

# The Legal Policy Of The General Election As An Independent Commission (A Review Of Indonesian Election 2014)

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**Abstract:** The Legal Institution of the General Election in Indonesia has an important role in the process of elections to realize the sovereignty of the people. The legal institution is independent as mandated of the Indonesian constitution (The 1945 Constitution). In the Election organizers as a chapter of the 1945 Constitution, stating that the Election Commission shall be independent and impartial toward participating in the election and political party. However in practice this task is not easy and can be run smoothly it is difficult to maintain a balanced relationship between the participant election commissions. This research is a descriptive analytic one using juridical normative approach to study the legal principles, legal synchronization. The technique being used to gather data is librarian research supported by field research using interview and questionnaire technique. The data being gathered are analyzed qualitatively. The result of the research shows that the legal institution the general election in undertaking has not been independent as expected, because for institutional and administrative for has not been independence and not impartiality and not professionalism. The rules in the process of elections is it not the election system and achievement of justice.

**Index Terms:** Election, Election System, Legal Policy

## 1 INTRODUCTION

There is none government system ever i this world that is willing to accept the cap of "undemocratic states", as well as the existence of election systems. Some of countries which apply or claim to be a democratic state or adopted the sovereignty of the people, elections is considered as the main framework of democratic principles. It is meaning that the implementation and the results of election is a reflection of democratic values as a representation of the people's aspirations. The first general election in Indonesia was held in 1955, ten years after the Indonesian declaration of independence in 1945, and five years after the temporary constitution of 1950 established a liberal representative democracy with a parliamentary system as its form of government. When the Republic of Indonesia was proclaimed in 1945, one of the first programmes espoused by its founding parents was the holding of general elections. A general election for a constitutional assembly (konstituante) was believed to be the answer to political instability. The 1953 Election Law paved the way for the country's first legislative elections in September 1955. Although the 1955 election, followed by local elections in 1957, was generally seen as democratic, it did not solve the chronic political crisis. The struggle between different ideological camps, between parliament and cabinet, as well as between communal groups, created a highly unstable political situation. Finally, backed by the military, President Soekarno proclaimed martial law in 1957. The parliament was dissolved and the 1945 constitution replaced the 1950 temporary constitution. This step enabled Soekarno to replace the elected parliament with an appointed council, return to the presidential system and ban political parties resisting these changes. President Soekarno later consolidated his power by establishing an authoritarian regime known as 'Guided Democracy'. In the following years,

Soekarno leant more and more to the left, bringing him into direct confrontation with the military. After years of tension, By 1967, Major General Soeharto had wrested all power from President Soekarno. A new authoritarian regime, called the New Order, was established. Soeharto was 'elected' as acting president by the parliament. The regime continued to manipulate the parliament as a support system for the government. Any potential for opposition was managed with a stick and carrot strategy, while any overt opposition was controlled by repressive measures. As a result, throughout Soeharto's 32 years in power, elections served more as a means of political mobilization than participation. As political machinery for the regime, elections did not allow for any meaningful political competition between different parties, programmes or ideologies. The House of Representatives (DPR) did not develop into an independent branch of government, separated from the executive, but served only as a rubber stamp for Soeharto's increasingly sultanistic regime. Since returning to democracy in 1999, Indonesia has introduced direct elections for president, national and sub-national parliaments, and local government executives. Democracy is a political form of government in a state carried out either directly by the people (direct democracy) or by means of elected representatives of the people (representative democracy). Roles and responsibilities of political parties not only provide its members at a general election to be elected to the legislature. However, political parties keep control of the performance of members of political parties represent the people who sit (constituents), so that the performance of the members of the political party is not out of the corridor purposes of the political parties. The involvement of political parties in the legislative branches (legislative) should give space to the community to fill the representative institutions. Rigorous selection process is required to become a member of a political party. Primarily because to become the candidate of a particular party. The reason for this selection process is not strictly internal party. Therefore, the pattern of recruitment of members of political parties that do not clearly lead to legislative drafting legislation produced by the "eye glass horse". So finally, not a few products legislation overlap and problematic to each others. Practically, in the representation system, except the issue of recruitment of candidates from

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political party, the main problem also on the phenomenon of election which to far from effectiveness ways, so be persistent problem. Based on the description above, there are some facts to be discussed in this writing, namely, first, the recruitment process in political parties tend not to walk; second, easy to become a member of a political party in the absence of a rigorous selection; and third, the implementation of legislative elections tend not to realize that people's quality of representation as an aspirational parliament. The issue to be discussed in this paper is "How does the legal arrangement of electoral system could find its legitimacy in the making an aspirational parliament?"

