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PEOPLE'S SOVEREIGNTY IN THE SYSTEM PRESIDENTIAL THRESHOLD IN THE PERSPECTIVE *SIYĀSAH AL-SYAR'IIYAH*

Iqbal Katrino, Yus Afrida

Faculty of Sharia and Law, UIN Sunan Kalijaga Yogyakarta, Indonesia

iqbal.katrino@gmail.com

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ABSTRACT

UU no. 7/2017 concerning General Elections, is the legal protection for the implementation of the 2019 General Election using the system presidential threshold. The problem is, this is seen as castration of individual rights where power is in the hands of the people. Equal treatment before the law and politics in the context of nominating the President and Vice President is limited to parties that are part of and meet the threshold in the 2014 general election. This research found that the implementation of the system Presidential Threshold in Indonesia was an embodiment of the people's sovereignty itself. Where the individual directly determines the leader, and in making the requirements to become a leader, and the DPR is a representation of the people. This eliminates concerns in the community when the system will be ratified Presidential Threshold in Law Number 7 of 2017 concerning Elections so that the people's sovereignty in the threshold system is by *siyāsah syar'iiyah* where *ahlul ḥalli wa al-'aqdi* can determine candidate leaders and Bai'ah is a form of the general election in determining the leader.

Keywords: People's Sovereignty; Presidential Threshold; and *Siyāsah al-Syar'iiyah*;

ABSTRAK

UU No. 7 /2017 tentang Pemilihan Umum dasar hukum dilaksanakannya Pilkada Umum Tahun 2019 dengan menggunakan system presidential threshold. Persoalannya adalah, hal ini dipandang sebagai pengebirian hak-hak individu dimana kekuasaan berada di tangan rakyat. Perlakuan yang setara di depan hukum dan politik dalam rangka mencalonkan Presiden dan Wakil Presiden menjadi terbatas hanya pada partai yang menjadi bagian dan mencukupi -threshold di pemilihan umum 2014. Riset ini menjumpai bahwa pelaksanaan sistem Presidential Threshold di Indonesia merupakan perwujudan dari kedaulatan rakyat itu sendiri. Di mana individu secara langsung menentukan pemimpin, dan dalam pembuatan persyaratan untuk menjadi pemimpin, yang mana DPR adalah representasi dari rakyat. Hal ini menghapuskan kekhawatiran di masyarakat ketika akan disahkannya sistem Presidential Threshold dalam Undang-Undang Nomor 7 Tahun 2017 tentang Pemilu, sehingga kedaulatan rakyat dalam sistem ambang batas sudah sesuai dengan *siyāsah syar'iiyah* dimana *ahlul ḥalli wa al-'aqdi* memiliki kapasitas untuk menentukan calon pemimpin dan Bai'ah adalah bentuk dari pemilihan umum dalam menentukan pemimpin.

Kata Kunci: Kedaulatan Rakyat; Presidential Threshold; dan *Siyāsah Syar'iiyah*;

Introduction

Democracy provides an opportunity for everyone to be involved directly or indirectly in determining the path and goals of the state. State policy settings are directly or indirectly influenced by the majority of the population who have voting rights through the electoral system.¹

The development of elections has undergone several stages of changes in the political configuration in Indonesia. On November 9, 2001, in the third amendment, there was a major change, whereby the people could elect the President and/or Vice President directly by Article 6A paragraph (1).² The rotation of power and open political recruitment will be seen from the holding election common to government leaders.³ Abuse of power will occur if there is no dynamic cycle of power in a country.

The review of Law Number 42 of 2008 concerning the General Election of the President and Vice President of 2013 has lead to a new concept, that the Presidential and Vice Presidential Elections and Legislative Elections are held simultaneously. The Constitutional Court in its decision Number 14/PUU-XI/2013 stated that simultaneous elections will be held in the 2019 elections and the following elections.⁴

Law Number 7 of 2017 concerning General Elections is the legal protection for organizing General Elections which includes a system regarding the Presidential Threshold. Article 222 of Law Number 7 of 2017 concerning Elections states that “Candidate pairs are proposed by Political Parties or Political Parties Contesting in the Elections who meet the requirements to obtain seats of at least 20% (twenty percent) of the total seats in the general election. DPR or obtained 25% (two fifty-five percent) of valid votes nationally in the previous election of DPR members.”⁵ So, the Presidential Threshold will still be applied in the 2019 election.

¹ Leo Agustino, *Pilkada Dan Dinamika Politik Lokal* (Yogyakarta: Pustaka Pelajar, 2009).

² Jimly Asshiddiqie, *Pokok-Pokok Hukum Tata Negara Indonesia Pasca Reformasi* (Jakarta: Buana Ilmu Populer, 2007).

