

LEGAL SYSTEM AND THE ADOPTION OF INTERNATIONAL MEASURES IN ELECTIONS IN DEMOCRATIC TRANSITION COUNTRIES

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ABSTRACT

Democratization has developed rapidly and has become a general standard in the international political order. For some who experience a period of democratic transition, the democratic general election adopted can lead to increased political capacity, civic institutions and the distribution of people's welfare. On the other hand, democracy also has the opportunity to encourage the fragmentation and strengthening of primordialism, economic concentration and social inequality. This study seeks to investigate the legal order and the adoption of international measures in elections in democratic transitional countries, by taking the case in Indonesia. This country has been democratized since the last two decades and made it the third largest democracy in the world. By using a qualitative method with a socio-legal approach and descriptive analytical analysis, the results of the study show that the institutionalization of elections in transitional democratic countries can encourage economic equality and create good governance as a principle of democratic governance. On the contrary, the administration of undemocratic elections has an impact on poverty, oligarchic politics, and corruption, as well as violence and social conflict. From the aspect of international standards, Indonesia has actively implemented measures of transparency and accountability in the holding of elections, by forming independent institutions and commissions to organize and oversee the implementation of elections.

Keywords: Democracy, Transition, Elections, Legal Order, International Standards, Socio-Economic Impact

INTRODUCTION

Election is an institution as well as a political practice procedure to realize popular sovereignty that enables the formation of a representative government. According to Robert Dahl (1989), election is the most ideal representation for a democratic government in modern times (Haris, 1998). Besides the election as a democratic procedure, or also often called the election as a democratic party is to form a state power system that is sovereign of the people and the deliberative representation outlined by the Constitution. State power born by election is a power born from below according to the will of the people that is used in accordance with the wishes of the people, by the people and for the people. Election is an acknowledgment and is a manifestation of people's political rights and at the same time is an expression of people's political rights and at the same time is the delegation of these rights by the people to their representatives to run the government. Election is one form of democracy in terms of procedures to form a broad government. In other words, elections are an important manifestation of

procedural democracy. In this regard Huntington (1993) states that the main procedure for democracy is the competitive selection of leaders by the people they will lead. In addition, elections are very much in line with democracy as a substance or substantial democracy, that is, democracy in the sense of governance organized by the people, by the people, and for the people. That is, it is the people who hold the highest sovereignty.

Democratization has developed steadily in Western democracies due to adequate political and legal support. One of the interesting aspects of the development of democracy in the last few decades is the characteristics that are displayed in the democratic transition countries. This has been a special concern, since democratization was successfully applied in post-Soviet Union Southern and Eastern Europe (Guérin et al., 2004; Greenberg, 2010), Latin America and countries in Asia at the end of the 20th century (Ethier, 2016; Higley et al., 1992). In this context, this study seeks to investigate the legal order and the adoption of international measures in elections in a democratic transition country, by taking the case in Indonesia. This country has been democratized since the last two decades and made it the third largest democracy in the world.

Elections in the Liberal Democracy Perspective

Elections in a top-down perspective are seen as an elite means to control the people so that they remain quiescent, malleable and governable. This function usually occurs in relation to authoritarian authorities. In an authoritarian government general elections are held to build legitimacy for the system they have built. In addition, elections are also a means by which elites can manipulate and control the masses. Elections are held to give legitimacy to power. This function is the most basic function in elections. The elected ruler will not only have legality but the most important thing is to have the moral validity to govern. With moral validity, all activities carried out by the government have legitimacy. Policies, application of rewards and sanctions made by the government are valid in the face of the people. The election is also to provide a circular process for strengthening the elite. Elections are a means and a direct path to reach the position of the ruling elite. The entry point for elite circulation in the general election is through the candidate selection stage. With the selection of candidates it can be seen whether the circulation of the elite refers to the process by which individuals rotate between the elite and non-elite, or refers to the process by which one elite is replaced by another. The final process of elite circulation is with representatives elected in general elections or those in the legislative and executive branches.

In liberal democracies, the electoral process is to provide representation. Elections are a channel that connects the public to government. This function is primarily a necessity of the people both in order to evaluate and control the behavior of the government and the programs and policies that result. With elections the people can choose their representatives who will occupy elected government positions. These representatives later became the connector of the people's interests on various problems faced by the people. In addition, elections are a means of political education. Elections are a form of direct, open and mass public political education that is expected to increase political understanding and increase public awareness about democracy. The role is mainly carried out by political parties and individuals participating in general elections. The instrument used was campaign material from participants in the general election. Ideologies, programs and policies offered by election participants can be a material for people's evaluation to make their right choices.

