



Constitutional Rights of the People's Sovereignty in General Elections in Indonesia: How Does the Presidential Threshold Become a Solution Amidst a Faltering Democracy?

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ABSTRACT

The Constitutional Court Decision Number 53 / PUU-XV / 2017, January 11, 2018 and Number 14 / PUU-XI / 2013, January 23, 2014 and Number 51-52-59 / PUU-VI / 2008, February 18, 2009 basically stated that the presidential threshold is an open legal policy meaning that the legislators have the right to regulate it. This normative fact has become a debate about the Law No. 7 of 2017 Article 222 and Article 6A (2) of the 1945 Constitution. Empirical facts in the history of the direct election of 2004 - 2014 use the presidential threshold by using two stages. However, it is not true that the presidential threshold is implemented in elections simultaneously in 2019 because the form of the presidential threshold is null and void by law not fulfilling 20% of the DPR seats or 25% of the national vote by using 2014 data. This means that Article 222 of Law No.7 of 2017 has eliminated the constitutional rights of people's sovereignty in Indonesian democracy. These two facts are very important to be analyzed where the presidential threshold model affirms the constitutional rights of the people's sovereignty in the simultaneous election of 2019. The aim is to find a presidential threshold model that is linear with the constitution to realize democracy. Analysis with Lawrence M Freidman's Legal System synergizes the substance, structure, and legal culture. The legal system built-in managing electoral regulations must rely on the operation of law based on Chambliss and Seidman's theory on three domains; Formers, Implementers, and Supervisors, who will become the pillars of realizing people's sovereignty. Its enforcement by using the progressive spirit embodies the justice of election substance.

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INTRODUCTION

Elections are an ideal tool for realizing democracy. Indonesia adheres to the People's Sovereignty in the implementation of a democratic system. This means that people will determine the direction of the implementation of the Indonesian government system. This mechanism is

carried out in the legislative elections and the vice-presidential election. 2019 is the first moment of simultaneous elections in Indonesia. This will be a national history as well as potential in the dynamics of elections that need to be studied scientifically from a state perspective.



Democracy means government from the people, by the people and for the people. This means that the people have the highest power in a democratic country. Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia affirms that sovereignty is in the hands of the people and is carried out according to the Basic Law. As a democratic country, it can be said that electing and being elected in an election is a deviation from the sovereignty of the people who are part of the basic rights of every citizen. Therefore, it is common in countries that call themselves democratic states for general elections to elect public officials in the legislative and executive fields both at the center and in the regions.

Elections are the embodiment of a Republican system of government, namely the sovereignty of the people, the legitimacy of the government, and the change of government regularly. Election as a manifestation of democracy is an ideal means and mechanism in the process of transferring power in a peaceful and orderly manner. The election is expected to run the process of power transfer in a country running well. Law No. 7 of 2017 concerning General Elections is a regulation in realizing democratic elections. The law is a new history or a new transition in the simultaneous general election system in Indonesia.

The consideration of Law No. 7 of 2017 is that the Indonesian state in carrying out the constitutional system there are still weaknesses, especially in the electoral system. Elections are part of the Indonesian constitutional system, so to realize a good constitutional system in this democratic case, it is necessary to create a democratic general election system. The electoral system in

Indonesia that is used at this time still has many problems, especially related to the regulation of elections, so the rules governing general elections must be revised to realize direct, general, free and secret elections, as well as honest and fair. There needs to be a comprehensive and integrated regulation related to elections. This law was created to create an effective and efficient election system. However, five things are being debated, namely the presidential threshold, the parliamentary threshold, the electoral system, the magnitude electoral area, and the method of voting conversion.

