

# Institutional Strengthening of the General Election Commission in Order to Realizes Fair and Just Election

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## Abstract

The general election is a manifestation and it is closely related. The reason, the election is considered to be giving birth to a representation of people's aspirations which of course is closely related to the legitimacy for the government. Direct election as a manifestation of the former referendum mechanism, it is possible to metamorphose into elections through representative institutions. However, this transition cannot be done immediately, there should be ordering of representative institutions from the recruitment system to the election of legislative candidates to be elected. In addition, transparency and accountability must be conducted in the transition of this mechanism. In the context of current Indonesian state administration practice, a strong government is a government that has a high degree of legitimacy. The legitimacy is gained because of its success in realizing it in society so that people respect and believe it. If the regional head is elected by those who do not have the legitimacy of the people to vote the regional head, then the elected regional leader also does not have strong legitimacy, so the ideals of creating a clean and strong government will be injured by an impartial system of citizen's basic rights fulfillment.

**Keywords:** General Election, Election System, Indigenous Peoples, Noken

## 1. Introduction

Indonesia is a Constitutional State (*rechtsstaat*) as affirmed by the 1945 Constitution as Indonesia's constitution. Indonesia as a constitutional State requires all actions of the State/government are always based on law. In a democratic country, the people who own and control the power and power itself is performed for the interests of the people themselves. Initially, democracy was an idea of the pattern of life that emerged as a reaction to the inhuman social and political reality in society. Certainly, the reaction is coming from idealistic and thoughtful people. There are three ideal values that support democracies as an idea of life were freedom, equality, and justice. In the reality, the idea is realized through the embodiment of symbols and the essence of the basic values of democracy truly represented or elevated from the reality of life that equal to the values itself.<sup>1</sup>

Substantially, the general election is an umbrella that serves as a means of delivery of peoples' democratic rights. The existence of electoral institutions has been recognized by countries with the principle of peoples' sovereignty. The essence of electoral issues sourced from 2 (two) main issues that are always questioned in the practice of constitutional life, concerns the teachings of peoples' sovereignty and democratic understanding, in which democracy as a manifestation of peoples' sovereignty and elections is a reflection of democracy. There are at least three general election' objectives: *the first*, allow for a peaceful and orderly change of government; *the second*, implements the people's sovereignty; and *the third*, implements the citizen's basic rights.<sup>2</sup>

In addition, the general election is a manifestation and it is closely related to human rights, particularly civil rights,<sup>3</sup> as one of the bill of basic human rights in the field of human rights, coupled with economic, social and cultural rights.<sup>4</sup> With the regulation of general election, starting from the principles, objectives, participants and executors of elections in the 1945 constitution, then constitutionally the general elections in Indonesia becomes more assertive in order to improve the basic rules of the State order and guarantee the implementation of peoples sovereignty in accordance with the development of understand democracy that governs the more assertive power-sharing by establishing a *checks and balances* system.

<sup>1</sup> Arbi Sanit. 1985. *Perwakilan Politik Indonesia*. Yogyakarta: CV. Rajawali. Page 83

<sup>2</sup> Moh. Kusnardi and Harmaily Ibrahim. 1998. *Pengantar Hukum Tata Negara Indonesia*. Jakarta: PSHTN-FHUI. Page 330

<sup>3</sup> Act No. 12 of 2005 on the Ratification of *International Covenant on Civil and Political Rights* (ICCPR).

<sup>4</sup> Act No 11 of 2005 on the Ratification of *International Covenant on Economic, Social and Cultural Rights* (ICESCR).

For some countries that implement or claim to be a democracy (peoples' sovereignty), general elections are considered as symbol and main benchmarks and first of democracy.<sup>1</sup> This means that the implementation and election result is a reflection and openness and an application of the basic values of democracy, in addition to the need for freedom of opinion and association which is considered reflection of citizens opinion. The reason, the election is considered to be giving birth to a representation of people's aspirations which of course is closely related to the legitimacy for the government.

General elections is a means of giving legitimacy to those who will serve in the government, also serve as a means of learning democracy (politics) for the people. It becomes a learning media of democratic practice for the people who are expected to form a collective awareness of all elements of the nation about the importance of choosing the right leader according to his/her conscience. Thus, it is an important means for the process of national leadership cadre in Indonesia involving all citizens in determining the choice related to the officials who will exercises government affairs.

Various types of disputes that arise in the implementation of general elections are certainly requires different officials also its handling. It can be said that the existing system in the handling of election criminal acts is still very inadequate. The diversity of disputes that may arise may lead to conflict of authority between apparatus handling disputes in the general election of region head.

