The Implementation of Good Governance in The Presidential Election in Indonesia

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Abstract
The 2019 presidential and vice presidential elections in Indonesia had complicated issues, including broken ballots, multiple voter lists, not registered as permanent voters, political money, transparency, administrative violations, electoral penalties, and high white numbers. These problems indicate that the values contained in the concept of good governance are not implemented in the election process. To analyze the issues, this paper uses normative method. The method is by analyzing the Laws. Especially when related to aspects of law enforcement in the principles of administrative law in good governance. This method will be formulated for implementing good governance in the election process. The results of the analysis have who that the electoral justice is very important to be achieved in the presidential election in Indonesia. the presidential system is in order to strengthen the presidential election. However, the presidential election as one of the recruitment in the Presidential in Indonesia system in election is against justice because do not use a good governance in election process. It is not supporting the electoral justice. Results of previous elections in Indonesia, it was found that the values of good governance have not been well implemented in all stages of the election, both in the pre-election stage, the election process until post-election. Especially when related to aspects of law principle in election. this research will be formulated with good governance system for implemented in election process. The paper will be socialized and implemented in the holding of presidential system election in Indonesia.

Keywords: Good Governance; Electoral System; Justice.

Introduction
Governance is a mechanism for managing economic and social resources that involves the influence of the state and non-government sectors in a collective activity. Governance is the practice of the administration of power and authority by the government in the management of government affairs in general and economic
The general election is a consequence of a democratic state that is regulated in Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945). As a consequence of the framework of thinking that the constitution is the result of a collective agreement of all people, which based on the theory of popular sovereignty is the highest authority, the constitution occupies the place as the highest law in the life of the nation and state (the supreme law of the land). In fact, the etymological constitution comes from the word “to constitute” which means to form, can also be interpreted as a document forming the state organization. Therefore the constitution binds all components of the state, both organizers and citizens.2

The constitution is an important document that contains basic regulations regarding the structure of government, rights and obligations as well as restrictions on the power and authority of the state, the constitution is a basic law (grundnorm), so in general it is usually in the form of written texts and unwritten texts), it depends on the legal system adopted by civil law or common law.3

Political parties are a form of freedom of association as one of the prerequisites for the operation of democracy. Freedom of association was born from a basic human tendency to live in a society and to organize both formally and informally, such tendencies constitute an inevitability (organizational imperatives) of community tendencies which, in principle according to Locke and Rousseau's views, is that organizational life arises to meet the needs and interests that the same from individuals as well as to achieve common goals based on equality of mind and conscience, therefore in its development freedom of association becomes one of the basic human freedoms that is universally recognized as part of human rights in terms of freedom of association.4

1 Philipus M. Hadjon, [et., al.], Hukum Administrasi Dan Good Governance (Universitas Trisakti press 2012).[37].
2 Brian Thompson, Textbook on Constitutional and Administrative Law (Blackstone Press 1997).[3].
3 Jawahir Thontowi, Islam Politik Dan Hukum: Esai-Esai Ilmiah Untuk Pembaharuan (Madyan Press 2002).[150].
4 Muhamad Ali Safa’at, Pembubaran Partai Politik (Rajawali Pers 2011).[14].
Presidential threshold is a concept that aims to propose qualified candidates for President and Vice President. This proposal is carried out by political parties or a combination of political parties responsible for the candidate pair of President and Vice President who are carried. However, some parties argue that presidential training is not appropriate because only parties that have votes or large seats can nominate the president and vice president, while parties with small votes and seats cannot nominate candidates for President and Vice President.

Law number 7 year 2017 Regarding General Election article 222 states that the provisions which still regulate the threshold of the Presidential nomination of 20% of the number of seats in the House of Representatives (DPR) or 25% of the total valid votes of the 2014 election results are considered not in line with the Law The 1945 Constitution of the Republic of Indonesia because Article 222 of Law Number 7 of 2017 concerning Elections does not give freedom to the public in making choices. This is considered contrary to article 6A paragraph (2), article 22E paragraph (1), article 27 paragraph (1), article 28D paragraph (1), and article 28D paragraph (3) of the 1945 Constitution of the Republic of Indonesia.

