

SOVEREIGNTY OF THE PEOPLE IN DETERMINING ELECTED LEGISLATIVE MEMBERS IN INDONESIA

Krisnadi Nasution, University of Indonesia

ABSTRACT

The articles of the 1945 Constitution are concise and straightforward yet contain deep and broad meanings. Such elaboration as legislation is often required before implementing them. The process and mechanism for the formation of laws democratically can conflict with the basic norms in the 1945 Constitution. A constitutional democratic juridical study against the standards regarding the determination of the elected legislative candidates contained in the 2017 Election Law, carried out in a normative juridical manner. Based on the results of the study, the norms of the 2017 Election Law (open proportional) regarding the determination of the elected legislative candidates, are not following the essence of the standards of people's sovereignty contained in Article 22E paragraph (3) and Article 28I paragraph (2) of the 1945 Constitution.

Keywords: People's Sovereignty, Democracy, Elected Legislative Member Candidates.

INTRODUCTION

Indonesia as a unitary state is a democratic legal state; sovereignty is in the hands of the people, which are implemented based on the constitution. This definition is explicitly stated in Article 1 of the 1945 Constitution of the Republic of Indonesia (from now on referred to as the 1945 Constitution), which contains the basic idea of Constitutional Democratic Jurisdiction. The basic idea is always confined to organizing the nation's life and state comprehensively, including ideology, politics, economic, social. Culture, law, defense, and security.

Sovereignty is the concept of supreme power in the state. Sovereignty, according to Jack H. Nagel, as quoted by Jimly Asshiddiqie, has two critical meanings, including the scope of power and the range of power (Asshiddiqie, 1994). While the meaning of people's sovereignty in a constitutional democratic juridical manner, starting from the basic norm in Article 1 paragraph (2) of the 1945 Constitution, Sovereignty is in the hands of the people and is implemented according to the constitution. As a basic norm, the formulation of the article is always concise and straightforward but contains a deep and broad meaning. KC Where expressed his opinion on the question: What should a constitution contain? The short answer then is: The very minimum, and that minimum to be rules of law. It means that to implement the article, further elaboration of legislation is often required, inseparably intertwined with Article 1 paragraph (3) of the 1945 Constitution, which stipulates that Indonesia is a state of law. The idea is in line with the principle of the rule of law, where the rule of law means that government officials and citizens are bound by and abide by the law. I repeat: government officials and citizens are bound by and abide by the law (Tamanaha, 2012). In line with the opinion, the rule of law in EU Court of Justice is being a tool to respond the arbitrary use of state power and a tool to guarantee an effective protection of natural and legal person against illegal act of the EU and of EU Member States acting within the scope of EU Law.

Based on Article 1 paragraphs (2 and 3) of the 1945 Constitution, all aspects of life in Indonesia must be under the constitution; in other words, all laws and regulations as the implementation of Constitution-based people's sovereignty must be juridically democratic. It underlies the Constitutional Democratic Juridical's school of thought.

In the event of a discrepancy between the statutory regulations and the basic norms they describe, a material (also formal) test can be carried out. The results of the judicial review can lead to a decision that a statutory provision is declared unconstitutional. The judicial review of statutory regulations (Laws) is carried out through the Constitutional Court, one of whose powers is to examine laws (after this referred to as UU) against the 1945 Constitution. Like in Hungarian, one of authority of Constitutional Court is annual the act in case violation the human right which is guaranteed by the constitution (Szmukler, 2019).

The authority of the Constitutional Court to examine the constitutionality of law against the 1945 Constitution suggests that the law is a political product. The formation of laws carried out democratically is primarily determined by the support that exists in political institutions. Big or small, weak or strong support in the construction of law will determine the formation of the law. The support-support process that occurs often departs from the political interests of groups in political institutions. Therefore, the law as a product of political institutions is formed based on the finality of the bargaining process between existing political interests.

“...Politics is determinant upon the law, because in reality, the law is a product of politics so that whatever law is available before us, is just the crystallization of the political wills mutually compete each other Starting from this outlook, each product of law will be very much determined or colored by the balance of power or political configuration which establishes it. Therefore, in this respect, it is very clear that politics will be very determinant upon the law”.

The formation of laws democratically still can conflict with constitutional norms; in other words, a rule formed through a democratic mechanism is not necessarily democratic. Legal standards must not violate constitutional norms as the highest law. There must be supervision of related political institutions, both internally and externally, so that the measures in law are always following constitutional norms. In this context, the law should not have the character of positivist instrumentalists.

