

Holiday Overview In Indonesia General Election (Is That Legal?)

by Wilma Laura Sahetapy

Submission date: 12-Aug-2019 08:34AM (UTC+0700)

Submission ID: 1159421023

File name: Publikasi1_10001_5270.pdf (283.09K)

Word count: 2575

Character count: 13913

Holiday Overview In Indonesia General Election (Is That Legal?)

Tomy Michael

Faculty of Law University August 17, 1945 Surabaya

Email: tomy@untag-sby.ac.id

Hufron

Faculty of Law University August 17, 1945 Surabaya

Email: hufron@untag-sby.ac.id

Wilma Laura Sahetapy

Faculty of Economy And Business Petra Christian University

Email: wilma@petra.ac.id

Abstract

In his consideration it was stated that the determination of national holidays in the context of the election of the Governor and Deputy Governor, Regent and Deputy Regent, and Mayor and Deputy Mayor simultaneously in several provinces and districts/cities was carried out to provide the widest opportunity for citizens to exercise their right to vote. This raises legal problems because it is related to Law No. 39-1999. Thus, when national holidays are announced, food includes violations of human rights freedom. The government should not set national holidays as a practical political arena.

Keywords: human rights, politics, law

A. Introduction

What do you think about general election? Many people think, general election about democracy and state of power in many state. When a country tries to implement democracy then the main law is the equality of society. But are elections always related to democracy? general elections can also be linked to nomocracy because in general elections things are guarded by the law. Personally, legal problems arise from unvalidated legal objectives, namely legal injustice, legal uncertainty and / or legal ineffectiveness. In this perspective, the highest essence is legal

injustice. This legal injustice must be overcome by turning it into legal justice, one of which is by issuing certain laws and regulations.

In the Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights (Law No. 39-1999) it is stated that humans are blessed by God Almighty with reason and conscience that gives him the ability to distinguish between good and bad. will guide and direct attitudes and behaviors in living their lives. With reason and conscience, humans have the freedom to decide their own behavior or actions. In addition, to compensate for this freedom, humans have the ability to be responsible for all the actions they take. Basic freedom and basic rights are what are called human rights that are inherent in humans naturally as gifts from God, the One. These rights cannot be denied.

Denial of these rights means denying human dignity. Therefore, any state, government or organization has an obligation to recognize and protect human rights for every human being without exception. This means that human rights must always be the starting point, and goals in the implementation of community, national and state life. This explanation invites all humans to understand their freedom with a sense of responsibility. When freedom is done not paying attention to other humans, freedom is not justified. From this perspective, elections are born of the great conceptions and ideas of Democracy, which means they refer to John Locke and Rousseau, who guarantee freedom, justice and equality for individuals in all fields. In democracy, these are participatory values and sovereignty that are upheld and must be carried out by citizens and state instruments both at the legislative, judicial and executive levels.

Relations between citizens of the state and the state although still far away but can be facilitated by various institutions and elements of society because of the freedom for all parties to actively participate in national development both political development and other fields. Communities are given space to play active roles and become part of the democratic process. Although substantially, their participation still tends to be procedural and momentum. One of the 'factories' elements of democracy is generated from the electoral process. On the other hand, Indonesian political parties are still moving slowly and many of them are still pragmatic in carrying out their responsibilities as political institutions that must create healthy, good and quality cadres. Healthy in movement, clever in determining direction and able to create the best cadre who will lead. As a result, public policy becomes a certain group policy and the welfare of some people. But in the context of an ideal democratic system, political parties are the largest

political aggregation institutions. Political parties become a forum for gathering public interests, articulating them in policy and building structures for individuals who participate in politics. In addition, political parties also play a role in controlling the government from outside the system by becoming opposition.

However, according to Edmund Burke the people who were chosen to be part of the representative institutions did not only represent their constituents. they have a responsibility to represent the public interest and not a handful of partai. Therefore, a cadre party or candidate who will occupy the seat of power in the executive or legislative level only politicians for his party when he will become servants of the state when he has occupied the seat of power (Farahdiba Rahma Bachtiar, 2014).

The people as the owner of the highest sovereignty have the right as citizens to channel their political rights through elections, roles and participation of the people is evidence that democratic values are still going well. If there are no elections, the people are not sovereign, because with elections, the people can determine who their representatives and leaders are in the seat of government so that they can become state operators in reaching people's expectations. In its implementation, elections are very dependent on the adoption of a government system adopted by a country, because it will affect the model of the implementation of election activities. The government system referred to here is related to the meaning of *regeringsdaad*, namely the implementation of government by the executive in relation to legislative power (Asshiddiqie, 2007). In the Indonesian context, presidential systems and multiparty systems are applied together. The implication of the combination of choosing this system simultaneously is the potential to weaken the presidential system itself, which leads to an unstable government.

