

# Constitutionality Rights in Election: Lesson from the Indonesia Election

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## Abstract

The people, in essence, have the highest power with government from, by, and for the people. However, the people cannot implement it in government implementation, so representative democracy emerges. This study aims to find and look for the right formula to maintain people's sovereignty in a democratic general election process. This paper is based on the normative legal research method, which refers to the legal norms in statutory regulations. The results show that guarding the people's sovereignty through democratic elections is the commitment of all components of the nation. Future elections are increasingly complex, such as the alleged existence of dynasties of power, the reach of political education, as well as the recruitment mechanisms of political parties. Not to mention the most powerful using the issue of ethnicity and religion issues as a black campaign. These things will colour the future elections. For the resulting government to gain people's legitimacy, it is necessary to have populist regulations and be escorted by the system through independent organizing institutions, eliminating political dowries and political education for all stakeholders.

**Keywords:** Black Campaign; Constitutional Rights; Democracy; General Election.

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## 1. INTRODUCTION

Indonesia, as a country that adopts a democratic system that puts sovereignty in the hands of the people. As a manifestation of people's sovereignty, there is a direct election process, in which the people can make their choices in a general election. Elections and local elections are also a means of manifesting people's sovereignty that results in people's representatives and democratic state government, based on Pancasila and the 1945 Constitution. One of the important principles of the rule of law is the guarantee of holding an independent election, that is, free from the influence of other powers to hold elections [<sup>1</sup>].

The affirmation of the supremacy of the 1945 Constitution states that sovereignty is in the hands of the people and is implemented according to the Constitution. This implies meaning that embracing the sovereignty of the people as well as the rule of law,

which is the basis of the state [<sup>2</sup>]. Hence, Indonesia recognizes the supremacy of the constitution, which means the highest power and sovereignty held by the people must be carried out based on the constitution as the highest law. From the state apparatus to the people, they are subject to the constitution. This provision is very different from the Constitution or the 1945 Constitution before it was amended, which stated that the People's Consultative Assembly entirely held the people's sovereignty.

From time to time, the electoral system in Indonesia is always dynamic in line with the regime in power at that time. As a country that adheres to democratic principles, elections are one of the things that are very much needed in legitimizing the government [<sup>3</sup>]. In 2004, there were several cases of violations in the implementation of legislative elections; based on the National Law Reform consortium, there

<sup>1</sup> Nasruddin, N., Asmara, G., & Cahyowati, R. R. (2019). Authority of General Election Commission for the Electoral Constitutional Rights. *International Journal of Multicultural and Multireligious Understanding*, 6(6), 97-102.

<sup>2</sup> Harijanti, S. D., & Lindsey, T. (2006). Indonesia: General elections test the amended Constitution and the new Constitutional Court. *Int'l J. Const. L.*, 4, 138.

<sup>3</sup> Morley, M. T. (2016). *De Facto Class Actions: Plaintiff-and Defendant-Oriented Injunctions in Voting Rights, Election Law, and Other Constitutional Cases*. *Harv. JL & Pub. Pol'y*, 39, 487.

were 3,153 violations, and in the presidential election, there were 274 violations of the presidential election. These election violations by the General Elections Commission (KPU) previously received less attention and were not optimal in resolving violations that election supervisors had recommended. It seemed that the KPU was waiting for the court's decision, as stated by Mahfud MD [4], that the quality of law in a country reflects the quality of its democracy. Thus it can be interpreted that democratic countries will produce laws that have a democratic character, while authoritarian or non-democratic countries will produce laws that have a democratic character.

Furthermore, democracy and elections in Indonesia have different meanings but should not be separated in their implementation. Suppose there are any violations in the implementation of the election [5]. In that case, it will reduce the legitimacy of the people towards the government elite. For this reason, an election management body is needed, which is one of the democratic instruments to manage the succession of leadership and this independent election management body must have a very strategic role.

## 2. RESEARCH METHOD

This paper is based on normative legal research method, which refers to the legal norms contained in statutory regulations [6]. Such method is based on the juridical facts that apply in society, relevant to legal life and based on information derived from secondary data sources that have previously been researched by other authors [7].