³ Aminuddin Ilmar, *Hukum Tata Pemerintahan* (Jakarta: Prenamedia Group, 2014).

⁴ Mahkamah Konstitusi, “Putusan Mahkamah Konstitusi Nomor 14/PUU-XI/2013” (2013).

⁵ Adapun penjelasan Pasal 222 ini adalah yang dimaksud dengan “perolehan kursi paling sedikit 20% (dua puluh persen) dari jumlah kursi DPR atau memperoleh 25% (dua puluh lima persen) dari suara sah nasional pada Pemilu anggota DPR sebelumnya” adalah perolehan kursi, DPR atau perolehan suara sah, baik yang mempunyai kursi di DPR maupun yang tidak mempunyai kursi di DPR pada Pemilu anggota DPR terakhir.

Regulations the presidential threshold in Law Number 7 of 2017 is still polemic to this day. At the 32nd plenary session of the DPR, four parties, namely the Partai Keadilan Sejahtera (PKS), Gerindra, Partai Amanat Nasional (PAN), and Partai Demokrat, did not agree with the threshold of 20% (twenty percent) of the seats or 25% (twenty five percent) of valid national votes as referred to in Article 222. The demonstration ends with a walkout of four factions in a plenary meeting.

Besides the parties that do not meet the threshold and new parties that lose the right to nominate candidates for President and Vice President even though they have passed verification as election participants. In the Constitutional Court's decision Number 53/PUU-XV/2017, there is a dissenting opinion by Judge Saldi Isra and Judge Suhartoyo which states that the application of the Presidential Threshold in simultaneous elections based on previous elections is irrelevant and unconstitutional. However, in essence, this provision is intended to strengthen the presidential system adopted by the Republic of Indonesia. This is exacerbated by the fact that the people who voted in 2014 did not know that their votes in that year would be used for the 2019 elections, although it supposes that choices would be different.

As it is known that, to uphold the quality of political civility, the existence of an election is one of the most important institutional decisions to be realized. The political logic of administrative management, the running of the bureaucracy, and the growth and development of civil society in a country will be created by the existence of an electoral system.⁶

Previous studies have certainly discussed this case a lot, for example, written by Lutfil Ansori,⁷ Saldi Isra,⁸ Abd. Wachid Habibullah,⁹ Muhammad Shiddiq Armia,¹⁰ and

⁶ Ahmad Sukardja, *Hukum Tata Negara Dan Hukum Administrasi Negara Dalam Perspektif Fikih Siyasah* (Jakarta: Sinar Grafika, 2014).

⁷ Lutfil Ansori, "Telaah Terhadap Presidential Threshold Dalam Pemilu Serentak 2019," *Jurnal Yuridis* 4, no. 1 (2017), <https://doi.org/10.35586/v4i1.124>.

⁸ Saldi Isra, "Pemilihan Presiden Langsung Dan Problematik Koalisi Dalam Sistem Presidensial," *Konstitusi: Pusako Universitas Andalas* 2, no. 1 (2009): 106–30, <https://www.mkri.id/index.php?page=download.EJurnal&id=157>.

⁹ Abd. Wachid Habibullah, "Pemberlakuan Presidential Threshold Dalam Pemilihan Umum Serentak" (Universitas Airlangga, 2015), <https://repository.unair.ac.id/33800/>.

¹⁰ Muhammad Siddiq Armia et al., "Penghapusan Presidential Threshold Sebagai Upaya Pemulihan Hak-Hak Konstitusional," *Petita* 1, no. 2 (2016), <https://doi.org/10.22373/petita.v1i2.83>.

Muh Rizal Hamdi¹¹ generally focus their research on tracking the constitutionality of Article 6A paragraph (2) about coalition opportunities, implementation of simultaneous elections that are not relevant to the presidential threshold, constitutional rights that held hostage due to the implementation of the presidential threshold, and the delay in the absorption of new political parties to nominate their representatives in the contestation of the President and Vice President.

Based on the previous description, the polemic regarding the presidential threshold which is considered to castrate the constitutional rights of citizens about equality of rights before the law and politics in nominating candidates for President and Vice President needs to be studied further in the framework of people's sovereignty with a focus on the issue of how to implement the concept of people's sovereignty in the system from the Presidential Threshold in the Perspective *Siyāsah Syar'iyah*.

Method

The type of research was library research, namely research procedures that produce descriptive data in the form of written or spoken words from people or observed behavior.¹² Other terms in law, this research was also called normative legal research.¹³ The research was qualitative and descriptive-analytic, which was managing and describing the data systematically, understanding and analyzing the data. After the data is collected, it goes the data description first. This research was normative legal research in the form of law research. The approach was juridical-normative, which analyzed the system presidential threshold in Article 222 of Law Number 7 of 2017 concerning General Elections from the perspective of *siyāsah syar'iyah*. Primary legal materials consisted of legislation, official records, or minutes in the making of legislation and judges' decisions. Secondary legal materials were all publications on a law that were not official documents, which included textbooks, and legal journals

¹¹ Muh. Rizal Hamdi, "Sistem Presidential Threshold Pada Pemilihan Umum Serentak Tahun 2019 Di Indonesia" (UIN Sunan Kalijaga, 2018), <https://digilib.uin-suka.ac.id/id/eprint/32040/>.