Internal supervision can be carried out while forming the law by parties directly or indirectly involved in developing the law. In practice, this supervisory mechanism cannot prevent democratic decision-making, so the potential for legal norms contrary to constitutional standards will still occur. Meanwhile, external supervision is carried out by parties outside the political institution concerned, not directly involved in forming the law.

The definition of external parties does not mean that all parties outside the political institution concerned have the authority to carry out supervision. This external party must be an institution with reference based on the constitution and control of judicial power. According to Craig, 2017: “.....acknowledges that 'judicial power has a central, strategic place in any well-ordered constitutional arrangement' and it is accepted that there is a role for courts 'in securing the rule of law, by fairly adjudicating disputes in accordance with settled law”.

In this case, the external party is the Constitutional Court given the authority to supervise and oversee so that the democratic process in forming laws remains under constitutional norms.

General Election (from now on referred to as election) is an activity where the people determine their will and choose as a form of people's sovereignty. One of the existing forms of elections is the legislative election to elect legislature members, regulated in Law Number 7 of

2017 concerning General Elections (starting now referred to as the 2017 Election Law). In determining the elected legislative candidates, the system applied by the 2017 Election Law is to use an open proportional system. Where the determination of the elected legislative member candidates is determined based on the most votes obtained by a legislative candidate implementing the open proportional system based on the majority vote is inseparable from the Constitutional Court Decision No. 22-24/PUU-VI/2008. In this decision, the Constitutional Court believes that people's sovereignty in elections is manifested in the people directly choosing the legislative candidates they want. The number of votes acquired by a legislative candidate shows the high political legitimacy of the legislative candidate.

Based on the 2017 Election Law, direct elections by the people do not only choose legislative candidates. The people can also vote on the parties participating in the general election, where the people can choose: Election Contesting Parties; and/or legislative candidates. Meanwhile, in determining the elected legislative candidates, the 2017 Election Law (as in the case of the Constitutional Court's decision above) is only based on the number of votes acquired by a legislative candidate, regardless of the number of people's votes who choose the party participating in the election which incidentally is also the embodiment of popular sovereignty.

In this paper, the essence of people's sovereignty in determining the elected legislative candidates as contained in the 2017 Election Law will be reviewed legitimately (particularly regarding legislative elections). This study was carried out in a normative juridical manner, using a comprehensive philosophical approach, concepts, and legislation.

The Sovereignty of the People in the Appointment of Legislative Members

To understand the concept of popular sovereignty, it is inseparable from the history of the formulation of sentences in the constitution as stated by Corwin and Peltason: By placing the constitution in the context of history, we can come to learn of the conditions and conflicts that produced it and continued to give it meaning (Sullivan, 1988).

The concept of popular sovereignty (popular sovereignty) (Laski, 1919) comes from the simple idea that the highest power in a country comes from the people. In Indonesia, this supreme power is exercised based on the 1945 Constitution, constitutionally democratic juridical. For this reason, the realization of people's sovereignty based on the 1945 Constitution must be carried out in a clear frame, namely by (1) Based on the constitutional norms that have been clearly and firmly determined in the articles of the 1945 Constitution; or (2) Based on legal discovery methods for constitutional norms that still require further elaboration.

The spirit and atmosphere of mysticism in the formation of constitutional norms (at the time of the Third Amendment of the 1945 Constitution) shows that election activities are an essential element of the implementation of a constitutional democratic system that places people's sovereignty as the basis or foundation for the formation of political institutions... . In other words, the quality of the aura of popular sovereignty has been fulfilled if the members of the legislature who sit in the relevant political institutions are elected through an election mechanism. This understanding departs from the reality of the period before the amendment to the 1945 Constitution, where most of the legislature members were not the result of elections but only based on appointments.

Before the amendment of the 1945 Constitution, the appointment of members of the People's Consultative Assembly of the Republic of Indonesia (hereinafter referred to as MPR) was regulated based on Government Regulation of the Republic of Indonesia Number 2 of 1970

concerning the Implementation of Law no. 16 of 1969 concerning the Composition and Position of the MPR, DPR and DPRD (hereinafter referred to as: PP 2 of 1970). Based on Article 2 Paragraph (1) PP 2 of 1970: The number of members of the MPR is twice the number of members of the DPR, namely 920 (nine hundred and twenty) people. The number of members of the MPR consists of elements of Regional Representatives totaling 131 (one hundred and thirty-one) people and the elements of the Group's Envoys are 329 (three hundred and twenty-nine) people, out of all members of the MPR totaling 920 (nine hundred and twenty) people. The composition of the MPR members is still added with elements of the House of Representatives of the Republic of Indonesia (hereinafter: DPR) as many as 460 (four hundred and sixty) people. However, of the 460 (four hundred and sixty) members of the DPR, 100 (one hundred) are members of the DPR who are the result of their appointment.

