

# Peoples' Sovereignty Principle on the Implementation of General Election in Indonesia

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## Abstract

People's sovereignty and democracy from the people must be respected as the main condition of the general election of government officials in Indonesia. Laws that govern the elections in Indonesia consists of 1945 Constitution Republic of Indonesia as the basis of any law that regulate the elections. Apart from the rules on elections organized in such a way to provide for people's sovereignty itself in conducting the general elections, in practice, there are many problems that eventually reduce, rob, and negate the sovereignty of the people in the administration of elections. In fact in determining the choice of the people is no longer in the state of free will, consciousness of the nation, and in full control of themselves. Government should come from the people, by the people and for the people turn into government comes, from, and to the interests of certain groups or political parties. The general election in Indonesia still can not provide and realize the people's sovereignty in determining the fate of the nation.

**Keywords:** General Election, Sovereignty Principle

## 1. Background of the problem

Government to be run by people means that the supreme power of a country relies in the hands of the people. Independent country is a country that upholds the distribution of justice for all people equally. The guided democracy principle is embraced by the Indonesian nation in the era of President Soeharto, but the positive impact of the idea of democracy is not perceived by the people of Indonesia. Authoritarian style of government appear more dominant. The state power was in the hands of the President for not a short period for the people of Indonesia. On May 21, 1998, then the idea of democracy started to be felt by people with the overthrow of the President Soeharto's administration.

The essence of democracy is the execution of the general election. All citizens have the right to determine the future of the nation by participating in voting, either directly or through a representative. Democracy is the power that comes from the people, by the people and for the people.

Indonesia is a democratic country. In the article 1 paragraph (2) of the 1945 Constitution, "Sovereignty belongs to the people and carried out according to the law the constitution". Sovereignty in the hands of the people shows that the people's position is the highest and most central. The opening of the 1945 Constitution states that Indonesia is a republic nation and the sovereignty of the people and based on God Almighty.

One of the means to establish a democratic system of the peoples' sovereignty as intended by the 1945 Constitution is the general election. Dahlan Thaib argued that, "The implementation of the people's sovereignty cannot be separated from the general election because the election is a logical consequence espoused by the principle of the peoples' sovereignty (democracy) in the life of the nation. The basic principle of a democratic state life is that every citizen has the right to actively participate in the political process"<sup>1</sup>. The power resulted from the election is the power that was born by the will of the people for the benefit of the people and is derived from the people. Community participation in the Democratic Party will increase the critical power of citizens, foster the spirit of nationalism, and the sense of shared responsibility for the future of the nation.

The principles of democracy adopted by Indonesia is Pancasila Democracy or the Indonesian Five principle of philosophical foundation. Pancasila democracy is a democracy that promotes negotiation for consensus without opposition<sup>2</sup>. 4th principle of Pancasila formulate that democracy led by the inner wisdom of deliberations' representative. Pancasila democracy is based on the principles of democracy and prioritize the negotiation for consensus.

Israel Idris suggests several basic functions of Pancasila Democracy:

1. Ensuring the participation of the people in the life of the state, for example:
  - a. Participate for the successful election
  - b. Participate for the successful development
  - c. Participate in a representative council / deliberative
2. To ensure and uphold the state of Republic of Indonesia
3. To ensure and uphold the unitary state of Republic of Indonesia in using the constitutional system
4. Ensuring the upholding of law, based on Pancasila
5. Ensure the existence of a relationship that is in harmony and balance between the State institutions
6. Ensure the accountable government<sup>3</sup>.

Pancasila Democracy of Indonesia interpret state governance is based on the peoples' sovereignty

should be implemented in accordance with the 1945 Republic of Indonesia Constitution.

Article 6A paragraph 1 1945 Constitution determines, "President and Vice President, elected as a pair, chosen directly by the people". Direct election by the people is an absolute purpose of the 1945 Republic of Indonesia Constitution which can not be deviated as there are no amendments on the provisions. Furthermore, Article 18, paragraph 3 and paragraph 4 1945 Constitution respectively – also states:

1. The Province District Government, districts, and the city has the Regional Representatives Council members which are elected through a general election.
2. Governors, regents and mayors, each as Head of the Provincial Government, District and City elected democratically.

Election of the head of state and legislators implemented through general election, while the local elections democratically elected. Democratic election means that the election can be elected directly by the people or through the people's representative for fulfilling the democratic life of the Indonesian nation. In practice, local elections in Indonesia is done through a general election. Democratic principles Indonesia became the main point in the administration of elections in Indonesia.