The debate related to constitutional rights is the presidential threshold, because the regulation of the level of support threshold from the DPR, both in the form of the number of votes (ballot) or the number of seats (seats) that must be obtained by political parties participating in the election in order to nominate the President of the political party or with the combination of political parties in elections (1945 Constitution Article 6A). Furthermore Law No. 7 of 2017 Article 222 states that "Candidate Pairs 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 number of seats in the DPR or obtain 25% (twenty-five percent) from the national legitimate votes in the previous Parliamentary Election "

This condition is not applicable because simultaneous elections do not stage the DPRRI Election DPRD and the new DPD for the Presidential Election. The following table applies the presidential threshold in Indonesia since the 2004 presidential and vice presidential elections were held until 2019.

Table 1. Presidential threshold of direct president and vice president elections

No	Tahun Pemilihan	Dasar Hukum	Presidential Threshold		Keterangan
			Suara DPR	Suara Sah Nasional	
1	2004	UU Nomor 23 Tahun 2003 Tentang Pemilihan Umum Presiden dan Wakil Presiden Pasal 5 Ayat (4)	15%	20%	Pemiludilaksana kanduatahap



2	2009	Undang-Undang Nomor 42 Tahun 2008 Tentang Pemilihan Umum Presiden dan Wakil Presiden Pasal 9	20%	25%	Pemiludilaksana kanduatahap
3	2014	Undang-Undang Nomor 42 Tahun 2008 Tentang Pemilihan Umum Presiden dan Wakil Presiden Pasal 9	20%	25%	Pemiludilaksana kanduatahap
4	2019	Undang-Undang Nomor 7 Tahun 2017 Tentang Pemilihan Umum	20%	25%	Pemiluserentak

Source:

Table 1 showed that the application of the presidential threshold was carried out three periods ago and was effective. The crucial thing to consider is whether simultaneous general elections in 2019 using the presidential threshold are still relevant? Of course, it is relevant or not on the conditions that must be met, namely 20% of seats in the DPR or 25% of the national vote in the legislative elections. However, in simultaneous elections, this condition did not materialize. Then the presidential threshold is irrelevant. This is crucial to be given solutions in substance, structure, and culture.

PROBLEM

How is the right presidential threshold model solution to realize the sovereignty of the people in Indonesia's democratic society from the perspective of Article 6A of the 1945 Constitution with Law No. 7 of 2017? This paper will describe empirically, normatively and sociologically, facts about the election implementation; Indonesian legal system in strengthening people's sovereignty in constitutional rights; the operation of democratic electoral law in interpreting the presidential threshold of Law no. 7 of 2017; the living constitutional law enforcement of democratic elections in the spirit of progressive legal models presidential threshold.

Indonesian Legal System in strengthening People's Sovereignty in Constitutional Rights

The 1945 Constitution, as the legal basis of the Indonesian government system, states that citizens are guaranteed, respected and

protected by their human rights. It means constitutionally recognizing, respecting the human rights of every individual human being within the territory of the Republic of Indonesia. Indonesian citizens, whether they are Indonesian citizens or not, are treated as humans with basic rights that are universally recognized. The human rights principles also apply to every individual Indonesian citizen. In fact, besides guaranteeing human rights, every Indonesian citizen is also given a guarantee of constitutional rights in the 1945 Constitution.

Certain human rights guarantees that only apply to Citizens or at least for Citizens are given specific features or virtues, for example, the right to work, the right to education and others which in turn give rise to obligations for the state to fulfill the rights it is specifically for Indonesian citizens. This means that the Republic of Indonesia is not required to fulfill the demands of foreign nationals to work in Indonesia or to get free education in Indonesia.

