ROLE OF HOST COUNTRIES: HANDLING OF INDONESIAN ELECTORAL OFFENCES

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Abstract

This paper is based on the author's observations in several countries as places for the implementation of Indonesian elections abroad. as a host country, of course, the foreign country has a fundamental role in the implementation of Indonesian elections in that country. The voting design in the implementation of Indonesian elections abroad has a different mechanism between at home and abroad. The handling of criminal offence that occur in the case of Indonesian elections abroad, of course, also requires relations between foreign countries, namely the country where the Indonesian elections are held. Therefore, the contribution of foreign countries cannot be separated in handling election crimes. This article provides arguments based on normative analysis with a doctrinal approach to the applicable regulations on the role of foreign countries where Indonesian elections are held. The results of the election analyze conceptually, the role of foreign countries in the enforcement of Indonesian elections abroad. The region of the country where the Indonesian General Election is held abroad certainly plays a role in helping the smoothness of the voting process. For example, by adding assistance personnel for security during the implementation of voting. However, what is lacking is the norms or rules governing the role of the country and what assistance can be provided by the country where the implementation of the Indonesian elections abroad is incomplete, so it is necessary to make changes to the regulations on the General Elections of the Republic of Indonesia Abroad including the role of the country where the Indonesian overseas elections are held.

Keywords: Contribution, Foreign Countries, Handling, Indonesian Election

Abstrak

Tulisan ini didasarkan pada pengamatan penulis di beberapa negara yang menjadi tempat pelaksanaan pemilu Indonesia di luar negeri. Sebagai negara tuan rumah, tentunya negara asing memiliki peran yang fundamental dalam pelaksanaan pemilu Indonesia di negara tersebut. Desain pemungutan suara dalam pelaksanaan pemilu Indonesia di luar negeri memiliki mekanisme yang berbeda antara di dalam dan luar negeri. Penanganan tindak pidana yang terjadi dalam kasus pemilu Indonesia di luar negeri, tentunya juga membutuhkan hubungan antar negara asing, yaitu negara tempat pelaksanaan pemilu Indonesia. Oleh karena itu, peran negara asing tidak dapat dipisahkan dalam penanganan tindak pidana pemilu. Artikel ini memberikan argumentasi berdasarkan analisis normatif dengan pendekatan doktrinal terhadap peraturan yang berlaku mengenai peran negara asing tempat penyelenggaraan pemilu Indonesia. Hasil penelitian menganalisis secara konseptual peran negara asing dalam penegakan pemilu Indonesia di luar negeri. Namun yang menjadi kkekurangan adalah norma atau aturan yang mengatur tentang peran negara tersebut dan bantuan - bantuan apa saja yang dapat diberikan oleh negara tempat pelaksanaan pemilihan Indonesia di Luar negeri belum lengkap, maka memang perlu dilakukan perubahan terhadap peraturan tentang Pemilihan Umum Republik Indoensia di Luar Negeri termasuk juga peran negara tempat dilaksanakan pemilihan umum luar negeri Indonesia.

Kata Kunci: Kontribusi, Negara Asing, Penanganan, Pemilu Indonesia

A. Introduction

Article 28 of the 1945 Constitution guarantees the political rights of citizens, including the right to vote in general elections. The legal basis for organizing elections is regulated in Article 22 E Paragraph (1) The 1945 Constitution states that elections are held directly, generally, freely, secretly, honestly and fairly every five years. Elections, whether to elect the president and vice president, members of parliament or regional heads, are a form of fulfillment of political rights and a manifestation of the implementation true democracy. There are many definitions of democracy of citizens' presented by various observers or intellectual figures. In this regard, the author refers to Robert Dahl's understanding of democracy as a form of "Affective participation" of members of a community, society or group of people. According to Dahl, democracy exists when there is "elected representation through fair elections and representative government". However, realizing this requires the fulfillment of the criterion that "all members of society have equal and effective opportunities to make their views known to each other". Meanwhile, regarding the election system, according to Prof. Ramlan Surbakti, there are at least two functions. First, as a procedure and mechanism for converting voters' votes (votes) into seats (seats) of state administrators of legislative and/or executive institutions at both the national and local levels. Second, as an instrument to build a democratic political system, namely through the consequences of each element of the electoral system on various aspects of the democratic political system. Indonesia's current electoral system is an open list representation system that has been in place since the 2004 elections. This system allows voters to choose candidates that are familiar to them. ¹Even candidates from a party at the bottom of the list have the opportunity to be elected if they get the most votes compared to other candidates from the same party or candidates

