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Comparison of Threshold Provisions for Presidential Candidacy in Indonesia and Turkey

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Abstract. In Indonesia, there is a nomination threshold often referred to as the Presidential Threshold in the mechanism to nominate a President and his/her Vice-President. The stipulation of the threshold as a condition for Political Parties to nominate pairs of President and Vice President candidates in the General Election is 20% of the votes or 25% of the seats in the Representative House in the previous legislative elections. This arrangement caused controversy because it limited the rights of political parties as eligible election participants in nominating candidates for the presidential position. It also ignored political parties' constitutional rights. The threshold requirement for presidential candidacy is also known in Turkey. Turkey is the only country that the author found where the presidential nomination system uses a threshold requirement. However, the presidential nomination threshold in Turkey is only 5% or 100,000 voters from the previous parliamentary elections. Presidential elections in Turkey are carried out simultaneously between the legislative and presidential elections and apply a two-round system like in Indonesia. Therefore, the threshold for the presidential nomination in Indonesia needs to be reduced and even removed to not restrict political parties from proposing candidate pairs for the position of President and Vice.

Keywords: Comparison · Presidential Threshold · Indonesia · Turkey

1 Introduction

Searching for countries that apply the presidential nomination threshold in the electoral system is not easy and almost no countries apply it as in the Indonesian Presidential Threshold model. Payne et al. in his book entitled, "Democracies in Development: Politics and Reform in Latin America", which Pipit R. Kartawidjaja quoted, said that in regards to the Presidential Threshold, "If people talk about general elections related to the "Presidential Threshold" then it means the presidential candidate requirement to qualify in the election as President." For instance, in the country of Brazil, it is 50 per cent plus one; in Ecuador, it is 50 per cent plus one or 45 per cent as long as it is 10 per

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cent different from the strongest rival; in Argentina, 45 per cent or 40 per cent as long as it is 10 per cent different from the strongest rival and so on [1].

Thus, in many countries, the term “Presidential Threshold” (hereinafter abbreviated as PT) is unknown in the sense of the required threshold in nominating a candidate for President and Vice that political parties must meet before participating in elections. The meaning of PT applied in various countries is the electability threshold. The candidate President and the Vice must qualify for election based on the post-poll General Election vote results.

However, based on the author’s research, there was one country that the author found, namely Turkey, whose presidential nomination system uses threshold requirements, as is the case in Indonesia. Therefore, the authors are interested in comparing the mechanism for the Indonesian presidential election as well as the election in Turkey, especially at the nomination stage, namely the threshold requirements for the presidential nomination, which raises pros and cons in Indonesia.

2 Method

This research is normative legal research. There are 3 (three) approaches were applied, namely the conceptual approach, the statutory approach, and lastly, the comparative approach.

The data source used is secondary data, commonly referred to as legal material in legal research. The author used primary legal materials (regulations and laws in Indonesia and Turkey), and secondary legal materials, including reference books, journal articles and research reports.

The data collection method uses a literature search. Analysis of data or legal materials is carried out by analytical prescriptive. Analytical prescriptive is used to analyze the problem using legal interpretation, legal concepts, legal values, and legal norms.

3 Discussion and Analysis

3.1 Presidential Threshold Definition

According to Online Black Dictionary, etymologically, the threshold shall mean: (1) a boundary that has different affair states if passed and (2) comparable and guiding maximum or minimum benchmarks. A breach in these requirements can lead the situation to be reviewed or the system to be remade [2]. According to English-Indonesian Dictionary, the threshold means: (1) ambang pintu (doorway) and (2) pemulaan, ambang (the start, the doorway) [3].

There are three threshold terms: the electoral threshold, the parliamentary threshold, and the Presidential Threshold. Jamaludin and Alan classified the threshold into two based on the general election type: legislative election and presidential election. In legislative elections, there are an electoral threshold, a parliamentary threshold, and a presidential threshold [4].

