separation between the legislative, the executive, and the judiciary branches. The fifth is *effective power to govern*, where the elected officials can rule the government effectively. For the first and second partial regimes, they are part of the dimension of vertical legitimacy and control. The third and fourth partial regimes denote the dimension of liberal constitutionalism and the rule of law. Meanwhile, the last partial regime is the dimension of effective agenda-control.^{1,2} Among those five regimes, this paper concerns adopting four indicators of the electoral regime to evaluate the application of the presidential threshold.

In the context of the elected candidate, the presidential threshold makes the elected candidate have powerful parliament support because the political parties nominate the candidate. Thus, the government's performance seems to be effective. However, the presidential threshold does not affect the legitimation of the elected president because the president is directly elected by voters, not parliament. Regarding inclusive suffrage, a high percentage of the presidential threshold leaves a limited number of candidates. It eases

voters to vote and the EMBs to administrate the election technically. On the other hand, the high percentage restricts voter preferences. It makes voter turnout decrease because voters may not like the existing candidates.

About candidacy rights, the high percentage of the presidential threshold merely allows the powerful candidate to be supported and nominated by major parties that can run for the presidential election. There is no chance for medium and small parties to nominate their candidates. In addition, candidates with potential competencies but are not supported by the party are also blocked by this regulation. In terms of holding free and fair organized elections, both the application and the absence of the presidential threshold still causes horizontal polarization among society before, during, and after the presidential election for a long time. Both also have another negative implication: the possibility of electoral fraud committed by all candidates and political parties because of the big ambition to win the competition and hold power.

Based on the summary presented in Figure 2, it can be known that the negative trends of the high percentage of the presidential threshold are more than the positive trends. There are six negative pieces of evidence and merely three positive ones. Therefore, it is essential to highlight here that the presidential threshold design in Indonesia's electoral system should be a "win-win solution" for at least related parties, such as political parties, voters, the EMBs, and potential candidates. Indeed, the solution is compatible with the framework of the embedded democratic election indicators.

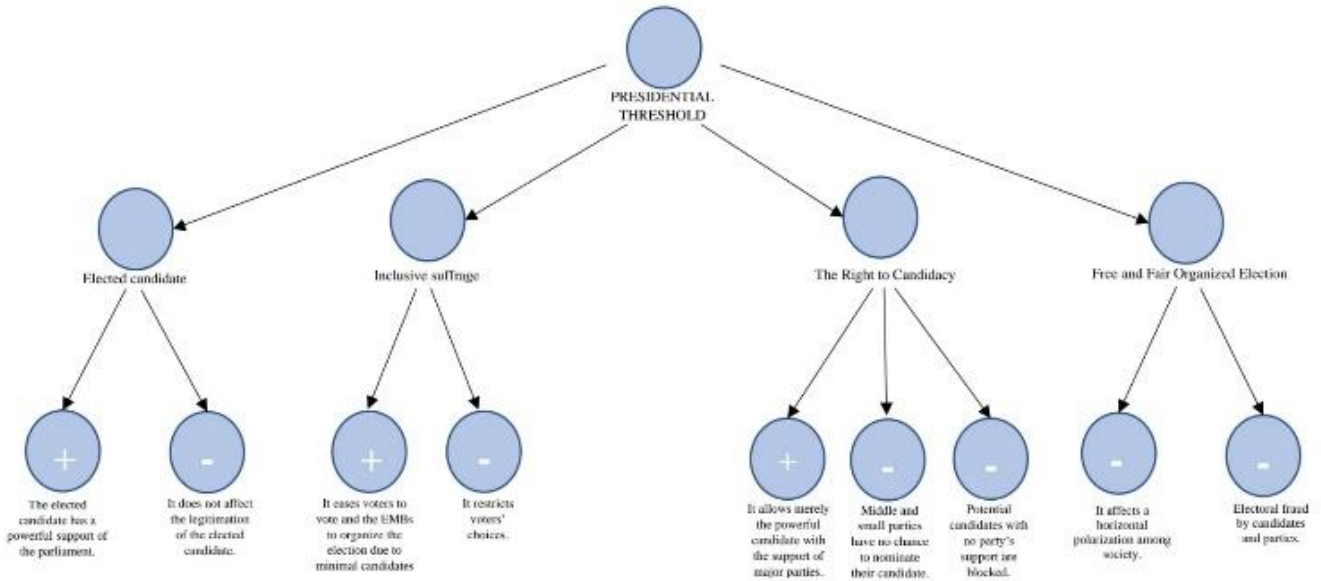


Figure 2. The Compatibility of the Presidential Threshold with the Embedded Democratic Election Indicators

Source: It was processed by the NVivo 12+ Platform.