¹ A. Farazmand, "Bureaucracy and Democracy: A Theoretical Analysis" *Public Organization Review*, 10 (3), (2010), 245–258.

from other parties from the same Dapil. This system is different from the district system that applied in the New Order era elections where the highest number of votes of a party in an electoral district implied that the winning party in the electoral district could place its candidates in the DPR RI according to the allocation of seats from serial number one to serial number according to the number of seats resulting from the conversion of the number of party votes based on a predetermined formula. Subsequent developments show that several years ago there was a discourse among observers politicians regarding the application of a closed list representation system. In this system, voters vote for a political party based on the candidate's serial number. If a party in an electoral district gets two seats, then the elected candidates are candidates number 1 and 2. Historically, the practice of implementing elections as a form of electoral democracy began with the first wave with the adoption of the right to vote for individuals to lead the government, such as the president and vice president, as well as their representatives in the congress and senate in the United States (US) in 1828.2

In addition, of course, the regulation of handling foreign elections must involve all parties, both internal parties of the Indonesian state, namely the Ministry of Foreign Affairs, the Attorney General's Office, the Indonesian National Police, the Election Supervisory Agency.

B. Results And Discussion

1. Implementation of Indonesia's Electoral Principles Abroad

The author also compares it with the principles of election as mentioned in Article 185 of Law No. 7/2017 on Elections as follows: 1. The principle of equal value of votes, i.e. the "price" of a seat in parliament

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² J. A. Winters, "Electoral Dynamics in Indonesia: Money Politics, Patronage and Clientelism at the Grassroots" *Bulletin of Indonesian Economic Studies*, 52(3), (2016), 405–409.

from one constituency is equal to the "price" of a seat in parliament from another constituency; 2. The principle of adherence to a proportional electoral system, so that the percentage of the number of seats obtained by each political party is equivalent to the percentage of valid votes obtained in the election; 3. The principle of proportionality, by paying attention to the equality of seat allocations between Dapil to maintain consideration of the allocation of seats in each Dapil; 4. The principle of regional integrality, taking into account the integrity and integration of the region, geographical conditions, transportation facilities and aspects of ease of transportation; 5. The principle of being in the same area, which means that Dapil can consist of one, several sub-districts and/or parts of sub-districts that must be fully covered by a Dapil in the province; 6. The principle of continuity, where the preparation or formation of Dapil pays attention to the determination of Dapil in the previous most recent election, unless there is a change in population that results in the allocation of seats in one Dapil exceeding the maximum limit and / or less than the minimum limit, there is an expansion of the region, and the Dapil that is arranged is contrary to the principles of Dapil arrangement that apply and are believed. Not all principles of election administration in accordance with the provisions in Article 185 can be adopted to examine the practice of implementing elections abroad so far. This is because even though it is in accordance with the conditions of the implementation of elections at home, not all principles of delimitation can be applied to the situation of Indonesian elections abroad. Therefore, the author tends to use the principles of constituency formation as stated by Lisa Handley.

In addition to Dapil, to lay a strong foundation for this paper, the author also considers it crucial to understand the notion of electoral justice, which is another keyword from the title of this paper. Electoral justice is defined, among others, as "a set of means and mechanisms designed to uphold the principles of free, fair and legitimate elections, as well as to

safeguard the political-electoral rights of all people" (The General Secretariat of the Organization of American States, 2015). International IDEA, meanwhile, defines electoral justice as the means and mechanisms available in a given country, local community, at the regional or international level to ensure that actions, procedures and decisions related to the electoral process comply with the legal framework, protect or restore electoral rights, and enable citizens believing that their electoral rights are secured or otherwise violated, to file complaints, take part in proceedings and obtain decisions.³

In essence, electoral justice is political justice that is very important to ensure the fulfillment of civil and political rights of citizens of a country, where civil and political rights are the basic rights of existing human rights and must be fulfilled before a person can access their social and economic rights. As another consideration to be discussed, there are two technical matters in the field at the time of the implementation of the Election that need to be considered, namely the provisions of the KPU RI to attach the announcement of the Dapil candidates at polling stations, including TPSLN-TPSLN, and the consequences of the additional ballot sheet containing the names, photos and logos and names of the political parties of origin of the candidates from the Dapil outside the ballot sheet containing the names, photos and logos and names of the political parties of origin of the candidates from the Jakarta II Dapil if there are Indonesian citizens abroad who want to vote for candidates from the Dapil in their respective home regions in Indonesia. Then in the next section, this paper will also discuss the issue of electoral democracy, the representation of Indonesian people abroad through members of the House of Representatives of the Republic of Indonesia from DKI Jakarta II constituency who were elected as a result of the election, the relationship between voters abroad and legislative

