



Implementation of the Parliamentary Threshold System in Indonesian Constitution, which Connect with Democratic Theory

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Abstract- The parliamentary institution is a representative institution that has duties in the field of legislation. As a representative institution, parliament is a means of implementing people's sovereignty which has been implemented through democratic mechanisms. Democracy is a form of government in which power in the country is fully vested in the people. In the practice of countries, there are countries that make the parliamentary institution completely occupied by representatives through the freest possible general election mechanism, but there are those that, for reasons of being effective and efficient, apply parliamentary thresholds for participation in the parliamentary institution. Indonesia, in carrying out general elections in the post-reform period, has implemented a PTH of 2.5%, for example, which is stated in Law no. 10/2008 concerning General Elections of Legislative Members. And finally it rose to 4% in accordance with Law No.1/2022 concerning General Elections for Legislative Members. Even though a judicial review of the general election law has been carried out at the MK over objections from various components of society, its decision is in accordance with decision no. 3/PUUVII/2009, the MK stated that the application of the PTH did not conflict with the Constitution. The research method uses a socio-legal approach with a qualitative research model. The qualitative research model is an approach in conducting research that is oriented towards natural phenomena or symptoms. The results of this research, the application of PTH in placing people's representation in parliament, very inconsistent with democratic theory.

Keywords- Threshold; Parliamentary Institutions; Democratic Theory.

I. INTRODUCTION

The state is an organization of sovereign power which includes territory, people and government with the common goal of building order and prosperity. As an organization, power in its implementation certainly has objectives that have been agreed upon by the parties who have founded the organization. In the existence of a state, including the purpose of the establishment of the state, it has been regulated in law as a mutual agreement, and if it is connected to the history of the existence and birth of the state, it can be linked to the existence of the polis during the time of ancient Greek rule as explained by Aristotle about the polis as a state. city. Each polis begins with the establishment of an area of the polis, in which there are people and leaders who are elected by the community in the polis [1].

Then how a policy stands as stated by Socrates is a social agreement that is expressed in the law that regulates it. Why is that, because in Socrates' view the agreement in the policy is to establish positions of power which will be handed over to people who have been given a mandate by the people and if it is connected with the implementation of the state, power is the positions contained in a state that will be filled by the people on the basis of an agreement written down in laws and regulations [2].

Sovereignty is the highest power in the polis which is a form of handing over power from the people to the polis based on the agreement of the people. In current state administration practices, sovereignty is the highest power in a state which is a form of handing over power from its people to the state based on the agreement of its

people which is expressed in laws and regulations. This sovereignty is actually the fundamental basis for the existence of a country. The person or institution that holds sovereignty is the one who legally has the authority to command, prohibit and punish in order to create order and obedience in society [3].

Furthermore, what is the mechanism for filling positions of power in a country? Is everyone free to choose the positions of power they want? Of course it's not like that, because the laws and regulations that were born as a binding agreement for the founding of the state, also regulate the mechanisms and procedures for filling positions of power in the state. In a country that adheres to a democratic form of government, for example, where the form of government in the country is based on the sovereignty of the people as the holder of the highest power in the country, not based on sovereignty for a group of rulers or regimes as in countries that adhere to a monarchical [4]

In constitutional references regarding the form of government with a democratic system, it can be found in the practice of countries that use this form of government, for example: In various countries in Europe, a form of government with a socialist democracy system is found, namely as an ideology that was born from the tradition of "finding a way." middle" or as an alternative way to capitalism and socialism, social democracy is also considered an ideology that represents simple groups. Simplicity which is meant in the context of this ideology, on the one hand, really respects competition in the economic field, but the virtues of the state can be practiced [5].

Then it can be seen in the practice of the Indonesian state starting from the time of the first president, Soekarno, with the Guided Democracy system, namely a democratic concept that emphasizes how the role of a leader in every political process that occurs in society has a very important role in regulating state direction. For example, Sukarno, as the first President of the Republic of Indonesia, was of the view that the western concepts of "freedom", "equality" and "justice" could not be applied in Indonesian society, and he proposed a new democratic system. which originates from original Indonesian culture, namely guided democracy [6].