Based on PP 2 of 1970, the composition of the MPR members who are appointed based on appointment (without going through an election) is more than (half) of the total MPR members, namely 560 (five hundred and sixty) people. Meanwhile, the members of the MPR who are appointed based on the election results are only 360 (three hundred and sixty) people. During the enactment of PP 2 of 1970, the reputation of people's sovereignty reflected through the membership of the MPR, which was elected through the election mechanism, was just an empty slogan.

After the reformation (before the amendment to the 1945 Constitution), the composition of MPR members still consisted of Regional Representatives, Group Representatives, and members of the DPR, based on Law Number 4 of 1999 concerning the Composition and Position of the MPR, DPR, and DPRD (hereinafter referred to as Law Number 4 1999). Changes occur in the number of each of these elements. However, the membership of the Regional Representatives and Group Representatives is still based on appointments that are not based on election results. In Law Number 4 of 1999 the number of members of the MPR is 700 (seven hundred) people. Of the total members of the MPR, consisting of 500 (five hundred) DPR members, 135 (one hundred and thirty-five) Regional Representatives, and 65 (sixty-five) members of the Group Envoy.

Regarding the number of DPR members as many as 500 (five hundred) people, it still needs to be distinguished. As many as 462 (four hundred and sixty-two) DPR members are members of political parties appointed based on election results. The remaining 38 (thirty-eight) members of the DPR are members of the Armed Forces of the Republic of Indonesia (hereinafter: ABRI) who are appointed based on appointment. So if the total members of the MPR who were selected based on the appointment (based on Law Number 4 of 1999) are accumulated, there are 238 (two hundred and thirty-eight) people. Meanwhile, the members of the MPR who were appointed based on the election results were 462 (four hundred and sixty-two) people.

Within the Regional People's Representative Council (hereinafter: DPRD) for both the provincial and district/city areas, the conditions are not much different. Based on Law Number 4 of 1999, it is determined that about 10 per cent of the total DPRD members are appointed based on appointments from the Armed Forces, not based on election results.

The mechanism for the appointment of some legislature members without going through the election mechanism as described above is a denial of the essence of democracy in filling/appointing members of the legislature. In other words, the election to elect legislature members is a means of realizing people's sovereignty, so that the appointment/appointment of a

member of the legislature without going through an election mechanism is a clear violation of the essence of people's sovereignty.

After the amendment to the 1945 Constitution, there was a change in the mechanism for becoming a legislature member. Before the amendment to the 1945 Constitution, there were 2 (two) ways to become a legislature member, namely: (a). based on appointment / appointment; and (b). based on election results. Meanwhile, after the amendment to the 1945 Constitution, all legislature members were appointed based on the election results.

This change associated with various materials discussed in the MPR meetings to make amendments to the 1945 Constitution. The multiple thoughts that emerged at that time contained the idea that all legislature members should be based on election results. This thought appeared clearly on various related occasions, from many members of the MPR at meetings to discuss changes (amendments) to the 1945 Constitution. The basic idea was then formulated and can be seen in Article 22 E of the 1945 Constitution (Vandenhoe, 2005).

Recent developments based on the 2017 Election Law, options what voters (the people) do to vote for parties and/or legislative candidates as a form of implementing popular sovereignty is based on an open proportional system. The system in the 2017 Election Law only considers the votes acquired by legislative candidates, regardless of the reality of the large number of votes cast for the party.

Related to the constitutional norms in Article 22E paragraph (3) of the 1945 Constitution, which stipulates: Participants in the general election to elect members of the People's Representative Council and members of the Regional People's Representative Council are political parties; then Article 22E paragraph (3) of the 1945 Constitution clearly and unequivocally stipulates that the participants in the legislative elections are political parties.

Likened to a competition/contest, the participants of the competition/contest are political parties. The judges/evaluators (and voters in elections) will evaluate the participants, not others. To determine which participant will be chosen by the voters, and the most choice of the voters will win the race/contestation. In other words, the constitutional norms in Article 22E paragraph (3) of the 1945 Constitution stipulated that in the election to elect members of the People's Representative Council and members of the Regional People's Legislative Assembly, the people can choose one political party among several political parties that are participating in the election (La-Porta et al., 2004).

