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The Implementation of Good Governance in the Presidential Election in Indonesia

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Abstract

The 2019 presidential and vice-presidential elections in Indonesia had complicated issues, including broken ballots, multiple voter lists, persons not registered as permanent voters, political money, transparency, administrative violations, electoral penalties and high white numbers. These problems indicate that the values of good governance have not been implemented in the election process. This paper uses the normative method to analyse the issues and laws, particularly when related to aspects of law enforcement and administrative law in good governance. This paper aims to formulate a method for implementing good governance in the election process. The results of the analysis show that electoral justice is very important in Indonesian presidential elections. However, the Indonesian presidential election system does not use good governance and does not support electoral justice. The results of previous elections in Indonesia showed that the values of good governance have not been well implemented in all stages of the election, especially regarding legal principles. This research proposes a good governance system to implement in the Indonesia presidential election process.

Keywords: Good Governance; Electoral System; Justice.

Introduction

Governance is a mechanism for managing economic and social resources that involves the influence of the state and non-government sectors in a collective activity. It is the practice of the government administering power and authority in managing government affairs in general and economic development in particular.¹

¹ Philipus M Hadjon and others, *Hukum Administrasi Dan Good Governance* (Universitas Trisakti Press 2012).[37].

The general election is a consequence of a democratic state that is regulated under article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945). The framework of the constitution is the result of a collective agreement of all people, based on the theory that popular sovereignty is the highest authority, and the constitution is the supreme law of the land. The word ‘constitution’, which comes from the verb ‘to constitute’ meaning to form, can also be interpreted as a document forming the state organisation. Therefore, the constitution binds all components of the state, both organisers and citizens.²

The constitution is an important document containing basic regulations on the structure of government, rights and obligations, and restrictions on the power and authority of the state. The constitution is a basic law (*grundnorm*). It usually takes the form of written texts and unwritten texts, depending on whether the legal system is based on civil law or common law.³

Political parties are a form of freedom of association, one of the prerequisites of democracy. Freedom of association was born from a basic human tendency to live in a society and organise both formally and informally. Such tendencies constitute an inevitability (organisational imperatives) of community tendencies which, in principle according to Locke and Rousseau, is that organisational life arises to meet the needs and interests of individuals and achieve common goals based on equality of mind and conscience. Therefore, freedom of association has become a basic human freedom universally recognised as part of human rights.⁴

Presidential threshold is a concept that aims to propose qualified candidates for president and vice president. Political parties or a combination of political parties responsible for the candidate pair of president and vice president carry out this proposal. However, some parties argue that presidential training is not appropriate because only parties that have votes or large seats can nominate the

² Brian Thompson, *Textbook on Constitutional and Administrative Law* (Blackstone Press 1997).[3].

³ Jawahir Thontowi, *Islam Politik Dan Hukum: Esai-Esai Ilmiah Untuk Pembaharuan* (Madyan Press 2002).[150].

⁴ Muhamad Ali Safa’at, *Pembubaran Partai Politik* (Rajawali Pers 2011).[14].

president and vice president, while parties with small votes and seats cannot nominate these candidates.

Article 222 of Law Number 7 Year 2017 on General Elections states that the provisions regulating the threshold of the presidential nomination – 20% of the seats in the House of Representatives (DPR) or 25% of the total valid votes of the 2014 election results – are considered not in line with UUD NRI 1945. Article 222 does not give freedom to the public in making choices, which is considered contrary to article 6A paragraph (2), article 22E paragraph (1), article 27 paragraph (1), article 28D paragraph (1) and article 28D paragraph (3) of UUD NRI 1945.

