

Concentration of power in nomination of presidential candidates in Indonesia

Asian Journal of Comparative Politics
2024, Vol. 9(3) 375–387

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DOI: 10.1177/20578911231199530

journals.sagepub.com/home/acp



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Abstract

Since 2004, Indonesia has held 5-yearly national elections for the positions of president and vice president. This has been a promising step forward in a maturing democracy. However, a restriction was imposed that nomination of presidential candidates can only be made by political parties with parliamentary representation above some minimum level—the “minimum threshold”. That threshold is relatively high, meaning that since 2009, there has only ever been two candidates for president in the elections, each backed by coalitions led by the dominant establishment parties. This paper discusses the workings of the minimum threshold and argues that it undermines democratic principles, having the effect of preserving and strengthening the power of the strongest political parties at the expense of new or emerging voices. We also propose an alternative approach that delivers the desired broader democratic voice.

Keywords

candidate nomination, Indonesia democracy, minimum threshold, political parties and democracy, presidential nominations

Introduction

Like many countries of the world, Indonesia operates with a presidential and Parliamentary system, each with their different roles. One point at which they interact is with the nomination of

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presidential candidates. Since 2004, the president has been elected via popular vote, but the nomination of presidential candidates is made by political parties with representation in the parliament. Only parties with parliamentary representation above some minimum level—the “minimum threshold”—are eligible to nominate candidates. This paper discusses the workings of the minimum threshold and argues that it undermines democratic principles, having the effect of preserving and strengthening the power of the strongest political parties at the expense of new or emerging voices.

The issue of candidate selection has been widely studied in the literature, but in most cases this has to do with how parties select candidates from among their own members for a particular seat or jurisdiction (Bawn et al., 2012; Cross, 2004; Pruyssers and Cross, 2016). The issue of who is eligible to be a candidate for a position in parliament or a presidential candidate usually centres around individual characteristics such as citizenship, age, criminal record, etc. In some cases, additional restrictions are placed on candidate eligibility that affect the ability of certain ethnic or other groups to be represented (Rodan, 2018; Tokali, 2008).

The Indonesian situation differs from these. Essentially it is built on the premise that a presidential candidate needs to have a base of support within the parliament. Without this support, their capacity to work collaboratively with the parliament would be greatly hindered. The minimum threshold is a way to guarantee that a presidential candidate has sufficient parliamentary support.

Before we go into that specific example, the broad issue we are addressing here is the risks associated with political parties who hold majority power in the parliament exercising that power to pass laws that do harm to democratic principles and actually reduce the voice of voters. This is a well-researched topic and of course there are many examples in recent and in past history of exactly this phenomenon. A prominent recent example includes the voter suppression laws in the United States: under the guise of reducing voter fraud, more stringent identity requirements for voters make it harder for certain demographic groups to vote, thus biasing elections in a certain direction (Hajnal et al., 2017).

With this context, it is important to understand the mechanisms by which political parties intent on preserving their power can undermine democracy, even in a comparatively well-functioning democracy. In most cases, a Constitution or a Bill of Rights provides some safeguards against violation of the democratic rights of the citizens, so the issue often becomes one of constitutional accountability. These are the exact issues that we face when we consider the example in Indonesia of nomination of presidential candidates. We will use the Indonesian example to highlight how important it is for constitutional accountability to be maintained, in order to provide a check and a balance against the increasing concentration of power amongst political parties. This requires a strong constitutional court that is empowered to be independent. And in this context, there are lessons to be learned from Indonesia’s experience, which we will articulate in this paper.

Turning to the specifics of this paper, we are concentrating particularly on an application of a law which was initially passed in 2003 leading up to the 2004 presidential election in Indonesia. This law specified what has become known as a minimum threshold, namely that a party or a coalition of parties in government must have received a minimum number of votes in the most recent parliamentary elections and hold a minimum number of seats in the parliament in order to be eligible to nominate a presidential and vice presidential candidate in the upcoming presidential elections.

This one law was passed in 2003 and first utilized in the 2004 presidential elections. It has subsequently been updated and applied in every presidential election since. We will look in more detail at what the evidence suggests are the consequences of this law for the selection of candidates and

for the narrowing of the political narrative around who represents the people in the roles of president and vice president.

