

## Conference Paper

# Presidential Threshold in the Presidential Election from the Perspective of Constitutional Democracy and State of Law

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**Abstract.**

Indonesia is a legal state, the state's administration is based on the Constitution as the highest law. The constitutional rights of every citizen are guaranteed constitutionally in the 1945 Constitution of the Republic of Indonesia, as well as the right to run for president and vice president. Candidates for President and Vice President proposed by political parties or coalitions of political parties are constitutionally not regulated. The election law stipulates its requirements as an open law policy. Therefore, by using a normative juridical approach, it is necessary to examine the limits of the Presidential threshold as an open legal policy such as the principles contained in the 1945 Constitution of the Republic of Indonesia, namely democracy, human rights, the rule of law, and fair elections. The presidential threshold can be said to be against the principles of constitutional democracy because the constitution does not regulate it. The current election is held simultaneously, namely the legislative and presidential, and vice-presidential elections are held simultaneously. So, the Presidential threshold is no longer needed or should be removed. The results of the vote in the previous election were inappropriately used as the basis for Political Parties to nominate candidates for President and Vice President.

**Keywords:** presidential threshold, presidential election, constitutional democracy, state law

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## 1. INTRODUCTION

In a democratic country, the highest sovereignty is in the hands of the people by carrying out joint activities to set goals and the future and determine the people who hold the top leadership. The community directly elects its representatives to sit in government institutions. Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that "Sovereignty is in the hands of the people and is implemented according to the Constitution." As a democratic country, it can be said that voting and being elected in elections is a deviation from people's sovereignty which is part of the right to rights of every citizen.[1]

### OPEN ACCESS

The Indonesian state holds elections to realize the sovereignty of the people to actively participate in general elections to realize the ideals of a democratic Indonesian society.[2] Elections as a means of implementing people's sovereignty, public participation are a necessity. Political participation is the core and heart of democracy. Therefore, democracy cannot be imagined without the ability of citizens to participate freely in the nation and state.

Harun Alrasyid[3] stated that the position of the President is as head of state equal to the position of a king or queen, for that the filling of the position of President is regulated in the Constitution or the Constitution as the highest fundamental law in the state of Indonesia. Elections for President and Vice President in Indonesia after the Amendment to the 1945 Constitution is held directly (direct democracy). Constitutionally, Article 6A paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that "the President and the Vice President are elected in one pair directly by the people." Then the requirements for submitting candidates for President and Vice President are regulated in Article 6A paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states that "*The pair of candidates for President and Vice President is proposed by a political party or coalition of political parties participating in the general election before the implementation of the general election.*"

However, on the other hand, there are restrictions on participating in the presidential and vice-presidential elections with a presidential threshold.[4] So, it can be seen from Article 6A paragraph (2) of the NRI Constitution that it does not regulate the presidential threshold or threshold, but further arrangements are regulated in law. So, it can be said that constitutionally filling the positions of President and Vice President in Indonesia is explicitly guaranteed by the constitution that everyone has the same opportunity in government, as the provisions of Article 28C Paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that "*Everyone has the right to advance himself in fighting for his rights collectively to build his community, nation, and country.*" Article 28D Paragraph (3) states "*every citizen has the right to have equal opportunities in government.*" *From the provisions of the article, every citizen constitutionally has the same opportunity to build the nation and state as well as the government.*"

The Presidential and Vice-Presidential Elections are held simultaneously with the Legislative Elections in 2019, so they differ from the previous elections, which were held at different times. According to Article 221 of Law Number 7 of 2017 concerning General Elections, "*Presidential and Vice Presidential Candidates are proposed in 1 (one) candidate pair by a Political Party or a Combined Political Party*". Article 222 states, "*Candidate pairs are proposed by Political Parties or Combined Election Contesting*

*Political Parties who meet the requirements for obtaining seats of at least 20% (twenty percent) of the total seats in the DPR or obtaining 25% (twenty five percent) of the valid votes nationally on Previous election for DPR members.”[5]*

With the presidential threshold, citizens are not given the same right to nominate pairs of candidates for President and Vice President as a manifestation of the rights of Indonesian citizens guaranteed by the constitution. The principle of democracy provides freedom and openness to public participation in building the state and government.[6] Departing from the above background, this paper examines the limits of the open legal policy presidential threshold and the presidential threshold for the presidential election from the perspective of constitutional democracy and the rule of law.

