



POLITICAL LAW OF GENERAL ELECTIONS IN THE REFORMATION ERA IN INDONESIA

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Article	Abstract
<p>Keywords: General Election; Law; Politic; Reformation Era</p> <p>History of Article Received: December , 2022; Reviewed: December, 2022; Accepted:December , 2022; Published:August, 2022;</p> <p>DOI:</p>	<p>There are still several obstacles in general elections in Indonesia, such as the potential for power abuse and the chaotic making of permanent voters. Based on the normative juridical method, 2 (two) conclusions are drawn. First, the regulation of elections in Indonesia's reform era is still better compared to the era of guided democracy and the New Order era. Second, law enforcement of elections in the reform era in Indonesia must still be based on the principle of legality. This can cause several obstacles, such as the difficulty of ensnaring money politics, and must involve several elements of related law enforcement institutions. Legal reforms are recommended to be related to a single law enforcement agency at each stage, starting from the investigation, investigation, and prosecution of election crimes.</p>

1. INTRODUCTION

Although organized in such a way as to fulfill interests and achieve common goals¹ A state continues to carry out its obligation to protect and safeguard the interests of its people. Then as a principal organization of political power,² A state of law, including Indonesia, is not allowed to make its policies into laws intended to perpetuate its power and or for specific purposes that ignore the fundamental objectives of the state, including in the case of General Elections (Pemilu). So that politics in terms of elections also must be connected to a country's policies that are closely related to issues of power, decision-making, public policy, and allocation or distribution in organizing certain functions for the community.³

To avoid the abuse of power, the Indonesian Constitution emphasizes that the President and Vice President are directly elected by the people for a five-year term, after which they can be re-elected to the same position, only for one term.⁴ Then members of

¹ Jimly Asshiddiqie, 2006, Pengantar Ilmu Hukum Tata Negara Jilid I, Jakarta, Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi RI, hlm 13.

² Miriam Budiardjo, 2008, Dasar-dasar Ilmu Politik, Jakarta, PT. Gramedia Pustaka Utama, hlm 47.

³ *Ibid*, hlm 14.

⁴ Pasal 7 UUD 1945.

the House of Representatives (DPR),⁵ members of the Provincial, District and Municipal People's Representative Councils (DPRD),⁶ and the Regional Representative Council,⁷ elected through General Election. In addition to the potential for abuse of power, another problem that arises in elections is the chaotic making of permanent voters (DPT), so the law's role is needed in handling it.⁸ Given that election in Indonesia is a direct mandate of the 1945 Constitution and general elections greatly determine the survival of the Indonesian nation because one of its functions is as a means of democracy to directly produce the President and Vice President, members of the DPR, members of the DPRD, and members of the DPD in ensuring the achievement of the ideals and goals of the nation, then in this paper, two main problems are raised. First, how is the regulation of elections in the reform era in Indonesia? Second, how is the law enforcement of elections in the reform era in Indonesia?

2. METHODS

In answering the formulation of existing problems, this normative juridical study utilizes a descriptive method, intended to provide data that is as accurate as possible about humans, conditions, or other symptoms, and a prescriptive, intended to get suggestions to overcome the problems raised in this article.⁹

The data collected in this study utilizes secondary data, which is ready-made data collected by other parties in various ways.¹⁰ Secondary data consists of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials are legal materials that have binding force, such as laws and regulations. Secondary legal materials are legal materials that can help analyze and understand primary legal materials. Meanwhile, tertiary legal materials complement primary and secondary legal materials, such as legal dictionaries and internet sources.¹¹

3. ANALYSIS AND DISCUSSION

a. The Meaning and Scope of Political Law in Indonesia

Political law according to Kusumaatmadja is a legal and legislative policy, in the context of legal reform,¹² always determined by the nature of the country and the political system adopted and influenced by its environment, both from within and from outside the prevailing political system. This is in line with Friedmann's opinion that the role of

⁵ Pasal 19 UUD 1945.

⁶ Pasal 18 ayat (3) UUD 1945.

⁷ Pasal 22C UUD 1945.

⁸ Ryan S. Alam and Saiful Wathan, Mempertimbangkan Model Dialog Strategis dalam Membangun Sistem Daftar Pemilih Tetap (DPT) Yang Lebih Baik, *Journal of Governance and Administrative Issues*, Vol. 1, No. 1, 2022, hlm. 15.

⁹ Soerjono Soekanto, *Pengantar Penelitian Hukum*, (Jakarta : Penerbit Universitas Indonesia, 2010), hlm. 9-11.