To our knowledge, the minimum threshold is a phenomenon unique to Indonesia, but it does provide an interesting example of the broader issue of political party actors and the risks to citizens' democratic rights.

Democracy and political parties

An analysis of the presidential nomination process needs to fit within a broader understanding of democratic principles and the role of political parties. We will reflect on these broader democratic principles and on the role of political parties and on some of the literature highlighting the ways in which these pillars of modern democracy can and have worked in conflict with each other.

The general definition of democracy is contained in Jürgen Habermas' *Conception* (e.g., Staats, 2004), namely a self-organizing community of free and equal citizens, coordinating their collective affairs through their common reason. Meanwhile, a narrower definition of democracy was formed by Joseph Schumpeter (1943), focusing on democracy as a method for selecting leaders. According to David Held (1999), democracy must involve the political community as the main characteristic of democracy. So it can be interpreted that democracy is not only related to choosing leaders, but the legitimacy of power and power is carried out by involving the people in an equal and free position.

International research and policy have identified the basic principles that must exist in order to have a democratic government. These principles often become a part of the Constitution or bill of rights in a democratic society. Although no two democratic countries are exactly alike, people in democracies support many of the same basic principles and desire the same benefits from their government. Here is one of the more widely used statements of the principles: citizen participation, equality, political tolerance, accountability, transparency, regular free and fair elections, economic freedom, control of the abuse of power, bill of rights, accepting the results of elections, human rights, multi-party system, and rule of law (e.g. Day, 2022).

We pick up specifically here on the importance of a multi-party system. Having more than one political party participating in elections and playing a role in government provides a level of contestability of ideas and a variety of points of view to be presented, and most importantly creates an accountability to the citizens via elections—a poorly performing government can be replaced. Voter choice is essential.

Political parties fulfil several roles. In terms of candidacy, they are in essence the organisational structure that organises the nomination of candidates and provides the supporting institution that helps candidates to contest elections successfully. They provide a “brand” that gives a candidate a core level of support and public identity.

In terms of governing, the party structure allows a process of organising individual candidates into groups, allowing the majority party to claim a mandate to form government, and also providing the basic discipline (party rules) for how that group will organise themselves within government (or opposition).

Political parties also represent concentrations of power. They are often used as tools that bridge political elites within efforts to achieve political power in a country (Imawan, 2003).

On the other hand, there are many ways in which political parties facilitate increasing concentrations of power among the political elite that lead to harmful effects on democracy. One very relevant example of this is the problem of party leadership being centred around personalities who take long-term control of a party (e.g. Karvonen, 2010; Rahat and Sheaffer, 2007).

Personality-driven politics became more common in Indonesia during the post-New Order era of democratization. An early example is Megawati Soekarno Putri, who became General Chairperson of the PDI Perjuangan from 1999 to the present and became a central figure in the party. Then there is Susilo Bambang Yudhoyono (SBY), who is the initiator and General Chair of the Democratic Party and is also a central figure in the party. Amien Rais, as the founder of PAN, is a figure who has also had a big influence on the party since its birth in 1998. Another figure, namely Abdurrahman Wahid (Gusdur), became a charismatic figure who founded PKB and became chairman of the Syuro Council for approximately nine years. Prabowo Subianto, who is the general chairman of the Gerindra Party, is also a central figure for the party. Lastly, Surya Paloh is the founder and general chairman of the Nasdem Party who has not been replaced to date. These examples show how party elites can be the main actors in party management, influential in every decision/policy of political parties. Apart from surviving as the main leaders of the party, these figures also become an identity/image attached to the party they lead.

This phenomenon of the personalization of political parties contradicts the state's efforts to re-institutionalize political parties through the Political Party Law. Parties ought to have internal mechanisms and party structures that have their respective functions and authorities in party organization. They should be organized in a modern way, moving away from the traditional approaches to organisation, characterized by charismatic and patrimonial leadership (Calise, 2015; Nuhasim et al., 2014). An example of the decline in party management can be seen in the determination of the form and filling of the party's board of directors, which is often collusive and nepotistic. Basically, each political party has its own mechanism for electing leaders, namely by deliberation, acclamation or voting, and all of these mechanisms are contained in the party's bylaws. However, the tendency that occurs in the succession of party leadership is acclamation with a single candidate, as if it does not open up opportunities for other party cadres to take part in the succession. Likewise when filling out the party management structure, not infrequently the strategic positions of political parties are filled by those closest to the party chairman, without going through a democratic mechanism.

