



Doctoral Program of Cultural Studies  
Faculty of Arts, Udayana University



awards

*I Gusti Bagus Suryawan*

*as a presenter*

*in the international conference on*

# **BUILDING COLLABORATION AND NETWORK IN A GLOBALIZED WORLD**

Doctoral Program of Cultural Studies  
Head,

Faculty of Arts, Udayana University  
Dean,



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Thursday, September 14<sup>th</sup>, 2017  
Faculty of Art, Udayana University  
Pulau Nias Street 13<sup>th</sup>, Denpasar - Bali





# PROCEEDINGS

the International seminar on  
**BUILDING COLLABORATION  
AND NETWORK IN A GLOBALIZED WORLD**



Doctoral Program of Cultural Studies  
Faculty of Arts, Udayana University

Editors:

Prof. Dr. Phil. I Ketut Ardhana, M.A.  
Prof. Dr. I Wayan Ardika, M.A.  
Prof. Dr. I Nyoman Darma Putra, M.Litt.  
Prof. Dr. Veysel Bozkurt  
George Mentansan, S.Sos., M.Hum.

September 14<sup>th</sup> 2017, Denpasar - Bali





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**Prepress  
Slamat Trisila**

**Cover Design  
I Ketut Sutariyasa**

**Publisher  
Postgraduate Program of Cultural Studies  
Faculty of Arts-Udayana University  
Nias Street 13, Denpasar  
Bali, Indonesia**

**First Edition: September 2017**

**ISBN 978 - 602 - 294 - 237 - 5**



## WELCOME MESSAGE RECTOR OF UDAYANA UNIVERSITY

The President of IFSSO (International Federation of Social Sciences Organization), Prof. Nestor Castro Ph.D.

The Dean Faculty of Arts Udayana University, Prof. Dr. Ni Luh Sutjiati Beratha, M.A.

The Vice President of IFSSO, Prof. Dr. phil. I Ketut Ardhana, M.A.

Prof. Joseph P. Lalo, Ph.D., (from the Philippines),

Prof. Dr. Yekti Maunati, MA (Indonesian Institute of Sciences, Jakarta)

Dr. Sri Sunarti Purwaningsih, MA (Indonesian Institute of Sciences, Jakarta)

Professors and postgraduate students,

*Om Swastyastu,*

First, I would like to submit our prayer and gratitude to Ida Sanghyang Widhi Wasa, Tuhan Yang Mahaesa/ the Almighty God, for his blessings and guidance that this International Seminar on "*Building Collaboration and Network in A Globalized World*", held by the Postgraduate Program of Cultural Studies, Faculty of Arts-Udayana University in collaboration with the International Federation of Social Science Organizations can be taken place this morning.

The distinguished guests, ladies, and gentlemen

First of all, I would like to extend my warm welcome to distinguished guests: Prof. Nestor Castro, Ph.D., (The President of IFSSO), Dr. Hakan Gullerce (Sociologist from Istanbul Foundation for Science Innovation), Prof. Morad Moulai Hadj (Department of Sociology, Faculty of Social Sciences, University of Oran- Algeria), Prof. Joseph P. Lalo, Ph.D., (from the Philippines), Prof. Yekti Maunati, Ph.D. M.A., and Dr. Sri Sunarti Purwaningsih (from the Indonesian Institute of Sciences, Jakarta), and all participants.

This International seminar covers areas like social science policy matters, establishing network, providing information, and documentation services in the social sciences.

In this International Seminar the delegates will have several opportunities, including:

To discuss topics ranging from ways to strengthen social sciences in Building Collaboration and Network in A Globalized World.

To examine the recent specific issues related to the development of social sciences and humanities studies in the region and in the world in general.

In the recent time, we are aware that sharing our experiences on social sciences and humanities studies is a must. By holding this International Seminar, we expect that we can strengthen our network and widen our knowledge and experiences in social sciences and humanities studies.

I believe that in the near future, there is a need for having a regular regional and international conferences/ seminars to fill the gap among scholars in different countries in understanding of the development of contemporary research in social sciences and humanities. Indeed, we need to share our experiences, both scientific and practical, on the development of social sciences and humanities studies.