¹⁰ Suteki dan Galang Taufani, *Metodologi Penelitian Hukum*, Depok: PT RajaGrafindo Persada, 2020, hlm. 215.

¹¹ *Ibid.*, hlm. 216.

¹² Mochtar Kusumaatmadja dalam Bintang Regen Saragih, *Politik Hukum*, (Bandung: CV. Utomo, 2006), hlm. 22.

law in social evolution is about reassessment, given the changing political or social and legislative conditions,¹³ and Rahardjo, who states that law should always make continuous adjustments to achieve its goals, the most crucial part of legal politics lies in the study of legislative techniques,¹⁴ whose basis of reasoning is public benefit for the true good of society.¹⁵ Then Hartono argues that the factors that will determine legal politics are not only solely determined by the will of lawmakers, practitioners, or theorists but also by legal developments in certain countries and legal developments.¹⁶ According to Satjipto Rahardjo, one of these adjustments can be made through the concept of a legal settlement not only in court (for those who think formally-legalistically) but also outside the court (for those who use the optics of legal sociology).¹⁷

The politics of law concerns which laws need to be formed (updated, changed, or replaced) and which laws need to be maintained to manifest the country's goals gradually. Miriam Budiardjo has confirmed this by stating that the political system functions to organize certain functions for society,¹⁸ It is manifested in law through legal politics, which is the ability to determine policies in choosing the best law for a particular society and how to formulate regulations so that the intentions contained by the legislator are clear in it.¹⁹

Despite the various factors that determine the politics of law, Mahfud MD²⁰ asserts that law is a political product, where a study of legal politics must cover at least three things that will give birth to legal products that have a responsive/populistic character in a country with a democratic political configuration and have an orthodox/conservative character in a country with an authoritarian political configuration. The three scopes of the study of legal politics include: (1) the study must be in the context of achieving state goals; (2) the study includes the political, economic, social, and cultural background or the birth of legal products; and (3) the study must also include law enforcement in reality. The inclusion of law enforcement in the study of legal politics shows the state's sovereignty over the law, which does not question whether it is fair or unfair because its relevance only lies in the juridical validity of the law, as emphasized by Soekanto and Austin. Soekanto emphasized that the main problem of law enforcement lies in the factors that may affect it, including the legal factors themselves, law enforcement factors, facilities or facilities that support law enforcement, community factors, and cultural factors.²¹ Meanwhile, Austin asserts that the legal system is authentic and valid because it gets its positive form from an authorized institution which must at least include the elements of a ruler, an order, an obligation to obey, and sanctions for those who disobey.²²

¹³ W. Friedmann, *Teori dan Filsafat Hukum: Telaah Kritis atas Teori-Teori Hukum*, Diterjemahkan oleh Mohamad Arifin, (Jakarta: CV. Rajawali, 1990), hlm. 30.

¹⁴ Satjipto Rahardjo, *Ilmu Hukum*, (Bandung: PT. Citra Aditya Bakti, 2006), hlm 358,359.

¹⁵ Jeremy Bentham, *Teori Perundang-undangan: Prinsip-prinsip Legislasi, Hukum Perdata dan Hukum Pidana*, terjemahan Nurhadi, (Bandung: Penerbit Nusamedia & Penerbit Nuansa, 2006), hlm. 25.

¹⁶ Sunaryati Hartono, *Politik Hukum Menuju Satu Sistem Hukum Nasional*, (Bandung, Penerbit alumni, 1991), hlm.1.

¹⁷ Satjipto Rahardjo, *Penegakan Hukum Progresif*, (Jakarta: Penerbit Buku Kompas, 2010), hlm. 3.

¹⁸ *Ibid.*, hlm. 6.

¹⁹ Astim Riyanto, 2010, *Filsafat Hukum*, Bandung, Penerbit YAPEMDO, hlm 77.

²⁰ Moh. Mahfud MD, 2009, *Politik Hukum di Indonesia*, Jakarta, PT. Rajagrafindo Persada, hlm. 3,4, 22.

²¹ Soerjono Soekanto, 2010, *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*, Jakarta, PT. RajaGrafindo Persada, hlm 8.

