



# **PARLIAMENTARY THRESHOLD IN CONSTITUTIONAL ELECTION IN 2019 (PHILOSOPHICAL REVIEW OF THE PRINCIPLES OF PEOPLE SOVEREIGNTY)**

**Muhammad Aziz Maftuh**

*Legal Staff of Jallu & Associates's Law Firm*

*Email: muhammad.aziz.maftuh@gmail.com*

<b>Submitted:</b>	<b>Revision Required:</b>	<b>Published:</b>
<i>21 Juli 2020</i>	<i>23 Agustus 2020</i>	<i>27 November 2020</i>

## **Abstract**

The 2019 Election leaves a problem with the people sovereignty in Indonesia, especially in the concept of the parliamentary threshold which is enforced at 4%. There are millions of legitimate votes that were wasted and did not convert into parliament because the party did not pass the threshold. The focus of this study is about the concept of parliamentary threshold in 2019 election which is reviewed from the people's sovereignty. This research is a library research (literature study) and employs a qualitative approach based on theoretical views and is reviewed from philosophical studies. The data is collected in the form of documentation from various books and scientific works related to this research. Based on the results, the concept of PT in the 2019 election resulted in the occurrence of wasted votes from valid votes so that millions of valid votes originating from the people's sovereignty were wasted. All new parties and small parties have very little chance of getting into parliament to voice the aspirations of their people. The disproportionality between the votes and the number of seats acquired becomes the reason that the concept of the

parliamentary threshold in the 2019 elections is against the people's sovereignty.

**Keywords:** Parliamentary Threshold, General Election, People Sovereignty

## Introduction

A state is an organization in an area that has the highest legal power and is obeyed by the people (Budiardjo, 2008). People live in milieu of working together, as well as in milieu of antagonism and contradiction, therefore, a state as an integration of political power (Budiardjo, 2008). It can be seen when the state determines the ways and boundaries to which power can be used in life together, either by individual groups or associations.

A country is like an organization as in general, since it makes it easier for the people to achieve their common goals or ideals. In this case, the state is the most powerful and orderly organization, so that all groups within a country must be able to place themselves in accordance with the regulations made by the state. Because the state can impose its power legally on all other power groups and can also set their goals in life, without eliminating the concept of democracy (Budiardjo, 2008).

Indonesia is a country that adheres to the theory of people's sovereignty, this can be seen in the preamble to the 1945 Constitution which reads "... formed in a state structure of the Republic of Indonesia with people's sovereignty ..." (The Opening of Indonesian Constitution, paragraph 4). This means that it is the people who hold the highest sovereignty in the state structure.

In the reform era, one of the democratization steps was the general election, because the important instrument in democracy is the general election (Putra: 2019). General election is considered as a symbol, as well as one of the benchmarks of democracy (Budiardjo, 2008). This is done in order to involve people in state structure (Astomo: 2014).

Indonesia conducts elections in the executive and legislative domains. The executive includes the president and vice president, governors, regents / mayors, up to the realm of village heads. Whereas in the legislative domain we only elect DPR, DPRD, and DPD.

Specifically for the presidential and vice presidential elections, and the DPR, in Indonesia as a democratic country it provides a threshold. Either the threshold in the presidential threshold or the parliamentary threshold whose rules have been stated in the Law.

The Parliamentary Threshold (PT) has actually been implemented since the enactment of Law Number 10 in 2008 concerning the General Election of members of the House of Representatives (DPR), Regional Representative Board (DPD) and Regional House of Representative (DPRD) (Sihombing:2009). Of course, with the implementation of the parliamentary threshold system, people who care about politics and elections in Indonesia will ask where the votes of political parties that do not reach this threshold.

The determination of the parliamentary threshold in law number 7 in 2017 concerning general elections gives the impression that the big parties want to maintain and perpetuate their power. There is also the impression that this threshold is intended to reduce the number of parties so that there will be only 2 ruling parties like in the United States. The determination of the threshold must pay attention to the course of democracy in Indonesia (Putri: 2018).