The basic norms (constitution) in Article 22E paragraph (3) of the 1945 Constitution were initially consistently implemented through Law no. 12 of 2003 concerning the General Election of Members of the People's Representative Council, Regional Representative Council, and Regional People's Representative Council (hereinafter referred to as the 2003 Election Law). The determination of the elected legislative candidates uses a proportional system (balanced representation) and an open candidate list system, as regulated in Article 84 paragraph (1) of the 2003 Election Law, which stipulates: *“Voting for the General Election of members of DPR, Provincial DPRD and Regency/Municipal DPRD This is done by voting for one of the symbols of the political parties participating in the general election and one candidate under the picture of the political parties participating in the general election on the ballot”*.

According to the 2003 Election Law, political parties will get seats with many valid votes obtained based on the Voter Divisor Number (after this referred to as BPP). If a candidate from the political party whose vote acquisition meets or exceeds the BPP value, the seat acquisition

for the political party will be awarded to that candidate. If there are none, then the candidate with the smallest serial number will get the seats.

The granting of seats for legislative candidates who obtain the same number of votes or exceeds the BPP is based more on the award for the person concerned. The number of votes shows the result of the hard work involved, so it is appropriate that there is an award for it. The awarding does not change the quality of the democratic election party in the context of the embodiment of people's sovereignty, considering that the essence of people's power in legislative elections lies in the election of members of the legislature through the election mechanism. The legislative members are not appointed by regional representatives/groups known before the 1945 Constitution encountered the amendments (Asshiddiqie, 2007).

The realization of democracy through elections that are enforced constitutionally determines that people's sovereignty is exercised through the intermediary of parties as participants in the general election that seats its members as members of the legislature.

The formulation of the sentence of the 1945 Constitution between Article 22E paragraph (3) for the election of DPR/DPRD members, compared to Article 22E paragraph (4) for the election of DPD members is very clear, so it is very logical if the norms contained in the formulation of these articles are implemented through a mechanism in the context of general elections as one of the manifestations of popular sovereignty.

Article 22E paragraph (4) of the 1945 Constitution stipulates: "*Participants in the general election to elect members of the Regional Representative Council are individuals*". From the point of view of Indonesian grammar, word differences between different sentences always carry different meanings. If other sentences are forced to have the same purpose, the result will cause uncertainty in the importance of the sentence in question. Sustained tension is very vulnerable to causing injustice (Merryman, 1987).

The consequence of the different formulation of sentences between the articles of the 1945 Constitution above, between Article 22E paragraph (3) and Article 22E paragraph (4), shows that there are different constitutional norms contained in it. In the sense that the election participants in the election of members of the legislature (in this case, members of the DPD) are individuals. So that the people's vote should be done by voting/voting for people who are contesting in the election. This method is a manifestation of people's sovereignty in the election of DPD members (Wolfe et al., 2015).

Likewise, in the Presidential and Vice-Presidential Elections, which are normatively defined in Article 6A paragraph (1) of the 1945 Constitution, directly elected by the people? Meanwhile, based on Article 22 E paragraph (3) of the 1945 Constitution (especially the election for members of the DPR/DPRD) does not use a direct election system, in contrast to the constitutional norms regarding the President's election and Vice President which have been determined.

When the 1945 Constitution requires that legislative candidates (DPR/DPRD) be elected directly, indeed, the formulation of the sentence contained in Article 22 E paragraph (3) of the 1945 Constitution includes the appropriate sentence, as contained in Article 6A paragraph (1) the 1945 Constitution, for example, namely: "*members of the DPR / DPRD are elected directly by the people*".

Theoretically, some parties argue that the quality of democracy can be better if the people channel their aspirations directly (direct democracy). However, Article 1 paragraph (2) of the 1945 Constitution stipulates that democracy in Indonesia is implemented according to the 1945

Constitution, meaning whether to use direct or indirect democracy will be determined by constitutional norms. For constitutional norms that are clear and firm, in this case, direct democracy (for the election of the President/Vice President and members of the DPD) and indirect democracy (for the election of the DPR/DPRD), should not be replaced by other norms viewed to be better than the existing constitutional norms.

