

## Law Politics Of Legislative Election

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Abstract. Elections in democracies, including in Indonesia, a process that put people's sovereignty completely hands of the people themselves. Principles of Election in accordance with the constitution, namely the principle of constitutional life of the sovereignty of the people (democracy), it is marked by every citizen has a right to participate actively in the decision-making processes of the state. In Indonesia until today there are several general election, such as the General Election to the The House of Representatives (DPR), Provincial DPRD, Regency / City; Election of the President; and Election Regional level is for election Regent / Mayor. At the village level do Democracy party called *Pilkades* (Village Head Election). The position of the House of Representatives is strong, the Parliament can not be dissolved by the President, unless the members are all concurrently be members of the People's Consultative Assembly (MPR). Therefore, Parliament can always keep an eye on the actions of the President, and if it considers the President actually violate the state policy which has been established by the Constitution or the Assembly, the Assembly may be invited to a special court order that could have asked for an answer to the President. Parliament consists of 560 members from 77 constituencies be represented compound (multi-member electoral districts) that have three to ten seats per constituency (depending on population-related region division) selected through open proportional system. The parliamentary threshold of 3.5 per cent applies only to the The House of Representatives (DPR) and does not apply to Provincial DPRD.

Keywords: Elections; Democracy; The House of Representatives.

### 1. Introduction

Elections in democracies, including in Indonesia, a process that put people's sovereignty completely hands of the people themselves. This was done through system replacement power peacefully conducted periodically in accordance with the principles outlined constitution. Principles of Election (Election) in accordance with the constitution, namely the principle of constitutional life of the sovereignty of the people (democracy), it is marked by every citizen has a right to participate actively in the decision-making processes of the state. Democracy is a process, which means that a republic will not stop in the form of government for the people of these countries have the will that is constantly changing. In contrast to the monarchy, which makes the descent as the basis for selecting the leader in the democratic republic apply the principle of similarity and equality where everyone has the ability to leads can be a leader if he is favored by most people.<sup>2</sup> The government made a contract or agreement with the people of the so-called social contract embodied in the elections so that the people can choose directly who the representatives in the legislature and

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<sup>2</sup> Brian Raynold Pangondian, 2014, *Pemilihan Umum di Indonesia*, Bandar Lampung: Informatic Management State Politeknik of Lampung, p. 1.

vote directly or through their representatives to elect a government in the executive branch for channeling the aspirations of the people who will then determine the future a country.

In Indonesia until today there are several general election, such as the General Election to the The House of Representatives (DPR), Provincial DPRD, Regency / City; Election of the President; and Election Regional level is for election Regent / Mayor. At the village level do Democracy party called *Pilkades* (Village Head Election).<sup>3</sup>Election in Indonesia can not be separated from the legislation in force. 2009 Election refers to the 4 (four) laws relating to the elections. While the last elections held in 2014. The election is the election refers to the four laws pertaining to elections.<sup>4</sup>The author focuses on writing about the legislative elections, which is one of general elections in Indonesia, including the House of Representatives (DPR). Parliament is the legislative branches that serves as a state institution.

Based on the above can be proposed formulation of the problem as follows: (1). How is a picture of the election Legislative (Parliament) in Indonesia? (2) What was the condition as well as the legislative election system applied in Indonesia when associated with Politics, Law, because the Parliament here discount related tasks closely with law?

## 2. Discussion

### 2.1. Legislative election (DPR) in Indonesia.

Electoral justice system is an important instrument to enforce the law and ensure fully implementation of the principle of democracy through elections that are free, fair, and honest. Electoral justice system is developed to prevent and identify irregularities in the elections, as well as the means and mechanisms to correct the irregularities and impose sanctions on violators. As one of the prerequisites in achieving electoral justice is through the legal framework should be structured so that unambiguous, comprehensible and open, and should be able to highlight all the elements of the electoral system necessary to ensure democratic elections.<sup>5</sup>

Until 2014, the Indonesian nation is already eleven times grand event held general elections. First, on 29 September 1955 to elect 272 members of Parliament. Second, December 15, 1955 to elect 542 members of the Constituent Assembly. The 1955 election was followed by over 30s political party (parties) and more than one hundred list of collection and individual candidates. Then periodically the New Order government which focuses on economic development and political stability to hold elections once 5 years. Successive began on May 2, 1977, dated May 4, 1982, April 23, 1987, dated June 9, 1992 until the 1997 election which was held on 29 May 1997. The

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<sup>3</sup> Rosalia Widhiastuti Sri Lestari, 2016, *Analisa Melek Politik Warga pada Pemilu Legislatif Tahun 2014*, Jurnal Aristo Vol. 4 No. 1.