### 3. Constitutionality Rights in Election: Challenge and Development

Guarding the people's sovereignty through democratic elections starting from the post-amendment of the 1945 Constitution. At the practical level, there was a fundamental change regarding the principle of separation of powers, which requires a strict separation in 3 (three) branches of power, namely legislative power (forming laws), executive power (implementing laws), and judicial power (the final interpreter of the Constitution).

The sovereignty of the people is the foundation of the development of democracy. While the people essentially have the highest power, it is impossible to implement it by the people in the implementation of government. However, as it turns out into practice, guarding people's sovereignty through elections becomes an interesting study for the sake of upholding democratic elections and gaining legitimacy from the people.

The simultaneous democratic party, which held in 2019, is the embodiment of the Indonesian state adhering to a democratic state system. First, the implementation of general elections; Last but not least, there is a representative institution. In essence, the choice of the electoral system can be used as a measure of the consistency of state administrators in implementing the principle of people's sovereignty. Of course, narrowing the people's movement in making choices will indicate not implementing popular sovereignty.

The discourse of joint national elections (simultaneously), namely legislative elections and executive elections (Presidential and vice-presidential elections) in 2019 become an exciting phenomenon in holding democratic parties in Indonesia. The dynamics that occurred after the Constitutional Court's decision No. 14/PUU-XI/2013, which granted a judicial review of Law no. 42 of 2008 concerning the Election of the President and Vice President, was declared contrary to the 1945 Constitution of the Republic of Indonesia. The Constitutional Court's decision implied that the Election of the President and Vice President would no longer be held after the elections for members of the DPR, DPD and DPRD.

Guarding people's sovereignty in elections is not easy because all government activities are required to involve the community even though there are signs that must be obeyed. Of course, it is evident now that there is a law on public information disclosure, namely Law no. UU no. 14 of 2008 concerning Public Information Disclosure is the embodiment of good governance and guarantees of legal certainty for the public's right to obtain the information needed and to participate in controlling the administration of the state or government, a paradigm shift is our choice [8] The Act increasingly directs and encourages open government (open government) [9].

<sup>4</sup> Mahfud MD, 1998, *Politik Hukum di Indonesia*, LP3ES, Jakarta, p 53.

<sup>5</sup> Tibaka, L., & Rosdian, R. (2017). The Protection of human rights in Indonesian constitutional law after the amendment of the 1945 constitution of the republic of Indonesia. *FIAT JUSTISIA: Jurnal Ilmu Hukum*, 11(3), 266-288.

<sup>6</sup> Soekanto, S and Mamudji, S. 2006. *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, Jakarta: Rajawali Press. p.23.

<sup>7</sup> Irwansyah. 2020. *Penelitian Hukum dan Praktik Penulisan Artikel*. Yogyakarta: Mirra Buana Media, p. 161

<sup>8</sup> Arbas, C., & Jalil, J. (2015). Independent Candidate in Regional Head Election in Indonesia. *JL Pol'y & Globalization*, 35, 159.

<sup>9</sup> Ahrens, G., & Hauserman, N. (2011). Fundamental Election Rights: Association, Voting, and Candidacy. *Valparaiso University Law Review*, 14(3), 463-485.

The theory of popular sovereignty arises from a straightforward idea: the people who should be the ultimate source of power in a country – others do not. The people have independent power over themselves. People's sovereignty was born as a reaction to the theory of the king's sovereignty, which mainly resulted in monopoly and power deviation. According to legal and political studies that sovereignty is absolute, and single power that cannot be divided has a higher nature. This implies that the concept of absolute sovereignty should not be maintained for the present. What must be understood is as a supreme power that can be divided and limited. As in Indonesia, of course, there are limitations as in the 1945 Constitution of the Republic of Indonesia, namely sovereignty in the hands of the people and implemented according to the 1945 Constitution. Hence, whoever becomes the ruler must always be restricted by law and the Constitution, as the highest law.