²² Bernard L. Tanya, Yoan N. Simanjuntak, dan Markus Y. Hage, 2010, *Teori Hukum: Strategi Tertib Manusia Lintas Ruang dan Generasi*, Yogyakarta, Genta Publishing, hlm 119,120.

b. Election Regulation in the Era of Reform in Indonesia

Elections are one of the legal products in Indonesia where each paragraph in Article 22E of the 1945 Constitution is emphasized that:

1. General elections are held directly, publicly, freely, secretly, and fairly every five years.
2. General elections are held to elect members of the DPR, DPRD, President and Vice President, and members of the DPD.
3. Participants in the general election to elect members of the DPR and DPRD are political parties.
4. The general election to elect members of the DPD is an individual.
5. A national, permanent, and independent election commission organizes general elections.
6. Further provisions on general elections are regulated by law.

Then, the follow-up to Article 22E paragraph (6) of the 1945 Constitution is implemented in several laws that are still in effect today, namely Law No. 7 of 2017 concerning General Elections, which is a merger and simplification of several previously applicable laws consisting of Law No. 42 of 2008 concerning General Elections of the President and Vice President, Law No. 15 of 2011 concerning the Implementation of General Elections, and Law No. 8 of 2012 concerning General Elections of Members of the House of Representatives, Regional Representatives Council, and Regional Representatives Council.

Elections are a means of popular sovereignty to elect the President and Vice President, members of the DPR, members of the DPRD, and members of the DPD, which are carried out directly, publicly, freely, confidentially, honestly, and fairly based on Pancasila and the 1945 Constitution.²³ The new definition of the 2017 Election Law shows that elections are indeed a manifestation of popular sovereignty. This differs significantly from previous political configurations, such as during guided democracy (1959-1966), which never issued election laws and regulations,²⁴ In the New Order period (1966-1998), several election laws were produced, such as Law No. 7 of 1953 concerning the Election of Members of the Constituent Assembly and Members of the DPR. However, in the law there was no definition of elections, there was also Law No. 15 of 1969 concerning the General Election of Members of the Consultative Body/People's Representatives in which there was no definition of elections and only stated that elections were held directly, generally, freely and secretly for members of the DPR, members of DPRD level I, members of DPRD level II, the People's Consultative Assembly (MPR)²⁵ where the electoral system is based on a balanced representation system, which means that the number of seats that can be obtained by each political organization is all the votes obtained divided by the number of seats available.²⁶ Then, after the fall of the New Order regime, which the Reformation Era marked, there was a drastic change in the Indonesian constitution; since Indonesia's Independence in 1945, the first amendment to the 1945 Constitution was passed in 1999. Subsequently, the second amendment to the

²³ Pasal 1 Angka (1) UU No. 7 Tahun 2017 tentang Pemilihan Umum.

²⁴ Moh. Mahfud MD, 2010, *Politik Hukum di Indonesia*, Jakarta, Rajawali Pers, hlm. 159.

²⁵ Pasal 1 UU No. 15 Tahun 1969 tentang Pemilihan Umum Anggota-Anggota Badan Permusyawaratan/Perwakilan Rakyat.

²⁶ Moh. Mahfud MD, *Op.cit.*, hlm. 246-247.

1945 Constitution was passed in 2000, the third amendment to the 1945 Constitution was passed in 2001, and finally, the fourth amendment to the 1945 Constitution was passed in 2002.

The fourth amendment to the 1945 Constitution, which included changes to the constitution on elections, increasingly brought democracy into place, namely sovereignty entirely in the hands of the people, from the people, for the people, and by the people. One of the facts is the dismantling of several political laws produced by the New Order, one of which is the Law on Elections which removes the portion of DPR and MPR members appointed by the President. The organization of elections is also released from the structural relationship with the government, from the General Election Institute (LPU), chaired by the Minister of Home Affairs, to the General Election Commission (KPU), which is independent, as confirmed in Article 22E paragraph (5) of the 1945 Constitution.²⁷ In addition to the primary law on elections, there are other laws related to elections, namely Law No. 1 of 2018 concerning the Second Amendment to Government Regulation No. 5 of 2009 concerning Financial Assistance to Political Parties.

The existence of political configurations that give birth to the character of legal products in each era in Indonesia shows that the law continually makes continuous adjustments to achieve its goals by laying its foundation on the most crucial part of legal politics, which lies in the study of legislative techniques²⁸ whose reasoning is based on the public benefit for the genuine good of the society in that country.²⁹ This is also following Astim Riyanto, who concluded that legal politics is the ability to determine policies in choosing the best law for a particular society and how to formulate regulations so that the intentions contained by the legislator are clear in it.³⁰

c. Election Law Enforcement in the Era of Reform in Indonesia

The common goal that the state wants to achieve with its society is further clarified by the existence of a law so that this relationship explains the close relationship between the occurrence of legal changes and changes in society in the history of its development. Although various factors determine changes in law and society in a country, Mahfud MD³¹ emphasizes that law is a political product. The study of legal politics must cover at least three things that will give birth to legal products that are responsive/populistic in a country with a democratic political configuration and orthodox/conservative in a country with an authoritarian political configuration. The three scopes of the study of legal politics are: (1) the study must be in the context of achieving state goals; (2) the study includes the political, economic, social, and cultural background or the birth of legal products; and (3) the study must also include law enforcement in reality.

