



## Implementation of the Parliamentary Threshold in Elections for the People's Representative Council of the Republic of Indonesia According to the 1945 Constitution

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### ABSTRACT

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The implementation of a democratic parliamentary threshold in Indonesia will always grow and develop in line with the growth and development of society. General elections which are a means to realize people's sovereignty must carry out political ideas in its implementation, so that democratic elections do not only determine who sits in parliament but represent people's sovereignty. The problem is whether the parliamentary threshold of the people's votes represented through political parties as participants in the 4% parliamentary threshold election can still be called people's sovereignty. The research method used is doctrinal research, namely research that is conceptualized and developed on the basis of the doctrine espoused in concept or development. The results of the study explain that the implementation of the Parliamentary Threshold is aimed at simplifying the party system and creating a strong presidential system with effective representative institutions, and guaranteeing people's sovereignty. Parliamentary Threshold is considered to be more effective in finding political parties that are serious about fighting for people's aspirations.

### Keywords:

Parliamentary Threshold, Sovereignty of the People, Political Parties, General Elections

### I. INTRODUCTION

Indonesia has held elections for the People's Representative Council from 1955 to 2019 and will hold elections for the People's Representative Council in 2024 (DPRRI, 2023, p.2). The 2024 People's Representative Council elections will apply the parliamentary threshold policy. The Parliamentary Threshold is the number of valid votes for a political party to be able to place its representatives in parliament. The enactment of the parliamentary threshold is a law-forming policy (legal policy) made to create a simple multiparty system. A simple multiparty system will provide effective performance for the people's representatives working in parliament (Anisah, 2019, p.42).

Indonesia as a country with a democratic system of government, and Pancasila as the basis of the state and the 1945 Constitution as its constitutional basis provide direction

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in terms of the general election of members of the People's Representative Council. Elections for the House of Representatives are held every five years. In the five-year national activity cycle, the election is one of the government's activities or programs that must be implemented, no matter how high the election costs (Huda & Nasef, 2017, p.42). Nonetheless, holding elections is a realization of the people's right to participate in government, and at the same time there is democracy in Indonesia. The concept of democracy as a system of people's government, so that every citizen has a voice in the exercise of power and takes a real part in the government system, which is known as the democratic concept, namely the concept of the people, by the people, and for the people. In this concept, actually the highest sovereignty lies with the people (Fahmi, 2011, p.20). In a democratic government system, of course, there is a close relationship with the building of the party system and the electoral system.

Political parties have a very strategic position and role in every democratic system. Political parties play a very strategic connecting role between governmental processes and citizens, and political parties actually define democracy. Thus, political parties are very important pillars to strengthen the degree of their institutionalization in any democratic

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political system (Huda & Nasef, 2017, p.42). One of the issues being discussed ahead of the 2024 election is related to the parliamentary threshold. The parliamentary threshold is the provision for the minimum number of votes that must be fulfilled by the political parties participating in the election to be able to place their legislative candidates in parliament. Political parties that do not meet the Parliamentary Threshold are not entitled to have representatives in parliament so that the votes that have been obtained by these political parties are considered lost (Rokhim, 2017, p. 85-94).

Looking at its history, the parliamentary threshold (PT) that was implemented in 2009 was 2.5% (two point five percent) based on the provisions of article 202 of Law no. 10 of 2008 concerning the General Election of members of the People's Representative Council, Regional Representative Council, and Regional People's Representative Council, and in the 2014 election as much as 3.5% (three point five percent) based on the provisions of article 208 of Law no. 8 of 2012 concerning the General Election of Members of the People's Representative Council, Regional Representative Council, and Regional People's Representative Council, while for the 2019 elections it has been agreed to increase to 4% (four percent) based on the provisions of article 414 of Law Number 7 of 2017 concerning General Elections. Furthermore, the parliamentary threshold (PT) is 4% in the 2024 Legislative Election. This is as stated in the Government Regulation in Lieu of Law (Perppu) Number 1 of 2022 concerning Elections. The calculation of the parliamentary threshold in the 2024 Legislative Election uses the *sainte lague* method which converts the number of party votes into seats in the People's Representative Council (Widi, 2023).