The aim of this International seminar is to elaborate this knowledge into concrete and practical solutions, so that all of us can strengthen our culture and improve their quality of life while conserving their environment for sustainable development.

I am proud that Udayana University in Bali has been chosen to be the host of the international seminar to all of you. I am very sure as the seminar progresses there will be many opportunities to learn one another as well as to develop new collaborations, network and partnership for the near future.

Through this international seminar, we can share ideas and give new suggestions to each other so that this international seminar will be meaningful for all of us. We do hope, that all ideas presented by the speakers will enrich our viewpoints and understanding on matters related to build collaboration and network in a globalised world.

I thank you all for being here. I wish you a fruitful seminar and please enjoy staying in Bali

Thank you very much.

*Om Shanti, Shanti Shanti Om*

**Rector of Udayana University**

**Prof. Dr. dr. A.A. Raka Sudewi, Sp.S (K)**



**WELCOME MESSAGE  
HEAD OF POSTGRADUATE PROGRAM  
OF CULTURAL STUDIES  
FACULTY OF ARTS-UDAYANA UNIVERSITY**

Rector of Udayana University, Prof. Dr. dr. A.A. Raka Sudewi, Sp.S (K)  
The President of IFSSO (International Federation of Social Sciences  
Organization), Prof. Nestor Castro Ph.D.

The Dean Faculty of Arts Udayana University, Prof. Dr. Ni Luh Sutjiati  
Beratha, M.A.

Prof. Joseph P. Lalo, Ph.D., (from the Philippines),

Prof. Dr. Yekti Maunati, M.A. (The Indonesian Institute of Sciences,  
Jakarta)

Dr. Sri Sunarti Purwaningsih, M.A. (Head of Research Center for Culture  
and Society, the Indonesian Institute of Sciences)

Professors and postgraduate students,

*Om Swastyastu,*

First, I would like to express my gratefulness *angayubagia*, to Ida Sanghyang Widhi Wasa, Tuhan Yang Mahaesa, the Almighty God, and welcome for all of you in Bali regarding our International Seminar on "Building Collaboration and Network in A Globalized World", held by the Postgraduate Program of Cultural Studies, Faculty of Arts-Udayana University in collaboration with the International Federation of Social Science Organizations

Ladies, gentlemen, and all participants,

I am happy to welcome you to the international seminar starting this morning in the Prof Dr. Ida Bagus Mantra Building, Faculty of Arts Udayana University in Denpasar Bali. I would like to extend my warm welcome to distinguished guests: Prof. Nestor Castro, Ph.D., (The President of IFSSO), Dr. Hakan Gullerce (Sociologist from Istanbul Foundation for Science Innovation), Prof. Morad Moulai Hadj (Department of Sociology, Faculty of Social Sciences, University of Oran 2- Algeria), Prof. Joseph P. Lalo, Ph.D., (from the Philippines), Prof. Yekti Maunati, Ph.D. M.A., and Dr. Sri Sunarti Purwaningsih (from the Indonesian Institute of Sciences, Jakarta), and all participants.

This International seminar covers areas like social science policy matters, providing information, and documentation services in the social sciences.

Delegates will have the opportunity:

To discuss topics ranging from ways to strengthen social sciences in Building Collaboration and Network in A Globalized World.

To examine the recent specific issues related to the development of social sciences and humanities studies.

By sharing our experiences on social sciences and humanities studies, we expect that we can widen our knowledge and experiences as well as strengthen our network among scholars in the fields of social sciences and humanities.

This also shows that there is a need for a regular regional seminar to provide a platform for the dissemination of research to each other and to the public in general.

As the Organizing Committee, I also would like to express my sincere thanks to all parties who have provided positive supports, both material and spiritual towards the achievement of this International seminar.

This international seminar bringing together more than 50 participants from across the world will explore the global connection in the world; will share ideas and comments, so that it will be fruitful for all of us and the ideas presented by the speakers will enrich our viewpoints and understanding on the development of social sciences and humanities studies. I do hope the Rector of Udayana University will kindly open this international Seminar.

I am sure as this seminar will bring many opportunities to learn one another as well as to develop new collaborations, network and partnership for the better future in the region.

Thank you very much.