The central issue in this research is the principle of good governance in elections based on the presidential threshold. To achieve justice in elections in a democratic country, the legal instruments for equitable elections must accord with morals and not conflict with the constitution. Some consider democracy to be a guarantee of transparency, accountability and justice. Through democracy, the political rights of citizens are well protected, and the people have power in clearer decision-making mechanisms.⁵

In his book on the development of law, jurisprudence, legal theory and philosophy of law, Meuwissen said that law loses its normative behaviour if its content cannot be justified. Laws that seriously violate human rights, for example, cannot be seen as applicable law.⁶ The issue is good governance principles in conducting elections based on the presidential threshold system.

This article used legal research to prepare the issues. Legal research is the process of finding the rule of law, legal principles and legal doctrines to address the legal issues at hand. Legal research is conducted to produce new arguments, theories and concepts to solve problems. The answers are expected to be right, appropriate, inappropriate or wrong.

⁵ Fauzan Ali Rasyid and Moh Dulkiah, 'Political Will Implementation of The Government in Hope Family Program Policy' (2020) 5 Journal of Governance.[22].

⁶ Meuwissen, *Meuwissen Tentang Pengembangan Hukum, Ilmu Hukum, Teori Hukum, Dan Filsafat Hukum* (Penerjemah: Arif Sidharta ed, Refika Aditama 2007).[47].

The data collection used for this article consisted of observation, interview, interpretation of law, law documents and court decisions. Reviewing the ratio legis of law helps solve the legal issues studied. The conceptual approach in this study concerns the views and doctrines developed in the science of law, specifically the law regarding the administration of equitable elections based on the presidential threshold. These doctrines, obtained through law books. interpretation of UUD NRI 1945, Law Number 7 Year 2017 on General Elections and regulations related to elections, help in finding new theories related to the political equality of political parties in the nomination of candidates for president and vice president. The case approach is carried out by examining relevant cases related to elections based on the presidential threshold and analysing court decisions.

Principles of good governance in elections

The United Nations Development Programme (UNDP) defines ‘governance’ as the exercise of political, economic and administrative authority to manage the affairs of the nation.⁷ The Indonesian electoral system also requires administrative governance to implement policies that operate the public sector in an efficient, effective, impartial, accountable and open manner.⁸ In essence, good governance is managing the country collaboratively between government, private and society civil by basing certain principles, including that the government must carry out the general principles of governance.⁹ Good governance has actually been applied in long before the administration of government, especially if we study the general principles of good governance. Good traits in the context of governance means decency and eligibility, which in foreign terms is called *beheerlijk*, like *beheerlijk bestuur*.¹⁰

Justice is the main policy in social institutions, and truth is the main policy in systems of thought. Those who believe in different concepts of justice can still

⁷ *ibid.*

⁸ Hadjon and others (n 1).[38].

⁹ *ibid.*

¹⁰ Akadun, ‘Good Governance’ (2007) 9 *Sosiohumaniora*. [37–45].

agree that institutions are fair when there are no arbitrary differences in giving rights and obligations and when the rules determine the right balance between opposing claims for the benefit of social life.¹¹ According to Rawls, the impartiality needed for fairness¹² means that the principles of justice imagined require the impartiality needed for justice. However, the concept of proportional justice and efficiency applied in the 2019 concurrent elections did not provide legal certainty to the participating political parties and did not provide a solution because it caused many casualties related to the election.

KC Wheare once said, 'Constitutions is used to describe the whole system of Government of a country, the collection of rules which establish and regulate or govern the government'.¹³ The essence of constitutionalism consists of two things: (1) the conception of the rule of law, which states that universally the authority of the law must overcome the authority of the government so that the law must be able to control and control politics and (2) the conception of civil rights of citizens, which outlines that the freedom of citizens under constitutional guarantees at the same time can be obtained by the constitution.¹⁴ A political party¹⁵ is a group of people organised for the purpose of winning the power of government through electoral or other means. Political parties typically display the following characteristics:

1. They aim to exercise government power by winning political office (small parties may use more elections to get a platform than to win power);
2. They are organised bodies with a formal membership;
3. They typically adopt a broad focus of issues, addressing each of the main areas of government policy (small parties, but only having a single-issue focus);
4. To varying degrees, they are united by common political choices and a common ideological identity.