In the 2019 election which implemented a parliamentary threshold of 4% which resulted in the waste of votes. There were approximately 13,594,842 votes wasted because they did not reach the threshold (Ristiano: 2019). In other words, the 2019 general election has ignored the aspirations of representation of 13,594,842 people or we can interpret it by removing the principle of popular sovereignty inherent in 13,594,842 people. So that the concept of PT in the 2019 election must be analysed through the principle of people's sovereignty to solve problems.

### ***The Concept of People's Sovereignty According to John Locke***

As a follower of empiricism, John Lock has the most radical empirical understanding, because he only admits that what is called knowledge is only what really arises from the experiences that occur. Intellect and reason only combine the impressions that exist in the experience which are then summed up into abstract and general ideas.

Such thinking in the realm of law is called contract theory (Farkhani: 2018).

The essence of this contract theory is that society submits to the law because of the agreement made together to submit to the law made. This theory then spread to the king's power, that the king did not fully have power or did not have absolute rights over the rights of his people. Because the rights are divided based on the agreement, which is the right of the king and which is the right of the people. In order for each of these rights to receive legal guarantees, it must be stated in statutory regulations (Farkhani: 2018).

Another important thought is about people's sovereignty. In *The Rule of Law*, John Locke argues that the legislature must be above the executive, because the legislature is the legislator and the supervisor of the law so that the law can run smoothly. Meanwhile, the executive only acts as the enforcer of the law, on the grounds that society has existed before the state so that the will of the people must be above everything that is represented in the legislative (Sitanggang: 2006).

According to Lock's view, people are the holders of power. So that the resistance carried out by the people is not a rebellion. The resistance they did was an effort to maintain and defend their rights. Oppositional power of the people is only used as necessary, or only used to uphold justice and must be based on law. Indirectly, Lock calls for morality and he wants the government to carry out its right duties (Sitanggang: 2006).

### ***The Concept of People's Sovereignty According to J.J Rousseau***

The sense of independence among the people increased as JJ Rousseau's writings on the social contract and people's sovereignty became widespread. Rousseau argues that freedom is a condition where there is no human desire to conquer others. Humans feel free from fear of the possibility of conquest of themselves either persuasively or violently. In addition, he also argued that free humans are people who obey laws and regulations but do not make themselves slaves so that their freedom does not lead to social anarchy. This free man then agreed to form a common power. This common power is known as the people's sovereignty. Every individual who gives up his rights or freedoms does

not lose both of them but the state is then tasked with protecting every individual in the state (Suhelmi: 2007).

According to Rousseau, the basic of the state is not natural law or divine law, but based on agreement. The agreement was possibly made because of the inherent nature of freedom in humans. Freedom can only be established in equality in the form of recognition of a common will. Because the common will is an abstraction of the entire will of each citizen. It is on this basis that absolute indivisible and irreplaceable sovereignty rests with the people (Farkhani: 2018).

Rousseau divided the will of the people in two categories. First, the *Volonte de Tous* or the will of the whole people. What Rousseau meant by *Volonte de Tous* was an agreement of all the people to form a state. The people's consent in this agreement cannot be revoked if at any time the people do not agree with the existing agreement. Second, *Volonte Generale* after the formation of the state, it is the majority vote that runs the system of government of a country. With the majority of votes in deciding a case which then emerged the dictatorship of the majority (Urofsky: *without year*).

### ***Parliamentary Threshold in 2009 Election***

The elections held in 2009 had a fairly large number of election participants, almost approaching the number of participants in the 1999 elections. In the 2009 elections, the electoral threshold was no longer in effect due to Law No. 10 of 2008 which discusses that election participants can participate without verification on the condition that these political parties have seats in the DPR in 2004 election (Amalia: 2017).

In Article 202 of Law No.10 of 2008, it is explained that political parties participating in the election must meet a vote acquisition threshold of at least 2.5 percent of the number of valid votes nationally to be included in determining the acquisition of seats in the DPR. However, this provision does not apply to the determination of seat acquisition for Provincial DPRD and Regency / Municipal DPRD. The calculation is the number of valid votes of all political parties participating in the election minus the number of valid votes of political parties

participating in the election that do not meet the vote threshold (UU No.10/2008, article 202-203).