Certain rights that can be categorized as citizens' constitutional rights are a. Certain human rights that only apply as constitutional rights for Indonesian citizens. Among other things the rights listed in Article 28D paragraph (3) of the 1945 Constitution which states, "Every citizen has the right to equal opportunities in government"; Article 27 paragraph (2) states, "Every citizen has the right to work and a decent living for humanity; Article 27 paragraph (3) reads, "Every citizen has the right and duty to participate in defense of the state"; Article 30 paragraph (1) reads, "Every citizen has the



right and duty to participate in the country's defense and security efforts"; Article 31 paragraph (1) determines, "Every citizen has the right to education"; b. Certain human rights that, although they apply to everyone, in certain cases, specifically for Indonesian citizens, apply certain virtues. Among other things, Article 28D paragraph (2) of the 1945 Constitution stipulates, "Everyone has the right to work ...". However, the state can limit the rights of foreigners to work in Indonesia. For example, foreign tourists are prohibited from using a visitor visa to earn a living or reward by working in Indonesia during the period of their visit; Article 28E paragraph (3) of the 1945 Constitution states, "Everyone has the right to freedom of association, assembly, and expression." Foreigners have no right to interfere in Indonesian domestic affairs; Article 28H paragraph (2) states, "Everyone has the right to get special facilities and treatment to obtain equal opportunities and benefits to achieve equality and justice." c. Citizens' right to occupy positions filled through election procedures (elected officials), such as the President and Vice President, the Governor and Deputy Governor, the Regent and Deputy Regent, the Mayor and Deputy Mayor, the Village Head, the Constitutional Justice, the Chief Justice, members The Supreme Audit Board, members of the consultative body and representatives, namely the MPR, DPR, DPD and DPRD, TNI Commander, Indonesian Police Chief, Bank Indonesia Board of Governors, members of state commissions, and other positions filled through electoral procedures, both directly or indirectly by the people. e. Article 27 paragraph (1) and Article 28D paragraph (3). Article 27 paragraph (1) determines, "All citizens are at the same position in law and government and are obliged to uphold the law and government without exception." Article 28D paragraph (3) reads, "Every citizen has the right to have the same opportunity in government." Therefore, every Indonesian citizen has the right to occupy the state and government positions of the Republic of Indonesia, as referred to above. The legality of status as a citizen is important to ensure

that these positions will not be filled by people who are not Indonesian citizens.

As for the guarantee of citizens' constitutional rights, the 1945 Constitution also regulates and determines the constitutional obligations of every citizen. Similar to rights, these obligations also consist of (i) obligations as human beings or human rights obligations, and (ii) obligations as citizens. If human rights and obligations are further differentiated from citizens' constitutional rights and obligations, the obligations referred to can also be distinguished between; human rights obligations; citizens' basic obligations; constitutional obligations of citizens. Human and citizen rights obligations are a. the obligation of each person to respect the human rights of others in the orderly life of the community, nation, and state, as stated in Article 28J paragraph (1) of the 1945 Constitution; b. The obligation of every person in exercising his rights and freedoms to submit to restrictions set forth in the law with the sole purpose of ensuring the recognition and respect for the rights and freedoms of others and to fulfill fair demands in accordance with moral considerations, religious values, security and public order in a democratic society, as determined in Article 28J paragraph (2) of the 1945 Constitution; c. The obligation of each person and every citizen to pay taxes and other levies that are coercive as determined in Article 23A of the 1945 Constitution; d. The obligation of every citizen to participate in efforts to defend the state as referred to in Article 27 paragraph (3) and to participate in the defense and security of the state as referred to in Article 30 paragraph (1) of the 1945 Constitution.

Constitutional rights in the realization of people's sovereignty are guaranteed in Article 28 of the 1945 Constitution. Its realization through direct democratic elections the people exercise their rights. This means that people's sovereignty is directly realized without going through intermediaries who may become incompatible with the wishes of the people in substance. Including the sovereignty of the people in the running for



the Presidential and Vice President's Pair. This is regulated in Article 6A of the 1945 Constitution that:

- (1) The President and Vice President are elected in a pair directly by the people.
- (2) Pairs of candidates for President and Vice President are proposed by political parties or a combination of political parties participating in the general election before the holding of general elections. ***)
- (3) Pairs of candidates for President and Vice President 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 more than half the number of provinces in Indonesia are appointed as President and Vice President. ***)
- (4) In the event that no pair of candidates for President and Vice President are elected, two pairs of candidates who obtain the first and second majority of votes in the general election shall be directly elected by the people and the pairs who obtain the majority of the people's votes shall be appointed as President and Vice President. ****)
- (5) The procedures for carrying out the election of President and Vice President are further regulated in law. ***)