This issue also reaped a lot of reactions in society, especially among legal and political experts. Some of them agreed, while others refused. The reasons for both are different and in general quite reasonable. The reasons for those who agree to the plan for the implementation of the parliamentary threshold are of the opinion that restrictions on political parties are more capable of creating stability in government, because the number of political parties currently developing seems to be extra characters in election moments (Anisah, 2019, p.42). The reason for refusing, because based on the context of the government's political logic, is actually not the number of political parties participating in elections that must be limited, but the ideal number of political party forces that need to be empowered and streamlined in parliament. In political practice, the government deals with political parties in parliament, not all parties participating in elections (Anisah, 2019, p.42).

According to the theory of people's sovereignty contained in Article 1 paragraph (2) of the 1945 Constitution, that "Sovereignty is in the hands of the people and implemented according to the Constitution", which is a condition that reflects the actual situation regarding the arrangement of the highest power, that the owner of the

highest power in the country are the people (Mulyosudarmo, 2004, p.47). General elections are used to give a mandate to state administrators as executors of state power regardless of how the system is implemented (Abdullah, 2009, p.56).

Furthermore, regarding the understanding of the people in the people's sovereignty, which means that the highest power lies with the people, and places the highest power in the hands of the people. The teachings of popular sovereignty as the last teachings practiced in modern countries get a good place, because the teachings of popular sovereignty can be considered as the best teachings besides other teachings of sovereignty (Anwar C, 2008, p.48). Because the people are sovereign in power, all rules and powers exercised by the state must not conflict with the will of the people (Sodikin, 2014). However, in the practice of legislative elections in Indonesia, the concept of a parliamentary threshold is problematic with a 4% limit for political parties that can place their representatives in parliament, so that the 4% limit is in accordance with people's sovereignty. This is the problem in this paper.

## II. RESEARCH METHODS

The research method used is normative legal research or doctrinal research, namely research that is conceptualized and developed on the basis of the doctrines adhered to in the concept or in its development (Ahmadi & Aripin, 2010, p.31). The approach used is the statute approach, and the conceptual approach. The statute approach is an approach that is taken by examining all laws and regulations that are related to the problems (legal issues) being faced. Statute approach by studying the consistency or conformity between the Constitution and the law, or between one law and another law (Ibrahim, 2007, p.321). Conceptual approach, which is an approach derived from the views and doctrines developed in the science of law. Studying the views and doctrines in the science of law, researchers will find ideas to solve the problems they face (Ibrahim, 2007, p.321).

## III. DISCUSSION

### 3.1. Concept of rule of law and democratic government system

The concept of rule of law, meaning that law is understood as a product of a state that aims to maintain legal order (*recht-order*). Social order must be considered synonymous with law or at least obedient to the law (Fadjar, 2005, p.48). The rule of law (*rechtstaat*) actually focuses on the existing legal system in a country. The legal system originates from continental Europe, which is commonly called civil law or modern Roman law, whose birth process began with a revolutionary struggle (Fuady, 2009, p.57).

The concept of a rule of law in Indonesia has become a benchmark in administering the state, including in holding general elections. This is expressly stated in Article 1 paragraph (3) of the 1945 Constitution, namely "Indonesia is

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a state based on law". One of the characteristics of a rule of law is a democratic government. People have rights to the state and individuals have rights to society (Putri, 2023), which means the protection of human rights (Kusnardi & Saragih, 2005, p.67). A country with the principle of democracy in a rule of law and guaranteed human rights, the people have the highest power in government which is known as the sovereignty of the people (Asshiddiqie, 1994, p.48). Sovereignty of the people is sovereignty that describes a system of power in a country that wants the highest power to be held by the people. Popular sovereignty is a way to solve problems based on a certain system that fulfills the general will. The general will relate to the exercise of governmental and judicial powers, but also the power to make regulations (Ridho, 2017). Democracy is defined as a system of government by involving the people, in which every citizen has a voice in the exercise of power and takes real part. The words "populist" and "people's sovereignty" denote the principle of democracy, meaning people's power (Asshiddiqie, 1995, p.13).