The results of this 2009 election, which implemented a parliamentary threshold of 2.5 percent, only 9 political parties managed to sit in parliament. The political parties that passed were the democratic party with 20.85%, the Golkar party 14.45%, the PDIP party 14.03%, the PKS party 7.88%, the PAN party 6.01%, the PPP party 5.32%, the PKB party 4.94%, the Gerindra party 4.46%, the Hanura party 3, 77%. Meanwhile, the accumulated number of parties that did not pass the threshold was 18.29% or around 19,048,653 valid votes that cannot have seats in the DPR (Adelia: 2018).

### ***Parliamentary Threshold in 2014 Election***

In the 2014 General Election of Members of the House of Representatives, Regional Representative Board and Regional House of Representative Council, the legal basis used is Law No. 8 of 2012. In this law, there is an increase in the parliamentary threshold by 3.5%. This parliamentary threshold is contained in article 208 which reads "Election Contesting Political Parties must meet a vote acquisition threshold of at least 3.5% (three point five percent) of the number of valid votes nationally to be included in determining seat acquisition for members of DPR, DPRD. Province, and Regency / City DPRD (UU No.8/2012). "

The raising of the parliamentary threshold made is the legal police for legislators. With the increase in the parliamentary threshold, it is hoped that there will be fewer political parties and to strengthen the presidential system in government.

The number of political parties in 2004 elections was 12 and 3 local parties in Aceh Province. The results of 2014 election with a threshold of 3.5% only resulted in 10 political parties that passed to parliament. So that parties that do not pass the threshold do not have representatives in the DPR. The political parties that pass the parliamentary threshold are Partai Demokrasi Indonesia Perjuangan (PDIP), Partai Golongan Karya (Golkar), Partai Gerakan Indonesia Raya (Gerindra), Partai Demokrat (PD), Partai Kebangkitan Bangsa (PKB), Partai Amanat Nasional (PAN), Partai Keadilam Sejahtera (PKS), Partai Nasional Demokrat (Nasdem), and Partai Hati Nurani (Hanura).

Meanwhile, two other parties, namely the Partai Bulan Bintang (PBB) and Partai Keadilan dan Persatuan Indonesia (PKPI) did not pass the 3.5% (three point five percent) parliamentary threshold (Amalia: 2016).

The application of 3.5% (three point five percent) threshold did not succeed in reducing the number of political parties in the House of Representatives (DPR). The increase of the parliamentary threshold from 2.5% to 3.5% is not effective in reducing the number of political parties in the DPR. Of the 12 (twelve) political parties that participated in the elections, 10 (ten) political parties passed the parliamentary threshold and only 2 (two) political parties, namely PBB and PKPI, did not pass the parliamentary threshold (Adelia: 2018).

### ***Parliamentary Threshold in 2019 Election***

In 2019 election, which was held last April, that was carried out simultaneously to elect the president and vice president, as well as elect other legislative officials, has used the latest Election Law, namely Law No.7 in 2017. In Article 414 paragraph (1) Law Number 7 in 2017 which reads: "Political Parties Contesting the Election must meet the threshold for obtaining votes of at least 4% (four percent) of the number of valid votes nationally to be included in determining the seat acquisition for DPR members". This means that the Parliamentary Threshold has increased by 0.5% (zero point five percent) from the 2014 General Election. So that parties whose votes do not reach 4% (four percent) in the legislative elections will not qualify as members of the Indonesian Parliament.

There are 16 political parties participating in 2019 election, but only nine political parties have passed the parliamentary threshold. The other parties that did not qualify were Garuda, Berkarya, Perindo, PSI, Hanura, PBB and PKPI. The cumulative number of parties that did not qualify was 9.82% of the national valid votes.

The Association for Elections and Democracy (Perludem) states that the increase of parliamentary threshold is often used as a shortcut to simplify the party system. According to them, the 2019 Election has not proven successful. "In practice, if we refer to the 2019 election with a parliamentary threshold number that increases from 3.5 % to 4 % it is unable to simplify the multiparty system in Indonesia into moderate

pluralism or simple multiparty," said Perludem researcher Heroik M. Pratama on Tuesday, 14 January 2020 when interviewed by the Tempo team (Putri: 2021).

