

RECONSTRUCTION OF THE ELECTION OF THE PEOPLE'S REPRESENTATIVE COUNCIL BASED ON PANCASILA JUSTICE VALUES

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ABSTRACT

This study aims to analyze the threshold for legislative elections (DPR) vote after amendments to the 1945 Constitution of the Republic of Indonesia which are not yet fair, and reconstruct the threshold of the vote for the legislative elections (DPR) based on Pancasila justice. The approach method in this research is empirical juridical. The data used is primary and secondary data. The collected data will be analyzed descriptively in analysis. The results of the study found that the threshold for the Indonesian legislative elections after the amendment to the 1945 Constitution of the Republic of Indonesia was not yet fair because of the parliamentary threshold in Article 414 paragraph (1) of Act Number 7 year 2017 concerning the General Election resulting in the loss of millions and perhaps tens of millions of people's votes. The votes were not valued in the calculations so that the people's aspirations were not represented. This threshold provision had injured and reduced people's sovereignty. Reconstruction of the vote threshold for Legislative Election (DPR) in Law Number 7 year 2017 concerning Elections is Article 414 paragraph (1) that needs to be constructed by providing a balance of interests between the people as holders of sovereignty in fulfilling their aspirations and candidates for DPR and political parties as participants in general election.

Keywords: Parliamentary Election, Threshold, Justice.

INTRODUCTION

In studies of elections there are two aspects that must exist, namely, the electoral system (electoral system/law) and electoral processes (electoral processes)¹. The electoral system means an instrument to translate votes in elections into seats won by parties or candidates. In general there are four clusters of electoral systems, namely plurality/majority systems, proportional representation systems, mixed systems, and other systems. On the other hand, the election process is related to the choice of technical elements of the election, for example the magnitude of the electoral district (district magnitude), nomination method (electoral formula), voting method (balloting formula), and the method of counting the votes.²

The electoral system needs to be appropriately designed to realize the objectives of the election, according to Aurel Croissant, there are 3 (three)³ election objectives, namely: (i) political representation, in the sense that groups in society can be represented in parliament, both in terms of geographic, functional, and descriptive; (ii) political integration, namely political stability can occur because of an understanding between political parties and the public towards political parties so that political conflicts can be effectively remedied through representative institutions; and (iii) help establish effective government, namely the guarantee of government stability and the government's ability to run the government.

The three objectives of the General Election cannot be realized as a whole within the same deadline in the election. Therefore it is necessary to prioritize the objectives of the election by taking one or two of these priorities. Thus the meaning of elections will be felt by the community in order to realize the accommodation of civil and political rights and opinion in the management of the government.

The electoral system in Indonesia is constantly changing from time to time in every election. In the process of making a change of regulation for each election has the dynamics of legal politics, namely the political, economic, social, cultural background for the birth of election law products.

¹ Iwan Gardono Sudjatmiko, 1999, "Reformasi Sistem Pemilu Indonesia", in Agus Riwanto, *Hukum Partai Politik dan Hukum Pemilu di Indonesia Pengaruhnya Terhadap Penyelenggaraan Pemilu Berkualitas dan Sistem Pemerintahan Presidensial Efektif*, Thafamedia, Yogyakarta, 2016, p. 1

² Kacung MariAjan, 2010, *Sistem Politik Indonesia Konsolidasi Demokrasi Pasca Orde Baru*, PT Kencana, Jakarta, h. 83-85, in Agus Riwanto, *Hukum Partai Politik dan Hukum Pemilu di Indonesia Pengaruhnya Terhadap Penyelenggaraan Pemilu Berkualitas dan Sistem Pemerintahan Presidensial Efektif*, Thafamedia, Yogyakarta, 2016, p. 1

³ Aurel Croissant, 2002, *Election Politics in Southeast and East Asia*, Fredrich-Ebert-Stiftung, Singapore, in Agus Riwanto, *Hukum Partai Politik dan Hukum Pemilu di Indonesia Pengaruhnya Terhadap Penyelenggaraan Pemilu Berkualitas dan Sistem Pemerintahan Presidensial Efektif*, Thafamedia, Yogyakarta, 2016, p. 1-2.