The readiness of the organizers in exercising the stages of electoral is depends not only on how many personnel they have to be able to carry out all election stages. The equally important factor is related to how well an institution can perform a series of election stages independently, freely and responsibly. The presence of tendencies that may undermine the conduct of elections in the implementation of electoral stages should be anticipated through the strengthening of election organizers. The General Election Commission is an independent institution granted authority by constitution.

Independence is not simply "independent, free, or impartial" with any individual, group or interest organization, or independent or influenced. It also means power, paradigm, ethics, and spirit to ensure a process and outcome of the election by reflects the interests of the people, nation and state, present and future. The independence that must be maintained by an independent institution includes 3 (three) things: institutional, functional, and personal independences. The institutional or structural independence is that the General Election Commission is not part of an existing state institution, not being subordinate or dependent on any state institution. Functional independence means that the General Election Commission should not be interfered with or governed and suppressed by any party in conducting the general elections, and functional independence is that a person who is a member of the General Election Commission is an impartial, fair, has capacity and capability.<sup>2</sup>

One factor that also weakens the General Election Commission is related to the validity of legal products of the General Election Commission, which always reaping the pros- and cons of the parties that are participating in the election. The non-compliance of the General Election Commission' rules as the instrument of general election is very disturbing the election, considering that the stage of election is a series of activities organized systematically with a short time.

## 2. Realizes a Democratic Government

Democracy is a form or a government system that all of its people participate in governing by the intermediary of its representative, or also called peoples' government.<sup>3</sup> The word of 'democracy' is derived from the French language *democratie* that newly-known on 16th century, referenced from the Greek word "demos" means "people" and the word "kratos" or "kratein" means "government", so "Democracy" is "a government by the people". The word "government by the people" has a connotation.<sup>4</sup>

The conception of democracy has always put the people in a very strategic position in the constitutional system, even at the level of implementation there is a difference between countries to another country. For the different variants of the implementation of democracy, then in the constitutional literature known to some terms of democracy that is a constitutional democracy, parliamentary democracy, guided democracy, Pancasila democracy, peoples' democracy, soviet democracy, national democracy, and so forth.<sup>5</sup>

<sup>1</sup> Dhurorudin Mashad. 1999. *Korupsi Politik, Pemilu dan Legitimasi Pasca Orde Baru*. Jakarta: Pustaka Cidesindo. Page. 1

<sup>2</sup> Suparman Marzuki, *Peran Komisi Pemilihan Umum dan Pengawas Pemilu yang Demokratis*, an article in Law Journal, No. 3 Vol. 15 July 2008. Page. 399

<sup>3</sup> Kamus Besar Bahasa Indonesia-KBBI "Fifth edition". 2008. Jakarta: Balai Pustaka. Page. 249.

<sup>4</sup> Munir Fuadi. 2010. *Konsep Negara Demokrasi*. Jakarta: Refika Aditama. Page. 1

<sup>5</sup> Moh. *Koesnardi* and Bintan R. Saragih. 1998. *Ilmu Negara*. Jakarta: Gaya Media Pratama. Pages. 167-191.

Robert Dahl considers that the continual governments' response to its citizen's preferences or desires is a hallmark of democracy. To ensure that the people must be given the opportunity to formulate preferences or interests alone, tell its preference was to its fellow citizens and the government either through action, individually or collectively, and see to it that his interests be considered as equals in the decision-making process of government, that is not in discriminating content or its origin.<sup>1</sup>

Dahl formulates the political institutions in the democracy government of modern representative as follows:<sup>2</sup>

1. Selected officials. The control over the governments' decision on policy constitutionally is in the hands of officials elected by citizens. Thus, the modern large-scale democratic government is representative;
2. Free, fair and regular elections. The elected officials are determined in general elections that are often held and carried out fairly, where coercion measures are rather rare;
3. Freedom of assembly. Citizens are entitled to express their own opinions without the danger of harsh penalties on matters of broadly defined political equality, including criticism of government officials, government, regimes, socio-economic and ideological order;
4. Access to alternative sources of information. Citizens are entitled to seek alternative sources of information and are free of other citizens, experts, newspapers, magazines, books, telecommunications and others. Moreover, alternative sources of information are in no under the control of government or other political groups that seek to influence the beliefs and behavior of people and these alternative sources are effectively protected by the constitution;
5. Associational autonomy. To achieve their diverse rights, including the rights necessary for the effectiveness of the actions of democratic political institutions, citizens are also entitled to form relatively free associations or organizations, including political parties and free interest groups;
6. Inclusive citizen rights. No adult living in a country and subject to the constitution can be denied its rights, this is granted to other citizens and required the five political institutions just mentioned. Such rights include the right to vote to elect officials in free and fair elections; the right to run in elections; the right to freedom of expression; the right to form and participate in political organizations; the right to a free source of information; and the right to other freedoms and opportunities that may be necessary for the successful actions of political institutions in large-scale democracies.