Indonesia as a republic in the form of a republic, the highest sovereignty is in the people. so that the people as the owner of the highest sovereignty and sovereignty is represented by the legislature. Its sovereignty is exercised by the legislature, as an embodiment of the people in general, so that its interests are also for the people in general (Ranadireksa, 2002, p.67). One of the implementations of people's sovereignty according to the concept of the Indonesian legal state is general elections and general elections which are meant by the general election of members of the People's Representative Council.

### **3.2. Parliamentary threshold conceptual framework**

One of the new instruments in legislative election law that was born in the reform era is regarding the Parliamentary Threshold. Parliamentary Threshold in the Oxford Advanced Learner's Dictionary, consists of the word parliament which means a group of people who are elected to make and change laws in a country, and threshold which means limits certain to start something (Al-Fatih, 2018, p.376). Theoretically, parliamentary thresholds are defined as one of the election technical instruments found in countries that implement proportional electoral systems, including in Indonesia. Parliamentary Threshold is usually expressed as a percentage of valid votes, or in some countries it can be expressed as a minimum number of seats (Al-Fatih, 2018, p.376). The Parliamentary Threshold is the provision for the minimum number of votes that must be fulfilled by the political parties participating in the election to be able to place their candidates for legislative members in parliament. This means that political parties that do not meet the parliamentary threshold do not have the right to have representatives in parliament so that the votes that have been obtained by these political parties are considered forfeited (Rokhim, 2011).

The basis for the existence of a parliamentary threshold is to make the people's voice representation in parliament more effective, not to limit the people's right to choose their representatives in parliament. Votes that are not represented does not mean that the people lose their sovereignty in parliament (Bachmid, 2020). The Indonesian parliamentary threshold is a threshold requirement for political party votes to be able to enter parliament. So, after the total number of votes for each political party is known, then it is divided by the number of votes nationally (Bachmid, 2020).

So far, the parliamentary threshold is an effort to simplify political parties in Indonesia, which is regulated through election laws. The simplification of political parties had indeed become a very controversial issue because of the political reality of post-reform Indonesia, with the general election system using a multi-party system. At first, through an open proportional election system in 2009, it implemented a 2.5% parliamentary threshold system. This means that only political parties that achieve a national vote of 2.5% of the total national valid votes are entitled to a seat in the People's Representative Council. Political parties that do not reach the parliamentary threshold of 2.5% will lose their votes and have no seats in the People's Representative Council (Firdaus, 2011). The minimum limit stipulated in Article 202 paragraph (1) of Law No. 10 of 2008 concerning the Election of Members of the People's Representative Council, Regional Representative Council, provincial and district/city Regional People's Representative Councils is 2.5% of the total number of valid votes in legislative elections. However, the provision for a parliamentary threshold of 2.5% in the 2009 election does not apply in determining the acquisition of seats for the Provincial and Regency/City Regional People's Representative Councils. So the parliamentary threshold only applies to legislators in the People's Representative Council (Sardini, 2011, p.67).

Furthermore, in the 2014 legislative elections, the parliamentary threshold increased to 3.5%, this is stipulated in article 208 of Law No. 8 of 2012 which states that "Election Contesting Political Parties must meet the vote acquisition threshold of at least 3.5% (three point five percent) of the number of valid votes nationally to be included in the determination of seats for members of the People's Representative Council, provincial Regional People's Representative Council, and district/city Regional People's Representative Council" (Sardini, 2011, p.67). This provision is the application of a policy of simplification of political parties by limiting their presence in parliament based on the percentage of a certain threshold of votes in elections known as the concept of parliamentary threshold. This provision applies to the vote acquisition of political parties in the 2014 legislative election (Kuswanto, 2016, p.221).

Likewise, in the 2019 legislative elections, the same parliamentary threshold was applied in 2014, namely 4%

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(four percent), this is determined in articles 414 and 415 of Law No. 7 of 2017. If you study the results of the 2009 and 2014 elections, then the prospects for the existence of political parties in the House of Representatives there will still be quite a lot, because of that the aims and objectives of the parliamentary threshold to simplify multi-party and

streamline the decision-making process in parliament will be very difficult to achieve (Adam, Betaubun, & Jalal, 2021), except with the intent and purpose of raising the parliamentary threshold to strengthen the presidential system of government.

Table.