The central issue in this research is the principle of good governance in elections based on the presidential threshold concept. In the case of the achievement of the concept of justice in elections in a democratic country that is just, the legal instruments used in achieving equitable elections must be in accordance with morals and not in conflict with the constitution. Democracy is considered by some to be a guarantee of transparency, accountability and justice. Through democracy, the political rights of citizens are well protected, and the people have power in clearer decision making mechanisms.5

Regarding this Meuwissen in his book on the development of law, jurisprudence, legal theory, and philosophy of law said that law loses its normative behavior, if its contents in an ethical manner by any means cannot be justified.5 Laws that seriously violate human rights, for example, cannot be seen as applicable

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law. This issues is Good Governance Principles in conducting elections based on the presidential threshold system.

The research method used in preparing this issues uses legal research. Legal research is a process to find the rule of law, legal principles, and legal doctrines to address the legal issues at hand. Legal research is conducted to produce new arguments, theories and concepts as prescriptive in solving problems faced, the answers expected in legal research are right, appropriate, inappropriate or wrong, this the results obtained in legal research already contain values.

The technique of the data collection used in this research was the observation, interview, interpretation of law, law documents, and court decisions. The result of reviewing the rasio legis of law is an argument for solving the legal issue being studied. The conceptual approach in this study moves from the views and doctrines that have developed in the science of law, specifically the law regarding the administration of equitable elections based on the presidential threshold. These doctrines, obtained through law books. Interpretation approach is interpreted in Constitution of the Republic of Indonesia and related to Law number 7 of 2017 concerning elections and regulations related to elections in order to find a new theories related to the political equality of political parties in the nomination of candidates for President and Vice President. The case approach is carried out by examining cases related to elections based on the presidential threshold that is relevant to the proposed legal issues and analyzing the results of court decisions as a judge’s consideration in issuing a decision.

**Principles of good governance in election**

The United Nations Development Program (UNDP) defines “Governance” as the exercise of political, economic and administrative authority to manage the affairs of the nation. The electoral system in Indonesia also requires administrative
governance as an implementation system policies that carry out the public sector in an efficient, effective, impartial, accountable and open manner.\(^8\) In essence, good governance is how managing the country collaboratively between government, private and society civil by basing certain principles among which are for the government must carry out the general principles of governance.\(^9\) good governance has actually been applied in long before the administration of government. Especially if we study general principles of good governance. Meaning of good traits in the context of governance, it means decency and eligibility which in foreign terms is called beehoorlijk like beehoorlijk bestuur.\(^10\)

Justice is the main policy in social institutions, as is the truth in systems of thought. Those who believe in different concepts of justice can still agree that institutions are fair when there are no arbitrary differences between people in giving rights and obligations and when the rules determine the right balance between opposing claims for the benefit of social life.\(^11\) According to Rawls in a book entitled the idea of justice: the deliberations in the imagined original position on the principles of justice demand, the impartiality needed for fairness\(^12\) means that the principle of justice imagined about the principles of justice requires the impartiality needed for justice. However, the concept of proportional justice and efficiency that was applied in the 2019 concurrent elections did not provide legal certainty to the political parties participating in the elections and did not provide a solution because it caused many casualties related to the 2019 concurrent election.

KC Wheare once said “Constitutions is used to describe the whole system of Government of a country, the collection of rules which establish and regulate or govern the government”.\(^13\) The essence of constitutionalism consists of two things first, the conception of the rule of law which states that universally the authority of

\(^8\) Philipus M.Hadjon et all (n 1).[38].  
\(^9\) ibid.  
\(^13\) KC Wheare, *Modern Constitution* (Oxford University Press 1996).[184].
the law must overcome the authority of the government so that the law must be able to control and control politics; secondly, the conception of civil rights of citizens which outlines the freedom of citizens under constitutional guarantees at the same time can be obtained by the constitution. A political party is a group of people organized for the purpose of winning the power of government, through electoral or other means. Political parties typically display the following characteristics:

1. They aim to exercise government power by winning political office (small parties may use more elections to get a platform than to win power);
2. They are organized bodies with a formal membership;
3. They typically adopt a broad focus of issues, addressing each of the main areas of government policy (small parties, but only having a single issue focus);
4. To varying degrees, they are united by common political choices and a common ideological identity.

