



## **PRESIDENTIAL THRESHOLD IN THE 2024 PRESIDENTIAL ELECTIONS: IMPLICATIONS FOR THE BENEFITS OF DEMOCRACY IN INDONESIA**

*Umarwan Sutopo,<sup>1\*</sup> Achmad Hasan Basri,<sup>2</sup> Hilman Rosyidi<sup>3</sup>*

<sup>1</sup>Faculty of Sharia IAIN Ponorogo, Indonesia

<sup>2</sup>Faculty Sharia and Law UIN Kiai Haji Achmad Siddiq Jember, Indonesia

<sup>3</sup> Faculty of Ushuluddin, Al-Azhar University Cairo, Egypt

<sup>1</sup>[umarwansutopo@iainponorogo.ac.id](mailto:umarwansutopo@iainponorogo.ac.id), <sup>2</sup>[tiro.hasan13@gmail.com](mailto:tiro.hasan13@gmail.com),

<sup>3</sup>[hilmanrosyidi87@gmail.com](mailto:hilmanrosyidi87@gmail.com)

\*Corresponding Author

---

DOI: 10.21154/justicia.v21i1.7577

Received: Nov 12, 2023

Revised: May 27, 2024

Approved: June 20, 2024

---

**Abstract:** Elections are one of the Indonesian people's efforts to elect the best leaders as well as the embodiment of a democratic country. The Presidential Threshold (PT) that applies in the 2024 presidential election (Pilpres) is one of the things that has become a polemic in society. This can be seen in several judicial review processes by the public and groups requesting the abolition of the threshold. With normative research and conceptual and legislative approaches relating to elections in general and presidential elections in particular, this research questions its benefits. The benefit in question is the benefit that returns to the community in particular and the government system that is formed. Through literature study and qualitative analysis, the results showed that the existence of PT contradicts the wrongful benefits and *darūri* in the nation's life and democracy. This means the people are limited in choosing presidential and vice-presidential candidates who truly suit their wishes. The nation's best sons and daughters are limited in their rights to nominate themselves as leaders because of the PT. Furthermore, the ruling party has a tremendous opportunity to control the presidential system, both at the legislative and executive levels, and this is undoubtedly contrary to the benefit itself.

**Keywords:** presidential threshold; 2024 presidential election; Indonesia election.

**Abstrak:** Pemilu merupakan salah satu ikhtiar bangsa Indonesia untuk memilih pemimpin terbaik sekaligus sebagai pengejawantahan dari sebuah negara demokrasi. *Presidential Threshold* (PT) yang berlaku dalam pemilu presiden (Pilpres) 2024 merupakan salah satu hal yang menjadi polemik di Masyarakat. Hal tersebut tampak dalam beberapa kali proses *judicial review* oleh Masyarakat maupun kelompok yang memohon penghapusan ambang batas. Dengan bentuk penelitian normatif serta pendekatan konseptual maupun perundang-undangan yang berkaitan dengan

pemilu secara umum dan pilpres secara khusus, penelitian ini mempertanyakan kemaslahatannya. Kemaslahatan yang dimaksud adalah kemaslahatan yang kembali kepada masyarakat secara khusus maupun sistem pemerintahan yang terbentuk. Melalui studi kepustakaan dan analisa kualitatif didapatkan hasil bahwa keberadaan PT justru bertentangan dengan kemaslahatan yang *mursalah* maupun yang bersifat *darūri* dalam kehidupan berbangsa dan berdemokrasi. Artinya, rakyat justru terbatas haknya untuk memilih calon presiden dan wakil presiden yang benar-benar sesuai dengan keinginannya. Putra putri terbaik bangsa terbatas haknya untuk mengajukan diri sebagai pemimpin karena ada PT itu sendiri. Lebih lanjut, partai penguasa memiliki peluang yang sangat besar untuk menguasai sistem presidensial, baik dalam tataran legislatif, maupun eksekutif, dan ini tentu bertentangan dengan kemaslahatan itu sendiri. Artikel ini menampilkan contoh-contoh nyata efek negatif dari pelaksanaan presidential Threshold terhadap demokrasi di Indonesia, sehingga dapat menjadi pedoman bagi segenap pemangku kebijakan dalam menentukan format pilpres yang lebih mengedepankan demokrasi itu sendiri

**Kata Kunci:** presidential threshold; pemilihan presiden 2024; pemilu Indonesia.



Copyright: © 2024 by author (s). This work is licensed under a Creative Commons Attribution-ShareAlike 4.0 International License.

## INTRODUCTION

Indonesia is one of the many countries that uphold democratic values in national and state life.<sup>1</sup> Indonesia is one of the many countries that uphold democratic values in national and state life. This can be seen in the succession of national and regional leadership through the electoral and presidential elections (*pilpres*).<sup>2</sup> In this regard, democracy and elections have a close relationship.<sup>3</sup> It is because general elections are one of the main methods or essential instruments in a democratic system.<sup>4</sup>

<sup>1</sup> A democratic state is a term used to refer to a country where the power of the government comes from the people and is vested in the people. Apart from that, respect for human rights, freedom of speech and equality before the law are indicators of a country being said to be a democratic country. This can be seen in several countries around the world, such as Indonesia, Malaysia Brazil and others. See Adjie Hari Setiawan, "Politik Hukum Presidential Threshold 20% Dalam Undang-Undang Nomor 7 Tahun 2017," *Jurnal APHTN-HAN*, 2023., 172; Bambang Poernomo, *Pertumbuhan Hukum Penyimpangan Di Luar Kodifikasi Hukum Pidana*, Jakarta, Bina Aksara, 45; Septi Nurwijayanti dan Nanik Prasetyoningsih, *Politik Ketatanegaraan*, Yogyakarta, Lab Hukum Fakultas Hukum Universitas Muhammadiyah Yogyakarta, 35

<sup>2</sup> Saiful Ansori, "Maqashid Syariah Dan Praktik Sistem Presidential Threshold Di Indonesia: Studi Pemilu Serentak Tahun 2019," *Jurisprudensi: Jurnal Ilmu Syariah, Perundang-Undangan Dan Ekonomi Islam* 12 (2020), 65.

<sup>3</sup> Gottfirdus Goris Seran, "Konstitusionalitas Dan Desain Pemilukada Langsung Serentak Nasional," *Jurnal Konstitusi* 16 (2019). 60

<sup>4</sup> M.Syaiful, "Antinomi Penerapan Presidential Threshold Dalam Sistem Pemilu Presiden Dan Wakil Presiden," *Julia: Jurnal Ligitasi Amsir* 10 (2022), 22

Momentum is used to allow citizens to participate in choosing their leaders.<sup>5</sup> It is also considered an ideal form of power transfer towards a peaceful and orderly succession of new leadership.<sup>6</sup>

The big event of the 2024 general election in Indonesia directly or indirectly brings up issues related to the processing system, including the threshold for selecting the president and his deputy as the most important icons in the democratic party. Presidential threshold (from now on referred to as PT) is a term that refers to the provision of conditions for presidential candidates or those who have the potential to become president by having to pass a certain threshold so that they have the right to nominate or be nominated as presidential candidates.<sup>7</sup>

The preceding suggests that the PT is closely related to the minimum number of votes required by members of parliament before they have the right to nominate or be nominated. Therefore, this system often becomes a trending topic of debate among politicians and academics, leading to the submission of a request for judicial review to the Constitutional Court (MK).<sup>8</sup> This is because the PT can impact the political process and its actors, including limiting the people in choosing ideal leaders.<sup>9</sup>

Article 222 of Law Number 7 of 2017 concerning General Elections reads, "Candidate Pairs are proposed by Political Parties or Associations of Political Parties Participating in the Election who meet the requirements for obtaining seats of at least 20% of the number of seats in the DPR or obtaining 25% of the valid votes nationally in the previous DPR member elections." The logical consequence of this article is that the constitutional right of the nation's best sons and daughters to have the opportunity to nominate or be nominated as president in Indonesia is obstructed except by those who have access to the major political parties and their elites.<sup>10</sup>

---

<sup>5</sup> M.Syaiful, "Antinomi Penerapan Presidential Threshold Dalam Sistem Pemilu Presiden Dan Wakil Presiden," *Julia: Jurnal Litigasi Amsir* 10 (2022), 22; Jesper Strömbäck and Lynda Lee Kaid, *The Handbook of Election News Coverage Around the World* (Routledge, 2009).

<sup>6</sup> Ansori, "Telaah Terhadap Presidential Threshold Dalam Pemilu Serentak 2019," *Yuridis* 4 (2017), 15-27.

<sup>7</sup> Resti Kurnia, "Analisis Yuridis Dan Siyasah Dusturiyah Terhadap Presidential Threshold Pemilu Serentak 2024" (UIN Sunan Ampel Surabaya, 2022), 27.