The inclusion of law enforcement in the study of legal politics shows the state's sovereignty over the law, which does not question whether it is fair or unfair because its relevance is only in the juridical validity of the law. Soekanto and Austin also emphasize this. Soekanto concluded that law enforcement's main problem is the factors that may affect it, including the legal factors themselves, law enforcement factors, facilities or

²⁷ *Ibid.*, hlm. 374.

²⁸ Satjipto Rahardjo, 2006, *Ilmu Hukum*, Bandung, PT. Citra Aditya Bakti, hlm 358,359.

²⁹ Jeremy Bentham, 2006, *Teori Perundang-undangan: Prinsip-prinsip Legislasi, Hukum Perdata dan Hukum Pidana*, terjemahan Nurhadi, Bandung, Penerbit Nusamedia & Penerbit Nuansa, hlm. 25.

³⁰ Astim Riyanto, 2010, *Filsafat Hukum*, Bandung, Penerbit YAPEMDO, hlm 77.

³¹ Moh. Mahfud MD, 2009, *Politik Hukum di Indonesia*, Jakarta, PT. Rajagrafindo Persada, hlm. 3,4, 22.

facilities that support law enforcement, community factors, and cultural factors.³² Meanwhile, Austin asserts that the legal system is accurate and valid because it gets its positive form from an authorized institution which must at least include the elements of a ruler, an order, an obligation to obey, and sanctions for those who disobey.³³

The inclusion of law enforcement as part of the study of legal politics in Indonesia which currently tends to be Kelsenian, which emphasizes the sovereignty of the state over the law, which causes law enforcement to act without questioning whether it is fair or unfair because its relevance only exists in the legality of the law juridically.³⁴ This causes consequences in legislation where if you want to sanction an offense, it must first be regulated in the law (Principle of Legality). This principle of legality is good because it has an instrumental function, regulating that there is no criminal act that is not prosecuted, and a protective function, where there is no punishment except based on the law.³⁵ This also means that no act is prohibited and punishable if it has not been regulated in a law, no analogies, and no retroactive application.³⁶ The vital principle of legality in law enforcement can lead to several obstacles, such as the difficulty of ensnaring money politics. This is different from Law Number 10/2016 on Regional Head Elections (Pilkada), which is more progressive and can punish everyone who is proven to receive or give money for political purposes, while the Election Law only ensnares those who commit money politics and are registered in the success team.³⁷

Matters regarding the consequences of an election violation are also inherent in Law No. 7/2017, which explicitly regulates the existence of election violations, disputes over election results, and election crimes. Election violations include violations of the code of ethics as stipulated in Article 456-Article 458, where DKPP carries out the settlement; administrative violations as stipulated in Articles 460-461, where the Supreme Court decides legal remedies for administrative violations of elections with its final and binding decisions (Article 463 paragraph 6 - paragraph 8), and violations of other laws and regulations that are not election violations. The Election Supervisory Body (Bawaslu), the Province/ Regency / City Bawaslu (Article 468 paragraph 1), is responsible for resolving election process disputes. However, it can be done through the State Administrative Court (Article 470 paragraph 1), whose decisions are final and binding, and no other legal remedies can be taken (Article 471 paragraph 7). Then in the case of disputes over election results, they can only be submitted to the Constitutional Court (Article 474, paragraph 1).

Specifically regarding the handling of election crimes is fully regulated in the Fifth Book of Law No. 7/2017, where Article 476 paragraph 1 emphasizes that reports of alleged election crimes are forwarded by Bawaslu, Provincial / Regency / City Bawaslu and or the Election Supervisory Committee (Panwaslu) to the Indonesian National Police

³² Soerjono Soekanto, 2010, *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*, Jakarta, PT. RajaGrafindo Persada, hlm 8.

³³ Bernard L. Tanya, Yoan N. Simanjuntak, dan Markus Y. Hage, 2010, *Teori Hukum: Strategi Tertib Manusia Lintas Ruang dan Generasi*, Yogyakarta, Genta Publishing, hlm 119,120.