## 2 THE OBJECTIVE OF RESEARCH

The objective of this research is to understand the essence of the people sovereignty, in order to construct a parliament concept which has legitimacy in the making an aspirational parliament.

## 3 METHOD OF RESEARCH

The type of research used in this paper is normative research. This research reviewing the parliament concept from the perspective of the constitutional law, with the aim of constructing an aspirational parliament which is ideal to be applied in Indonesia. Beside to conducting interviews with sources, the data being used include secondary data consisting of primary law materials in the form of laws and regulations, tertiary law materials in the form of reference books, opinion of experts, and the outcomes of previous research, as well as tertiary law materials in the form of language dictionaries. The analysis method applied in this paper starts with the abstraction of primary law materials, secondary law materials and tertiary law materials, leading to an understanding of the essence of the people sovereignty, in order to construct a parliament concept which has legitimacy in the making an aspirational parliament as well as sovereignty of the people theories.

## 4 RESULTS AND DISCUSSION

### 4.1 Legal Arrangement of General Elections for the House of Representatives

Members of the House of Representative shall be elected through a general election. So, safe to say that the general elections become an important part in creating a democratic constitutional state. In practice, it's necessary to organizers who work independently and the process can be accounted for as required by law. Elections are a means of political community to provide credentials to people who become representatives. The complexity that exists in the community calling for a general election aspirational become a necessity. On the other hand, the legal arrangement of electoral system must be accommodate the customes of general election. The existence of legal structuring and organizing elections are complete professionalism, then certainly the success of the elections. In association with the general election process, according to Hamid Muchlis, that almost all countries have institutions that can be referred to as "auxiliary state's bodies". According to him, these institutions generally serves to support the main state institutions. Auxiliary state's organs can be formed from the main state institutions function which theoretically run three functions, namely legislative, executive, and judicial. The formation of these support organizations, in

order of effectiveness exercise of the powers which it is responsible. In addition, there is also an independent agency, whose authority can be sourced from the direction of the country's constitution or governance requirements and generally established by law. General election shall be held by a General Election Commission (re: KPU) which is national, permanent, and independent in nature. General Election Commission also knowing as an *auxiliary state's bodies* or *Auxiliary state's organ*. In association with Robert A. Dahl's view in their "procedural democracy," book stated that as the size of an election that meets the principles of democracy: First, inclusiveness, meaning that every person who has grown to be included in the election; second, equal vote, meaning that every voice has the same rights and values; Third, effective participation, meaning that everyone has the freedom to express their choice; fourth, enlightened understanding, meaning that in order to accurately express their political choice, everyone has a strong understanding of and ability to decide his choice; and fifth, final control of the agenda, that is considered a democratic election when there is space to control or supervise the elections. The complexity of general election because it's ranging from planning, drafting regulations, until to teamwork relationship or coordination with the competent parties, party professionals, all of it there should be a standard practice law. Thus, the aspect of function of the members General Election Commission especially those in the making of regulations as a derivative of the laws then of course it is certain that is capable of performing the task of making laws and regulations are those who have the competence and expertise. The legal standards as the standard arrangement of democratic elections is needed. As stated by Guy S Goodwin-Gil, that: The free and fair elections can be achieved if the available legal instruments governing all the elections; and able to protect the organizers, participants, candidates, voters, observers, and citizens in general of fear, intimidation, violence, bribery, fraud, and other fraudulent practices that will affect the outcome of the election. Therefore, the elections free and fair elections require legislation along with officers responsible for enforcing the legislation elections. As a comparison, international standards of democratic elections can only be realized if carried out by an institution and independently. Institute for Democracy and Electoral Assistance (IDEA) formulated a number of international standards as a benchmarks or absence of democratic elections. This international standard is a minimum requirement for a legal framework or legislation to ensure democratic elections. The main source of international standards of democratic elections it is a declaration and international and regional conventions, such as the Universal Declaration of Human Rights (1948); the International Covenant concerning Civil and Political Rights (1960); European Convention for the Protection of Human Rights and Fundamental Freedoms (1950); and the Charter of Africa concerning Human and People's rights (1981). Based on these regulations, formulated 15 aspects of democratic elections, namely:

1. The preparation of the legal framework;
2. The selection of the electoral system;
3. Determination of the constituency;
4. The right to vote and to be elected;
5. Voter registration and voter lists;
6. Ballot access for political parties and candidates;
7. Democratic election campaign;

8. Access to media and freedom of expression;
9. Financing and expenditure;
10. Voting;
11. Counting and recapitulation;
12. The role of party representatives and candidates;
13. Election monitoring;
14. Compliance with the law;
15. Enforcement of election laws; and
16. Election management institution.

Particularly in view of the election management institution, an international standard of democratic elections confirms the need for legal guarantees that the agency can work independently. The independence of electoral administration is an important issue, because the organizers of the election machinery to make and implement decisions that may affect the election results. Based on the above, however, the organization of the general elections work within a time frame sufficient (efficient), have a qualified resource, and there are adequate funds. General election law should regulate the size, composition, and working lives member election management bodies. Also regulate the relationship between the central election management bodies and institutions of lower level election, and the relationship between all electoral institutions by the executive. The law should make provision for a mechanism to process, decide, and handle complaints in the general election in a timely manner (Table 1).

**Table 1.** International legal standards of the general elections regarding people's participation.

No.	Legal Source	Material of General Election
1	Declaration of Human Rights (1948)	Eligible to participate in the government of his country.
2	International Convention on the Political Rights Women (1952)	Women have the right to hold a public office
3	Convention on the Elimination of all Forms of Discrimination Against Women (1979)	- To vote in all elections and public referenda and to be eligible to become members of selected institutions in general; - Participate in policy-making at all levels of government.
4	International Covenant on Civil and Political Rights (1966)	Participate in the implementation of public affairs.
5	General Assembly of United Nations, No. A/RES/46/137 December, 17, 1991.	Everyone has the right to participate in the government of his country, directly nor indirectly. - Everyone has the right to participate in the government of his country, directly or through representatives;
6	American Declaration of the Rights and Duties of Man (1948)	- Everyone has the right to take part in elections.
7	American	The rights to hold a public

	Convention of Human Rights (1969)	office.
8	The Banjul Charter and human and Peoples Rights (1981)	Everyone has the right to participate freely in the country.
9	Declaration on Criteria for Free and Fair Elections (1994)	Everyone has the right to participate in the government of their country

**Source:** International IDEA and ODIHR Osce, 2001.

Some of international legal standard above, as an important part of the groundwork for the general elections in several countries. Obviously, by making receptions or adjustments to the national legislation. According to author, these international legal standard can be summarized as follows:

**First**, the independence of the electoral administration is an important issue, because of the general elections make and implements decisions that can affect the outcome of elections. Therefore, the institution must work within a time frame sufficient; have a qualified resources, and sufficient available funds.

**Second**, the electoral system of law should regulate the size, composition, and working life member of General Election Commission. Also regulate the relationship between the central election management bodies and institutions of lower level election, and the relationship between all electoral institutions by the executive. The law should make provision for a mechanism to process, decide, and handle complaints in a timely election.