<sup>8</sup> Ansori, "Maqashid Syariah Dan Praktik Sistem Presidential Threshold Di Indonesia: Studi Pemilu Serentak Tahun 2019"; Sholahuddin Al-Fatih and Fitria Esfandiari, "Presidential Threshold in Indonesian Election: An Islamic Law Perspective," *Yurispruden* 5, no. 1 (January 20, 2022): 55-69, <https://doi.org/10.33474/yur.v5i1.14145>. 67,

<sup>9</sup> Azlan Thamrin Dirga Acmad, "Calon Presiden Perseorangan Dan Presidential Threshold Dalam Sistem Pemerintahan Presidensial Indonesia," *Diktum: Jurnal Syariah Dan Hukum* 19 (2021), 120.

<sup>10</sup> The 1945 Constitution specifically recognizes that every citizen has equal rights and equal standing in government, as contained in Article 27 (1) "All citizens shall be equal before the law and government and shall uphold the law and government with no exception.", Article 28D (1) "Every person shall have the right

It cannot be denied that the PT was initially an effort by political and legal leaders in Indonesia to strengthen the presidential system in Indonesia.<sup>11</sup> It also guarantees and ensures that the elected president or government has more power because it is supported by the majority of parliamentarians so that government programs can run more effectively and efficiently.<sup>12</sup> However, on the other hand, it is not uncommon for the elected president to be held hostage by the supporting party itself so that the people are the ones who suffer losses because government policies accommodate the interests of the party and its elites rather than the interests and needs of the people.

Discussions regarding the presidential threshold have previously been carried out by researchers, for example, what was done by Arifudin and Hamdan Zoelva, who tried to examine PT from the perspective of Prismatic Law,<sup>13</sup> Muhammad Aziim and Kosariza regarding the analysis of the application of thresholds in presidential elections,<sup>14</sup> Moh. Ridwan in the threshold for the 2019<sup>15</sup> presidential election, and others that still provide gaps for research, namely the 2024 presidential election (Pilpres) with a *maslahah* approach.

About this reality, this article examines the PT system through the lens of *maslahah*. *Maslahah* or benefit is a perspective in Islamic law that focuses on the expected benefits and rejects possible dangers or losses. The expected conclusion is the answer to the big question of whether the presence of PT in the 2024 election has great benefits or is it the opposite.

This research uses legal methods, including juridical, philosophical, comparative, and conceptual approaches. Philosophical, juridical research investigates the legal ideas that regulate the Presidential Threshold, especially in the

---

to recognition, guarantees, protection, and certainty of a just law and equal treatment before the law." and (3), Article 28I (2) UUD NRI 1945. ", Article 28D (1) "Every person has the right to recognition, guarantees, protection, and certainty of a just law and equal treatment before the law." and (3), Article 28I (2) of the 1945 Constitution of the Republic of Indonesia. "Every person has the right to be free from discriminatory treatment on any basis and has the right to protection against such discriminatory treatment."

<sup>11</sup> Setiawan, "Politik Hukum Presidential Threshold 20% Dalam Undang-Undang Nomor 7 Tahun 2017.", 170.

<sup>12</sup> Ansori, "Telaah Terhadap Presidential Threshold Dalam Pemilu Serentak 2019," *Yuridis* 4 (2017), 15; Helmi Helmi, Mukhrijal Mukhrijal, and Nyak Fadhlullah, "Presidential Threshold (Discourse Review on Strengthening Presidential Systems in Indonesia)" (1st Aceh Global Conference (AGC 2018), Atlantis Press, 2019), 225-29, <https://doi.org/10.2991/agc-18.2019.36>.

<sup>13</sup> Hamdan Zoelva Arifudin, "Pembaharuan Sistem Presidential Threshold Di Indonesia Berdasarkan Konsep Prismatika Hukum," *Jurnal Hukum Progresif* 10 (2022), 127.

<sup>14</sup> Kosariza Muhammad Aziim, "Analisis Penerapan Ambang Batas Perolehan Suara (Presidential Thershold) Dalam Pemilihan Presiden," *Limbo: Journal Of Constitutional Law* 2 (2022), 165-182.

<sup>15</sup> Moh.Ridwan, "Ambang Batas Dalam Pemilihan Umum Presiden 2019 Perspektif Presidensialisme Dan Masalah Mursalah" (UIN Sunan Kalijaga Yogyakarta, 2022).

2024 Presidential Election. Comparative and conceptual approaches are used to uncover ideas and concepts of Islamic law, especially *Maslahah*, especially in the issue of the election of the president and his vice president (*Pilpres*). The end of this research will be an addition to the treasures of political thought and a foothold for policymakers in formatting elections towards more significant benefit.

### **THE CONCEPT OF MASLAHAH BASED ON THE ISLAMIC PERSPECTIVE: IMPLICATIONS FOR LEADERSHIP SUCCESSION**

*Maslahah* is a term with the antonym *mafsadah* (damage), which, according to language, is a single word from *al-masāliḥ* which means "goodness."<sup>16</sup> It is also sometimes paired with *istiṣlāḥ*, which means it brings goodness. Apart from that, sometimes these two words are accompanied by the word *al-munāsib* which means "things that are suitable, appropriate and correct in their use,"<sup>17</sup> and also the word "*mursalah*" so that it becomes "*Maslahah mursalah*" where the meaning is a benefit that is not stated explicitly. directly or clearly by sharia arguments in realizing it, whether it is rejected or accepted.<sup>18</sup> The term "maslahat" in Indonesian means "something that brings benefits and benefits."<sup>19</sup>

Of these meanings, *maslahah* is everything or anything that contains benefits, either to obtain benefits and goodness or to avoid harm. However, not all benefits from a human perspective can be accepted in Islamic law. Therefore, there are several forms of *maslahah*, namely as follows:

First, *al-maslahah al-mu'tabarah* is a benefit that is supported by sharia'. Both the type and form. This means that particular arguments form the basis of the form and type of benefit. Second, *Al-maslahah al-mulghāh*, which means benefits that are rejected by sharia' because they conflict with the provisions of sharia.' Third, *Al-Maslahah al-Mursalah*, namely benefits whose existence is neither supported nor rejected by the Sharia.<sup>20</sup>

---

<sup>16</sup> Ibn Manzur, *Lisan al 'Arab* (Beirut: Dar Sadir, 1994)., Juz II, Cet. Ke III, 516.

<sup>17</sup> HM.Hasbi Umar, *Nalar Fiqh Kontemporer*, Cet.I (Jakarta: Gaung Persada Press, 2007)., 112.

<sup>18</sup> Abd.Waha Khallaf, *Ushul al Fiqh* (Jakarta: Majelis al Ta'lim Lil Indunesiyyin lil Dakwah al Islamiyah, 1973), 116; Felicitas Opwis, *Maslahah and the Purpose of the Law: Islamic Discourse on Legal Change from the 4th/10th to 8th/14th Century* (Brill, 2010).

<sup>19</sup> Departemen Pendidikan dan Kebudayaan, *Kamus Besar Bahasa Indonesia* (Jakarta: Balai Pustaka, 1996)., 184.

<sup>20</sup> Mushthafa Sa'id al Khan, *Atsar al Ikhtilaf Fi Al Qawaid al Ushuliyyah Fi al Ikhtilaf al Fuqoha'* (Beirut: Muassasah al-Risa>lah, 1972)., 552. There is a slight difference with what is conveyed by Imam Ghazali where he uses the terms *al Gharibah* (strange), *al batilah* (damaged / wrong), *furu'* (branch), and *ashal* (principal) in the division of *maslahat*. Abu Hamid Muhammad bin Muhammad al-Ghazali, *Al-Mustashfa min 'Ilm al-Ushul*, Juz II, Dar al-Fikr,Kairo, 1937, hlm. 306

Apart from that, if viewed from the aspect of the need for benefit, it can be mapped into several types, namely first, *al-Darūrīyah*, namely benefit related to basic human needs (primary) to realize and protect the existence of five things, namely maintaining religion, nurturing the soul, nurturing the mind, nurturing offspring, and nurturing wealth. Second, *al-Hājīyah* means benefits needed to perfect essential benefits, or in other words, to fulfill secondary needs, humans need it, but it does not reach the *dharury* (basic) level. Third, *al-Taḥsīnīyah*, which means complimentary benefits for humans or, in other words, tertiary fulfillment.

