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Review of the Implementation of the Party Threshold in Safeguarding Democracy: Consensus on Implementation Constitutionalism in Indonesia

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Article

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Abstract

Indonesia's democracy as one of the largest democracies in the world requires a general election system that is able to ensure people's representation while creating political stability. One of the instruments used in the Indonesian electoral system is the application of political party thresholds (*electoral threshold and parliamentary threshold*). This policy is intended to simplify the party system, strengthen the effectiveness of government, and create a more stable presidential system. However, the application of the threshold also raises debates about the quality of democracy, political representation, and its conformity with the principles of constitutionalism. This study aims to analyze the influence of the implementation of the party threshold system on political stability and the quality of democracy in Indonesia, as well as to examine the consensus on the application of thresholds in the perspective of constitutionalism based on the General Election Law. The research method used is normative legal research with legislative, conceptual, and comparative approaches. The results of the study show that the implementation of party thresholds contributes to the simplification of the party system and government stability, but on the other hand has the potential to reduce the political representation of the community. From the perspective of constitutionalism, the threshold setting must remain based on the principles of people's sovereignty, the rule of law, and constitutional consensus as the basis for the implementation of a democratic state.

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INTRODUCTION

Indonesia is one of the largest democracies in the world. The large population demands the implementation of a general election system that is able to ensure the democratic circulation of leadership for the benefit of the people. Basically, Indonesian democracy is based on the values of Pancasila as the basis of the state. Pancasila Democracy emphasizes the principle of kinship and mutual cooperation aimed at realizing the welfare of the people. Democracy integrates the

values of religiosity, truth, love for others, and the sustainable personality of the Indonesian nation.[1]

After the collapse of the New Order regime in 1998, Indonesia entered an era of reform marked by democratization efforts through various constitutional changes and political policies. Democracy places the people as the holders of the highest sovereignty so that a basic rule is needed that is able to guarantee and protect the rights of the people in the life of the state. These basic rules are known as the constitution which is the basis for the administration of government and the implementation of democracy.[2]

In the Indonesian democratic system, general elections are the main means of exercising people's sovereignty. Through general elections, the people elect their representatives who will carry out legislative and executive functions. The existence of political parties is an important element in the democratic system because it functions as a means of channeling people's aspirations and a link between the people and the state.[3]

Regulation regarding the threshold of political parties is one of the instruments used in the Indonesian election system. Article 414 of Law Number 7 of 2017 concerning General Elections stipulates that political parties participating in the election must obtain at least 4% of the number of valid national votes to be included in the determination of the acquisition of seats in the House of Representatives. This policy is intended to simplify the party system and increase the effectiveness of government. However, the application of the threshold also raises debates about the quality of democracy, political representation, and its conformity with the principles of constitutionalism.[4]

On the one hand, the threshold is considered to be able to create political stability and strengthen the presidential system. On the other hand, the policy is seen as limiting the political representation of the community because votes given to political parties that do not meet the threshold are not converted into parliamentary seats. Therefore, a comprehensive study is needed on the influence of the application of the threshold system on political stability and the quality of democracy in Indonesia and its relevance to the principles of constitutionalism.

Based on this description, this article discusses the effect of the implementation of the party threshold system on political stability and the quality of democracy in Indonesia and analyzes the consensus on the application of thresholds in the Indonesian constitutionalism system based on the provisions in the General Election Law.

RESEARCH METHODS

This research is normative legal research that uses a statutory approach, a conceptual approach, and a comparative approach. The legislative approach is carried out through a study of

[1] Mohammad Hatta, *Nationality and Nationality, Book 1* (Jakarta: LP3ES, 1998), 87.

[2] Moch. Marsa Taufiqurrohman, "*Reviewing the Application of Election Thresholds to the Proportional General Election System in Indonesia*," Politika: Journal of Political Science, Vol. 12, No. 1 (2021), 128

[3] Ekawahyu Kasih, "*The Implementation of Democratic Principles in the Political System in Indonesia to Realize Social Justice for All Indonesian People*," Journal of Lemhanas Studies of the Republic of Indonesia, Vol. 6, No. 2 (2018), 52.

