

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

## A Comparison Of Presidential Regulations Threshold Indonesia And China In The Proposal Of Presidential and Vice Presidential Candidates

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**Abstract.** *Guarantees of Human Rights (HAM) are an important pillar of democratic life. Article 28D paragraph (3) of the 1945 Constitution states, "Every citizen has the right to equal opportunities in government." However, the candidate pair must meet a threshold requirement of 20% to advance in the election for the nomination for president and vice president. In Article 6A paragraph (2) of the 1945 Constitution, he cannot become president or vice president because he does not meet the 20% threshold, which is not in accordance with democratic principles. Other countries, including China, do not employ the presidential threshold system for selecting presidential and vice presidential candidates. The research method used is sociolegal research with an approach method, namely a historical approach. Research results in Indonesia indicate that they wish to nominate the President and Vice President, the Board People's Representatives (DPR), and the House of Representatives Regional (DPRD), especially those previously supported by political parties. Article 6A, paragraph (2) of the NRI Constitution from 1945 states that political parties, or a combination of them, propose the candidate pairs for president and vice president before the general election. Meanwhile, in practice, only one political party, the PKT, has effective power at the national level in China.*

**Keywords:** *Comparison; Indonesia vs. China; Presidential Threshold.*

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## **1. Introduction**

Article 1 paragraph (2) of the 1945 Constitution, as a result of the third amendment to the Indonesian Constitution, states that the Indonesian State adheres to the concept of popular sovereignty. According to this understanding, the Indonesian State adheres to a democratic system in which the highest sovereignty rests with the people . Indonesia, like the democratic country mentioned above, must, of course, uphold Human Rights (HAM). This is because guaranteeing Human Rights (HAM) is one of the important pillars of democratic life . Moreover, the universal acceptance of the current Human Rights (HAM) doctrine as a moral, political, and legal framework and guideline contributes to world peace and freedom from fear, oppression, and unfair treatment .

In a constitutional context that is full of political interests, the Indonesian Constitution also accommodates Human Rights (HAM) in the political field of government. The state guarantees that its citizens have the same political rights as one individual. Article 28D, paragraph (3) of the 1945 Constitution states this guarantee. The 1945 Constitution guarantees that :

“Every citizen the right to equal opportunities in government.”

Besides the article above, there is also a law that governs political rights for the government. It is called Law Number 39 of 1999 concerning Human Rights (HAM), and the eighth part of it talks about the right to participate in government. Article 43 says that :

- (1) Every citizen has the right to be elected and vote in general elections based on equal rights through direct, general, free, secret, honest, and fair voting in line with the law.
- (2) Every citizen has the right to participate in government directly or through freely chosen representatives, as specified in statutory regulations.

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The general election system for President and Vice President in Indonesia after the amendment to the 1945 Constitution actually provides very wide space for every citizen to have the right to vote and be elected. In addition to that, the pair of Presidential and Vice Presidential Candidates can be declared the winners of the Presidential and Vice Presidential general election if they have support of more than 50% (fifty percent) nationally and must reach 20% (twenty percent) in half of all provinces in Indonesia . However, to advance in the election, the presidential and vice presidential nominees must meet certain threshold requirements, commonly referred to as the Presidential Threshold.

The Presidential Threshold in the election of president and vice president has directly raised pros and cons since the beginning of its implementation in Indonesia. In the 2004 presidential election, the threshold rule for the election of president and vice president was applied at 3 percent of DPR seats, or 5 percent of the valid national votes obtained from the DPR elections, and in 2009, the threshold increased to 20 percent of the number of DPR seats, or 25 percent of the valid votes obtained . The DPR members participate in the national election. This rule persisted in the 2014 presidential election, requiring 20 percent of DPR seats or 25 percent of the national vote, and it remains the same for the 2019 and 2024 presidential elections. There is Article 222 of Law Number 7 of 2017 concerning General Elections, which states that political parties or combinations of political parties must hold 20 percent of the DPR seats or 25 percent of valid national votes to be able to nominate presidential and vice presidential candidates .

The nomination of President and Vice President pairs without a minimum threshold for support from political parties or combinations of political parties will open up more space or opportunities for people from various circles who have the potential, capacity, and capability to become President and Vice President whose opportunities have so far been closed. This is due to the lack of support from political parties that meet the presidential threshold . Furthermore, nominating the president and vice president under the Presidential Threshold provisions eliminates the opportunity to nominate the president and vice president independently without the support of political parties in the DPR .

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Individuals and groups from non-political parties lose their right to election representation. This is tantamount to violating the principles of democracy, which explain that every citizen has the same rights. For instance, if a very suitable candidate, meeting the criteria, and possessing the qualities and capabilities to become President of the Republic of Indonesia, receives promotion from a small party or falls below the 20% threshold, as stipulated in Article 6A paragraph (2) of the 1945 Constitution, he will not be eligible to become President or Vice President due to their failure to meet the 20% threshold, a violation of democratic principles.