Article 6A stipulates that the presidential candidates are regulated in paragraph (2). The pairs of candidates for President and Vice President are proposed by political parties or a combination of political parties participating in the general election before the general election. So that the presidential threshold becomes inappropriate especially with conditions that cannot be empirically fulfilled because the legislative and presidential elections are held simultaneously. At the same time castigating the constitutional rights of citizens in participating in the active right to nominate a president and or vice president. This concept only strengthened the status quo of the bigger political parties; the smaller ones would die because they would not have great figures to advance to become president and vice-presidential pairs.

PRESIDENTIAL THRESHOLD IN THE CONTEXT OF DEMOCRACY IN GENERAL ELECTION OF INDONESIA

The implementation of Law No. 7 of 2017 has been effective since it was enacted by the election organizers and political parties preparing themselves in the process of simultaneous election stages in 2019. In the perspective of the operation of the law, this condition is normal, namely with the forming domain that validates the Election Law, the Implementing Domain, namely the Election organizer, political parties and the people carry out in an orderly manner, and at the same time the domain of supervisors, in this case, is Bawaslu, Polri and MK are ready with the behavior and legal instruments of their institutions.

1. The operation of the Indonesian Election Law in Law No. 7 of 2017

The journey of the general election in Indonesia since the Indonesian nation's independence is not without problems and challenges. The problems in every general election in Indonesia continue to exist both large and small. Although regulations related to elections continue to be evaluated and improved. The birth of Law No. 7 of 2017 concerning General Elections is a new instrument in carrying out general elections in Indonesia. Law No. 7 of 2017 concerning General Elections is not without problems and challenges ahead. It has been mentioned before that before Law Number 7 of 2017 was passed, many issues were very crucial and could cause problems in the general election.

This situation causes Law Number 7 of 2017 concerning General Elections to face problems and challenges in realizing the politics of general election law. Many problems and challenges will be faced in the implementation of general elections in Indonesia after the birth of Law Number 7 of 2017 concerning General Elections. The substance of Act No. 7 of 2017 concerning General Elections. Law Number 7 of 2017 concerning General Elections consists of six books with a total number of articles of 573.



Provisions relating to the Presidential Threshold are contained in Article 222 of Law Number 7 of 2017 concerning General Elections. More detailed presidential threshold is regulated in CHAPTER VI Regarding Proposal for Candidates for President and Vice President and Determination of Candidates for Presidential and Vice President Candidates for DPR, DPD, Provincial DPRD, and Regency / City DPRD Part One Concerning the Procedure for Determining, Proposing, and Determining Candidates Candidate Pairs Paragraph 1 Regarding Procedures for Determination of Candidate Pairs Article 222 of Law Number 7 the Year 2017 states that:

"Candidate Pairs proposed by Political Parties or Combined Election Contesting Political Parties who meet the requirement to obtain a seat of at least 20% (twenty percent) of the total number of seats in the DPR or obtain 25% (twenty-five percent) of the valid votes nationally in the Election of DPR members previous

The application of this article is irrelevant. This is because the presidential threshold used is the general election of previous DPR members. The previous general election for DPR members was in 2014. This was because the 2019 general election was held simultaneously. Therefore the presidential threshold is irrelevant if it is applied to the 2019 general elections held simultaneously.

The 2014 Presidential threshold has been used for the 2014 presidential and vice presidential elections, so it is not appropriate to be used again for the 2019 general election. Besides that, the results of the 2014 DPR member elections are no longer in line with the conditions in 2019. The time lag is quite long, making it likely that people's preference preferences differ between 2014 and 2019. (see table 1).