Benefits are explicitly or implicitly mentioned in the Qur'an and al-Hadith, where one of the meanings is the explanation that the purpose of Allah SWT in sending down His Sharia is for the benefit of humans themselves or to prevent them from damage, both worldly and hereafter<sup>21</sup> About the choice of head of state and government, *maslahah* theory was put into practice during the 4 (four) post-prophetic caliphate era and several Islamic government dynasties that followed. Abu Bakr's initiation as caliph after the Prophet's death differed from that of Umar Ibn Khatab, who succeeded him. This difference in method also occurred during the time of Usman and Ali.<sup>22</sup> This happens because there are no standard rules regarding leadership succession.<sup>23</sup>

The more democratic succession of *al-Khulafā` al-Rāshidūn* leadership was utterly different from during the Umayyad and Abbasid dynasty periods.<sup>24</sup> Muawiyah rose to the top leadership of the Islamic state not based on the democratic choice of the people but because Hasan bin Ali resigned from his position. He did this to avoid prolonged conflict between Muslims. The process of Hasan's resignation and then Muawiyah taking over as caliph later on was called *ām al-jamā'ah*.<sup>25</sup>

---

<sup>21</sup> Abu Ishaq Asy Syathibi, *Al Muwafaqat Fi Ushul Al Syariah* (Beirut: Dar al Kutub al Ilmiyah, 1991), 4; Ibrahim Ibn Al-Shatibi, *The Reconciliation of the Fundamentals of Islamic Law: Al-Muwafaqat Fi Usul al-Shari'a*, trans. Imran Ahsan Khan Nyazee (Reading, UK: Garnet Publishing, 2012).

<sup>22</sup> Badri Yatim, *Sejarah Peradaban Islam (Dirasah Islamiyah I)* (Jakarta: PT.Grafindo, 2000). 38. Abu Bakr was coronated after negotiations between the Muhajirin and Anshar, while Umar Ibn Khotob was coronated after being proposed by Abu Bakr (the previous leader). Meanwhile, Usman Ibn Affan was chosen by a council of formators appointed by Umar. As for Ali ibn Abi Talib became caliph after Usman after he was coronated by the people.

<sup>23</sup> Mohammad Aso Samsudin Ukhtul Iffah, "Telaah Proses Sukses Khilafah Pada Materi Sejarah Perkembangan Islam Masa Khulafaurrasyidin," *Edupeedia* 6 (2021)., 22.

<sup>24</sup> Nurfaizillah, "Praktik Politik Dalam Sejarah Islam Era Dinasti-Dinasti Islam," *Al Ijtima'i :International Journal of Government and Social Science* 6 (2020)., 43.

<sup>25</sup> Syamsul Nizar, *Sejarah Pendidikan Islam* (Jakarta: Kencana Press, 2008)., 55. The term 'amul jama'ah is another word for the unity of the ummah. This is because Muslims agreed to place one person as the sole leader, where previously there were political factions that controlled each other.

The political reality that claimed many victims may have been one of the reasons for Muawiyah (the founder of the Umayyad Dynasty) to change the previously democratic form of government to a monarchical hereditary system (hereditary kingdom) by appointing his son Yazid as his successor crown prince.<sup>26</sup> Some people opposed and criticized this policy, but this fact was later confirmed by experts in Islamic jurisprudence, such as Imam al-Mawardi in his book *al-Aḥkām al-Ṣulṭānīyah*, where the validity of leadership succession is one of the methods of appointing the previous ruler.<sup>27</sup>

As explained above, the leadership succession events of the classical Islamic period are identical to the benefit theory. The appointment of Abu Bakar as leader was a problem regarding possible hostility between the Anshar (Aus and Khajraz tribes).<sup>28</sup> Thus, his election as caliph became a symbol of unification between the politically conflicting parties.<sup>29</sup> The same thing applies to the peace agreement between the Umayyads and Hasan bin Ali, including the coronation of Yazid as the successor crown prince to the Umayyads. This means the starting point for choosing a president or leader starts from existing benefits. The extent to which society wants a leader who will be their choice. They have choices that do not always have to come from the offers of the major parties because not all of these parties represent the majority of the people's wishes for their potential leaders.

## **PRESIDENTIAL ELECTION AND ELECTION DYNAMICS IN INDONESIA**

General Elections (Pemilu) in Indonesia occasionally take place with different forms and models.<sup>30</sup> This can be seen in the history of the early governments of independence, the old, new, and the reform period. About this, political dynamics run dynamically. Without exception are policies issued by political elites as holders and possessors of power.

Based on existing history, several elections that have taken place in Indonesia, among others, occurred during the Old Order era, which only lasted 1 (one) time,

---

<sup>26</sup> Kholid Mawardi M.Luthfi Anam K, "Periodeisasi Dan Perkembangan Dinasti Umayyah," *Transformasi Manageria* 1 (2024)., 54.

<sup>27</sup> Abu al Hasan Ali ibn Muhammad al Mawardi, *Al Ahkam al Shultoniyyah* (Cairo: Dar al Hadis, 2006)., 6.

<sup>28</sup> Khalid Ibrahim Jindan, *Teori Politik Islam: Telaah Kritis Ibnu Taimiyyah Tentang Pemerintahan Islam*, ed. Masrinin, Terjemahan (Jakarta: Risalah Gusti, 1995).,6-30.

<sup>29</sup> Nur Ahsan Syakur Mirayanti, Nuraeni, "Kepemimpinan Abu Bakar Al Shiddiq," *Rihlah* 11 (2023)., 40.

<sup>30</sup> Since the proclamation of independence, 12 elections have taken place up to 2019. The changes related to it occurred along with the changes in the 1945 Constitution which were carried out in stages in 1999, 2000, 2001 and 2002. See Achmad Edi Subiyanto, "Pemilihan Umum Serentak Yang Berintegritas Sebagai Pembaruan Demokrasi Indonesia," *Jurnal Konstitusi* 17 (2020)., 356-358.

namely 1955. Meanwhile, during the New Order era, elections lasted several decades, namely 1971, 1977, 1982, 1987, 1992, and 1997. Meanwhile, in the post-reform period, elections occurred in 1999 and 2004.<sup>31</sup> After that period, several elections occurred in 2009, 2014, 2019

Generally, the election process is to elect people's representatives in parliament or state leaders. About this, in the history of elections in Indonesia, changes in the laws and regulations governing them had an impact on the candidates selected, both as president and as members of parliament. Initially, the people only elected members of parliament and constituent members but did not elect the president. This can be seen in the leadership of Ir. Soekarno, the first president of the Republic of Indonesia, was only elected by the PPKI (Indonesian Independence Preparatory Committee), not by the people or members of parliament.<sup>32</sup> His mandate as head of state was attached to him from 18 August 1945 until the third period of the republic, namely 1967.<sup>33</sup>

Article 45, paragraph (3) of the 1950 UUDS states, "The President and Vice President are elected according to the rules established by law". However, until President Sukarno's reign ended, the law never became a reality. Thus, the election process continues to run in this period (the old order), only the focus of the general election is on who the people choose as their representatives in parliament and not choosing a president.<sup>34</sup>

The 1971 election (New Order era) was still relatively the same as the previous election, namely electing the people's representatives, while the issue of choosing the president was given to members of the MPR (People's Consultative Assembly).

---

<sup>31</sup> Fiska Friyanti, "Pelaksanaan Pemilihan Umum Dalam Sejarah Nasional Indonesia" (Universitas Negeri Semarang, 2005), viii; Bagus Surya Prabowo, "Menggagas Judicial Activism Dalam Putusan Presidential Threshold Di Mahkamah Konstitusi," *Jurnal Konstitusi* 19, no. 1 (March 28, 2022): 073-096, <https://doi.org/10.31078/jk1914>.

<sup>32</sup> Hayatun Na'imah, "Peralihan Kekuasaan Presiden Dalam Lintasan Sejarah Ketatanegaraan Indonesia," *Khazanah, Jurna Studi Islam Dan Humaniora* 13 (2015), 120.

<sup>33</sup> Na'imah, 122-29; Marco Bünte and Mark R. Thompson, eds., *Presidentialism and Democracy in East and Southeast Asia* (London; New York: Routledge, Taylor & Francis Group, 2023).

<sup>34</sup> The 1955 general election was the first general election held during the Old Order era. This election was conducted through 2 (two) stages, namely September 29 and September 15. The people who were elected were members of the House of Representatives and members of the Constituent Assembly whose duties and functions were to compile a new basic law. The flow and process of the first election in Indonesia was held in 3 (three) different cabinet regimes, namely: Wilopo, Ali Sastroamidjojo and Burhanudin Harahap. In the first cabinet (Wilopo), Basic Law No.7 of 1953 was passed as the legal basis for general elections. Then after that, in the second cabinet, the election campaign took place after the ratification of the Election Law on April 4, 1953 and the ratification of party signs on May 31, 1954. The voting process occurred in the Burhanuddin Harahap Cabinet. See Singgih Bambang Permadi, "Proses Pemilihan Umum 1955 Di Indonesia" (Universitas Negeri Yogyakarta, 2014).