First, the electoral threshold is the threshold for obtaining votes nationally as political parties’ requirement to be eligible as participants in the next event of election for legislative members. Second, the parliamentary threshold is the threshold that political parties

must achieve to send their representatives to the legislature. Third, PT is the threshold that candidates must obtain for candidates to become President and Vice President [4].

3.2 Presidential Threshold Regulation di Indonesia

The presidential nomination threshold in Indonesia is regulated in the General Election Act and has been implemented since the 2004 General Election until the 2019 General Election. The 222nd Article of Law No. 7/2017 on General Elections states that “Candidate pairs are proposed by a single or a coalition of political parties contesting in an election that achieve the requirements for obtaining at least 20% (twenty per cent) of the total House of Representatives seats or 25% (twenty-five per cent) of the nationally valid votes in the prior House of Representatives members’ election. This provision is not regulated in the Constitution. Republic of Indonesia’s 1945 Constitution Article 6A paragraph (2) [14] stipulates, “The pair of presidential and vice-presidential candidates are proposed by a political party or coalition of political parties participating in the general election prior to the implementation of the general election.” This threshold requirement has led to debates among constitutional law experts. Even though a judicial review has been carried out by the Constitutional Court many times, it is still declared constitutional by the decision of the Constitutional Court.

PT aims to toughen the governmental presidential system adopted by Indonesia. A threshold will encourage political parties to form coalitions in carrying out presidential candidate pairs. It is hoped that the coalition will become the initial support and function as support in parliament when the promoted President is elected President. Thus, the threshold for presidential nomination can support the realization of a solid and stable government so that the government can run effectively as intended by the presidential system. Nevertheless, on the other hand, the threshold requirement will reduce political parties’ rights to propose pairs of candidate presidents.

Political parties cannot freely and independently determine their presidential candidates because they must fulfil the requirements of 20% parliamentary seats or 25% votes from the previous House of Representatives election. In addition, this threshold has implications for the rights of new political parties to nominate a President. New political parties will immediately lose their constitutional rights. Constitutional rights are constitutionally guaranteed, both expressed and implied [15]. In this case, political parties have just lost the right to nominate presidential candidates because they do not have seats in parliament and no electoral votes because they were not participants in the general election five years earlier.

The implication in question has been illustrated in the description in the academic text of the General Election Bill; if the threshold is still applied, injustice will arise for new parties that previously did not participate in the 2014 general election [7]. However, the advantage is that the threshold will force political parties to carry out political consolidation. Combined political parties that support the president will strengthen the presidential system. Apart from that, there will be coalitions to strengthen the implementation of government [7].

Threshold provisions in the General Election Act stipulate conditions for candidacy, not electability. Meanwhile, there are no threshold requirements for the presidential nomination in the Constitution but requirements for electability. Indonesia adopts the

threshold concept in terms of electability in the Republic of Indonesia's 1945 Constitution. The 1945 Constitution, Article 6A paragraph (3) states that the presidential and vice-presidential candidates who obtained more than half (50%) of the total votes in the general election with at least a fifth (20%) in each province spread over half the number of provinces in Indonesia, were appointed as President and VP. Although it has been stipulated that there is an electability threshold/PT as stipulated in the 1945 Constitution, Article 6 paragraph (3), the General Election Act adds a threshold requirement at the nomination stage.

Sulardi said that Indonesia implemented a double Presidential Threshold system [8] because there were two Threshold/PT regulations: first at the time of nomination and election. In the Constitution, the Presidential Threshold is known in the second presidential election round in the electability phase. Meanwhile, the Threshold/PT nomination is a mechanism regulated in the General Election Act. Judging from the substantive meaning of the Presidential Threshold in the practice of some countries, it can be emphasized that the Presidential Threshold is a presidential candidate's requirement to be able to be elected as President, not a requirement to be nominated as a President and Vice President [8].