He said the other side of increasing the parliamentary threshold had the side effect of wasting voters' votes in vain. This is because political parties whose votes do not reach the minimum threshold will not be converted into seats. Instead of raising the parliamentary threshold, Heroik suggested that it is better to rearrange the amount of seat allocation per electoral district (dapil). According to him, changing the electoral districts from 3-10 to 3-8 will result in a simplification of the party system naturally without having to throw away the party's votes. Logically, smaller constituencies mean that the more competitive and difficult it is for political parties to win seats will have an effect on party simplification (Putri: 2021).

## **ANALYSIS OF THE PARLIAMENTARY THRESHOLD CONCEPT IN 2019 CONSTITUTIONAL ELECTION IN THE REVIEW OF PEOPLE'S SOVEREIGNTY**

A country with democratic system is always synonymous with general elections to elect state officials both in the executive and legislative realms. Likewise with Indonesia today, the implementation of democracy is much more developed and more open than Indonesia before the reformation, especially during the New Order era. However, the development of democracy has caused various problems, one of which is the concept of a parliamentary threshold in the electoral system in Indonesia.

As explained in the previous discussion, the concept of parliamentary threshold was used for the first time in the 2009 elections with a threshold value of 2.5% of the national valid votes of political parties to be able to occupy parliamentary seats. This threshold figure has increased in the 2014 elections by 3.5% and in the 2019 elections it has increased again by 4%. The problems arising from the concept of a parliamentary threshold from the point of view of people's sovereignty are:

First, there are wasted votes or the waste of legitimate votes from the people for nothing when the political party does not get a national



valid vote of 4%. Whereas one form of manifestation of people's sovereignty is when the people elect representatives of the people and elect certain public officials to hold a power that functions to regulate the state. In the 2019 election, there were more than 13 million valid votes that could not be converted to parliament or it could be said that there were legitimate votes removed from the people and were not channelled into parliamentary seats. According to John Lock's view, people are the holders of power in a country. So that if there are many voices that are wasted, it is a form of resistance and betrayal against the highest power holders, namely the people. However, what we have to understand is that the concept of a threshold that eliminates millions of votes is a form of regulation made by the people themselves through representative institutions.

This happens because many people in Indonesia makes it impossible for them to hold power and rule efficiently. So they formed a concept of representation in the form of the DPR. When the DPR is directly elected by the people and the DPR makes regulations in the state, including the concept of parliamentary threshold, it is valid because the DPR acts as a container for people's thinking as well as a juridical bridge between the people and the government. So that the DPR's decision to make a parliamentary threshold that eliminates millions of people's votes is the will of the majority vote through a representative system.

With the wasted votes, the most important element of people's sovereignty, which is sending their elected representatives to parliament, is lost. Whereas in the theory of people's sovereignty, the highest power in a country is held by the people. This power is lost and simply ignored through this parliamentary threshold concept. Moreover, women's representation in the parliament has decreased because their party has not passed the parliamentary threshold. The fact is that the general chairman of the PSI gets the highest votes in Electoral District 3 of Jakarta. It means that she cannot enter parliament. This has also become a barrier against women's representation in parliament. Based on data from the KPU, she received the highest votes in the electoral districts of DKI III. The votes she gets are a form of people's sovereignty,

but these votes cannot be converted into parliamentary seats so that the will of the people is no longer absolute.

According to Rousseau, the people's will must be absolute because the basis of the state is not natural law or divine law but is based on agreement. The agreement was made possible because of the inherent nature of freedom in humans. Independence or freedom can only be established in equality in the form of recognition of the common will. Because the common will is an abstraction of the entire will of each citizen. It is on this basis that absolute indivisible and irreplaceable sovereignty rests with the people.

Rousseau's concept regarding the will of people is called the *Volonte Generale* which states that people's sovereignty is the same as a majority vote decision. The majority vote determines the running of the government, but in the concept of parliamentary threshold, the most votes in an electoral district cannot even be converted into parliamentary seats and cannot run the government as a people's representative institution. Juridically, this happened because of the dictatorship of the majority vote represented by the DPR to prevent any new groups entering the parliament to participate in running the government. As long as the electoral system is still used for the distribution of DPR seats, the threshold for valid national votes should not be applied. If enforced, the people's sovereignty in these electoral districts will be lost.