*Om Shanti, Shanti Shanti Om*

**Prof. Dr. phil. I Ketut Ardhana, M. A.**



## PREFACE

**I**nternational Seminar on “Building Collaboration and Network in A Globalized World”, held by the Postgraduate Program of Cultural Studies, Faculty of Arts-Udayana University in collaboration with the International Federation of Social Science Organizations (IFSSO).

This International Seminar 2017 basically does not end when the event is done. Efforts to disseminate and recommendation from research have been an integral part of research have been an integral part of a research process itself. The results of research should remain open at certain level and be widely publicized.

Publishing the proceedings of “Building Collaboration and Network in A Globalized World” is an effort to disseminate research results. This proceeding book is a collection of research and study of researchers, academics, and doctoral candidates with different background from many fields of science such as politics, public administration, culture, education, arts, and tourism.

As organizer of the seminar, we hope this proceeding book is able to provide information and inspiration for those who are related to the topics of the research. We would also like to express our sincere gratitude and appreciation to all those who have supported in organizing this International International Seminar. Hopefully this small step can be a stepping stone for next bigger effort.

Denpasar, 14 September 2017

Derinta Entas, S.E.,M.M  
Organizing Committee

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'TEBANG' AND 'POTONG' VERBS IN IREES LANGUAGE

# CONSTITUTIONAL PROBLEMATICS IN THE PRESIDENTIAL GOVERNMENT SYSTEM IN INDONESIA

## ABSTRACT

The purpose of this study is to know and explain the problematics of the Constitutionality of Presidential Filling through general election in presidential system, as well as the constitutional problem of power relation of president and parliament to legislation authority in presidential government system in Indonesia. The type in this study is normative research using statutory approach, comparison approach, and case approach. The use of this type research is to examine and analyze the issues discussed in this study. The result of this study shows that: (1) The problem of filling the presidential office through general election in presidential system is the standardization of presidential threshold that is 20% (twenty percent) based on the Law of General Election (which has not been given number) is unconstitutional, because it is contradictory to Article 6A paragraph 2 and Article 22 E Paragraph 1 and 2. In addition, it is also contrary to the decision of the Constitutional Court Number 14/PUU-XI/2013 and to legalize the presidential threshold that has no philosophical basis in the presidential government system. Similarly, legalizing or presenting the presidential threshold into the law on elections with arguments for simplification of political parties does not have an empirical basis as in the empirical facts of elections in 1999, 2004, 2009, and 2014. (2) The constitutional relation between the president and parliament in presidential practice in Indonesia has been a deviation caused by the norm of the 1945 Constitution of the Republic of Indonesia itself. The authors conclude that as long as the 1945 Constitution of the Republic of Indonesia is not amended, it implies sustainable state administration issues and the 1945 Constitution of the Republic of Indonesia in the context of political reality and law does not adhere to the principle of constitutionalism as the essence of the constitution in every modern state.

Keywords: constitutional problematics, presidential government system, Indonesia.

## INTRODUCTION

In the system of constitutional democratic state, the position and role of president is very central in every country characterized by democracy. Moreover to the state characterized by presidential system, the position of president and the authority it possesses is a study that shows the indicator on the system of state administration as well as in the presidential government system adopted by a state.

In addition, the level of presidentialism is also measured by the president's political power as head of state and head of government *vis a vis* with the legislative power relation in a country. The practice of presidentialism in the history of state administration dates from the history of the United States of America as *an avant-garde* of modern presidential practice.



However, the model of power relations between the president and the legislative power in the practice of state administration varies across countries.<sup>1</sup>

The emergence of a presidential system based on the constitution of a State to create a strong power and authority of the president and on the other side aims to stabilize the political system in relation with the legislative power based on the principle of check and balance. But on the other hand, the principle of state requires the relationship of constitutional state institutions must be equal and there is no subordination to each other. But in reality, based on legal and political reality in Indonesia, the presidential system is not as ideal as it is practiced in the first-time State. In the constitutional format, in fact the legislative body, in this case the Regional Representative Council (in Indonesian terms *Dewan Perwakilan Daerah*) subordinated in relation to the power and authority of the President and with the House of Representatives (DPR) in functions owned by the parliament.