## 2. METHODOLOGY

The research method uses a normative approach, sources of legal materials include primary legal materials and secondary legal materials, techniques for collecting legal materials using literature and internet studies, then analyzed qualitatively descriptively.[7]

## 3. RESULTS AND DISCUSSIONS

### 3.1. Limitation of the open legal policy presidential threshold in the presidential and vice presidential elections

The legal discipline regarding open legal policy is relatively new. The law only recognizes legal policy, so the phrase open legal policy does not stand autonomously.[8] This comes from developing the legal policy paradigm. The open legal policy does not have a standard terminology footing, even in unknown terms.

Open legal policy or open legal policy is a term that was born from the development of the use of the word legal policy in terminology, which is defined as the policy of the state through the agency authorized to establish and decide the desired regulations, to express what is desired. Likewise, the legislative body's formation of laws is a fundamental social and political process. It has a broad influence that will shape and regulate or control society. Even more than that, the law is a product of the authorities that can be used to achieve and realize the goals that are aspired.[9]

In practice, the term legal policy undergoes a word extension process with the addition of the phrase "open." Substantially not much different from the original meaning, the legal policy has practically dichotomized the content material that legislators can

regulate with their will based on the perspective (worldview) of legislators (legislative and executive) and content material that must be definite and definite. Consistent with the mandate of higher regulatory norms and cannot be interpreted other than those that have been determined.[10]

Presidential threshold as an open legal policy in the presidential and vice presidential elections, there should be restrictions on when the open legal policy can be implemented so that it remains in line with the Constitution. This is because an open legal policy can be interpreted as the freedom of legislators to form legal policies not explicitly regulated in the Constitution.[8] The meaning of open legal policy by legislators is often misinterpreted or even used as the ultimate weapon for both the DPR and the President to limit people's aspirations in the process of law formation.[10] Whatever the choice, it is not prohibited as long as it does not conflict with the 1945 Constitution of the Republic of Indonesia.

For this reason, it is necessary to limit the Presidential threshold as an open legal policy, such as the values or principles contained in the 1945 Constitution of the Republic of Indonesia, namely democracy, human rights, a state of law, and elections that are, qualified, with integrity and the terms and procedures for their implementation should not conflict with the principles are regulated in Article 6 paragraph (2) of the 1945 Constitution of the Republic of Indonesia concerning the requirements for submitting candidates for President and Vice President, Article 6A paragraph (2) of the 1945 Constitution of the Republic of Indonesia on the procedures for its implementation.

### **3.2. Presidential Threshold Election of President and Vice President from the Perspective of Constitutional Democracy and the Rule of Law.**

Citizens have guaranteed constitutional rights in building society, nation, and state. The principle of constitutional democracy is that the President and/or Vice President must pay attention to the people's will as a form of people's sovereignty. This is following rational democracy: in general elections, it is necessary to have an appropriate nomination and election system, an effective and efficient electoral system based on the constitution.

Rational democracy is realized if the following elements are met in the general election:[11]

Rational democratic system. In the general election, it is necessary to have an appropriate nomination and election system, an effective and efficient one;

1. Rational political party. Political parties must have good internal competition commitments and procedures offered to the people to be elected, not based on family, money owners, or image

The candidates to be chosen are rational. The candidates chosen in the general election have high quality and noble character, not those who have a lot of imagery by selling their looks in the media or just having high electability based on survey results;

Smart voter. Voters must be educated and enlightened to become smart voters who can distinguish which candidates are good candidates and which are just political adventurers;

1. Rational democratic culture. Getting a rational democratic culture does take time, but it needs to be consciously nurtured continuously.