³⁴ Henry Dianto Pardamean Sinaga dan Fatma Ayu Jati Putri, "Sintesis A Priori dan Aposteriori dalam Mereorientasi Penegakan Hukum di Indonesia: Suatu Penyelajahan Hukum Transendental", in Absori *et.al.* (Eds.), *Hukum Transendental: Pengembangan dan Penegakan Hukum di Indonesia*, Yogyakarta: Genta Publishing, 2018, 487.

³⁵ D. Schaffmeister, *et al*, 2007, *Hukum Pidana*, Bandung, PT. Citra Aditya Bakti, hlm. 7.

³⁶ Moeljatno, 2008, *Asas-Asas Hukum Pidana*, Jakarta, Rineka Cipta, hlm. 7.

³⁷ KumparanNews, available at <https://kumparan.com/kumparannews/bawaslu-soroti-kelemahan-uu-pemilu-dalam-atasi-politik-uang-1538988416674459064/3>, accessed on Dcember 20, 2022.

(Polri). Furthermore, the offense of election crime is regulated in detail along with the elements of the act, sanctions and or fines starting from Article 488 to Article 554 where the types of offense have been described, such as in the case of deliberately providing information that is not in the filling of the voters list, for PPS or PPLN who deliberately do not announce and or correct the temporary voters list, any village head and or the like who makes decisions / actions that are favorable or detrimental to one party, any person who disrupts, obstructs, or disrupts the course of the election campaign, any person who deliberately conducts an election campaign outside the predetermined schedule, implementers and or campaign participants who deliberately or negligently cause disruption to the implementation of the election campaign, any person and or election participants who deliberately provide false information in the election campaign fund report, any employer/subordinate who does not give his/her workers/employees to vote on the voting day, any person who intentionally promises or gives money or other materials to voters, any person who intentionally votes more than once, any member of the KPU, Provincial/Regency/City KPU, PPK, PPS, and/or PPLN who does not follow up on the findings of Bawaslu, Provincial/Regency/City Bawaslu, any ballot printing company that does not maintain the confidentiality, security and integrity of ballot papers, any presidential and vice presidential candidate who resigns after his/her stipulation until the implementation of the first round of voting, the leader of a political party or a joint leader of a political party who deliberately withdraws his/her candidate and or candidate pair that has been determined by the KPU until the implementation of the first round of voting, The leader of a political party or a joint leader of a political party that deliberately withdraws its candidate and or candidate pair that the KPU has determined until the implementation of the first round of voting. The number of elements involved in the law enforcement of election crimes has made the handling ineffective, and many election crimes have failed to be processed due to the disagreement of the elements contained in the Law Enforcement Center, which consists of Bawaslu elements, Panwaslu elements, Police elements, and Prosecutor's Office elements.³⁸

4. CONCLUSION

Based on the description in the introduction and discussion above, there are 2 (two) main conclusions. First, the regulation of elections in the reform era in Indonesia was much better compared to the period of guided democracy (1959-1966), which never issued election laws and regulations,³⁹ Second, election law enforcement in the reform era in Indonesia has been regulated in Law No. 7/2017, which regulates election violations, election disputes, disputes over election results, and election crimes. Second, election law enforcement in the reform era in Indonesia has been regulated in Law No. 7/2017, which regulates election violations, election disputes, disputes over election results, and election crimes. However, law formation and election law enforcement must keep up with the development of a society that always wants improvements and changes in the law that are always in the process of becoming, primarily due to increasingly rapid globalization, especially since there are still obstacles in terms of handling money politics and inefficient handling of election crimes because it involves several elements at once.

³⁸ Sudi Prayinto, *Problematika Penegakan Hukum Tindak Pidana Pemilu 2019*, Call for Paper Evaluasi Pemilu Serentak 2019, www.journal.kpu.go.id, hlm. 1.

³⁹ Moh. Mahfud MD, 2010, *Politik Hukum di Indonesia*, Jakarta, Rajawali Pers, hlm. 159.

The political role of election law must be distinct from the policies of the Republic of Indonesia, especially those related to various societal fields such as power, decision-making, public policy, and allocation or distribution in organizing certain functions for society. Good legal politics will lead to the creation of decisions that will be able to bind the Indonesian people as long as the laws to be made or to be reformulated or to be reconstructed are first extracted from the soul of the Indonesian people themselves based on the flow of law that focuses on society.

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