Changes in the package of political laws in each of the different elections prove that there have been social and political changes in Indonesia which demand to be accommodated in the General Election to lead to legal policy in the form of a law that will be enforced or not implemented in order to achieve the objectives country.⁴

Until now, Indonesia does not yet have a stable election regulation, both in the sense of the electoral system (electoral system/electoral law), as well as from the electoral process.⁵

The electoral system adopted in Indonesia is a plurality/majority system candidate for members of the DPR, Provincial DPRD, and Regency/City DPRD who obtain the most votes obtain seats in the DPR, and DPRD. However, the determination of seats for elected candidates in the DPR is not the case. Political parties participating in the General Election must meet the vote acquisition threshold of at least 4% (four percent) of the number of legitimate votes nationally to be included in the determination of seats in DPR members. If the political parties participating in the General Election do not meet the vote acquisition threshold of at least 4% (four percent) of the national legitimate votes, even though the candidates from the party meet the Electoral Number (BPP) of the Electoral District (Electoral District), the candidate remains did not get a seat in the DPR, thus the candidate's vote was not counted (forfeited). The aspirations of the people as voters who have chosen their representatives through elections become not represented in the DPR. Therefore, the substance of popular sovereignty has been seized with such an election system. With the system of calculating the elected DPR members as stipulated in Article 414 paragraph (1) of Law Number 7 year 2017 concerning General Elections, tens of millions of people's votes will be in vain.

Determination of elected candidates for DPR members as stated in Article 414 of the Election Law has violated the principle of justice which is the principle in the implementation of elections. With the absence of tens of millions of people's aspirations have been channeled through the General Election to elect their representatives in the DPR. The people's sovereignty has been seized by the state through an improper electoral system.

In explaining Law Number 7 year 2017 concerning General Elections stated that, Election of DPR members, DPD members, and DPRD members are held by guaranteeing the principle of representation. It means that every Indonesian citizen has a representative who sits in a representative institution that will voice people's aspirations in all level of government, from the center to the regions. Elections that are held directly, publicly, freely, confidentially, honestly, and fairly are an absolute requirement to realize a quality representative, trustworthy, and can carry out functions to an optimal legislative institution. The implementation of good and quality elections will increase the degree of healthy, participatory and representational competition that is stronger and more accountable.⁶

In the context of the problematic implementation of the democratic system in Indonesia, this research was designed. The study limits the conduct of research on the implementation of the Indonesian Parliamentary Election system after the 1945 Constitution amendments and their problems, especially related to the Pancasila state ideology. It also analyzed and found the ideal legal construction of the Indonesian Election system based on Pancasila state ideology based on justice.

RESEARCH RESULT AN DISCUSSION

The threshold for the vote acquisition of the legislative elections (DPR) after the amendment of the 1945 Constitution of the Republic of Indonesia which is not yet fair.

Democracy is the maximum participation of the people in the running of state power. Thus, when interpreting democracy, it is simply as power from, by and for the people themselves. Power or sovereignty actually comes from the people. As is the case with its implementation, it is the people who will exercise that sovereignty to achieve prosperity and fulfill the expectations for the people's welfare as much as possible. This system of government based on popular sovereignty can be known as the "democratic" government system.⁷

The implementation of the principle of democracy itself is a manifestation of the implementation of one of the principles of human rights, namely human rights in the political sphere, meaning the rights to participate in government and equality of position in government.⁸ And as a political theory, democracy states that everyone has values and dignity that must be recognized and observed by the community.⁹

⁴ Moh. Mahfud MD, 2010, *Politik Hukum di Indonesia*, PT. Rajagrafindo Persada, Jakarta, p. 4.

⁵ *Ibid*, p. 74.

⁶ Explanation of Law Number 7 of 2017 concerning General Elections.