The six negative trends of the presidential threshold are that: 1) it does not affect the legitimacy of the elected candidate; 2) it restricts voters’ choices; 3) medium and small parties do not have the chance to nominate their candidates; 4) potential candidates with no party support are blocked; 5) it affects horizontal polarization among society; 6) the emergence of the electoral fraud by candidates and parties. It is strengthened by Figure 3, which demonstrates most negative keywords, such as pragmatism and restrict, as the biggest words. Other negative words are high cost, wasted vote, polarization, decreased, and disproportionate. In addition, only one word indicates a positive trend, namely “opportunity”.

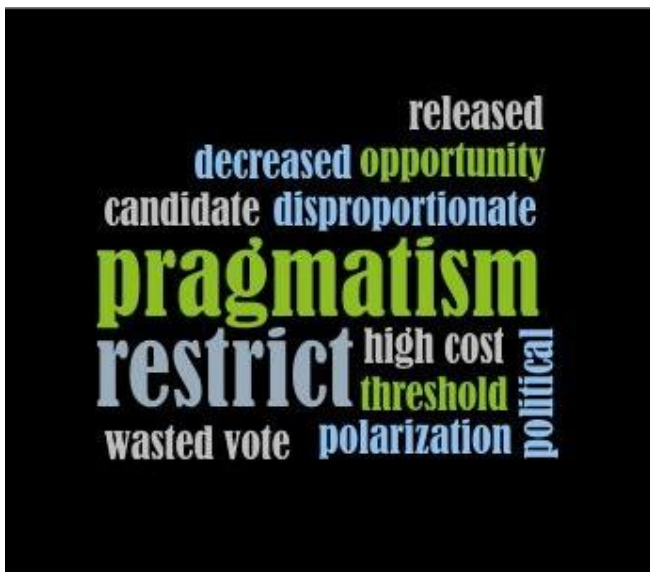


Figure 3. The Wordcloud of the FGD Results with Respondents

Source: It was processed by the NVivo 12+ Platform.

To address those negative trends, the design of the presidential threshold proposed by this paper is:

“Removing the presidential threshold, but the presidential candidates can be nominated merely by political parties that succeeded in achieving the parliamentary threshold at the national level.”

This design needs two fundamental prerequisites. *First*, the parliamentary threshold ranges merely between 0% and 4%, and *second*, the simultaneous legislative and executive elections are no longer applied. The high percentage of the presidential threshold basically violates the constitutional rights of political parties to promote their candidates as guaranteed by the 1945 Constitution. Referring to the 2019 presidential election as the requirement for the 2024 presidential election, it indicates that only one political party fulfills the percentage of the presidential threshold, namely the *Partai Demokrasi Indonesia Perjuangan [Indonesian Democratic Party of Struggle]* (PDIP). There is no chance for other political parties to nominate their candidate in the 2024 presidential election.

Applying such a design provides various potential candidates, enables all successful parties in the parliament to nominate their candidates and decreases social conflict. It solves the negative trend of numbers 2, 3, 4, and 5. Regarding the negative trend of number 1, the legitimization depends on the vote collected by the elected candidate because the presidential candidates are elected by voters directly. It is also supported by the extent of consolidation performed by the elected candidates after the electoral event. Regarding the negative trend of number 6, it should be governed by further regulation by considering the severe punishment for perpetrators of electoral fraud. This design, indeed, does not violate and contradict the 1945 Constitution.

The following inquiry is why only political parties that succeeded in earning the parliamentary threshold nominate the presidential candidates? The answer has a twofold consideration: *first*, appreciating the party's performance in the legislative election. In other words, it is an additional reward for them. *The second* is to allow unsuccessful parties to work more seriously in further legislative elections. It indicates that creating and maintaining a political party should be supported by serious strategies in keeping its endurance. Nonetheless, nine political parties who passed the parliamentary threshold in the 2019 election did not automatically nominate nine presidential candidates. They can make a coalition with other parties.

In addition to that, to strengthen the presidential government, the government coalition can be formed by the elected president by creating his/her cabinet. It signifies that the elected president and the coalition can still receive proposals from other parties to support the coalition. Therefore, the presidential threshold cannot create a strategic coalition and allows other parties to support the government after the contestation. In the case of the 2019 presidential election, Prabowo Subianto-Sandiaga Uno, the rival of Jokowi-Maruf Amin, eventually joined the existing government. Prabowo and Sandiaga were appointed to be ministers in Jokowi's cabinet, including bringing the *Gerindra* Party into the government coalition. It reveals that a high percentage of the presidential threshold can harm the presidential system and ideological contestation.