Second, it is very difficult for new political parties to enter the parliament. The provisions of the parliamentary threshold in 2019 elections made the election event fierce and encouraged political parties to work hard to collect votes, especially new parties. The increase in the parliamentary threshold proved to be a threat to smaller parties. Especially a newly founded party with new people new ideas and new faces. In the 2019 elections, no new party passed the parliamentary threshold. Basically, these new parties also come from the silent majority that are scattered in Indonesia.

From the facts in 2019 which show that there are no new parties that have passed, this shows that the concept of a threshold has indeed killed off new parties' steps to voice the people's idea or opinion. The effect on small parties is that they are only extras in elections. When this happens, the big parties or the ruling party will receive the benefits. They

can make other regulations in their favour again at a later date so that the ruling party is firmly in parliament. If this happens, then an oligarchy in the government system in Indonesia will be created. Indonesia will be controlled by political elites from certain parties and the closed opportunity for new political parties to send candidates to parliament indicates that democracy in Indonesia is not as it should be.

This phenomenon is analysed by the thinking of John Locke in his view of The Rule Of Law, that the legislature must be above the executive because the legislature is the legislator and the supervisor of the law so that the law can run smoothly. Whereas the executive is only the enforcer of the law, on the grounds that society comes before the state so that the will of the people must be above everything that is represented in the legislature, so any attempt to stop a new party from sitting in parliament is a violation of the people's sovereignty because it is not the will of all. people.

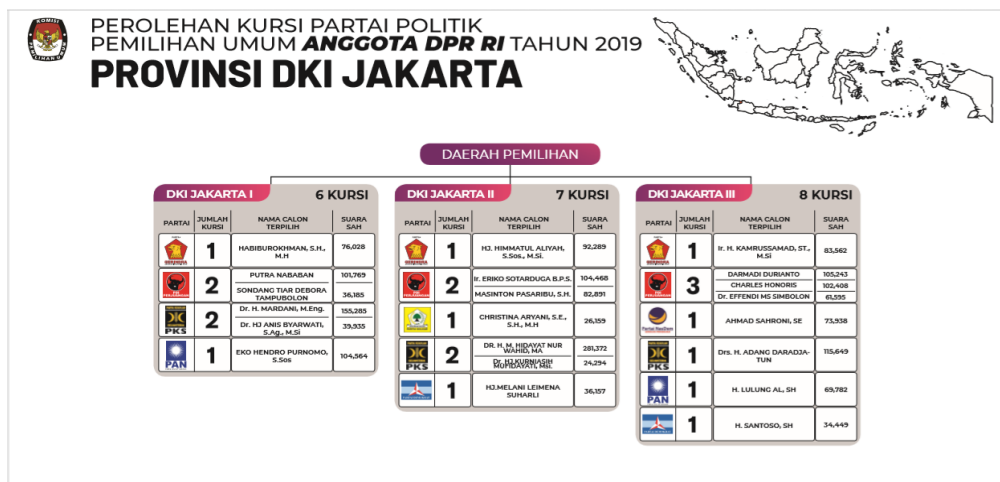
Third, there is disproportionality between the number of votes and the number of seats in the parliament. Referring to Rousseau's concept which states that it is the majority vote that runs the government, the concept of parliamentary threshold creates a disproportionality between votes acquired and seats. The following is a data table showing the disproportionality between the number of votes and the number of seats:

Table

Political Party	Votes	Seats	Status
PDIP	27.503.961(19,33%)	128	Passed PT (4%)
Golkar	17.229.789(12,31%)	85	Passed PT (4%)
Gerindra	17.596.839(12,57%)	78	Passed PT (4%)
NasDem	12.661.792(9,05%)	59	Passed PT (4%)
PKB	13.570.970(9,69%)	58	Passed PT (4%)
Demokrat	10.876.057(7,77%)	54	Passed PT (4%)
PKS	11.493.663(8,21%)	50	Passed PT (4%)
PAN	9.572.623 (6,84%)	44	Passed PT (4%)
PPP	6.323.147 (4,52%)	19	Passed PT (4%)

