



Implications of the Presidential Threshold Implementation on the Formation of Cartel Coalitions

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Abstract

The threshold for presidential candidacy as a condition for nominating candidates for President and Vice President in the General Election in Indonesia creates constitutional problems. Political parties that have been designated as election participants cannot immediately nominate pairs of candidates for President and Vice President because there are additional requirements outside of the constitutional provisions, namely that political parties must have 20% of the DPR RI seats or 25% of the valid national votes resulting from the Legislative Election in the previous five years. This research aims to analyze the implications of implementing the Presidential Threshold on the formation of cartel coalitions. The research method is normative legal research using primary, secondary, and tertiary legal materials. Apart from limiting the rights of political parties, these threshold provisions also have implications for the formation of cartel coalitions, so they are very dominant in parliament. This research concludes that setting the threshold for nominations for President and Vice President has implications for the formation of large coalitions (oversized coalitions) in government, even political cartels, thus opening opportunities for oligarchs to intervene in government.

Keywords: Election, Presidential Threshold, Cartel

Abstrak

Ambang batas pencalonan Presiden sebagai syarat untuk pengajuan calon Presiden dan Wakil Presiden dalam Pemilihan Umum di Indonesia menimbulkan problematika ketatanegaraan. Partai Politik yang sudah ditetapkan sebagai peserta pemilu tidak dapat serta merta mengajukan pasangan calon Presiden dan Wakil Presiden dikarenakan ada persyaratan tambahan diluar ketentuan konstitusi yaitu Partai politik harus memiliki 20% kursi DPR RI atau 25% suara sah nasional hasil Pemilu Legislatif lima tahun sebelumnya. Tujuan penelitian ini, untuk menganalisis implikasi penerapan Presidential Threshold terhadap terbentuknya koalisi kartel. Metode Penelitian adalah penelitian hukum normatif dengan menggunakan bahan hukum primer, sekunder dan tersier. Selain membatasi hak Partai Politik, ketentuan ambang batas tersebut juga berimplikasi terhadap terbentuknya koalisi kartel, sehingga sangat dominan di parlemen. Kesimpulan penelitian ini adalah pengaturan ambang batas pencalonan Presiden dan Wakil Presiden berimplikasi terhadap terbentuknya koalisi besar (*oversized coalition*) dalam pemerintahan, bahkan kartel politik sehingga membuka peluang bagi oligarki untuk intervensi dalam pemerintahan

Kata kunci: Pemilu, *Presidential Threshold*, Kartel

I. Introduction

One of the agreements of the drafters of changes to the 1945 Constitution on the government system was to strengthen the Presidential system.¹ Efforts to realize this agreement are by implementing a system of direct election of the President and Vice President by the people who were originally elected through the People's Consultative Assembly (MPR). Article 6A

¹ Idul Rishan, "Risiko Koalisi Gemuk Dalam Sistem Presidensial Di Indonesia," *Jurnal Hukum Ius Quia Iustum* 27, no. 2 (2020): 219-240.

paragraph (1) of the 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia) states, "The President and Vice President are elected as a pair directly by the people." This is in line with the commitment to affirm the principle of popular sovereignty, that in a democratic country, government comes from the people, by the people, and for the people, so that since the 2004 General Election, direct elections for the President and Vice President have been held.²

However, in the Presidential nomination stage, there are threshold requirements for Presidential nomination often called the Presidential Threshold as regulated in the Election Law. Experience in the 2019 Election, the threshold for Presidential candidacy is regulated in Article 222 of Law Number 7 of 2017 concerning Elections which states, "Candidate Pairs are proposed by Political Parties or Associations of Political Parties Participating in the Election that meet the requirements for obtaining seats of at least 20% (twenty percent) of the number of seats in the DPR or obtained 25% (twenty-five percent) of the valid votes nationally in the previous DPR member elections." Based on this article, not all Political Parties participating in the Election can nominate pairs of candidates for President and Vice President even though they have been determined by the General Election Commission (KPU) as Election participants.