¹² Winarmo Surachman, *Pengantar Penelitian Ilmiah, Dasar, Metode Dan Teknik* (Bandung: Tarsito, 1990).

¹³ Sabarudin Ahmad, Novita Anggraeni, and Andrian Kukuh Pambudi, "A. Djazuli's Thinking Regarding Hifzu Al-Ummah: Dismissing the Entangled Bureaucracy to Commemorate the Era of Society 5.0," *Journal de Jure* 12, no. 1 (2020): 86–101, <https://doi.org/10.18860/j-fsh.v12i1.8700>.

relevant to research.¹⁴ The primary and secondary legal materials were then analyzed prescriptively analytically.

Findings and Discussion

Siyāsah Syar’iyyah, Ahlul Ḥalli wa al-‘Aqdi and Bai’ah

In the discourse of *fiqh siyāsah* or *siyāsah syar’iyyah*, the issue of appointing leaders is a vital element in the system of caliphate (government). There are two ways to appoint a leader in Islam. First, Abu Bakr ra to Umar ra through the direct appointment, and then it was agreed by all Muslims. Second, Umar ra to Usman Bin Affan ra to create a team called *ahlu-shura*, which was then agreed upon by other friends.

The appointment of the head of state discusses the issue of the source of power and the criterias. Based on history, Abu Bakr had appointed Umar to be an imam and the appointment by Abu Bakr ra was approved by the Muslims (*ummah*). While Umar ra pointed to submit to the *ahlu syura'* (*imma saḥabat*) which was then approved by other friends in the appointment of the caliph. This means that in this context Umar ra handed over the appointment of the caliph to a group of authorized people called *ahlu syura'*.¹⁵ As mentioned earlier, the issue of *wali ul-ahdi* was based on two main issues, namely who is in power and what are the requirements to become a priest.

The next issue is regarding the requirements or criteria for becoming an *imam* (leader). According to al-Mawardi, an *imam* or leader must meet the following conditions. First, fair with all conditions (true speech, trustworthiness, protected from all the things that is forbidden, stay away from all sins and doubts, hold *muru'ah*; which reduces justice "*al-Faqs*"). Second, it has knowledge to be used for *ijtihad* in law and legal cases that must be resolved. Third, healthy senses, both hearing, sight, and speech so that they can be used properly. Fourth, healthy limbs from defects that can interfere with movement. Fifth, intelligence and ability to manage the people and benefit. Sixth, truth and have responsibility and steadfastness in defending the country and fighting enemies. Seventh, *nasab*, the *imam* must be of Quraysh descent based on texts and *ijma'*.

¹⁴ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Prenamedia Group, 2014).

¹⁵ A. Djazuli, *Siyasah: Implementasi Kemaslahatan Umat Dalam Rambu-Rambu Syariah* (Jakarta: Prenamedia Group, 2009).

Ibn Khaldun in the appointment of leaders requires that in the appointment of leaders, they have a fair nature, have the knowledge, and are physically fit, and able to carry out their duties. Meanwhile, Abu A'la al-Maududi has four criteria for the imam, namely Muslim, intelligent and mature, and Islamic citizens. In contrast to other scholars, Ibn Taymiyya emphasized that a leader, according to him, is the main person who has the power of trust.¹⁶

There are different criterias and conditions in the deliberations of the scholars to appoint an *imam*. When choosing a leader, the most ideal should be chosen, when none is close to the ideal criteria, or none of them is the most useful criteria. Because of that, The area of al-and can be realized if it meets the requirements and is agreed upon by the *ahlul ḥalli wa al-‘aqdi*.¹⁷

Ahlul Ḥalli wa al-‘Aqdi

The language of those who are authorized to release and bind is called *ahlul ḥalli wa al-‘aqdi*.¹⁸ According to *fāqih* expert/*fiqh*, *siyāsah ahlul ḥalli wa al-‘aqdi* has the function and authority to determine and decide general cases. Therefore, it can be referred to as a forum for representatives and a forum to accommodate the aspirations of the community.