This disproportionality occurs because the sainte lague calculation method used in the calculation of seat acquisition where only parties that pass the threshold are included in the calculation in the electoral zone, which caused disproportionality. This phenomenon

contradicts the teachings of JJ Rousseau because parties that get a few votes such as Demokrat and Golkar can influence policies and decisions in parliament because they have a large number of seats



The table above is an example of the disproportionality between the number of votes and the number of seats. In the electoral zone of DKI III, PSI is not invincible based on the number of votes received. Since the party does not pass the threshold, it is not included in the distribution of seats so that other parties can benefit from gaining seats in the parliament. This phenomenon is against the people's sovereignty because the will of the majority of the people in the electoral zone has not been fulfilled. So that Rousseau's teaching on Volonte Generale does not apply in Indonesia because of the concept of this parliamentary threshold.

### Conclusion

From the description above, it can be concluded that people's sovereignty means that the highest power in a country comes from the people, which means that the people have the highest power in the country. Meanwhile, the Parliamentary Threshold is the minimum threshold that must be obtained by political parties to be included in the calculation of seat acquisition in parliament. The concept of PT resulted in the occurrence of wasted votes from valid votes so that millions of valid votes originating from the people's sovereignty were wasted. In

fact, all new parties have very little chance of getting into parliament to voice their aspirations. The proportionality between the votes and the number of seats acquired is also the reason that the concept of the parliamentary threshold in 2019 elections is against the people's sovereignty according to the concept of popular sovereignty by John Locke and J.J Rousseau.

## REFERENCES

- Adlina Adelia, Relevansi Ambang Batas Parlemen (Parliamentary Threshold) dengan Sistem Presidensial di Indonesia, Thesis, (Yogyakarta, UII, 2018).
- Ahmad Suhelmi, Pemikiran Politik Barat (Kajian Perkembangan Negara, Masyarakat dan Kekuasaan), (Jakarta: Gramedia, 2007)
- Budiarti Utami Putri, "Perludem dkk Usul Pilkada 2020 Ditunda Setelah Juni 2021" <https://nasional.tempo.co/read/1294925/ambang-batas-parlemen-naik-tak-sederhanakan-sistem-partai/full&view=ok>
- Christoforous Ristiano, "Ambang Batas Parlemen 4 Persen Dinilai Tak efektif Wadahi Suara Pemilih," <http://kompas.com/nasional/read/2019/06/24/12513261/ambang-batas-parlemen-4-persen-dinilai-tak-efektif-wadahi-suara-pemilih>
- Eka N.A.M Sihombing, "Pemberlakuan Parliamentary Threshold Dan Kaitannya Dengan Hak Asasi Manusia", Jurnal Konstitusi Lk Sps Universitas Sumatera Utara Vol. 1 (Juni 2009)
- Evi Kurnia Putri, "Urgensi Pengaturan Kenaikan Ambang Batas Bagi Partai Politik," Skripsi (2018)
- Farkhani dkk., *Filsafat Hukum: Paradigma Modernisme Menuju Post Modernisme* (Solo: Perum Gumpang Baru, 2018)
- Luky Sandra Amalia dkk, *Evaluasi Pemilu Legislatif 2014 : Analisis Proses dan Hasil*, (Yogyakarta: Pustaka Pelajar, 2016)
- Luky Sandra Amalia dkk, *Partai dan Sistem Kepartaian Era Reformasi*, (Yogyakarta : Pustaka Pelajar, 2017)
- Melvin I. Urofsky, Pendahuluan: Prinsip-Prinsip dasar Demokrasi, Jurnal "Demokrasi", America Commere Freedom.

Parliamentary Threshold in Constitutional Election..... (Muhammad Aziz Maftuh)

Miriam Budiardjo, *Dasar-Dasar Ilmu Politik*, ( Jakarta: Gramedia Pustaka Utama, 2008)

Putera Astomo, *Hukum Tata Negara Teori dan Praktek*, (Yogyakarta: Thafa Media, 2014)

Sitanggang, *Filsafat Demokrasi*, (Jakarta: Bumi Aksara, 2006)

Tengku Suhaimi Hakim Putra, "Pengaruh Ambang Batas Parlemen Terhadap Keberlangsungan Partai Politik dalam Sistem Pemilu di Indonesia," Skripsi (2019)