The following empirical data on the acquisition of seats in the DPR 10 political parties in the 2009 elections

1. Nasdem Party (36 seats or 6.4 percent)
2. National Awakening Party (47 seats or 8.4 percent)

3. Prosperous Justice Party (40 seats or 7.1 percent)

4. Indonesian Democratic Party of Struggle (109 seats or 19.4 percent)

5. Golkar Party (91 seats or 16.2 percent)

6. Gerindra Party (73 seats or 13 percent)

7. Democratic Party (61 seats or 10.9 percent)

8. National Mandate Party (48 seats or 8.6 percent)

9. United Development Party (39 seats or 7 percent)

10. Hanura Party 6,579,498 (16 seats or 2.9 percent)

Furthermore, in the 2014 elections the acquisition of seats in the DPR 10 political parties is:

1. Nasdem Party 8,402,812 (6.72 percent)

2. National Awakening Party (PKB) 11,298,957 (9.04 percent)

3. Prosperous Justice Party (PKS) 8,480,204 (6.79 percent)

4. Indonesian Democratic Party of Struggle (PDIP) 23,681,471 (18.95 percent)

5. Golkar Party 18,432,312 (14.75 percent)

6. Gerindra Party 14,760,371 (11.81 percent)

7. Democratic Party 12,728,913 (10.19 percent)

8. National Mandate Party (PAN) 9,481,621 (7.59 percent)

9. United Development Party (PPP) 8,157,488 (6.53 percent)

10. Hanura Party 6,579,498 (5.26 percent)

This empirical data does not significantly affect the presidential threshold prerequisites. Because political parties have also conducted coalitions. It is precisely what denies the sovereignty of the people is that they must be forced to meet the presidential threshold for political parties that want to nominate a president-vice presidential pair and do not have to coalesce to fulfill 20 DORRI seats or 25 national votes. Factually, there are doubts about democrats to form coalitions with political parties that are not in line, but because of this rule, even though Democrats



are declared to have two legs, they must officially declare their support for one partner.

2. Implementation of the Presidential Threshold in the 2019 Simultaneous Elections

This threshold is adopted in the electoral system, as a formulation of the calculation of votes and seats in a proportional representation system. The threshold was originally used in terms of looking at the level of party competition to occupy seats in electoral districts in the proportional electoral system. This concept links the magnitude of the electoral district (district magnitude) and the formula for the acquisition of party seats with the quota method. The mathematical relationship applies in this concept, the greater the size of the electoral district, the smaller the percentage of votes to get a seat, conversely the smaller the size of the constituency, the greater the percentage of votes to get a seat.

Threshold as a proportional representation system, numbers, and minimum proportions, from the number of voters to become representatives/messengers in parliament. The term Threshold is also termed the minimum barrier (minimum limit). The electoral threshold is generally divided into two classifications, namely effective threshold, and formal threshold. Andrew Reynolds explained that the effective threshold is an arrangement that was born from mathematical calculations in the General Election system (a mathematical by-product of features of electoral systems). The effective threshold is also translated as the Hidden Threshold or Natural Threshold because the law does not explicitly state the minimum percentage of votes that must be met. The effective threshold places the size of the electoral district.

Mathematical thresholds are always there, so the threshold formula is called the hidden threshold or effective threshold. The experts provide a formula related to this effective threshold, namely, such as the threshold is 100% divided by the magnitude of the electoral district plus one (threshold =

100%: magnitude of the electoral district + 1), for example, the magnitude of the electoral district is 19 seats, then the threshold is 5 percent. This is what is called the threshold. The difference with the formal threshold, the effective threshold is not written in the rule of law regarding the percentage explicitly, but only natural or emerges naturally.

While the formal threshold, the amount of percentage is stated clearly and firmly in the rule of law. The threshold is forced to be carried out in elections based on applicable laws so that parties that do not get votes to reach the threshold are not entitled to seats or are not entitled to be included in the counting of seats. In the presidential and vice presidential election system (2019 elections), it means that political parties or coalitions of political parties that do not reach the threshold are not entitled to nominate candidates for President and Vice President. The development of general elections in the concept of Indonesian democracy carries a threshold in every system of general election forms, starting from the electoral threshold as a condition for political parties to participate in elections, the parliamentary threshold as a form of party threshold to occupy. The seat of the central parliament, up to the presidential threshold as the party vote threshold to carry the candidates for President and Vice President in the General Election.