The requirement to obtain 20% of seats or 25% of votes originating from legislative elections five years previously, has implications for the constitutional rights of Political Parties, both old Political Parties and new Political Parties. Old political parties that do not reach the threshold for presidential candidacy cannot nominate presidential candidates freely and independently, because they must join or form a coalition with other parties to meet the adequacy of the threshold/PT percentage. It's different with new political parties, not only are they unable to nominate presidential candidates independently, but new political parties don't even have the right to nominate pairs of presidential candidates because they don't have the capital of seats or votes from the previous five years' elections. New political parties have lost their right to nominate a President since being appointed as election participants.

This raises legal issues, especially regarding the constitutionality of norms, because the 1945 Constitution of the Republic of Indonesia as the highest law does not regulate threshold/PT requirements. The delegation of further regulations in Article 6A paragraph (5) of the 1945 Constitution of the Republic of Indonesia only regulates the "procedures" for holding elections, not the requirements for nominating presidential candidates. Therefore, there has been a conflict of legal norms between Article 222 of Law No. 7 of 2019 with Article 6A paragraph (2) and paragraph (5) of the 1945 Constitution of the Republic of Indonesia. The threshold/PT has limited the constitutional rights of Political Parties, while the 1945 Constitution of the Republic of Indonesia does not limit Political Parties in nominating Candidate Pairs since the nomination of Presidential Candidate Pairs by Political Parties in the nomination stage.

Apart from the problem of conflict of norms, thresholds/PT also result in various legal implications, including the constitutional rights of political parties, the principle of popular sovereignty, the principle of justice for political parties, as well as the presidential government system, and the formation of cartel coalitions. This article intends to discuss in more depth the legal implications of the Presidential nomination threshold for the Presidential government system and the formation of cartel coalitions or cartel politics.

II. Research Problems

Based on the description in the introduction, this research focuses on the problem of the legal implications of the presidential nomination threshold for the presidential government system and the formation of cartel coalitions or cartel politics.

² Abdul Majid and Anggi Novita Sari, "Analisis Terhadap Presidential Threshold Dalam Kepentingan Oligarki," *Jurnal Rechten: Riset Hukum dan Hak Asasi Manusia* 5, no. 2 (2023): 8-15.

III. Research Methods

This type of research is normative legal research. There are two approach methods used, namely the conceptual and statutory approaches. The data source used is secondary data, which in legal research is usually called legal material. The legal materials used consist of primary legal materials in the form of statutory regulations, and secondary legal materials including reference books, journal articles, and research reports related to the author's research topics. The data collection method was carried out through literature searches. Data or legal materials are analyzed in a prescriptive analytical manner.

IV. Result and Discussion

The application of a threshold/PT in the stages of nominating the President and Vice President to form a government is not relevant to the Presidential system and is closer to the tradition in the parliamentary system. In the Presidential system, the President and members of parliament are elected separately in two elections (legislative-executive) which results in the sovereignty of power between the two being relatively the same, directly born from the people.³

Philosophically, the essence of the presidential government system is to strengthen the President's position in government because his character as the holder of executive power demands this.⁴ This conception was put forward by Thomas Jefferson, President of the United States, a country that runs a presidential system of government. Jefferson's conception of presidential power was as follows:

The President unifies the will of the nation and thereby embodies it. The source of President's claim to embody the will of the nation is his mode of election; because the president is the single nationally elected officer, the President can claim, more than members of Congress, to represent the national will. Because the President must be able to executive that will, it must be surprisingly strong, energetic.⁵

The President is a symbol of unifying the nation and therefore tries to make it happen. The source of the President's sovereignty to realize the will of the nation lies in the method of his election. The President is the sole official elected nationally. The president can claim to represent the national will, more so than members of Congress/parliament. Therefore, the President must be able to exercise executive power strongly and energetically.