Elections are a manifestation of a democratic process. The implementation of a good election based on the principles of overflow and fairness will produce a government that should be of good quality, credible and accepted by the community. The final

¹¹ John Rawls, *A Theory of Justice Teori Keadilan* (Pustaka Pelajar 2011).[6].

¹² Amartya Sen, *The Idea Of Justice* (Penguin Books 2010).[55].

¹³ KC Wheare, *Modern Constitution* (OUP 1996).[184].

¹⁴ MD Mahfud, *Demokrasi Dan Konstitusi Di Indonesia* (Rineka Cipta 2003).[145].

¹⁵ Andrew Heywood, *Politik* (Pustaka Pelajar 2014).[407].

goal is to lead to good governance, which is just and prosperous.¹⁶ Elections held by the state through political parties sourced from the people's representatives are the objectives of the constitution. Representation is a relationship in which a person or group is in or acting on behalf of a larger community. This can be achieved through the administration of wisdom by an educated elite, guidance or instructions given to a delegation through the victory of a people's mandate or representatives drawn from the groups they represent.¹⁷

Larry Diamond and Richard Gunther¹⁸ stated that to achieve a goal and find several different implications in party types for character and quality in political democracy, especially it needs to be identified in the various functions performed by political parties, 'Involves two distinct phases of the electoral'. Before entering the party function, there are two phases in the electoral process. The first is a candidate nomination in which election participants represent each party in the party election in a special room. The second is electoral mobilisation, where parties motivate them to each choice in supporting their candidates and, in some cases, facilitate the participation of participants in the electoral process. Other party functions include issue structuring, social representation, interest aggregation, forming and sustaining government, and social integration.¹⁹ This is very influential with the quality of parties in elections. Therefore political parties participating in elections in the democratic system must have the same position considering the party comes from citizens to participate effectively in the political process. If successful in the task, they will feel they have served the country.

Presidential threshold is an additional provision regarding the nomination requirements of president and vice president in article 6A paragraph (2), which states that 'The pairs of candidates for President and Vice President are proposed

¹⁶ Kadek Cahya Susila Wibawa, 'Pengawasan Partisipatif Untuk Mewujudkan Good Governance Dalam Penyelenggaraan Pemilihan Umum Serentak Di Indonesia' (2019) 2 Administrative Law & Governance Journal.[620].

¹⁷ Heywood (n 15).[346].

¹⁸ Larry Dimaond and Richard Gunther, *Political Parties and Democracy* (The Johns Hopkins U Press 2001).[7].

¹⁹ Bryan A Garner, *Black's Dictionary* (9th edn, Thomson Reuters Business 2009).[1304].

by political parties or a combination of political parties participating in the election prior to the election in Indonesia'. This provision clearly provides room for political parties to participate in the nomination of candidates for president and vice president, bearing in mind that political parties are representatives of the people and connecting the relationship between the state with its citizens.

Robert A Dahl²⁰ argues that in a democratic country there generally are eight institutional guarantees:

1. Freedom to form and join organisations;
2. Freedom of expression;
3. The right to vote;
4. Eligibility for public office;
5. The right of political leaders to compete for support and votes;
6. Alternative sources of information;
7. Free and fair elections;
8. Institutions for making government policies depend on votes and other expressions of preference.

All countries in the world have used elections as a peaceful and orderly power transfer mechanism.²¹ Elections are a pillar of democracy and are considered the most effective in solving the problem of transfer of power.²² Through the election process, the transfer of power is guaranteed to be safer and more effective because it can reduce the level of chaos. Leadership circulation will be more competitive and open.²³

Openness in the electoral process is not only regulated in the process of determining candidates but starts from the promotion of candidates for president and vice president by political parties. Such promotion is considered important because political parties are representatives of the people and accommodate the aspirations of various interests in society through non-party organisations or community organisations. These interests are the basis for the formation of diverse groups to achieve common goals through social integration. Democratic ethics should be

²⁰ Robert A Dahl, *Perihal Demokrasi* (Yayasan Obor 2001).[52–53].