Al-Shura is a popular term used to refer to *ahlul ḥalli wa al-‘aqdi* in the early phase of Islamic rule. Abdul Hamid al-Ansari said that the forum used by the people or representatives of the people to discuss and decide on problems and the benefit of society is called *ahl al-syura*. Thus, it is the people who have the highest right to determine who the leader is.¹⁹

Ahlul ḥalli wa al-‘aqdi by *fiqh* scholars was formulated based on the consensus of the *Muhajirin* and *Ansar* in choosing the four previous caliphs. There was an election that occurred spontaneously in that event, namely the election of Abu Bakr and Ali with consideration of general responsibility for the election of Abu Bakr and Ali from another friend.²⁰

¹⁶ Djazuli.

¹⁷ Muhammad Iqbal, *Fiqh Siyasaḥ: Kontekstualisasi Doktrin Politik Islam* (Jakarta: Prenamedia Group, 2014).

¹⁸ Suyuthi Pulungan, *Fiqh Siyasaḥ: Ajaran, Sejarah Dan Pemikiran* (Yogyakarta: Ombak, 2014).

¹⁹ Iqbal, *Fiqh Siyasaḥ: Kontekstualisasi Doktrin Politik Islam*.

²⁰ Iqbal.

The fundamental of the institution Deliberation as a reflection of the sovereignty of the people, based on the word of Allah SWT in As-Syura (42): 38:

والذين استجابوا لربهم وأقاموا أصالوة وأمرهم شورى بينهم ومما رزقناهم ينفقون

Responding to *al-Mawdudi's* verse that one of the characteristics of Muslims is to solve problems that together become a concern with deliberation. The verse is not only a warning about a fact, but also as a command and regulation. Then, there must be a consultative figure.

Al-Mawardi is of the view that there are differences of opinion among scholars regarding the number of *ahlul ḥalli wa al-‘aqdi* who have legitimacy as representatives and the people's choice in choosing the head of state. The case in *Saqifah Bani Sa'idah* in determining Abu Bakr as caliph using allegiance was a wet election because it was approved by the *jumhur ahlul ḥalli wa al-‘aqdi*. This was agreed by some scholars. This is different from the opinion of some other scholars that the caliph must be chosen or approved by five friends in the mirror of the selection of Abu Bakr and Usman which was agreed upon by Umar bin al-Khattab, Abu Ubaidah bin Jarrah, Asid. ibn Hudhair, Basyar Ibn Sa'ad, and Salim mawla Abi Hudzaifah were later followed by other Muslims (in the case of Abu Bakr).

The incident *Saqifah Bani Sa'idah*, which produced Abu Bakr as caliph, was the result of deliberation conducted by friends with seniors. *Qiyas* became the basis of the argument in agreeing on Abu Bakr as caliph because Abu Bakr was appointed by the Prophet as a prayer priest. And according to Umar, Abu Bakr was the Prophet's most beloved friend.²¹

The relationship between *ahlul ḥalli wa al-‘aqdi* and the people as it is known that they are the people's representatives in exercising the right to elect the head of state, so it states that their choice is the people's choice. The issue of how such representation can occur is not explained in detail by the fiqh scholars, whether appointed by the caliph or elected by the people.²² However, *al-Mawardi* emphasized several criteria that must be owned or met by *ahlul ḥalli wa al-‘aqdi*, including: fair, knowing well the candidate

²¹ Mular Ibnu Syarif and Khamami Zada, *Fiqh Siyasah: Doktrin Dan Pemikiran Politik Islam* (Jakarta: Airlangga, 2008).

²² Pulungan, *Fiqh Siyasah: Ajaran, Sejarah Dan Pemikiran*.

for head of state to be elected and having broad policies and insights, aiming there are no mistakes in decision making in elect a head of state.²³

Bai'ah

Etymologically *bai'ah* is a form of masdar that comes from *bāyi'un* (transaction). The oath of allegiance to leadership is the meaning of *bai'ah*, which has implications for a strong relationship between the leader and the led. *Bai'ah* creates legal binding in the form of responsibilities, obligations, and rights that are fair and proportional.²⁴ Ibn Taimiyah argues that *bai'ah* means an oath of allegiance from the community to the leader. Identical to the agreement, it must involve two or more parties, the leader and the community. In realizing *bai'ah*, the scholars and all parties who are knowledgeable, talented, influential, and have to power are involved in the process.²⁵

The expansion of the meaning of *bai'ah* by involving all influential elements of society is one of Ibn Taimiyah's main thoughts which is not in line with the elitist implications of the concept of *ahlul ḥalli wa al-'aqdi*,²⁶ which characterizes classical *khilāfah* theory. Some classical theorists view *ahlul ḥalli wa al-'aqdi* as having a great power in determining the outcome of the constitutional process that, on various occasions, they reduce the practice of *bai'ah* or even ignore it. For example, to justify the dynastic succession. Al-Mawardi asserted that, *bai'ah* can be said to be valid even it only born from the government's agreement with one voter. Thus, it is justifying the practice of hereditary succession.