Elections have a close relationship with democratic principles and legal principles as fundamental principles that are widely used by modern countries. Elections are closely related to democracy because actually elections are one way of implementing democracy. As it was pointed out that at the moment it can be said that no country can carry out its democracy directly in the sense of being carried out by all its people. Elections also have close links with the principles of the rule of law, because through general elections citizens can choose their representatives who are entitled to make legal products and carry out supervision or implementation of the will of the people outlined by the people's representatives (Kusnardi and Hamai, 1983; Schumpeter, 1974; Pastor, 1989).

Various international standards regarding the holding of democratic elections have been developed by international organizations that focus on holding elections, such as The Association of Central and Eastern European Election Officials (ACEEEO), drawing up a direction on the Convention on Election Standards Electoral Rights and Freedom, The European Commission for Democracy Through Law (Venice Commission), which compiles Guidelines on Elections, the International Foundation for Electoral Systems (IFES) to develop Universal Standards for Free and Fair Elections. The National Democratic Institute for International Affairs (NDI) which compiles the Democratic Election: Human Rights, Public Confidence and Fair Competition, and the Southern Africa Development Community (SADC) Formed Parliamentary forum 'Norms and Standards for Elections in the SADC Region, The Southern Africa Development Community (SADC) Formed Parliamentary Forum 'Norms and Standards for Elections in the SADC Region (Hague and Harrop, 2001).

As a society that has been in a democratic transition since the last two decades, Indonesia as part of the global community also needs international recognition in the implementation of elections, of course there is a moral obligation to pay attention to international standards regarding the implementation of elections both presidential elections, parliamentary elections, DPD, MPR and DPRD, as well as regional head elections. Specifically in this dissertation the researcher focuses on organizing legislative elections. Therefore, the material regarding international standards is an important subject to be conveyed so that a comprehensive picture of the elections that have been held in Indonesia can be obtained. The international standards regarding the implementation of democratic elections compiled by The Organization of Democratic Institutions and Human Rights (ODIHR) - (OSCE) and The Institute for Democracy and Electoral Assistance (IDEA).

Democracy and Legal System in General Elections

In the concept of state administration, democracy implies that the highest authority in political affairs is the people's right. In the 1945 Constitution of the Republic of Indonesia for example, the concept of democracy is found in article 1 paragraph (2) which confirms that sovereignty is in the hands of the people (Thaib, 1999). Black et al. (1999) define democracy as government by the people, either directly or through representatives. According to Dahl (1989), democracy provides opportunities for effective participation, equality in voting; gaining enlightened understanding, exercising final control over the agenda; and the inclusion of adults.

Democracy is capable of providing an opportunity for the people to actively participate in voting, and carrying out supervision. This has some consequences on democracy to provide a general standard measure. In other words, opportunities which are a consequence of the standard general measure of a democratic state should be implemented to be qualified as a democratic

country. Hence, a procedural standard supported by the rule of law is highly required. Beetham (1993) broadens the concept of democracy as a process of making decisions about rules and binding policies collectively. This is related to controls and arrangements that all collective members enjoy equal rights to take part in decision making. Directly conducted, democratic elections hold the principles of popular control and equality in their implementation (Utami et al., 2019).

Hague and Harrop (2001) interpret democracy in the literal sense referring not to the choice of rules by the authorities, but to the rejection of the separation between regulation and people. In the context of a democratic transition state, especially Indonesia, the notion of democracy was also put forward by Asshiddiqie (2005) who stated that democracy was first an idea that assumed that power was from, by and for the people. In a more participatory sense democracy is even called power from, by and to be with the people. It means, that power is basically recognized as coming from the people, and because of that the people actually determine and give direction and actually carry out the life of the state. The whole system of organizing the country is basically also intended for all the people themselves. Even a good state is also idealized to be held together with the people in the sense of involving the community in the broadest sense. The law governs and controls humans in a life together. Cicero stated that in every society there is always a legal system (*yam societas ibi ius*). Law is a system consisting of elements that interact with each other to achieve certain goals (Widiyono & Siregar, 2020). The concept of such system was also stated among others by Von Bertalanffy (2010), Talcott Parsons (1985), Shrode and Voich (1974). Friedman (1986) stated that the legal system is part of the social system, so he must also be able to meet social expectations. Therefore, the legal system must be able to produce an output of law pattern which is itself significant with social expectations. The modern legal system that has been widely used by countries in the world with the rule of law doctrine is said to be the only one entitled to be called a legal system. In this legal system justice has been deemed given by making the law and the justice that will be enforced is determined by law. Based on the modern legal system a specific legal order has emerged that has increasingly separated itself from other systems or fields in society such as politics. The independence of the modern legal system is seen in the form of specificity and autonomy regarding the legal substance, institutions, methodologies and fields of work (Unger, 1976).