As mentioned by Dahl and Huntington, in other discussions, Linz and Stepan, defines democracy as a legal freedom to formulate and support political alternatives with the right to freely associate, free to talk and other basic freedoms for everyone, free competition and non-violence among leaders with periodic legitimacy for them to hold government; the inclusion of all effective political positions in a democratic process; and the right to participate to all members of the political community, regardless of their vote. Practically, this means the freedom to establish political parties and to hold free and fair elections for a certain period of time without removing any effective political position from election accountability directly or indirectly.<sup>3</sup>

According to Larry Diamond that democracy as a system of government with 3 (three) features, firstly; extensive competition to occupy the political positions with regular, free and fair elections; secondly, there is complete political access, so that no adult is excluded; thirdly, freedom of the press, association, and adequate law enforcement to ensure that competition from political participation becomes authentic.<sup>4</sup>

According to Hans Kelsen that democracy is "Democracy means that the will which is represented in the legal order of the state is identical with the wills of subjects."<sup>5</sup> Further, Hans Kelsen argued that "that all power should be exercised by one collegiate organ the members of which are elected by the people and which should be legally responsible to the people."<sup>6</sup> Abraham Lincoln (former 16th President of the United States) declared that democracy is the government from the people, by the people, and for the people. Therefore, the system of democratic government is used as opposed to the system of tyrannical government, autocracy, totalitarianism, aristocracy, oligarchy, and theocracy.<sup>7</sup>

Abraham Lincoln's view above, according to Ririen Ambarsari that the word "from the people" refer to a free elections or freedom to vote that owned equally by all the people as participants of political life (*zoon politicon*).

<sup>1</sup> Mohtar Mas' Oed. 1994. *Negara, Kapital Dan Demokrasi*. Yogyakarta: Pustaka Pelajar. Pages 9-12

<sup>2</sup> *Ibid.*, Pages. 118-120

<sup>3</sup> Juan J. Linz & Stepan, "Mendefinisikan dan Membangun Demokrasi" dalam Juan Linz et al., *Menjauhi Demokrasi Kaum Penjajah: Belajar dari Kekeliruan Negara-negara lain*. Bandung: Mizan-LIPI & Ford Foundation. Pages.26-27.

<sup>4</sup> Larry Diamond. 1994. *Revolusi Demokrasi Perjuangan untuk Kebebasan dan Pluralism di Negara Sedang Berkembang*. Jakarta: Yayasan Obor Indonesia. Page. 10

<sup>5</sup> Hans Kelsen. 1973. *General Theory of Law and State*. New York: Russel & Russel. Page. 284

<sup>6</sup> *Ibid.*

<sup>7</sup> Saripudin Bebyl. 2003. *Tata Negara*. Bandung: Gramedia Pustaka Utama. Page. 32.

So, what is expected by democracy in this case is the free election to seek all those who sit in the political order of state government. The idea of “by the people” means that by the best elected representatives of the people in the equality of legal juridical right to vote. What might be the freedom and equality in choosing the best rulers, who can truly represent and realize the will of the majority, so that the people feel themselves to be governing because all of their aspirations can be fulfilled or at least understood as “attitude truth” by people’ majority and minority.<sup>1</sup>

The idea “for the people” is the idea to declare the ultimate goal of democracy organized through “the process from the people and by the people.” “For the people” is the goal or scale of success that can be a measure for the elected representative who becomes the ruler in carrying out the mandate of the will of the people. If “for the people” is not realized, the people have the right to replace it with a better representative choice and have more moral and skill enough to realize the will of the people. The will of the people manifested in the form of government programs “for the people” is a measure to see the point of success of a government regime taking place.<sup>2</sup>

Basically, democracy is a concept of government where supreme authority (or sovereignty) is in the hands of the people or it is often said that democracy is government by the people or the majority government. One of the most common definitions of democracy is that democracy is a government by the people in which the highest authority is in the hands of the people and run directly by them or by their elected representatives under the free electoral system. From this definition, there are several important elements of democracy, including the existence of power exercised directly or through representation, sovereignty in the hands of the people, free electoral system. The principle of peoples’ sovereignty and freedom is essential in the above-mentioned conception. In addition to the principles then democracy also contains elements of a set of practices and procedures of a long process of institutionalization. Thus, democracy is a system of government within a country in which all citizens have the right, obligation, position and good power in running their lives as well as in participation in state power, in which the state is entitled to participate in running the state or supervising state power both directly through its elected representatives fairly and honestly by governments run solely for the benefit of the people, run by the people for the benefit of the people.<sup>3</sup>