[4] Firman Noor, "*Opposition in Democratic Life: The Importance of the Existence of Opposition as Part of Strengthening Democracy in Indonesia*," Indonesian Society, Vol. 42, No. 1 (2016), 4.

the Constitution of the Republic of Indonesia in 1945 and Law Number 7 of 2017 concerning General Elections. A conceptual approach is used to analyze the concepts of democracy, people's sovereignty, political parties, and constitutionalism. Meanwhile, a comparative approach is carried out by comparing the setting of the threshold for political parties in Indonesia with several other countries, namely Turkey, Italy, and Serbia.

The legal materials used consist of primary legal materials in the form of laws and regulations and secondary legal materials in the form of books, scientific journals, research results, and the doctrines of experts related to democracy, the electoral system, political parties, and constitutionalism. The analysis is carried out qualitatively through legal interpretation and the study of various relevant legal sources.

ANALYSIS AND DISCUSSION

1. The Effect of the Implementation of the Party Threshold System on Political Stanbility and the Quality of Democracy in Indonesia

a. The evolution of the electoral system from the perspective of democracy in Indonesia

The review of Indonesian democracy in the evolution of general elections has brought the concept of boundaries in various forms of the electoral system. These boundaries are an important requirement for political parties to participate in general elections, both as election participants, seat holders in the central parliament, and as supporters of presidential and vice presidential candidates.[10] As part of the sovereignty of the people, electoral laws were made to ensure the transfer of the old leadership and power to the new leader and the placement of power by the new government. It is important to remember that leaders elected by the people are leaders who come from the people's trust through a system of representatives.[5]

Historically, starting from the beginning of the independence period to the era of democratic reform, it has undergone different changes and peculiarities. The practice of democracy in Indonesia has developed in at least 4 phases as follows: a. Parliamentary Democracy (1945-1959), a period of democracy in which the role of parliament is very important and parties are known as parliamentary democracy. It has political instability, a multiparty system, and frequent cabinet changes. Then there are records of political party failures, ideological disputes, and local uprisings; b. Guided Democracy (1959-1965), a democracy that in some ways has deviated from constitutional democracy, which is officially the foundation, and features elements of people's democracy. It has the characteristics of a power system focused on President Soekarno, the dissolution of political parties, and the dominance of Nasakom's ideology.

In addition, there are shortcomings such as loss of freedom of opinion, human rights violations, and escalation of political conflicts; c. New Order (1966-1998), In this case, the period of Pancasila democracy, which is a constitutional democracy that prioritizes presidential

[5] Matori Abdul Djalil, *The Demands of Reform and the Organizers of the 1999 Elections in the Transition Period,* (Jakarta: KIPP, 1999), 34.

democracy, has the characteristics of political stability, and economic growth. Then there is the issue of the problem of authoritarianism, human rights violations, and corruption, which was marked by the end of the New Order regime collapse.[6] d. Reform (1998-Present), referred to as the period of democratic transition that began with the amendment of the 1945 Constitution of the Republic of Indonesia which increased political freedom and strengthened the presidential system. It has special characteristics, including the transition to democracy, decentralization, and regional autonomy.

John Locke stated that in the natural state, people choose to form civil society through a social contract, in which people surrender some of their natural rights to the government in the hope of gaining protection and order. Unless they agree in greater numbers than the majority, every individual who gathers from a natural state to form a society must understand that they must surrender all the power necessary to achieve that goal to the majority.[7]

Democracy is concerned with how power is divided in society or distributed. Power is defined as the ability of a person or group to influence the behavior of another person or group through behavior and involvement in policy formulation. This is an important principle in politics. We can look at Indonesia's political system during the New Order period, as well as the elections of 1999 and 2019. In view of these developments, power allows various groups of people to influence government policies, with the House of Representatives and the Regional House of Representatives being the most appropriate.[8]

Thus, we can draw an important conclusion that Indonesia's electoral system is constantly evolving, including the application of various types of boundaries. Locke's theory of the social contract, which includes the idea that individual rights are granted to society, provides a philosophical foundation for the formation of society and government. In a democracy, political power is shared between various institutions, such as the House of Representatives and the House of Representatives, which allows different groups of people to influence the policies made by the government.

b. Political parties as representations of the face of democracy in Indonesia

Indonesia, especially at the beginning of independence, democracy in Indonesia experienced a changing dynamism. It starts with parliamentary democracy, which has a good foundation, but is poorly implemented. Due to a presidential decree issued on July 5, 1959, guided democracy then emerged as a substitute for parliamentary democracy. With a communist-leaning government, the PKI had a rebellion, and Sukarno was replaced by Suharto. For approximately 32 years, the Pancasila democracy of the new order era was implemented. B.J. Habibie began the reform era because the country's stability declined. Citizens must study the

[6] Ismail Sunny, *Pancasila Democracy Mechanism*, (Jakarta: Aksara Baru, 1987), 9-10.

