

Electoral System in Indonesia: Reviewing the National Legislative Elections

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Abstract

People participation in the management and decision-making of government becomes an indicator of peoples' sovereignty, but it is not intended that all people should be directly involved. The type of this research was a normative method to organize electoral law in Indonesia in realizing the aspirative of the House of Representatives. The result shows that the legal provisions for recruitment the candidate of members of legislative has not been optimal. One indication is the mechanism of recruitment is not adequate. Legal instruments regarding the elections organizer is not representative, because the elements of the quality standards of competence, integrity, and accountability towards the elections have not been adequately regulated in the laws and regulations. While, the terms and reinforcement (competence) of candidate of legislative's member are regulated in legislation. In addition, requires legal instruments of election organizing that is comprehensive to accommodate the concept of supervision and in order to realize the representative parliamentary.

Keywords: Election, Electoral System, Parliament

1. Introduction

"The sovereignty shall be in the hand of the people and implemented according to the Constitution,"¹ A manifestation of the principle of people's sovereignty that guaranteed by the Constitution requires that the people who the real holder of the State with all its authority to carry out all the functions of State's power, both at legislative, executive, and judiciary, based on "Almighty God". Government policies based on the will and wishes of the people, then the people who determine the objectives and policies of the State, and the people have the full power within the government.

The embodiment of the peoples' representatives through a democratic means *from the people, by the people, and for the people* contains that the people who sovereign in determining the objectives of State's administration and management.² Therefore, shall be in accordance with the will and desires of the people as the supreme sovereign holder.

People participation in the management and decision-making of government becomes an indicator of peoples' sovereignty, but it is not intended that all people should be directly involved. This requires the institution as people's representative that functions to receive and distribute the people's aspirations; formulating a regulation in the governance; and budgeting in accordance with the will and needs of the people.

The implementation of people's sovereignty in Indonesia requires the presence of political parties to conducts functions of political recruitment. Roles and responsibilities of political parties are not only to prepare candidates in the general election to be elected to the legislature³. However, political parties still control the performance of members of political parties as people's representative (constituents), so the performance of the members of political party is not out of the corridor of the establishment of political parties. The involvement of political parties in peoples' representative institutions (legislative) should give space to people to fill the representative institutions.

Requires a rigorous selection process to become a member of a political party, additionally become candidates of a particular party. The reason for this internal party selection process is not strict. Therefore, the pattern of unclear recruitment for political party members lead to legislative in drafting legislation produced by "horse eye glass".⁴ As a consequence, many products in legislation are overlapping one another.

In a system of representation, apart from the problem of recruitment of prospective members of the House of Representatives on the political party, the phenomenon of general elections is not effective, so it become a prolonged problem. And also, the House of Representatives was not optimal in performs their duties and functions, due to the low monitoring by the Parliament Honorary Board.⁵

As described above, there are some facts to be discussed in this paper, namely; *first*, the process of cadre in political parties tend not operate; *second*, easy to become members of political parties in the absence of a rigorous selection; and *third*, the implementation of general elections tends not to realize the representation of people that quality.

2. Method of the Research

This research using a normative method⁶ to organize electoral law in Indonesia in realizing the aspirated of the House of Representatives. Data obtained from several scientific resources and it presented in the writings of both deductive, inductive,

¹ A mandate of the Indonesian Constitution as stipulated on Article 1 (2) of the 1945 Constitution.

² P Laslett And J Fishkin (ed). 1979. *Philosophy Politics and Society*. fifth series. New Haven: Yale University Press. Pages : 97-133

³ J. B. J. M. Ten Berge. *Besturen Door De Overheid*, W. E. J. Tjeenk Willink, Deventer, 1996, pg. 34-38. Compare to Ridwan HR. 2002. *Hukum Administrasi Negara*. UII-Press. Yogyakarta. pg. 8-10.

⁴ Budiman. 2013. *Proses Rekrutmen Politik* (http://nasional.kompas.com/read/2013/09/05/1018475/Proses_Rekrutmen.Politik_Neneknya.Korupsi accessed on 26 November 2013)

⁵ The National Legal Development of Ministry of Law and Human Rights RI 2011. Final Report of Legal Research. *Tentang Efektifitas Badan Kehormatan DPR/DPRD Tahun 2011*. Pages : 88-91

⁶ Soerjono Soekanto and Sri Mamudji. 1985. *Penelitian Hukum Normatif suatu tinjauan singkat*, First edition, CV. Rajawali. Jakarta. Page: 15

and mix. Legal materials obtained from the result of writing and analyzed by using the theoretical basis of literature and concepts.