<sup>4</sup> Bagus Anwar Hidayatulloh, 2014, *Politik Hukum Sistem Pemilu Legislatif dan Presiden Tahun 2009 dan 2014 dalam Putusan Mahkamah Konstitusi*. Jurnal Hukum IUS QUIA IUSTUM NO. 4 VOL. 21, OCTOBER 2014: 559 – 582.

<sup>5</sup> Veri Junaidi, dkk, 2013, *POLITIK HUKUM SISTEM PEMILU : Potret Keterbukaan dan Partisipasi Publik dalam Penyusunan Undang-Undang Nomor 8 Tahun 2012 tentang Pemilihan UMUM Anggota DPR, DPD, dan DPRD*, Jakarta: Yayasan Perludem, p: iii.

1999 election was the first election in the reform era. Election 1999 was held on June 7, 1999 which is the election to 8 and by 48 political parties.

directly. Election 2009 is the tenth election in the history of Indonesia. Election 2009 was held April 9, 2009 followed by 44 political parties, including the local parties in Aceh and Individual prospective (DPD). The 2014 election was held on 9 April 2014 3 followed by 15 parties and local parties in Aceh. Indonesia is a Representative a Republic where the president is head of state and head of government. Indonesia 1945 Constitution, the Constitution of the Republic of Indonesia Of 1945 is the basis for the system of government and limited separating the legislative, executive and judicial.<sup>6</sup>

Suharto's fall in 1998 and the beginning of the Reformation resulted in significant amendments to the Constitution, which affect all three powers of government, adding clauses human rights are important, and first introduced the concept of "elections" to the constitution. Legislative legal framework governing the democratic representation is complex and involves several laws:

- Act No. 15 Of 2011 regarding the General Election Organizer;
- Act No. 8 of 2012 on the General Election of Members of the House of Representatives, Regional Representatives Council and Regional House of Representatives;
- Act No. 42 Of 2008 regarding the General Election of President and Vice President;
- Act No. 32 Of 2004 on Regional Government (including the election of regional heads);
- Act No. 2 of 2011 on Political Parties;
- Act No. 27 of 2009 on the People's Consultative Assembly, House of Representatives, Regional Representatives Council, and Regional House of Representatives;

In Indonesia, there are two national legislative bodies: the House of Representatives (DPR) and the Regional Representatives Council (DPD). Parliament is the body that already exists and is established under the Act of 1945 and the Council, which was formed in 2001 is a new kind of representative institutions that are constitutionally established through amendments to the Constitution as a movement toward bicameralism in Indonesia. However, only the Parliament exercising legislative functions in full; DPD has a more limited mandate. Combined these two institutions called the People's Consultative Assembly (MPR). Representatives from both the DPR and DPD elected for a term of five years. The position of the House of Representatives is strong, the Parliament can not be dissolved by the President, unless the members are all concurrently be members of the People's Consultative Assembly (MPR). Therefore.<sup>7</sup>

Parliament consists of 560 members from 77 constituencies be represented compound (multi-member electoral districts) that have three to ten seats per constituency (depending on population-related region) selected through open proportional system. The parliamentary threshold of 3.5 per cent applies only to the Parliament and does

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<sup>6</sup> Astri Ramadhani, 2014, *Implementasi Pemilu Legislatif 2014*, Surakarta: Universitas Muhammadiyah Surakarta, p. 3.

<sup>7</sup> Prof. Dr. A. Hamid S. Attamimi, S.H., 1998, *ILMU PERUNDANG-UNDANGAN: Dasar-dasar dan Pembentukannya*, Yogyakarta: KANISIUS (Anggota IKAPI), p. 58-59.

not apply to Parliament. Each voter will receive a ballot for the election of members of Parliament which contain all political parties and legislative candidates who are running in constituencies where voters are located. Voters then, using nails, punching a hole in the name of the political party or a candidate is selected. Legislative Election Law currently in force (Act No. 8 of 2012), the seat allocation process has been simplified into two phases only.

To calculate the allocation of seats, the General Election Commission (KPU) will first determine splitter Voter Numbers (BPP) for each constituency. BPP is the number of valid votes received in an electoral district, divided by the number of seats available for the constituency. A political party get one seat each time the number of votes obtained by the party reached the BPP. For example, if the BPP an electoral district is the 1500 and 5000 party A receives sound, the party would gain three seats in the first stage of seat allocation. Then, in the second stage, the remaining seats in the constituency allocated to the political party with the largest sound remainder (rest of the sound is reduced party's total votes of voice used to get a seat in the calculation of the first stage). For example: BPP in an electoral district with 5 seats contested by the two parties is 1500; Party A gain 5000 sound so get three seats in the first phase, and Party B obtained in 2500 sounds so getting a seat in the first phase; the rest of the voice of the Party A is 500 and B is the rest of the party vote in 1000; thus, for the remainder of his voice is bigger, Party B gets the last seat in the second stage of seat allocation. If there are two or more parties that have a residual noise equal to the number of remaining seats, those seats will be obtained by the geographical distribution of political parties gains a wider voice. When the number of seats obtained by political parties have been determined, The seat filled by the legislative candidates who ran on behalf of related parties in the constituency in question and managed to get the most votes. For the 77 constituencies in the elections Members of Parliament, political parties gains voice did not reach 3.5 per cent of the valid votes were not included in the process of seat allocation. Parties that have not reached 3.5 per cent of the valid votes in the General Election of DPR still be able to get a seat in the Provincial DPRD and Regency / City. Act No. 8 of 2012 maintaining mandatory minimum quota of 30 percent women candidates for the list of candidates nominated and one female candidate in each of the three candidates sequentially from the initial list of candidates.