In contrast to the presidential system, in a parliamentary system of government, real support from parliament for the Prime Minister is needed to run the government, because the Prime Minister is responsible to parliament and the Prime Minister can be overthrown by a motion of no confidence by parliament. According to Zainal Arifin Muchtar, in a parliamentary system, especially the Westminster system, a coalition becomes very, very important, especially if the party fails to obtain support greater than 50 percent. Because after the single electoral system - which is only legislative elections - gave birth to parliament, the main debate is how to build a government, especially when there is no majority party control.⁶

The position of Prime Minister really depends on how strong the coalition is successfully built. Failure to build a coalition very easily leads to failure to obtain the Prime Minister's seat. In running the government, the continuity of the Prime Minister's power depends on the policy choices made, whether or not they are in line with the wishes of the majority of political forces in parliament.⁷ Therefore, a coalition or cooperation between political parties to support and maintain the Prime Minister's position in government is very necessary. So the tradition of

³ Andre Ata Ujan, "Keadilan Dan Demokrasi: Telaah Filsafat Politik John Rawls," *Kanisius, Yogyakarta* (2001).

⁴ Kuswanto, *Konstitusionalitas Penyederhanaan Partai Politik, Pengaturan Penyederhanaan Partai Politik Dalam Demokrasi Presidensial*, (Malang, 2016).

⁵ Jeremy D Bailey, *Thomas Jefferson and Executive Power* (Cambridge University Press, 2007).

⁶ Zainal Arifin, "Koalisi-Oposisi Dalam Sistem Presidensial," 2019.

⁷ Ibid.

coalitions or combinations of parties is very well known and needed in a Parliamentary government system.

The theory of coalitions in general has grown in the tradition of parliamentary democracy and is very much in character with high-level coalitions or at the national level. Coalition formation is a study that has attracted the interest of social scientists for a long time (Neumann and Morgenstern, 1953; Riker, 1962; Axelrod, 1970).⁸ Coalitions are an interesting subject of study because in a multiparty system, no political party is able to come to power without building cooperation with other political parties. The emergence of a majority party coalition is almost less discussed theoretically, because the cartel coalition model rarely occurs.⁹ This cartel coalition phenomenon is similar to the birth of a holding industry in politics. A cartel coalition is a coalition to maintain power by gathering as many supporting parties as possible. The main characteristic is office-seeking, maximizing profits to gain power.¹⁰

In terms of quantity, there are three types of coalitions, namely, small coalitions (undersize coalitions), oversized coalitions (oversize coalitions), limited-fit coalitions (minimum winning coalitions). A small coalition is a coalition of political parties that does not achieve a simple majority of seats in parliament. On the other hand, an oversized coalition occurs if the coalition party controls more than an absolute majority of seats in parliament. A limited coalition is a coalition of parties that controls seats in parliament with a range of simple majority and absolute majority.¹¹

In terms of quality, there are three types of coalitions, namely, ideological coalitions (consensus coalitions), strategic coalitions (conglomerate coalitions), and pragmatic coalitions (exclusive coalitions). Ideological coalitions occur because of similarities in ideology, vision and mission. Therefore, this type of coalition has the strongest solidity. Strategic coalitions have more moderate solidity because they occur solely as a strategy to win elections. For example, a party coalition to face the Presidential election. This type of coalition is issue-based. On certain issues that benefit each party, the coalition can be very solid, and vice versa.¹²

Coalitions in the party system in Indonesia have occurred frequently, since the 2004 Election to the 2019 Election. Even though Indonesia implements a Presidential system, coalitions between political parties are still formed, this is caused by at least three factors. First, constitutionally, the Presidential nomination mechanism regulated in the 1945 Constitution provides the option for political parties to nominate candidates independently or join forces (coalition). Second, the influence of the Presidential Threshold in the Election Law which requires a minimum of 20% of DPR seats or 25% of valid national votes in the General Election, so that political parties are encouraged to form coalitions to meet the adequacy of this percentage of seats. Third, no single party won the election absolutely or with a single majority, so the option of forming a coalition is more attractive to win the battle in the Presidential Election while simultaneously securing a position in government. However, there is a tendency that gradually the government coalition that is formed is getting bigger and becoming very fat in parliament, leaving only a few opposition parties.