Indonesia general elections belong to the people of Indonesia, the right of every citizen. Sovereignty of the people in executing the general election should be free from pressure and interference of outside parties or other particular ruler groups. The election is a democratic party, the Democratic Party is a party of the people to exercise their right to determine their political destiny of the nation. Participation of citizens in choosing representatives and local leaders as well as heads of state should be free of coercion, pressure, power, and money politics.

The nature of sovereignty is the ownership of full control of affairs in their own country within a region and government in it. People as citizens have full control in the affairs of their own country. Sovereignty, if it is related to the conduct of the elections, has the meaning that the people is in control of elections. As a control, citizens have the freedom to choose a political party for example, to follow the campaign, and gives right to vote during election day. In short, sovereignty of the people in the elections is the execution of the elections as mandated by Article 22E of the 1945 Constitution, "the general election should be held directly, publicly, free, confidential, honest and fair ...".

Every citizen has the right to participate in the elections freely, confidentially, honestly, and fairly. The right of the election is a fundamental right of every citizen of the democracy country. Elimination of the right is a form of insult to democracy. It is the people who are in control of elections, it is the people who are in control of the Indonesian government.

One example of deprivation of people's sovereignty happening in Indonesia is on the September 25, 2014 where the People's Consultative Council in the plenary session passed an elections bill. October 2, 2014, President Susilo Bambang Yudhoyono gave two Government Regulation in Lieu of Law to Parliament for ratification of the election law which was passed on September 26, 2014. Under the Act, the mechanism of elections to the regional parliament made. The first Government Regulation in Lieu of Law is Government Regulation in Lieu of Law No. 1 of 2014 on the election of Governor / Regent / Mayor. This regulation, at the same time, revoke the Law No. 22 of 2014 which says the election of Governor / Regent / Mayor refers to indirect local elections by Parliament. The second regulation has Government Regulation in Lieu of Law No. 23 of 2014 concerning local government remove the duties and authority of Parliament in electing regional heads.

Although in the end, the president Susilo Bambang Yudhoyono issued a cancellation of Government Regulation in Lieu of Law bill in this election, but the event above have shown that some groups of the political elite has a goal to seize the sovereignty of the people in the choice of district head. The presence of this Election Law makes people no longer have the opportunity to vote directly for the district head. The public's right to vote was given to the people's representatives in Parliament.

Maurice Duverger in his book "Les regimes Democratiques" stated as follows:

The procedure to fill the democratic positions divided into two, namely direct democracy and representative democracy. The definition of direct democracy is a way to fill the positions by the citizen directly choose someone to occupy certain positions in the government, while representative democracy is a way to fill the positions with the citizen elect a person or a political party to choose a person occupying a particular position to accomplish certain state duties (institutional) such as the legislative, executive and judicial power<sup>4</sup>.

Sovereignty of the people will only run optimally in local elections if people participate in the Democratic Party. The indirect election allows the political party's interest above and over the interests of the people. Let the people themselves who determine their fate, the fate of the region, the fate of the nation.

## I. 2 Problem Formulation

Starting from background exposure problem, the problem can be formulated as follows:

1. Does the setting elections in Indonesia has prioritized the the principle of peoples' sovereignty?
2. Does the elections in Indonesia gives sovereignty to the people?

### **I.3 Research Objectives**

The purpose of the study

1. To determine the extent of the general elections provision in Indonesia.
2. To obtain information about the implementation of the general elections peoples' sovereignty in Indonesia
3. To contribute to the government and the public about the rights of the people to participate in general elections sovereignly.

### **I.4 Methodology**

#### 1. Type of research

This study uses normative juridical research. In other words, it means the effort to search for a settlement of the problem by examining and assessing the positive legal norms by using the concept of "Law in the book", which is by conducting library research.

#### 2. Problem Approach

Problem approach in this study is using the Statute Approach and Conceptual Approach. Approach Statute is "an approach by examining all the laws and regulations relevant to the legal issues that are being addressed". While Conceptual Approach is "approach to identify and discuss views and doctrines that developed in the science of law".

#### 3. Materials / legal sources

Materials / legal sources used in this study can be distinguished as follows:

- Primary legal materials, which is a legal binding material, in the form of legislation, in this case the Constitution of the Republic of Indonesia 1945, Constitution No. 39 of 1999 on Human Rights.
- Secondary legal material, which is closely related to the primary legal materials because it explains the primary legal materials, among other literature on the general election and the people's sovereignty.

#### 4. Research Step

The collection of legal materials made with inventory, classification and systematization. Inventory step is done by collecting material related laws through literature. The Materials are classified based on the need to analyze the problem formulation. To ease the understanding, the material is arranged systematically.