Thus, the mechanism for implementing presidential election procedures is regulated in TAP MPR.No.II/MPR/1973, where this occurs through consensus deliberation because there is only a single candidate, namely Soeharto.<sup>35</sup> The presidential election model (pilpres) in subsequent elections (1977, 1983, 1988, 1993, 1998) remained relatively the same as the 1971 election.

The dynamics of the next election is a period of reform, where the election agenda, which was initially to be held in 2022, was accelerated to 1999. Before the election, laws in the political sector were passed, including Law Number 2 of 1999 concerning Political Parties, Law Number 3 Concerning Elections, and Law Number 4 Concerning the Composition and Position of the MPR, DPR, and DPRD.<sup>36</sup> Consequently, at that time, the people elected members of the People's Representative Council (DPR RI), Regional Representative Council (DPD), and Regional Representative Council (DPRD). The difference between the elections during this period (reformation) and before (the new order) was the political party participants. In contrast, in the previous regime, they carried out party fusion actions, namely Golongan Karya (Golkar), the United Development Party (PPP), and the Indonesian Democratic Party (PDI). Meanwhile, in the 1999 election, 48 political parties participated in the election.<sup>37</sup>

Even though reforms have been implemented, the implementation of the presidential election (Pilpres) continues through members of parliament (indirectly). Interestingly, in the previous regime, the presidential candidates for several elections only came from one candidate. Then, in this period, the presidential candidates come from the winning parties, so DPR members will choose more than 1 (one) person.<sup>38</sup>

The DPR RI, due to the 1999 election, changed the law. No. 3 of 1999 concerning Elections. These changes were realized with the enactment of Law No. 12 of 2003. This law became the basis for the 2004 elections, where the implementation underwent significant changes, namely the addition of the presidential and vice presidential elections. The presidential election was more democratic than in the

---

<sup>35</sup> Na'imah, "Peralihan Kekuasaan Presiden Dalam Lintasan Sejarah Ketatanegaraan Indonesia.", 130.

<sup>36</sup> Indra Pahlevi, "DINAMIKA SISTEM PEMILU MASA TRANSISI DI INDONESIA," *Politica* 5 (2014)., 112.

<sup>37</sup> Indra Pahlevi, "Dinamika Sistem Pemilu Masa Transisi di Indonesia," *Politica* 5 (2014), 112; Eddie Dekel, Matthew O. Jackson, and Asher Wolinsky, "Vote Buying: General Elections," *Journal of Political Economy* 116, no. 2 (April 2008): 351-80, <https://doi.org/10.1086/587624>.

<sup>38</sup> Friyanti, "Pelaksanaan Pemilihan Umum Dalam Sejarah Nasional Indonesia." 88.

previous era.<sup>39</sup> This is because the people directly elect the president and his deputy. The election process and dynamics are further illustrated in several laws and regulations in Indonesia, including Law No. 22 of 2007 concerning General Election Organizers, and secondly Law No. 10 of 2008 concerning the General Election of Members of the DPR, DPD, and DPRD, and thirdly Law no. 42 of 2008 concerning the Election of President and Vice President.

Law No. 10 of 2008 imposed a parliamentary threshold of 2.5% of the total valid votes for national elections. As a result, of the 38 political parties participating in the 2009 elections, only 9 political parties met the parliamentary threshold and had seats in parliament. Meanwhile, specific issues regarding the presidential election did not experience changes as in previous elections. After the 2009 and 2014 elections, Law No. 7 of 2017 concerning Elections where the Presidential Threshold issue is one of its critical points.

#### **PRESIDENTIAL THRESHOLD IN THE 2024 PRESIDENTIAL ELECTION ISSUE PERSPECTIVE**

As mentioned above, since the promulgation of Law Number 23 of 2003, Indonesia's president and vice president have been elected as a package by the people directly, publicly, freely, confidentially, honestly, and somewhat (*Luber Jurdil*).<sup>40</sup> This, the provisions for nominating presidential and deputy pairs are that they are nominated by political parties or combinations of political parties that obtain at least 15% of the total number of seats in the DPR or 20% of the valid votes nationally in the DPR member elections. This means that the threshold in elections has been applied.<sup>41</sup>

In the end, the 2004 election constellation gave rise to several figures as presidential and vice-presidential candidates, namely Abdurrahman Wahid and Marwah Daud Ibrahim, Wiranto and Salahuddin Wahid, Megawati Soekarnoputri and Hasyim Muzadi, Amien Rais and Siswono Yudho Husodo, Susilo Bambang Yudhoyono and Muhammad Jusuf Kalla, and finally Hamzah Haz and Agum

---

<sup>39</sup> Article 22E of the 1945 Constitution emphasizes that elections to elect the President and Vice President, members of the DPR, members of the DPD, and members of the DPRD are held based on the principles of direct, general, free, secret, honest, and fair every five years. See Subiyanto, "Pemilihan Umum Serentak Yang Berintegritas Sebagai Pembaruan Demokrasi Indonesia." 360.

<sup>40</sup> This is also the mandate of the post-amendment 1945 Constitution. Article 6A of the 1945 Constitution of the Republic of Indonesia states that the President and Vice President are elected in one pair directly by the people.

<sup>41</sup> Article 5 paragraph (4) of the law states that "a presidential and vice-presidential candidate pair can only be proposed by a political party or a coalition of political parties that obtain at least 15 percent of the total seats in the House of Representatives or 20 percent of the national valid votes in the election of members of the House of Representatives".

Gumelar.<sup>42</sup> Of the six pairs, the one who did not qualify was pair one, namely Abdurrahman Wahid. Finally, the 2004 presidential general election (Pilpres) lasted for 2 (two) rounds. No single pair could get more than 50% of the valid votes.<sup>43</sup>

Presidential Threshold (PT) is an additional provision for setting the conditions for nominating presidential and vice presidential candidates.<sup>44</sup> The practice in 2004, 2009, and 2014 was the first to elect members of the DPR, DPD, and DPRD or legislative elections (Pileg), so after that, the presidential election (Pilpres) was held. In this way, the political parties received the first votes to nominate the president possibly.<sup>45</sup> There has been an increase in the threshold (PT) amount in the presidential election, namely in the 2004 election, which referred to the law. Number 23 of 2003 concerning Elections, the threshold is 15% of the number of DPR seats or 20% of the number of valid national votes in the election for council members, then in 2009, it changed to 20% of at least the number of DPR seats or 25% of the national valid votes.<sup>46</sup> Meanwhile, the nominal PT in the 2014 election did not change based on the same reference in 2009.

Then, the further developments regarding the 2019 and 2024 elections where they are conducted simultaneously, both for presidential and legislative elections as regulated by Law Number 7 of 2017 concerning Elections. Some parties have considered this situation an issue,<sup>47</sup> although, in reality, the allocation of PT remains unchanged, just like in previous elections.<sup>48</sup> The same will also happen in the 2024 elections. The main issue is that if PT is determined in simultaneous elections, the logical consequence is that the opposition will become weaker or possibly disappear.

---

<sup>42</sup> Friyanti, "Pelaksanaan Pemilihan Umum Dalam Sejarah Nasional Indonesia.", 108. See also <https://www.kpu.go.id/page/read/1114/pemilu-2004>.

<sup>43</sup> Law No. 23/2003 on Presidential and Vice-Presidential Elections, Article 67 paragraph (1) explains that if no candidate pair obtains more than 50% of the votes, the candidate pairs that obtain the first and second highest number of votes are re-elected by the people directly through elections.

<sup>44</sup> Article 6A paragraph (2) of the NRI Constitution which states that "Candidate pairs for President and Vice President are proposed by political parties or a coalition of political parties participating in the election before the implementation of the election".

<sup>45</sup> Setiawan, "Politik Hukum Presidential Threshold 20% Dalam Undang-Undang Nomor 7 Tahun 2017.", 175.

<sup>46</sup> Law No. 42/2008 on the General Election of the President and Vice President. Article 9 of Law 42/2008 states that "Candidate pairs are proposed by a political party or a coalition of political parties participating in the elections that meet the requirements of obtaining at least 20% (twenty percent) of the total seats in the DPR or obtaining 25% (twenty-five percent) of the national valid votes in the elections for members of the DPR, prior to the implementation of the Presidential and Vice Presidential Elections".

<sup>47</sup> Alfa Fitri dan Wicipto Setiadi, "Presidensial Threshold Dalam Pemilihan Umum Serentak: Kemunduran Demokrasi Konstitusional?," *Jurnal Legislasi Indonesia* 19 (2022)., 69.

