

THE ROLE OF THE LAW IN SAFEGUARDING ELECTORAL DEMOCRACY IN INDONESIA

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ABSTRACT

Indonesia's democracy based on the law, is aimed at achieving social justice and welfare for all Indonesian people. Following the amendment of the 1945 Constitution, the Indonesian electoral democracy shifted to a very liberal direction whereby officials are elected in office mainly on procedural and financial bases. While notions such as merit, competency, integrity and morality are only supporting elements. Consequently, the law seems to be a mere tool for legitimizing such a liberal system, which tends to harm the sovereignty of the Indonesian people. This study seeks to answer the question as to what extent electoral laws in Indonesia contribute in safeguarding electoral democracy to help achieve some of the core values enshrined in the 1945 Constitution. The study reveals that electoral laws are not contributing in building a real and efficient electoral democracy in Indonesia. The study shows that the role of electoral laws is increasingly small in ensuring that candidates are elected by the people on the basis of merit, competency, high integrity and morality, instead of money.

Keywords: Role of the Law, Electoral Democracy, Elections in Indonesia.

INTRODUCTION

Article 1 section 2 of the 1945 Constitution says that political sovereignty is in the hands of the Indonesian people, not in the hands of People's Consultative Assembly or "*Majelis Permusyawaratan Rakyat (MPR)*". The new formulation of this provision, a result of the amendments to 1945 Constitution, makes two important precisions: first, the fact that the holder of sovereignty is the people and second, the implementation of this sovereignty shall be in accordance with the 1945 Constitution. Prior to the amendments, the people's sovereignty was exclusively in the hands of MPR (Mukthie, 2004) whose authority was absolute (Jimly, 2002). Prior to amendment, this constitutional provision looked as if the people had transferred their sovereignty to the a supreme being, the *Leviathan*, as Hobbes put it (Bagir, 2004). The changes brought about by the constitutional amendments imply that sovereignty of the people is no longer in the hands of MPR (Jimly, 2002), but instead it is carried out by the all the branches of the government in accordance with the constitution (Bagir, 2004). Article 1 section 3 of the 1945 Constitution not only implies that Indonesia is a rule of law country but it also means that the government is based on a constitutionalism, instead of absolutism (Bagir, 2004). Budiardjo (2007) refers to this as "*the adoption of a constitutional democratic system*" (Miriam, 2008) whereby the power of government is regulated and constrained by the constitution. Miriam Budiardjo argues that the implementation of constitutional democracy must meet six conditions ie., constitutional protection for basic rights including human rights, independent and free

judiciary, free and fair elections, freedom of expression, freedom of movement, association/cooperation; and civic education. Free and fair elections implies that the people must be allowed to choose their representatives without fear and coercion. Free and fair elections also implies that the law must step in to set the rules to protect both the voters and the candidates and to prevent the rise of electoral tension, which is harmful to the philosophy of constitutional democracy. In addition to this function, the law must also prevent elections from becoming very elitist because they are hijacked by anti-democratic practices and behaviors, such as money politics and political party oligarchy. To make sure that democracy runs according to the philosophy of the state, the law must fully assume these functions. Law is a very important element for maintaining the balance of electoral democracy. Plato (429 BC) argues that democracy raises the quest for freedom, which ultimately causes much damage to the society's order (John, 2013). In other words, uncontrolled freedom within a democracy may lead to anarchy (Soehino, 2008). Therefore, law is necessary to guard democracy. Although freedom and equality are essential principles of democracy (Khairul, 2011), they must be governed and subject to some restrictions by law, otherwise democracy would be excessive (Mahfud, 2017). Democracy would only be dominated by the instincts of the political elite to vent their thirst for power alone (Kristiadi, 2009). Therefore, the law must be a tool to keep democracy in balance on the right track in order to achieve social justice and welfare for all the Indonesian people. Amendments to the 1945 Constitution (from 1999 to 2002) has allowed for President and Vice President, head of the region to be directly elected by the people through general elections with popular vote system. While members of the House of Representatives or *Dewan Perwakilan Rakyat* (DPR) and the Regional House of Representatives or "*Dewan Perwakilan Rakyat Daerah (DPRD)*" are elected through a proportional system whereby candidates are elected by a majority vote. Such a system has become one of the main factors driving the Indonesian democracy into a liberal system whereby, and unfortunately, concepts such as patronage, clientelism and money politics have become unavoidable as the result of the inefficiency of the available electoral laws. Therefore, drawing on a combination of normative and empirical data, this paper endeavors to identify the flaws of Indonesian electoral laws and the means to overcome them in order to safeguard electoral democracy in Indonesia.