Since the 1998 reform era the government in this case the elected president of Indonesia has sometimes been caught in a conflict of interest when forming a cabinet and deciding political policies, demands from supporting parties and political interests in parliament sometimes made the government run less effective because of being held hostage by political, opportunist and pragmatic interests. I'am developing elections in Indonesia, indirectly efforts to strengthen presidential systems have been running since the reform era in 1998. Political culture that changes with global development and demands make Indonesia continue to improve itself in improving the political and constitutional system. The People's Consultative Assembly also agreed that the amendments to the 1945 Constitution would affect the procedure for electing the President and

Vice President. Asshiddiqie stated that in implementing a presidential system, the President is responsible to the people directly and not through the People's Consultative Assembly.

In practice there is a Presidential Decree of the Republic of Indonesia Number 14 of 2018 concerning Election Day for Election of Governors and Deputy Governors, Regents and Deputy Regents, and Mayors and Deputy Mayors of 2018 as National Holidays (Presidential Decree No. 14-2018), Indonesian Presidential Decree Number 15 of 2018 concerning Election of the Governor and Deputy Governor, Regent and Deputy Regent, and Mayor and Deputy Mayor of 2018 as National Holidays (Presidential Decree No. 15-2018) and Presidential Decree of the Republic of Indonesia Number 48 of 2018 concerning Election Day for Election Governor and Deputy Governor, Regent and Deputy Regent, and Mayor and Deputy Mayor in 2018 as National Holidays (Presidential Decree No. 48-2018). These three presidential decisions came together and were signed on June 25, 2018 but the right presidential decree was Presidential Decree No. 15-2018.

In his consideration it was stated that the determination of national holidays in the context of the election of the Governor and Deputy Governor, Regent and Deputy Regent, and Mayor and Deputy Mayor simultaneously in several provinces and districts/cities was carried out to provide the widest opportunity for citizens to exercise their right to vote. This raises legal problems because it is related to Law No. 39-1999.

B. Methodology

Using normative legal research, in order to find a solution to the problem of legal issues and the application of indirect evidence as a basis for judges to impose criminal cases. The results of this study provide prescriptions about what should be applied to the formulation of the problem posed. Approach method in the form of legislation approach, conceptual approach, and case approach (Soerjono Soekanto, 1987).

C. Result And Discussion

The form of state law in a legal perspective is the existence of a state and a government based on law. When based on law, everything must be normative even if there are unwritten rules but have binding enforcement. Problems that arise in Presidential Decree No. 15-2018 namely inviting every citizen to exercise their right to vote. law The expression "voting rights" in Presidential Decree No. 15-2018 produces dictum "Establishes Wednesday 27 June 2018 as a national holiday in the context of the election of the Governor and Deputy Governor, Regent and

Deputy Regents, and Mayors and Deputy Mayors When the implementation desired by the government is carried out simultaneously, the issuance of laws and regulations relating to national holidays including conflicts with human rights.

Referring to Article 23 of Law No. 39-1999 that: (1) Everyone is free to choose and have political beliefs. (2) Everyone is free to own, issue and disseminate opinions in accordance with his conscience, verbally and or in writing through print and electronic media with regard to religious values, politeness, order, public interest, and state integrity. Freedom for everyone to choose and have political beliefs will make the country ready to accept those who do not vote.

Political trust in a legal perspective is an absolute thing that must be obeyed. In No. 7-2017) stated that Article 198 (1) Indonesia, which has 17 (seventeen) years or more, on polling day, has been married, or has been married, has the right to vote. (2) Indonesian Citizens as referred to in paragraph (1) are registered 1 (one) time by the Election Organizer in the Voters list. (3) Indonesian citizens whose political rights have been revoked by the court do not have the right to vote.

Article 199, To be able to exercise their right to vote, Indonesian citizens must be registered as Voters except as specified in this Law. Article 200 In the general election, members of the Indonesian Armed Forces and members of the Police of the Republic of Indonesia do not exercise their right to vote.

The existence of this article emphasizes the Indonesian National Army and the Indonesian National Police not to vote. Determination of national holidays contradicts the principle of human freedom where the phrase "voting rights" indicates that the state wants to remove normatively to be required to vote. When everyone has political beliefs that do not fit their heart, everyone has the right not to vote. Not choosing here cannot be interpreted as a form of non-participatory society for the survival of the nation and state.