One of the great fears of political parties is a devolution of power to the citizens and to a broader and increasing base of voters. The incentive is there for political parties to seek to concentrate power rather than to devolve power. This will be an important interpretive tool to apply to make sense of what has taken place in Indonesia.

Parties in power have a number of levers available to try and cement their power and narrow the democratic freedom of the citizens. The most obvious ways this happens is via restrictions on the right to vote (voter suppression) and adjusting the system (e.g. electoral boundaries) to increase chances of winning marginal seats. However, another mechanism is making the candidate nomination process difficult or restrictive. Restrictions on candidacy reduce voter choice, and if the restrictions are biased toward major party candidates, they serve as a useful mechanism of concentrating and preserving existing power structures. In the extreme cases, all but one of the candidates are declared ineligible, and there is only one candidate, invariably from the ruling party.

Indonesian context

We explain now in more detail the workings of the minimum threshold and how it has been applied in each election from 2004 to 2019, including an explanation of how many candidates were nominated at each point. We will also show, by the construction of the minimum threshold, how from a theoretical point of view, it produces a phenomenon where it is impossible for there to be more than

three candidates or pairs of candidates for the presidential/vice presidential role. And in fact, in most cases there have been only two candidates. First, however, the 2004 changes need to be put in historical context.

Indonesia's first general elections were held in 1955, 10 years after the proclamation of independence in 1945, and five years after the 1950 provisional constitution established a liberal representative democracy with a parliamentary system as its form of government. When the Republic of Indonesia was proclaimed in 1945, one of the first programs supported by the country's founding fathers was the holding of general elections. However, elections could not be held for several years while a war of independence was waged against the Dutch colonial armed forces (Sulistyo, 2016). The founding president, Sukarno, was appointed by the Preparatory Committee for Indonesian Independence (PPKI). He held office from 1945 to 1967, when he handed over power to Suharto. During this period, the presidential nominations were made from among the parliament, and selected based on a parliamentary vote made early in the life of each parliament. In each case, there was only one nomination, Sukarno, so he was elected unopposed.

In 1963, four years before he stepped down, Sukarno was declared president for life. The decision was stipulated through MPRS Decree No. III/MPRS of 1963 concerning the Appointment of Dr. Ir Sukarno as President for Life. The idea of Sukarno being elected as president for life was sparked by concerns about the dominance in the parliament of one party, the PKI. It was felt by many powerful people that only Sukarno was considered able to outperform the popularity of the PKI (McIntyre, 2005).

The decision to designate Sukarno as president of Indonesia for life was deemed to have deviated from the 1945 Constitution. The 1945 Constitution states that Indonesia is a democratic country. Therefore, President Sukarno's appointment as president of Indonesia for life was considered very deviant. The 1945 Constitution also does not recognize the appointment of a president for life. Therefore, the decision to appoint Sukarno as president for life was no longer valid. President Sukarno stepped down from his position on 20 February 1967 after signing a Letter of Transfer of Power at the Merdeka Palace. After Sukarno stepped down, Suharto was appointed as president of Indonesia.

A further five legislative elections were held under President Suharto's rule, from 1967 to 1999. Every March following the legislative elections, the People's Consultative Assembly held a general session which included the election of the president and then the vice president. On all occasions, Suharto was the only person to be a candidate for president, thus allowing him to be elected unanimously. In the vice presidential election, all candidates backed by Golkar (and the military faction) were then elected unanimously (Sulistyo, 2016).

After Suharto was forced from office in 1997, there were three presidents elected by the Parliament, each serving short terms. The last of these was President Megawati (2001–2004). During her tenure, a constitutional amendment was introduced that allowed for popular elections for president.

This brief history highlights that 2004 marked a step forward in the maturing of the democratic processes for Indonesia, with the first popular elections for president (Abdulbaki, 2008; Singh, 2003). The Constitution at this point made it clear that the parliamentary parties were to nominate the president. Yet there is no further guidance in the Constitution about the process for nomination, or whether there should be some restrictions on which political parties ought to be eligible to make a nomination.