⁷ A. Mukhtie Fadjar, *Negara Hukum dan Perkembangan Teori Hukum, Sejarah dan Pergeseran Paradigma*, Intrans Publishing, Malang, 2018, p. 145.

⁸ *Ibid*, p. 146.

⁹ Robert K. Carr, *American Democracy, in Theory Practice*, Thenehart and Winston, New York, 1961, p. 26, in *Ibid*.

Thus democracy can only work with the rule of law. The new supremacy of law and rule of law can be enforced and must be enforced democratically if the laws and regulations are set by the people themselves through their representative institutions. Since, democracy is freedom held by order and order with freedom.¹⁰

The Indonesian people consciously or not have carried out the idea of democracy. The Indonesian people through elections dedicate themselves to building a democratic state with state power. Election is the mechanism chosen to make it happen. The importance of elections in a country that adheres to democracy has led to elections being used as a basis for determining the existence of democracy in a country. Countries that elect leaders and their representatives through general elections show that the country is democratic. Conversely, if there is no general election, the country is not democratic¹¹. In realizing truly democratic elections, one of the standards that must be a reference, is that elections are carried out with a set of regulations that support freedom and honesty, so that with laws that provide opportunities for freedom to citizens, opportunities in the direction of elections more democratic is achieved.¹²

However, the problem is to get there is not easy, it takes several stages and processes that must be passed. The processes that must be followed include: 1) must go through a democratic process and 2) must go through a general election process.

1) Democratic Process

The rationale of democracy is about people's sovereignty which means that all political power is returned to the people themselves as objects of authority.¹³ But the idea of democracy later developed in several aspects of human life and gradually adjusted national political needs. The idea of democracy has changed, from the idea of people's power to being an idea of equality, equality and prosperity.¹⁴ So, then there emerged several democracies, such as political democracy, economic democracy, religious democracy, and so forth.

The development of democracy in Indonesia itself has always fluctuated, it cannot be separated from the results of the political dynamics of the elite-bureaucrats, according to the agenda of their respective interests. Although it must be admitted that basically democracy is chosen because it is still believed to be a way out of the problems of life of the people who have always been in the sphere of tyranny and dictatorship for years.

Indonesian democracy itself experiences three phases of historical perspective which according to Miriam Budiardjo are divided into four phases:¹⁵

- a) The period of the Republic of Indonesia I (1945-1955), namely the period of democracy (constitutional) which highlighted the role of the parliament and party parties and which could therefore be called Parliamentary Democracy.
- b) The Period of the Republic of Indonesia II (1959-1965), namely the period of Guided Democracy which in many aspects has deviated from constitutional democracy which formally is the basis, and shows several aspects of people's democracy.
- c) The period of the Republic of Indonesia III (1965-1998), namely the period of Pancasila Democracy this is constitutional democracy that emphasizes the presidential system.
- d) The Period of the Republic of Indonesia IV (1998-present), namely the reformation period that wanted the establishment of democracy in Indonesia as a correction of the political practices that occurred during the Indonesian Republic III Period.

2) Democracy and Political Parties

C.F Strong said that democracy determines social progress, because when participation is high it will be directly proportional to the level of public awareness. Therefore, the party as a place of aspiration and at the same time a place for people's political struggle has important positions (roles) and roles in the wheel of democracy. In fact, many have argued that political parties are democracy¹⁶. What happens is a beneficial reciprocal relationship. Relationships only occur if the parties feel fortunate, if not, the relationship does not occur. As a result, the public views the existence of political parties with skepticism, even though political parties should be seen as tools of political struggle.

¹⁰ *Ibid*, p. 147.

¹¹ Wendy Melfa, *Menggagas Amandeen UUD 1945 dari Pemilukada*, Jurnal Dinamika Hukum Vol. 13 No. 1 Januari, 2013.

¹² *Ibid*.

¹³ Ilham Yuli Isdiyanto, *Rekonstruksi Hukum & Ketatanegaraan Indonesia*, UII Press, Yogyakarta, 2016, p. 142.