Apart from that, in the practice of western countries, a Liberal Democratic system is found, namely: Constitutional democracy is a political system that adheres to individual freedom. Constitutionally, this can be interpreted as individual rights from government power. In liberal democracies, majority decisions (from representative or direct processes) are applied to most areas of government policy subject to restrictions so that government decisions do not violate individual freedoms and rights as stated in the constitution. Nowadays, constitutional democracy is generally compared with direct democracy or participatory democracy [7]

In Indonesian practice, for example, after the change from Soekarno's government to Soeharto's government, it was implemented with the Pancasila Democracy system. As a democratic concept, it applies generally and universally, but when applied in a nation/state, its implementation is always bound by the objective conditions of the country/nation concerned. Therefore, the nuances of democracy are cultural, not ideological, so that democracy does not have to be like what developed in the West. For Indonesia, democracy is Pancasila, meaning as a system of government, as well as a way of life, referring to the values of Pancasila. As a government system, democracy develops transparency, tolerance, peace, order and as a way of life democracy upholds the values of equality, freedom, participation in determining state policy and all of this within the framework of Pancasila values [8].

With regard to the implementation of general elections, especially for legislative institutions, in practice in countries around the world, including Indonesia, they are carried out in various ways. For example: the election of legislative members is carried out freely by all political parties participating in the election without paying attention to the election results of the political parties as a whole, whatever the results (percentage) the elected members will sit as people's representatives in the parliamentary institution. The United States is a country that does not adhere to parliamentary threshold (PTH), not only because general elections in America are only contested by two parties but also because America adheres to liberal democracy. Meanwhile, in other practices, the election of legislative members is not carried out freely but is carried out on a limited basis by taking into account the overall election results (percent) of political parties. In this case, the elected legislative members do not automatically sit in the parliamentary institution, but will see whether their political party obtains results that exceed the limits set out in statutory regulations as a condition for sitting in the parliamentary institution, namely what is called the PTH.

In the application of the PTH concept, it is different from the Electoral Threshold concept where the minimum number of seats obtained to sit in a parliamentary institution and also automatically being able to participate in the next election, while PTH is more about the number of votes supported within certain limits for included in the calculation of political party votes in parliament. This matter is a form of the government's commitment to creating a party political election participants try more to seek support from constituents so that the legitimacy of the people can also be more accountable and In the end, it will be seen from the performance of parliament when it is done occupied the seat of the central legislature. This is also a consideration for the implementation of the threshold concept for parliamentary institutions in several countries in the world, including Indonesia [9].

The Philippines is one of the countries that implements PTH, although the implementation is not the same as in Indonesia. Regarding the vote calculation for the Indonesian winner, using the total number of valid votes cast divided by the number of seats will produce a threshold and from these results the number of votes needed to occupy one seat is determined. parliament, with a term of office of 5 years. The Philippines applies a PTH of 20 percent of the members of the DPR who nominate their members in legislative elections. Meanwhile, in the Philippines, the total voter list is divided by the number of seats available and you will see how many votes are needed for one parliamentary seat, with a term of office, namely the Senate for 6 years and the DPR for 3 years. The number of times a person can be a member of the legislature is not stated explicitly in Indonesian law, but the Philippines states it explicitly, where the Senate is only for two terms and the DPR is for 3 terms. The number of members in Indonesia is much larger with the Congress numbering up to 711 people, while in the Philippines there are only 24 members of the Senate and 250 members of the DPR [10].

Basically there is no standard formula in the world regarding the amount of threshold for each country. Provisions regarding PTH in each country are generally influenced by the culture and history of the country concerned. For example, the implementation of the PTH in Germany of 5% with the aim of limiting the election of extremist groups, and efforts to stop small political parties from getting representation. Therefore, countries in the world that apply PTH do not have absolute limits for each country and tend to vary. This absolute limit does not require a requirement for every country to implement it. For example, the implementation of the PTH in Germany of 5% with the aim of limiting the election of extremist groups, and efforts to stop small political parties from getting representation. Therefore, countries in the world that apply PTH do not have absolute limits for each country and tend to vary. This absolute limit does not require a requirement for every country to implement it [11].

As a comparison, based on the experiences of a number of countries, there are various implementations of the Parliamentary Threshold, for example Turkey, the threshold is 10%, Finland is 5.4%, Belgium is 4.8%, Sweden is 4, Norway 4%, Greece 3.3%, Austria 2.6%, Italy 2%, Israel 2%, Denmark 1.6%, and the Netherlands 0.67%. In essence, there are 4 (four) criteria for applying parliamentary thresholds in countries holding elections, namely: (a) based on the percentage of voters, for example 3% in Spain; (b) based on the location of application threshold provisions are normally applied, either in the constituency, for example as in Spain, or at the national level for national voters as in Germany; (c) the stages of implementation, parliamentary or representative thresholds are mostly carried out at the initial stages of calculating votes and seats, but some are in between calculations, for example Denmark; (d) the threshold is usually imposed on the object of a political party or coalition of political parties, for example in Poland it is imposed 5% on political parties, and 8% on coalitions of political parties [10].