The 1945 Constitution of the Republic of Indonesia is quite strict in limiting presidential nominations. Only political parties or coalitions of political parties may nominate candidates. No independent candidates are allowed. The constitution expressly requires a two-round system to ensure the elected President is supported by a majority (more than 50 percent) of the electorate. As a consequence of this, political parties may form coalitions to join in the second round. This will guarantee the quality of democracy because, on the one hand, it is sufficient to guarantee competitive contestation. Still, on the other hand, it ensures the effectiveness of political support from the people and from political parties to the elected President.[11]

In implementing democratic principles, there are limitations in democracy in the constitution, called constitutional democracy. The system for filling the position of the President based on Article 6A is a form of democratic regulation. Article 6A Paragraph (1) states that "the President and Vice President are elected in one pair directly by the people," and Article 6A Paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that "the pair of candidates for President and Vice President is proposed by a political party or coalition of participating political parties. General election before the general election. This provision shows that not every citizen can submit or be proposed to be a candidate for President and Vice President but must go through a political vehicle that carries them. The presidential and vice-presidential elections are directly by the people, but political parties still determine the presidential and vice-presidential candidates. That is, there is only one entrance for presidential and vice presidential candidates to enter the presidential and vice presidential election contest.

The requirements for electing a pair of presidential and vice presidential candidates are regulated in Law no. 42 of 2008 concerning the General Election of the President and Vice President Article 159 paragraph (1), which reads: "Elected pairs of candidates are Candidate Pairs who obtain more than 50% (fifty percent) of the total votes in the Presidential and Vice-Presidential Election with at least 20% (twenty percent) of the votes in each province spread over more than (half) of the number of provinces in Indonesia".

Article 159 paragraph (1) of Law no. 42 of 2008 concerning General Elections has been annulled by the Constitutional Court through the Constitutional Court's Decision No. 50/PUU-XII/2014 concerning Judicial Review of Law No. 42 of 2008. Law no. 7 of 2017 concerning Election Article 416 paragraph (1) re-arranges the provisions of Article 159 paragraph (1) of Law No. 42 of 2008, which the Constitutional Court has canceled. Article 416 paragraph (1) reads: "Elected pairs of candidates are Candidate Pairs who obtain more than 50% (fifty percent) of the total votes in the Presidential and Vice-Presidential Election with at least 20% (twenty percent) of the votes in each province. Spread over more than (half) of the number of provinces in Indonesia." Then it was retested to the Constitutional Court based on the Constitutional Court's Decision No. 39/PUU-XVII/2019 concerning Judicial Review of Law No. 7 of 2017 (conditional constitutional).

DPR or 20% (twenty percent) of the nationally valid votes in the election for members of the DPR. At first, the presidential threshold setting appeared in Law no. 23 of 2003 concerning General Elections. Article 5 paragraph (4) reads: "The Candidate Pair as referred to in paragraph (1) can only be proposed by a political party or coalition of political parties that obtains at least 15% (fifteen percent) of the total seats.

Article 9 of Law no. 42 of 2008 concerning the General Election of the President and Vice President, the presidential threshold setting reads: "Candidate pairs are proposed by political parties or a combination of political parties participating in the election who meet the requirements for obtaining seats of 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 election for members of the DPR, prior to the implementation of the Presidential and Vice-Presidential Election."

Decision Number 51-52-59/PUU-VI/2008 the Constitutional Court thinks: "The setting of the threshold (Article 9 of Law No. 42 of 2008) is a concrete norm which is the elaboration of Article 6A of the 1945 Constitution. twenty percent) of the seats in the DPR and 25% (twenty five percent) of the national valid votes in the DPR Election, as has been the opinion of the Court in previous decisions, constitute an open legal

policy delegated by Article 6A paragraph (5) the 1945 Constitution..., and Article 22E paragraph (6) of the 1945 Constitution...”.

Article 222 of Law no. 7 of 2017 states that: "A Candidate Pair is proposed by a Political Party or a Combined Election Contesting Political Party that meets the requirements for obtaining seats of at least 20% (twenty percent) of the total seats in the DPR or obtaining 25% (twenty five percent) of the valid votes. Nationally in the previous DPR member elections." Provisions in Law no. 7 of 2017 indicate an attempt to monopolize the large and 'powerful' political parties in the executive.

Decision No. 53/PUU-XV/2017, dated 11 January 2018, the Constitutional Court reaffirmed:

1. Legal considerations regarding the minimum threshold for obtaining votes for political parties (or coalitions of political parties) to nominate candidates for president and vice president is the legal policy of legislators...
2. The provisions contained in Article 222 of the 2017 Election Law follow the strengthening of the presidential system, which is the constitutional design of the 1945 Constitution....”