In analyzing, the deduction method is used. In other words, the way of thinking or logic starts with general knowledge derived from the provisions of laws, and then implemented on the formulation of the problem which then produce specific answers. To obtain the correct and logical answer, some interpretations were used, specifically, systematic and authentic interpretation. Systematic interpretation is an interpretation by seeing the arrangement of chapters that connected with each other in the legislation itself or other articles from another laws to gain a more solid understanding. Meanwhile, the authentic interpretation is the exact interpretation of the meaning specified in the legislation itself.

### **The analysis of People's Sovereignty in General Election Regulations**

The fourth amendment of 1945 Constitution in 2002 is to change the presidential election system and vice-president which was originally performed by the people's consultative assembly and it was agreed to be done directly by the people. Followed in 2007 with the enactment of the Law no 22 Year 2007 regarding the General Election Organizer subsequently replaced by Law No. 15 of 2011 (hereinafter referred to as Election Law). The regional head and deputy are included as part of the general election.

Before the author explained more about the principle of people's sovereignty in the regulations on the general election in Indonesia, first of all, it will be described a number of regulations governing the elections. 1945 Constitution as the supreme law and basic foundation of the entire laws under it, regulates elections in article 1, paragraph (2), Article 6A, Article 18 paragraph (3) and (4), Article 20, Article 21, and Section 22E.

Sovereignty rests with the people and to be carried out based on the Constitution in Article 1 (2) 1945 Constitution Republic of Indonesia. Sovereignty of the people is the basis, guidelines, and the final destination in a state administration. Interests of the people is a priority of the state administration in Indonesia.

Article 6A 1945 Constitution regulates the general election of President and Vice President were made directly by the people. Couple presidential and vice presidential candidates nominated by political parties or coalition of political parties that are participants of the election. Procedures for the implementation of the general election for president and vice president further regulated in the law no 42 Year 2008 regarding General Election of President and Vice President (hereinafter called the Presidential Election Law and Vice President).

Local government elections in the 1945 Constitution are based on the Article 18. In the third paragraph of this article confirms that the Legislative Council elected through general elections. Under this provision, it promulgated on Act - Act No. 8 of 2012 on General Election of Members of the Board of Representatives, Regional Representatives Council, and the Regional Representatives Council (hereinafter referred to as the Election Law of Representatives).

Article 18 in paragraph (4) 1945 Constitution stipulates that the election of governors, regents and mayors conducted democratically. As it was discussed in previous chapter, that the democratic election can be in a form of direct democracy system and indirect democracy system. Based on the Article 1 paragraph 4 Election Law that, "Election of Regional Head and Deputy Head of Region is the election to choose a regional head and deputy regional head directly in the Unitary Republic of Indonesia under Pancasila and the Constitutions of the Republic of Indonesia". These provisions answered the meaning of the phrase "elected democratically" contained in Article 18 paragraph (4) 1945 Constitution makes the system used is direct democracy. The latest legislation governing elections of regional heads is in the law no. 1 of 2015 on Stipulation of Government Regulation in Lieu of Laws no. 1 of 2014 On the Election of Governors, Regents and Mayors become the laws (hereinafter referred to as Election Law).

Seeing the glimpse of the regulations on the election of president and vice president, members of the people's representatives, and local leaders on implementing the system of direct democracy, which is the general election, answered the mandate of the 1945 Constitution in Article 1 (2) which requires the sovereignty vested in the people.

The general elections are facilitating people to a sovereign, in a sense to participate in the vote or to be voted, and give voting freely, and play an active role in the activities of the general election. However, too soon to say if all the regulations, in principle, are entirely based on the principle of people's sovereignty implicit and explicitly in its substance. So, the author wants to elaborate on each regulation.

The general election is a means of implementation of the sovereignty of the people held in direct, public, free, confidential, honest, and fair in the Republic of Indonesia under Pancasila and law of the Republic of Indonesia Year 1945, as set out in Article 1 the general election law. Organizing principle of people's sovereignty is based on the principle of an independent, fair, legal certainty, orderly election organizer, public interest, transparency, proportionality, professionalism, accountability, efficiency, and effectiveness. This is clearly stated in the Article 2 in the general election law.

The general election law regulates the administrator of the general elections specifically an institution which conduct and administered the general election to elect the members of House of people's representatives, Assembly at provincial and the president and Vice President, as well as regional head and deputy regional head who directly conducted by the people. The institutions that hold the elections according to the laws in Article 1 is the Election Commission, Provincial Election Commission and the Election Commission Regency/ City Election Committee sub-district, the Voting Committee, Election Committee of Foreign Affairs, Group Organizers Voting, Group Operator Overseas voting, Election Supervisory Board, Provincial Election Supervisory Committee and the Election Supervisory Committee Regency/ City Election Supervisory Committee Districts, electoral Supervisory Field, electoral Supervisory Foreign Affairs, and Honorary Council.