RESEARCH METHODOLOGY

This is a socio-legal research whose primary data, consisting laws related to general and regional elections in Indonesia, were collected through literature study. To support the analysis, the study also involves secondary legal materials made up of research results, expert opinions in a number of published books and interviews. These materials are analyzed by using both statute and comparison approaches so as to study the consistency and conformity between different laws. These two approaches are meant to yield an assessment of the regulatory role of the law in safeguarding electoral democracy by regulating both general and regional elections in Indonesia.

RESULTS AND DISCUSSION

The Focus of the Intervention of the Law

If democracy is a system of government of, by and for the people, as Lincoln put it (Imam, 2010), then the idea of safeguarding democracy is about how power is acquired, diverted, exercised and accounted for. Basically, all aspects of democracy require legal control. However,

the present study is limited to the aspects of electoral democracy. Generally speaking, electoral democracy is the process of filling public offices with representatives elected by universal, free, equal, direct and secret suffrage. It is true that during elections the people are free to choose their representatives, but this freedom needs to be regulated by the law not only to prevent disputes but also and more importantly to see to it that the process will yield the most competent and upright political leaders to carry out the people's mandate. For elections to become the manifestation of directed democracy, the role of the law must be limited not only to ensuring fair and equal elections, but it must also check the moral standard and competence of the candidates. The law must determine the most ideal and strict criteria for the election of political leaders in public offices. These criteria would include, among others, standards of care for the interests of the people in general, adequate intellectualism, entrenchment, clear network and moral integrity of candidates (Ali, 2003). Fair and free elections alone do not guarantee good elections. Election should be aimed at producing political leaders with high skills, moral standard and integrity capable of prioritizing and promoting the interests of the people. With this role of the law, election would no longer be a mere process of voting without some limitation, but rather, a process through which people choose candidates with the appropriate qualifications. This is in our view the most important function of the law in safeguarding elections. In the history of Indonesian elections, the law has always been involved, ranging from regulating the process of holding elections to establishing electoral disputes resolution mechanisms. However, Indonesia's electoral laws have not been able to build a system whereby the function discussed above can be implemented. Despite all the eligibility requirements, the whole electoral system mostly results in the election of unqualified leaders with low integrity and virtue. The focus of the law must not only be on electoral procedures, candidacy eligibility requirements, and electoral disputes resolution mechanism but also and more importantly on the issues presented above.

Reasons for the Intervention of the Law

The following endeavors to provide some answers to the issue as to why the law needs to step in to further improve the Indonesia electoral system. First, in democracy, government power lies in the hands of the people, as argued earlier. In practice, they exercise this power by electing their representatives on the principle of one man one vote. But in order to do so the people need to have adequate knowledge and education so as to make informative choices. Al-Mawardi argues that to be able to make such a choice, voters must have a fair attitude and an understanding of what a good and appropriate leader is (Imam, 2010). Unfortunately many voters lack this capability (Mahfud, 2017). They are easily deceived and galvanized by dishonest politicians for the purpose of winning the election (Mahfud, 2017; Topo, 2017). In his work entitled "*Representative Democracy: Legislators and Their Constituents*", Mezey argues that in a direct democracy, citizens hardly get all the information about all the issues so they can not implement various policies appropriately, and as a result they consider their own interest in making decisions (John, 2013). This is perhaps one of the reasons why the American presidential election does not use popular voter system, but electoral college, whereby the president is elected by a group of "*informed*" people in every state (Cavin, 2011). The majority of voters in Indonesia do not really understand what the political party agendas are, which candidates they ought to choose and so forth. They are more likely to be passive and unable to distinguish between facts and fictions (Adnan, 2010). This state of ignorance makes them, somehow, lose interest in the political system and become oriented towards momentary personal gains, which makes them very vulnerable to money politics and patronage practices (Zulfikri, 2010). Elections