3. Legal Provisions in Organizing the Legislative Election

The executor of general elections becomes an important part in realizing the democratic constitutional State. In practice, requires the executor to work independently and its process can be accounted for according to law. Elections are a means of people's political to give a mandate to the people who become representatives.¹ Complexity in the community demanding the aspiration process of election becomes a necessity.

On the other hand, the legal system of elections must accommodate the plenary of general election system. The presence of the plenary legal arrangement in elections and organizers are professionalism, then certainly the success of the elections.² Instead, legal arrangement of electoral were not good and the organizers are not professional will culminate in a general election is not get legitimacy of public confidence.

Related to the general election, according to Hamid Muchlis,³ that almost all countries have institutions that can be referred to as the "auxiliary state's bodies". According to him, the body generally serves to support the main State institutions. Auxiliary state's organ can be formed of the functions of main State institutions that theoretically perform three functions, namely the legislative, executive, and judicial. The establishment of these supports organizations, in order of effectiveness of powers which it is responsible. In addition, there are also independent institutions, whose authority can be sourced from the direction of the State constitution or governance requirements and generally established by legislation.

The electoral commission related to *auxiliary state's body* or *auxiliary state's organs*. The existence of electoral commission is mandated by the constitution (the 1945 Constitution) in order to elections. General election is very complex, ranging from planning; drafting regulations, until the cooperation relationship or coordination with the competent parties, party professionals, for all the implementation should there be a legal standard. Thus, in the aspect of implementation the functions for members of the Electoral Commission especially on the regulatory then surely it is certain that it is capable of performing the task of making laws and regulations are those who have the competence and expertise.

Required a standard for legal arrangement as standard democratic elections and based on the principle of election, as stated by Guy S Goodwin-Gil⁴ that:

Free and fair elections can be achieved if there is a legal instrument that governing all the election process; so it able to protect the organizers, participants, candidates, voters, observers, and citizens in general from fear, intimidation, violence, bribery, fraud and other fraudulent practices that will affect the result of election. Therefore, free and fair elections require election legislation and officers who responsible for enforcing the election legislation.

For comparison, the standard of international democratic elections that the determinant of a democratic election or not is the presence of body or election organizers. International standards state that the election organizers institutions must do all electoral activities in an independent, transparent, and impartial.

In the perspective of international law, the Institute for Democracy and Electoral Assistance (IDEA)⁵ formulated a number of international standards as benchmarks of democratic election or not. This international standard is a minimum requirement for the legal framework or legislation to ensure democratic elections. The main source of international standards of democratic elections that are Universal Declarations of Human Rights 1948, the International Covenant on Civil Rights and Political 1960, the European Convention 1950 for the Protection of Human Rights and Fundamental Freedoms, also Africa's Charter 1981 on Human and Peoples' Rights.

Especially for the electoral bodies, the international standards of democratic elections confirm the need for a legal guarantee that these institutions are able to work independently. The independence of electoral organizer is an important issue, because the organizers of election make and implement decisions that may affect the result of election.

As above, however, the body of elections organizer works within an efficient work time, have a qualified resource, and there are adequate funds. Electoral laws should regulate the size, composition and tenure for members of election organizing bodies. Also, regulate the relationship between the election organizer body in both central and local, and the relationship between all electoral institutions with executive agencies. The law should make provision for a mechanism to process, adjudicate and dispose of electoral complaints in a timely manner.

As a comparison, the standard of international law in relation to the elections to ensure that bodies work independently, namely: the Universal Declaration of Human Rights 1944 and the International Covenant on Civil and Political Rights 1966. Based on these two international documents, International Parliamentary Union and IDEA International formulates a number of institutional standards of the general elections, namely:

First, the independence of the electoral organizer is an important issue, because the general elections make and implement decisions that can affect the result of elections. Therefore, these institutions should work within an efficient time frame, have a qualified resource, and provided adequate funding. *Second*, the electoral law should regulate the size,

¹ Tauchid Noor. *Peran Komisi Pemilihan Umum Meningkatkan Partisipasi Masyarakat dalam Pemilihan Umum*. Jurnal Konstitusi. Vol. II. No. 1. Juni 2009. Page : 54

² Yunus, A., & Reumi, F. Irwansyah. (2015). "Recognition of the Customary Court: A Review of Decentralization in Papua as Special Autonomy". *Journal of Research in Humanities and Social Science*, 3(7), 57-69.