The general election commission in accordance with Article 1, item 6 on the general election law is an election management institution which is national, permanent and independent. The constitutions mandated the independence of the Commission in carrying out its duties independently and remain. Independent in the sense that there is no interference from the government or a particular group. Independent means capable of performing their duties and responsibilities in full and constant for the Indonesian nation. This is made clear in Article 3 paragraph (3) Election Law which stipulates that "in organizing the elections, the Commission is free from the influence of any party with regard to the implementation of the tasks and authority". Based on the constitutions, it is clear that this law provides for the Commission to hold the sovereignty of their duties.

Some of the essential requirements that must be met by a member of the Commission under Article 11 Election Law is loyal to Pancasila as the state, the 1945 Constitution of the Republic of Indonesia, and the ideals of Proclamation of August 17, 1945; Commission members must have integrity, a strong personal, honest and fair; never been a member of a political party, does not hold any political position, structural position, and functional position in government department. The provisions of Article 11 of this Election Law hoped for creating the Commission as an independent, transparent, and quality institute. The General Elections Supervisory Board is a form of people's sovereignty in the administration of elections in Indonesia because of the Commission comes from the people so that in carrying out its duties, it will put the interest of the people first.

Duties, powers and obligations of the Commission can be found in Article 8 to Article 68 of the Election Law. Although the Commission is an institution that is independent and credible, Election Law requires the supervision of the Commission's performance. The agency charged with supervising the administration of elections in the entire territory of the Republic of Indonesia is the General Elections Supervisory Board, as stipulated in Article 1 point 16 Election Law.

In line with the principle of the general election commission, the the General Elections Supervisory Board membership consist of professionals who have the ability to conduct supervision and not a member of any political party. It is clearly stipulated in Article 73 of Election Law. The General Elections Supervisory Board is an independent agency staffed by people from Indonesia were "elected" and considered able to oversee the implementation of the Democratic Party in Indonesia. The General Elections Supervisory Board should be

professional in conducting its duties and authority and obligation to be non-discriminatory as stipulated in Article 73 to Article 76 of the Election Law.

Based on the discussion regarding the Election Law analysis above, it can be drawn an outline that elections are mandated direct election by the people who are the embodiment of people's sovereignty. Election Law in preamble part, considers that a general election as an expression of people's sovereignty useful to produce democratic governments. Implementation of direct election, general, free, confidential, honest and fair can only be achieved if carried out by the organizers of the elections with integrity, professionalism that comes from the people.

The constitutions which govern the election of President and Vice President is the Presidential and Vice President Election Law. The Presidential and Vice President Election Law preamble explains that the election of president and vice president held in a democratic and civilized through the wide participation of the entire people, based on the principles of direct, public, free, confidential, honest, and fair to elect the President and Vice President. And the Presidential and Vice President Election Law requires wide participation of the people in determining the extent of the President and Vice President. Communities are given freedom, confidentiality, direct, honesty, and fairness to choose their government as citizens of a sovereign state. Article 2 in the Presidential and Vice President Election Law stipulates that "the election of president and vice president are carried out effectively and efficiently based on the principles of direct, public, free, confidential, honest, and fair."

Article 3 of Presidential and Vice Presidential Election law set as follows:

1. The election of President and Vice President are conducted every 5 (five) years
2. The election of President and Vice President is conducted in the entire territory of the Republic of Indonesia as a single unity electoral district;
3. The vote is held simultaneously on holidays or cessation days.

Based on the provisions of Article 3, it can be seen that the voting day of the election of president and vice president is a big day or the biggest democracy party in Indonesia simultaneously and nationally. On this day people choose and decide sovereignly as part of a sovereign nation. Every citizen of Indonesia has the potential to become a candidate for the presidential and vice presidential candidates if they fulfill the requirements mandated in Article 5 of the Presidential and the Vice President Election Law. The opportunities are open for everyone to become a candidate for president and vice president is a form of people's sovereignty in participating in the Democratic Party in Indonesia. The Presidential and Vice Presidential Election Law provides the right of the people to be part of the Indonesian government, the community becomes the government itself in accordance with the principle of people's sovereignty. Although in the candidacy, the citizen should be promoted by a political party or a coalition of several political parties participating in the election.

Article 10 paragraph (1) in Presidential and Vice Presidential Election Law determine, "the determination of candidates for president and/ or vice presidential candidate conducted in democratic and transparent manner in accordance with the internal mechanisms of the related political parties". This provision aims to prevent conflicts of interest in the party in order to appoint internal candidates for president and vice president to be chosen. The determination should be done in a democratic and open.