Table 1. Map of Political Party Coalitions Before and After the 2019 Election¹³

Coalition of Political Parties Supporting Jokowi Before the 2019 Election	Coalition of Political Parties Supporting Prabowo Before the 2019 Election
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⁸ Ridho Imawan Hanafi, *Pemilu Serentak 2019: Sistem Kepartaian Dan Penguatan Sistem Presidensial* (Yayasan Pustaka Obor Indonesia, 2021).

⁹ I bid.

¹⁰ Ibid.

¹¹ Bailey, *Thomas Jefferson and Executive Power*.

¹² Lester G Seligman and Cary R Covington, *The Coalitional Presidency* (Dorsey Press, 1989).

¹³ Hanafi, *Pemilu Serentak 2019: Sistem Kepartaian Dan Penguatan Sistem Presidensial*.

No.	Name of political party	Position	Percent	No.	Name of political party	Position	Percent
1.	PDIP	128	22,26	1.	Gerindra	78	13,75
2.	Golkar	85	14,78	2.	Demokrat	54	9,39
3.	Nasdem	59	10,26	3.	PKS	50	8,70
4.	PKB	58	10,08	4.	PAN	44	7,65
5.	PPP	19	3,30				
Total		349	61	Total		226	39
Coalition of Political Parties Supporting Jokowi After the 2019 Election				Coalition of Opposition Political Parties After the 2019 Election			
	PDIP	128	22,26		Demokrat	54	9,39
	Golkar	85	14,78		PKS	50	8,70
	Nasdem	59	10,26		PAN	44	7,65
	PKB	58	10,08				
	PPP	19	3,30				
	Gerindra	78	13,75				
Total		427	74,98	Total		148	25,74

Source: Secondary Legal Material, processed by the Author, 2022.

Based on Table 1, the composition of Political Parties formed before and after the 2019 Election experienced changes or changes in membership. The coalition of parties supporting the government (Jokowi) experienced a surplus condition (oversized coalition), while the Opposition coalition party (Prabowo) experienced a minus condition, in fact almost only 1 (one) party was truly in opposition, namely PKS, while PAN finally also entered the condition. the. government, then the Democrats chose to be in the middle.

The formation of the grand coalition was influenced by the setting of the threshold/PT as a requirement for nominating the President, thus encouraging parties to form coalitions before the election, and even after the election to increase parliamentary support for the President. Such support is needed to realize a strong and stable government so that there is no deadlock between the President and the DPR, and the occurrence of division or division in the government (divided government). However, on the other hand, the fat coalition threatens democracy, as it leaves very few opposition parties critical of the government.

The coalition that was originally formed to serve as initial support for Presidential candidates to advance in the election contest, has turned into a large coalition that controls the government. Looking at the coalition map of political parties supporting Jokowi after the 2019 elections with 74.98% of seats in the DPR plus the inclusion of PAN (7.65%), the total number of government political parties is 82.63%, very fat (oversized coalition). In addition to the effort to gather as many supporting parties as possible, the composition of the government's supporting forces in the DPR after the 2019 elections has met the criteria referred to by Kuskridho Ambardi as a political cartel.

The characteristics of a political cartel are: First, the loss of the role of party ideology as a determining factor for coalitions between parties; Second, permissiveness in coalition formation; Third, the absence of opposition. Fourth, election results have almost no effect in determining the behavior of political parties; Fifth, the a strong tendency of political parties to act collectively as a group.¹⁴

Political cartels, in Herlambang's terms, are called "gang politics".¹⁵ The Presidential Threshold will create a political process that is pragmatic and transactional among political parties. With this threshold requirement, there is almost no single party that can carry its own

¹⁴ Kuskridho Ambardi, *Mengungkap Politik Kartel* (Kepustakaan Populer Gramedia, 2009).