²¹ Jimly Asshidiqie, *Peradilan Etik Dan Etika Konstitusi* (Sinar Grafika 2014).[271].

²² *ibid.*

²³ *ibid.*

seen as a set of principles characterised by the working of a democratic society and how society can live freely despite differences, weaknesses, and ignorance. The principles of democracy include²⁴: (1) individualism, which is at the core of human existence if citizens want it to, and will, differences occur; (2) freedom is the foundation of justice, while oppression and justice are the opposite form; and (3) equality of rights belongs to humans which cannot be traded or taken.²⁵ In line with this statement, Dunleavy and O'Leary stated that 'In modern democracies the presumption of legitimacy has been converted into a continuous process of legitimation through regular elections and in some cases plebiscites... the citizens of a democratic state are not a suppressed class, but they are a subjected class'.²⁶

The existence of good governance in the electoral system greatly influences the process of developing political party organisations as an inseparable part of the democratic system. The existence of good governance opens up opportunities for political parties to prepare prospective leaders who will sit in government. Yves Meny and Andrew Knapp observed that a democratic system without political parties or with a single party is impossible or at any rate hard to imagine.²⁷ Governance will be defined as good only if public resources and public matters are well managed. It is also a term of response toward society's needs.²⁸ Good governance consists of the following principles:

1. Participant: every citizen has their choice (right) in making decisions, both directly through the mediation of legitimation of institutions representing their interest;
2. Rule of law: the rule of the law, decision, government policy, organisation and institution related to society are conducted based on the law;
3. Transparency: transparency is defined as the deliberacy of the information flow, can be unknowledged, monitored, by many parties about its policy, the process of the governance organisation;
4. Responsiveness: governance institutions will have to be perceptive and responsive to the interests of their stakeholders;

²⁴ Sam S Souryal, *Ethics in Criminal Justice* (Cipta Manunggal 1999).[485].

²⁵ *ibid.*

²⁶ Patrick Dunleavy and Brendan O'Leary, *Theories of the State* (Macmillan 1990).

²⁷ Yves Meny and Andrew Knapp, *Governance and Politics in Western Europe* (OUP 1988).[86].

²⁸ UNDP, *Governance for Sustainable Development a Policy Document* (New York 1997).

5. Consensus Orientation: oriented to the deal which can become the mediator for the different interest as a way of looking for the best alternative and defending a broader interest'
6. Equality: the equivalence of all men and women, minority or majority, by not looking at their wealth status, has the similar opportunity to get the prosperity right;
7. Effectivity and Efficiency: all of the activity process, the activity of the governance institutions can carried out their tasks;
8. Accountability: the decision maker in a government, public servant and civil society is responsible toward the public and the institutional stakeholders;
9. Strategic Vision: the leader and the public will have the perspective of good governance and a broad human resources development in line with the development.

The limitation of political parties participating in the election is a factor hampering the democratic party in Indonesia. There is the problem of political parties participating in the election that do not have the same rights in carrying out candidates for president and vice president. There is also the problem of the election of executive institutions in the region that can run independent of political parties. This has become inconsistent in the holding of elections in Indonesia because regional elections are also important and the same as the presidential and vice presidential elections. The president is a state official who has the position of head of state and head of government.²⁹

The implementation of the presidential threshold has resulted in the loss of opportunities and citizens' rights through political parties that did not participate in previous elections. It is therefore necessary to pay attention, in accordance with the principles of democratic electoral justice, in determining the presidential threshold; it must not be detrimental to the community groups, especially minorities. Talking about the implementation of good governance in the public sector cannot be separated from the vision of Indonesia's future development. A good government can be said to be a government that respects the sovereignty of the people and has a main task that includes protecting the Indonesian nation and all spilled Indonesian blood, advancing public welfare, educating the nation, and carrying out the world