II. LITERATURE REVIEW

A. Parliamentary Institution.

Parliament is an institution within state power as a place to accommodate all representatives in state offices, which has duties and functions in the field of legislation in ensuring the accommodation of the interests of the components of society it represents. As a representative institution, parliament is a state institution which has various kinds of equipment in providing services to the people who have the desire to occupy positions in parliamentary institutions including positions as members of the legislature, whether members of the legislature at the central level, provincial level or regional level. district/city. The governance of parliamentary institutions is all regulated in statutory regulations, starting from the statutory level as general provisions followed by statutory regulations at the implementation level, for example: government regulations, presidential regulations and other technical implementing regulations. This is intended so that the implementation of recruitment and filling of positions in parliamentary institutions can run well in accordance with the corridors of statutory regulations so that legal certainty is guaranteed [15].

The existence of parliamentary institutions as people's representative institutions in practice in various countries is closely related to the area of the country, the form of the country, the form of government and the system of government. A country that has a very large territory with a very large population is of course different from one that has a very small territory with a very small population, in determining how many representatives of legislative members will sit in parliament. The form of a unitary state which places the central government as the holder of power and only part of it is handed over to regional governments which are part of the central government, is of course different from the form of a united state which places the states as the holder of power in the country. parts and only parts are ceded to the federal government, and state governments have autonomous powers. A democratic form of government (republic) where sovereignty in the state is held entirely by the people and the people have the authority to determine policies in the state, of course different from a monarchical form of government (Kingdom) where sovereignty in the state is not fully controlled by the people, but controlled by the kingdom and only part of it was handed over to the people [15].

B. Democratic System

Democracy is a stages or a process that a country must go through to achieve prosperity (Rousseau's). This statement seems to say that democracy for a country is a lesson towards perfect constitutional development. Even though Rousseau realized that perfection does not belong to humans. Therefore, the measure of whether there is democracy in a country is not determined by the final goal, but rather looks at the facts of the existing stages. Therefore, the measure of whether there is democracy in a country is not determined by the final goal, but rather looks at the facts of the existing stages [16].

Hans Kelsen thought that democracy came because of the freedom of human thought. But freedom is considered something negative, because it is considered to be free from ties or the absence of all ties, as well as freedom from all obligations. This assumption is rejected by Hans Kelsen, because when humans are in a social construction, the idea of freedom can no longer be assessed simply, no longer simply being free from bondage, but the idea of freedom is analogous to the principle of one's own will [17].

In Aristotle's view, there are three forms of constitution that apply in a country, namely monarchy, oligarchy and democracy. Aristotle provides an understanding of each of these forms of constitution. Monarchy, where power is held by individuals, namely by the power of the King. Oligarchy is a form of constitution where power is held by elected people and democracy, power is held by all citizens or in other words it is the citizens who rule [17]. Apart from that, Aristotle also emphasized the form of government. For him, democratic government is a form that must be practiced, even though it is not ideal, it is better than other forms of government. Because of the form of democracy, it makes all citizens determines political policy in the country. Democracy is a government form who always has the full confidence of his people [1]

C. Public Election System

General elections (GE) are a means of democracy to realize state government with popular sovereignty, where all state policies are based on the will of the people and are dedicated to the welfare of the people. GE are often referred to as a democratic party held by a country. In a country that adheres to democracy, elections are the key to creating democracy. In Indonesia, elections are a real indicator of democracy and are a purposes for the citizen to express their power over the government and state. The elections are referred on Pancasila and the 1945 Constitution. Elections are carried on the principles of direct, general, free, secret, honest and fair within the Unitary State of Indonesia [18]. GE can be said to be a means of democracy and a form of implementation of sovereignty people's to create representatives of people and managers who are qualified aspirational, and responsible for the welfare of the citizens. GE is a process indirect democracy to elect the representatives of the citizens who will carry the government, where the representatives of the citizens hold the mandate of the government referred on the citizens mandate, therefore it does not allow all the citizens to be involved directly in the government [19]. Elections : "elections are the consideration when their officials and decide choose a member, what they want to do from the government. These citizens decisions to determine what rights they want to have and keep. In definition, it is the will of the peoples to elect institutions who will govern and who will accomodate their interests. Peoples determine where their rights will be related to elect institutions who will govern them [20].