[7] John Locke, *The Second Treatise of Government*, (Indianapolis: Hackett Publishing Company, Inc., 1980), p. 53. Quoted from Satya Arinanto's book, Legal Politics 1, (Jakarta: Postgraduate FH UI), 5.

[8] Adityawarman, "*Political Development and the Quality of Democracy*," Journal of Moderat, Vol. 6, No. 2 (2020), 405.

development of Indonesian democracy, apply democratic principles, and reflect on history because it can have a positive impact.[9]

Article 2 paragraph (1) and Article 6A paragraph (1) of the 1945 Constitution show that democracy in Indonesia will occur. According to Juan Linz et al., the indicators include accountability, an open political recruitment process, periodic changes of leaders, general elections (elections), and the exercise of basic rights. Where any eligible citizen can vote or be elected, no one who is eligible cannot vote or be elected.[10] Given one of these indicators, elections are intended to provide people's sovereignty through democratic practices by electing representatives to the legislative and executive institutions. The purpose of this election is to elect a ruler who is also democratic to sit in the institution through elections that involve community participation, so that it is able to meet the needs and interests of the community.[11] According to President Abraham Lincoln's famous definition, democracy can be defined not only as government by the people but also as government for the people, or a government that follows the will of the people. The ideal democratic government is one that always follows the wishes of all its citizens. Although such a government never gives a full response, democratic regimes may want it.[12]

The conditions that occur raise the question of whether it is true and natural for the government elected through the electoral system to be a representation of democracy in order to run the state system. According to Aspinal and Berenschot, parties in Indonesia, as in most democratic systems, play an important role in politics. Parties in Indonesia are generally strongly institutionalized, at least when compared to previous democracies. However, political parties are often very marginal in the exchange of clientelism with acts of clientelism (exchange of promises and political loyalty) which is very important in political life in Indonesia.[13] The most common example is the formation of a successful team where candidates form non-party organizations with demands for promise and loyalty. In short, democracy has an important role for the people who use it because it gives the people the right to determine the organization of their own country. Almost all definitions of this term give an important position to the people, although its application in different countries is not always the same as that of the political system.[14]

2. Consensus of the Threshold Party in Implementing the Constitutionalism System in Indonesia Reviewed from the Election Law

[9] Christopher Ezra Manurung, *"The Development of the Democratic System in Indonesia and Its Relevance for Life in 2022*," Nusantara, Vol. 1, No. 1 (2022), 13.

[10] Satya Arinanto, *Constitutional Law and Democratization in Indonesia*, (Jakarta: Publishing House Faculty of Law University of Indonesia, 2000), 66.

[11] Revorlin Telaumbanua, "*Political Dynasties and the Quality of Democracy in Indonesian Regional Government: Evaluation and Perspectives*," Journal of Government, Vol. 9, No. 2 (2024), 56.

[12] Arend Lijphart, Democracies: Patterns of Majoritarian and Consensus Government in Twenty-One Countries, (New Haven: Yale University Press, 1984). Quoted in Satya Arinanto, Legal Politics 1, (Jakarta: Postgraduate FH UI), 25.

[13] Edward Aspinal and Ward Berenschot, *Democracy for Sale: Election, Clientelism and the state in Indonesia*, (Ithaca: Cornell University, 2019), 9-10.