Ibn Taymiyya's opinion shows that the blessings of the people expressed in *bai'ah* are the legal protection for the Islamic government. Because *bai'ah* has a very important meaning, and its implementation must be carried out in an atmosphere that guarantees

²³ Iqbal, *Fiqh Siyasah: Kontekstualisasi Doktrin Politik Islam*.

²⁴ Faizin and Wan Zailan Kamaruddin Wan Ali, "Konsep Imamah Dan Baiat Dalam Pemikiran Lembaga Dakwah Islam Indonesia Dilihat Dari Perspektif Siyasah Syari'ah," *Ar-Risalah* 15, no. 1 (2015): 1–7, <https://doi.org/10.30631/al-risalah.v15i01.374>.

²⁵ Jindan Khalid Ibrahim, *Teori Politik Islam: Telaah Kritis Ibnu Taimiyah Tentang Pemerintahan Islam* (Surabaya: Risalah Gusti, 1995).

²⁶ Istilah *ahlul ḥalli wa al-'aqdi* sebenarnya bukan istilah syariah, tetapi istilah yang dipopulerkan oleh para fuqaha dan ahli sejarah. Sebuah alasan mengapa ini tidak bisa disebut sebagai istilah syariah, karena istilah ini tidak digunakan dalam nas-nas syariah. Karena itu, tidak semua fuqaha menyebut dengan istilah yang sama. Imam al-Mawardi dan al-Farra', misalnya, menggunakan istilah *ahlul ḥalli wa al-'aqdi*. 2 al-Hamidi dan ar-Ramli menyebutnya dengan istilah "Ahlul Ikhtiyar". 3 Ibn Hazm menyebutnya dengan istilah "Fudhola al-Ummah" 4 Al-Qahir al-Baghdadi menyebutnya dengan "Ahlul Ijtihad wal' Adalah." Semua ini sebenarnya mempunyai konotasi yang sama, <http://hizbut-tahrir.or.id/2015/08/31/siapa-ahlul-halli-wal-aqdi>, di akses 7 Agustus 2019, 9.11 WIB

freedom of opinion and the possibility of conflict. Moreover, it must always be related to the Shari'a, which must be obeyed by the government and the community as a firm commitment to obey all the rules contained in the law of Al-Qur'an and As-Sunnah.²⁷

Conditions such as knowledge, fairness, and piety that must be met by a leader are in line with Ibn Taimiyah's method which emphasizes the most important elements in every situation in society according to their capabilities, resources, and diversity, as well as different levels of their lives.²⁸

Therefore, Ibn Taymiyya thinks that there is no Muslim who is not entitled to the highest position, as long as he fulfills the following conditions. First, obtain the most votes from the *ummah* using Islam is determined by deliberation and *mubaya'ah*. Second, obtain support from those in power in society (*ahl al-syaukah*). Third, reliable and meets requirements of power personnel.

Legal Basis for Presidential Threshold and People's Sovereignty in Indonesia

Presidential Threshold is a concept that aims to nominate qualified candidates for President and Vice President. This proposal is made by a political party or coalition of political parties who are responsible for the pair of President and Vice President.²⁹ This was limit adopted in the electoral system, as a formula for counting votes and seats in proportional representation systems. Indonesia applies a Threshold in the electoral system because Indonesia adheres to a proportional representation system.

This term Threshold is also called minimum limit. This term is often used to set the parliamentary threshold and the presidential threshold to participate in elections.³⁰ The electoral threshold is generally divided into two classifications, Threshold Effective and Threshold Formal. Andrew Reynolds explained that the effective threshold is the setting that was born from a mathematical calculation in the electoral system (mathematical by-product electoral system feature). The effective threshold is also translated as a hidden threshold, natural threshold or because the law does not explicitly

²⁷ Ibrahim, *Teori Politik Islam: Telaah Kritis Ibnu Taimiyah Tentang Pemerintahan Islam*.

²⁸ Qomaruddin, *The Political Thought Ibn Taymyya*, n.d.

²⁹ Agus Adhari, "Eksistensi Presidential Threshold Pada Pemilihan Umum Serentak 2019," 2016, https://www.researchgate.net/publication/299537176_Eksistensi_Presidential_Threshold_Pada_Pemilihan_Umum_Serentak_2019.