³ Muchlis Hamdi. 2007. "State Auxiliary Bodies di Beberapa Negara", Presented on legal and non-legal dialogues "Penataan State Auxiliary Bodies dalam Sistem Ketatanegaraan" Department of Law and Human Rights RI, Surabaya 26-29 June 2007. Page : 1

⁴ Didi Suprianto. 2007. *Menjaga Independensi Penyelenggara Pemilu*. Perludem. Jakarta. Page: iii

⁵ IDEA, 2002. *Standar-Standar Internasional Pemilihan Umum: Pedoman Peninjauan Kembali Kerangka Hukum Pemilu*. IDEA. Jakarta. Pages :39-47.

composition and tenure for members of election organizing institution. Also, regulate the relationship between the election organizer body in both central and local, and the relationship between all electoral institutions with executive agencies. The law should make provision for a mechanism to process, adjudicate and dispose of electoral complaints in a timely manner.

In the aspect of professionalism of the elections organizer, the word of professionalism is a mental attitude of a person who has knowledge and technical capabilities to a job with a full sense of responsibility that the exercise of the full of consistency, disciplined, honest, and loyal to a job that is done by full-time well to personal purpose and a common goal (group).

Its relation with the duties and authority of the Electoral Commission as election organizer are so extensive, to arrange the stages of electoral regulation, carry out all stages of the electoral process, and to monitor and enforce the rules of the electoral law enforcement.¹

The complexity of the duties and authority of the election organizer, it is necessary to have professional members. Related to the above, as according to Halmstead,² an election must be managed by a specialized group of experts who have been highly trained and committed that manage and facilitate the electoral process and who are permanent employees of the election organizer body. As an element of professionalism to the elections organizer in order to conduct free and fair elections are the organizer should be a group of experts who have been trained and have the competence and high commitment in the general election.

4. Supervision as “Main Actor” in Realizing the Representatives of Legislative

The concept of surveillance has two parties that are related.³ The party who supervise is given the authority both inside and outside an organization (supervised) to pay attention to those who supervised and briefed accordingly. While the supervised parties are party who has relation to who supervise, the relationship between the supervisor and the supervised are either institutional relations or relations for competence. Thus, the parties who supervise actually have a relationship institutionally and have more competence than those supervised. Therefore, they would be able to know and understand more of the supervised. Instead, it would not work an effective supervision, if the supervisors do not (competence) to know and understand the party who supervised, especially in terms of understanding the performance of the supervised.

Supervision is not absolute from the outside or inside in an organization, its provisions that the party who supervise would better understand and know the supervised party based on a goal that has been determined. Thus, the supervised parties will always conduct a job as determined by based on a provision. Such provisions in the form of laws or regulations are to understand main duties and its functions each other. Thus, in a job will be planned, implemented, in achieving a goal because supervision is not only done on a mistake in the implementation, but more than that since the plan will be to achieve a goal will always be supervised.

The supervision will be very important to be done especially with regard to the people’s interest and in this case is the public. Whereas, the people in giving the mandate to someone or many people, the community no longer has to be a part that can control the attitude of the given mandate. Against the theory of imperative and free mandate is to do with the theory of modern constitutional state (*welfare state*) as Miriam Budiardjo’s⁴ view that the character is “Constitutional protection, in the sense that the constitution in addition to ensuring the rights of individuals must also determine the procedural way to the protection of rights the guaranteed rights.” Thus, both imperative and free mandates are the legal provision that conducted by the representatives of the represented (the public). Meanwile, the rights of individuals (people), as well as the procedures to be embodied by the representatives of the community.

In principle, the presence of legal provisions, then the general public is no longer have to be a part in the direct supervision, because the legal provision has provided a guarantee for realizing the public’s rights, in accordance with the procedures and applicable regulations. It can be done if the representatives are those who have the competence and morality for carrying out a mandate, but on the other hand, can only occur outside of the will of the mandate if the representative no competence and no moral to the public interest.

If, the people’s representatives do not have the competence and moral, of course, it is certain that these representatives are not-aspirative. Because in a process to conducting the people’s mandate is not able to realize the benefit of peoples’ rights and will be able to conducting the provisions of the constitution. If mandates are conducted as constitution, then due to the result or consequence on their repressive measures of control which suspended actions or cancellation of an activity to be carried out by a representative of an activity or work to be done.