The move to direct election of the president and vice president was established by a 2002 amendment to the 1945 Constitution of the Republic of Indonesia. The amendment stated in Article 6A

paragraph (1) that the president and vice president are directly elected as a pair by the people. Article 6A paragraph (2) states that the pair of candidates for president and vice president shall be proposed by a political party or coalition of political parties participating in the general election prior to the holding of the general election. Paragraph (3) states that pairs of candidates for president and vice president who get more than 50% of the votes in general elections with at least 20% of the votes in each province spread over more than half of the total provinces in Indonesia, are sworn in as president and vice president. Paragraph (4) states that in the event that no presidential and vice presidential candidate pairs are elected, the two candidate pairs that receive the first and second most votes in the general election are directly elected by the people and the pair that obtains the most popular votes is sworn in as president and vice president. Finally, Paragraph (5) outlines the procedures for holding the presidential and vice presidential elections.

It is clear that this amendment of the Constitution of the Republic of Indonesia does not discuss thresholds, and it has a clear process for managing the need for more than one round of presidential elections, a likely occurrence if political parties name several presidential candidates.

Following this constitutional amendment, the Parliament passed Law Number 23 of 2003 concerning the general election of the president and vice president which became the basis for the implementation of the 2004 presidential election. The nomination of the president is regulated in Article 5 paragraph (1) which states that the participants in the presidential and vice presidential election are candidate pairs proposed in pairs by political parties or coalitions of political parties. Meanwhile in the provisions of Article 10 paragraph (4), presidential candidates and/or vice presidential candidates who have been proposed as a pair by a political party or a coalition of political parties as referred to in paragraph (3) may not be nominated again by a political party or coalition of other political parties, meaning that a candidate cannot be nominated twice by a political party or coalition of political parties.

The minimum threshold requirement was also established: only parties which received at least 5% of the popular vote or 3% of seats (17 of 550 seats) in the House of Representatives (Dewan Perwakilan Rakyat [DPR]) would be allowed to submit candidates. Parties that did not meet these criteria must join with other parties to meet at least one criterion (Ananta et al., 2005; Aspinnall, 2005).

Based on these minimum threshold requirements, seven parties represented in the parliament were eligible to nominate a candidate. Six of the seven chose to take this option, and one candidate was subsequently ruled ineligible, leaving five candidates. At the first round of voting, no candidate was able to achieve 50% of the vote, so as the Constitution allows, a second-round presidential election was held between the top two candidates, and the pair Susilo Bambang Yudhoyono and Muhammad Jusuf Kalla were appointed as president and vice president elect (Ananta et al., 2005).

Subsequent to the 2004 elections, the Minimum Threshold Law was strengthened by varying the threshold requirements. In the direct presidential election (Pilpres) in 2009 there was a change in the provisions for the presidential threshold amount following the issuance of the new Election Law (Mietzner, 2010). In this Election Law, there are new provisions for submitting the names of the presidential and vice presidential candidates. This is stated in Law Number 42 of 2008 general election for the president and vice president article 9 which reads: "Candidate pairs are proposed by political parties or a coalition of political parties participating in the election who meet the requirements for obtaining seats of at least 20% (twenty percent) of the total seats in the DPR or obtain 25% (twenty five percent) of the national valid votes in the election for members of the DPR, prior to the implementation of the presidential and vice-presidential election".

These threshold levels have remained constant since 2009, and have had the effect of reducing the number of candidates. In 2009 there were three candidates, and since 2014, there have been only two candidates nominated at each election. Of the three candidates in 2009, SBY was successful in achieving 60% of the vote in the first round, so was the victor without the need for a second-round runoff election.

The Minimum Threshold Law has been open to some questioning. For example, Goffar (2018) described how the existence of a presidential threshold was justified by a Court decision. The constitutional court, as the guardian of the Constitution, has decided the matter of constitutionality of the presidential thresholds. In the Decision No. 51-52-59/PUU-VI/2008 concerning Review of Law Number 42 of 2008 concerning General Elections, dated 18 February 2009, the Constitutional Court confirmed that the problem of setting the threshold is an open legal policy. This is reinforced by Decision No. 53/PUU-XV/2017 concerning Review of Law No. 7 of 2017 concerning general elections dated 11 January 2018 (Goffar, 2018). Pradnyana (2018) explains that the existence of a minimum presidential threshold is in accordance with the Constitution based on decisions of the constitutional court and the authority of the DPR as an institution that forms laws so that the legal product made is an open law policy of the DPR.