Based on the reality, the author is inspired to conduct in-depth study of presideansialisme system in legal and political reality in the state administration system in Indonesia, Problematic in the contrast of *das sein* and *das sollen* on the above background, the researcher formulates the problem as follows: (1) how is the problematic of constitutionalism of Presidential Filling through election in presidential system? and (2) How is the constitutional problem relating the power relations of the president and parliament to the legislative authority in the presidential government system in Indonesia?

## RESEARCH METHOD

This type of research is normative legal research, ie research that is focused to examine the rules or norms in positive law. The approach used in this research is statutory, comparison, and case approach.

The legal substances used in this study are primary legal materials consisting of the 1945 Constitution of the Republic of Indonesia and the laws and regulations under it, as well as the constitution in various countries. While the secondary material is obtained from literature books, international journals, and other research reports. Then analyzed qualitatively and presented in deskriptif.

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<sup>1</sup>In presidential systems an executive with considerable constitutional powers-generally including full control of the composition of the cabinet and administration-is directly elected by the people for a fixed term and is independent of parliamentary votes of confidence. He is not only the holder of executive power but also the symbolic head of state and can be removed between elections only by the drastic step of impeachment. In practice, as the history of the United States shows, presidential systems may be more or less dependent on the cooperation of the legislature; the balance between executive and legislative power in such systems can thus vary considerably. Vide, Juan J. Linz, *The Perils of Presidentialism*, Journal of Democracy, Volume 1, Number 1, Winter 1990, p.52.

## **RESULT AND DISCUSSION**

### **Constitutional Problematics of Filling Post President Through Elections in the Presidential System in Indonesia**

Election-related discourse as an indicator of a modern constitutional democracy State, almost all political scholars agree that elections are an important criterion for measuring the democratic level of a political system. For example, Robert A. Dahl, Gwendolen M. Carter, John H. Herz, Henry B. Mayo, Austin Ranney, and Sudhaussen are some of them.<sup>2</sup>

In the context of the implementation of elections in Indonesia constitutionally to elect members of the People's Legislative Assembly, the Regional Representative Council, the President and the Vice President and the Regional People's Legislative Assembly, under Article 22 E Paragraph (2). Whereas in the Draft Bill on the Implementation of General Election, conceptualized as follows:

The General Election is to elect the President and Vice President and to elect Members House of Representatives, Members of the Regional Representative Council, and Members of the Regional People's Legislative Assembly as a means of exercising the sovereignty of the people directly, publicly, freely, secretly, honestly and fairly in the State Unity of the Republic of Indonesia based on Pancasila and the 1945 Constitution of the State of the Republic of Indonesia.

Whereas the Election Contestants are the candidate pairs for the General Election of the President and Vice President, the political parties for the General Election of Members of DPR, Provincial DPRD Members, and Members of Regency/Municipal DPRD as well as individuals for General Election on DPD Members (Bill on the Implementation of General Election).

From the regulation of elections, it should be interpreted that the presidential filling is held in elections held every five years. The logic implies the non-urgency of setting the presidential threshold as a condition to be an election participant. It is also in line with the verdict of the Constitutional Court Decision Number 14/PUU-XI/2013 that the simultaneous general election is a huge and inefficient budget wastage. Therefore, according to the Petitioners, the Presidential Election and the Election of Members of the Representative Body (which are not concurrent) are contradictory to Article 27 paragraph (1), Article 28D

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<sup>2</sup> Eef Saepulloh Fatah, 2000, *Zaman Kesempatan : Agenda-agenda Besar Demokratisasi Pasca-Orde Baru*, Mizan, Bandung, p.116.



paragraph (1), Article 28D paragraph (3), Article 28H paragraph (1) Article 33 Paragraph (4) of the 1945 Constitution.

Law governs regarding the procedure for filling the position through further clearance. Constitutionally based on the 1945 Constitution of the Republic of Indonesia on the third amendment under Article 6A Paragraph (5) as follows “procedures for the implementation of the election of President and Vice President are further stipulated in law”. Implementation of presidential and vice presidential election procedures based on Law on General Election. Norms that are directly related to the procedure of filling presidential office through General Elections are arranged accordingly:

Article 221

Candidates for President and Vice President are proposed in 1 (one) pair by Political Parties or Combined Political Parties.