¹⁴ *Ibid*.

¹⁵ Miriam Budiardjo, *Dasar-Dasar Ilmu Politik*, Edisi Revisi, Cetakan Sembilan, Gramedia Pustaka Utama, Jakarta, 2013, p. 127-128.

¹⁶ Jimliy Assiddiqie, *Pengantar Ilmu Hukum Tata Negara*, Jilid II, Sekretaris Jenderal dan Kepaniteraan Mahkamah Konstitusi, Jakarta, 2006, p. 153.

3) Political Party and Election

Various skepticism towards political party is often encountered and we hear in Indonesia, although basically democracy also requires trust. Trust can be obtained from the party's track record. If the existence of a political party is not as expected, the public, especially the voting community, will prefer to be apathetic. People can be moved if they get something. Inevitably there is the practice of money politics in a democratic system. This is because the legitimacy of political parties is the high and low level of society in general elections.

Based on the provisions of Law Number 7 year 2017 concerning General Elections, Article 414 paragraph (1) the main conditions for being included in the determination of seats for DPR members of the Election Contesting Political Parties must meet a threshold of at least 4% (four percent) of valid votes national. Although Candidates for DPR members obtain votes that fulfill the Dividing Numbers as in Article 415 paragraph (2), Article 420 letter b in one electoral district, if the votes of the Election Contesting Political Parties carrying such candidates do not meet the 4% (four percent) vote Legally, the Political Parties Participating in the National Election cannot be included in the determination of seats in the DPR. From the provisions regarding this threshold, there will be millions of votes of the people who have chosen their representatives through candidates, who are not valued and forfeited.

From the provisions of Article 414 paragraph (1) this results in the deprivation of popular sovereignty has been channeled through the Election to elect its representatives in the DPR. To run a democratic state government based on Pancasila and the 1945 Constitution of the Republic of Indonesia. Article 414 is not in line with the consideration of the consideration of this Act, and is contrary to the principle of justice in elections.

Elections in the Post-Amendment to the 1945 Constitution were also marked by the application of a threshold system, namely the electoral threshold (minimum vote acquisition to be able to participate in the next election) for the 2004 Legislative Election and Parliamentary threshold (national vote for a party to be able to position their representatives in the DPR) for the 2009 and 2014 Legislative Elections, as well as the presidential threshold, namely the support threshold of the proponent party proposed by the pair of candidates for President and Vice President. This threshold system or policy is likely to continue to be adopted in subsequent elections.

The legislative elections to elect members of the DPR and DPRD in 2004 were followed by 24 political parties, in the 2009 elections followed by 38 political parties and 6 local political parties specifically for the Aceh province, and in the 2014 Election followed by 12 political parties and several local political parties. Meanwhile for the upcoming 2019 Election 16 national political parties and 4 (four) Aceh local political parties will participate.

Results of the 2004, 2009 and 2014 Legislative Elections (DPR) for the top five (KPU sources) as follows:

- a. 2004 Election (fighting 550 DPR seats): 1) 128 Golkar Party (21.58%), 2) PDIP 109 seats (18.53%), 3) PKB 52 seats (10.57%), 4) PPP 58 seats (8.45%), 5) Democrats 57 seats (7.45%);
- b. 2009 Election (multiplying 560 DPR seats): 1) Democratic Party 150 seats (26.75%), 2) Golkar Party 107 seats (19.1%), 3) PDIP 87 seats (15.5%), 4) PKS 58 seats (10.36%), and 5) PAN 43 seats (7.8%);
- c. 2014 elections (fighting for 560 DPR seats): 1) PDIP 109 seats (18.95%), 2) Golkar 91 seats (14, 75%), 3) Gerindra 73 seats (11.81%), Democrats 61 seats (10, 19%), and PKB 47 seats (9.04%)

If viewed from the three criteria of the principle of democracy, namely people's sovereignty, the legitimacy of the government, and regular change of government, then both the 2004, 2009 and 2014 elections has fulfilled them. Moreover, the constitution has provided a constitutional mechanism for the settlement of Legislative election results (PHPU) disputes and Presidential Elections at the Constitutional Court, while for Pemilukada/Pilkada (regional election) results disputes have been resolved at the Supreme Court (according to Law No. 32/2004) and then transferred to the Constitutional Court (according to Law 12/2008).