³⁰ Armia et al., "Penghapusan Presidential Threshold Sebagai Upaya Pemulihan Hak-Hak Konstitusional."

state the minimum percentage of votes that must be met. The threshold places the district as an important mathematical aspect in determining seat acquisition.³¹

In elections in Indonesia, the word Threshold was found in three cases of regulating the electoral system. The threshold that was first applied in Indonesia was before the 2004 General Election, namely the Electoral Threshold which was set in 1999. This threshold is interpreted as a condition for obtaining votes and seats for parties to participate again in the upcoming elections. This is stated in Law Number 3 of 1999 concerning General Elections which states "To be able to take part in the next General Election, Political Parties must have a maximum of 2% (two percent) of the total seats in the DPR or have at least 3% (one percent)) of the total number of seats in the DPR) the number of seats in DPRD I or DPRD II is spread out at least (half) of the number of provinces and in (half) of the number of regencies/cities throughout Indonesia based on the results of the General Election".³² This provision is reaffirmed in Article 143 paragraph (1) of Law Number 12 of 2003. This is known as the Electoral Threshold, namely the minimum limit for party seats in the post-conflict local election to take part in the next general election. In Article 5 paragraph (4) of Law Number 23 of 2003 concerning the General Election of the President and Vice President, it is stated that: "The Candidate Pair as referred to in paragraph (1) can only be proposed by a political party or political coalition of political parties that obtains at least 15% (fifteen percent) of the total seats in the DPR or 20% (twenty percent) of valid votes nationally in the election of members of the DPR.

Therefore, Article 5 of Law Number 23 of 2003 stipulates that pairs of candidates for President and Vice President are proposed by a party or coalition of parties that have at least 15 percent of the DPR seats or 20 percent of the DPR election votes. This provision was raised to 20 percent of the DPR seats or 25 percent of the DPR election votes by Article 9 of Law Number 42 of 2008 which reads: "A pair of candidates is proposed by a political party or coalition of political parties participating in the election who meet the requirements to obtain at least 20% of the number of seats in the election

³¹ I Gusti Nugrah Agung Sayoga Raditya, "Pengaturan Ambang Batas Formal (Formal Thershold) Dalam Konteks Sistem Pemilihan Umum Yang Demokratis Di Indonesia" (Universitas Udayana, 2013), <https://adoc.pub/pengaturan-ambang-batas-formal-formal-threshold-dalam-kontek.html>.

³² Dewan Perwakilan Rakyat RI, "Undang-Undang Republik Indonesia Nomor 3 Tahun 1999 Tentang Pemilihan Umum" (1999).

of members of the DPR or obtain 25% of the national valid votes in the election of members of the DPR, prior to the holding of the Presidential and Vice-Presidential Election. The rules regarding this election are regulated in Law Number 7 of 2017 concerning General Elections. This is called as the Presidential Threshold, which is the minimum limit of seats or votes for a party or coalition of parties to nominate a candidate pair for President and Vice President.

Etymologically, people's sovereignty comes from the Latin word *supreme*, which means *over*. In line with that, CF Strong stated that sovereignty means superiority which, in the context of the state, implies the power to make laws. Furthermore, in Indonesian Dictionary, sovereignty means the highest power over the government of the state, region, and so on. Meanwhile, according to Simon Blackburn's philosophical dictionary, sovereignty is the highest authority that is not subject to other authorities. The description explains that sovereignty is one form of power, in this case, the highest power.

Indonesia as a state of law, of course, runs its government through a legal system. The Indonesian legal system begins with the 1945 Constitution of the Republic of Indonesia as the highest law and is determined or enforced by the laws and regulations without conflicting with the basic law. In the 1945 Constitution of the Republic of Indonesia, the phrase "people's sovereignty" is included in the preamble to the fourth paragraph.

This is different from the people's sovereignty in the 1945 Constitution of the Republic of Indonesia before the amendment. After the amendment to Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, it was stated that sovereignty was in the hands of the people and carried out according to the Constitution.

The constitution has developed of meaning. It is no longer just a legal document but also contains the notion of constitutionalism, which is the basic principles of state administration, even in countries that do not have a written constitution that makes the supremacy of power in parliament as a form of people's sovereignty.

The theory of popular sovereignty was pioneered by Jean Jacques Rousseau who expressed his opinion that sovereignty or supreme power is in the hands of the people. The king or head of state is only the executor of what has been decided or desired by the people. This sovereignty of the people was also followed by Immanuel Kant who said

that the purpose of the state is to enforce the law and guarantee the freedom of its citizens. In the definition, the freedom here is freedom within the limits of legislation, while the law is the one that has the right to make it the people themselves. Thus, the law is the embodiment of the will or will of the people. So, it is the people who represent the highest power or sovereignty.

General Description of *Siyāsah Syar’iyyah* in the Implementation of People's Sovereignty in the System Presidential Threshold

There is a clear correlation between the rule of law based on the constitution and popular sovereignty which is implemented through a democratic system. This correlation is seen from the emergence of the term constitutional democracy, as stated in the theory of democracy, that people's participation is the essence of this system.³³ The concept of democracy provides the fundamental reason for a power mechanism based on the principle of equality and human equality. Democracy places humans as owners of sovereignty which are then known as the principle of popular sovereignty.³⁴

System Presidential Threshold is a concept that aims to nominate candidates for President and Vice President who meet the requirements. This proposal is made by a political party or coalition of political parties who are responsible for the pair of President and Vice President. Although, at the beginning of the discourse on the formation of the presidential threshold, there were many pros and cons both at the level of formulation in parliament and society in general. So, one of the Parties, namely the Ideal Party, chose a judicial review to the Constitutional Court for violating constitutional norms and injuring the norms of population sovereignty.