Article 222

The Candidate Pair is nominated by a Political Party or Combined Political Parties Participating in the General Election, which meets the requirements of a seats of at least 20% (twenty percent) of the total seats House of the Representative or obtains 25% (twenty-five percent) of the nationally valid votes in the previous General Elections.

Terms of filling the position based on the norm, it can be seen that a political party or a combination of political parties carries the submission or requirement to become a presidential candidate and vice president. Presidential candidates and representatives promoted by political parties or from a combination of political parties must meet the presidential threshold standard of 20% (twenty percent).

From the procedure, according to the researcher, the standardization of the presidential threshold of 20% (twenty percent) is unconstitutional, as it is contradictory to Article 6A paragraph (2) stipulating that a political party or a coalition of political parties participating in the general election before the election proposes the candidate for President and Vice President. In addition, it is also contrary to the decision of the Constitutional Court Number 14/PUU-XI/2013. The implications of the Constitutional Court's decision, namely the a quo election participants, the presidential and vice-presidential candidates must be proposed before the election is held. That is, the presidential candidate and vice presidential candidate has been agreed by a combination of political parties before the election is held to elect the parliament and presidential and vice presidential candidate. In addition, the philosophical meaning behind the Constitutional Court's decision actually also aims to simplify the political party, because if the election simultaneously interpreted with

presidensialism with multi-party system, a necessity of the presidential system experienced anomalies and political pragmatism and ending it gave rise to political decisions that harm each other.

In comparison, filling the presidency in various countries. For example, a Chilean country that embraces a presidential system of government, the President is elected directly by the Chilean people through General Elections to elect the parliament and the president.

This is as in Article 6 of the Chilean Constitution, which regulates as follows:

*The President of the Republic will be elected by direct vote and by absolute majority of the suffrage validly emitted. The election shall be held in conjunction with that of the parliamentarians, in the form determined by the respective constitutional organic law, the third Sunday of November of the year after which the [person] who is in the functions must cease the responsibility.*

The same is true with Azerbaijan, that the election is an election to elect the parliament and the President. This can be seen as Article 83 of the Constitution of The Azerbaijan Republic, which was amended in 2002 to elect the Azerbaijani parliament (Milli Majlis), namely:

Principles of the Elections to the Milli Mejlis of the Azerbaijan Republic Deputies of the Milli Mejlis of the Azerbaijan Republic are elected on the basis of the majority and election systems and universal, equal, direct elections by free, individual and secret ballot.

Meanwhile, to elect the President of Azerbaijan as follows:

Article 101

Foundations for the Election of the President of the Azerbaijan Republic The President of the Azerbaijan Republic is elected for a term of 5 years by universal, direct and equal elections by free, individual and secret ballot.

From these comparisons, it indicates that in filling the positions of presidents and vice presidents through elections is simultaneously with parliamentary elections. Thus, the actual presidential threshold in the presidential election has no constitutional ground. The argument of researchers, that in the general election constitutionally done simultaneously. Based on the results of simulations conducted by LIPI, the use of parallel election system (simultaneously) at least able to produce the dominant political parties and make the simplification of political parties naturally.<sup>3</sup> Concurrent election practice experience in Asia, the Philippines is an example of a country in Southeast Asia that introduces simultaneous executive and legislative

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<sup>3</sup> See Sri Yanuarti, 2014, *Adaptasi Sistem Pemilu Paralel Bagi Indonesia*, Pusat Penelitian Politik, Jakarta.



electoral systems, except for the lowest executive positions in urban neighborhoods and rural villages.<sup>4</sup>

Unlike the case with the presidential threshold, where the general election of president and vice president after the general election to elect members of parliament. The practice is precisely what is practiced in the parliamentary system in which the parliament is elected first in an election to elect the prime minister as head of government.

In addition, the simplification of political parties as in the spirit of the Constitutional Court's ruling above, in reality that executes a presidential government system in a multi party system, has failed. This is as in previous research conducted by Scott Mainwaring<sup>5</sup> Reveals that the combination between presidentialism and the multi-party system of divisiveness appears to be in conflict with a stable democracy. Empirical evidence supports this argument, in the world there are relatively few presidential democracies that have survived for 25 years or more: Chile, Colombia, Costa Rica, the United States, Uruguay and Venezuela. The presidential system in that country does not run in the corridor of the party's multi system.