In Indonesia, the presidential threshold is interpreted as the acquisition of votes in the legislative elections or the purchase of a certain minimum number of parliamentary seats as a requirement to nominate candidates for president and/or vice president. The threshold requirement for presidential candidacy based on votes or political party seats in the DPR is uncommon in presidential schemes. A common practice in countries with presidential systems, the presidential threshold is the imposition of a minimum threshold for the presidential election. The context of implementing the presidential threshold – even if this term is intended to be used – is not to limit presidential candidacy but to determine the minimum percentage of votes for the election of a presidential candidate.

An open legal policy is delegated by Article 6A paragraph (5) of the 1945 Constitution of the Republic of Indonesia, which stipulates, "The procedure for the implementation of the Presidential and Vice-Presidential election is further regulated in law." The procedure for conducting the election of the President and Vice President is further regulated "in" the Law, the word in it should be held in a separate law. Then Article 22E paragraph (6) of the 1945 Constitution of the Republic of Indonesia stipulates, "Further provisions regarding general elections shall be regulated by law." So the two Articles mandate that the implementation of general elections is regulated "by" the Law; it can be together with other laws so that it is not expressly or separately. Then with the implementation

of simultaneous elections starting in 2019, the election arrangements become one in Law Number 7 of 2017 concerning General Elections.

The regulation of the procedures for implementing the Presidential and Vice-Presidential election is integrated with the Election Law. Article 222 of Law Number 7 of 2017 concerning General Elections states that "pairs of candidates are proposed by a political party or coalition of political parties participating in the election who meet the requirements for obtaining seats of at least 20% of the total number of DPR seats or obtaining 25% of the nationally valid votes in the previous election for members of the DPR." This provision is an open legal policy (open legal policy) from the legislature (Legislative and Executive). The term "before the implementation of the general election" in Article 6A of the 1945 Constitution of the Republic of Indonesia is linear with Article 22E paragraph (2) of the 1945 Constitution, which refers to the general election of members of the DPR, DPD, and DPRD which is held simultaneously in one contestation with the election of the President and Vice President. So that in such circumstances, all political parties are in the same position, namely zero percent of seats or zero percent of valid vote.

On the other hand, the Constitutional Court Decision Number 51-52-59/PUU-VI/2008 dated February 18, 2009, Constitutional Court Decision Number 14/PUU-XI/2013 dated January 23, 2014, Constitutional Court Decision Number 108/PUU-XI/2013 dated February 11, 2014, was reaffirmed in the Constitutional Court Decision Number 53/PUU-XV/2017 concerning the Review of Law Number 7 of 2017 concerning General Elections dated January 11, 2018. The last one is Constitutional Court Decision Number 74/PUU-XVIII/2020, dated November 16, 2020, which is a decision on the results of a judicial review related to the article that regulates the provisions on the Presidential Threshold. All these decisions state that the Presidential Threshold is legal and constitutional. The Constitutional Court thinks that the Presidential Threshold is an Open Legal Policy.

In 2021 and 2022, there were 6 (six) applications were declared unacceptable because of their legal standing:[12]

The Constitutional Court Decision No. 66/PUU-XIX/2021 was requested by the Deputy Chairperson of the Gerindra Party DPP Ferry Joko Yuliantono, who gave power to Refly Harun and Salman Darwis. The decision contains dissenting opinions from 4 Constitutional judges.

Constitutional Court Decision No. 68/PUU-XIX/2021 was requested by two members of the DPD RI, namely Bustami Zainudin and Fachrul Razi.

The Constitutional Court Decision No. 70/PUU-XIX/2021 with Gatot Nurmantyo as the applicant.



The Constitutional Court's Decision No. 5/PUU-XX/2022 with the self-employed applicant Lieus Sungkharisma.

The Constitutional Court Decision No. 6/PUU-XX/2022 was requested by 3 DPD RI members, Tamsil Linrung, Fahira Idris, and Edwin Pratama Putra.

1. The Constitutional Court's Decision No.7/PUU-XX/2022 was requested by a State Civil Apparatus (ASN), Ikhwan Mansyur Situmeang.

