

General Election (Election) As an Implementation of The Constitution in A Country with A Democracy System

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Received: 11/03/2023

Revised: 09/05/2023

Accepted: 20/06/2023

Abstract

This research discusses the implementation of democracy in Indonesia through its governmental and constitutional systems. The main focus of this study is on the role of the constitution, particularly the 1945 Constitution of the Republic of Indonesia, in conducting General Elections (Pemilu) as one of its constitutional mandates. This research adopts a descriptive-analytical approach to analyze how democracy is applied in the governance practices of Indonesia. Through an examination of the constitution's content and its historical development, this study identifies that the founders of the Unitary State of the Republic of Indonesia agreed to draft a written constitution, namely the 1945 Constitution. This constitution aims to guide the administration of the state in accordance with the people's aspirations, to establish good governance, and to support the enforcement of democracy and human rights. The research also explores the role of elections within the constitution as a vital mechanism for political participation. Elections are regarded as instruments to provide legal certainty in their implementation, ensuring fairness for all parties involved. In this context, the research concludes that Indonesia, as a democratic country, is an ideological and factual statement that cannot be denied. This research provides a deeper understanding of how the implementation of the constitution and elections plays a significant role in safeguarding and advancing democracy in Indonesia. The findings of this study are expected to contribute to the ongoing debates and further developments regarding political governance and democracy in Indonesia.

Keywords

Constitution; General Election; Democracy

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1. INTRODUCTION

A good state order will bring about a good national life. The community needs to understand the meaning of living in a state (Strong et al., 2023). Every country has a constitution as its basic law. As Cass R Sunstein quotes in "Designing Democracy, What Constitution Do," the main purpose of forming a constitution is (to create the preconditions for a well-functioning democratic order). One of its functions is to prevent the accumulation of power in one person or institution/body. Accumulation can result in absolute power, leading to a tendency for arbitrary actions by those in power (Kasim et al., 2023).

The 1945 Constitution of the Republic of Indonesia (UUD 1945) is the applicable basic law. UUD 1945 has been amended several times and designed in such a way as to be in line with the spirit of



democracy of the Indonesian people. One of the highlights is the relationship between state institutions. The most prominent design change is the alteration of the power of the MPR as the highest state institution. Before the change, sovereignty was in the hands of the people and carried out entirely by the MPR. Now, sovereignty remains in the hands of the people but is implemented according to the UUD.

In almost all democratic countries, general elections (Pemilu) are considered a symbol and a benchmark of democracy. The results of elections held in an atmosphere of openness with freedom of expression and association are considered to reflect the participation and aspirations of the community with reasonable accuracy. With elections, it is hoped that representatives of the people who understand the aspirations of the people, especially in the process of formulating public policies with a system of power rotation, can be produced. Elections also provide an opportunity for a number of political parties to be ousted from parliament in every subsequent election, so that power in making laws does not automatically make political parties in parliament complacent, and no political party can maintain its power.

Universally, elections are instruments for realizing popular sovereignty that aim to form a legitimate government and a means of articulating the aspirations and interests of the people. General elections are one way to determine representatives of the people who will sit in the legislative body, and therefore, there are various electoral systems. Indonesia is a country based on popular sovereignty, as stated in Article 1 paragraph 2 of the 1945 Constitution, which states that sovereignty lies in the hands of the people and is carried out according to the Constitution. Popular sovereignty is reflected, among other things, in the holding of general elections at certain times. General elections are a fundamental right of citizens, and therefore, in implementing human rights, it is a necessity for the government to hold general elections. In our constitution, the 1945 Constitution, it regulates the existence of elections in Chapter VIIB, Article 22E, which is about general elections. In accordance with the principle that the people are sovereign, everything must be returned to the people to decide. It is a violation of human rights if the government does not hold elections or delays elections without the approval of the people's representatives.

In popular sovereignty with representation, or representative democracy, or indirect democracy, those who exercise sovereignty are the people's representatives. To ensure that these representatives can truly act on behalf of the people, the people themselves must choose their representatives.

2. METHODS

This research is a type of non-doctrinal research, or commonly known as field research, which examines the legal provisions in force and what happens in reality in society. Non-doctrinal research is legal research on the application or implementation of normative legal provisions in society and in action in each specific legal event that occurs in society (Baihaki, 2023). In other words, it is a research conducted on the actual or real conditions that occur in society with the aim of identifying and discovering facts and data needed, after which the necessary data is collected to identify the problem that ultimately leads to problem-solving.

The type of data used in this research is secondary data obtained through literature review by examining literature, articles, and materials related to this research. The author refers to primary legal materials, such as legislation, as secondary data. Primary legal material consists of legislation and jurisprudence. In addition to primary legal material, this research also uses secondary and tertiary legal material.

Drawing conclusions is taking legal decisions from the presented data. In this research, the analysis method used is a qualitative analysis method that will produce deductive data.