In another view, the implementation of an election in a democratic country can be linked to the purpose of the election itself:

1. Open the opportunity for a change of government and also a moment to test the quality and quantity of people's support for successes and shortcomings the government that is exercising its power;
2. As a means of absorbing the dynamics of aspirations by people for identification, articulation and aggregation within a certain period;
3. To test how high the quality of implementation is the sovereignty of the people [21].

By looking at the description above, it can be ascertained how important the implementation of good and quality GE is in bridging the selection process for community representatives to obtain positions of power in the country which have been regulated in statutory regulations. Good GE will be able to build the development of democracy in a country, because not a single country in the world that is considered a democratic country will ignore a GE process. Therefore, democracy and GE are closely related to the sustainability and progress of a country. The implementation of PTH in the Indonesian constitutional system can be seen from several GE for legislative members from the pre-independence period, starting with the most democratic first elections in 1955 until 2019..

No.	Year of Election	Parties of Election	Election System	Threshold (PTH)
1.	1955	34	Liberalism	None
2.	1971	9	Limited	None
3.	1977	3	Limited	None

4.	1982	3	Limited	None
5.	1987	3	Limited	None
6.	1992	3	Limited	None
7.	1997	3	Limited	None
8.	1999	48	Liberalism	None
9.	2004	24	Liberalism	None
10.	2009	16	Liberalism	2.5%
11.	2014	16	Liberalism	3.5%
12.	2019	14	Liberalism	4%

Data based on : <https://setkab.go.id/>. Political-parties-participating-2019-election.

III. METHOD

This research uses a socio-legal approach, where all existing regulations are always analyzed and linked to symptoms that occur in society [12]. The research model used is a qualitative research model, where the data used is weighted data, not numerical data [13].

The data used is secondary data which includes: primary legal materials, namely all statutory regulations related to research, secondary legal materials, namely doctrinal references or views from experts that can strengthen primary legal materials, and tertiary legal materials, namely references, references that come from websites/internet [14].

IV. RESULT & DISCUSSION

A. Fondation of thought.

Threshold, electoral threshold, or PTH is basically the same, namely the threshold (requirements) that must be related by parties of the politic, to be able to send their representation to parliament institutions. Usually it is expressed in terms of the valid votes percentage, obtained or in some areas it can be expressed in the form of a minimum number of seats which is known as the voter divisor number (BPP). The calculation mechanism in the case of Indonesia is usually in the formula 1 per 100 population, 1 per 200 population, or 1 per 500 population. If these provisions cannot be implemented, a gerrymandering strategy will be carried out, namely grouping electoral districts due to the minimal population that will be used as electoral districts. Towards an electoral system with an affirmative PTH [22].

The purpose of holding a threshold in the electoral system in a country is for two reasons, namely: (1) limiting the number of political parties that receive insignificant support from voters entering parliament. This is intended because minimize the number parties of politic in parliament is expected to increase the effectiveness of institution's work. This condition then makes the function of parliament namely legislative, budgetary and supervisory functions due to conflicts of interest from various political parties. (2) screening the parties of politic joining in the next election. The large number parties of politic joining in the election not only has an impact on increasing funds for organizing elections, but also makes voters confused when voting. Towards an electoral system with an affirmative PTH[23]. The purpose of this research is to find out why there has been a change in the PTH in Law Number 7 of 2017 concerning GE and how parties of politic will continue with the change in determining the PTH in the GE. Using normative juridical research methods, it is concluded: That changes to the parliamentary threshold in each General Thinking Law are aimed at simplifying parties and maintaining government stability. Another impact is strengthening the majority party groups because the PTH of 4% makes the big parties permanent in party institutions [24].

B. Implementation in the Indonesian system.

In terms of political rights, the emergence of the PTH reduces the citizen's rights in establishing party organizations. Political manifestations are regulated in Article 28 of the Constitution 1945 "Freedom of expressing thoughts verbally, assembly and association and in writing and so on is determined by law". The substance of freedom of association and assembly is regulated by Article 24 paragraph (2) "Every citizen or community group has the right to make a party of politic, NGO or other organization to participate in the government and state in line with willing for the protection, enforcement and promotion of human rights in accordance with the provisions of regulations". This purpose that make a party of politic is a human right of the people, so that if there are restrictions by the government then there is a constitutional violation of citizens' rights. In the 2019 elections held last April which were held continue to elect the president and vice president, as well as electing other legislative members, the latest Regulation Election, namely Law No. 7 of 2017, was used. In paragraph (1) of Article 414 of Law No. 7 /2017 which states: "Political Parties participate the Election must

achieve the vote acquisition threshold of at least 4% (four percent) of the number of nationally valid vote to be included in determining the a rights of DPR member seats." This purposes that the PTH has increased by 0.5% (zero point five percent) from the 2014 election.