²⁹ Philipus M Hadjon, *Pengantar Hukum Administrasi Indonesia* (Gadjah Mada U Press 2015).[205].

order based on freedom, eternal peace and social justice. These roles should be the basis for local government in running the government so that it can manifest the principles of good governance.³⁰

Determination of the presidential threshold must pay attention to the diversity of society reflected in political aspirations,³¹ be done proportionally and focus on the political balance of the law simplifying the party and protecting political diversity. It must not be made based on consideration of the advantages and disadvantages obtained by political parties.³²

Our research observed political developments and the electoral system in Indonesia. The main ingredient in analysing the constitution and the applicable law while the electoral system is associated with a system of good governance to create elections that are fair, free and open to voters. Good governance can control the actions of arbitrary authorities and form laws that favour the authorities so that the elections will be far from just due to a bad system and authoritarian rule.³³

The general election is an important means to elect the president and vice president as heads of state and heads of government who will work in administering the country and implementing policies. Each country has a different electoral system due to the type of party system, social and political conditions of the community, population and culture. Through good governance, the general election is getting better. Good governance is the basis of comparing seats with the number of votes, having accountability to voters, winning the majority vote but giving minority groups can sit in public positions, making policies and issues based on people's goals, and not forming rules on behalf of the people by legalising their goals based on their power (abuse of power).

³⁰ Muhammad Ilham Arisaputra, 'Penerapan Prinsip-Prinsip Good Governance Dalam Penyelenggaraan Reforma Agraria Di Indonesia' (2013) 28 Yuridika.[200].

³¹ I Dewa Made Putra Wijaya, 'Mengukur Derajat Demokrasi Undang-Undang Nomor 42 Tahun Tentang Pemilihan Umum Presiden Dan Wakil Presiden' (2014) II Jurnal IUS.[654].

³² *ibid.*[565].

³³ Peter Mahmud Marzuki, *Penelitian Hukum* (Kencana Prenada Media Group 2017).[35].

The awareness of democracy is higher if people's participation is also high in forming a good government. The increasing involvement of the community in the holding of elections shows that democracy is also stronger in a country. Good governance is a system that can encourage people to participate and openly give rights in elections. The function of good governance in the electoral system is to distribute power and manage resources and various problems faced by the community because the concept of governance contains elements of democracy, fairness, transparency, rule of law, participation and partnerships with Indonesian people as written in the constitution and the law on election.

A second and more specific criticism pertains to the nature and the extent of party fragmentation at the local level, which is insufficiently recognised in the book. As mentioned above, Horowitz generally argues that fragmentation is not a bad thing because it solidifies multipolar fluidity and thus helps minimise polarisation and conflict. However, his rather succinct statement that 'the party fragmentation prevailing at the national level is often replicated, but in varying configurations, at the regional level' does not at all capture the reality of many local parliaments in Indonesia, which often feature higher numbers of parties (both absolute and effective) than the national parliament in Jakarta. Especially in eastern Indonesia, fragmentation is often so extreme that parties merely represent individuals or family clans rather than broader communities. In this context, fragmentation contributes fairly little, if anything at all, to conflict management between social groups. Instead, it simply renders parliamentary processes meaningless and paralyses regional development. The most recent changes to the election laws, which will lead to the elimination of most small parties from local parliaments, should therefore not simply be seen as a threat to multi-polarity and regional autonomy but also as a necessary adjustment to a flawed electoral rule.³⁴ Good governance can reduce the abuse of power and make the system good and under control.

³⁴ Donald L Horowitz, *Constitutional Change and Democracy in Indonesia* (CUP 2013).[151].