Assessment of the quality of democracy (people's sovereignty) is a separate issue that cannot be partially translated (e.g. only on the process/mechanism of the election for members of the DPR/DPRD). In this regard, Abraham Lincoln, the 16th president of the United States in 1863, stated in the covenant in the Gettysburg Address: “[T] his nation, under God, shall have a new birth of freedom-and... government of the people, by the people, for the people, shall not perish from the earth.”

The slogan of the people's government, by the people, for the people is a concept regarding the realization of people's sovereignty, which is very deep and comprehensive. If you want to apply and interpret this concept, it cannot be done partially, for example: only in the sentence government of the people. Government by the people, government for the people must also be interpreted collectively and comprehensively with the sentence government of the people.

As is the case in a law formation carried out by lawmakers and other fields, they can all fulfil the essence of the people, by the people. But not necessarily the essence for the people is fulfilled. A law that is formed by the legislators (of the people) and proceeds democratically in its decision-making (by the people), will not necessarily result in a democratic law (for the people).

In Indonesia, the concept of government of the people, by the people, for the people is very in line with the basics of thought contained in the Preamble to the 1945 Constitution. In implementing the concept, it cannot be separated from the constitutional democratic juridical system as the basis and guidelines. This is a mandate contained in Article 1 paragraphs (2 and 3) of the 1945 Constitution (Nwafor, 2013).

The formation of the 2017 Election Law based on the mandate of Article 22 E paragraph (6) of the 1945 Constitution (regarding legislative elections) in a constitutional democratic juridical manner has indirectly adopted constitutional norms direct presidential and vice-presidential elections. In other words, the formation of the standards of the Election Law, which is carried out democratically, applies an open proportional system, where the election of legislative members is carried out directly (direct democracy), in a juridical democratic constitutional manner, it is not following constitutional norms.

There are 2 (two) kinds of constitutional norms in electoral democracy under the juridical understanding of constitutional democracy in Indonesia, namely: (1) Direct democracy for the election of the President and Vice President and members of the DPD; and (2) indirect democracy for the election of legislative members (DPR and DPRD). The creation of new norms beyond those already stipulated in the constitutional standards should not occur.

Vote Counting and Determination of Elected Legislative Candidates

One of the main tasks of constitution is to providing rules of the political game. Therefore, Article 22E the Constitution of Republic of Indonesia has determined the way and method in which political officials, like the members of House of Representatives, the President

and Vice President, etc., are elected. However, these provisions are limited and not detailed, so a law is formed which regulates technical provisions regarding vote counting.

Based on the 2017 Election Law, voters cast their votes through ballot papers by voting for: (1) Party; and/or (2) The name of the legislative candidate. After that, the votes will be counted, which will be recorded in a predetermined form. Vote counting is carried out starting from the polling station, in stages and continuously at the sub-district/village, sub-district, district/city, provincial, and national levels. Based on the vote count, the number of votes obtained by each party per electoral district can be seen according to the level of its representative institution, which is stated in a predetermined form. The form contains at least three (3) parts of data: (1) the number of votes won by the party; (2) The number of votes won by each legislative candidate; (3) The number of votes as a result of the sum of points (1) and (2).

Through an open proportional system, the number of party votes which is the result of the sum of the numbers (1) and (2) for each electoral district, and the formula for calculating party seat acquisitions (based on the 2017 Election Law-method Sainte Lague), can be seen the number of seats gained for each party in each electoral district according to the level of the representative institution. This method Sainte Lague is used in several other countries, "...*Sainte-Lague's method is also known as Webster's method or the divisor method withstands rounding. This method is used in New Zealand, Norway, Sweden, Denmark, Bosnia and Herzegovina, Latvia, Hamburg and Bremen*" (Van-Eck et al., 2005). The party seats obtained are distributed to the relevant party legislative candidates through determining the elected candidates based on the most votes they have achieved.

The mechanism for determining the number of seats and the elected legislative candidates who will occupy them is primarily determined by the accumulation of voters' votes, both those who vote for legislative candidates and those who vote for parties. So in simple terms, the electability of a legislative candidate, apart from being based on the vote acquisition of the voters themselves, is also based on the votes obtained from those who voted for the party. This condition occurs in almost all elected legislative candidates because only a few legislative candidates can win a certain number of votes (abbreviated as BPT). The rest, their election was due to the support of the votes that voted for the party; even the support for the votes that voted for the party was often far greater than the votes acquired by the elected legislative candidates.