Why were these revisions to the minimum threshold law made prior to the 2009 election? Despite the fact that the two-round election process was managed well in 2004, the revision of the minimum threshold law to substantially increase the thresholds was designed to reduce the number of candidates, and reduce the chances of a second-round run-off being needed (Mietzner, 2010). Given the size of Indonesia's democracy, there is an aversion to that outcome, although it is common in many parts of the world, including equally large democracies (e.g. Brazil in 2022).

The other legitimate case for the minimum threshold is with the benefits of a president having a strong "party base" that in turn has a strong presence in the parliament. Sumodiningrat (2021: 49) argues that "the presidential threshold is aimed at simplifying the fragmentation of political parties in parliament". This allows greater cooperation between these two arms of government. For example, it is problematic if a reform agenda is proposed by the president, but it is rejected by the Parliament, owing to the president's limited influence and support within the parliamentary parties. This has been a real experience in Indonesia during the presidency of Abdul Rahman Wahid. He was elected president by the parliament in 1997, but with limited party support, in part because of splits within other larger parties. His presidency only lasted less than half of the 5 year term, as he was unable to gain sufficient support across the parties, and his initiatives generated a good deal of opposition, to the point where he even declared a state of emergency in the country a few months before he was ejected from the role of president (Vandijk, 2001).

It is notable that this very unsettled period occurred just prior to the introduction of a popular vote for the presidency, along with the minimum threshold requirements. It appears that the cautious approach to the presidential nomination process, further strengthened prior to 2009, was driven in part by a desire to avoid a repeat of this kind of instability.

The minimum threshold and democracy

It is notable that had the 2009 threshold levels been applied in the 2004 presidential nominations, the eventual winner, Susilo Bambang Yudhoyono, would not have been able to be nominated—his party only achieved 7.45% of the vote and 55 seats (10%), both well short of the 2009 thresholds.

This demonstrates in a very real way that this increase in threshold was consequential, not a minor pragmatic change.

Simple mathematics shows that the 25% minimum threshold puts in place a system whereby there can be at most three and in most cases only two candidates. In fact, as noted, after 2009, there have only ever been two candidates at all the subsequent elections, even though three is theoretically possible.

A two-candidate election will always mean a single-round presidential election where the winner is proclaimed at the end of the one and only vote. The Constitution allows for two rounds of elections, as in many countries of the world. Anticipating the possibility of multiple candidates, the second round will be utilised if no individual candidate achieves more than 50% of the vote in the first round, as happens very commonly in many countries in the world. In Indonesia, this part of the Constitution has not been called upon since the introduction of the higher minimum threshold (in 2009), because the number of candidates has always been small enough that the leading candidate has always already achieved the 50% threshold required to be declared the victor.

The empirical reality shows the strong connection between the minimum threshold and the narrowing of the base of candidates and therefore the preservation of the power and authority of the presidential position in tight alignment with the current political base—the large and powerful political parties that dominate the parliament.

This is not the experience in other countries of the world, such as, for example, France, where a small/new party candidate in Macron was elected (Elgie, 2018). Or in other cases where smaller minor parties have been able to put forward candidates who have successfully won elections. This cannot happen in Indonesia because of the minimum threshold rule, except in 2004 when the minimum threshold was set at a comparatively low level.

The seminal work by Dahl (1994) emphasises that mature democratic institutions ensure that “practically all adults have the right to vote in the election of officials and have the right to run for elective offices in the government” (Dahl, 1994: 26). More broadly, electoral justice requires that every action, procedure and decision related to the electoral process is in accordance with the law, the right to vote is protected, and the right is given to every political party or citizen to nominate candidates, including for president and vice president. The electoral justice system is a key instrument of the rule of law and the main guarantee of adherence to democratic principles to hold free, fair and pure elections.

From a constitutional point of view, elections are explicitly regulated in the 1945 Constitution of the Republic of Indonesia Article 6A paragraph (2) and are delegated in the Election Law. However, there are aspects of the Law that are considered by some to be contrary to the principles of democracy and the provisions stipulated in the 1945 Constitution of the Republic of Indonesia, including the minimum threshold provisions. These are stipulated in Article 222 of the Election Law. This Article undermines the intent of the Constitution and these important democratic principles because it places unreasonable limits on the opportunity for political parties to nominate candidates for president and vice president, violating the key democratic principle of citizen participation.