The main element of Indonesian democracy based on Pancasila is the principle of “deliberation”, its initial the word deliberation in the fourth precept of Pancasila, which reads entirely of “wisdom led by the wisdom in representative deliberations,” the essence of the deliberation is a “win-win solution” meaning with the principle of deliberation, it is expected to include all parties who differ in opinion. However, the problem of win-win solutions or actual expectations is very difficult to apply in the practice of nation and state. Hence, the more realistic deliberation format in this context is voting based on the one man one vote method that produces the concept of win-lose solution. Based on the concept of zero sum game, though not always mean the winner takes all. In this case, the concept of deliberation democracy in Indonesia version is one of the species of consensus democracy theory.<sup>4</sup>

According to Miriam Budiardjo<sup>5</sup> that to implement democratic values, several institutions should be organized as follows: responsible government, representative council representing groups and interests in society and elected by free and secret elections and on the basis of at least two candidates for each seat. This representative council performs control, allows for opposition, constructive, and a continuous assessment of government policy; and a free justice system to guarantee human rights and maintain justice.

In this regard, a rational democratic system is the relationship of general election required a proper, effective and efficient candidate system.<sup>6</sup> In terms of rational political parties, political parties must have good internal competition and procedural procedures to place rational candidates to be handed over to the people to be elected. So, the candidates who are placed are those who are not because based on kinship, friendship, money owner, or celebrity seller looks.

### 3. A Critical Analysis of the General Electoral System in Indonesia

Principally, general elections in any country have equal essence. It is an umbrella where people do activities to

<sup>1</sup> Ririen Ambarsari. 2009. *Antara Golput Dan Kearifan Berdemokrasi Pada Pemilu 2009 Dalam Suatu Tinjauan Filosofis*. Jurnal Konstitusi, vol. II. No. 1. Juni 2009. Pages. 132-133

<sup>2</sup> *Ibid*

<sup>3</sup> Abdul Bari Azed. 2000. *Sistem-Sistem Pemilihan Umum*. Depok : Badan Penerbit Fakultas Hukum Universitas Indonesia. Page. 1

<sup>4</sup> Munir Fuady. 2010. *Konsep Negara Demokrasi*. Jakarta: Refika Aditama. Page.188

<sup>5</sup> Miriam Budiardjo. 2008. *Dasar-Dasar Ilmu Politik* ed-revisi. Jakarta: PT. Gramedia Pustaka utama. Pages. 63-64

<sup>6</sup> Munir Fuadi. 2010. *Konsep Negara Demokrasi*. Jakarta: Refika Aditama. Page. 27

vote people or a group of people who become people or State leaders. The elected leader will exercise the will of the people who elect him. It is a primary means to enforcing a democratic political order. Its function as a tool to nourish and perfecting a democracy, its essence as a means of democracy to form a system of state power that is basically born from the bottom according to the will of the people so as to form the State power that really distribute down as a dignity in accordance with the will of the people, by the people, according to the representative deliberation system.<sup>1</sup>

General election is a recognition and embodiment of the political rights of the people and at the same time delegates the political rights of the people to their representatives to run the government. In order to do so, it takes a political vehicle, and a political party then comes and offers its cadres to represent the political rights of the people in the state. However, to fight for the political rights of the people, the political party must first show its existence that can be seen from the vote in the general election.

In general, general elections are a means of generating government regeneration as well as in the context of good and clean governments; it is also a space to evaluate the work of the government in the current period. In the general election, the manifestation of the will of the people is set forth in the rights and obligations available. The right for the people to voice their aspirations, choosing representatives and leaders who they think are role models, without any intervention and coercion from anyone, including the state and obligations for those who feel entrusted to carry out the mandate of the people, as legislators, governor, regent, mayor or elected President and Vice President. It is a gateway to democratic society.

In this context, the general elections are an ideal image for a democratic government. According to Seymour Martin Lipset that a stable democracy requires conflict or separation so that there will be seizure of political office, opposition to the ruling party and the turn of the ruling parties.<sup>2</sup> Therefore, the election is not only to determine the legitimate party in power, but far more important is the evidence that democracy is running steadily, where there is a turn of the ruling political parties. With regard to the objectives of the election, according to Parulian Donald, there are two benefits as well as a direct goal to be achieved with the implementation of electoral political institutions, namely the establishment or legitimate power and achieving political representativeness.