Implementation of PTH in Indonesia:

2009, GE – PTH = 2,5%			2014, GE –PTH = 3,5%			2019, GE, PTH =4%		
	Nama Partai	%		Nama Partai	%		Nama Partai	%
1	Partai Demokrat	20,85	1	PDIP	18,95	1	PDIP	19,33
2	Partai Golkar	14,45	2	Partai Golkar	14,75	2	Partai Gerindra	12,47
3	PDIP	14,03	3	Partai Gerindra	11,81	3	Partai Golkar	12,31
4	PKS	7,88	4	P. Demokrat	10,19	4	PKB	9,69
5	PAN	6,01	5	PKB	9,04	5	Partai Nasdem	9,05
6	PPP	5,32	6	PAN	7,59	6	PKS	8,21
7	PKB	4,94	7	PAN	6,79	7	Partai Demokrat	7,77
8	Partai Gerindra	4,46	8	Partai Nasdem	6,72	8	PAN	6,84
9	Partai Hanura	3,70	9	PPP	6,53	9	PPP	5,53
	-	-	10	Partai Hanura	5,26	-	-	-

Data based on : <https://setkab.go.id/> Political-parties-participating-2019-election.

There is decision 52/PUU-X/2012 issued by the Constitutional Court (MK) to annul paragraph (1), paragraph (2) of Article 8, and Article 208 in Law No. 8 of 2012 concerning the General Election of Members of the DPR, the DPD and the DPRD (Law No. 8 of 2012) are very worthy of appreciation. This is an effort to erode the political gap experienced between the strength of old parties politic and the strength of new parties of politic. At least this decision also implies reducing the oligarchic regime in the formation of the Political Law to reduce egoism in maintaining its power. The formation of this Political Law previously invited polemics and political commotion ahead of the 2014 elections. The first of these polemics was the question of setting a parliamentary threshold of 3.5% which was carried out in the electoral process at both the local and national levels. Apart from that, it is also mandatory to have verification rules for non-parliamentary political parties as a condition for participating in the 2014 elections which are also considered to prevent the existence of new parties in a systematic and constitutional manner. Of course, this provoked a strong reaction from 22 small parties who saw this regulation as very discriminatory considering that it was tantamount to reducing the active participation of other citizens in participating in the practical political process. The basis of the application for a judicial review lies in determining the PTH at 3.5% nationally. The existence of such a large threshold is actually something odd in an established democratic country. The implementation of the PTH itself can be understood in two major paradigms, namely simplifying political parties and making the electoral system more effective [25].

After the enactment of Law No. 7 of 2017 concerning General Elections, various elements of society submitted a Judicial review to the MK to challenge one of the controversial articles which has long been an issue of debate across the election period, namely regarding the PTH for the 2019 simultaneous elections. Efforts to conduct judicial review of PTH are not the first such effort, as there have been approximately 5 (five) MK decisions related to PTH provisions, even since the first PTH provisions were implemented in the Election Law, namely in the 2009 elections with a threshold of 2, 5% (percent) have been citizens or legal entities who have submitted applications to the MK. In the MK Decision, Decision No. 3/PUUVII//2009, emphasized: "The provisions regarding the PTH are regulated in paragraph (1) of Article 202 of Law no. 10 of 2008 does not violate the constitution because the provisions of this law have provided an opportunity for every citizen to form a political party but at the same time it is rationally selected and limited through the provisions of PTH to be able to have representatives in the DPR."

V. CONCLUSION.

The implementation of certain PTH in determining the position of a member of the legislature which is linked to a certain number limit (percent) of the results of the general election of political parties, if it is connected to a liberal democratic system, then the implementation of a PTH with a certain number limit (percent) is not in line with the spirit of creating popular sovereignty which is realized by the widest possible participation of the community in determining the direction and policies of the state/government.

Indonesia is a very large country, has the third largest population in the world, has a large land and sea area consisting of many islands. The heterogeneous ethnic, religious and cultural diversity that has existed for a long time is a strength for the Indonesian state. Therefore, if the implementation of general elections is connected as part of a limited/representative democratic process in producing an effective and efficient parliamentary institution as mandated in Principle IV of Pancasila.

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