¹⁵ H. P. Wiratraman, "Pemilu Dan Neo-Otoritarianisme: Tantangan Menjaga Daulat Rakyat Dalam Pemilihan Umum," in *Prosiding Konferensi Hukum Tata Negara Ke-5* (Batusangkar, 2018).

Presidential and Vice-Presidential candidates. The experience of the 2014 and 2019 Presidential Elections, which only gave rise to two pairs of candidates for President and Vice President, is not impossible to happen again in the 2024 Elections. Political realities that are head-to-head from the point of view of political realism, thicken the political coalition of pragmatism.¹⁶ When compared to the context of elections in the United States, the situation and character are certainly different, especially in the absence of a more ideological political battle. In Indonesia, head-to-head electoral practices display the character of gang politics, rather than ideological politics.¹⁷

Almost all of the characteristics revealed by Ambardi and the opinions expressed by Herlambang are relevant to the reality of political cartel coalitions in parliament. The coalition of parties formed is not based on ideological similarities but on short-term political interests. Coalition formation is more permissive and pragmatic to obtain Ministerial seats and parliamentary leadership. The minority opposition played by PKS and (sometimes) the Democrats has not been consistent. The factions supporting the government in the DPR, which are an extension of political parties, still seem to have one voice, for example in the discussion of several bills, including the KPK Revision Bill, the Omnibus Law Bill, the Minerba Bill, the Constitutional Court Bill, the IKN Bill, and others. The formation of these laws lacks public participation and pays very little attention to the aspirations of the community, due to the dominant coalition of ruling parties in the DPR RI.

Political cartels are the entry point for oligarchic power to control the entire political process and hijack democratic institutions. Oligarchy does not only mean power exercised by a handful of people, according to Jeffrey Winters, oligarchy is a minority that controls material wealth and has a wide range of power, embracing a wide space and community. {10} Wealth is the power resource that defines oligarchs and drives oligarchic politics and processes.¹⁸ Enormous wealth in the hands of a small minority creates a very significant excess of power in the political sphere, including in a democracy.¹⁹

With the material wealth and wide range of power possessed by oligarchs, the Presidential Threshold, which regulates the minimum requirements for submitting presidential and vice-presidential candidates, triggers expensive political costs and encourages political oligarchs to sponsor figures to become president. After the leader they finance is elected, the interests of the oligarchs must be accommodated so that they are hostage to the interests of other parties, which encourages the practice of corruption, collusion and nepotism.²⁰ Winters asserts that oligarchs can be governments, but they don't have to be. They constitute a minority form of power and influence thanks to the material resources they have personally accumulated and are willing to keep and maintain.²¹

The existence of a presidential nomination threshold opens wide opportunities for oligarchs to "play" more easily, in organizing and controlling elections because the number of competing political parties and their presidential candidates is limited. With relatively simple polarization and competition, for example only two pairs of candidates, from two coalition camps, the oligarchs can reap the benefits of both pairs of candidates competing, and whoever wins is "owned" by the oligarchs.

Thus, the existence of a Presidential nomination threshold is normatively unknown in the constitution and is even contrary to the constitution, so it is very worthy of being canceled by the Constitutional Court. The existence of the threshold has implications for the formation of cartel coalitions and opens wider opportunities for oligarchic forces to influence the course of government.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Jeffrey A Winters, "Oligarki," *Gramedia Pustaka Utama* (2011).

¹⁹ Ibid.

²⁰ Majid and Sari, "Analisis Terhadap Presidential Threshold Dalam Kepentingan Oligarki."

²¹ Winters, "Oligarki."

V. CONCLUSION

Based on the discussion above, the following conclusions can be drawn regarding the Implications of the Presidential Threshold Implementation on the Formation of Cartel Coalitions:

1. Setting the threshold for the nomination of the President and Vice President ignites the desire of political parties to form coalitions to win the Presidential and Vice Presidential elections as well as control the government.
2. Setting the nomination threshold for the President and Vice President has implications for the formation of an oversized coalition in the government, even a political cartel, thus opening opportunities for oligarchs to intervene in the government.

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