<sup>48</sup> Pasal 222 UU Nomor 7 tahun 2017 tentang Pemilu menyebutkan, "pasangan calon diusulkan oleh partai politik atau gabungan partai politik peserta pemilu yang memenuhi persyaratan perolehan kursi paling sedikit 20 persen dari jumlah kursi DPR atau memperoleh 25 persen dari suara sah secara nasional pada pemilu anggota DPR sebelumnya".

This is because parties are likely to form coalitions with the winning party of the election.<sup>49</sup> In terms of public interest, this is clearly against democratic principles, especially to the detriment of the people. The opportunity for the people to access alternative leaders is restricted by a system dominated by the winning party. In reality, political parties do not always reflect the aspirations of the society. Examples of these statements are the issues about the Job Creation Law<sup>50</sup> and the Capital City of Indonesia (IKN) Law.<sup>51</sup>

Except for that, in a presidential system, a president holds the executive office, while the House of Representatives (DPR) is the legislative body. Both institutions are separated from each other and have their mandate from the people. These two institutions do not directly depend on each other regarding constituents.<sup>52</sup> Therefore, forcing the existence of PT in the 2024 presidential election goes against the spirit of public interest. Eliminating the PT would be more beneficial for the purity of the presidential system.

The President of Indonesia, theoretically as the chief executive, can form a cabinet in his administration independently and free from political party intervention. This contrasts with the parliamentary system, which requires the support of a parliamentary majority to form a government.<sup>53</sup> Because if a conflict occurs between the two, the judiciary will resolve the issue.<sup>54</sup> This happens because both have equal standing, resulting in a checks and balances relationship where the head of state is not accountable to the parliament.<sup>55</sup>

It means that the presidential threshold implemented in the 2024 presidential election mainly contradicts the presidential system of government in Indonesia because the executive and legislative branches have different bases of legitimacy. Therefore, the Presidential Threshold (PT) in the presidential election is not beneficial. Because of that, several parties such as the *Partai Kebangkitan Nasional*

---

<sup>49</sup> Setiawan, "Politik Hukum Presidential Threshold 20% Dalam Undang-Undang Nomor 7 Tahun 2017.", 175.

<sup>50</sup> Related to this is the rejection from the public regarding the passing of the Job Creation Law by the DPR. The public rejected it, but political parties passed it. See Agus Machfud Fauzi Hesti Kartikasari, "Penolakan Masyarakat Terhadap Pengesahan Omnibus Law Cipta Kerja Dalam Perspektif Sosiologi Hukum," *Doktrina: Journal Of Law* 4 (2021).

<sup>51</sup> Achmad Badawi, "Problematika Yuridis Undang-Undang Nomor 3 Tahun 2022 Tentang Ibu Kota Negara Dalam Perspektif Ilmu Perundang-Undangan," *Sovereignty: Jurnal Demokrasi Dan Ketahanan Nasional* 2 (2023), 63.

<sup>52</sup> Miriam Budiardjo, *Dasar-Dasar Ilmu Politik*, Edisi Revi (Jakarta: Gramedia Pustaka Utama, 2008), 303.

<sup>53</sup> Saldi Isra, *Pergeseran Fungsi Legislasi*, Kedua (Depok: PT Raja Grafindo Persada, 2018), 56.

<sup>54</sup> Ni'matul Huda, *Ilmu Negara* (Jakarta: PT Raja Grafindo Persada, 2017), 254.

<sup>55</sup> Janedjri M.Gaffar, *Demokrasi Konstitusional Praktik Ketatanegaraan Indonesia Setelah Perubahan UUD 1945* (Jakarta: Konstitusi Press, 2012), 176.

(PKN), the *Partai Keadilan Sejahtera* (PKS),<sup>56</sup> *Partai Bulan Bintang* (PBB), the Chairman of the Regional Representative Council (DPD), the Gelora Party, the Deputy Chairman of the *Gerakan Indonesia Raya* (Gerindra), and the Ummat Party, have made efforts for a judicial review (JR). Besides political parties and institutions, some individuals have also filed lawsuits against the PT such as Lieus Sungkharisma, Fahira Idris, Tamsil Linrung, Edwin Pratama Putra, Rizal Ramli, Syafril Sjöfyan, Tito Reosbandi, Elyan Verna Hakim, Endang Wuryaningsih, Ida Farida, Neneng Khodijah, and Lukman Nulhakim.<sup>57</sup>

Most of the petitioners for the judicial review (JR) want to reduce or eliminate the threshold. The petitioners' argument generally concerns the contradiction between Article 222 of Law Number 7 of 2017, which contains the PT, and Articles 6 and 6A.<sup>58</sup> It can be said that this is contrary to democratic values,<sup>59</sup> primarily when related to the people's constitutional rights. However, all efforts made by the petitioners to cancel the PT in Article 222 failed because the Constitutional Court held the opposite view.<sup>60</sup>

The impact of a threshold in the presidential candidacy in the 2024 presidential election is the limitation on the ability of the nation's best sons and daughters to be nominated as president or vice president. The Presidential Threshold of 20% of the total seats held by supporting parties or 25% of the national valid votes poses a significant barrier for small parties to propose potential candidates. Besides that, the

---

<sup>56</sup> "Sufni Dasco Nilai Gugatan Presidential Threshold ke MK Wajar dan Sah," <https://www.dpr.go.id/berita/>. accessed October 11 2023.

<sup>57</sup> "Bolak Balik Presidential Threshold Digugat di MK," <https://news.detik.com/berita/d-6164708/bolak-balik-presidential-threshold-digugat-di-mk/3>. accessed October 11 2023.

<sup>58</sup> Article 6 (1) Candidates for President and Vice President must be Indonesian citizens by birth and have never accepted another citizenship of their own free will, have never betrayed the state, and be spiritually and physically able to carry out their duties and obligations as President and Vice President. (2) The requirements to become President and Vice President shall be further regulated by law.

Article 6 A (1) The President and Vice President shall be elected in one pair directly by the people. (2) Candidate pairs for President and Vice President shall be nominated by a political party or a coalition of political parties participating in the general election before the general election. (3) The pair of candidates for President and Vice President who get more than fifty percent of the total votes in the general election with at least twenty percent of the votes in each province spread across more than half of the total provinces in Indonesia, shall be inaugurated as President and Vice President. (5) The procedures for the implementation of the election of the President and Vice President shall be further regulated by law.

<sup>59</sup> Setiawan, "Politik Hukum Presidential Threshold 20% Dalam Undang-Undang Nomor 7 Tahun 2017.", 177.

<sup>60</sup> The Constitutional Court (MK) has decided at least 21 *judicial review* cases related to the *presidential threshold* over five years, from 2017 to 2022. The Constitutional Court is of the opinion that the *presidential threshold* is not only not in conflict with the Constitution, but it is also an *open legal policy* of the lawmakers, so that the ones who decide are the members of parliament themselves, not within the authority of the Constitutional Court. See also Putusan MK Nomor 52/PUU-XX/2022 tentang "Ketentuan Ambang Batas Pencalonan Presiden dan Wakil Presiden (Presidential Threshold)".

dominance of large parties, which typically become supporting parties of the government, makes it difficult for opposition parties to nominate their potential candidates despite the diverse people having different political preferences.

The evidence of this is seen in the dynamics of the nomination of prospective presidential candidates (Bacapres) and vice presidential candidates (Bawacapres) for the 2024 presidential election, which have been hesitant. Anis Baswedan, as a new core of change, secured his ticket after being endorsed by three major parties: Nasdem (*National Demokrat*), *Demokrat*, and *Partai Keadilan Sejahtera* (PKS). These supporting parties bring ideas of change, contrasting with the Jokowi administration.<sup>61</sup> Meanwhile, the continuity core represented by Prabowo and Ganjar also faces challenges in determining their vice-presidential candidate. The parties are polarized into two political doctrines – change and continuity, although when writing this, it looks like the three factions will form in the first round.

Another effect of implementing the Presidential Threshold in the 2024 presidential election in Indonesia is the show of political dramas in front of the public that is pragmatic, which means political parties should ideally have idealism about the future government format through their best cadres to advance as presidential and vice-presidential candidates find it difficult. Eventually, whether they like it or not, they will engage in political bargaining based on party interests and power rather than ideals aimed at national progress.

The logical consequence of this phenomenon is marked by how easily a political party from one coalition switches sides to another even though their ideas and political doctrines are different. The PKB party, initially aligned with the continuity core (Prabowo), suddenly changed direction, not towards Ganjar (continuity), but towards the *Partai Nasdem*. Meanwhile, the party that supports Anis Baswedan promotes ideas of change.<sup>62</sup> On the other hand, the *Partai Demokrat*, initially critical of the government and aligned with the core of change, shifted the direction of the presidential election towards the continuity core (Prabowo).<sup>63</sup> Politicians may see this phenomenon as regular, but people can interpret it

---

<sup>61</sup> "Anies Berharap Demokrat Nasdem PKS Wujudkan Poros Perubahan," <https://www.cnnindonesia.com/nasional/20221008030136-32-857892/anies-berharap-demokrat-nasdem-pks-wujudkan-poros-perubahan>. accessed October 18 2023.

