

# CHAPTER I

## INTRODUCTION

### A. Background of Research

The term Indonesia is a state based on the law contained in the Indonesian constitution,<sup>1</sup> The 1945 Constitution means that efforts to actualize a state based on law can be implemented if the process of administering government is based on the principles and principles contained in the 1945 Constitution.<sup>2</sup> Because the 1945 Constitution as the Indonesian constitution becomes the highest law or occupies the highest place in the hierarchy and legal norms in Indonesia.

The Indonesian government system adheres to a presidential government system which has also been stated in the 1945 NRI that the President of the Republic of Indonesia is the holder of a government authority. According to Miriam Budiardjo, the government system is divided into two groups: a parliamentary executive system and a presidential system with a fixed executive and a non-parliamentary executive.<sup>3</sup> With the arrangement of the presidential government system adopted by Indonesia, there is a division of power between the executive and legislative institutions and is also followed by a judicial institution called the Trias Politica. This political idea was first conceived by John Locke and developed by Montesquieu. Trias Politica is the idea that state power is divided into three types of power: First, legislative power or an

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<sup>1</sup> “The 1945 Constitution, Article 1 Paragraph (3).”

<sup>2</sup> Janpatar Simamora, “Tafsir Makna Negara Hukum Dalam Perspektif Undang-Undang Dasar Negara Republik Indonesia Tahun 1945,” *Jurnal Dinamika Hukum* , Vol. 14, No. 3 (2014), p. 1.

<sup>3</sup> Miriam Budiardjo, 2021, *Dasar-Dasar Ilmu Politik*, Revisi Jakarta, Gramedia Pustaka Utama, p. 297-304.

institution that has the power to make laws (the rulemaking function); second, executive power or power in which to implement the law (rule implementation function); third, the power of the judiciary as a judicial institution to prosecute every violation of the law (rule adjudication function).<sup>4</sup>

In the form of a democratic state, the people are the owners and holders of the highest authority in a country; in order to maintain a systematic cycle of power, a mechanism for selecting the president and vice president is needed periodically so that it can maintain the integrity and purity of democracy and the change of government power that can work effectively and efficiently.<sup>5</sup> Therefore, the election for Indonesia's president and vice president uses the General Election system, which the people directly elect.

Elections are regulated in Law Number 7 of 2017 with essential points promulgated where these points have become polemic until now, namely regarding the Presidential Threshold (hereinafter called PT), which is the threshold for political parties or a combination of political parties to nominate candidates for president and vice president. The law states that the terms for the candidacy of the president and vice president of a political party or coalition of political parties must obtain at least 20% of the total seats in the DPR or obtain 25% of the valid votes nationally in the previous election for members of the DPR.<sup>6</sup>

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<sup>4</sup> *Ibid.* p. 281-282.

<sup>5</sup> Jimly Asshiddiqie, 2020, *Pengantar Ilmu Hukum Tata Negara*, Depok, Gramedia Pustaka Utama, p. 413-415.

<sup>6</sup> "Article 222 Law Number 7 of 2017."

The PT problem always arises every time a presidential election is held. This problem has always arisen since the first time Indonesia held direct presidential elections 2004, where the threshold for electing a presidential candidate has been regulated in Article 5 Paragraph (4) of Law Number 23 of 2003, which states at least 15%. Then, the electability threshold for a presidential candidate has increased by 20% as the presidential election has been going on every five years until now, even in the 2019 simultaneous elections, even with the provisions of the 2014 election threshold.<sup>7</sup>

The presidential nomination threshold applied to Article 222 of The Election Act has the potential to open transactional politics because the president will always depend on the support of parliamentary votes. The votes obtained by the parliament become support which causes coalition impurities, resulting in a conflict of interests. From this, the president inevitably has to submit and obey the rules of the coalition of political parties so that in carrying out his government duties, the president becomes dependent and must be careful in making his political choices because he has to consider the interests of the political parties that support him.<sup>8</sup>

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<sup>7</sup> Abdul Ghoftar, "Problematika Presidential Threshold: Putusan Mahkamah Konstitusi Dan Pengalaman Di Negara Lain Dispute on Presidential Threshold: Decisions of the Constitutional Court and Other Countries' Experiences," *Jurnal Konstitusi*, Vol. 15, No. 3 (2018), p. 481.

<sup>8</sup> Rahmat Teguh Santoso Gobel, "Rekonseptualisasi Ambang Batas Pencalonan Presiden Dan Wakil Presiden (Presidential Threshold) Dalam Pemilu Serentak," *Jambura Law Review*, Vol. 1, No. 1 (2019), p. 99.

presidential candidate has been regulated in Article 5 Paragraph (4) of Law Number 23 of 2003, which states at least 15%. Then, the electability threshold for a presidential candidate has increased by 20% as the presidential election has been going on every five years until now, even in the 2019 simultaneous elections, even with the provisions of the 2014 election threshold.<sup>9</sup>

In the course of Judicial Review's (hereinafter called JR) submission of the Presidential Threshold, there were many rejections. Since the enactment of the Presidential Threshold in the 2004 election until now which is regulated in Law Number 7 of 2017 concerning General Elections, many lawsuits have been filed with the Constitutional Court to be able to cancel this policy.<sup>10</sup> There have been more than 14 times, and most recently, there have been 8 JR submissions regarding the presidential nomination threshold in Article 222 of The Election Act, which was sued to the Constitutional Court, but until now, it has not achieved maximum results, this is due to rejections or requests that cannot be accepted by the judges MK. The legal argument that the Constitutional Court always puts forward is that Article 222 of The Election Act concerning elections starts from the open legal policy of legislators (Open Legal Policy), Presidential Threshold as a reinforcement of the presidential system applied in Indonesia, and there is no relationship between the applicant and the rights constitutional with the petition filed (Legal Standing).

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<sup>9</sup> Ghoffar, *Loc. cit.* p. 481.

<sup>10</sup> Saldi Isra, 2019, *Sistem Pemerintahan Indonesia*, 1st ed. Depok, RajaGrafindo Persada, p. 4.

However, to fight for the purity of the constitution and still maintain legal rationality and the logic of democracy because what we all know is that democracy in various countries is indeed not uniform, but at the same time, democracy cannot be equated with the interests of political parties, but must be with the public interest. Therefore, the JR submission related to the Presidential Threshold must be continued until the cancellation of the Article regarding the Presidential Threshold is received in order to maintain the purity of the constitution, create justice, and keep democracy in Indonesia firmly established.

#### **B. Research Problems**

Based on the research background above, the two formulations of the problem formulation that must be answered are:

1. How are the Implications of the Presidential Threshold on Indonesian Presidential Elections?
2. Do the Presidential Threshold Provisions Support Strengthening the Presidential System in Indonesia?

#### **C. Objectives of Research**

The objectives of this research are:

1. To understand the provisions of the Presidential Threshold in the Theory of Constitutional Law and the Constitution.
2. To analyze the implications of the Presidential Threshold with the rationality and logic of law and democracy.

3. To propose suggestions in the form of arguments as reinforcement of reasons in the main application for Reviewing the Law on the Presidential Threshold.

#### **D. Benefit of Research**

There are some benefits of this research, namely:

1. Theoretical Aspect

This research is expected to contribute to the development of theories in science, especially in the theory of Constitutional Law and regarding the provisions of the Presidential Threshold.

2. Practical Aspect

This research can provide a better understanding of the Presidential Threshold, especially concerning the application for a Law Review regarding the Presidential Threshold for lecturers, students, and the parties involved.