According to Mainwaring Research, the presidential system can survive in a multi-party political system, the only solution necessitating a coalition. It is as historical in tradition Traditional coalition practice in the presidential government system both in the European countries. Nor is it happening or practiced in Latin America. It is necessary when the government is in a minority situation in parliament. This reality becomes the rule of the game in a multiparty political system. In fact, if correlated with the bicameral parliamentary system, based on the results of research José Antonio Cheibub<sup>6</sup> which states:

“According to a worldwide comparative study of presidential democracies (1946-1996), presidents did not have a majority in congress in more than half of the cases (53 percent); this rate being higher in bicameral (60 percent) than in unicameral systems (about 46 percent)”.

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<sup>4</sup> See Joel Rocamora, *Philippine Political Parties, Electoral System and Political Reform*, <http://www.philsol.nl>. Accessed on July 25, 2017.

<sup>5</sup> Scott Mainwaring, *Presidencialisme di Amerika Latin*, dalam Arend Lijphart, 1995, *Sistem Pemerintahan Parlementer dan Presidensial*, Translated by Ibrahim R. et.al., PT Grafindo Persada, Jakarta, p.119.

<sup>6</sup> José Antonio Cheibub (2002), *Minority Governments, Deadlock Situations, and the Survival of Presidential Democracies*, in Comparative Political Studies in British Journal of Political Science. P. 287. Vide too, Mariana Llanos, *Explaining Coalition Performance in Presidential Systems: The Importance of (a Parliamentary-style) Coalition Management*, Paper Presented at the Workshop “Parliamentary Practices in Presidential Systems: (European) Perspectives on Parliamentary Power in Latin America” European Consortium of Political Research Nicosia, Cyprus, 25-30 April 2006, p. 1.

Moreover, according to José Antonio Cheibub, related to the phenomenon of coalition in presidential government system and multi party party bicameral parliament system as above, which in essence according to Cheibub that the practice of coalition is an implication of fragmentation of multiparty political system. Even such coalition practices are just like practices on parliamentary government systems, where the position of the government party becomes a minority in parliament. More results of Cheibub research as follows “As in parliamentary systems, the occurrence of minority governments in presidentialism is a consequence of the fragmentation of the party system”

Even further according to Linz in Mainwaring that the presidential system is a rigid system than the parliamentary system of government. Linz's argument, that the stability of the parliamentary system of government that became an indicator in Linz's argument was that in the parliamentary system flexibility in changing the format of government aimed at regime stability. It is based on that argument that the coalition is formed on the parliamentary system of government, because the prime minister is a connector of the tongue and political ideas of parliament, More details as follows:

As Linz (1984) notes, it is necessary to distinguish between cabinet stability and regime stability. Parliamentary systems have mechanisms that may lead to relatively frequent changes in cabinets and governments, but this flexibility in changing governments may help preserve regime stability. Conversely, the fixed electoral timetable of presidential regimes apparently ensures cabinet and governmental stability, but in practice has introduced a rigidity inimical to regime stability.<sup>7</sup>

From these Linz statements, it shows that coalition practices are in fact more patterned parliamentary government systems. Thus, according to the researcher that the presidential government system, although not coalition of the political party, the executive power is not necessarily afraid of the political opposition of the opposition party in parliament, because the State institution in the modern state administration system is equal, based on the principle of constitutionalism and checks and balances. To corroborate the researcher's proposition, based on the history of presidential government system. The history of the emergence of such presidentialism, according to Moh. Kusnardi and Hermaily Ibrahim<sup>8</sup> who stated that:

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<sup>7</sup> Scott Mainwaring, 1990, *Presidentialism, Multiparty Systems, And Democracy: The Difficult Equation*, Working Paper, Kellogg Institute. p.5

<sup>8</sup> Moh. Kusnardi and Hermaily Ibrahim, 1998, *Pengantar Hukum Tata Negara, Sinar Bakti*, Jakarta, p.177.