## **2.2. Conditions and legislative election system applied in Indonesia when associated with Law Politics.**

Political parties in the Republic of Indonesia on the one hand acts as the main channel to fight the will of the people, nation and state. As the reform mandate election administration quality should be improved in order to ensure fair competition, participatory dynamic, a higher degree of representation and mechanisms and clear accountability. According to Mahfud MD, the law is a political product, so that when discussing the politics of law tend to describe the political influence of the legal or political system influence on the development of the law.

Political law also includes the notion of how politics affects the law by looking at the configuration of the power that is behind the making and enforcement.<sup>8</sup> Satjipto Rahardjo law defines politics as an activity to select and how that would be used to achieve a social purpose and specific law in society.<sup>9</sup> Political law seeks to create and define how humans should act. Politics makes a *ius constituendum* (law would apply), and trying to keep it at a later date *ius constituendum* valid as *ius constitutum* (law will take effect at a later date).<sup>10</sup> The birth of the election law in 2009 and 2014 can not be separated from the political configuration. The elections of 2009 and 2014 is an election, which coincided with the era of the United Indonesia Cabinet. Both of these have a political election law and are reflected in the system configuration and implementation. Configuration strengths and interests in lawmaking bodies and interventions from the outside can not be ignored in the formation of legislation. and strength, both socially, politically and economically.<sup>11</sup>

During its development, the laws that have been born to hundle the election, political turmoil as a result of some of the parties are not satisfied the clause in some article related to the law. Elections in Indonesia is regulated by election laws are always changing due to the needs of quality improvement, due to the influence of the political configuration and because of changes in population demographics and maps of government.<sup>12</sup> To measure the political configuration in any legal product, whether democratic or authoritarian can be seen through the three pillars of democracy, namely: the role of political parties and the House of Representatives; the role of the executive; freedom of the press (freedom of information for every member of society).<sup>13</sup> Based on the benchmarks, the study of the laws of politics can be traced legislative product as a product if it meets the legal or political product. The national legal system is the unity of law and legislation that consists of many components that are interdependent, which was built to achieve the objectives rests on a state by state law grounds and ideals embodied in the Preamble and Articles of 1945.<sup>14</sup> Thus, it can be affirmed that the preamble and Articles of the 1945 Constitution is the source of all national laws Indonesian politics. The assertion both as a source of national political law is based on two reasons, namely:

- Preamble and article of 1945 contains objectives, basic, legal ideals and norms of the Indonesian state should be the goal and the political foundation of law in Indonesia.
- Preamble and Articles of the 1945 Constitution contains typical values derived from the views and culture of Indonesia inherited by our ancestors centuries ago.<sup>15</sup>

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<sup>8</sup> Mahfud MD, 2009, *Politik Hukum di Indonesia*:: political configuration, according to Moh. Mahfud MD to mean a composition or a constellation of political forces that are dichotomous divided into two diametrically opposed concepts, namely the configuration of democratic politics and authoritarian political configuration, Jakarta: PT Raja Grafindo Persada, p. 4.

<sup>9</sup> Satjipto Rahardjo, 2000, *Ilmu Hukum*, Bandung: Citra Aditya Bakti, p. 35.

<sup>10</sup> Bintang Regen Saragih, 2016, *Politik Hukum*, Bandung: CV Utomo, p. 17.

<sup>11</sup> Jazuni, 2005, *Legislasi Hukum Islam di Indonesia*, Bandung: Citra Aditya Bakti, p. 9-10.

<sup>12</sup> Jenedjri M. Gaffar, 2012, *Politik Hukum Pemilu*, Jakarta: Konstitusi Press, p. xiv.

<sup>13</sup> Mahfud MD, 1998, *Politik Hukum Indonesia*, Jakarta: LP3ES, p. 26.

<sup>14</sup> Mahfud MD, 2010, *Membangun Politik Hukum Menegakkan Konstitusi*, Jakarta: Rajawali Pers, p. 22.

<sup>15</sup> *Ibid*, p. 23.