It is apparent that the minimum threshold aims to strengthen the major political parties and to diminish the rights of small new political parties. This strengthening of the two major parties reinforces all of the problems inherent in a two-party system, in particular the tendency for policy convergence around the “median voter”, well described in Alesina (1988). It is sometimes argued that new political parties should not be easily given equal status to old political parties that already have names and electability. However, the larger established parties already enjoy a legacy of a large and

often influential supporter base, so a new party already starts at a significant disadvantage. To further disadvantage them by excluding them from the nomination process is an unnecessary grab at power by the established parties. It is well recognised in the literature that there are great benefits in diversifying political power beyond one or two major parties—for example, see the work of Orellana (2014) on the benefits of diversity for policy making. Conversely, small parties pose a threat to the larger parties, with their focus on policy, often on single-issue policies. There is an incentive for the governing parties to limit the influence of these smaller parties, to protect their interests and influence.

To summarise, this section has shown from a theoretical and practical point of view that the minimum threshold has posed a narrowing of democracy in the presidential nomination process. It runs the risk of being perceived as the application of political power to diminish rights, reduce the voice of people and weaken democracy in the country. Making it impossible for a medium-sized or small party to nominate a presidential candidate clearly violates the democratic principles of a multi-party system.

Maximum threshold: A way forward

Having argued from a practical point of view what the effect has been and from a theoretical point of view about what the obvious implications are, we will turn to a discussion of the alternatives. We introduce an approach to thresholds in the nomination process which seeks to address the limitations and weaknesses of the current system and to establish a different way of thinking about thresholds that actually promotes and encourages democracy, whilst also recognising the value of parties as a legitimate system for organizing political actors. We refer to this proposal as the maximum threshold, and its basic idea is to limit the size of each party coalition, thus dispersing political power. To our knowledge, this approach is unique and has not been adopted in any other contexts. The issue of political party coalition formation has been studied from several angles (e.g. Dhillon, 2005), but we are not aware of discussion of the concept of a maximum threshold.

Under our proposal, the first stage of the nomination process starts with what we term a bottom-up process. International evidence suggests that a bottom-up participatory process not only strengthens democratic participation but also guarantees the autonomous authority inherent in political parties (Dalton et al., 2011). What is meant by “bottom up” is a system within each political party for determining the candidates for president and/or vice president in stages from the district/city, provincial and central levels. It is hoped that a bottom up system within each political party will be able to maximize public participation at large. Specifically, this serves to open space for all cadres and administrators of political parties. The bottom up process avoids parties getting stuck with the same choice of presidential candidate from one election to the next. The existence of a primary election within each political party will avoid the polarization of the contest which usually centres around only two choices, selected by only the largest parties in a top-down manner.

The case for a bottom-up approach is compelling. For example, evidence from Indonesia suggests that ethnic riots have been associated with areas of “low electoral competition”—narrowing the scope of candidates by relying on a top-down approach is disempowering to citizens and can lead to unrest (Toha, 2015).

After the potential candidates have been determined by each political party participating in the election, the next stage allows parties to form coalitions to strengthen the support base of particular candidates, and also to narrow the list of candidates. However, in the interests of encouraging diversity, it is desirable to prevent parties from forming coalitions that are too large—the larger the

coalition, the fewer candidates there are. We propose the use of a concept called the maximum threshold requirement in nominating the presidential and vice presidential candidates. This requirement works as follows. First, the maximum threshold is set as the highest percentage of votes of an individual political party which was achieved at the recent parliamentary election. For example, if the top ranked party receives 30% of the votes at the parliamentary election, the maximum threshold is set at 30%. Next, political parties are entitled to form coalitions for the purpose of nominating a presidential candidate endorsed by all members of the coalition. However, a key requirement is that a coalition cannot comprise a group of parties that together achieved more than the maximum threshold.

It should be pointed out that only political parties that have been declared passed based on Komisi Pemilihan Umum Republik Indonesia (KPU RI) verification in the 2019 elections would be able to nominate candidates. The 4% parliamentary threshold requirement or the acquisition of parliamentary seats or valid national votes is the key for political parties to advance as participating political parties (Idrus, 2022). Nine political parties passed the KPU RI verification for the 2019 elections. This mechanism thus serves as a natural way to enforce a minimum threshold in order to provide a modest restriction on the nomination process.