“The background of the United States adopting the presidential system is the hatred of the people against the reign of King George III so that they do not want the form of a monarchic state and to realize their independence from British influence, so they prefer to follow Montesquieu's lead by holding a separation of powers, so there is no possibility of one Will exceed other powers, because in trias politika there is a system of checks and balances”

In addition, the fact also indicates that the presidential threshold does not have a juridical, socio-political, and philosophical basis in filling the presidency in a presidential government system. In the case of a presidential threshold in the electoral bill for presidential filling, it is an unconstitutional act of law that is supposed to be petitioned for a Judicial review to the Constitutional Court and the interests of the positivization of the presidential threshold of political reality are only for the violation of power and the holding of other political parties and there is no relation to the simplification of the party Politics, as in previous efforts to raise a presidential threshold aimed at simplifying political parties. But, the result failed. For example, the 1999 elections imposed a two percent threshold. Of the 48 parties, the threshold qualified for only six parties. In fact, 24 parties followed the 2004 election. Further to the political reality of the 2009 elections, there were 38 national political parties competing throughout Indonesia and six other Acehnese political parties competing only in Aceh province. Nine political parties won seats in the House of Representatives (DPR) at the national level. After the 2009 election, the nine political parties changed the electoral law and established a much higher parliamentary threshold to register, compete and win elections. For example, political parties must have permanent offices in 33 provinces, at least in 75 percent of districts/cities in each province, and at least in 50 percent of sub-districts in each district/city. In the legislative elections of April 9, 2014, 46 political parties registered but only 12 national political parties and three local political parties (who were allowed to contest in Aceh alone, competed with national parties) were successful and contested in elections.<sup>9</sup>

Thus, any argument to legalize the presidential threshold is that it has no philosophical foundation in the presidential government system. Similarly, legalizing or prescribing the presidential threshold in the law on elections with arguments for simplification

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<sup>9</sup> *Ibid.*, p.4.

of political parties does not have an empirical basis as in the empirical facts of elections in 1999, 2004, 2009 and in 2014.

### **Constitutional Problematics Relation of Presidents Power and Parliaments on Authority of Legislation in the Presidential Government System in Indonesia**

Fundamental problems in the presidential government system are seen from the relation of the presidential and parliamentary authority in the context of policy formulation and the function of legislation. Anomaly relations between the president and parliament in the function of legislation are an uncommon in Presidential State practice. For example, the president and House of Representative as the full authority holder who commenced at the stage of proposing, discussing, until the approval stage of the draft law.

The legal and political reality is an anomaly in the practice of state administration. This can be seen in the presence of a second-floor parliamentary institution whose authority is subordinated by the first chamber and the president's authority in the legislation function. The process precisely spans infiltration of the political interests of the ruling party and the infidelity of the House of Representatives with the President in the legislative function, because the process lacks control of the legislative process in the second-room parliament (DPD). On the other hand, when the ruling party in parliament (DPR), which is controlled by political opponents of the party winning the election of President and Vice President Candidate, is certain deadlock in the process of law formation caused by different political views and implies the failure of the government to serve the people's welfare through legislation (Especially the formation of laws related to politics and economics).

This reality has relevance as stated by Barry K. Winetrobe, that in principle, in the process of formation of law in political configuration, not apart political influence (political interest) and coalition of electoral winning party against the process of forming the law.

Barry K. Winetrobe<sup>10</sup> state that :

In a more political sense, the Parliament's electoral system, being a form of proportional representation, makes single-party majority government unlikely. The operation of the Executive as either a formal coalition (as has been the practice), informal coalition or minority administration is bound to have an impact on

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<sup>10</sup> Barry K. Winetrobe, 2004, *Making the Law In Devolved Scotland, Parliament, Politics, and Law-Making marks the tenth anniversary of the publication The Hansard Society*, LSE, 9 Kingsway, London. P.55.



lawmaking, both in the substance of legislation and in the operation of the parliamentary legislative process.