**Percentage (%) Parliamentary Threshold, Number of Political Parties Participating in Legislative Candidates and Political Parties Passing the Parliamentary Threshold**

Year	% Parliamentary Threshold	Legal Basis	The Number of Political Parties Participating in the Legislative Election	Number of Political Parties Passing the Parliamentary Threshold	Number of Fractions in the House of Representatives
2009	2,5	Article 202 Law No.10/2008.	34	9	9 Factions
2014	3,5	Artikel 208 Law No.8/2012	12	10	10 Factions
2019	4	Artikel 414 and 415 Law No.7/2017	16	9	9 Factions

### 3.3. Implementation of parliamentary threshold linked to the theory of people's sovereignty according to the 1945 Constitution

The purpose of implementing a parliamentary threshold is because it has the advantage of simplifying political parties that will sit in parliamentary seats and this without limiting the participation of political parties in elections as is the case with implementing the electoral threshold (ET) (Bischoff, 2009), which limits political party participants with a certain minimum number of votes to take part in the next election. Conditions for constitutionality, that the policy of forming laws to simplify political parties essentially depends on the conditions for constitutionality explained by the Constitutional Court (Qamar, 2012). With regard to the opinion of the Constitutional Court, the principle that must be considered is that as a law-forming policy it must be in line with Article 22E of the 1945 Constitution. This means that the Constitutional Court has provided guarantees that the parliamentary threshold is the freedom to form laws as long as they do not violate human rights or contradict with the principle of popular sovereignty, the principle of equality, the principle of justice and the principle of non-discrimination. This means that legally raising the threshold desired by legislators in applying the parliamentary threshold is still freely possible (Firdaus, 2011).

Theoretically, there are no references that explain the ratio or reasons for determining the amount of the parliamentary threshold. This is entirely a political law where the practice of each country is different (Rokhim, 2011). In other words, determining the parliamentary threshold is not a theoretical problem. Even so, logically one can still formulate

an understanding that the higher the size of the parliamentary threshold, the greater the impact of simplification of political parties that can be generated. In accordance with this understanding, so that the number of political parties in parliament can be increasingly limited, this of course depends on the amount of the parliamentary threshold that is to be set (Rokhim, 2017).

Provisions regarding the parliamentary threshold in each country are generally influenced by the cultural and historical existence of the country. There is no official size for a country regarding the application of a parliamentary threshold (Rokhim, 2017). Several references regarding the parliamentary threshold in several countries show different variables. Countries in the world that apply a parliamentary threshold, there is no absolute limit for each country. This absolute limit does not require a requirement for every country to implement it. What is common is that there are exceptions from the parliamentary threshold mechanism (Firdaus, 2011).

The provision for a parliamentary threshold in Indonesia is being debated, because both the DPR and experts are of the view that theoretically a parliamentary threshold is good, but the dynamics that are developing in society related to the level of awareness of people's political culture seems that this idea will experience problems. The application of the parliamentary threshold is also considered not to accommodate the interests of all components of the nation's political potential and also does not absorb the aspirations of the people themselves (Al-Fatih, 2018, p.376). The application of a parliamentary threshold at the lower level has the potential for horizontal conflict because when a candidate

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is elected but because he does not meet the parliamentary threshold, in the end the elected candidate cannot sit in parliament (Firdaus, 2011).

Thus, the application of the parliamentary threshold is theoretically good because it aims to simplify political parties in parliament and ensure the votes obtained by political parties resulting from general elections (Riewanto, 2007, p.78). However, the condition of Indonesian society which is still pluralistic and the level of political awareness in society which is still developing requires serious attention. If this problem is analyzed according to the theory of popular sovereignty, then the stipulation of a parliamentary threshold of 4% results in many missing votes. The argument is that when the votes they distribute to one of the political parties or legislative candidates do not reach the parliamentary threshold, their votes are lost and are not considered (Bachmid, 2020). There are also many legislative candidate participants who already have a lot of voices in the election but just disappear when their political parties do not meet the threshold of the parliament itself. This is a very big loss for legislative candidates or political parties. In addition to losing their voices, the people as participants in legislative candidates who have spent a lot of money, they failed because of the parliamentary threshold.