The forms of people's sovereignty in election regulations in Indonesia can be found in the provisions of the Campaign. The people are the participants of the campaign itself as stipulated in Article 35 paragraph (6) in the President and Vice Presidential Election Law. The campaign carried out by the principle of honest, open, dialogue and responsible and are part of the political education of the public. Campaigns provide political education to the community, the campaign serve as a platform for open and explain the vision, mission and programs of the candidates for president and vice president to the public. This is in accordance with Article 37 paragraph (1) in Presidential and Vice Presidential Election Law.

The campaigns, contribute to the fulfillment of people's sovereignty in the elections in Indonesia. The public is entitled to know and recognize the candidates for the president and vice president. Society needs to make choices based on assessment of the vision, mission, work programs, and the profile and reputation of the existing candidates. This is why the campaign is tend to be open.

The guarantee for every level of the society able to vote in the polls is a form of people's sovereignty. Article 113 paragraph (2) the Presidential and Vice presidential Election Law and determine, "Voting polls referred to in paragraph (1) be located in a place that is easily accessible, including persons with disabilities, does not combine several regions, and pay attention to the geographical aspects and also ensure every voters may vote in direct, free and secret. " the effort is maximized to make every citizens to encounter no difficulty, confusion, and obstacles in voting at the polling stations.

Article 114 of the presidential and vice presidential election law in paragraph (3) states that, "polls are seen by witnesses of the paired candidate". The votes that have been give to the people are supervised by witnesses of the candidates who are essentially also a member of the community. Article 134 paragraph (8) provides that the citizens witness the vote calculations of the candidates. Thus, among the members of society

are able to oversee the process of the elections and vote calculations.

Based on the above explanation, it appears that the Presidential Election Law and vice set in such a way general election for president and vice president of the sovereignty of the people. People are given the opportunity to become a candidate for the presidential and vice-presidential candidate. Citizens are given the right to choose and vote, and directly supervise the course of voting until the vote count.

The General Election of Members of House of People's Representatives stipulated in the Law on Election of Representatives. Preamble of this law states that to elect members of House of people's representatives, Leadership of political party at provincial / regional level, Assembly at provincial / regional as the embodiment of the people's sovereignty as a means to produce aspirational, good quality, and responsible representatives based on Pancasila and the 1945 Constitution Republic of Indonesia. The elections are required to guarantee the deliverance peoples vote directly, publicly, freely, confidentially, honestly, and fair.

Under the provisions of Article 11 and Article 51 of the General Election Law of Representatives, Those who are eligible to become incumbent legislators are all Indonesian citizens who meet the qualifications of this law.

Every member of the public who meet the requirements have the right to elect a representative of the people he/she wants. Similar to the system on the nomination of the president and vice president, a member of the House of People's Representatives or Assembly at Provincial/ Regional must come from a political party. It is stipulated in Article 7 of the Election Law of Representatives. Whereas, pursuant to Article 11 of the Election Law of Representatives, the Leadership of Political party at provincial/ regional level member candidates came from individuals.

As well as presidential and vice presidential elections, the process of the legislative elections, the campaign also conducted. According to Article 77 of the Election Law of Representatives, the campaign is part of the political education of the public and carried out in a responsible manner. People are the participants of the election campaign itself. The material of the campaign is the delivery of the vision, mission and programs of political parties and related candidates. This is in accordance with Article 78 of the Election Law of Representatives. This campaign gives people a clear understanding of the programs of each candidate, and facilitate the people to get to know the profiles of the candidates who will represent themselves.

Article 174 the peoples' representatives in general election also regulate the voting calculation should be witnessed by the witness. As well as under Article 183, the Voting Committee shall announce voting certificate from all polling stations working area by posting it in public places.

Article 2 of the peoples' representatives in general election set up, "the elections are carried out effectively and efficiently based on the principles of direct, public, free, confidential, honest and fair". This law prioritizes sovereignty of the people to carry out the elections in accordance with the principle of direct elections, general, free, confidential, honest, and fair.

The local elections are based on the General Election Law. Latest Election Act in 2015 in response to the political game that is enacted the Law Number 22 Year 2014 regarding the Election of governors, regents and mayors that regulate the local elections indirectly through the Regional Representatives Council. On the promulgation of the Act - this legislation at the end of 2014, the Indonesian people reject this policy, causing problems and disputes that forced the appropriate Constitutional Court Decision No. 138 / PUU-VII / 2009.

The sovereign right of the people are seized by the political elites who want to maintain the existing power. The local elections are only carried out by representatives of the people would narrow the chances of the candidates and incumbent legislators quality but they will come from a small party or parties that are not the winner of the election. Indonesia, which recognizes the sovereignty of the people in a general election in Indonesia, perceived discriminate against its own citizens when the law was enacted. Society no longer sovereign to choose their own government.