After going through a long debate and a mechanism of judicial review at the Constitutional Court (MK), the Constitutional Court finally decided to reject the lawsuit because the concept presidential threshold is an open law that is a policy for legislators and does not violate norms of constitutional norms so that it applied the presidential threshold.

The presidential threshold resulted in a polemic in the 2019 Election because the Presidential and Vice-Presidential Election, and the Election of Members of the People's

³³ Abdul Aziz Hakim, *Negara Hukum Dan Demokrasi Di Indonesia* (Yogyakarta: Pustaka Pelajar, 2011).

³⁴ Jimly Asshiddiqie, *Hukum Tata Negara Dan Pilar-Pilar Demokrasi* (Jakarta: Sinar Grafika, 2012).

Representative Council (DPR) were held simultaneously. Look at the rules for nominating the President-President and Vice-President in the 2019 Election, which is a minimum requirement of a 20% seat threshold in parliament and 25% of the national valid votes were elections in 2014. Here, the simultaneously of the two types of elections made deep enough problems. However, the regulation regarding the presidential threshold has existed for a long time since the 2004 election, but it has not become a polemic because the election for members of the House of Representatives was held first as material for determining the election. The presidential threshold plays in the election of candidates for President and Vice President, so that the people's sovereignty is realized in the legislative election, and the people immediately vote again in the election of candidates for President and Vice President.

Back to the rules made by the DPR, regarding the threshold for the nomination of President and Vice President, in Islam which was popularized by the *fuqaha*, the concept is known as *ahlul ḥalli wa al-‘aqdi*. In short, *siyasa fiqh* scholars refer to people who have the authority to decide and determine something on behalf of the people, meaning *ahlul ḥalli wa al-‘aqdi* as. With that, *ahlul ḥalli wa al-‘aqdi* can be stated to be a forum for representatives and aspirations of the people.³⁵

As approved by Maududi, verses about *ahlul ḥalli wa al-‘aqdi* is:

والذين استجابوا لربهم وأقاموا أصالوة وأمرهم سورى بينهم وما رزقهم ينفقون

The light in the verse that, in making decisions in an institution Consultative in the DPR must find an agreement point that sets the rules regarding the Presidential Threshold.

In classical literature, *ahlul ḥalli wa al-‘aqdi* is an institution whose job is to determine the leader or determine who will be the leader or caliph. However, if look more deeply, at the time of khulafaur-Rashidun, for example during the appointment of the caliph Abu Bakr As-Siddiq ra, there was a tough debate about who should be the successor of the Prophet's caliph, after his death.

In the Saqifah Bani Sa'idah forum, Muhajirin and Ansar both had names that they fought for as caliphs. From among the Muhajirins agreed to appoint Abu Bakr As-Siddiq ra as caliph, while from the Ansar who had already been in the Saqifah Bani

³⁵ Iqbal, *Fiqh Siyasah: Kontekstualisasi Doktrin Politik Islam*.

Sa'idah forum had a friend who was believed to be the leader, namely Sa'ad bin Ubadah, who was in pain at that time.

In this incident, at the time of the appointment of Abu Bakr as caliph, there was a tough debate but when the situation got more complicated and it was feared, that there would be a split and one of the Ansar groups stood up and said, "From us, there is a leader and from you, there is one leader, O Quraysh" then Umar bin Khattab came as an intermediary and said to Abu Bakr, "Raise your hand, O Abu Bakr!". Abu Bakr raised his hand, then Umar immediately pledged allegiance to Abu Bakr and the Emigrants followed him to pledge allegiance to Abu Bakr. Then, they follow also to be loyalty to him.

From this incident, it seen that Umar bin Khattab emerged as a force that had a big influence on the election of Abu Bakr as the strongest candidate to become the caliph to replace the Prophet Muhammad PBUH. Look at the context of the election of leaders in Indonesia today, in this case, the election of candidates for President and Vice President, then the the presidential threshold are relevant to be a representation of people's sovereignty where the majority vote of the people becomes a strong force that channeled to Political Parties to be more support and increase the percentage of seats in parliament and the national valid votes. The greater the power to nominate candidates for President and/or Vice President.