Democratic Elections and National Socio-Economic Quality

The contestation of people's representation through elections in democratic transitional countries is usually filled with violations of law, violence, and corruption. For the case in Indonesia, data from UGM (2009) The misappropriation of funds that led to acts of corruption emerged in the implementation of the 2009 legislative elections. the legislature, the size of the election budget, and the emergence of short-term political interests. Corruption of state money is a hereditary disease in every legislative election.

Free and fair elections are elections that meet democratic standards with conditions including equal opportunities in the campaign, no intimidation and physical violence in voting and no manipulation in vote counting (Central Bureau of Statistics, 2011). Indonesian voters need to understand the objectives that can be obtained through participation in elections, especially in terms of electing leaders. Three-quarters or 67 percent of voters believe that voters can use elections to elect their leader, elect their representatives (6 percent), or elect a president (4 percent). Only one tenth of them can tell other functions of the election such as voicing their

feelings (7 percent) or asking something from the government (4 percent). One fifth of voters (19 percent) do not know exactly what can be achieved through elections. The expectations of Indonesian voters regarding the electoral process are still low and are limited to their mechanical function of filling positions in public institutions (The Asia Foundation, 2003).

Illiterate voters in Indonesia are the group with the lowest understanding of democracy with a percentage of 96 percent). Other groups included in the low category are the voters group above the age of 35 years ie 71 percent of them occupy low positions in the index, especially elderly female voters with a percentage of 76 percent of them having low understanding without basic education, 87 percent having low understanding, and without television access by 82 percent. Eight out of ten female voters with lower education and low income are included in the category of low understanding of elections. Voter groups with high education, younger age, high income and who have access to television are more optimistic that their voice can bring change. The opposite condition is in the disadvantaged groups that are low educated, older, low income, and do not have access to television. Voters from this group are those who do not feel their participation can bring change. This low understanding has the effect that the role of democratic elections is only limited to replacing the leaders of the political elite. This is the only election and election campaign function in Indonesia that they consistently know and carry out. Voters in Indonesia do not have the opportunity to practice other electoral functions, including giving people the opportunity to voice their opinions, change policies, make people representatives accountable, change government, or even demand protection. This is because Indonesia has just experienced free and fair elections. People are not aware that the election process offers various ways to make their voices heard. As a result, people feel neglected or helpless even though they always cast their votes every five years. Nevertheless hope is still open by providing space for efforts to conduct voter education in a non-partisan part of the election process. The aim of the election can be an opportunity to express themselves, hold the representatives of the people and government accountable, and channel local aspirations. In addition, higher voter expectations will encourage political parties to try to win the hearts of voters by meeting their expectations.

In a democratic society civil rights and freedoms are respected and upheld. The need for individual and social freedom must be met. Individual freedom refers to the ability of humans as individuals to determine for themselves what to do. With freedom someone can take the initiative to take the best steps to develop themselves and their people. Social freedom is intended as a space for the exercise of individual freedom. Strict restrictions imposed by government or military institutions on the lives of citizens can damage individual freedom (Maran, 2014).

The Legatum Prosperity Index is an annual ranking developed by the Legatum Institute (Indonesia Kreatif, 2014). This calculation is based on various factors such as wealth, economic growth, education, health, personal well-being, and quality of life (Numbeo, 2013). The measurement parameters include the economic sub-index, measuring performance in four main areas of the country: macroeconomic policy, economic satisfaction and expectations, foundations for growth, and financial sector efficiency; subindex governance, measures the performance of the state in three areas: effective and accountable government, fair elections and political participation, and rule of law; entrepreneurship & opportunity, measuring a country's level of entrepreneurship, promoting innovative activities, and equal opportunity; the education subindex, covering state performance in three areas: access to education, quality of education, and human resources; the health subindex, which includes state performance in three areas: basic health outcomes (objective and subjective), health infrastructure, and preventive care; the safety and

security subindex, including the performance of the state in two ways: national security and personal safety; subindex of individual freedom, measuring the performance and progress of countries in ensuring individual freedom and encouraging social tolerance; The social subindex of capital measures the performance of the state in two areas: social cohesion and the involvement of community and family networks.