³ A. Blaise, & L. Massicote, "Electoral Formulas: A Macroscopic Perspective" *European Journal of Political Research*, (1997), 107-129.

candidates from DKI Jakarta II constituency, how far voters abroad know or know the candidates from DKI Jakarta II constituency, and if the programs offered by the candidates and the ideological background of the candidates can be accepted or not by the voters.

2. Indonesia's Overseas Election Implementation System

The Essence of Electoral Justice and Electoral Democracy Fairness is one of the important election principles, so election organizers must carry out elections in accordance with this principle as much as possible.⁴ So far, many efforts have been made by the state and various institutions to ensure the implementation of elections that are fair to all parties. There have also been many efforts to realize inclusive elections.

Electoral justice is an important instrument to uphold the law and ensure the full implementation of democratic principles through the organization of elections. Electoral justice is also upheld to prevent the possibility of irregularities in the election, as a benchmark to fix these irregularities if they arise, and as a reference for election supervisors and law enforcers in sanctioning violators. The concept of electoral justice is not only limited to law enforcement, but also a factor that needs to be considered in designing and implementing the entire election process, including the determination of electoral districts or constituencies before the election is held. When tracing the first two decades of the 21st century, the development of the implementation of equitable electoral democracy or the sense of electoral justice in a number of countries began to face challenges as revealed by the International Institute for Democracy and Electoral Assistance (IDEA) in its report released in 2022 entitled "The State of Democracy in Asia and the Pacific 2021, The Report".

⁴ N. Desverose, and Priyatmoko, "Electoral Justice for Voters with Mental Disabilities in the 2019 Simultaneous Elections in Surabaya" *Journal Politik Indonesia* Vol. 6 No. 2 (2019)

According to International IDEA, a number of countries in the Asia Pacific are in an "alert" status. There has been an "erosion of democracy" since 2020, with the emergence of the phenomenon of political militarization, the rise of ethnonationalism and sharp polarization in society that threatens the treasures of national diversity in India, Sri Philippines and Indonesia. An important element in the Lanka. implementation of electoral democracy is the electoral system. André Blais and Louis Massicote in their article in the European Journal of Political Research entitled "Electoral Formulas: A Macroscopic Perspective" (1997), translate the electoral system as "a definition of how votes are cast and seats are allocated". According to Blais and Massicote, the typology of electoral systems is based on electoral formulas related to the results of vote counting so as to determine the allocation of seats (in parliament, which refers to the number of seats in each district, or from the results of vote counting at polling stations ".

The Urgency of Structuring Overseas Electoral Districts for Electoral Justice The arrangement of electoral districts is an urgency in the process of electoral democracy, because changes in the number of residents in the electoral districts are inevitable, because there are residents who die, enter an age that according to the provisions allows exercising the right to vote, or because they move to another electoral district. Urgency also arises when one or more neighboring electoral districts experience regional expansion or natural disasters. Dapil arrangement also becomes urgent if there are Dapil in the previous elections that have been determined but later found to be contrary to the principles of Dapil arrangement.⁵

The principles include equality of vote value, adherence to a proportional electoral system, proportionality, area integrality, being in the

⁵ Article 185 of Law Number 7/2017 on Elections.

same area coverage, cohesiveness, and continuity.⁶ The summary of the provisions of these articles regulates Dapil and the number of seats in each Dapil, which is then detailed into the number of seats for DPRD members and the determination of Dapil by KPU RI. The data of Indonesian citizens in the Representatives of the Republic of Indonesia in various countries is their data at the time of reporting to the Representative of the Republic of Indonesia in their respective countries of domicile. In fact, not all Indonesian citizens come to the Representative of the Republic of Indonesia to report themselves so that their whereabouts are not known by the Representative of the Republic of Indonesia. They may have been asked to immediately start working by the company or place of work or start attending lectures for those who continue their studies so they cannot take the time to go to the RI Representative or do not know that there is an RI Representative in their country of domicile.