#### 4.2 Parliament's Supervisory System

The term "supervision" has different meanings, but generally spoken we can distinguish between a broad and a narrow notion. According to Indonesian official dictionary, the term "supervision" is derived from the word "alert" (re: awas) which means "pay attention very well". Therefore, in a two-party supervision of the most important is the controlling party is given the authority both inside and outside an organization (supervised) to pay attention to those who supervised and provide guidance accordingly. While the party is the party supervised nothing to do with that oversees, the relationship between the supervisor and the supervised is both institutional relationships or relationships because of competence. Actually, controlling party and institutional relationships and have more competence than the supervised. Therefore, the controlling party will be able to know and understand more of the supervised. Instead, would not run an effective supervision, if the supervisor is not (competence) knowing or understanding of the parties and supervised, especially in terms of understanding the performance of the supervised. Supervisory is not only about coming from the outside or from within an organization, which oversees the provisions that will better understand and know to which monitored on the basis of a goal that has been set. Thus, those who are supervised will always carry out a job as determined on the basis of a provision. Provisions intended is in the form of laws or regulations will both understand each other main tasks, and functions (duties). Therefore, in a job can be planned, implemented, in achieving a goal because supervision is not

only done on an error in the implementation, but more than that since the plan will be to achieve a goal will always be supervised. The supervision will be very important to be done especially with regard to the interest of the people in this case is the public. That, the people in the mandates to someone or many people, the community no longer have to be a part that can control the attitude of the mandated. So, if the representatives of the community doesn't have the competence and moral, of course, it's certain that the representative isn't aspirational. Because in the process of carrying out the mandate in the community are not able to realize the rights of the public interest and will be able to carry out the provisions of the constitution. It's means, in realizing the mandate (aspiration) in accordance society it is necessary to control (law) according to the rules, supervision in accordance with the procedures of work (politics) and supervision in accordance with the will of the people's desire (social). As the concept of supervision by R. Terri that the term surveillance is to determine what is accomplished, evaluate it, an apply corrective measure, if needed to usure result in keeping with the plan. Terry's opinion above, more or less in line with what was presented by MJ Manulang who sees surveillance as a process establishes what work has been carried out, assess and correct it if necessary with the intention that the implementation of the work in accordance with the original plan. Then it can be interpreted that "determine what has been achieved" means any legal oversight that prohibition and orders to carry out a process in achieving the objectives as directed. "Evaluate and implement corrective action" means that in the process then there are provisions that must be followed. Meanwhile, "to make sure the results according to plan" means that the result is to be achieved in accordance with the wishes of the people. If both views above are taken as the basic concept in control, then there is a relationship between managerial control and supervision of law. operation of law as a tool or container in the conduct of the parties given control authority for the benefit of society. That the law as a means of social control, the law is not to be interpreted as a law, but the law is for a man, or a law for the benefit of mankind. Meanwhile, in the sense of managerial oversight is a value ranging from monitoring the implementation process until the results achieved in accordance with the planning (early). In relation to the controlling function, according to the author that the control is the process of overseeing all actions against a planning program that has been determined either purpose or usefulness. It can be concluded that the restriction of a supervision are as follows:

- a) The presence of the supervisor and supervised;
- b) A work in conformity with the purpose and usefulness (aspirational);
- c) In accordance with the standards specified value (legal aspect);
- d) Supervision based on a rule that is clear;
- e) Follow the development and evaluation of political ways.

Based on the cases study and observation of the reality above, at least there are three things that author should be **Noted: First**, as a concept, there is no one either a concept or theory which states that the derivative of the sovereignty of the people is a political party or political representative; **Second**, as a political approach, political purpose is for the benefit of the general public, and in that

case if the political parties (in particular) want to recall, while the people (in general) still want it as a folk mandataria holder, then usually subject to mandatorily giver (people) not a political party; **Third**, based on legal side, the weakness of the law enforcement is the absence of legal protection in providing protection to members the House of Representatives as the mandatory people (constituents), as a result of political parties as "master" of the members. So, it can affect the performance of the parliament because will follow the will of the political parties, rather than the public desires.

#### 4 CONCLUSION

The outcomes of the research indicate that the legal arrangements regarding of recruitment for the members of parliament in Indonesia election system has not aspirational ways. This is caused by the mechanism of recruitment itself which has not explicitly accommodating the people participation. As well as the supervisory system of the members of Parliament who do not explicitly. Therefore, good supervision political aspects (performance), the supervision of the social aspects (ethics), and monitoring the legal aspects have not been adequately regulated. Therefore, the legal arrangements of electoral system should regulate clearly related quality standards of competence, professional quality, and accountability side in the making an aspirational parliament

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