Mr. Jusuf Kalla, who served as the 10th and 12th Vice Presidents of the Republic of Indonesia, shares my belief that there is no assurance of victory; in 2004, only 11 percent, four parties, and the Democrat Bulan Bintang supported us. But they won 60 percent. On the other hand, he said, when he ran for the 2009 presidential election with Wiranto, the pair received votes below the party's vote. Golkar and Hanura supported the pair of presidential candidates, JK-Win. According to JK, during the presidential election, people made their choices based on the figures who came forward .

After the election of the president and vice president, the establishment of a threshold for nominating candidates can lead to an imbalance in parliament. This imbalance could delay the work program of the elected president and vice president, as the ruling party in parliament exerts pressure. Problems arise because not all political parties participating in the election can nominate each candidate for president and vice president on the grounds that these political parties did not participate in the previous election or did not have votes for legislative seats in the previous election.

Based on the description outlined above, the author is interested in raising this issue in a scientific work in the form of a thesis with the title "Comparison of Presidential Threshold Regulations Indonesia and China in Nominating Candidates for President and Vice President".

## **2. Research Methods**

Research methods are methods or procedures used to conduct research so that they are more focused and can answer the problem formulation and research objectives and can be scientifically justified . This research is a type of socio legal research, namely is an approach that done with see something reality law in in public, And is approach Which used For see aspects law in interaction social in in public, works as support For identify And clarify findings material non law for needs legal research or writing on Comparative Presidential Threshold Regulations

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Indonesia and China in Nominating Candidates for President and Vice President . The approach method used is a historical approach which is carried out by examining the background of what was studied and the development of regulations regarding the issue at hand .

Data sources come from primary legal materials, secondary legal materials and tertiary legal materials. Primary legal materials consist of basic regulations, statutory regulations, official records, state gazettes and explanations, treatises, which are closely related to legal materials with the problem being studied . This research consists of: Pancasila, the 1945 Constitution of the Republic of Indonesia, Law Number 39 of 1999 concerning Human Rights, Law Number 7 of 2017 concerning General Elections. Furthermore, secondary legal materials are materials that provide instructions and explanations for primary legal materials, such as books, journals, scientific works and opinions of legal experts related to the writing of this research . Furthermore, tertiary legal materials are data or materials that provide instructions or explanations for primary legal materials and secondary legal materials . Tertiary legal materials in this research include dictionaries or encyclopedias related to the writing of this research. Next, data collection techniques include interviews and literature review/study.

### **3. Results and Discussion**

#### **3.1. Indonesia**

In this case, the application of the Presidential Threshold to the conditions for presidential and vice presidential nominations appears to have violated human rights, especially political rights, which should be upheld in a democratic country. Freedom to choose and be elected in elections is a very crucial right in a democratic country because the dynamic of democratic life is that the people hold the highest power . Considering that Indonesia adheres to a presidential system, the characteristics of this system are that there is no connection between the executive and legislative institutions, because these two institutions have clearly different legitimacy. These two institutions cannot overthrow each other, their positions in the state structure are parallel. With this parallel structure of state institutions, it is very unnatural that the nomination of president and vice president still requires the support of a vote from the DPR as is the Presidential Threshold that is currently implemented.

The part that is often forgotten in democracy is essentially giving the people a choice. However, in reality political parties only rely on and form coalitions with the ruling political party so that they can only provide support and do not have voting rights in nominating their own political

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party cadre candidates in accordance with the agreement stipulated by the ruling political party. As the provisions of political parties participating in general elections are regulated in Article 414 paragraph (1) of Law Number 7 of 2017 concerning General Elections which states that "Political Parties Participating in General Elections must meet the threshold for obtaining votes of at least 4% (four percent) of the total valid votes nationally to be included in determining the acquisition of seats for members of the DPR."

The existence of a threshold in nominating candidates for President and Vice President can create an imbalance in parliament which is needed after the election of the President and Vice President which can cause delays in the work program of the elected President and Vice President due to pressure from the ruling party in parliament. Problems arise because not all political parties participating in the election can nominate their respective candidates for President and Vice President on the grounds that these political parties did not participate in the previous election or did not have votes for legislative seats in the previous election.

If wish to nominate for President and Vice President, Board People's Representatives (DPR), and the House of Representatives Region (DPRD) especially Previously supported by political parties. As written in Article 6A paragraph (2) of the NRI Constitution In 1945 "the candidate pairs for President and Vice President were proposed by Political Parties or a combination of Political Parties participating in the general election before the election is held general".