Another possibility is that they may consider it unnecessary to report themselves for certain reasons. Those who do not report to the RI Representative are greater than those who do, so the data on registered voters abroad based on the total DPTLN from around 130 RI Representatives abroad in the 2019 elections totaling 2,058,191 people is not the real number of the total number of Indonesian citizens abroad in that year. Meanwhile, the Directorate of Indonesian Citizen Protection of the Indonesian Ministry of Foreign Affairs stated that the total number of Indonesian citizens registered with all Indonesian Representatives as of May 2022 was 3,011,202 people.

⁶ The arrangement of Dapil in Indonesia is also based on the provisions of Article 192 paragraph (4), Article 194 paragraph (5), and Article 195 paragraph (1) of Law Number 7 Year 2017.

⁷ The Indonesian Diaspora Network Congress in 2015 estimated the number of Indonesian citizens abroad at around 8 million (Indonesia Diaspora Network Global, 2017).

⁸ S. P. Aji, "Evaluation of the 2019 Election Dapil Formation: Measurement of the Principles of Equality of Vote Value Proportionality and the Level of Political Party Competition" *Journal of KPURI*, (2020)

The Indonesian population is estimated to reach around 9 million people, the majority of whom are migrant workers. Countries that are known to have many Indonesians include Malaysia, Saudi Arabia, Singapore, Brunei Darussalam and the United States. In addition, there are also quite a number of Indonesian people in Taiwan. Voters in the 2019 General Election in Numbers Problems with the Conditions for Electing Candidates from the Jakarta II Constituency As stated earlier, there are a number of Indonesian citizens abroad who criticize why the candidates who should be elected are among the candidates from the Jakarta II constituency, even though they come from various regions in Indonesia.

They also questioned if there was any guarantee that the elected candidates would pay attention to and fight for their aspirations. Indonesians abroad come from various regions or provinces. The background of Indonesians in Singapore, for example, shows that most come from East Java, West Nusa Tenggara (NTB), Central Java and West Java. The concentration of the Indonesian population abroad is mostly in Malaysia, Saudi Arabia, Taiwan, Singapore, Brunei Darussalam and the United States. If it is the case that Indonesian citizens abroad are expected to vote for candidates from constituencies in their home provinces, the consequences will be very unfeasible and time-consuming for PPLN in various countries to identify the province of origin of each Indonesian citizen.

It may not necessarily be a large number, or it may only be two or even just one ballot paper from a particular electoral district. Although there may be a large number of registered Indonesian voters from East Java or NTB in a country, this does not mean that only ballot papers from the electoral districts of these provinces are sought to be imported from the Center by PPLN, but also ballot papers from the electoral districts of other provinces whose other Indonesian citizens are registered as voters in the PPLN working

⁹ Kompas.com, "The Number of Dapil and DPR Seats in the 2024 Election will Increase" https://www.kompas.id/baca/polhuk/2022/07/04/jumlah-Dapil- and-dpr-seats-in-2024-elections-will-increase Beritasatu.com (2013)

area or the same country. This is to ensure equal opportunities for voters from their home provinces even though the number of Indonesian citizens from those provinces is relatively much smaller.

Therefore, the possibility of meeting the expectations of Indonesian citizens so that they can exercise their voting rights seems complicated, difficult to fulfill or not feasible. What also needs to be considered is the posting of announcements of candidates from other electoral districts in the province of origin of citizens other than the Jakarta II electoral district. As has been stated in the previous section of this paper, the posting of the announcement of the names of candidates at TPSLN-TPSLN is one of the provisions of KPU RI. Taking into account the author's observations as an employee of the Ministry of Foreign Affairs of the Republic of Indonesia regarding the limited area of the Representative of the Republic of Indonesia in various countries or regions in the world, where the TPSLN-TPSLN will be established, and taking into account the regulations in many countries that do not allow foreign election activities to be carried out in their territory except in the area of the foreign country's representative, the posting or pasting of the announcement sheet is anticipated to be very space-consuming. Therefore, just like the possibility of bringing in ballot sheets from constituencies other than the Jakarta II constituency ballot sheets, the possibility of bringing in or posting sheets announcing the names of candidates from other constituencies and related information in addition to the sheets announcing the names of candidates from Jakarta II constituency and other information is also not feasible or difficult to fulfill. Another problem is the application of an open proportional representation system which, although it allows voters abroad to vote directly for their candidates, they generally do not know the performance or track record of candidates from the DKI Jakarta II constituency. Therefore, they may vote randomly, or vote for celebrity candidates that they know if there are celebrity candidates from certain parties in the DKI Jakarta II constituency.