In 2015, to ensure that the local elections were democratic as mandated in Article 18 paragraph (4) 1945 Constitution, the government enacted the Law on Election that stipulate Government Regulation in Lieu of the law no. 1 of 2014 on the Election of Governors, Regents and Mayors became a law constitution.

Peoples's sovereignty and democracy of the people must be respected as the main condition on the implementation of the local elections. The implementation of the people's sovereignty and democracy can only be seen when the local elections conducted directly by the people. The general election law contains the same essentials as the laws that governs stated elections above. The adopted principle is the election that is conducted in a democratic election based on the principles of direct, public, free, confidential, honest, and fair as defined in Article 2 of Law Election.

Those who are entitled to become regional head candidate are any Indonesian citizens who meet the requirements set by the Election Law. In contrast to the requirements of presidential and vice presidential candidates, including candidates for national and regional parliaments, regional head candidates apart from the political parties can also come from individuals or independent. This is set out clearly in Article 1 paragraph 3 and 4 in conjunction with Article 7 of Law Election.

Each Indonesian citizen above 17 years old or have been married and are registered in the general election may vote in the voting. It is stipulated in Article 1 point 6 of the Law of the General Election. To ensure the credibility and transparency on the voting day, the polls are witnessed by the representative witness, supervisory committee, observers, and the public presence. This is in accordance with the provisions of Article 89 in conjunction with Article 98 paragraph (7) of the General Election.

### **Analysis of Peoples' Sovereignty in Conducting the General Election**

The general elections implementation must be in accordance with the laws that have been specifically regulates the elections. In principle, General elections should be made directly, public, free, confidential, honest, and fair. A part of explanation of the peoples' Representatives General Election Law clearly describe the understanding of the principle of elections. With the principles of directness, People as voters have the right to vote directly in accordance with the will of his/ her conscience, without intermediaries.

The nature of general voting means an implication of the opportunity guaranteed for all citizens, without discrimination based on race, religion, race, class, gender, regional, employment, and social status. Every citizen has the right to choose freely in making their choice without any pressure or coercion from anyone. In the exercise of their rights, every citizen is guaranteed the safety by the state, so the citizen can choose according to the will of conscience.

In the voting, Voters guaranteed that his choice will not be known by any party. Voters cast their vote in the ballot can not be known by others. In the implementation of this election, the general election organizers, government officials, election participants, election observers, voters, as well as all parties concerned should behave and act honestly in accordance with the provisions of the legislation. Every Voter and Election Participants receive equal treatment, and free of any party fraud.

The campaign is a part in the elections administration and it will be carried out under the provisions of law-related regulations. In organizing the campaign, it is important to note the prohibitions and restrictions imposed by the laws. For example, the prohibitions the representative nomination campaign of the people, for example under Article 69 of the General Election Law, which is as follows:

During the Campaign it is prohibited to:

- a. Argue the state ideology of Pancasila and the Preamble to the 1945 Constitution of the Republic of Indonesia;
- b. insult someone, religion, ethnicity, race, class, Candidates for Governor, Regent Candidate, Mayor Candidate and/ or the Political Parties;
- c. conduct campaigns in the form of hateful, defamatory, pitting the political parties, individual, and/ or community groups;
- d. use violence, threats of violence or advocate the use of violence to individuals, community groups and/ or the Political Parties;
- e. disrupt security, peace and public order;
- f. threat and advocate the use of violence to take over power from the legitimate government;
- g. damage and/ or eliminate the campaign props;
- h. use the facilities and the expenditure of the Government and Local Government;
- i. use a place of worship and educational facilities;
- j. perform a parade by foot and/ or by a vehicle on a highway; and/ or
- k. conduct campaign activities beyond the set schedule by the Provincial General Election and the Regency General Election.

#### Article 70

1) During the campaign, candidates are prohibited to involve:

- a. The Officials of State-Owned Companies/ regionally owned companies;
- b. The State civil officials, members of the Indonesian National Police, and members of the Indonesian Armed Forces; and
- c. Region Head and region officials.

2) Governors, Regents, Mayors, and other state officials can participate in the campaign by asking permission on campaign leave in accordance with the provisions of laws and regulations.

3) The state officials referred to in paragraph two (2), which became Candidates for Governor, Candidate for Regent, Candidate for Mayor in carrying out the campaign can not use the facilities associated with the position.

#### Article 71

(1) Government Officials, Officials of the Civil State Apparatus, and the Region Chief are prohibited from making decisions and/or actions that favor or disfavor one of the candidates during the campaign.

(2) The Incumbent is now allowed to replace the position within 6 (six) months before the term of service ends

(3) The incumbent is not allowed to use any programs and activities for the Local Government Electoral activities within 6 (six) months before the term of service ends.