Umar bin Khattab's loyalty to Abu Bakr was then followed in droves by many friends both from the *Muhajirin* and from the *Ansar* in the Saqifah Bani Sa'idah incident that made Abu Bakr's choice of power as a substitute for the Prophet Muhammad PBUH become stronger. Where if it is discussed in the context of the General Election of President and Vice President in Indonesia, Abu Bakar as is the strongest candidate as it has the largest threshold requirements and is supported by power of politics which also has a large percentage threshold. Also, it was supported by Umar bin Khattab which was then followed by his other friends in the Saqifah Bani Sa'idah incident.

Therefore, the classical theory regarding the appointment of leaders by an institution called *ahlul ḥalli wa al-'aqdi* has the same function as the legislative institution, namely the House of Representatives (DPR) in the current context in Indonesia. The institution has the function of making regulations regarding the requirements for the nomination of leaders. The terms of a nomination here is the

threshold requirements or presidential threshold. As happened in the Saqifah Bani Sa'idah incident (an example of the first *ahlul Halli wal aqdi* incident) in determining the strongest candidate as a candidate for leader, where Umar bin Khattab acted as a representation of great political power, in the current context, there is a legislative institution that determines the terms of candidacy. That, there are political party factions that previously had a parliament on threshold as a form of measurement of their political power to determine the requirements for the nomination of leaders.

A Glance of the *Syar'iyah Siyāsah* Against the Sovereignty of the People In the system, Presidential Threshold

The fundamental of Ibn Taimiyah's opinion on election issues on the practice of the life of the prophet and *khulafaur rasyidin*, he argued that there was nothing wrong as the Prophet had given instructions the *khulafaur rasyidin* would one day continue his leadership in carrying out the mandate of government in the world. But, for themselves, these instructions do not meet the requirements of those who are entitled to become caliphs, unless Muslims choose and want them.

The process of *bai'ah* in classical treasures, namely during the *khulafaur rasyidin* period involved all friends who lived at that time, for example in the succession of Abu Bakr ra, after experiencing a long incident in *ahlul ḥalli wa al-'aqdi* at the Saqifah Bani Sa'idah incident. Abu Bakar ra became the strongest candidate than Sa'ad bin Ubadah from the Ansar. Abu Bakr emerged as the strongest candidate who pocketed great support from great friends, such as Umar bin Khattab and Abu Ubaidah bin al-Jarrah.

With this great power, the Companions flocked to the allegiance of Abu Bakr ra, means that the blessing of the people expressed in the *bai'ah* became the fundamental factor for the legitimacy of the Islamic government. The state is founded by the cooperation of the whole community, especially those who have a strong influence among the people because political power cannot be established without physical support. Without the support of the great political powers represented by great friends, such as Umar bin Khattab or in Ibn Taimiyah's language is *ahl al-shaukah*, the aspired Imamate will lose power and strength, even the entire goal.

Within the framework of *Bai'ah*, every Muslim can be elected to the highest position if fulfills the following conditions. First, get the most votes from the *ummah* by Islam determined by consultation and *mubaya'ah*. Second, obtain support from the

parties in power in the community (*ahl al-syaukah*). Third, is trustworthy and meet the requirements of power personal.

In the context of elections and the presidential threshold in Indonesia, it will find relevance where in this concept, the element of obtaining the support of the majority of the people has been met with a minimum standard of 20% (twenty percent) of seats in parliament and 25% (twenty-five percent) of seats in parliament to each party that participate in the election. This is an implementation of the support of power holders in society.

The identification of the people's will in the system presidential threshold lies in the general election when electing people's representatives who are incorporated into the legislative institution and has a legislative function in determining the threshold rules (presidential threshold). Only be *bai'ah* involves all people to participate. In the same way, the elections that are held also involve all people's participation directly in the booths where the voting occurs. Therefore, *bai'ah* is a commitment or oath of allegiance of the people to their elected representatives in the legislative general election.

Conclusion

Based on the description and discussion, it concluded that the form of legal certainty from the state as a legal protection for the implementation of general elections is to establish Law Number 7 of 2017 concerning General Elections as the initial channel for the process of people's aspirations or their political attitudes as mandated by the constitution. In addition, it must be realized that the merger of the election of members the House of Representatives with the election of the President and Vice President still requires various improvements, even though it has gone through a judicial review at the Constitutional Court and has been decided. That means, it has been formally and materially established.

The review of *siyāsah syar'iyah* in this study concludes that the presidential threshold has fulfilled the element of people's sovereignty with following two reasons. First, the System Presidential Threshold, which is a requirement for candidates for President and Vice President is a form of holding *bai'ah* itself because the community is directly involved in determining their attitudes and constitutional rights in choosing representatives in parliament. Second, the implementation of the system Presidential Threshold has been in line with the concept of *ahlul ḥalli wa al-'aqdi* because apart

from being a form of people's sovereignty that has been entrusted to him, it also has the task and function of setting the requirements as a leader.

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