[14] Deliar Noer*, Introduction to Political Thought*, (Jakarta: Cv Rajawali, 1983), 207.

a. The influence of political party consensus on the Application of constitutionalism principles in parliamentary threshold setting

Under Indonesia's constitutional system which is based on the principle of checks and balances, the concept of democracy regulated in the Constitution cannot be applied exclusively. This is because Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that "Indonesia is a state of law", and the consequences of this provision have had an impact on the life of the nation and the state as a whole, which must be adjusted to the principles set out in the Constitution.[15] Democracy or people's sovereignty can ensure that people participate in the decision-making process, so that the laws made and implemented truly reflect the community's sense of justice.[16]

An important decision in a country's politics is to determine its direction. The social, economic, and cultural development of the nation will be affected by this decision. In addition, this political direction can affect education, economic growth, and employment practices. Proper politics can improve people's welfare by encouraging economic growth, creating job opportunities, and protecting natural resources. Social stability and a just society can be achieved through proper politics. In addition, improper political decisions can lead to damage to the past, such as social injustice, economic inequality, and unemployment. Improper political decisions can also lead to religious and ethnic conflicts, poverty, and unemployment. Therefore, it is very important for a country to take the right political steps. The government must consider various factors to determine the right political path to create a more just and prosperous country.[17]
One of the meanings of general elections is as an exercise of people's sovereignty and as a means to provide and strengthen the legitimacy of the people. The phenomenon of elections is unique because it is not only the obligation of the ruler to hold it, but the public also feels interested and gives their attention to the voters.[18]

Article 222 of Law Number 7 of 2017 concerning General Elections stipulates that "presidential candidate pairs are proposed by political parties or combinations of political parties participating in the election that meet the requirements for obtaining at least 20 percent (twenty percent) of the number of seats in the House of Representatives (DPR) or 25 percent (twenty-five percent) of the valid votes nationally in the previous election of members of the House of Representatives." Threshold, If it is associated with constitutionalism, it is clearly not affected by constitutional doctrine.[19]

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[15] Fitra Nanda Armesta, "*The Problem of Constitutional Rights of Political Parties in the Nomination of Presidential Candidates and Vice Presidential Candidates of the Republic of Indonesia Reviewed from Law Number 7 of 2017 concerning General Elections*," Ikamakum Journal, Vol. 3, No. 1 (2023), 305.

[16] Ridwan HR, *State Administrative Law*, (Yogyakarta: UII- Press, 2002), 8.

[17] Peni Jati Setyowati, "*The Function of Philosophy, Religion, Ideology and Law in Political Development in Indonesia,"* Yuridika, Vol. 31, No. 1 (2016), 82-83.

[18] Robert A Dahl, The *Dilemma of Pluralist Democracy Between Autonomy and Control, translated by Sahat Simamora,* (Jakarta: Rajawali: Press, 1985), 19.

[19] Rahmat Rizki Aulawi, "*The Implementation of the Use of Presidential Threshold for the Candidacy of the Indonesian President and Vice President in the 2019 Presidential Election*," Lex Renaissance, Vol. 2, No. 7 (2022), 429.

The understanding of constitutionalism carries *out the limited state*, so that the administration of the state and government do not commit irregularities and the matter in question needs to be stated and regulated firmly in the articles of the constitution. The Constitution is the embodiment of the supreme law that all components of the State must abide by, and the basic principle of constitutionalism is that the power of government must be limited.[20] According to Article 1 paragraph 2 of the 1945 Constitution, "sovereignty is in the hands of the people and is implemented according to the Constitution" and "sovereignty is in the hands of the people"
It contains two important meanings. The word "sovereignty is in the hands of the people" refers to the existence of a sovereign people's government or democracy (*democratic state*), and "implemented according to the Constitution" is a principle of constitutionalism that contains the understanding of the constitution.[21]

It can be concluded that people's sovereignty limits all state activities carried out by the government. The constitution of a country is made only based on a mutual agreement (*consensus*) of the will of the people and the will of the people. This agreement (*consensus*) guarantees modern constitutionalism, which relies on a constitution that is generally understood to rely on three elements of agreement (*consensus*), namely: a. An agreement on *the general goals of society or general acceptance of the same philosophy of government*; b. Agreement on "the rule of law" as the basis of government or the administration of the State (*the basis of government*); c. Agreement on the *form of institutions and procedures*. The implementation of the general election of the President and Vice President with the provisions of the threshold is certainly measured by the level of constitutionality whether it is in accordance with the principles of constitutionalism.[22]

b. Dynamics of Political Party Consensus in Determining the Parliamentary Threshold in Elections

