

INDEPENDENT OBSERVER

JAKARTA - INDONESIA



FRIDAY, MARCH
8-14, 2024
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Life was much easier when apple and blackberry were just fruits.

- Anonymus

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Strengthening Democracy

Revision of Parliamentary Threshold - Justice for voters

By Arfianto Purbolaksono

On Thursday, February 29, 2024, the Constitutional Court (MK) ordered lawmakers to revise the 4 percent parliamentary threshold provision, to be implemented in the next elections in 2029. This decision was made following a judicial review against Law 7/2017 on elections, based on the petition filed by the Association for Elections and Democracy (*Pertudem*), which views that the current provision has led to significant numbers of legitimate but wasted votes — votes that cannot be converted into seats in the House of Representatives (DPR).

In its ruling, MK considered the threshold as prescribed in Article 414(1) to be in contravention of the principles of popular sovereignty and electoral fairness, as well as a violation of legal certainty guaranteed by the 1945 Constitution, namely Article 1(2), Article 22E (1) and Article 28 D (1). The decision will not affect the 2024 elections but will become unconstitutional if no revision is implemented before the next elections.

Why it was put there in the first place

The parliamentary threshold is defined as the minimum share of all votes that political parties must gain in order to secure seats in Parliament. It is generally divided into two types — effective threshold and formal threshold. According to Professor of Political Science at the University of North Carolina, Andrew Reynolds, effective threshold is “mathematical by product of features of electoral systems”.

It is also termed as a ‘hidden threshold’ or ‘natural threshold’, because the law does not explicitly state the minimum vote percentage that must be met. It places the size of the electoral district (district magnitude) as an important mathematical aspect in determining seat allocation.

In contrast to the effective threshold, the formal threshold is legally imposed, meaning it is

written into the constitutional or legal provisions which define the Proportional Representation (PR) system. A formally-defined formal threshold sets out the minimum percentage of votes that must be met by a political party, effectively restricting those who fail to meet the requirement from entering parliament.

In Indonesia, the formal threshold was first implemented in the 2009 elections, based on Article 202(1) of Law 10/2008 on elections, which stipulated that “a political party contesting in a legislative election must reach the electoral threshold, which is 2.5 percent of the national number of valid votes, in

order to be included in the seat allocation for DPR members.”

This policy continued to be implemented through Law 8/2012, which raised the threshold figure to 3.5 percent in the 2014 elections, although that only applied to DPR, not Regional Legislative Councils (DPRD) in the provincial and regency/municipality levels, following a judicial review ruling by MK.

stable parliamentary institutions.

However, the proposal faced stiff resistance from parties that won seats (such as the Democratic Party, PAN and PPP) and those outside the parliament (such as PBB and PSI). There were at least four reasons why they rejected the idea.

First, raising the threshold will make it more difficult for parties to enter the parliament. Second, it does not necessarily lead to the streamlining of political parties in the legislature, as the previous elections have shown. Third, it does not necessarily strengthen the consolidation of democracy and the presidential system. Instead, it will only raise the civil society’s concerns about the stranglehold of the political oligarchy in

Indonesia. Fourth, it will cause a sizeable number of votes to be wasted.

Electoral threshold & democratic legitimacy

The intense debate on whether the electoral threshold should be raised or lowered happens mainly due to the unequal representation of political parties in Parliament, as a result of this policy. Furthermore, the ballots voters cast for the political parties of their choice will simply go to waste if they fail to cross the threshold.

In the 2019 legislative elections, for example, the General Elections Commission (KPU) announced that the number of valid votes casted was 139,971,260. Of the 17 parties participating, only nine made it to the parliament. They received a total of 126,376,418 (90.29 percent) votes. The remaining 13,594,842 (9.71 percent) votes were discarded because they did not meet the threshold. This means that not all voters can be represented by their candidates of choice in the parliament.