From standpoint of both benefits are immediate goals that are in a relatively short time scale. This suggests that the benefits are felt immediately after the election process takes place. The goals is not directly generated from the overall activities of all parties involved in the election process, both contestants and implementers and supervisors in a relatively long period, namely political and political institutionalization. In a simpler sense, the goals are directly related to the election results, whereas the goal is not directly related to the process of achieving the outcome.

In the context of socio-political in the design of electoral systems, various professions will provide different views based on their respective skills and professions. All of them provide ideal concepts, such as election system design consultants will avoid a “one size for all” approach by recommending a system that can be applied to any situation. Constitutional experts will say “depends” on the rules.

The general electoral system includes 2 (two) main thing:<sup>3</sup> First, how to implement an existing system of rules in general (recognized and embraced by generally constitutional democracies). This is often referred to as electoral laws governing the general electoral system and the rules that govern how elections are run, how the distribution of electoral results is set and so on. Second, how the mechanism of implementing an election can be called as an electoral process. In electoral process this is determined for example who the organizing committee of the general election, the party or organization of the election participants, and others.<sup>4</sup> There are two models in general election system consisting of organizational- and mechanical systems.<sup>5</sup>

The General Election Commission in exercising its duties as the organizer of the general election is given the authority to form the Decision of the General Election Commission. The discussion on the legal products of the General Elections Commission is important in relation to the extent to which the General Election Commission is able to use legal instruments in strengthening its institutions.

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<sup>1</sup> Rusli Karim M. 1991. *Perjalanan Partai Politik di Indonesia: Sebuah Potret Pasang Surut*. Jakarta: CV. Rajawali. Page. 120

<sup>2</sup> Seymour Martin Lipset. 1960. *Political Man: Basis Sosial Tentang Politik*. Yogyakarta: Pustaka Pelajar. Page. 1

<sup>3</sup> Jimly Asshiddiqie *Format kelembagaan Negara dan Pergeseran Kekuasaan dalam UUD 1945*. FH UII Press. Yogyakarta. 2004. Page. 44

<sup>4</sup> Bintang R. Saragih “Masyarakat Indonesia dan sistem pemilu”. *Op. Cit.* Page. 307.

<sup>5</sup> Moh. Kusnardi and Harmaily Ibrahim. *Op. Cit.* Page. 333



Administrative decisions are a very general and abstract definition, which in practice appears to be in the form of very different decisions. However, administrative decisions also contain the same traits, because finally in theory there is only one definition namely "Administrative Decision". It is important to have an in-depth understanding of the definition of administrative decisions, since it is necessary to be known in the practice of particular decisions/actions as administrative decisions. It is indispensable, because positive law attaches certain legal consequences to such decisions, for example a legal settlement through a particular judge, the legal nature of the decision being individual-concrete.

Under international standards, the legal framework should regulate sanctions for violations of election laws. Many countries create election violation rules in their election laws. Any criminal provisions established for legal purposes should reflect the purpose of the drafting of the law. For example: "any attempt to prevent violations, corrupt and illegal practices in the elections; and rules about electoral lawsuits."

The principle violations of free and fair electoral, not only harm to candidates who are clean and honest, but also harmful to all Indonesian people, especially marginalized and poor groups who do not get leaders who will fight for their interests. Their access to politics, economics, education, employment will be closed and no longer able to compete with groups with much better access in society.<sup>1</sup> Moreover, if the winners solely capitalize on the economy and dependence of capital forces, then campaign promises for the welfare of the people will be difficult to be realized.

#### 4. Conclusion

Direct election as a manifestation of the former referendum mechanism, it is possible to metamorphose into elections through representative institutions. However, this transition cannot be done immediately, there should be ordering of representative institutions from the recruitment system to the election of legislative candidates to be elected. In addition, transparency and accountability must be conducted in the transition of this mechanism. In the context of current Indonesian state administration practice, a strong government is a government that has a high degree of legitimacy. The legitimacy is gained because of its success in realizing it in society so that people respect and believe it. If the regional head is elected by those who do not have the legitimacy of the people to vote the regional head, then the elected regional leader also does not have strong legitimacy, so the ideals of creating a clean and strong government will be injured by an impartial system of citizen's basic rights fulfillment.

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<sup>1</sup> Mikfatul Huda. 2011. *Pola Pelanggaran Pemilu dan Perluasan Keadilan Substantif*. Jakarta: Majalah Konstitusi. Page. 137

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