Another democratic index, known as The Better Life Index, was developed by the Organization for Economic Cooperation (OECD). The measurement indicators are state income, security, and the unemployment rate because according to the OECD all indicators that shape the quality of individuals and are able to create prosperity (OECD, 2013).

In Indonesia, there is the People's Welfare Index (IKraR) to measure the quality of democracy. IKraR is used to describe community welfare based on existing conditions and realities. Freedom, which is the main point of democracy, is considered to be able to increase economic growth because production and trade activities can be carried out without interference from the state. The producers and owners of capital can do anything to advance their business so that it has a positive impact on the quality of the country's economy. In addition to the freedom to do business domestically, entrepreneurs and capital owners can expand their business to other countries so that profits increase and advance their business (Martha et al., 2015). This makes democracy beneficial for the circulation of power, but also for increasing the capacity and quality of the country's economy.

Democracy is a system of government based on law. This rule of law protects the rights of every citizen, maintains order, and also limits the power of the government so that it does not act arbitrarily towards its people. All citizens have the same position before the law. The law is a definite protection for the community, including protection of property rights. The existence of definite protection of ownership rights results in them having the right to be themselves. They also have the right to regulate their own lives as desired so that prosperity is more likely to be achieved. Democracy gives freedom to every individual. But it is not free without limits because they must respect the freedom possessed by other individuals. the freedom they have will be used to develop their potential, creativity and other positive aspects so that they will advance the country. One example of the existence of entrepreneurship in a person will produce new businesses and employment for other communities. Democracy also supports the economy by opening up access to the widest possible information for individuals. The use of the internet in economic activities has led to the emergence of new business models, increasing competitiveness and flexibility in the economy and allowing productivity jumps in a country.

Supervision from certain institutions so that the implementation of economic activities can run better. The law can protect every individual from improper treatment. The law is also a limitation of what can and should not be done by someone. Law enforcement, individual freedom and access to information, as well as supervision from the judiciary are considered to be able to create healthy economic activities. Indonesia's National Human Rights Commission (2015) develops indicators for the implementation of free elections which include freedom to / in choosing; voters free from coercion and various intimidations; protection against acts of discrimination; The availability of an independent legal procedure to process complaints and complaints from citizens both as voters or elected parties and free from corruption and pressures from any political group. Determination of democracy which is implemented as a system of government in Indonesia has been very effective as implemented in other countries in the world. and the application of democracy in Indonesia is in line with and based on the Pancasila and the 1945 Constitution.

Elections are one of the crucial stages in the realization of democracy as a popular sovereignty. Elections directly determine the political representation and political accountability of representatives of the people and government. Determine the pair of new president and vice president or sentence the current president not to be re-elected and determine regional representation and determine the local executive. The election was attended by many competitors, making tight competition, violations and fraud and disputes possibly occur. Hence, third party in impartial bodies is needed to judge and try political competition. Democratic governance that comes from the people must be in accordance with the results of the general election as an important feature or a main pillar in the modern democratic system.

CONCLUSION

Democratization has developed rapidly and has become a general standard in the international political order. For some who experience a period of democratic transition, the democratic general election adopted can lead to increased political capacity, civic institutions and the distribution of people's welfare. Elections are a form of implementing democracy that has an economic impact, creating good governance and democratic governance. This means that democratic governance will refer to an ideal democracy that aims to support the democratic process with the aim of creating/producing good governance. Some key elements such as elections, human rights, the media, legislative bodies, the executive, civil oversight mechanisms, public sector management including public finance and the constitution are decisive in creating good governance. The legal framework in the implementation of elections ensures human rights in the conduct of elections.

On the contrary, the implementation of undemocratic elections has an impact on poverty, oligarchic politics, and corruption. It is important to note that two of the nine types of corruption directly related to elections are election fraud and corrupt campaign practice. In addition, non-democratic elections are also attached to money politics as an effort to influence the behavior of others by using certain rewards or buying and selling votes in the process of democratization in the general election. In addition, economic, political, ideological, and belief interests make elections extremely vulnerable to various acts of violence and social conflict.