The application of the presidential threshold according to the judgment of the Constitutional Court through decision No. 3 / PUU-VII / 2009 is a more democratic policy because it does not threaten the existence of political parties in proposing pairs of candidates for President and Vice President. The presidential threshold is considered not contrary to the 1945 Constitution of the Republic of Indonesia because it does not negate the principle of popular sovereignty and is not discriminatory because it applies to all political parties. Whereas according to the decision of the Constitutional Court Number 14 / PUU-XI / 2013, the provisions regarding the presidential threshold are considered to be an open legal policy (open legal policy) of the legislators. The term legal policy can be



interpreted as freedom for legislators to take legal policy.

However, the application of the presidential threshold contains consequences of the loss of opportunity and citizens' rights through political parties that do not meet the amount determined to nominate candidates. Therefore, it should be noted, by the principles of democracy, in determining the threshold of the magnitude of the presidential threshold may not be detrimental to certain groups of people, especially minorities.

The Constitutional Court, through its decision, Decision Number 14 / PUU-XI / 2013, asserted that the provisions regarding the presidential threshold are an open legal policy or andelegation of open authority that can be determined as a legal policy by the legislators. Therefore, the Constitutional Court handed over the presidential threshold issue to the legislators, namely the government and the DPR.

The application of Law No. 7 of 2019 can be carried out as a judicial review in Article 222. This is by the mechanism of Chamlis and Seidman Law. That the law must work to be able to realize welfare and substantive justice (the truth justice). The main consideration for the search for substantial justice is no longer the formal (state law) and material (living law) aspects of law but the legal nature aspect, which involves the consideration of the main consideration of substantial justice is no longer searching the formal aspects (state law) and living law) law but the nature of the legal aspects, namely the exclusion of considerations of morality, ethics and religion. Substantive justice as "perfect justice." The search for the welfare of substantive justice for people's sovereignty can only be achieved by using a legal pluralism approach. Following is the flow of the implementation of the simultaneous election implementation law in 2009 so that the constitutional rights of the people's sovereignty will be well realized.