Elections are like a competition, which is to attract sympathy from the public as a competition in filling political positions in the government based on formal and constitutional elections of citizens who of course, meet the requirements. Elections in a universal context are an instrument that can realize people's sovereignty which has meaning to shape legitimate government as well as a means of articulating the aspirations and interests of the people. Simultaneous elections in 2018 and 2019 have the same essence in holding elections, only the simultaneous elections in 2018 are for the election of governors, regents, and mayors (simultaneous elections) At least the results of the simultaneous regional elections in 2018 will be a barometer in running the 2019 simultaneous elections.

Starting the simultaneous regional elections in 2018 was very dynamic, as evidenced by 171 (one hundred and seventy-one) regional election cases, a total of 72 (seventy-two) were submitted to the Constitutional Court (MK), of the 72 cases that entered the Court, 58 cases were dismissed with dismissal decisions, while 55 cases have also been decided with the verdict "unacceptable" on the grounds: a. The object of the application is not the authority of the Constitutional Court; b. The application is submitted beyond the date of submission of the application and; c. The Petitioner does not have legal standing, the regional election that year was followed by a relatively large number of voters. The percentage of the difference in vote results stipulated in Article 158 of the Pilkada Law was ignored.

Election participants who are members of the main political parties will gain votes for the presidential/vice-presidential candidates. The challenge of the Constitutional Court itself is nothing more than its authority, namely handling cases if a dispute arises the deadline is a challenge, which the Constitutional Court must address due to the dispute over the results of

the Legislative election. The Constitutional Court must decide within 30 days of the case being submitted. The Court will settle no more than 14 days after the Constitutional Court receives the case for the presidential election. The problem is that the 2019 election is the first simultaneous election between the executive and legislature, while the settlement period remains unchanged. Is this a note for immediate Judicial review?

In fact, not all regional election cases can be resolved in the Constitutional Court, depending on the problems they face. For example, administrative violations can be resolved at the General Elections Commission (KPU). The State Administrative Court resolves the cancellation of candidate pairs, and the supervisory committee can resolve disputes between candidates. For this reason, maturity is required from the community to always comply with applicable regulations and avoid transactional politics. As quoted by Daniel Bumke, a researcher from the University of Leeds, that transactional politics is an action that is usually used by someone to influence voters [<sup>10</sup>]. John Sidel [<sup>11</sup>] also suggested that the presence of a local strongman is a person who distributes money as money politics when elections are held. Sidel still thinks that it is vital for people who play a role in cheating and even violence in elections to gain many votes to win the candidate who pays for it. Of course, this significantly affects the behaviour and atmosphere in the Council building when the candidate wins and becomes a member of the legislature. Political crimes like this will, of course, harm the implementation of democratic elections. It may reduce public awareness to become smart and polite voters because this can become an embryo for corrupt practices for members of the legislature.

#### **4. Towards Indonesian harmony instead of ethnicity and religion issues as black campaign: Recurring problem**

In carrying out a successful election, it is necessary that elections are held without fraud, without violations and do not conflict with the principles of direct, general, free, confidential, honest and fair. In the administration of the state, elections are a significant meaning and even become a symbol in today's democracy with the principle of popular sovereignty as enshrined in the 1945 Constitution of the Republic of Indonesia.

<sup>10</sup> Arliman, L. (2016). Keterbukaan Keuangan Partai Politik Terhadap Praktik Pencucian Uang Dari Hasil Tindak Pidana Korupsi. *Jurnal Cita Hukum*, 4(2), 96286.

<sup>11</sup> Sidel, J. T. (2005). Bossism and democracy in the Philippines, Thailand and Indonesia: towards an alternative framework for the study of 'local strongmen'. In *Politicising democracy*. Palgrave Macmillan, London. pp. 51-74

According to Robert Dahl [<sup>12</sup>], there are five standards or criteria that can be used to measure that the government process can be said to be democratic, that is:

- a. Effective participation
- b. Voice equation
- c. Bright understanding
- d. Agenda monitoring
- e. Adult coverage

Effective participation means that people are required to express their views; equality of votes, that the people should be given a compelling and equal opportunity to vote and all votes should be counted equally. A clear understanding means that every people should be given adequate opportunities to study alternative and relevant policies [<sup>13</sup>]. At the same time, the monitoring of the agenda is a state policy of various policies that are open to change if the people want. In this case, the inclusion of adults is that all or at least most of the adults who become permanent residents should have full citizenship rights as indicated by the previous criteria [<sup>14</sup>].