3. FINDINGS AND DISCUSSION

Development of the 1945 Constitution As The Written Constitution in Indonesia

a. Definition of the Constitution

The term "constitution" according to Wirjono Prodjodikoro comes from the French verb "constituer," which means "to form"; thus, the constitution means formation (Diarmila, 2023). In this case, what is formed is a state, so the constitution contains the beginning of all kinds of basic rules regarding the first pillars to establish the great structure called the state (Taufiqurrohman et al., 2023). In fact, the term "constitution" is not used to refer to a single definition. In practice, the term "constitution" is often used in several meanings.

Some experts distinguish between the constitution and the Basic Law, but there are also experts who equate them. Scholars who distinguish the meaning of the constitution from the Basic Law include Prodjodikoro, who states that there are two types of constitutions: written constitutions and unwritten constitutions (Leba, 2023). There is also Herman Heller who divides the definition of the constitution into three (Nur, 2023):

- 1) Die Politische verfassung als gesellschaftlich wirklichkeit. The constitution reflects political life in society as a fact, so it contains political and sociological meanings.
- 2) Die Verselbstandigte rechtsverfassung. The constitution is a set of rules that live in society, so it contains juridical meaning.
- 3) Die geshreiben verfassung. The constitution is a written text as the highest law that applies in a country.

b. Function and Nature of the Constitution

The constitution has a very important function for a country. The constitution or Basic Law functions as a guide and a limit, regulating how state power is exercised because the purpose of the constitution according to Prodjodikoro is to establish order regarding state institutions, their authority, how they work, and how to declare human rights that must be guaranteed (Renwarin & Sharon, 2023). The constitution requires two conditions to be met, namely the form and content. The form of the constitution is a written text that is the highest law that applies in a country, and the content of the constitution is a fundamental regulation, meaning that not all important issues must be included in the constitution, but only matters that are of fundamental importance.

The constitution has functions that have been detailed by Jimly Asshiddiqie, a professor of constitutional law, as follows (Madjid & Akbar, 2023):

- a. A function to determine and limit the power of state organs;
- b. A function to regulate the relationship of power between state organs;
- c. A function to regulate the relationship of power between state organs and citizens;
- d. A function to provide legitimacy to state power or activities of state power;
- e. A function to transfer or delegate authority from the original source of power (which in a democratic system is the people) to state organs;
- f. A symbolic function as a unifier (symbol of unity), a reference to national identity and greatness (identity of nation), as well as a center of ceremony;
- g. A function as a means of social control, either narrowly in the political sense or broadly covering social and economic fields;
- h. A function as a means of social engineering or social reform.

In general, countries after the 19th century have a written constitution, so it is reasonable if the constitution can be equated with the Basic Law. The basic norms that exist in society today have been made into written rules. In relation to the nature of the constitution, Kusnardi suggests that there are flexible and rigid constitutions. The flexibility or rigidity of a constitution can be seen from the way the constitution is changed. In every written constitution, there are articles about changes. Bryce suggests that the special nature of a flexible constitution is elastic and announced and changed in the same way as laws. While the nature of a rigid constitution is that it has a higher position and degree than other

laws and regulations and can only be changed in a special or extraordinary way or with heavy requirements. This is because a constitution, although designed for a long time, will always lag behind the development of society, so at some point when development occurs, the constitution needs to be changed.

1. Constitutionalism and Separation of Powers

Constitutionalism is an ideology that emphasizes limits on the government through the constitution. Constitutionalism recommends the use of the constitution as more than just a "power map"; its function is to organize political authority so that it cannot be used arbitrarily. Constitutionalism is also the value that underlies the principle of separation of powers pioneered by a Frenchman named Montesquieu in his book *The Spirit of the Laws* (Zain, 2023).

The principle of separation of powers was developed by two great thinkers from England and France, John Locke and Montesquieu. The concept of separation of powers proposed by these two great thinkers is known as the theory of *Trias Politica*. According to John Locke, power is divided into three powers, namely (Arafi'i et al., 2023):

- a. Legislative power, responsible for making regulations and laws;
- b. Executive power, responsible for implementing the laws including the power to judge;
- c. Federative power, whose duties include all actions to maintain national security in relation to other countries such as making alliances, etc. (now known as foreign relations).

Meanwhile, Montesquieu differentiated the separation of powers into three parts although there are differences with the concept conveyed by John Locke, namely (Andrew, 2023):

- a. Legislative power, responsible for making laws;
- b. Executive power, responsible for implementing the laws (but in Montesquieu's view, the focus is on actions in foreign policy);
- c. Judicial power, responsible for judging violations of the law.

From these two opinions, there are differences in thinking between John Locke and Montesquieu

2. Development of the 1945 Constitution as a Constitution in Indonesia

- a. The Constitution as the Foundation of the State

The founders of the Republic of Indonesia agreed to draft a constitution in the form of a written Basic Law with all its meanings and functions. A day after the proclamation of independence on August 17, 1945, the Indonesian Independence Preparation Committee approved the Indonesian Constitution as a "Revolusi Grondwet" in a document called the Constitution of the Republic of Indonesia on August 18, 1945 (Dasfordate, 2023). Thus, although the 1945 Constitution was very short and contained only 37 articles, the three essential components of a constitution according to the general theory of constitutions were fulfilled in the 1945 Constitution. In the history of Indonesia's constitutional development, there have been four types of laws that have been in force:

1. Period August 18, 1945 - December 27, 1949 (Enactment of the 1945 Constitution)
2. Period December 27, 1949 - August 17, 1950 (Enactment of the Constitution of the United States of Indonesia)
3. Period August 17, 1950 - July 5, 1959 (Enactment of the 1950 Provisional Constitution)
4. Period July 5, 1959 - present (Reenactment of the 1945 Constitution)

Development of The Electoral System in Indonesia As an Expression of A Democratic State

- a. General Election as a Means of Democracy

General elections are a means to achieve a democratic state. Therefore, they must be conducted democratically. The legal framework for elections must regulate mechanisms and effective legal solutions for election management issues. The goal is to provide legal certainty for the conduct of elections, so that justice for all parties can be achieved. The legal framework for election law enforcement regulates interconnected mechanisms, which are known as the election law enforcement system.

Aristotle's concept of classical democracy states that a democratic state has the following characteristics (Mrozek & Gawliczek, 2023):

- a. Elections for an office by all from all;
- b. All rule over everyone and everyone rules over all in turn;
- c. Positions are filled by the masses, either all or mainly those who do not require experience or skills;
- d. There is no term dependent on ownership or property qualifications, or only the lowest possible;
- e. The same person cannot hold the same position twice, or can but only for a short time or only a few positions unrelated to warfare;
- f. Short terms for all positions, or up to six positions are possible;
- g. Everyone will act as a judge in court, selected from all and judging all or most issues, namely those affecting the constitution, surveillance, and contracts between individuals;
- h. The assembly is the highest authority in all matters, or at least in the most important matters, while officials have no higher authority than anyone else, or if they do, it is very limited;
- i. Payment for services, in the assembly, in the court, and in the offices, is the same for all;
- j. Because birth, wealth, and education are signs that determine oligarchy, their opposites, namely low birth, poverty, and low education, are considered common in democracy;
- k. No official has an unlimited term of office, and if the position is vacated before its term ends, the people will choose its replacement from among several candidates.

The above criteria are characteristics of a democratic state, which must be upheld in the development of Indonesia's electoral system.

b. Constitution as the Guarantor of Citizens' Rights

Indonesia is a democratic country, an ideological and factual statement that can no longer be denied (Marcellino, 2023). The reality of Indonesia as a democratic country is evident through the implementation of general elections (pemilu) every five years, from the local level up to the national level. These elections can be in the form of legislative elections (pileg), gubernatorial elections (pilgub), presidential elections (pilpres), and so on. In addition, the existence of institutions such as the People's Representative Council (DPR), the People's Consultative Assembly (MPR), and the Presidency, as well as the accompanying ministries, further confirms that Indonesia is a democratic country. Although these institutions meet only the minimum procedural standards of a democratic country, general elections or pemilu provide a means for citizens to exercise their right to democracy, which is guaranteed by the constitution, including the right to equal opportunities under the law and government as stipulated in the 1945 Constitution, which states that "all citizens are equal before the law and government and must uphold the law and government without exception," and "everyone has the right to recognition, protection, and a fair legal certainty as well as equal treatment before the law," as well as the principle of equal opportunity.

Based on Article 28 and Article 111 of Law Number 42 of 2008 concerning the Election of the President and Vice President, this right is only granted to citizens who have been registered in the Permanent Voter List or Additional Voter List. Therefore, citizens who are eligible to vote but are not registered in the DPT are disadvantaged by the application of this provision in the law. If judicial review is not requested on this article, citizens will not be able to exercise their right to vote in the presidential election.

After the judicial review of Article 28 and Article 111 of Law Number 42 of 2008 concerning the Election of the President and Vice President, which was decided by Constitutional Court Decision Number 102/PUU-VII/2009, the constitutional rights of citizens were strengthened. As a result, citizens who are not registered in the Permanent Voter List (DPT) can still exercise their right to vote using their identity card (KTP) along with their family card (KK) or passport for Indonesian citizens residing outside Indonesia, with certain conditions.

4. CONCLUSION

This research concludes that there are two types of constitutions, namely written constitutions and unwritten constitutions, which play a crucial role in a country. The constitution serves as a guide and limitation in exercising state power, regulating state institutions, authorities, human rights, and more. In Indonesia, the founders of the Republic agreed to have a written constitution known as the Undang-Undang Dasar. Constitutional reform is considered a vital necessity to govern the country according to the people's aspirations, establish good governance, and support democracy and human rights. Elections (pemilu) are an essential instrument in a democratic country and must be conducted democratically. The legal framework for elections should govern mechanisms and problem resolutions effectively to ensure justice for all parties. Indonesia's status as a democratic country is evident through the implementation of elections every five years, from the local to the national level. The existence of institutions such as the DPR, MPR, and the presidential institution further solidifies Indonesia's democratic nature. Elections are a means of democracy guaranteed by the constitution, providing equal opportunities in law and governance as stipulated in the 1945 Constitution. Elections aim to realize popular sovereignty, establish legitimate governance, and serve as a platform for expressing the aspirations and interests of the people. While sovereignty remains in the hands of the people, its implementation follows constitutional provisions.

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