The above decision was declared unacceptable and had the exact reasons for the constitutionality and legal standing of the petitioners who questioned the rules for the Threshold for presidential candidacy as regulated in Article 222 of the Election Law. They asked the Constitutional Court to annul Article 222 of the Election Law so that the process of nominating the president and vice president by a political parties/a coalition of political parties does not use the requirement of a percentage of seats or valid national votes.

Finally, in 2022, the Constitutional Court again rejected the judicial review of Article 222 of the Election Law submitted by the DPD RI as applicant I and the Crescent Star Party (PBB) represented by Prof. Yusril Ihza Mahendra (Petitioner II) based on the Constitutional Court's Decision Number 52/PUU-XX/2022 which read on July 7, 2022.

In the presidential system, the Threshold is no longer relevant as a basis for the requirements for presidential and vice presidential candidates. The requirements for the percentage of presidential and vice presidential candidates are regulated in Article 6A paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states, "The pair of presidential and vice presidential candidates 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 over half the number of provinces in Indonesia, is appointed as President and Vice President."

The existence of a presidential threshold narrows the space for presidential candidates who are expected by the general public. The right to propose candidates is the right for political parties in the parliament/legislature to nominate candidates for President and Vice President guaranteed by the constitution. So the determination of the presidential Threshold is not following the principles of constitutional democracy because it is not specified in the form.

Abolishing the Presidential Threshold for presidential candidacy is the wisest step to take.[13] The legislators (DPR and DPD) must rethink the Presidential Threshold because this will limit the people from getting more and better alternatives. Following the ideals of democracy which protects all the rights of citizens, it has become imperative also to

preserve the meaning of recognition, a guarantee of protection and legal certainty, and legal justice by imposing equal status on every citizen—nationality before the law.[14]

The embodiment of democracy in elections must at least meet the following elements:

Rational democratic system. In general elections, there is a need for an appropriate nomination and election system, an effective and efficient electoral system, and so on

Rational political party. Political parties must have good internal competition commitments and procedures offered to the people to be elected, not based on family, money owners, or image.

The candidates to be chosen are rational. The selected candidates in the general election have high quality and noble character, not those who have a lot of imagery by selling their looks in the media or just having high electability based on survey results

Smart voter. Voters must be educated and enlightened to become smart voters who can distinguish which candidates are good candidates and which are just political adventurers

Rational democratic culture. Getting a sensible democratic culture does take time, but it needs to be consciously nurtured continuously.[15]

The legal problem occurs when the simultaneous general elections in Indonesia still maintain the presidential threshold provisions for political parties to nominate pairs of presidential and vice presidential candidates. This is as stated in Article 222 of the Election Law, which states: "Candidate pairs are proposed by a political party or coalition of political parties participating in the general election who meet the requirements for obtaining seats of at least 20% of the total number of DPR seats or obtaining 25% of nationally valid votes in the general election. Previous members of the House of Representatives." [16]

The arrangement of state institutions is an integral part of the context of the progress of democracy and the process of democratic consolidation, in which state institutions are arranged in such a way that they meet the indicators of democracy. The essence of all this is the institutionalization of democratic values in state institutions' overall procedures and working mechanisms.

To create a balance between the parliament and the President in the principle of checks and balances, there must be a balance between the legislature and the executive in the administration of government. Constitutional rights, which include the right to vote, the right to be a candidate, and the right to propose a candidate, must not conflict with the Constitution. Political parties are a forum for the public to participate in government guaranteed in the Constitution to occupy positions in parliament and the executive.[17]

Currently, the right to nominate oneself (the right to be a candidate) has been limited by the Constitution, which limits the meaning of the freedom of citizens to build society and the state that the Constitution guarantees. The provision of the presidential threshold shows that the laws and regulations are increasingly limiting the right to propose candidates to fill the positions of President and/or Vice President by political parties. This is contrary to the principle of constitutional democracy, where there is no regulated threshold for the nomination of President and Vice President.[6]

According to the author, the presidential threshold in simultaneous elections or legislative elections and the presidential and vice presidential elections are carried out simultaneously, are no longer needed or should be removed. As a country that adheres to people's sovereignty as stipulated in Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia stating, "Sovereignty is in the hands of the people and carried out according to the Constitution." as many choices as possible to obtain good leaders and have capacities above the ordinary people they lead. The enactment of the presidential threshold in the 2019 simultaneous elections minimizes the people's choice to determine the leader. In contrast to the Presidential Threshold, the 2004 and 2009 elections were more moderate, so many candidates emerged then. The general election system for the President and Vice President is carried out directly by the people in the 2004 General Election. A presidential threshold limits the nomination of the presidential and vice presidential pairs. Pairs of candidates can only be proposed by a political party or a combination of political parties that obtain at least 15% (fifteen percent) of the total seats in the DPR or 20% (twenty percent) of the nationally valid votes in the election for members of the DPR.