The description above shows that the Election Development in Indonesia was influenced by the development of its Constitution and the political/constitutional system that was implemented, so that the Election Principles, Election Participants, Election Organizers, and various Elections also experienced dynamics.

When it is viewed from the criteria of democratic principles, namely the principle of popular sovereignty, the legitimacy of the government, and regular governmental changes, only the 1955 Election, the 1999 Election, the 2004 Election, the 2009 Election and the 2014 Election fulfilled it. In terms of whether or not the election results are legally questioned in the court forum, only elections after the Amendment to the 1945 Constitution provide its constitutional mechanism, whereas in the General Elections before the Amendment to the 1945 Constitution the mechanism is not yet known.

From the explanation above, it appears that the implementation of elections in Indonesia includes the most complex and most complicated elections in the world. In this context the author wants to examine in more depth the extent of the implementation of legislative elections, specifically the election of the House of Representatives, in terms of aspects of democracy, the representation of the people represented, and the system used.

Post-Amendment to the 1945 Constitution the Legislative Election (DPR) has been held three times, namely the 2004 General Elections, 2009 Elections and 2014 Elections, and upcoming Elections in 2019. Since the 2009 - 2019 Election the threshold has been imposed. the sound of the legislative election (DPR). The 2009 legislative elections (DPR) are regulated in Law Number 10 of 2008 concerning General Elections of Members of the DPR, DPD and DPRD. Article which sets the threshold for the vote acquisition of the legislative election (DPR), namely Article 202 paragraph (1), "Election Contesting Political Parties must meet the vote acquisition threshold of at least 2.5% (two point five percent) of the valid number of votes national to be included in the determination of seats in the DPR ". This article requires the threshold for the vote acquisition of Political Parties Participating in National Elections.

From the provisions of the Article, the main conditions for being included in the determination of seats in DPR members must meet the prescribed threshold. Even though candidates for DPR get votes that meet the BPP in electoral districts, if the votes of the Election Contesting Political Parties carrying candidates for DPR do not meet the threshold of 2.5% (two point five percent) the legitimate votes of National Political Parties Participating in the Election cannot be included in determining the acquisition of seats in the DPR. From the provisions regarding the threshold, there will be millions of votes of the people who have elected their representatives through candidates who are not valued and forfeited.

The 2014 legislative elections (DPR) were held based on Law Number 08 year 2012 concerning Elections of the DPR, DPD and DPRD. Determination of the threshold for obtaining the legitimate number of political parties nationally is stipulated in Article 108, "Election Contesting Political Parties must meet the vote acquisition threshold of at least 3.5% (three point five percent) of the legal number nationally to be included in the determination of acquisition. seats for members of the DPR, PRovinsi DPRD, and Regency/City DPRD ". The upcoming legislative elections (DPR) in 2019 will be held based on Law Number 7 of 2017 concerning Elections. Determination of the threshold for obtaining the legitimate number of political parties nationally regulated in Article 414, paragraph (1) Election Contesting Political Parties must meet the vote acquisition threshold of at least 4% (four percent) of the legal number nationally to be included in the determination of member seats DPR. Paragraph (2) all Election Contesting Political Parties are included in the determination of seats for members of the Provincial DPRD and Regency/City DPRD. From the provisions of Article 414 paragraph (1) this results in the deprivation of popular sovereignty which has been channeled through the Election to elect its representatives in the DPR. To run a democratic state government based on Pancasila and the 1945 Constitution of the Republic of Indonesia. Article 414 is not in line with the consideration of the consideration of this Act, and is contrary to the principle of justice in elections.