The Challenge of Maintaining People's Sovereignty Through General Elections, there is a lesson for all of us in the 2014 Presidential election, we feel the division, and it is increasingly felt in the 2016/2017 election for the Governor of DKI Jakarta. What is increasingly felt divided is that social media has contributed to this. Furthermore, ahead of the 2019 Presidential Election, how do we maintain the people's sovereignty and no longer raise issues that smell of politicizing ethnic, religious, racial or intergroup issues in the state. This is a big challenge. Not to mention the dynasties of power that are increasingly clear that they want to survive in every general election.

Political Elites are essential in their commitment to not raise SARA issues in holding democratic parties through elections, let alone wrapped in democracy. At the Grass root level, there is no problem with racial issues, it is believed that the community has become more tolerant and understanding. It reminds us of the research conducted by anthropologist Clifford Geertz conducted in the Pare area, Kediri Regency, East Java. Geertz divides

Javanese society into three groups, namely priyayi, santri, and abangan.

Geertz's trichotomy of abangan, santri, and priyayi. Geertz did not imagine that the results in classifying Javanese people would use dynamics for political purposes when doing his research. The political elites are not aware that the issue of SARA used in the general election will result in a terrible division, and it is not easy to cure and even tends to be inherited. They will justify various means to achieve their political goals, the impact of which is difficult to cure.

As described previously, from transactional to election violations, issues raise concerns in the future after the candidate is appointed as a member of the legislature. Elections are a means to realize citizen participation in the political field of citizens and political parties. This can be realized by election organizers who must be neutral, open and accountable in treating election participants; democratic attitudes can foster trust to accept elections and democracy as part of the nation's life and the state.

Democracy is not only a social and political issue but an economic problem. Moreover, everything, namely developing political democracy and economic democracy, must refer to the 1945 Constitution and Pancasila. A good political system in a country will be able to affect its economic situation. Furthermore, a good and progressive political society will give birth to a good government as well. From here, we begin to prepare to take the role that political parties have carried out into the role of the community through education, maturity, and community participation. General elections are in sight, must seriously develop and guard democracy, prevent corruption, clean up political party cadres first, and eliminate political dowry, if any.

The future challenge ahead of the general election in Indonesia, in this reform era, is to find a leader who can direct the positive energy of the nation by utilizing the gifts of Indonesia's natural wealth that can continue to be enjoyed for the prosperity of the people. Political democracy will not be able to run well without democratization in the economic field. In the end, the values of Pancasila as the ideology and philosophy of the state are social justice for all Indonesian people. The Constitutional mandate in controlling natural resources for the welfare of the people is the main capital.

## 5. CONCLUSION

Guarding the sovereignty of the people through democratic elections is the commitment of all components of the nation. Future elections are increasingly complex: such as the alleged existence of dynasties of power, the reach of political education,

<sup>12</sup>Liando, D. M. (2017). Pemilu Dan Partisipasi Politik Masyarakat (Studi Pada Pemilihan Anggota Legislatif Dan Pemilihan Presiden Dan Calon Wakil Presiden Di Kabupaten Minahasa Tahun 2014). Jurnal LPPM Bidang EkoSosBudKum, 3(2), 14-28.

<sup>13</sup>Hasen, R. L. (2008). Introduction: Developments in Election Law. Loy. LAL Rev., 42, 565.

<sup>14</sup>Liddle, R. W. (2014). Improving the Quality of Democracy in Indonesia: Toward a Theory of Action R. William Liddle. In Beyond Oligarchy (pp. 57-78). Cornell University Press.

recruitment mechanisms for members of political parties and the transparency of the decision-making process of legislative candidate nominations and the ability to provide cross-network public space. Not to mention the most powerful using the issue of ethnicity and religion issues as a black campaign. These things will colour the future elections. Hopefully, all components of the nation participate in guarding the sovereignty of the people according to their respective roles. For the resulting government to gain people's legitimacy, it is necessary to have populist regulations and be escorted by the system through independent organizing institutions, eliminating political dowries and political education for all stakeholders. Above all, this is the entrance to create a just, prosperous and legal society.

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