<sup>62</sup> Anies Cak Imin Deklarasi Pakai Baju Putih Yang Identik Dengan Jokowi," <https://news.republika.co.id/berita/s0cmwz484/aniescak-imin-deklarasi-pakai-baju-putih-yang-identik-dengan-jokowi>. accessed October 18 2023.

<sup>63</sup> "Alasan Partai Demokrat gabung Koalisi Prabowo Bukan Koalisi Ganjar," <https://rejogja.republika.co.id/berita/s1cyop291/alasan-partai-demokrat-gabung-koalisi-prabowo-bukan-koalisi-ganjar>. accessed Oktober 18 2023.

differently. They (the people) may become more apathetic, meaning they no longer trust the faith of political parties and their politicians in the constellation of the 2024 presidential election.

The presentation above on the PT policy in the 2024 presidential election will have several impacts, with the summary as follows: Firstly, the obstruction to the nation's best candidates from running for president or vice president if their parties fail the PT requirements. Secondly, existing presidential and vice-presidential candidates are influenced by political party oligarchies. Thirdly, elected leaders tend to prioritize the policies of their supporting parties over the interests of the people, as these parties provide them with candidacy opportunities. Fourthly, public political preferences are no longer based on the candidates' ideas but are more influenced by specific political factions' financial contributions (money politics). Lastly, voter abstention will rise due to disillusionment with candidates presented by parties lacking consistent and principled political ideologies.

The five points described above contradict the concept of "*kemaslahatan*" (benefit or public interest), whether it comes to democratic systems, presidential systems, or the sustainability of the nation and state post-presidential and vice-presidential elections. "*Maslahah*" encompasses everything that contains benefit, whether for obtaining goodness, benefit, or avoiding harm. It is categorized into various types, including "*al-mu'tabarrah*," "*al-mulghāh*," and "*al-Mursalah*." Moreover, in terms of urgency, it is divided into "*al-Ḍarūrīyah*," "*al-Ḥājīyah*," and "*al-Taḥsīnīyah*."

The 2024 presidential election aims to achieve "*kemaslahatan*" (benefit or public interest) that is widely beneficial through the election of leaders in a democratic nation with a presidential system practiced in Indonesia. Having leaders who the people choose and can guide the nation towards a better direction represents a public interest of "*al-Ḍarūrīyah*" in national life. In connection to this, as mentioned earlier, since the enactment of Law Number 23 of 2003, the President and Vice President of Indonesia have been elected as a single package by the people through a direct, general, free, secret, honest, and fair (*Luber Jurdil*) election process.<sup>64</sup> The rules for nominating presidential and vice-presidential pairs require them to be proposed by political parties or coalitions that obtain at least 15% of seats in the

---

<sup>64</sup> This is also the mandate of the post-amendment 1945 Constitution. Article 6A of the 1945 Constitution of the Republic of Indonesia states that the President and Vice President are elected in one pair directly by the people.

House of Representatives (DPR) or 20% of valid votes nationally in the DPR election. This means that the threshold in elections has been implemented.<sup>65</sup>

The threshold (PT) for presidential elections has already increased. In the 2004 elections, according to Law Number 23 of 2003 on Elections, the threshold was set at 15% of the total seats in the DPR or 20% of the valid national votes in the legislative election. By 2009, this threshold had been raised to at least 20% of the total seats in the DPR or 25% of the valid national votes.<sup>66</sup> Subsequently, under Law Number 7 of 2017 on Elections, which will be applied in the 2024 presidential election, the PT remains unchanged from previous elections.<sup>67</sup> However, this issue continues to be debated by some parties.<sup>68</sup>

The main issue is that if PT is determined in simultaneous elections, the logical consequence is that the opposition will become weaker or possibly disappear. This is because parties are likely to form coalitions with the winning party of the election.<sup>69</sup> When considering "*kemaslahatan*" (benefit or public interest), this contradicts the essential democratic benefit ("*al-Darūri*"), where the people should have the opportunity to choose alternative leaders outside of those presented by the winning parties. The PT restricts this possibility, as the policies of parties dominating the parliament do not always reflect the people's aspirations. Examples include the Omnibus Law on Job Creation<sup>70</sup>, the Capital City Law (IKN), and the selection of presidential and vice-presidential candidates.

Except for that, in a presidential system, a president holds the executive office, while the House of Representatives (DPR) is the legislative body. Both institutions

---

<sup>65</sup> Article 5 paragraph (4) of the law states that "a presidential and vice-presidential candidate pair can only be proposed by a political party or a coalition of political parties that obtain at least 15 percent of the total seats in the House of Representatives or 20 percent of the national valid votes in the election of members of the House of Representatives".

<sup>66</sup> Law No. 42/2008 on the General Election of the President and Vice President. Article 9 of Law 42/2008 states that "Candidate pairs are proposed by a political party or a coalition of political parties participating in the elections that meet the requirements of obtaining at least 20% (twenty percent) of the total seats in the DPR or obtaining 25% (twenty-five percent) of the national valid votes in the elections for members of the DPR, prior to the implementation of the Presidential and Vice Presidential Elections".

<sup>67</sup> Article 222 of Law No. 7/2017 on Elections states, "candidate pairs are proposed by a political party or a coalition of political parties participating in the election that meets the requirements of obtaining at least 20 percent of the total number of DPR seats or obtaining 25 percent of the valid votes nationally in the previous DPR elections."

<sup>68</sup> Setiadi, "Presidensial Threshold Dalam Pemilihan Umum Serentak: Kemunduran Demokrasi Konstitusional?", 69.

<sup>69</sup> Setiawan, "Politik Hukum Presidential Threshold 20% Dalam Undang-Undang Nomor 7 Tahun 2017.", 175.

<sup>70</sup> Related to this is the rejection from the public regarding the passing of the Job Creation Law by the DPR. The public rejected it, but political parties passed it. See also Hesti Kartikasari, "Penolakan Masyarakat Terhadap Pengesahan Omnibus Law Cipta Kerja Dalam Perspektif Sosiologi Hukum."



are separated from each other and have their mandate from the people. These two institutions do not directly depend on each other regarding constituents.<sup>71</sup> Therefore, forcing the existence of PT in the 2024 presidential election goes against the spirit of public interest. Instead, eliminating the PT would be more beneficial ("*mursalah*") for the purity of the presidential system.

The President of Indonesia, theoretically as the chief executive, can form a cabinet in his administration independently and free from political party intervention. This contrasts with the parliamentary system, which requires the support of a parliamentary majority to form a government.<sup>72</sup> Because if a conflict occurs between the two, the judiciary will resolve the issue.<sup>73</sup> This happens because both have equal standing, resulting in a checks and balances relationship where the head of state is not accountable to the parliament.<sup>74</sup>

It means that the presidential threshold implemented in the 2024 presidential election mainly contradicts the presidential system of government in Indonesia because the executive and legislative branches have different bases of legitimacy. Therefore, the Presidential Threshold (PT) in the presidential election is not beneficial. Because of that, several parties such as the *Partai Kebangkitan Nasional* (PKN), the *Partai Keadilan Sejahtera* (PKS),<sup>75</sup> *Partai Bulan Bintang* (PBB), the Chairman of the Regional Representative Council (DPD), *Partai Gelora*, the Deputy Chairman of *Gerakan Indonesia Raya* (Gerindra), and *Partai Ummat*, have made efforts for a judicial review (JR). Besides political parties and institutions, some individuals have also filed lawsuits against the PT such as Lieus Sungkharisma, Fahira Idris, Tamsil Linrung, Edwin Pratama Putra, Rizal Ramli, Syafril Sjofoyan, Tito Reosbandi, Elyan Verna Hakim, Endang Wuryaningsih, Ida Farida, Neneng Khodijah, and Lukman Nulhakim.<sup>76</sup>

---

<sup>71</sup> Miriam Budiardjo, *Dasar-Dasar Ilmu Politik*, Edisi Revi (Jakarta: Gramedia Pustaka Utama, 2008), 303; Masykuri Abdillah, "Sharia and Politics in The Context of Globalization and Society 5.0," *AHKAM: Jurnal Ilmu Syariah* 22, no. 2 (December 31, 2022), <https://journal.uinjkt.ac.id/index.php/ahkam/article/view/28959>.