(4) In the case of incumbent purposely conducting as referred to in paragraph two (2) and paragraph three (3), the incumbent will get sanction of cancellation as a candidate by the Provincial General Election or by the Regency General Election.

If the prohibition is violated, there has been a criminal offense punishable by criminal sanctions. According Moeljatno, criminal act is prohibited by a rule of law, where the prohibition as well as threats in the form of a specific criminal, for anyone who violates the prohibition. In the real situation, there are many irregularities in the implementation of the campaign which ultimately reduces, rob, and negate the sovereignty of the people in conducting the elections. The case example is in the presidential election and the vice president of Indonesia in 2014. "Black Campaign" which aims to damage the good name and destroy the character happened among the candidates supporters in social media. There was a widespread discourse war among the general public. The world of social media is filled info faultfinding, derogatory, even defame a presidential candidate. Some headlines that exist among other things, there was a general who forced a supreme attorney to save Jokowi; "Gandeng Jokowi – JK" or support Jokowi and Jusuf Kala is the slogan to against mental revolution vision; Agum Gumelar and the victim's family rejected Prabowo in 1998; and so forth.

The stated phenomenon worried the community and away from ethical standards. The purpose of the laws to conduct an honest and fair general election encounters obstacles on its implementation. Sovereignty of the people to be chosen fairly and honestly have been rigged. Similarly to the general public who are entitled to vote, have been instigated by untruthfulness and slander that ultimately affects the objectivity in determining the choice. This action on the other hand, triggered the rupture the people. Examples of the case above is just one example of many violations that occur in the administration of the campaign, both by the people, the success team, by political parties, the government, or even by the candidates themselves.

In addition to the stated irregularities in the campaign, some issues regarding the general election resulted in the sovereignty of the people, among others, is the first, the money politics problem. Culture of money politics happens everywhere and it is no longer a secret, it becomes public secret. Money politics occurred during the proposing of a candidate of the party and also during the search for direct support of the people. People get paid and bribed to vote a particular candidate. Thus, in determining the choice of the people is no longer in the state of free will, consciousness of the nation, and in full control of themselves. Money politics eliminates the principle of people's sovereignty in the general election. Votes given are not based on the principle of free and fair will. Secondly, the slow delivery on the voting data logistic in certain areas. The difficulty of transportation to reach certain areas of Java Island hamper the general election process. Communities in those certain areas are experiencing delays and can not deliver the voting data on time.

Thirdly, the problem of calculation and determination of election results. This stage is a very important stage and it needs special attention. It often happens the miscalculation of votes between candidates which does not match with the data in the voting stations and so on. With this indication of fraud, stealing people's sovereignty in the implementation of the general election often happens. The vote that has given to people deliberately ruled out for the interests of certain political group. The existence of many problems in the general election in Indonesia indicates a fading stage of people's sovereignty in determining the fate of the nation through the general election in Indonesia. Government should come from the people, by the people and for the people turn into government who comes from, to, and for the interests of certain groups.

#### 4.1 Conclusion

People's sovereignty and democracy from the people must be respected as the main condition of the general election of government officials in Indonesia. The implementation of the people's sovereignty and democracy can only be seen if the election for president and vice president, members of parliament, as well as head of the region conducted by the people. Laws that govern the elections in Indonesia consists of 1945 Constitution Republic of Indonesia as the basis of any law that regulate the elections, the Presidential and Vice Presidential Election Law, the Representatives Election Law, The Election for Regional Heads Law; and the Election Administrator Law. The stated laws which apply the system of direct democracy elections, said that the mandate of the 1945 Constitution in Article 1 verse (2) which requires the sovereignty vested in the people. Election Law in Article 1 paragraph 1 in conjunction with Article 2 expressly provides that elections sovereignty of the people is the elections held in direct, general, free, confidential, honest, and fair. The same set in Article 2 and Vice Presidential Election Law in conjunction with Article 2 of the Law Election of Representatives in conjunction with Article 2 of the Law of the General Election.

The principle of People's sovereignty is a guideline and objective in every general election in Indonesia as aspired and envisioned by the laws above. The forms of people's sovereignty stipulated in the laws above outlines, among others, the right of every person to be elected and vote without discrimination and under pressure; rights campaign conducted by the principle of honest, open, dialogue and responsible and it is a part of the political education of the public. Campaigns serve as a political education to the communities, and it has a function as a platform for open and explain the vision, mission and programs of the candidates; on voting day,



the public witnessed the process of counting and calculation of the votes transparently. The Election organizers are institutions that the General Election Commissions and the General Elections Supervisory Board that are independent in the sense that there is no interference from the government or any particular group. Independent means capable of performing their duties and responsibilities in full and constant for the Indonesian nation. The General Election Commissions and the General Elections Supervisory Board is a form of people's sovereignty in the administration of elections in Indonesia because they come from people so that in carrying out its duties, they will put the interest of the people.