Reconstruction of the threshold for the vote acquisition of the legislative elections (DPR) based on Pancasila justice values

According to Miriam Budiardjo, he explained that even though the right of democracy in choosing and being elected has been developed in the country of Vietnam, but overall, the matter of Indonesian Democracy is still considered more advanced. That is because Vietnam still holds the principle as a Communist state. That is, even though democracy in Vietnam is more advanced than it was a few years before, but still the election is still merely a means to fulfill the functions of the proletarian dictator.¹⁷

Indonesian democratic is held directly and through a system of representation. Directly, people's sovereignty is manifested in three branches of power reflected in the People's Consultative Assembly consisting of the House of Representatives and the Regional Representatives Council; President and vice president; and the power of Justice consisting of the Constitutional Court and the Supreme Court (legislative, executive and judicial).

The establishment of these state institutions is the ultimate goal to realize the goals of the Indonesian state as set out in the fourth paragraph of the 1945 Constitution of the Republic of Indonesia, namely¹⁸:

1. Protecting the entire Indonesian nation and all of Indonesia's bloodshed;
2. Promote general welfare;
3. Educating the life of the nation; and
4. Participate in carrying out world order based on freedom, eternal peace and social justice.

Law of the Republic of Indonesia Number 7 of 2017 concerning General Elections, namely the latest law for the holding of general elections simultaneously. This Law is a merger and refinement of the previous three existing laws, namely Law-Undang Number 42 of 2008 concerning the General Election of the President and Vice President, Law Number 15 of 2011 concerning

¹⁷ Miriam Budiardjo, *Dasar-Dasar Ilmu Politik*, Edisi Revisi, Cet. Kesembilan, Gramedia Pustaka Utama, Jakarta, p. 157.

¹⁸ The fourth paragraph of the Preamble of the 1945 Constitution of the Republic of Indonesia mandates as follows: "Then than that to form an Indonesian State Government that protects the entire Indonesian nation and the entire Indonesian bloodshed and to promote public welfare, educate the nation's life and participate in carrying out world order based on independence, eternal peace and social justice, then the Indonesian Independence was compiled in one Indonesian Constitution, which was formed in the state structure of the Republic of Indonesia which has people's sovereignty based on the One Godhead, just and civilized Humanity, Unity Indonesia, and popularism led by wisdom in consultation / representation, and by realizing a social justice for all Indonesian people".

the Implementation of General Elections, and Law Number 8 of 2012 concerning General Elections of Members of the People's Legislative Assembly, Regional Representative Council and Regional People's Representative Council.

In some democracies general elections are considered a symbol as well as a benchmark of democracy. The results can be used as a benchmark for the accuracy of the participation and aspirations of the people, although it is also realized that elections are not the only benchmark and need to be supplemented by measuring several other activities that are more sustainable, such as participation in party activities and others.¹⁹

It must be admitted that the Election Law Number 7 Year 2017 is far better than the law that has been replaced, at least it has united the general election activities carried out simultaneously. However, it must also be seen carefully that the law still contains several shortcomings and weaknesses that need to be reconstructed again, with the aim of preparing better electoral instruments. Some Articles in Election Law Number 7 of 2017 which according to Promovendus need to be reconstructed include the following articles:

Article 414

- (1) Election Contesting Political Parties must meet the vote acquisition threshold of at least 4% (four percent) of the number of legitimate votes nationally to be included in the determination of seats for DPR members.
- (2) All Election Contesting Political Parties are included in the determination of seats for members of the Provincial DPRD and Regency / City DPRD.

In accordance with Article 414 paragraph (1), all political parties that do not succeed in fulfilling the requirements for vote acquisition shall be at least 4% (four persen), the political party will not be included in the calculation of the determination of seats for DPR members.

The provision clearly ignores the aspirations of the voting people, while not in accordance with the principle that "Sovereignty is in the hands of the people". It is conceivable, if there are two or three political parties that only succeed in generating 3.5% each (three and a half percent), how much votes are wasted in vain. This is different from the legislative elections in the United States and France which still accommodate the people's voice, however small the votes are. Only those who get a small vote must join a party that gets a vote above the threshold.