5. CONCLUSION

With the application of the SWOT assessment, the presidential threshold has positive and negative trends. Internally, strengths and weaknesses are equal by having five proofs, respectively. Externally, threats are more powerful than opportunities. Overall, the negative trends seemingly dominate the application of the presidential threshold than its positive trends. Meanwhile, if the presidential threshold is not applied, the SWOT results in two impacts on each indicator. It means all of them are equal. If the high percentage of the presidential threshold is examined by the four embedded democratic election indicators, the negative trends dominate more than the positive trends. Six is negative, and three is positive. It denotes a fundamental examination that should be regulated to obtain the embedded democracy. The high percentage of the presidential threshold seems to have no compatible prospects with the embedded democracy.

To design the presidential threshold as a "win-win situation" in Indonesia's presidential system and to cope with the negative trends, the proposed presidential threshold design is the deletion of the application of the presidential threshold. The presidential candidates can only be nominated by political parties that achieve the parliamentary threshold with two prerequisites: the maximum of 4% for the parliamentary threshold and the absence of the simultaneous election. For practical implications, such a design provides many potential candidates, allows the victorious parties to nominate their candidates, and diminishes a social conflict because of various alternative candidates.

AUTHORS' CONTRIBUTIONS

All authors in this paper have made significant contributions since the research proposal writing, data collection, data analysis, and the full paper writing.

ACKNOWLEDGMENTS

The authors express sincere gratitude to the Ministry of Education, Culture, Research, and Technology (Mendikbud-Ristek) Republic of Indonesia in providing the generous grant for this research under the grant number of 1867/E4/AK.04/2021 and three other derivative contract numbers: 165/E4.1/AK.04.PT/2021 (between Mendikbud-Ristek and LLDikti in Yogyakarta Region), 3279.4/LL5/PG/2021 (between LLDikti in Yogyakarta Region and Universitas Muhammadiyah Yogyakarta), and 015/SP.LRI/VIII/2021 (between the Research and Innovation Institute Universitas Muhammadiyah Yogyakarta and the grantee). Our honest thanks also goes to all informants who spent their time and shared their fruitful experiences to improve this paper. Special thanksgiving is addressed to the local team of the data collection (Agus Mahfudz Fauzi, Wais Alqorni, Hadi Saputra, Ahmad Nur Hidayat, Masmulyadi, Margono, David Efendi, and Ubay) and the research assistants (Dyah Mely Anawati, Adibah Dhifani Gusmi, Milla Farihatul Ahna, M. Edward Trias Pahlevi, etc.) in managing FGD and interview transcripts as well as helping other technical issues.

REFERENCES

- [1] W. Merkel, Embedded and Defective Democracies. *Democratization*, 11(5), 2004, pp. 33–58. <https://doi.org/10.1080/13510340412331304598>
- [2] W. Merkel, Embedded and Defective Democracies. In: Hadiwinata B. S. & Schuck, C. (eds.) *Democracy in Indonesia: The Challenge of Consolidation*. Baden-Baden, Nomos-Verlag, 2007, pp. 31-63.
- [3] W. Merkel, A. Croissant, Conclusion: Good and defective democracies. *Democratization*, 11(5), 2004, pp. 199-213.
- [4] The Decree of Constitutional Court No. 14/PUU-XI/2013 regarding the Judicial Review of the Act No. 42/2008 concerning the General Election of President and Vice President towards the 1945 Constitution.
- [5] Act No. 42/ 2008 on Presidential and Vice-Presidential Election.
- [6] J. Asshiddiqie, "Pemilihan Umum Serentak dan Penguatan Sistem Pemerintahan", in www.jimly.com/makalah/namafile/173/PEMILIHAN_UMUM_SERENTAK.pdf, 2015.
- [7] Act No. 7/2017 on Election.
- [8] A. Reynolds, & B. Reilly, *The international IDEA handbook of electoral system design*. Stockholm: International IDEA, 1997.
- [9] R. Al-Hamdi, Ideological Cleavage under Open-list Proportional Representation: Parties' Position toward the 2019 Indonesian Presidential Threshold. *Jurnal Ilmu Sosial dan Ilmu Politik*, 24(3), 2021, pp. 205-019.