Anthony Lester argues that:

"We must try to protect the basic rights that we all enjoy because of our common humanity. They include the right to life, the right not to be tortured or subject to inhuman or degrading treatment or punishment, the right not to be enslaved, the right to a fair trial, freedom of thought, conscience and religion, freedom of expression, to respect personal and family life, the right to marry, the right to private ownership, to education, to take part in free and secret elections, and to enjoy these rights without discrimination. They are

the cornerstone of democracy based on the rules of law and humanity and our shared dignity. They call for special protection against undue interference and abuse by elected politicians or public officials. Human rights are not gifts from the government. They are our birthright. Some believe human rights are part of natural law and religious teachings; for others they are the fruit of the eighteenth-century Enlightenment; for the pragmatists they are basic individual freedoms. Philosophers and theologians reflect on the origins and sources of fundamental rights. I am not a philosopher or theologian. What is important to me is whether they are observed in practice and whether there is an effective recovery for victims when they are violated. Some right to be enforced by the judge. The other must be enforced by the government. It is the responsibility of the political branch to secure and protect economists. Social and cultural rights. Judges do not have the competence or expertise to decide how to make health services, or overcome poverty, or make trains run on time. Not the function of the judge to resolve political issues or to consult with the public about the matter. Judges do not have the mandate to make laws and must be careful to avoid political turf when deciding how to balance individual rights and public interests. Rarely, when weapons of democratically elected countries fail to fully fulfill their obligations to protect economic, social and cultural rights, courts can intervene, for example, to prevent hunger or stop discrimination in providing health services. If the courts try to impose economic theory or political ideology, they will undermine their legitimacy and public trust in the administration of justice. "(Anthony Lester, 2016).

In this understanding, freedom is a manifestation of democracy. Cass R. Sunstein said that:

"Many laws are made possible only because of this phenomenon. Consider the fact that the formation of a large regulatory body is often only possible because agreements are not specifically specified. In dealing with air and water pollution, occupational safety and health, or broadcasting regulations, legislators meet on incomplete general requirements - the regulation "makes sense", or provides a "safety margin". If the legislature seeks to determine these requirements - to decide what constitutes a reasonable regulation - there will be a high degree of dispute and conflict, and perhaps the relevant law cannot be applied at all. "(Larry May and Jeff Brown, 2010).

When freedom is a manifestation of democracy, democracy is actually a normatively limited freedom. The existence of democracy is freedom based on law. A person's freedom to participate in general elections is an absolute right. Restrictions on rights even though national holidays can also make a person not to take part in elections will weaken the nature of the election itself.

D. Conclusion

Thus, when national holidays are announced, food includes violations of human rights freedom. The government should not set national holidays as a practical political arena.

Presidential Decree of the Republic of Indonesia Number 10 of 2019 concerning General Voting Days in 2019 as National Holidays (Presidential Decree No. 10-2019), embodied that the determination of national holidays in order 2019 general elections are held in order to provide the widest opportunity to Indonesia citizens to exercise rights choose it. This shows that elections contains choices and do not vote, both of which are citizens rights without government interventions.

References

- Anthony Lester, *Five Ideas To Fight For*, 2016, United Kingdom, Oneworld Publications.
- Farahdiba Rahma Bachtiar, Indonesian Election: The Mecca of State Democracy From Various Representations, *Profit Political Journal* Volume 3 Number 1 of 2014.
- Jimly, Asshiddiqie, *Principles of Post-Reformation Indonesian Constitutional Law*, 2017, Jakarta: Popular Buana Sciences.
- Larry May and Jeff Brown, *Philosophy of Law*, 2010, United Kingdom, Blackwell Publishing Ltd.
- Soerjono Soekanto, *Tata Cara Penyusunan Karya Tulis Ilmiah Bidang Hukum*, Ghalia Indonesia, Jakarta, 1987.

Holiday Overview In Indonesia General Election (Is That Legal?)

ORIGINALITY REPORT

13%

SIMILARITY INDEX

10%

INTERNET SOURCES

4%

PUBLICATIONS

10%

STUDENT PAPERS

MATCH ALL SOURCES (ONLY SELECTED SOURCE PRINTED)

7%

★ Submitted to Sriwijaya University

Student Paper

Exclude quotes On

Exclude bibliography On

Exclude matches < 1%