Apart from the rules on elections organized in such a way to provide for people's sovereignty itself in conducting the general elections, in practice, there are many problems that eventually reduce, rob, and negate the sovereignty of the people in the administration of elections. Government should come from the people, by the people and for the people turn into government comes, from, and to the interests of certain groups or political parties. The most striking event happened in the election of president and vice president was the "Black Campaign". Case examples was in the presidential election and the vice president of Indonesia in 2014. Black Campaign which aims to damage the good name and destroy the character among each candidate supporters in social media, which in turn lead to disunity and chaos. Some issues in general election that resulted in the sovereignty of the people, among others, is money politics, the culture of money politics is rife everywhere and it becomes a public secret. Money politics occurred during the proposing of a candidate of the party and also during the search for direct support of the people. People get paid and bribed to vote a particular candidate. Thus, in determining the choice of the people is no longer in the state of free will, consciousness of the nation, and in full control of themselves.

Money politics eliminates the principle of people's sovereignty in the general election. The voting is not based on the principle of free and fair. The issue of the slow delivery on the voting data logistic in certain areas. The difficulty of transportation to reach certain areas of Java Island hamper the general election process. Communities in those certain areas are experiencing delays and can not deliver the voting data on time. The issue of the calculation and determination of election results. This stage is a very important stage and it needs special attention. It often happens the miscalculation of votes between candidates which does not match with the data in the voting stations and so on. With this indication of fraud, stealing people's sovereignty in the implementation of the general election often happens. The vote that has given to people deliberately ruled out for the interests of certain political group. The general election in Indonesia still can not provide and realize the people's sovereignty in determining the fate of the nation.

#### 4.2. Suggestion

The main purpose of the laws regarding the general election to provide sovereignty to the people in conducting the general election in direct, general, free, confidential, honest, and fair must be supported by the government and the whole society. Government in this regard must be explicitly impose sanctions and penalties on any parties who purposely committing irregularities or violations in the elections process. Every parties, including the candidates, must obey the rules that have been promulgated and put forward the principle of elections in order to create a democratic party on the sovereignty of the people in Indonesia. People as supporters, sympathizers and voters should be aware of the human rights as a sovereign so they should not participate in black campaign, money politics, and other violances. The official administrator of the general election such as the General Election Commissions and the General Elections Supervisory Board, should be an institution which is independent and professional, let the interests of the people above everything else.

#### References

- Asshiddiqie, Jimly, *Pergumulan Peran Pemerintah Dan Parlemen Dalam Sejarah*, UI – Press, Jakarta, 1997
- ....., *Kemerdekaan Berserikat, Pembubaran Partai Politik Dan Mahkamah Konstitusi*, Konstitusi Press, Jakarta, 2005.
- ....., *Pengantar Hukum Tata Negara II*, Konpres, Jakarta, 2006.
- ....., *Perkembangan Dan Konsolidasi Lembaga Negara Pasca Reformasi*, Sekretariat Jendral dan Kepaniteraan Mahkamah Konstitusi RI, Jakarta, 2006
- Bagir Manan, *Hubungan Antara Pusat dan Daerah Menurut UUD 1945*, Jakarta, Sinar harapan, 1994.
- Budianto, Akmal, *Hukum Pemerintahan Daerah*, Penerbit LaksBang PRESSSindo, Yogyakarta, 2010
- Dahlan Thaib, *Implementasi Sistem Ketatanegaraan Menurut UUD 1945*, Yogyakarta: Liberty, 1993.
- Indrayana, Denny (2007). "Indonesia dibawah Soeharto: Order Otoliter Baru". *Amandemen UUD 1945: antara mitos dan pembongkaran*. Mizan Pustaka. ISBN 9794334421
- Israil, Idris. *Pendidikan Pembelajaran dan Penyebaran Kewarganegaraan*, Malang, Fakultas Peternakan Universitas Brawijaya, 2005.
- Majelis Permusyawaratan Rakyat RI, *Naskah Akademik Undang-Undang Dasar Negara Republik Indonesia 1945 Usulan Komisi Konstitusi*, Jakarta: Sekretariat Jenderal MPR RI, 2004.

Miriam Budiarjo, Dasar-Dasar Ilmu Politik, Jakarta: PT. Gramedia, 1983.  
Peter Mahmud Marzuki, Penelitian Hukum, Cetakan VI, Kencana Prenada Media Group, Jakarta, 2010.  
Undang Undang Dasar 1945  
Undang Undang RI Nomor 15 Tahun 2011 Tentang Penyelenggara Pemilihan Umum