- [10] Act No. 23/2003 on the Presidential and Vice-Presidential Election.
- [11] M. Wibowo, "Menakar Konstitusionalitas sebuah Kebijakan Hukum Terbuka dalam Pengujian Undang-Undang", *Jurnal Konstitusi*, 12(2), 2015, pp. 196-216.
- [12] R. Ajie, "Batasan Pilihan Kebijakan Pembentuk Undang-Undang (*Open Legal Policy*) dalam Pembentukan Peraturan Perundang-Undangan Berdasarkan Tafsir Putusan Mahkamah Konstitusi," *Jurnal Legislasi Indonesia*, 13(2), 2016, pp. 111-120.
- [13] CNN Indonesia, "*Presidential threshold* dinilai merusak sistem pemilu serentak" <https://www.cnnindonesia.com/nasional/20190424180114-32-389317/presidential-threshold-dinilai-merusak-sistem-pemilu-serentak>, 28 April 2019.
- [14] J. Asshidiqqie, dalam "Partai Politik dan Pemilihan Umum Sebagai Instrumen Demokrasi", *Jurnal Konstitusi*, 3(4), 2006.
- [15] H. Zoelva, "Problematika Penyelesaian Sengketa Hasil Pemilukada oleh Mahkamah Konstitusi", *Jurnal Konstitusi*, 10(3), 2013, 377-398.
- [16] J. Simamora, "Menyongsong Pemilu serentak", *Jurnal Rechtsvinding*, 3(1), 2014, pp. 1-18.
- [17] S. Isra, "Pemilihan Presiden Langsung dan Problematik Koalisi dalam Sistem Presidensial", *Jurnal Konstitusi Pusako Universitas Andalas*, 2(1), 2009, pp. 107-117
- [18] S. Prayitno, "Refleksi Yuridis Pilpres 2009", *Jurnal Konstitusi*, 6(3), 2009, pp. 25-30.
- [19] S. Zuhro, "Memahami Demokrasi Lokal: Pilkada, Tantangan, dan Prospeknya", *Jurnal Pemilu Demokrasi*, 4, 2012.
- [20] Indonesia's 1945 Constitution after the amendment between 1999 and 2002.
- [21] N. K. Denzin, Y. S. Lincoln, Introduction: The Discipline and Practice of Qualitative Research. In: Denzin, N. K. & Lincoln, Y. S. (eds.) *The Sage Handbook of Qualitative Research*. Thousand Oaks, Sage, 2011, pp. 1-19.
- [22] C. Glesne, A. Peshkin, *Becoming Qualitative Researchers: An Introduction*. New York: Longman Publishing Group, 1992.
- [23] D. Silverman, *Interpreting Qualitative Data. Methods for Analyzing Talk, Text and Interaction*. London: Sage, 2001.
- [24] F. Devine, Qualitative Methods. In: Marsh, D. & Stoker, G. (eds.) *Theory and Methods in Political Science*, Second Edition. New York, Palgrave, 2002, pp. 179-215.
- [25] M. Q. Patton, *Qualitative Research and Evaluation Methods*. Thousand Oaks: Sage, 2002.
- [26] B. Flyvbjerg, Case Study. In: Denzin, N. K. & Lincoln, Y. S. (eds.) *The Sage Handbook of Qualitative Research*, Fourth Edition. Thousand Oaks: Sage, 2011, pp. 301-316.
- [27] R. K. Yin, *Case Study Research: Design and Methods*. Thousand Oaks: Sage, 1994.
- [28] J. W. Creswell, *Qualitative Inquiry and Research Design: Choosing Among Five Approaches*, Third Edition. Thousand Oaks: Sage, 2013.
- [29] J. Gerring, "What is a case study and what is it good for?" *The American Political Science Review*, 98(2), 2004, pp. 341-354.
- [30] G., Kamberelis, G. Dimitriadis, Focus groups: Contingent articulation of pedagogy, politics, and inquiry. In Denzin, N. K., & Lincoln, Y. S. (Eds.), *The sage handbook of qualitative research*. Thousand Oaks: Sage, 2011, pp. 545-561.
- [31] J. B. Manheim, R. C. Rich, *Empirical Political Analysis: Research Methods in Political Science*. London: Longman, 1986.
- [32] M. B. Miles, A. M. Huberman, *Qualitative Data Analysis: An Expanded Sourcebook*. Thousand Oaks: Sage, 1994.
- [33] A. Latief, "Pilpres dalam Perspektif Koalisi Multipartai", *Jurnal Konstitusi*, 6(3), 2009.
- [34] Sodikin, "Pemilu Serentak (Pemilu Legislatif dan Pemilu Presiden dan Wakil Presiden) dan Penguatan Sistem Presidensial, *Jurnal Rechtsvinding*, 3(1), 2014, pp. 19-31.
- [35] S. Isra, "Jalan Panjang menuju Pemilu Serentak," <https://www.saldiisra.web.id/index.php/tulisan/artikel-koran/26-mediaindonesia/148-jalan-panjang-menuju-pemilu-serentak.html> , 2014.