Belief in elections as an instrument of democracy is not new in Indonesia's post-independence history. Even in autocratic governments such as the New Order, elections are held periodically to carry out Pancasila Democracy. Although not in accordance with democratic standards, elections have become the most important tool that shapes the political beliefs and traditions of the Indonesian people about what elections mean in democratic life. For a country that wants to be called a democratic country, elections seem to be a mantra.[23] One of the objectives of any drafting of electoral laws in Indonesia during the reform period is almost certainly to establish a simple multiparty party system. However, the simple multiparty idea in question is still unclear. However, the measurement would be easier if the simple multiparty concept was based on the number of political parties that exist today. This must of course be

[20] Sholihah Ratna, "*Opportunities and Challenges of the 2019 Simultaneous Elections in a Political Perspective*", Scientific Journal of Government Sciences, Vol. 3, No 1 (2018), 88.

[21] William G. Andrews, *Constitutions and Constitutionalism*, (New Jersey: Van Nostrand Company, 1968), 9.

[22] Fitra Nanda Armesta, "The Problem of Constitutional Rights of Political Parties in the Nomination of Presidential and Vice Presidential Candidates of the Republic of Indonesia Reviewed from Law Number 7 of 2017

[23] Sigit Pamungkas, *Regarding Elections*, (Yogyakarta: Fisipol UGM, 2009), 2.

adjusted to the social and cultural situation in Indonesia. It is clear that Indonesia's diverse society cannot be represented by just a few existing political parties. In this concept, the principle of representation must be guaranteed.[24]

In republican government, elections are the most important process that ensures that the three main principles of democracy are applied: the sovereignty of the people, the legitimacy of government, and the government that changes regularly. Elections, as a form of democracy, are considered an ideal tool for a peaceful and orderly transition of power. With elections that are held well, it is hoped that the process of transferring power in a country will run well. Indonesia as a country that adheres to democracy as one of the important parameters to show that elections have become democratic. Elections are one of the most basic rights for citizens, so for this basic right, the government carries out elections.[25]

Everything must be returned to the people, according to the principle of people's sovereignty. The Indonesian people must participate in the political process by directly electing the President and Vice President. According to the 1945 Constitution of the Republic of Indonesia, presidential and vice presidential elections are carried out to elect the president and vice president who get the majority of the Indonesian people to be able to carry out the functions of the state government well and to achieve national goals.[26]

Since the presidential election was conducted in person, the threshold of the requirements for nominating presidential and vice presidential candidates has always been a problem. Some people believe that setting the boundaries for this presidential candidacy is essential to building a stronger presidential system. If the elected candidates receive initial support from the threshold parliament, they will have an easier time implementing their programs and work programs in the future.[27] Since the 20% threshold for candidacy was set, Benny Kheman argued that this restriction would limit the emergence of alternative competitors. The people don't care because their choices are limited. In fact, to increase electoral competition, electoral laws or laws must allow alternative leadership candidates to emerge, including improving the participation and quality of their leaders.[28] Then what about political parties in parliament? In Law Number 7 of 2017 concerning General Elections, Article 414 paragraph (1) still shows that political parties participating in elections must have a threshold of at least 4% of the number of valid votes nationally to be counted in the election and valid until the latest in 2024. Gradually, if you look back, starting from the 1999 election with a party threshold of 2%.[29] Furthermore, in the 2004 election, it increased by a determination to 2.5%.[30] In the 2009 election, the requirement to

[24] Yusdar, "*A Comparative Study of Party System Arrangements in Indonesia*," *Al-Adaalah Journal*, Vol. 3, No. 2 (2018), 130.

[25] Moh. Kusnardi, *Indonesian Constitutional Law*, (Jakarta: Center for Constitutional Law Studies, Faculty of Law, UI, 1976), 329.

[26] Ni'matul Huda, *Indonesian Constitutional Politics "A Study on the Dynamics of the Amendment of the 1945 Constitution"*, 2nd Edition, (Yogyakarta: FH UII Press, 2004), 84.

[27] M. Daffa Alfaritsi and Yoga Mulyadi, "Problems Regarding General Elections on the Effectiveness of the Presidential Threshold," *Jurnal Rechten: Legal and Human Rights Research*, Vol. 2, No. 3 (2020), 1.