Against supervision conducted for realizing the people’s rights (aspiration) in accordance with the legal provisions, the supervision is done by the party that is given the authority, by conduct inherent supervision namely supervision directly by officials against his/her subordinates for any duties that is the responsibility of subordinates it, in realizing the people’s mandate (aspiration) the need for supervision (law) according to the rules, supervision in accordance with the work procedures (politics) and supervision in accordance with the will of the wishes of the people (social).

In planning, process, implementation, and until the results achieved must correlated. Then, supervision is a provision of mutual accords between planning, process, implementation and the specific purpose, and has consequences each other. While, the essence of supervision are supervision of a value. The consequences as a result in the value of a work may be suspended until recovery, or canceled because not in conformity with the provisions in force.

¹ Tauchid Noor. *Op.Cit.*, page: 53

² Bulls Trycket, et al. *Seri Buku Panduan Internasional IDEA Standar-standar Internasional untuk Pemilihan Umum Pedoman Peninjauan Kembali Kerangka Hukum Pemilu* Publisher: Bulls Tryckeri. Halmstead. Sweden. Page : 46

³ Nadeak, J., Tarigan, P., Nasution, F. A., & Agusmidah, A. (2014). “Pelaksanaan Fungsi Pengawasan Anggota Dewan Perwakilan Rakyat Daerah Terhadap Kinerja Eksekutif Di Kota Medan”. *USU Law Journal*, 2(1), 211-229

⁴ Miriam Budiardjo. 1977. *Dasar-Dasar Ilmu Politik*. Gramedia. Jakarta. Page. 38.

If both arguments are taken as a basic concept in supervision, then there is a relationship between managerial supervision and law. The working of law as a tool in conducting control of the party is given the authority to the public interest. That the law as an instrument of social control, interpreted as a law is not for law, but the law is for a man, or law for the benefit of man. Meanwhile, the supervision in the sense of managerial is the supervision of a value ranging from a process of implementation and results achieved in accordance with the initial plan.

Supervision in State organizing is an implication of the rule of constitutional State and democracy as argued by Ridwan HR¹ that is *first* the principle of constitutional State one of them is the legality is “the restriction of citizen’s freedom (by the government) have to be found its principles in the legislation. *Second*, the principle of democracy is the “supervision and control (organizing) of government must be controlled” and “the people are given the possibility to objection.”

Basically, the argument of Ridwan are the State administration is to be based on a rule and the rule is based on the constitution, as a consequence as an constitutional or legal state, while the consequences of a democracy state is that the State organizer are to be supervised or controlled. While, the people is given democratic right to conducts an objection to the government as a giver of mandate of the government (receive of mandate).

The restrictions of government’s power should also be subject to the will of the people (democracy) and shall be restricted to the norm of law and in the highest levels is called as constitution.² Characteristics and main principles of a constitutional or democratic State and one of them is the judiciary that is free from other powers and impartially.

For this view that if it is considered that the restriction imposed on members of the House of Representatives through the judiciary, it certainly will be restricted to the duties and the authorities given by the legislation, so the restriction through institutional mechanisms to members of legislative is certainly not optimal, should members of legislative is supervised by an institution that has the authority to interpret the values and norms contained in the constitution. With the supervision of a member of legislative, then it is meant as a form of monitoring that is done vertically to provide interpretation by referring to a rule, and in accordance with the authorities given to supervisors.

In supervisory both in aspects of legal, political and social are the presence of a competent person giving interpretation to give a final value. And each of the final value will be consequence for suspended or cancellation a work. And a consequence both administratively and politically to the social consequences of the people who supervised. This means that supervision must have the legal power to impose sanctions. Both preventive, repressive and that is a power of supervision itself.

The existence of Parliament institutions as an institution to conducts the peoples’ sovereignty. While, the value of the people’s sovereignty and becomes the responsibility of the members of legislative to absorb the aspiration of people. Therefore, in conducts the people’s sovereignty to absorb the aspirations of the people, its indicator is the performance of the members of the legislative. If the performance of legislative is aspirational it would certainly be an institution that reflects the aspirations of peoples’ sovereignty as well.

Basically, the performances of legislative’s members are not so easy, because it will be in direct contact with the needs of the people (constituent), and the people’s interests. For performance of duties and functions given it must be based on the 1945 Constitution and legal provision that govern them. The aspiration of people is not a benchmark for aspiration. Because, as the constitutional States, certainly should be based on the law.