It is also worth to remember that this lack of representation will reduce the legitimacy — the recognition and acceptance of an



AGUNG WARTADIRJO

A long-standing polemic

The polemic over the parliamentary threshold (PT) has long been the subject of public debate. For example, at the celebration of a NasDem Party anniversary on November 11, 2020, the party’s Chairman, Surya Paloh, proposed that the PT be increased to 7 percent. He argued that this would create a more mature and quality democratic institutions in the Indonesian political sphere.

Previously, the same proposal was also expressed by several political parties in their effort to revise Article 414(1) of Law 7/2017. Raising the PT, in their views, would create streamlined and



authority and power. In the context of elections, voters proffer their mandate in the form of votes to those they elect to represent their interests and concerns in parliament. In return, the voters accept and recognize the authority and power of parliament as the formal institution that represents them. If a sizeable number of voters are not represented, this will, directly or indirectly, undermine the legitimacy of the parliament as the citadel of the people's will and sovereignty.

Additionally, as of this writing, the ties between political parties and voters have been weak, as indicated by the results of several surveys. For example, pollsters *Politika Research and Consulting (PRC)* and *Parameter Politik Indonesia (PPI)* at the beginning of 2020 found that 85.9 percent of respondents did not identify with certain political parties. Another survey, conducted in 2017 by *Saiful Mujani Research and Consulting (SMRC)* concluded that only 11.7 percent of the respon-

dents have partisan identification. *Djayadi Hanan*, a political observer and lecturer at *Paramadina University*, observed that for more than 20 years, party identification in Indonesia has been very low, ranging between 10 to 15 percent. This means that almost 90 percent of Indonesian voters have no emotional or psychological affinity to a particular party. Apart from low party identification, it is indicated that party system in the country is not deep rooted, hence the low level of public trust in po-

litical parties.

In a survey conducted by *Indikator Politik Indonesia* in June 2023, only 6.6 percent of the respondents say they really trust political parties, 58.7 percent say they trust somewhat, while 29.5 percent say they have little trust. When asked about trust toward DPR, 61.4 percent say they trust somewhat, 7.1 percent really trust, and 26.6 percent indicated they have no trust at all.

The results above should serve as a wake-up call for political par-

ties to reevaluate their function in political representation. Moreover, in recent times, political parties and parliament have been deemed to have failed in fulfilling their representational function by passing controversial laws. For example, the ratification of the *Job Creation Law* is considered to only benefit employers and is detrimental to the workers and the economy at large. The timing in which the legislation was passed was also considered insensitive to the situation of the laborers who were facing hardship amid the ravage of the Covid-19 pandemic.

If the public no longer trusts political parties as democratic institutions, it should not come as a surprise that the legitimacy of parliament as the people's representation in a democratic system has been adversely impacted. This is what German philosopher and social theorist *Jurgen Habermas* termed a "legitimacy crisis", defined as decline in the confidence of administrative functions, institutions, or leadership. The failure of the political system in managing loyalty of the people, coupled with the failure of the economic system in managing the conflict of interests between capital owners and the masses has resulted in an identity crisis. This identity crisis then poses a threat to the very social fabric that holds the society together. This is how they are interlinked.

A fairer threshold

Based on the argument elaborated above, MK decision should be followed up by the government and DPR to revise *Law 7/2017*, aimed specifically at setting a fairer parliamentary threshold, not only for candidates, but most importantly for voters as the real owners of legitimacy.

Given the regional differences

in terms of population in Indonesia, it is very important that we encourage a system that can represent all voters in Indonesia proportionally. At the same time, this will remedy the weaknesses in the current parliamentary threshold system. With the belief that all votes matter and ensuring that they are counted and represented in the parliament, it is hoped that injustice in political representation can be eliminated.

Otherwise, political parties will increasingly be viewed only as institutions representing a handful of elites and interest groups, not as true representatives of the people. The pillar of democracy will be undermined in the face of diversity in Indonesia, and will ultimately lead to a crisis of legitimacy. Furthermore, the MK ruling must also be followed up by institutional reform of political parties so that they can function optimally, inclusively, responsively, with integrity and relevance, as well as contextually as one of the pillars of democracy in Indonesia. [10](#)



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