The provision is not only wise, because it can still channel the voice of the minority, it also makes the people think, that not necessarily the one whose voice is not a bit of truth; because in small parties aspirations and ideals are often embedded which are often ignored by established parties. To avoid neglecting the voices of the people who are wasted, the vote acquisition of political parties that do not meet the threshold of at least 4% (four percent), then the political party must join together to obtain a vote of at least 4% (four percent) .

With reference to the description above, some of the articles should be reconstructed. But in the opinion of the author, many articles that need to be reconstructed, the most important and most urgent to be reconstructed, in accordance with the focus of study in this paper, is about the Legislative Election as the implementation of the concept of popular sovereignty as well as the implementation of the principles of Pancasila democracy and in accordance which has been regulated in the 1945 Constitution of the Republic of Indonesia, especially in relation to the main topic of this dissertation, only the author of reconstruction will only Article 414.

The complete Article are as follows:

- (1) Election Contesting Political Parties must meet the vote acquisition threshold of at least 4% (four percent) of the number of legitimate votes nationally to be included in the determination of seats in DPR members.
- (2) All Election Contesting Political Parties are included in the determination of seats for members of the Provincial DPRD and Regency / City DPRD.

If we look at the Article 414 Paragraph (1) is clearly less in line with the concept of "People's Sovereignty". Even though popular sovereignty is the key in understanding elections, where people's sovereignty places the people as the highest authority. It is also in line with the fundamental view in democracy, that governance is from the people, by the people and for the people. In this case the people are the foundation and basis of their legitimacy. Sovereignty can also be interpreted as the authority of a political entity.²⁰

People's sovereignty means that the people are in power, this is because the people of a country are a group of people who have similarities, including equality of origin, equality/feeling, equality of residence or search for sustenance, equality of interests or needs, equality of thoughts or intentions. The people who gather and live together need to choose their leaders or representatives together to determine their lives together, so that elections are carried out.²¹

¹⁹ *Ibid*, h. 461.

²⁰ Jimly Asshidiqie, *Pokok-Pokok Hukum Tata Negara Indonesia Pasca Reformasi*, Bhuana Ilmu Populer, Jakarta 2008, p. 158.

²¹ Kasman Singodimejo, *Masalah Kedaulatan*, Bulan Bintang, Jakarta, 1978, p. 39.

People who have sovereignty are characterized by their authority to determine the people who will represent them. The mandate for people is chosen as a representative given directly by the people through an election mechanism, which reflects that the government is sourced from the people.

On the other hand the purpose of elections is the implementation of the people's political rights. People in democratic countries are guaranteed by the constitution to carry out their basic human rights, one of which is political rights. Through the mechanism of periodic elections, these political rights can be carried out in an orderly and peaceful manner.

So it is very strange, if up to the provisions contained in Article 414 paragraph (1) until then reducing people's sovereignty rights and people's political rights. Therefore the Article which clearly reduces people's rights both in sovereignty and channeling their aspirations needs to be reconstructed from:

Article 414

- (1) Election Contesting Political Parties must meet the vote acquisition threshold of at least 4% (four percent) of the number of legitimate votes nationally to be included in the determination of seats for DPR members.
- (2) All Election Contesting Political Parties are included in the determination of seats for members of the Provincial DPRD and Regency / City DPRD. reconstructed into.

Article 414

- (1) Election Contesting Political Parties must meet the vote acquisition threshold of at least 4% (four percent) of the number of legitimate votes nationally to be included in the determination of seats in DPR members, Political Parties which do not meet the vote acquisition threshold of at least 4% (four percent) must join all political parties whose acquisition of votes is less than 4% (four percent) until they reach the threshold for obtaining a vote of at least 4% (four percent).
- (2) All Election Contesting Political Parties are included in the determination of seats for members of the Provincial DPRD and Regency / City DPRD.