[28]Fuqoha, "*Filling the Presidential Position and Presidential Threshold in Constitutional Democracy in Indonesia*", Journal of Adjudication, Vol. 1, No. 2 (2017), 27.

[29] Article 39 paragraph (3) of Law Number 3 of 1999 concerning General Elections.

[30] Article 9 paragraph (1) of Law Number 12 of 2003 concerning the General Election of Members of the House of Representatives, the Regional Representative Council, and the Regional House of Representatives.

participate in the election was 3% plus political parties that had seats in the House of Representatives for the 2004-2009 period.[31] If you ask how the ideal number is to determine the *threshold*, there is no standard size. Because each country also has a different percentage, which will be described in the next discussion.

3. **Comparison**

a. Turkey

The history of the Turkish state has a striking political dynamic journey. The high threshold in Turkey is due to Turkey's ongoing internal political divisions since the 1960s, which led to an increase in the threshold to 10% in the 2002 elections. Unfortunately, however, the threshold did not succeed in preventing political divisions from occurring, so that 45% of the popular vote in the 2002 elections lost their votes and could not be represented in parliament. Historically, the Turkish Parliament has had a high level of interparty mobility. Elected representatives can easily switch from one party to another if they feel their party will not reach the 10% threshold or if they feel their party will not reach that position.[32]

b. Italy

Almost all countries are aware of the possibility of losing votes due to the implementation of limits. The threshold is often opposed by many smaller parties because, in addition to potentially removing large numbers of votes, it also tends to deter smaller parties from gaining seats in parliament. Therefore, some countries are trying to solve the problem by creating limits for political parties and coalitions. Italy has a 4% threshold of political parties and a threshold of 10% of party coalitions. European politics today is greatly influenced by the changes that are taking place in Italy. After twenty years of unstable governing coalitions on the center-right and center-left During this period, the percentage of abstain in general elections doubled to 25% in 2018, and the approval of the mainstream parties that have ruled the country has fallen from above 50% of all voters in 2006 to less than 30% in 2018. Instability in electoral behavior may continue for a variety of reasons. Some of these are the breakdown of traditional political loyalties, new ideological and cultural conflicts, and the importance of leadership.[33]

[31] Article 315 of Law Number 10 of 2008 concerning the General Election of Members of the House of Representatives, the Regional Representative Council, and the Regional House of Representatives.

[32] Gilles Dorronsoro and Elise Massicard, "Being a Member of Parliament in contemporary Turkey," *European Journal of Turkish Studies*, Vol. 3 (2005), 19.

[33] Mario Pianta, "Italy's Political Upheaval and the Consequences of Inequality," *Intereconomics*, Vol. 55, No. 1 (2020), 13.

c. Serbia

The state of Serbia sets the threshold for political parties to be 5%, but it is made lower for minority groups, by 0.4%. The Serbian state sees the implementation of the threshold as not representing minority groups in parliament. Therefore, the boundaries do not result in the loss of minority votes. A special threshold for minorities is provided by Serbia.[34]

CONCLUSION

The review of Indonesian democracy in the evolution of general elections has brought the concept of boundaries in various forms of the electoral system. These boundaries are an important requirement for political parties to participate in general elections, both as election participants, seat holders in the central parliament, and as supporters of presidential and vice presidential candidates. Parties in Indonesia, as in most democratic systems, play an important role in politics. Parties in Indonesia are generally strongly institutionalized, at least when compared to previous democracies. However, political parties are often very marginal in the exchange of clientelism with acts of clientelism (exchange of promises and political loyalty) which is very important in political life in Indonesia. People's sovereignty limits all state activities carried out by the government. The constitution of a country is made only based on a mutual agreement (*consensus*) of the will of the people and the will of the people. This agreement (*Consensus*) guarantees modern constitutionalism, which rests on the constitution. In Law Number 7 of 2017 concerning General Elections, Article 414 paragraph (1) still states that political parties participating in elections must have a vote threshold of at least 4% of the number

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[34] Yusdar, "A Comparative Study of Party System Arrangements in Indonesia," *Al-Adaalah Journal*, Vol. 3, No. 2 (2018), 137.

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