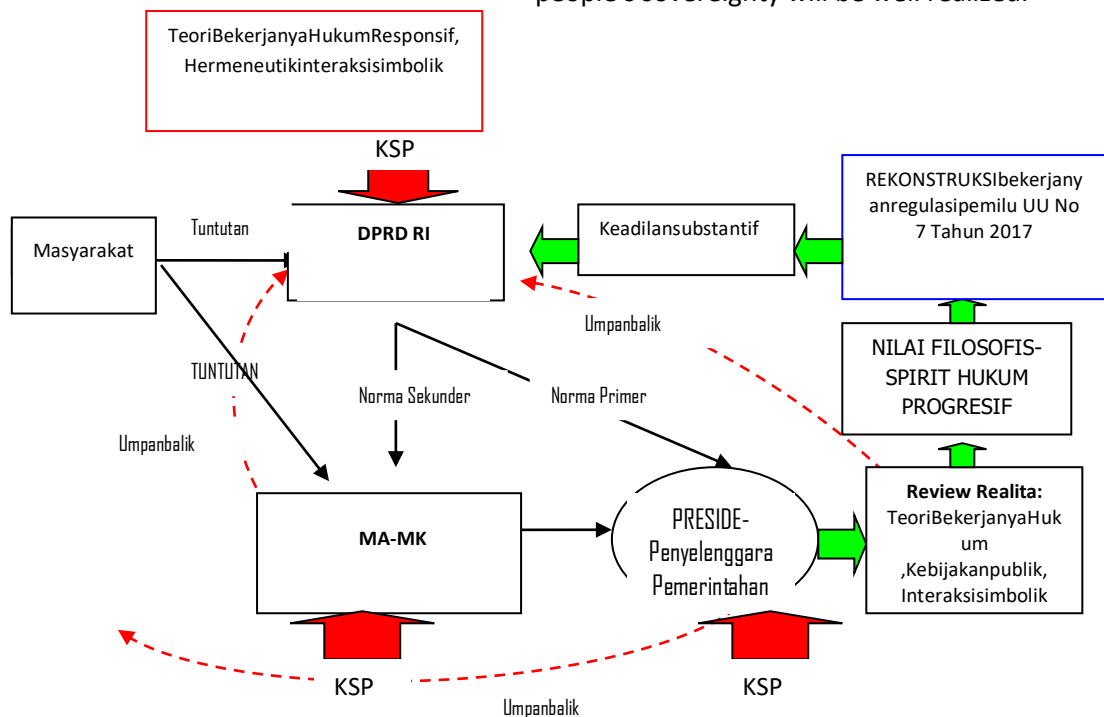


Figure 1. Legal Operating Framework in Indonesia

THE LIVING CONSTITUTIONAL DEMOCRATIC ELECTION LAW ENFORCEMENT IN THE SPIRIT OF PROGRESSIVE LEGAL PRESIDENTIAL THRESHOLD MODEL

The constitution is understood as a living law and responds to all the dynamics of state life and the legal needs of society to realize national goals. As David Strauss's said that A



living Constitution is one that evolves, changes over time, and adapts to new circumstances without being formally amended. On the one hand, the answer has to be yes: there is no realistic alternative to a living Constitution. Our written Constitution, the document under the glass in the National Archives, was adopted 220 years ago. It can be amended, but the amendment process is very difficult. The most important amendments were added to the Constitution almost a century and a half ago, in the wake of the Civil War, and since that time many of the amendments have dealt with relatively minor matters. That the constitution changed the amendment so that the Constitutional Court's decision could differ on the substance of the same case after the discovery of new arguments. In this case, the decision related to the presidential threshold has been decided through three MK decisions.

Constitutionally the presidential threshold is constitutional. This can be seen from the decision of the Constitutional Court regarding the presidential threshold. Decision of the Constitutional Court Number 53 / PUU-XV / 2017 dated 11 January 2018 and Constitutional Court Decision Number 14 / PUU-XI / 2013 dated 23 January 2014 and Decision of the Constitutional Court Number 51-52-59 / PUU-VI / 2008 dated 18 February 2009 states that the presidential threshold is an open legal policy. This means that the legislators have the right to regulate the presidential threshold. However, the Constitutional Court's ruling was not yet able to resolve the constitutional issue of people's sovereignty. Therefore, by using progressive law enforcement, the Constitutional Court must immediately conduct a trial process to make decisions submitted by twelve elements of society (BusroMukodas et al.) regarding judicial review of Article 222 of Law No. 7 of 2017. Of course, this decision must accommodate the development of legal needs society and the constitutional rights of the community as holders of people's sovereignty. So that the Constitutional Court was pushed for the zero percent presidential threshold that was imposed on simultaneous

elections in 2024. At the same time, to prepare the election management institutions and political parties to prepare themselves.

The breakthrough by the Constitutional Court above is called the living constitutional, which is in line with the spirit of Progressive Law that was sparked by Professor SatjiptoRahardjo, asserting that law is for humans and not vice versa. "Law is not only the building of regulations, but also the building of ideas, culture, and ideals," further said that legal thinking needs to return to its basic philosophical, namely the law for humans. With these philosophies, human beings become determinants and points of legal orientation. The law is in charge of serving humans, not vice versa. Therefore, the law is not an institution that is free from human interests. The quality of law is determined by its ability to serve human welfare. This has led to progressive law adopting "ideology": Pro-justice law and Pro-people law. Based on this theory, justice cannot be directly found through a formal logical process. Justice is obtained through institutions. Therefore, formal-logical arguments are "sought" after justice is found to frame the juridical-formal decisions that are believed to be fair. Therefore the concept of progressive law, the law does not serve for itself, but for purposes that are outside him.