The determination of the elected candidates in Article 422 of the 2017 Election Law is carried out based on the majority of votes obtained by the legislative candidates, without considering that the elected candidates only contribute a small portion of the votes in the BPT. As in the 2019 Legislative Election (East Java Provincial DPRD) there were 16 parties in Electoral District I (Surabaya City). Of the 16 parties, there are 10 participating parties whose votes are higher than those of the elected candidates. In other words, the system enacted in the 2017 Election Law ignores the aspirations of voters who vote for parties (Mahfud, 2013).

Open Proportional in the 2017 Election Law

The open proportional system implemented in the 2017 Election Law provides options for the people to vote for: (1) Parties; and/or (2) The name of the legislative candidate. The determination of the elected candidate is determined based on the majority of votes cast by the legislative candidate among the legislative candidates from the party concerned. Even though the votes acquired by the legislative candidates did not meet the BPT, the shortfall would be "*contributed*" to the votes cast by the party.

Voters/people cast their ballots according to their will, which is the embodiment of popular sovereignty. The will of the people who voted for the party shows the party's legitimacy in determining the legislative candidates and the size of the votes obtained by the legislative candidates shows the level of legitimacy they get. However, the 2017 Election Law in determining the elected legislative candidates does not give room for the people's will, which is realized by voting for parties. The 2017 Election Law still relies on the Constitutional Court Decision No. 22-24/PUU-VI/2008, which in one of its legal considerations states:

Article 1 paragraph (2) of the 1945 Constitution states that sovereignty is in the hands of the people and is implemented according to the constitution. This shows that the highest authority is in the hands of the people so that in various general election activities, the people directly choose whom they want. The number of voters voted for by the people shows the high level of political legitimacy obtained by the legislative and executive candidates; on the other hand, the low number of votes also indicates the low political legitimacy of the candidate concerned; this sentence becomes the spirit of the Constitutional Court's decision but is a distorted consideration, meaning:

That the constitutional norms contained in Article 1 paragraph (2) of the 1945 Constitution: "... *implemented according to the Constitution*". This means that the method used for implementing the direct or indirect method of choice determines the constitutional norm, where Article 22E paragraph (3) of the constitution contains the notion of representative democracy. In addition, the Constitutional Court's legal considerations did not consider the will of the people (people's sovereignty) granted to the party. Likewise, in other parts of the Constitutional Court's legal considerations in decision no. 22-24/PUU-VI/2008 does not consider the people's will channeled through the party. This shows that there are contradictory statements in the legal considerations (Moreau, 2010).

The voting method in the 2017 Election Law provides an opportunity to vote for parties is a camouflage of legal politics. It is as if the norm is under the mandate of Article 22E paragraph (3) of the 1945 Constitution, where political parties are participants in the legislative elections. However, further implementation of the people's sovereignty given to the party, realized by voting for the party, was ruled out. Many vote count results show that the votes for voting for parties are more dominant than those for voting for candidates (people);

The idea that the elected legislative candidates are representatives of the party, besides the concern that the party elite will dominate if the determination of the elected legislative candidates is based on serial numbers. This opinion is very subjective, not following the recruitment and development of cadres in political parties. The placement of a legislative candidate in a specific serial number cannot be separated from the party's monitoring and evaluation of the cadre concerned.

Based on General Election Commission Regulation Number 20 of 2018, the placement of a person as a candidate for a legislative member must be based on proportionality and professionalism. The principle of proportionality is an attitude that can prioritize the balance between rights and obligations as a legislature member. In contrast, the focus of professionalism is the ability/expertise to carry out a code of ethics and is always guided by the laws and regulations.

On the other hand, grading/sequencing in a heterogeneous society is a must and very reasonable to achieve proportional justice. In the career ladder of personnel, academia, personnel in judicial power, and others always use the method of ranking/sequence.

Not considering the votes of party voters and only considering the number of votes cast for legislative candidates in determining the elected legislative candidates is a discriminatory treatment against parties. This violates Article 28I paragraph (2) of the 1945 Constitution: "Everyone has the right to be free from discriminatory treatment on any basis and is entitled to protection against such discriminatory treatment".

CONCLUSION

The norms of the 2017 Election Law regarding the determination of elected legislative candidates whose implementation excludes the existence of political parties as participants in the legislative elections, so that it seems as if the election participants are individuals not following the constitutional norms contained in Article 22E paragraph (3) and Article 28I paragraph (2) of the 1945 Constitution. Participants in the legislative elections must respect various good and wise thoughts adopted in an Election Law, but by sticking to and implementing clear and firm constitutional norms in determining the elected legislative candidates.

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