Comprehensive arrangements already exist in the Republic of Indonesia's Constitution regarding the Presidential Election as stated in Article 6A paragraphs (1) to (5), which consist of the election mechanism, nominations, elections in the first and second rounds, terms of the election, and the procession for the inauguration of the elected President and Vice-President candidates. [5, 6] However, this arrangement creates a loophole in Article 6A paragraph (5) which states that the procedure for implementing the next presidential election be regulated in law (Act).

It is the authority of the government and the House of Representatives to formulate further and detailed rules relating to the mechanism for the presidential election, [13] which is included in the Election Law or the Presidential Election Law. The legislators use this authority to add various requirements, including the threshold/PT in nominating the President. Thus, several laws were born from the 2004 to 2019 elections that regulate the presidential election or general elections. These laws include Act No. 23 of 2003 concerning the Presidential and Vice-Presidential Election as the basis for implementing the 2004 Presidential Election, then Act No. 42 of the Year 2008 concerning the Presidential and Vice-Presidential Election, as the legal basis for the 2009 and 2014 Presidential Elections. Furthermore, Act No. 7 of 2017 concerning Elections is the legal basis for the 2019 simultaneous elections.

In each of the aforementioned laws, the Threshold/PT provisions are always listed with a percentage that changes each time the General Election Act is passed. This polemic regarding the threshold/PT has also occurred during the enactment of Act No. 23 of 2003 and Act No. 42 of 2008. Moreover, in Act No. 7 of 2017, when the implementation of the General Election is no longer separate between the Legislative Election and the Presidential Election, the Threshold/PT issue always arises and becomes a debate in various places. The most discussed issue was using the previous year's general election results (2014) to nominate the presidential and vice-presidential candidates in the 2019 election, thus impeding the obstruction of new parties' rights in submitting presidential and vice-presidential candidates.

3.3 Presidential Threshold Regulation in Indonesia and Turkey Comparison

Turkey is the only country that the Author found where the presidential nomination system uses a threshold requirement. Thus, the Author chose Turkey as a comparison country in this study. The President of the Republic of Turkey is directly elected by the people. Presidential candidates are selected from Turkish citizens who meet the requirement to become candidates over 40 (forty) years old and have completed higher education. The term of office of the President is five years and can be extended for a maximum of two terms (Article 7-Article 101 of Law No. 2709 and it has been amended into Article 101) [9]. In the Turkish Constitution, it is stated that political party groups, political parties which have received more than five per cent of the valid votes in sum alone or jointly in the latest parliamentary elections, or a hundred thousand electorates may nominate a candidate for the presidency [9].

Political parties can nominate candidates for President of Turkey if they can obtain more than 5% (five per cent) of the valid votes either alone or together with other parties (in combination) in the last parliamentary election or obtain 100,000 (one hundred thousand) voters. The threshold for nominating the President of Turkey is relatively small, only a minimum of 5% votes or 100,000 voters, compared to Indonesia, which applies the figure of 20% of the vote or 25% of the seats in the Indonesian House of Representatives.

Presidential elections in Turkey are held concurrently with the Turkish Grand National Assembly elections, held on the same day every five years. The Turkish Constitution states:

Elections for the Turkish Grand National Assembly and the Presidency shall be held on the same day every five years. A deputy whose term of office expires is eligible for re-election. If the simple majority is not obtained in the first round of Presidential elections, the second round of voting is held according to the procedure stated in Article 101 (Article 4-Article 77 of Law No. 2709 and its title has been amended as follows: Article 77) [9].

The simultaneous election model in Turkey is similar to Indonesia, which is also carried out simultaneously between the legislative member election and the presidential election. The Turkish presidential election system also uses a 2 (two) round system (majority of the runoffs), as is the case with Indonesia. Article 101 of the Turkish Constitution states,

In presidential elections conducted by universal suffrage, the candidate who receives the absolute majority of the valid votes shall be elected President of the Republic. If this majority cannot be obtained in the first ballot, the second ballot shall be held on the second Sunday following this ballot. The first two top-rated candidates in the first ballot shall run for the second, and the candidate who receives the majority of valid votes shall be elected President of the Republic (Article 7-Article 101 of Law No. 2709 and it has been amended into Article 101) [9].