REFERENCES

- Asshiddiqie, J. (2005). *Constitutional law and pillars of democracy: Flakes of legal thinking, media and human rights*. Jakarta: Konstitusi Press.
- Beetham, D. (1993). *Liberal democracy and the limits democratizations in held: Prospects for Democracy*. West Stanford: Stanford University Press.
- Black, H.C., Garner, B.A., McDaniel, B.R., & Schultz, D.W. (1999). *West publishing company. Black's law dictionary*. St. Paul, MN: West Group.
- Central Bureau of Statistics. (2011). *The 2010 Indonesian democracy index of freedom that is responsible and substantial*. Jakarta: Central Statistics Agency
- Dahl, R.A. (1989). *Democracy and its critics*. Yale University Press.
- Ethier, D. (2016). *Democratic transition and consolidation in Southern Europe, Latin America and Southeast Asia*. Springer.
- Friedman, L.M. (1986). The law and society movement. *Stanford Law Review*, 38(3), 763-780.

- Greenberg, J. (2010). There's nothing anyone can do about it: Participation, apathy, and successful democratic transition in post socialist Serbia. *Slavic Review*, 69(1), 41-64.
- Guérin, D., Petry, F., & Crête, J. (2004). Tolerance, protest and democratic transition: Survey evidence from 13 post-communist countries. *European Journal of Political Research*, 43(3), 371-395.
- Hague, R., & Harrop, M. (2001). *Comparative government and politics an introduction*. New York: Palgrave.
- Haris, S. (1998). Structure, process and function of elections: Preliminary notes. In S. Haris (Eds.), *Suing the New Order Election*. Jakarta: Obor Indonesia Foundation & PPW-LIPI.
- Higley, J., Gunther, R., & John, H. (1992). *Elites and democratic consolidation in Latin America and Southern Europe*. Cambridge University Press.
- Huntington, S.P. (1993). *The third wave: Democratization in the late twentieth century*. University of Oklahoma press.
- Indonesia Kreatif. (2014). *The legatum prosperity index 2013*. Retrieved from <http://gov.indonesiakreatif.net/legatum-prosperity-index-2013/>
- Kusnardi, M., & Hamai. (1983). *Introduction to Indonesian constitutional law*. Jakarta: Center for the Study of Constitutional Law, Faculty of Law, University of Indonesia.
- Maran, R.R. (2014). *Introduction to political sociology*. Jakarta: Rineka Cipta.
- Martha, J., Bainus, A., & Heryadi, H. (2015). *The effect of implementing democracy on well-being: Theory and reality (case study: Indonesia)*.
- National Human Rights Commission. (2015). *Fulfillment of citizens' constitutional rights in the 2015 simultaneous local election*. Jakarta.
- Numbeo. (2013). *Quality of Life Index for Country 2013*. Retrieved from http://www.numbeo.com/quality-of-life/rankings_by_country.jsp?title=2013-Q1
- OECD. (2013). *OECD Better life index*. Retrieved from <http://www.oecd.org/statistics/datalab/bli.htm>
- Parsons, T. (1985). *Talcott parsons on institutions and social evolution: Selected writings*. University of Chicago Press.
- Pastor, R.A. (1989). *Democracy in the Americas: Stopping the pendulum*. Holmes & Meier Pub.
- Schumpeter, J. (1974). *Capitalism, socialism and democracy*. New York: Harper.
- Shrode, W.A., & Voich, D. (1974). *Organization and management: Basic systems concepts*. McGraw-Hill/Irwin.
- Thaib, D. (1999). *Sovereignty of the people's law and constitution states*. Yogyakarta: Liberty.
- The Asia Foundation. (2003). *Democracy in Indonesia: A survey of indonesian voters*. The Asia Foundation.
- UGM. (2009). *Zainal Arifin Mochtar: 2009 elections are prone to corrupt practices*. Retrieved from <https://ugm.ac.id/id/berita/588-zainal-arifin-mochtar-pemilu-2009-rawan-praktik-korupsi>
- Unger, R.M. (1976). *Law in Modern Society*. New York: The Free Press.
- Utami, N.S., Prasetyoningsih, N., Hidayat, A., Saraswati, R., & Budiono, A. (2019). Equality of the political rights of people with mental disorders (PWMD) in general elections. *Indian Journal of Forensic Medicine and Toxicology*, 13(4), 1571-1575.
- Von-Bertalanffy, L. (2010). General systems theory. *The science of synthesis: Exploring the social implications of general systems theory*.

Widiyono, T., & Siregar, H. A. (2020). The relationship between human basic (human rights) obligations and human rights. In *International Conference on Law Reform (INCLAR 2019)* (pp. 152-156). Atlantis Press.