Since the beginning, the Parliamentary Threshold setting has received a lot of rejection, especially by the new parties participating in the election because the government and the House of Representatives who passed the law were considered to be discriminatory. A number of political parties then submitted a Judicial Review to the Constitutional Court to annul the Parliamentary Threshold provisions. However, based on the Constitutional Court Decision No. 52/PUU-X/2012 still considers that Parliamentary Threshold rules are basically constitutional and do not conflict with the 1945 Constitution. Referring to Constitutional Court Decision No. 52/PUU-X/2012 which states that the legal policy of limiting the number of parties is a natural thing (Hadi & Brata, 2020). This fairness is due to the large number of political parties that do not effectively gain support from the public, so that these political parties cannot place their representatives in representative institutions. In addition, the Constitutional Court also gave consideration that in order to strengthen a presidential system of government, a simple multi-party system was needed (Hadi & Brata, 2020).

The Parliamentary Threshold is the threshold for a political party's minimum vote acquisition in general elections to be able to place their legislative candidates in parliament (Kholis, 2020). With this provision, political parties that do not meet the minimum threshold are not entitled to have representation in parliament, so that the votes that have been obtained by these political parties are considered forfeited or lost. This parliamentary threshold is made to stabilize the relationship between the executive and the legislature in a democracy. Once again, the basic location

of the existence of a Parliamentary Threshold is to make the people's voice representation in parliament more effective, not to limit the people's right to choose their representatives in parliament (Hadi & Brata, 2020). The implementation of the Parliamentary Threshold is aimed at simplifying the party system and creating a strong presidential system with effective representative institutions. The effectiveness of representative institutions is inseparable from the number or number of political power factions that exist in the DPR. The fewer political parties that exist in representative institutions, the better the effectiveness of the implementation of the functions of representative institutions. Parliamentary Threshold is considered to be more effective in capturing political parties that are serious about fighting for people's aspirations (Kholis, 2020).

The tendency for many political parties to emerge is indeed a reflection of the democratic values upheld by Indonesia. Political parties are considered as a forum as well as a tool for the ruler to carry out the functions of his power to achieve the goals of the state (Erfandi, 2014, p. 126). In addition, as a guarantee of human rights for citizens based on Article 28 of the 1945 Constitution of the Republic of Indonesia which states that the state guarantees freedom for citizens to associate and assemble and express their opinions orally and in writing.

With the freedom to establish a political party, regulations are needed to control existing political parties. Efforts to simplify the number of parties have begun to emerge from the lengthy verification process that must be passed by a political party in order to become election contestants. Apart from that, efforts to simplify the party were also manifested by the existence of the Parliamentary Threshold policy (Firdaus, 2011).

As is known, ahead of the general election will be followed by many new parties which tend only as a form of participating in enlivening the five-year democratic party. This can be seen by the fact that there are not many contributions made from the presence of these parties and it is evident that there are many new parties that do not meet the Parliamentary Threshold to occupy seats in parliament (Al-Fatih, 2018, p.376).

Therefore, the Parliamentary Threshold was first implemented in the 2009 election, and during the 2009 legislative election the provisions that apply to the implementation of this Parliamentary Threshold are Article 202 of Law Number 10 of 2008, which stipulates that the parliamentary threshold is set at 2.5% of the number of valid votes nationally and is only applied in determining the seats of the People's Representative Council and does not apply to the Provincial Regional People's Representative Council or Regency/City Regional People's Representative Council (Al-Fatih, 2018, p.376). However, in the 2009 election, political parties that previously did not get seats in parliament in the 2004 election and should not have been allowed to take part

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in the election could become election participants with the Constitutional Court Decision Number 12/PUU-VI/2008. This resulted in the number of political parties participating in the 2009 election, namely 44 political parties (7 Acehese local parties), of which 28 political parties did not pass the threshold, and only 9 (nine) political parties had seats in parliament (Hadi & Brata, 2020).