¹ In presidential elections conducted by suffrage, the candidate who obtains an absolute majority of valid votes will be elected as President of the Republic. If this majority cannot be obtained in the first ballot, a second ballot will be held on the second Sunday after this ballot. The first two top candidates on the first ballot will run for the second, and the candidate who gets a majority of valid votes will be elected President of the Republic. The difference compared to Indonesia is that the requirements for the President of Turkey election in the first round do not use regional distribution as in Indonesia (at least 50% ⁵ of the number of provinces), but only with a simple majority of votes (at least 50% of the nationally valid votes) [10].

The appointment of ¹ Vice President in Turkey is not in the same package as the presidential ³ election. After being elected, the President may appoint one or more Vice Presidents (Article 10- Article 106 of Law No. 2709 and it has been amended into Article 106) [9]. Thus, one or more Vice Presidents of T⁵urkey are appointed directly by the elected President, not through a general election. In contrast to Indonesia, the ⁶ presidential and vice-presidential elections are conducted in pairs and are elected directly in the general election.

Furthermore, the similarities and differences between the presidential election systems in Indonesia and Turkey will be described in Table 1.

Apart from having some similarities with Turkey, the presidential election system in Indonesia is also similar to Latin American countries, namely the two-round system (majority run-off). The election winner shall win a minimum of more than 50 per cent votes, or a second round is held attended by participants with the first and second most votes. In general, the legislative and executive elections in Latin America are also held simultaneously, and there is no application of the presidential nomination threshold [11].

In countries with presidential systems, such as America, Brazil, Peru, Mexico, Colombia, and Kyrgyzstan, the threshold is unknown. These countries implement an open system of candidacy without the requirement of support. However, the government systems of these countries are also stable, as exemplified by the United States [11].

4 Conclusion

Based on the study results, it turns out that Indonesia is not only implementing the Presidential Threshold in terms of the nomination threshold; there is another country that uses the same mechanism in nominating the President, namely Turkey. However, there is a significant difference between Indonesia and Turkey in the number or percentage of the threshold. The threshold used by Turkey is very low, 5% votes for political parties or 100,000 voters in the legislative election. In ² comparison, Indonesia uses a very high threshold of 20% of parliamentary seats or 25% of the votes obtained by political parties in the ⁶ previous legislative elections.

The threshold for ⁶ presidential candidacy in Indonesia raises problems. First, it reduces the freedom of political parties to nominate pairs of presidential candidates independently. Second, eliminating the constitutional rights of new political parties because they cannot nominate ⁸ presidential candidates. Therefore, to not cause discrimination and injustice ² to political parties, the Presidential Threshold in Indor⁶nia should be abolished so that all political parties participating in the election have the same opportunity to nominate pairs of candidates for President and Vice President.

Table 1. Presidential Election System in Indonesia and Turkey Comparison

System	Indonesia	Turkey
Presidential Election Mechanism	Directly from the people	Directly from the people
Presidential Term Length	Five years	Five years
Presidential Term Length Limit	Two Periods	Two Periods
Presidential Threshold	20% parliamentary seats or 25% votes of election results	5% votes or 100.000 votes
Simultaneous Election	Election of House of Representatives, Regional People's Representatives Assembly, Regional Representatives Council and Presidential election	Election of Turkey's Grand National Assembly and Presidential Election
Presidential Election System	Two-round system/run-off	Two-round system/run-off
First Round Selectibility Requirement	Minimum of 50% votes and the minimum of 50% Provincial regional distribution, where the minimum distribution in each Province is 20%votes	The minimum votes are 50% (simple majority)
Second Round Selectibility Requirement	The most votes win	The most votes win
Vice President	Elected in pair with the President	The President appoints Vice President

Source: Analyzed by the author from the constitution and the Election Law of the Republic of Indonesia and the constitution of Turkey

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