Conclusion

The existence of the presidential threshold as a system in the general election of president and vice president in Indonesia is contrary to the principles of fair elections associated with a good, orderly and fair system of good governance protecting citizens' voting rights, guaranteeing equal rights of citizens to be elected and determining the equality of the requirements of political parties as election participants. The existence of power in a country is inseparable from the democratic election process. Elections held by the state through political parties sourced from the people's representatives based on good governance are the goals of the constitution.

The existence of the presidential threshold system established as a condition for nominating candidates for president and vice president is also contrary to the spirit of UUD NRI 1945, where the constitution requires presidents to be directly elected by the people (article 6A paragraph 1). Presidential and vice-presidential candidates are to be proposed by a political party or a combination of political parties participating in the general election (article 6A paragraph 2), which means that all political parties that have passed the verification by the General Election Commission (KPU) have the right to nominate candidates for president and vice president. Proposals are conducted before the general election, that is, the election at that time, not the previous election (article 6A paragraph 2). The terms of the candidates for president and vice president candidates were delegated based on article 6A paragraph (2).

Bibliography

Akadun, 'Good Governance' (2007) 9 Sosiohumaniora.

Arisaputra MI, 'Penerapan Prinsip-Prinsip Good Governance Dalam Penyelenggaraan Reforma Agraria Di Indonesia' (2013) 28 Yuridika.

Asshidiqie J, *Peradilan Etik Dan Etika Konstitusi* (Sinar Grafika 2014).

Dahl RA, *Perihal Demokrasi* (Yayasan Obor 2001).

Diamond L and Gunther R, *Political Parties and Democracy* (The Johns Hopkins U Press 2001).

Dunleavy P and O'Leary B, *Theories of the State* (Macmillan 1990).

Garner BA, *Black's Dictionary* (9th edn, Thomson Reuters Business 2009).

Hadjon PM, *Pengantar Hukum Administrasi Indonesia* (Gadjah Mada U Press 2015).

Hadjon PM and others, *Hukum Administrasi Dan Good Governance* (Universitas Trisakti Press 2012).

Heywood A, *Politik* (Pustaka Pelajar 2014).

Horowitz DL, *Constitutional Change and Democracy in Indonesia* (CUP 2013).

Mahfud MD, *Demokrasi Dan Konstitusi Di Indonesia* (Rineka Cipta 2003).

Marzuki PM, *Penelitian Hukum* (Kencana Prenada Media Group 2017).

Meny Y and Knapp A, *Governance and Politics in Western Europe* (OUP 1988).

Meuwissen, *Meuwissen Tentang Pengembangan Hukum, Ilmu Hukum, Teori Hukum, Dan Filsafat Hukum* (Penerjemah: Arif Sidharta ed, Refika Aditama 2007).

Rasyid FA and Dulkiah M, 'Political Will Implementation of the Government in Hope Family Program Policy' (2020) 5 Journal of Governance.

Rawls J, *A Theory of Justice Teori Keadilan* (Pustaka Pelajar 2011).

Safa'at MA, *Pembubaran Partai Politik* (Rajawali Pers 2011).

Sen A, *The Idea of Justice* (Penguin Books 2010).

Souryal SS, *Ethics in Criminal Justice* (Cipta Manunggal 1999).

Thompson B, *Textbook on Constitutional and Administrative Law* (Blackstone Press 1997).

Thontowi J, *Islam Politik Dan Hukum: Esai-Esai Ilmiah Untuk Pembaharuan* (Madyan Press 2002).

UNDP, *Governance for Sustainable Development a Policy Document* (New York 1997).

Wheare KC, *Modern Constitution* (OUP 1996).

Wibawa KCS, 'Pengawasan Partisipatif Untuk Mewujudkan Good Governance Dalam Penyelenggaraan Pemilihan Umum Serentak Di Indonesia' (2019) 2 *Administrative Law & Governance Journal*.

Wijaya IDMP, 'Mengukur Derajat Demokrasi Undang-Undang Nomor 42 Tahun Tentang Pemilihan Umum Presiden Dan Wakil Presiden' (2014) II *Jurnal IUS*.

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