National legal systems to be built is the legal system of Pancasila, the legal system take or combine various grades of interests, social values, and the concept of justice into a legally binding prismatic taking the good elements. Politics national law as a basic guideline for all shapes and formulation process, the formation and development of law in the country. When national political law is a basic guideline for all shapes and formulation process, the formation and development of law in the country, it is certain political national law must be formulated on a legislation which are essential too, not in a legislation of a technical nature, Referring to the 1945 Constitution has been amended four times,

(1) and the People's Consultative Assembly;

(2) The Board of Representatives.

MPR can formulate legal politics in the form of the Constitution. After the third amendment to the 1945 Constitution, the Assembly is no longer as the highest state institutions (the supreme body), but only a joint session (joint session) that bring together the People's Consultative Council of the Regional Representatives Council.<sup>16</sup>

House of Representatives (DPR) can formulate legal politics in the form of legislation, due to its position as a legislative power. Article 20 (1) first change the 1945 Constitution describes the Parliament holds the power to make law. This article also indicates a shift power (the shifting of power) in the legislation (legislative power) which was originally a presidential power now moves to the House. This formulation is reinforced by Article 20A which describes Parliament has a legislative function, the function of the budget, and monitoring functions. However, according to the provisions of Article 5 (1) The President is entitled to propose draft Act to Parliament. Parliament has a very significant role in order to make the national legal blueprint for achieving the goals aspired state. The role of the Parliament to do this is outlined in a law.

Constitution as MPR products and product legislation as the House did not come from a vacuum, but is the actualization of the will of the political, economic, social, cultural, and others. The will can come from various backgrounds.<sup>17</sup>The will of these can appear either at the level of the political superstructure and political infrastructure. Indonesian political infrastructure consists of political parties, interest groups, pressure groups, political communication tool, and political figures.<sup>18</sup>The political superstructure which has the authority to formulate legal politics only MPR and the DPR only. The will of both political, economic, social, cultural and others, arising from the infrastructure level politics then debated and crystallized at the level of political superstructure then the output is the formulation of legal politics either contained in the Constitution if it is a product of the Assembly or invite OF if it is a product of the House of Representatives.

### 3. Closing

#### 3.1 Conclusion

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<sup>16</sup> Jimly Asshiddiqie, 2002, *Konsolidasi Naskah UUD 1945 Setelah Perubahan Keempat*, Jakarta: Center for the Study of Constitutional Law, University of Indonesia, p. 5.

<sup>17</sup> Mahfud MD, op.cit., p. 7.

<sup>18</sup> Imam Syaukani, 2010, *Dasar-dasar Politik Hukum*, Jakarta: PT Rajagrafindo Persada, p. 121.

- Legislative election (DPR) in Indonesia. Election is an important democratic tool for democracies in measuring the extent of a country's democracy. Elections also as a tool for social change and politics of a country, where every election, which later resulted in a new socio-political system in line with the legislative election and executive. In Indonesia, there are two national legislative bodies: the House of Representatives (DPR) and the Regional Representatives Council (DPD). Parliament consists of 560 members from 77 constituencies be represented compound (multi-member electoral districts) that have three to ten seats per constituency (depending on population-related region) selected through open proportional system. Each voter will receive a ballot for the election of members of Parliament which contain all political parties and legislative candidates who are running in constituencies where voters are located. Voters then, using nails, punching a hole in the name of the political party or a candidate is selected.
- Conditions and legislative election system applied in Indonesia when associated with Law Politics. Electoral systems are a method, an instrument for translating the number of votes in the election to the seats of parliament from parties that won the most votes. The system also makes the size of a democracy or not the election was conducted. From here, we can see that through this system, competition, participation and guarantee political rights in a country can be seen. Election 2014 is the implementation stage of democracy through elections more democratic and using a system that was predicted to produce social and political changes are better than ever. House of Representatives (DPR) can formulate legal politics in the form of legislation, due to its position as a legislative power. Article 20 (1) first change the 1945 Constitution describes the Parliament holds the power to make law. This article also indicates a shift power (the shifting of power) in the legislation (legislative power) which was originally a presidential power now moves to the House. This formulation is reinforced by Article 20A which describes Parliament has a legislative function, the function of the budget, and monitoring functions.

### 3.2 Suggestion

- Election legislative in Indonesia use the democratic system in which everyone is entitled to their own discretion, and therefore should prospective members legislative more assertive in approaching the community not just handed all the team success because at present many are not familiar with legislative candidates but people just choose based on the images they see on any sound card without knowing how the vision and mission of each member of the legislature.
- Parliament holds the legislative power which can formulate legal politics in the form of legislation. We can see on the present lack of awareness about the laws that exist in Indonesia because of the many additional and changes. Therefore, it is expected to be more selective in the formulation of legislation, it is intended that not many laws which must then be added or be changed many times.

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