<sup>72</sup> Isra, *Pergeseran Fungsi Legislasi*, 56.

<sup>73</sup> Huda, *Ilmu Negara*, 254.

<sup>74</sup> M.Gaffar, *Demokrasi Konstitusional Praktik Ketatanegaraan Indonesia Setelah Perubahan UUD 1945*, 176.

<sup>75</sup> "Sufni Dasco Nilai Gugatan Presidential Threshold ke MK Wajar dan Sah," <https://www.dpr.go.id/berita/>, accessed October 11 2023.

<sup>76</sup> "Bolak Balik Presidential Threshold Digugat di MK," <https://news.detik.com/berita/d-6164708/bolak-balik-presidential-threshold-digugat-di-mk/3>, accessed October 11 2023.

The stipulation of PT in simultaneous elections in 2024 is a stumbling block to a healthy democratic process.<sup>77</sup> It even pushes the Indonesian people into the dark room of pseudo-democracy. This means that democracy, which initially provided a broad opportunity for anyone to take a fundamental part in determining the nation's fate in the future through an honest, fair, accessible, and secret presidential election, must finally submit to the hegemony of the power of certain political parties.

The freedom to choose a leader and to be elected in an election is no longer owned by the people but by the ruling party. Furthermore, these ruling party elites will offer a package of people's choices, regardless of whether these choices genuinely represent the wishes of the party constituents or are unilateral policies by the party chairman. This is contrary to the meaning of democracy and *its benefits*, where each citizen has the same rights in determining the fate of their nation as a tribute to human rights and participation in decision-making."<sup>78</sup>

The guarantee of democracy's core values of freedom, equality, deliberation, and justice has been shattered by the existence of PT. The freedom of the people/individuals before power must be protected for their benefit. However, it cannot be denied that the balance between the collective rights of society and individuals must be maintained.<sup>79</sup> Therefore, the state must be present to guarantee that democracy does not become pseudo.

About this, as a stumbling block to a healthy democracy and to bring out its benefits for the community in the presidential election, the annulment of PT is an idea worth considering. The 2024 presidential election requires the authentic voices of the people in determining who is the leader of the Indonesian Nation born from the womb of the people's wishes and not from political parties alone, let alone a handful of political party rulers. The people must be the determinant in every choice because they are the ones who better understand the benefits that will return to themselves in the event of the election of the president and his deputy.

The benefit that returns to the people is fundamental in state policies. This is as in the rule *تصرف الإمام على الرعية منوط بالمصلحة* where the meaning is that all actions and decisions, decrees, and policies of a leader must refer to the realization of benefit. This is because a legislative product formulated by the government must

---

<sup>77</sup> Mustiqowati Ummul Fitriyah, "Implikasi Demokrasi Semu Dan Politik Pencitraan Berbingkai Islam Terhadap Good Governance," *Politea: Jurnal Pemikiran Politik Islam* 4 (2021), 22.

<sup>78</sup> Solihin Defrizal, Achmad Zulham, "Demokrasi Dalam Islam: Tinjauan Tafsir Maudhu'i," *Wardah: Jurnal Dakwah Dan Kemasyarakatan*, 2020., 2

<sup>79</sup> Nasaruddin Umar, "Demokrasi Dan Musyawarah: Sebuah Kajian Analitis," *Perta: Jurnal Komunikasi Perguruan Tinggi Islam* V (2002), 36.

function for the benefit of the people as the fulfillment of their fundamental rights.<sup>80</sup> Another meaning that is identical to this statement is that actions and decisions made by leaders should not be based on and for the benefit of specific groups but must be based on the benefit that returns in general.<sup>81</sup> Furthermore, about the benefit and democracy in general, as well as PT and presidential elections in particular, the provisions related to PT in the 2024 Presidential Election are the embodiment of the policies of the rulers, in this case, members of the board (legislative) and the government (executive). Meanwhile, legislation products that should impact or affect the general public have the opposite effect.

The existence of the PT provision harms the people as the owners of this nation's democracy. Their political channeling references are constrained, especially regarding the presidential and vice presidential elections 2024. The PT regulation's blockage of the democratic rights of the general public is contrary to the benefit. Furthermore, the president and vice president are elected due to the PT position of the head of state and head of government as hostages of the winning party. The executive leader may be more subject to political parties than the people's will. This kind of thing contradicts the interests of the nation and state.

## CONCLUSION

The upcoming Presidential and Vice-Presidential elections in 2024 are a routine effort by the Indonesian nation to achieve the public interest through the election of a head of state and government capable of leading the country and nation towards a better future. Additionally, this serves as an embodiment of democracy within Indonesia's presidential system. The Presidential Threshold (PT) regulation in the 2024 election, when viewed from the perspective of public interest, actually contradicts this aim, conflicting with both "*maslahah mursalah*" and essential benefits ("*darūri*"). This is because the elected President and Vice President are not purely the people's choice, but the oligarchy of certain political parties sanctions them. Instead of freely choosing the nation's best candidates, the people can only accept the options predetermined by the majority of party votes. Meanwhile, the hegemony of the supporting parties and the dominant members of parliament over the elected government is powerful. In a presidential system, however, the government should be free from the political pressure of parliament members and stand on equal footing

---

<sup>80</sup> Achmad Musyahid Idrus, "Kebijakan Pemimpin Negara Dalam Prespektif Kaidah Fikih: Tasarruf al Imam Manutun Bil Maslahah," *Ad Daulah* 10 (2021), 130.

<sup>81</sup> Abdul Mujib, *Kaidah-Kaidah Ilmu Fikih* (Jakarta: Kalam Mulia, 2005), 61.

with them. The impact of the PT causes people to be less enthusiastic about the candidates due to the unclear political principles of the presidential and vice-presidential candidates. Lastly, the likelihood of a "golput" (abstention) movement or non-participation in such an election will increase significantly.

## REFERENCES

- Abdillah, Masykuri. "Sharia and Politics in The Context of Globalization and Society 5.0." *AHKAM: Jurnal Ilmu Syariah* 22, no. 2 (December 31, 2022). <https://journal.uinjkt.ac.id/index.php/ahkam/article/view/28959>.
- Al-Fatih, Sholahuddin, and Fitria Esfandiari. "Presidential Threshold in Indonesian Election: An Islamic Law Perspective." *Yurispruden* 5, no. 1 (January 20, 2022): 55–69. <https://doi.org/10.33474/yur.v5i1.14145>.
- Al-Shatibi, Ibrahim Ibn. *The Reconciliation of the Fundamentals of Islamic Law: Al-Muwafaqat Fi Usul al-Shari'a*. Translated by Imran Ahsan Khan Nyazee. Reading, UK: Garnet Publishing, 2012.
- Ansori. "Telaah Terhadap Presidential Threshold Dalam Pemilu Serentak 2019." *Yuridis* 4 (2017).
- Ansori, Saiful. "Maqashid Syariah dan Praktik Sistem Presidential Threshold Di Indonesia: Studi Pemilu Serentak Tahun 2019." *Jurisprudensi: Jurnal Ilmu Syariah, Perundang-Undangan Dan Ekonomi Islam* 12 (2020).
- Arifudin, Hamdan Zoelva. "Pembaharuan Sistem Presidential Threshold Di Indonesia Berdasarkan Konsep Prisma Hukum." *Jurnal Hukum Progresif* 10 (2022).
- Badawi, Achmad. "Problematisasi Yuridis Undang-Undang Nomor 3 Tahun 2022 Tentang Ibu Kota Negara Dalam Perspektif Ilmu Perundang-Undangan." *Sovereignty: Jurnal Demokrasi Dan Ketahanan Nasional* 2 (2023).
- Budiardjo, Miriam. *Dasar-Dasar Ilmu Politik*. Edisi Revi. Jakarta: Gramedia Pustaka Utama, 2008.
- Bünthe, Marco, and Mark R. Thompson, eds. *Presidentialism and Democracy in East and Southeast Asia*. London ; New York: Routledge, Taylor & Francis Group, 2023.
- Defrizal, Achmad Zulham, Solihin. "Demokrasi Dalam Islam: Tinjauan Tafsir Maudhu'i." *Wardah: Jurnal Dakwah Dan Kemasyarakatan*, 2020.
- Dekel, Eddie, Matthew O. Jackson, and Asher Wolinsky. "Vote Buying: General Elections." *Journal of Political Economy* 116, no. 2 (April 2008): 351–80. <https://doi.org/10.1086/587624>.
- Departemen Pendidikan dan Kebudayaan. *Kamus Besar Bahasa Indonesia*. Jakarta: Balai Pustaka, 1996.