Legislative’s members would be aspiration, if accords between the will and desires of the people and in accordance with the law. Related to the relationship between aspiration (people), performance (legislative’s members), on the principle (legal), then the performance is ultimate achievement in an organization’s activities or a special work function for a certain period, as according to Jhon Bernadin³ that: “*performance is defined as the record outcomes product on the specified function job or activity during a specified time period.*”

Against members of legislative, in conducting a performance is certainly not simply enough with the supervision given by the political parties in the political education process. However, equally important as the provision of competence carried academically and or experiences during their stay in the region of constituents. As a member of legislative is not only the task of receiving aspirations, and yet another task is how to make a regulation that is aspirational. Besides that, the function of budgeting as something vital, it takes a competence to conduct a performance, the budget can be useful for the public interest (constituents).

As part of indicator is the ability to implement a function of the performance of members of legislative against the budget, supervision, aspiration then at least as a member of legislative has competence; knowledge of the duties and functions as members of legislative, expertise in conducting its duties and functions as member of legislative, and the presence of a shared experience together constituents (in some measure). The experience is intended as part of the aspirations that are able to feel (as a representative) and knows all the needs of the community (constituent), so the performance is done is directly correlated with the interests and needs of the peoples. Creating the aspirational members of legislative, in the first step is to become roles and responsibilities that are attached to political parties in providing political education and recruitment as candidates for Parliament.

According to the authors, there are 2 (two) important things in the implementation of the constitutional and democracy State against members of legislative, *first*, requirement, and mechanism and competencies as a candidate of Parliament should be a provision as a measure. Presumably, later at least be able to conducts their task and role. *Second*, the mechanisms and competencies that they are going through. As a way to select members of legislative and at least as

¹ Ridwan HR. 2002. *Op.Cit.*. pg. 8-10.

² Fatkhurohman, et al 2004. *Memahami Keberadaan Mahkamah Konstitusi di Indonesia*, PT. Citra Aditya Bakti. Bandung. p. 5; Faiz, P. (2016). A Critical Analysis of Judicial Appointment Process and Tenure of Constitutional Justice in Indonesia. *Hasanuddin Law Review*, 1(2), 152-169. doi: <http://dx.doi.org/10.20956/halrev.v1i2.301>

³ Jhon Bernadin and Russel. E.A.Joyce. 1998. *Human Resource Management: An Experimental Approach*. Page : 379

aspirative legislative. *Third*, the implementation of elections which have competence; professionalism, credibility, transparency, and accountability as well as the will of election laws.

In implementing a performance as a member of legislative, then their basic knowledge of the Parliament with main duties and functions. Simply put, how to perform a job as a member of legislative where the duties and functions of these institutions are not known. How can achieve a product of good law, while those assigned to make the laws and regulations do not have the ability and competence, at the same time also did not understand the wishes and the will of the people as a mandate giver.

Due to the lack of knowledge about basic tasks and functions of members of legislative is directly correlated with not maximal performance of legislative's members. Hence, as a member of legislative in order to understand and know the will and desires of the people then they first settled at some time in the district (constituency). Not only an instant to become a member of legislative with only a mere political party members, and with their particular approach to the political party official who has the authority to determine the candidates for members of legislative.

On one hand, as the mandatory of the people, the members of legislative are open to receive aspiration, criticism, opinion of the people represented. Not exactly "patronize" the people with the intention of discrediting the public, for the purposes and individuals and groups or party interest. According to the author, that the existence of the Parliament as an institution and a member of Parliament as an institution is a manifestation of the people's sovereignty who were born as the mandatory of people. The political parties are not giving the mandate to the representative in the Parliament. Political party is only as a forum for learning, testing proficiency in managing the political (government) within a country. The idea of the birth of a legislative basically sourced from the desires of people for a law as a means to regulate the common life in addition to their need for agencies that create and enforce it. Generally, members of legislative represent the people through political parties. These representatives are political representation.

5. Conclusion

Legal provisions for recruitment the candidate of members of legislative has not been optimal. One indication is the mechanism of recruitment is not adequate. Legal instruments regarding the elections organizer is not representative, because the elements of the quality standards of competence, integrity, and accountability towards the elections have not been adequately regulated in the laws and regulations. On this basis, the authors suggested that the legal provisions on recruitment for members of legislative are regulated in the Basic and Household Budgeting of Political Parties. While, the terms and reinforcement (competence) of candidate of legislative's member are regulated in legislation. In addition, requires legal instruments of election organizing that is comprehensive to accommodate the concept of supervision and in order to realize the representative parliamentary.

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