To illustrate the feasibility of this proposal in the Indonesian context, in the 2019 election, the political party that obtained the highest percentage of votes at that time was PDIP with a percentage of 19.33% (<http://www.kpu.go.id>). Under this proposal, this percentage would become the maximum threshold for the proposed presidential and vice presidential candidacy model. The PDIP party can nominate its own candidates for president and vice president without forming a coalition of political parties. Other parties can form coalitions and nominate a joint candidate, as long as the combined percentage of votes for any given coalition does not exceed the limit obtained by the largest party, PDIP. For example PKB party has a percentage of 9.69% and PKS has a percentage of 8.21%, so if they formed a coalition, the combined percentage would be 17.90%. This does not exceed the threshold obtained by PDIP so the two parties can form a coalition and nominate a pair of candidates for president and vice president. Meanwhile, other political parties that do not wish to form a coalition of political parties are given equal rights to nominate the president and vice president.

It is worth asking whether in fact a maximum threshold is required at all. Why not simply remove the minimum threshold requirement? Without some upper ceiling, parties can form coalitions as big as they are able to negotiate. This will provide an opportunity for political parties to combine in what Indonesians call a *kong kali kong way*—conducting a coalition by piling several small parties on the party with the highest percentage (Darma, 2018). This is likely to produce a single very powerful candidate and lead to a system led by transactional political parties focused purely on the aim of being part of the coalition that supports the president-elect.

Unlike the minimum threshold requirement, the process described in this paper based on the maximum threshold allows capable independent political parties to nominate candidates for president and vice president without having to combine political parties. In addition, there are several things that are important goals for the use of the maximum threshold, including:

1. The maximum threshold is in line with the meaning of Article 6A paragraph (2) of the Constitution which gives the right to each political party participating in an election to produce candidates for president and vice president independently or in a combination of political parties.

2. The presidential system is strengthened with the principle of checks and balances. The maximum threshold will give birth to controls and balances from other political parties that assist the development and evaluation of quality government policies.
3. The maximum threshold aims to strengthen the integrity of political parties. This gives a better likelihood of producing prospective leaders with integrity, quality and responsibility, and minimizing the risk of political corruption and abuse of power, as well as producing financial governance that is transparent and accountable, and not solely based on the desires of an elite group of certain political parties.
4. The maximum threshold does not eliminate the rights of small political parties, but also retains the relative strength of the larger parties, reasonably acquired by their electoral popularity.
5. The maximum threshold is in line with the principles of fairness and equal rights for political parties and citizens in determining the candidates for president and vice president.
6. The system will help eliminate forms of social polarization in the contestation for the election of the president and vice president.
7. The maximum threshold system will make it possible to produce multiple candidates. This will not cause concern: the Constitution allows for a second round to be held between the two candidate pairs that receive the most votes in the first open round. This was applied successfully in the 2004 presidential elections.

Implications

In this final section of the paper, we draw together all of these arguments and reflect on what we can learn from the Indonesian experience about the risks and hazards of application of political power to reduce democratic principles and the democratic power of people. The aim is to make the democratic movement across the world stronger as we learn from the experiences of individual countries and seek to ensure that these experiences are lessons for others as they move forward.

Lessons from the Indonesian experience include:

- The constitutional court needs to be independent: while the Minimum Threshold Law was deemed to be constitutional, there is plenty of debate about this, and some question about the degree of independence behind this decision (Butt, 2015).
- Strong civil society is needed in order to understand and to question proposed reforms from Government.
- The minimum threshold was invented to overcome potential problems that other countries rarely encounter. Reforms need to take more account of international experience, not just hypotheticals, especially when it involves the reduction of freedom and the power of citizens' voices.
- Legal measures can often be needed to prevent major parties from forming coalitions that can overwhelm other parties based on the sheer dominance of their support base. An approach we call the maximum threshold is discussed in this paper, one well suited to the Indonesian context.

Progress toward democracy in Indonesia has been slow and steady, and while minimum threshold is far from perfect, it represented a step forward in 2004 toward presidential election via popular vote.

The time is now right to improve the presidential nomination process, and this paper has explored a practical way forward.

Declaration of conflicting interests

The author(s) declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding

The author(s) received no financial support for the research, authorship, and/or publication of this article

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