- Dirga Acmad, Azlan Thamrin. "Calon Presiden Perseorangan Dan Presidential Threshold Dalam Sistem Pemerintahan Presidensial Indonesia." *Diktum: Jurnal Syariah Dan Hukum* 19 (2021).
- Fitriyah, Mustiqowati Ummul. "Implikasi Demokrasi Semu Dan Politik Pencitraan Berbingkai Islam Terhadap Good Governance." *Politea: Jurnal Pemikiran Poltik Islam* 4 (2021).
- Friyanti, Fiska. "Pelaksanaan Pemilihan Umum Dalam Sejarah Nasional Indonesia." Universitas Negeri Semarang, 2005.
- Helmi, Helmi, Mukhrijal Mukhrijal, and Nyak Fadhlullah. "Presidential Threshold (Discourse Review on Strengthening Presidential Systems in Indonesia)," 225–29. Atlantis Press, 2019. <https://doi.org/10.2991/agc-18.2019.36>.
- Hesti Kartikasari, Agus Machfud Fauzi. "Penolakan Masyarakat Terhadap Pengesahan Omnibus Law Cipta Kerja Dalam Perspektif Sosiologi Hukum." *Doktrina: Journal Of Law* 4 (2021).
- Huda, Ni'matul. *Ilmu Negara*. Jakarta: PT Raja Grafindo Persada, 2017.
- Idrus, Achmad Musyahid. "Kebijakan Pemimpin Negara Dalam Prespektif Kaidah Fikih: Tasarruf al Imam Manutun Bil Maslahah." *Ad Daulah* 10 (2021).
- Iffah, Mohammad Aso Samsudin Ukhtul. "Telaah Proses Sukses Khilafah Pada Materi Sejarah Perkembangan Islam Masa Khulafaurrasyidin." *Edupedia* 6 (2021).
- Isra, Saldi. *Pergeseran Fungsi Legislasi*. Kedua. Depok: PT Raja Grafindo Persada, 2018.
- Jindan, Khalid Ibrahim. *Teori Politik Islam: Telaah Kritis Ibnu Taimiyyah Tentang Pemerintahan Islam*. Edited by Masrinin. Terjemahan. Jakarta: Risalah Gusti, 1995.
- Khallaf, Abd.Wahab. *Ushul al-Fiqh*. Jakarta: Majelis al Ta'lim Lil Indunesiyyin lil Dakwah al Islamiyah, 1973.
- Khan, Mushthafa Sa'id al. *Atsar al Ikhtilaf Fi Al Qawaid al Ushuliyah Fi al Ihktilaf al Fuqoha'*. Beirut: Muassasah al-Risa>lah, 1972.
- Kurnia, Resti. "Analisis Yuridis Dan Siyasa Dusturiyah Terhadap Presidential Threshold Pemilu Serentak 2024." UIN Sunan Ampel Surabaya, 2022.
- Manzur, Ibn. *Lisan al 'Arab*. Beirut: Dar Sadir, 1994.
- Mawardi, Abu al Hasan Ali ibn Muhammad al. *Al Ahkam al Shultoniyyah*. Cairo: Dar al Hadis, 2006.
- M.Gaffar, Janedjri. *Demokrasi Konstitusional Praktik Ketatanegaraan Indonesia Setelah Perubahan UUD 1945*. Jakarta: Konstitusi Press, 2012.
- Mirayanti, Nuraeni, Nur Ahsan Syakur. "Kepemimpinan Abu Bakar Al Shiddiq." *Rihlah* 11 (2023).
- M. Luthfi Anam K, Kholid Mawardi. "Periodeisasi Dan Perkembangan Dinasti Umayyah." *Transformasi Manageria* 1 (2024).

- Moh. Ridwan. "Ambang Batas Dalam Pemilihan Umum Presiden 2019 Perspektif Presidensialisme Dan Masalah Mursalah." UIN Sunan Kalijaga Yogyakarta, 2022.
- M. Syaiful. "Antinomi Penerapan Presidential Threshold Dalam Sistem Pemilu Presiden Dan Wakil Presiden." *Julia: Jurnal Ligitasi Amsir* 10 (2022).
- Muhammad Aziim, Kosariza. "Analisis Penerapan Ambang Batas Perolehan Suara (Presidential Thershold) Dalam Pemilihan Presiden." *Limbago: Journal Of Constitutional Law* 2 (2022).
- Mujib, Abdul. *Kaidah-Kaidah Ilmu Fikih*. Jakarta: Kalam Mulia, 2005.
- Na'imah, Hayatun. "Peralihan Kekuasaan Presiden Dalam Lintasan Sejarah Ketatanegaraan Indonesia." *Khazanah, Jurna Studi Islam Dan Humaniora* 13 (2015).
- Nizar, Syamsul. *Sejarah Pendidikan Islam*. Jakarta: Kencana Press, 2008.
- Nurfazillah. "Praktik Politik Dalam Sejarah Islam Era Dinasti-Dinasti Islam." *Al Ijtima'i: International Journal of Government and Social Science* 6 (2020).
- Opwis, Felicitas. *Maslahah and the Purpose of the Law: Islamic Discourse on Legal Change from the 4th/10th to 8th/14th Century*. Brill, 2010.
- Pahlevi, Indra. "Dinamika Sistem Pemilu Masa Transisi Di Indonesia." *Politica* 5 (2014).
- Permadi, Singgih Bambang. "Proses Pemilihan Umum 1955 Di Indonesia." Universitas Negeri Yogyakarta, 2014.
- Prabowo, Bagus Surya. "Menggagas Judicial Activism Dalam Putusan Presidential Threshold Di Mahkamah Konstitusi." *Jurnal Konstitusi* 19, no. 1 (March 28, 2022): 073-096. <https://doi.org/10.31078/jk1914>.
- Seran, Gotfirdus Goris. "Konstitusionalitas Dan Desain Pemilukada Langsung Serentak Nasional." *Jurnal Konstitusi* 16 (2019).
- Setiadi, Alfa Fitri dan Wicipto. "Presidensial Threshold Dalam Pemilihan Umum Serentak: Kemunduran Demokrasi Konstitusional?" *Jurnal Legislasi Indonesia* 19 (2022).
- Setiawan, Adjie Hari. "Politik Hukum Presidential Threshold 20% Dalam Undang-Undang Nomor 7 Tahun 2017." *Jurnal APHTN-HAN*, 2023.
- Strömbäck, Jesper, and Lynda Lee Kaid. *The Handbook of Election News Coverage Around the World*. Routledge, 2009.
- Subiyanto, Achmad Edi. "Pemilihan Umum Serentak Yang Berintegritas Sebagai Pembaruan Demokrasi Indonesia." *Jurnal Konstitusi* 17 (2020).
- Syathibi, Abu Ishaq Asy. *Al Muafaqat Fi Ushul Al Syariah*. Beirut: Dar al Kutub al Ilmiah, 1991.
- Umar, HM. Hasbi. *Nalar Fiqh Kontemporer*. Jakarta: Gaung Persada Press, 2007.
- Umar, Nasaruddin. "Demokrasi Dan Musyawarah: Sebuah Kajian Analitis." *Perta: Jurnal Komunikasi Perguruan Tinggi Islam* V (2002).
- Yatim, Badri. *Sejarah Peradaban Islam (Dirasah Islamiyah I)*. Jakarta: PT.Grafindo, 2000.

“Bolak Balik Presidential Threshold Digugat di MK,”  
<https://news.detik.com/berita/d-6164708/bolak-balik-presidential-threshold-digugat-di-mk/3>. accessed October 11 2023.

“Anies Berharap Demokrat Nasdem PKS Wujudkan Poros Perubahan,”  
<https://www.cnnindonesia.com/nasional/20221008030136-32-857892/anies-berharap-demokrat-nasdem-pks-wujudkan-poros-perubahan>. accessed October 17 2023.

“Anies Cak Imim Deklarasi Pakai baju Putih Yang Identik Dengan Jokowi,”  
<https://news.republika.co.id/berita/s0cmwz484/aniescak-imin-deklarasi-pakai-baju-putih-yang-identik-dengan-jokowi>. accessed October 18 2023.

“Alasan Partai Demokrat Gabung Koalisi Prabowo Bukan Koalisi Ganjar,”  
<https://rejogja.republika.co.id/berita/s1cyop291/alasan-partai-demokrat-gabung-koalisi-prabowo-bukan-koalisi-ganjar>. accessed October 18 2023.

1945 Constitution

Law No. 42 of 2008 on the General Election of the President and Vice President

Law No. 7 of 2017 on General Elections

Law No. 3 of 2022 on the National Capital City

Law No. 23 of 2003 on Presidential and Vice Presidential Elections

Constitutional Court Decision No. 52/PUU-XX/2022 on the Provisions of the  
Threshold for Nomination of President and Vice President (Presidential  
Threshold)