### **3.2. China**

In practice, only one political party has effective power at the national level, namely the CCP. This dominance is such that China is effectively a one-party state. Eight small parties are part of the United Front and also take part in the political system, but they have limited power at the national level. Small parties within the Front are almost completely subservient to the CCP; they must accept the "leading role" of the CCP as a condition for their continued existence.

China's political system allows the participation of some non-CCP members and minor parties in the National People's Congress (NPC), but they are checked by the CCP. China's Constitution states in its preamble: "The system of multiparty cooperation and political consultation led by the Communist Party of China will exist and thrive for a long time to come."

The President of the People's Republic of China (simplified Chinese; traditional Chinese: Pinyin: Zhōnghuá Rénmín Gònghéguó Zhǔxí), or abbreviated Hanzi: meaning Chairman of State) is the

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head of state People's Republic of China. This position was created through the Constitution 1982. Previously, the President was elected by the National People's Congress in accordance with Article 62 of the Constitution. In practice, presidential elections are usually 'single candidate' elections. The candidate was recommended by the Presidium of the National People's Congress.

The term Zhuxi (Chairman) refers to the general chairman of a committee, and was translated as such before the 1982 Constitution (e.g. Chairman Mao). The official translation changed to President after 1982 to follow Western terminology. Despite this, zhuxi is still used in Chinese, and its original meaning remains general chairman. The word President when translated from English is still Zongtong (zǒng tǒng), which causes some confusion regarding its usage. Zongtong was not used to replace Zhuxi because it was considered Western and bourgeois.

With a population of 1.3 billion people, the direct election of a national leader in China would likely be a task of Herculean proportions. That is why the general election procedure for the supreme leader is based on a series of complicated representative elections. Here's what you should know about the National People's Congress and the election process in the People's Republic of China. The National People's Congress, or NPC, is the highest organ of state power in China. It consists of representatives elected from various provinces, regions, and government agencies across the country. Each congress is elected for a five- year term . NPCs are responsible for the following:

- a) Amending the constitution and overseeing its enforcement.
- b) Enact and amend basic laws governing criminal offenses, civil affairs, state organs, and other matters.
- c) Elect and appoint members to central state organs, including the chairman, vice chairman, secretary general, and other members of the NPC Standing Committee. The NPC also elects the President and Vice President of the People's Republic of China.

Despite these official powers, the 3,000-person NPC is largely a symbolic body, as members are often unwilling to challenge leadership. Therefore, real political authority rests with the Chinese Communist Party, whose leaders ultimately set policy for the country. While the power of the NPC is limited, there have been times in history when dissenting voices from the NPC have forced the purpose of decision making and policy review.

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The election of Chinese representatives begins with the direct vote of the people in local and village elections operated by local election committees. In cities, local elections are broken down by residential areas or work units. Citizens 18 and older elect to their village and local community congresses, and those congresses, in turn, elect representatives to provincial people's congresses .

Provincial congresses in China's 23 provinces, five autonomous regions, four municipalities directly governed by the Central Government, the special administrative regions of Hong Kong and Macao, and the armed forces then elected approximately 3,000 delegates to the National People's Congress (NPC). The National People's Congress is empowered to elect China's president, prime minister, vice president, and chairman of the Central Military Commission as well as the president of the Supreme People's Court and the procurator general of the Supreme People's Procuratorate.

The NPC also elects the NPC Standing Committee, a 175-member body composed of NPC representatives that meets throughout the year to approve routine and administrative matters. NPCs also have the power to remove any of the positions listed above. On the first day of the Legislative Session, the NPC also elects the NPC Presidium, which consists of its 171 members. The Presidium determines the session agenda, voting procedures on bills, and the list of non-voting delegates who can attend NPC sessions.

#### 4. Conclusion

The application of the Presidential Threshold to the requirements for presidential and vice presidential nominations appears to have violated human rights, especially political rights, which should be upheld in a democratic country. Freedom to choose and be elected in elections is a very crucial right in a democratic country because the dynamic of democratic life is that the people hold the highest power. In Indonesia If wish to nominate for President and Vice President, Board People's Representatives (DPR), and the House of Representatives Region (DPRD) especially Previously supported by political parties. As written in Article 6A paragraph (2) of the NRI Constitution In 1945 "the candidate pairs for President and Vice President were proposed by Political Parties or a combination of Political Parties participating in the general election before the election is held general". Meanwhile in China, in practice, only one political party has effective power at the national level, namely the PKT. This dominance is such that China is effectively a one-party state. There is a need for reconstruction of the Presidential Threshold Regulation in the Submission of Candidates for President and Vice President by

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Political Parties and combinations of political parties in Indonesia to provide opportunities for the nation's best sons and daughters to nominate themselves as president and vice president of Indonesia.

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