

CHAPTER I

INTRODUCTION

A. Background of Research

General Elections in Indonesia were held for the first time in 1955.¹ An honest and fair election is the cornerstone of democracy, as stated in Article 2 of General Elections Law No. 7/2017: "Elections are carried out based on the principles of direct, general, free, secret, honest and fair". Elections are the democratic process of directly electing representatives or government officials by the citizens.² It has been considered a measure of democracy because people can participate in determining their choice towards their government and country.³ However, the existence of rules regarding the presidential threshold in Indonesia has made some parties, especially political parties, feel that their rights are limited.

The first regulation regarding the presidential threshold is regulated in Presidential Election Law No. 23/2003, which is the first regulation to formulate the presidential threshold as stated in Article 5 (4), namely: "The candidates, as referred to in paragraph (1), can only be proposed by a political party or a coalition of political parties that obtain at least 15% of the total seats members in the House of Representatives/ *Dewan Perwakilan Rakyat*

¹ Bawaslu, 2019, *Sejarah Pemilu di Indonesia*, <https://batamkota.bawaslu.go.id/sejarah-pemilu-di-indonesia/#:~:text=Pemilu%20pertama%20dilaksanakan%20pada%2029,Pemilu%201955%20menggunakan%20sistem%20proposional>. (Accessed on 09 October 2023 at 22.09)

² A Mas'udah, "The Presidential Threshold as An Open Legal Policy in General Elections in Indonesia", *Prophetic Law Review*, Vol. 2 No. 1 (July, 2020), p. 40.

³ Sunarso S, *et al.*, "Elections as A Means of Citizens Political Education: A Comparative Study between Indonesia and Malaysia", *Cakrawala Pendidikan: Jurnal Ilmiah Pendidikan*, Vol. 41 No. 1 (February, 2022), p. 129.

(hereinafter DPR) or 20% of the national valid votes in the elections for members of the DPR." Since 2004, Indonesia began to implement the presidential threshold system in general elections; this year was also the first time the people conducted elections directly. The presidential threshold is the threshold for votes that political parties must obtain in an election to nominate a presidential candidate.⁴ It is a requirement for someone to be able to run for president or vice president in the general election.

General Elections Law No.7/2017 guides the implementation of the 2019 Presidential and Vice Presidential Elections, has regulated various mechanisms, procedures, and requirements for candidates for President and Vice President. One of the provisions in the law is the existence of presidential threshold that must be met by a pair of candidates for President and Vice President. During the threshold implementation, the public, especially political parties, have filed several judicial reviews to the Indonesian Constitutional Court/ *Mahkamah Konstitusi Republik Indonesia* (hereinafter MKRI) to test the validity of thresholds in general elections. The reason for this review is mostly based on the protection of human rights, especially the civil and political rights of citizens, which are considered to be threatened by the implementation of the threshold.⁵ This is because many voters' votes are considered to be wasted through this mechanism.

⁴ Sulardi & Febriansyah Ramadhan, "Presidential Threshold in the Presidential Election: A Democratic and Constitutional Study", *In 2nd International Conference on Indonesian Legal Studies (ICILS 2019) Atlantis Press*, Vol. 363 (November, 2019), p. 149

⁵ Ahmad Sabirin, *et al.*, "Civil and Political Rights in Constitutionality of Accommodation of Individual Candidates and Elimination of Presidential Thresholds from the Perspective of the 1945", *Constitution. International Journal of Law and Public Policy (IJLAPP)*, Vol. 5 No. 2 (September, 2023), p. 51.

Article 222 of Election Law No. 7/2017 is unconstitutional and will result in an unconstitutional government. Because the presidential and vice-presidential candidates are determined by the legislative election votes of political parties participating in the previous election, political interests may exist. The problem with the Presidential Threshold arises because of the dynamic nature of politics, which is constantly changing and evolving. It refers to the requirement that a presidential candidate obtain a certain percentage of the total national vote to advance to the presidential election round. Although designed to secure political stability and encourage the formation of a strong government, this rule has caused various problems.

Over the past two decades, the MKRI has reviewed many laws regarding General and Regional Head Elections. Article 222 of General Elections No. 7/2017 is the most frequently tested law. Constitutional Justices have decided 31 case decisions, with 6 Rejected Cases, 23 Not Accepted Cases, and 2 Determination Cases. In its judicial reasoning, the MKRI assumed that the article related to the presidential threshold had often been challenged for more or less the same reasons. Furthermore, the Court believes that the presidential threshold of 20% of the DPR seat members or 25% of the national valid votes is constitutional; until now, the Court's stance remains the same. Another reason for Justice's reasoning in rejecting challenges in cases related to the presidential threshold is that the presidential threshold provision is an open legal policy, which is the domain of lawmaking institutions, namely DPR and President.

Judicial reasoning, the process by which Justices interpret and apply the law to specific cases, plays an important role in this determination. The decisions made through this reasoning affect democratic principles such as representation, accountability, and legitimacy, thus affecting the foundations on which democratic societies are based. The judicial authorities' interpretation and application of these thresholds can significantly affect the democratic process, political stability and public confidence in the legal system. Understanding the implications of judicial deliberations in presidential threshold cases is crucial to ensuring fair and transparent electoral practices.

One of the main criticisms of the presidential threshold is that it may ignore the political aspirations of minorities, limit political pluralism, and strengthen major political parties while hindering small or new parties. In addition, there are also concerns that this rule could lead to greater political polarization as parties tend to join forces with larger parties to meet the presidential threshold requirement.

B. Problems Formulation

Based on the background already explained, the author formulates a research problems, namely:

1. What are the judicial reasonings of the Justices regarding presidential threshold cases?
2. How are the implications of Justice's reasoning regarding the presidential threshold for presidential candidacy?

C. Objectives of Research

The purposes of this research are:

1. To understand and analyze the judicial reasoning of the Justices regarding presidential threshold cases.
2. To analyze the implications of Justices regarding the presidential threshold to presidential candidacy.

D. Benefits of Research

There are some benefits of this research, as follows:

1. Theoretical Benefit. Contribution to the development of legal science theory, especially in understanding the theory of the constitutional review and presidential threshold in democratic and election systems in Indonesia.
2. Practical Benefits. This research is expected for president and parliament as a lawmaking institution to be able to provide better concept or policy of the Presidential Threshold in Indonesia Elections and for Constitutional Court to pay attention of the Presidential Threshold cases.