Constitutional Law expert Zainal Arifin Mochtar believes that setting the threshold for presidential candidacy is an effort to concentrate power. The presidential threshold is related to efforts to concentrate power on certain parties, or this is actually part of the oligarchic game. An oligarchy is a group of capital owners who have the main goal of maintaining the accumulation of wealth. This group[18] does not care who becomes president as long as they can work with them for a purpose. According to Iwan Satriawan, the determination of the threshold for presidential candidacy is also considered a strategy for large parties to force smaller parties not to produce candidates. In fact, it is possible for a qualified candidate from a small party to defeat a candidate from a large party who is not credible. This is a shadow democracy, there is a liberal dimension, but there are certain parts that are locked in the democratic process, namely the Presidential Threshold. The Constitutional Court of the Republic of Indonesia itself

has rejected eleven times legal efforts related to the presidential nomination threshold, so so far, and these efforts have failed.[18]

Hendra Nurtjahyo stated that people's sovereignty or democracy has three underlying existential principles, namely freedom, equality, and the sovereignty of the majority vote (the people).[19] Freedom is meaningless if there is no equality. Freedom without equality will give birth to a new tyranny. On the other hand, equality will never exist if freedom is not given. Both will not be realized if their sovereignty is not recognized. All principles of popular sovereignty are one unit. One and the other complement each other and cannot be separated. The principle of freedom and equality is classified as an existential principle. While the principle of majority votes, he called the procedural principle.

Rudolf Mellinghoff in Janedjri M. Gaffar[17] places the election in two positions, namely as a mechanism for transferring power from the people to the state and as a giver of legitimacy to the government. Rahmat Teguh Santoso Gobel[20] argues that the reconceptualization of presidential and vice presidential elections in the simultaneous election mechanism must be based on several things: first, the abolition of the presidential threshold to zero percent is a rational constitutional mechanism in accordance with the practice of simultaneous elections. Second, all political parties participating in the election are given the widest opportunity to be able to submit a pair of presidential and vice presidential candidates. With more and more candidates, it will strengthen the political consolidation system to ignite public participation in order to make the general election successful.

The abolition of the Presidential Threshold as an open legal policy for the nomination of the president and vice president is the wisest step to take and does not violate the constitution. This is in accordance with the ideals of democracy and the rule of law with the guarantee that every citizen has the same position before the law and protects all citizens' rights, as a guarantee of protection and legal certainty as well as legal justice. This aspect needs to be considered when revising the election law for the upcoming 2024 election.[13]

#### 4. CONCLUSION AND RECOMMENDATION

The constitutional right of every citizen to exercise the right to be a candidate for President and/or Vice President. Article 6A paragraph (2) of the 1945 Constitution of the Republic of Indonesia does not regulate the requirements for candidates for President and Vice President proposed by political parties. The provisions of Article 222 of the Election Law become an open legal policy for legislators to regulate the requirements for

the nomination of President and Vice President. This is called an open legal policy. This is contrary to the principles of constitutional democracy, considering that constitutionally there is no set threshold for the nomination of President and Vice President. For this reason, the Presidential threshold as an open legal policy needs to be limited to the values or principles contained in the 1945 Constitution of the Republic of Indonesia, namely democracy, human rights, a state of law, and elections that are fair, qualified, with integrity and the terms and procedures for their implementation.

As a legal state, everything must be based on the Constitution as the highest law, considering that the Presidential threshold is not regulated in the 1945 Constitution of the Republic of Indonesia and is an open legal policy in its implementation regulations. For this reason, in simultaneous elections, legislative elections, and presidential and vice-presidential elections are held simultaneously, the Presidential threshold is no longer needed or should be removed. The provisions on the acquisition of votes in the previous election were inappropriately used as the basis for Political Parties to nominate candidates for President and Vice-President.

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