The Election Law was again revised into Law Number 8 of 2012 which stipulates a parliamentary threshold of 3.5% and applies nationally to all members of the People's Legislative Assembly and Regional People's Representative Councils. However, later this rule was challenged by 14 political parties to the Constitutional Court. The Constitutional Court granted part of the political parties' requests for judicial review of Law Number 8 of 2012. Article 208 of Law Number 8 of 2012, along the phrase "Provincial Regional People's Representative Council and Regency/City Regional People's Representative Council are contrary to the 1945 Constitution". In consideration decision, explained that the implementation of the Parliamentary Threshold of 3.5% of the total valid votes nationally to be included in the determination of the acquisition of seats for members of the People's Representative Council, Provincial Regional People's Representative Council, Regency/City Regional People's Representative Council, will eliminate the votes of political parties that do not reach 3.5% at the national level. In the end, the Constitutional Court determined that the 3.5% threshold only applies to the DPR and not to the DPRD. In the 2014 elections as many as 15 political parties participated (3 Acehese local political parties) and two parties did not qualify for parliament (Constitutional Court Decision).

Furthermore, for the 2019 elections, the Election Law was again changed to Law no. 7 of 2017, which raises the parliamentary threshold by 4% of national valid votes and applies nationwide to all members of the DPR. So, as contained in Article 415 of Law no. 7 of 2017, if a party does not fulfill 4%, then it is not included in the vote count for seats in the DPR. The second provision is also contained in Article 414 which states that all political parties are included in the vote count for the Regency/City Regional People's Representative Council. From the formulation of the article, it is clear that there is no provision stating that the calculation for political parties that do not fulfill the 4% is not included in the calculation in the Regency/City Regional People's Representative Council (Hadi & Brata, 2020). Likewise, in the 2024 legislative elections, they still maintain a parliamentary threshold of 4%. The implementation of the implementation of the parliamentary threshold according to the Election Law No. 7 of 2017 is also inseparable from the presidential system. The presidential system is a republican system of government in which the executive power is elected through elections and is separated from the legislative power (Hadi & Brata, 2020).

The presidential system is inseparable from the Parliamentary Threshold, in which the parliamentary threshold aims to strengthen the president's position. If the threshold for parliament is high, fewer parties will occupy parliament and the position held by the president will also be strong (Kholis, 2020). Then with so few parties it will not generate much interest. So, it would be better for the representative body to be represented by several parties so as not to have too many interests. The simplification of political parties can strengthen the institutional presidential system. Parliament becomes more conducive and effective with a modest number of parties, so that it can continue with the president as the head of state and government.

Legal policy regarding parliamentary thresholds is a way to create legal politics of a simple multi-party system, especially in realizing a pure presidential system of government in Indonesia. The increase in the threshold to 4% also aims to build political life by creating stability between the party system and presidential government in an atmosphere of checks and balances. The parliamentary threshold is one of the efforts to simplify political parties and if it is simplified then the presidential system will be strong and stable (Widi, 2023). This is because if many parties pass the parliamentary threshold, then at the time of making a policy it will have an impact on the stability of the government because there are many political parties with their own interests.

#### **IV. CONCLUSION**

The application of a democratic parliamentary threshold will always grow and develop in line with the growth and development of society. General elections are a means to realize democracy, must carry out these political ideas in practice, so that democratic elections do not only determine who sits in parliament but are general elections that can represent people's sovereignty and the purpose of holding general elections in principle is to implement people's sovereignty. Carry out the rights of citizens and make the transition of government leadership run in an orderly, safe and peaceful manner. The application of a parliamentary threshold with 4% of national valid votes according to the theory of popular sovereignty is still in line with the 1945 Constitution, so that constitutionally it can be justified.

The constitutionality of applying the parliamentary threshold according to Election Law No. 7 of 2017 is also inseparable from the presidential system. The presidential system is a system of government and the executive power is elected through elections and is separate from the legislative power. The basic layout of the Parliamentary Threshold is to make the people's voice representation in parliament more effective, not to limit the people's right to choose their representatives in parliament. The implementation of the Parliamentary Threshold is aimed at simplifying the party system and creating a strong presidential system with

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effective representative institutions. The effectiveness of representative institutions is inseparable from the number or number of factions of political power in the DPR. This is because the fewer political parties that exist in representative institutions, the more effective the implementation of the functions of representative institutions will be. Parliamentary Threshold is considered to be more effective in capturing political parties that are serious about fighting for people's aspirations.

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