Low Overseas Voter Participation and Lack of Voters' Knowledge of Candidates According to Hasyim Asy'ari, Chairman of the Indonesian KPU, the turnout rate of overseas voters in the 2019 legislative elections was around 50%.¹⁰ Although the level of overseas voter participation was much higher than the level of overseas voter participation in the previous election (in 2014) which was less than 30%, the level of overseas voter participation was still very far from the national voter participation rate of 81.9% in the same year's election. 11 Dino Patti Djalal, former Deputy Minister of Foreign Affairs and Indonesian Ambassador to the United States, and the organization he founded, Foreign Policy Community of Indonesia (FPCI), are working to increase the participation rate of overseas voters in the 2019 legislative elections by organizing a "Know Your Candidate" (KYC) program in March 2014. According to him, the knowledge of overseas voters is generally low. He observed that the connection between the Indonesian diaspora and their candidates from DKI Jakarta II constituency was weak. "... many diasporas do not know who their representatives are in the House of Representatives, and Indonesian diasporas also feel physically and politically distant from their representatives in the House of Representatives" Noting the lack of knowledge of Indonesian diaspora voters about their candidates for representatives in the House of Representatives, through the KYC program and the online platform he established on the site "calegdiaspora.com", Dino Djalal hopes that voters can check the profiles of the candidates and find out their vision and mission through a number of issues that are of concern to many Indonesian diaspora

10 Ibid

¹¹ BPS DKI Jakarta (2021), Population of DKI Jakarta Province by Age Group Age and Type Gender 2019-2021, http://jakarta.bps.go.id/indicator/12/111/1/jumlah-penduduk-province-dki-jakarta-by-age-group-and%gender.html (2024, June 15)

communities. However, Dino Djalal regrets that not all profiles of candidates for the DKI Jakarta II constituency are available on the online site.¹²

Possibility of Establishing Separate Electoral Districts for Indonesians Abroad What may be proposed to be explored by the DPR RI, in this case Commission II, the Government and KPU RI is the establishment of a separate electoral district for Indonesians abroad. This electoral district can be included in the electoral district of the DKI Jakarta Province or if there will be electoral districts as part of the electoral district of the National Capital Province. The consideration is the total number of Indonesian citizens registered in all Indonesian Representatives abroad of more than 3 million people based on information released by the Directorate of Indonesian Citizen Protection, Ministry of Foreign Affairs of the Republic of Indonesia in July 2022, and the existence of the Indonesian Diaspora (IDN) Global network with its administrators professionals from various fields of expertise or experienced expertise.

C. Conclusion

Geographically, the countries of Malaysia, Singapore and Darussalam are neighbors. Together with the Philippines, Thailand, and other Southeast Asian countries, Indonesians residing in the region can be included in the Southeast Asia electoral district, for example. Similarly, Indonesians in China, including Taiwan, South Korea and Japan who are geographically within the same region (East Asia) could be included in the East Asia constituency. Saudi Arabia and the Middle Eastern countries around the Arabian could be made into one constituency, namely the Arabian Peninsula constituency, and so on. Geographically, Malaysia, Singapore and Brunei Darussalam are neighboring countries. Together with the Philippines,

¹² Dino Patti Djalal Special Interview: Diaspora Voices Are Not Bonus News,

Qaumiyyah: Jurnal Hukum Tata Negara, Vol. 5 No. 1 Tahun 2024

liputan6.com, https://www.liputan6.com/globab/read/3928223/wawancara-special-interview-dino-pati-djalal-voice-of-diaspora-is-not-a-bonus-only-basyari, (2024, June 16)

Thailand and other Southeast Asian countries, Indonesian citizens living in the region can be included in the Southeast Asia constituency, for example. Similarly, Indonesian citizens in China, including Taiwan, South Korea and Japan who are geographically in the same region (East Asia) can be included in the East Asia constituency. Saudi Arabia and the Middle Eastern countries around Arabia can be made into one constituency, namely the Arabian Peninsula constituency, and so on. The region of the country where the Indonesian General Election is held abroad certainly plays a role in helping the smoothness of the voting process. For example, by adding assistance personnel for security during the implementation of voting. However, what is lacking is the norms or rules governing the role of the country and what assistance can be provided by the country where the implementation of the Indonesian elections abroad is incomplete, so it is necessary to make changes to the regulations on the General Elections of the Republic of Indonesia Abroad including the role of the country where the Indonesian overseas elections are held.

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