Two types of progressive law enforcement: (1) Dimensions and human factors of actors in progressive law enforcement. Ideally, they consist of a new generation of legal professionals who have the vision and philosophy that underlies progressive law enforcement; (2) The need for a kind of revival in Indonesian academics, intellectuals, and scientists and legal theorists. Related to Legal Realism and Freirechtslehre, progressive law sees the law not from the lens of the law itself, but rather from the social goals it wants to achieve and the consequences arising from the operation of the law. Because the presence of law is associated with its social objectives, progressive law is also close to the Sociological Jurisprudence of Roscoe Pound, which rejects the study of law as a study of



regulations.² Thus, in the process of science, Progressive Law goes beyond positivistic rules and legal documents. Progressive Law is also close to the theories of Natural Law, namely, in its concern for what Hans Kelsen calls 'meta-judicial.' As such, Progressive Law puts human interests ahead of interpreting laws from the point of 'logic and regulation.' Progressive law does not stop at criticism of the liberal legal system. Progressive law emphasizes the understanding that law is not driven by positive law or statutory law, but it is also moved in an informal direction because progressive law assumes the basis that law exists and is present for humans.

Progressive law enforcement is carrying out the law not only according to the black-and-white words of the rules (according to the letter) but according to the spirit, and deeper meaning (to the very meaning) of the law or law.⁵ Law enforcement is not only by intellectual intelligence but rather with spiritual intelligence. In other words, law enforcement is carried out with full determination, empathy, dedication, commitment to the suffering of the nation, and accompanied by courage to look for other ways than usual. The idea of progressive law enforcement was born from a long intellectual reflection. The discussion of progressive law enforcement above is one track record of intellectual reflection which is the starting point why progressive law enforcement is used as an alternative type of law enforcement. We conclude that "the truth of the law cannot be interpreted solely as the truth of the law, but must be understood as the truth of the principle of justice that underlies the law."

The main points of this progressive legal model can be described as follows:

1. Progressive law is aimed at protecting the people towards the ideal of law;
2. The law rejects the status-quo, and does not want to make law as a technology that has no conscience, but rather a moral institution;
3. Law is an institution that aims to bring people to a just, prosperous life and make people happy;

4. Progressive law is, "pro-people's law and pro-justice";

5. The basic assumption of progressive law is for humans, not vice versa. Related to this, the law does not exist for itself, but for something bigger;

6. Law is always in the process of continuing to be (law as a process, the law in the making).

A breakthrough in the Constitutional Court in the perspective of progressive law in the form of courage to make a decision that Article 222 of Law No. 7 of 2017 is revoked meaning the presidential threshold is zero percent by strengthening Article 6A of the 1945 Constitution (different from the three previous MK decisions) will be an alternative model for strengthening the presidential threshold in realizing rights constitutional sovereignty of the people. Furthermore, strengthening the presidential system of the Indonesian government by imposing and strengthening parliamentary and electoral threshold.

CONCLUSION

The conclusion is that the presidential threshold model is nullified and strengthens the parliamentary threshold and the electoral threshold. The Indonesian people will obtain their sovereignty through a democratic election in a linear regulation between the constitution (the 1945 Constitution) and the laws and regulations. The Constitutional Court made a bold breakthrough in the perspective of progressive law on the living constitutional frame. The Constitutional Court is encouraged to immediately conduct judicial review proceedings related to Article 222 of Law No. 7 of 2017 so that it is linear with Article 6A of the 1945 Constitution. The presidential threshold of 0 percent is also able to manage well to avoid the domination of the status quo, which, if enacted Article 222 of Law No. 7 of 2018, gives birth to a neo-new order in the implementation of elections and the dominance of political parties.

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