Another issue of the constitutionality of the deadlock, the president's authority with regard to the function of legislation, the president's authority in the presidential government system in Indonesia does not have veto power in the event of differences and rejection of the draft law. The implications of the political reality and the constitutionality of the problem of the draft law should be brought to the next priority of the prolegnas. Article 20 Paragraph (3) which regulates the following: If the bill does not come into mutual consent, the draft law shall not be brought before the House of Representatives at that time.

In addition, it should be in the presidential system government, the authority relation between the parliament and the president in a linear way as an effort to check and bless the State institution as the spirit of the constitution. It is the foundation for the existence of bicameral parliament as according to Philip Norton<sup>11</sup> by stating that in essence as follows:

“That the philosophical construction in choosing the option of a bicameral parliamentary model is inseparable from the possibility of giving reconsideration to the different spaces in the legislature in the functioning of the law, so as to avoid mistakes and improve the good quality and stability in making the law”.

The Norton indication is reinforced by Mag Russel's opinion, which states as follows:

“That in the bicameral parliamentary model is not only by reason of getting good quality and stability in the banning of the law. However, it can also improve efficiency as it is possible to divide the legislative workload between the two rooms. In this case, also referred to the function of legislation as one of the functions of parliament in the constitutional system”.

In political and legal realities, this is not the case in Indonesia. It is not apart from the anomaly issue of the 1945 Constitution, which subordinates the authority of the second parliamentary, room (DPD) *vis a vis* with the first room parliament (DPR) and presdien. Particularly related to substantial authority in the second-room parliament in the constitutional system. Thus, according to the author, political parties are creating democracy, because the interests of sovereign owners (people) are hung by political parties by political

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<sup>11</sup> Philip Norton, 2004, ‘How Many Bicameral Legislatures Are There?’ The Journal of Legislative Studies, Vol.10, No.4 (2004), p.6-7.

parties in the DPR. If examined on the legitimacy aspect of DPR and DPD, and the President is obtained from the same source.

Thus, based on the constitutional problem as has been explained, according to the author is not inherent in the 1945 Constitution itself. For example, based on Article 22D Paragraph (1) to Paragraph (3), the authority of the DPD as a parliamentary institution is determined by the DPR, which is controlled by the interests of political parties. The political configuration of DPD as a regional representative is not balanced with the fulfillment of the interest of the region it represents. On the side of its legal configuration, the DPD can not design and veto the political interests of the DPR which is a political representative institution and the President as the executive representative in the legislation process.

From the analysis, it shows that presidential practice in Indonesia has happened deviation caused by norm of 1945 Constitution of the Republic of Indonesia itself. The authors conclude that as long as the 1945 Constitution of the Republic of Indonesia is not amended, it implies sustainable state administration issues and the 1945 Constitution of the Republic of Indonesia in the context of political reality and law does not adhere to the principle of constitutionalism as the essence of the constitution in every modern state.

## **CONCLUSION**

1. The problem of filling the presidency by election in the presidential system is the standardization of the presidential threshold of 20% (twenty percent) based on the General Election Law (which has not been given a number) is unconstitutional, as opposed to Article 6A paragraph (2) and Article 22 E Paragraphs (1) and (2). In addition, it is also contrary to the decision of the Constitutional Court of Decision Number 44/PUU-XI/2013 and to legalize the presidential threshold that has no philosophical basis in the presidential government system. Similarly, legalizing or presenting the presidential threshold in the law on elections with arguments for simplification of political parties does not have an empirical basis as in the empirical facts of general elections in 1999, 2004, 2009 and in 2014.
2. Presidential and parliamentary relation in presidential practice in Indonesia there has been a deviation caused by the norm of the 1945 Constitution of the Republic of Indonesia itself. The authors conclude that as long as the 1945 Constitution of the Republic of Indonesia is not amended, it implies sustainable state administration issues and the 1945 Constitution of the Republic of Indonesia in the context of



political reality and law does not adhere to the principle of constitutionalism as the essence of the constitution in every modern state.

## RECOMMENDATION

To strengthen the presidential system in Indonesia, it is recommended as follows:

1. Legal cancellation and no binding power of the norm provisions of the Presidential threshold in the filling of the post of president through general election;
2. Strengthening the authority and function of the DPD in compensating for the political forces in relation to the DPR and the president;
3. In the function of legislation, the president has veto power;
4. Constitutional amendment.

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