Thus, according to the results of the reconstruction of Article 414 paragraph (1), all political parties that fail to meet the requirements for voting at least 4% (four pesrsen) must be prepared to join a political party that meets the requirements for voting at least 4% (four percent) if the political party wants to remain included in the calculation of the determination of seats for DPR members.

The provisions of reconstruction are also in line with the principle of "Sovereignty of Bradada in the hands of the people".²² Provisions on the results of the reconstruction also avoid the possibility of one or more political parties only succeeding in generating 3.5% (three and a half percent) respectively, which means that there will be millions or even tens of millions of voters who are wasted in vain.

Reconstruction is also in line with and in line with elections in other democratic countries such as legislative elections in the United States and France that still accommodate the people's voice, however small the votes are, including the votes from independent candidates. It's just that for those who get a small vote, they must join a party that gets a vote above the threshold.

These provisions, aside from being wise, because they can still channel the voice of the minority, also make the people think, that not necessarily the one whose voice is not a bit of truth; because in small parties aspirations and ideals are often embedded which are often ignored by established parties. The question of how the small party must be engaged with the party with a large vote (above the minimum threshold) is another matter. More specifically, Law Number 7 of 2017 concerning General Elections, particularly Articles related to the Legislative Election, before and after reconstruction can be clearly drawn and warped in the table as follows:

Table
Reconstruction of Law Number 7 year 2017 concerning General Elections
Based on Pancasila Justice Values

No.	Before Reconstructed	Weakness	After Reconstructed
1.	Article 414 paragraph (1) Election Contesting Political Parties must meet the vote acquisition threshold of at least 4% (four percent) of the number of legitimate votes nationally to be included in the determination of seats for DPR members.	Many people's voices are wasted, and people's aspirations are ignored, even the possibility of a majority vote is not represented, and injures people's sovereignty	Election Contesting Political Parties must meet the vote acquisition threshold of at least 4% (four percent) of the number of legitimate votes nationally to be included in the determination of seats in DPR members, Political Parties that do not meet the vote acquisition threshold of at least 4% (four percent) must join all political parties whose acquisition of votes is less than 4% (four percent) until they reach the threshold of obtaining a vote of at least 4%

²²See Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia.

			(four percent).
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From the results of the reconstruction of the Legislative Election Article in Law Number 7 year 2017 concerning the General Election, there were noticeable differences in the articles before being reconstructed compared to Law Number 7 of 2017 concerning Elections after being reconstructed. From the results of the article reconstruction in Law Number 7 year 2017 concerning Elections, it was also seen that the Reconstruction Election Law was not only more democratic than the Election Law, especially in relation to the Legislative Election, before being reconstructed, but also not ignoring the minority vote. This is in accordance with Article 1 paragraph (2) of the 1945 Constitution which is actually a reflection of the Preamble of the 1945 Constitution which contains points of Pancasila.

CONCLUSIONS

1. The vote threshold for the Indonesian legislative elections after the amendment to the 1945 Constitution of the Republic of Indonesia is not yet fair because the legislative election vote threshold throws the vote of political parties to sit as DPR members with less than 4% of the acquisition the voice of the DPR RI elections. For the upcoming elections in 2019 to be included in the determination of seats for members of the DPR Political Party, bearers must obtain at least 4% of the valid votes in an effort to simplify the party system in the future. As a result of the loss of millions and perhaps tens of millions of people's voices that were not valued in the calculations so that the people's aspirations were not represented, the provisions of this threshold had hurt and reduced people's sovereignty.
2. Reconstruction of the vote threshold for Legislative Elections in Law Number 7 year 2017 concerning Elections is Article 414 paragraph (1) which needs to be constructed as "Election Contesting Political Parties must meet the vote acquisition threshold of at least 4% of the votes Nationally valid to be included in the determination of seats in DPR members, Political Parties that do not meet the vote acquisition threshold of at least 4% must join all political parties whose vote is less than 4% until they reach the threshold of at least 4%.

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