have become the capital battleground as candidate struggle not to put forward comprehensive plans of governance but to buy maximum votes. Sadly, this tactic has been working well due to voters' low level of education (Zulfikri, 2010). Political elite, on the other hand, are not very much interested in getting rid of this undemocratic phenomenon as it allows them to gain power (Georg, 2003). With such system, elections are nothing but the legitimacy of an oligarchic government that is totally unfavorable of the people. Since most elected representatives are not well informed, their job is legally problematic (Bagir, 2016). The practice of political party oligarchy has become the characteristic of Indonesian politics since the fall of the New Order regime (Hanta, 2010). An oligarchy referred to as civil oligarchy by Winters (Jeffry, 2011). When democracy is not guided by the law, chances are it turns into an oligarchy for the two concept are not too far away from one another. Describing the democracy of the United States, Mosca (1939) argues that democracy is only a mask for a minority control over the majority and is a big hoax (Jeffry, 2011; Gaetano, 1939). Second, the requirements and mechanisms for determining candidates are also too weak and loose. In fact, the formulation of the law on the candidacy eligibility requirements is so weak that it makes it easier for anyone to become lawmaker, president or head of region. Qualification/disqualification requirements set by the election law are more of trivial administrative formalities, such as the requirement for a senior high school education as the minimum education level for any candidate running for a parliamentary seat. Ironically, the same requirements also allow a former convicted follow to run for a public office provided they had served their jail time. In other word, you could commit heinous crimes such as corruption, murder and rape, go to jail and come back years later to become an Indonesian lawmaker if you are lucky. Disqualification criteria, on the other hand, are too lenient as they are more concerned with sexual issues such as adultery and prostitution-related matters (Tambunan, 1986). These low qualification and disqualification requirements are also coupled with poor candidate nomination process by political parties. The main objective of political parties is to find a candidate who is rich and famous enough (Suwardi et al., 2016) to attract maximum voters (Bagir, 2016). It seems as if they are more interested in finding a rockstar rather than an actual political leader (Koirudin, 2004). This is the part where money comes at play as the more money a candidate donates to the party's elite, the higher the possibility of being nominated (Didik, 2014). As candidate nomination process is left to political parties according to the election law, many of them have set some rather weak requirements to select their candidates. The requirements of Golkar Party can serve an example in this regards. In fact, in choosing its candidates, Golkar Party bases its assessment on four aspects, namely the dedication to the party (40%), electability of the candidate (30%), functional assignment (20%) and education (10%) (Teguh, 2014). In light of what has been said above, the law can intervene in two significant parts of the electoral process, i.e. candidates nomination procedure/mechanism and the criteria for nominating candidates. As far as nomination requirements are concerned, the law can adopt more substantial terms in order to produce better candidates. As for candidate nomination criteria, they must be set through legislation, not entirely by political party elite (Ali, 2003). It can not be said with certainty that until these conditions are met, electoral democracy will not thrive in Indonesia, as law itself is a political product (Mahfud, 2001). It only is the tip of the iceberg. But with its compelling power, the law will most certainly prevent the Indonesian electoral democracy from turning to an oligarchy. It must adopt strict and measurable conditions whereby candidates are placed under scrutiny. At the same time, it must also ensure that financial capital is no longer a decisive factor for party candidate nomination. However, whether such step will be taken depends largely on the political configuration and will of the legislators.

As argued earlier, sovereignty is in the hands of the people, and whether or not they will make a wise choice during elections is too unpredictable a matter. And whether or not a voter had received money or gift from a candidate a prior to voting is a matter that law can not prove, unless there is tangible evidence. But the law can play greater role in shrinking the use of money to entice voters. Although Law No. 10/2016 on Regional Elections sets money politics as a criminal offence, it does not go hard on the actual offenders (Laws and Regulations, 2016). In fact, this law says that if a person is found guilty of giving out money or gift to influence a vote, their shall be sentenced to only 36-72 month in prison with a fine of \$20.000-1 million USD. As for those to whom the money/gift is given, this law remains silence when it could punish them with the lost of certain civil rights, including the right to vote for they have misused their political right.

CONCLUSION

After the amendments of the 1945 Constitution, a general electoral system based on popular vote was established in Indonesia. This, along with many other constitutional reforms, has paved the way for the implemetation of democracy in Indonesia. However, the inefficiency of the electoral laws is turning this electoral system into a liberal model. Elections, as means of expressing popular sovereignty, do not produce elected officials oriented towards the interest of the Indonesian people, but rather to power, fame and the accumulation of wealth. Under such conditions, the law as a guardian of democracy plays a very small role. To ensure that Indonesia's electoral democracy remains on track of real and sustainable democracy capable of bringing about social justice and welfare for all the Indonesian people, the role of the law in ensuring election processes and results must be maximized. The effort is made by adopting strict restrictions on both the candidate and the wise use of citizens voting rights. The law must ensure that the electoral process is not influenced by the practice of money politics. At the same time it must also see to it that electoral candidates have the competence, integrity and morality to meet the aspirations of the Indonesian people.

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