Elections are a manifestation of a democratic process. The implementation of a good election based on the principles of overflow and fairness will produce a government that should be of good quality, a government that is credible and accepted by the community. The final goal is of course to lead to good governance, which is just and prosperous. Election held by the state through political parties sourced from the people’s representatives are the objectives of the constitution. Representation is a relationship in which a person or group is on, or acting on behalf of, a larger community. This can be achieved through the administration of wisdom by an educated elite, through guidance or instructions given to a delegation through the victory of a people’s mandate or through representatives drawn from the groups they represent.

Larry Diamond and Richard Gunther in his book entitled Political Parties and Democracy stated that to achieve a goal and find several different implications

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14 Mahfud MD, Demokrasi Dan Konstitusi Di Indonesia (Rineka Cipta 2003).[145].  
15 Andrew Heywood, Politik (Pustaka Pelajar 2014).[407].  
17 Andrew Heywood (n 15).[346].  
18 Larry and Richard Gunther, Political Parties and Democracy (The Johns Hopkins University Press 2001).[7].
in party types for character and quality in political democracy, especially it needs to be identified in the various functions performed by political parties “Involves two distinct phases of the electoral” Before entering the party function, there are two different phases in the electoral process. The first is a candidate nomination in which election participants represent each party in the party election in a special room; and electoral mobilization, where parties motivate them to each choice in supporting their candidates and, in some cases, facilitating the participation of participants in the electoral process. Other party functions include issue structuring, this social representation, interest aggregation, forming and sustaining government, and social integration.¹⁹ This is very influential with the quality of parties in elections, therefore political parties participating in elections in the democratic system must have the same position considering the party comes from citizens to participate effectively in the political process and if successful in the task then they will feel they have a gift important in a service in the country.

Presidential Threshold is an additional provision regarding the provisions regarding the nomination requirements of President and Vice President in Article 6A paragraph (2) which states “The pairs of candidates for President and Vice President are proposed by political parties or a combination of political parties participating in the election prior to the election in Indonesia” this clearly provides room for election participant political parties in the nomination of candidates for President and Vice President, and bearing in mind that political parties are representatives of the people and connecting the relationship between the state (state) with its citizens (Citizens).

Robert A. Dahl²⁰ argues that in general in a democratic country there are eight institutional guarantees, namely:

1. Freedom to form and join organizations;
2. Freedom of expression;
3. The right to vote;
4. Eligibility for public office;
5. The right of political leaders to compete for support and votes;

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¹⁹ Bryan A. Garner, Black’s Dictionary (9th edn, Thomson Reuters business 2009).[1304].
²⁰ Robert A. Dahl, Perihal Demokrasi (Yayasan Obor 2001).[52-53].
6. Alternative sources of information;
7. Free and fair elections;
8. Institutions for making government policies depend on votes and other expressions of preference.

All countries in the world have used elections as a peaceful and orderly power transfer mechanism. The election is a pillar of democracy which is considered the most effective in solving the problem of transfer of power. Through the election process the transfer of power is guaranteed to be safer and more effective because it can reduce the level of chaos. Leadership circulation will be more competitive and open.

Openness in the electoral process is not only regulated in the process of determining candidates but starts from the promotion of candidates for president and vice president by political parties, this is considered very important because political parties are representatives of the people and accommodate the aspirations of various interests in society through non-party organizations or community organization. These interests are the basis for the formation of diverse groups to achieve common goals through social integration. Democratic ethics should be seen as a set of principles characterized by the working of a democratic society, how society can live freely despite differences, weaknesses, and ignorance. The principles of democracy include: (1) individualism which is at the core of human existence if citizens want it to, and will, differences occur; (2) freedom is the foundation of justice, oppression and justice are the opposite form; (3) equality of rights belongs to humans which cannot be traded or taken. In line with the statement above Patrick in his book entitled Theories of The State “In modern democracies the presumption of legitimacy has been converted into a continuous process of legitimation through regular elections and in some cases plebiscites… the citizens of a democratic state are not a suppressed class, but they are a subjected class”.

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21 Jimly Asshidiqie, *Peradilan Etik Dan Etika Konstitusi* (Sinar Grafika 2014).[271].
22 *ibid.*
23 *ibid.*
24 Sam S. Souryal, *Ethics in Criminal Justice* (Cipta Manunggal 1999).[485].
25 *ibid.*
The existence of good governance in the electoral system greatly influences the process of developing political party organizations as an inseparable part of the democratic system itself. The existence of good governance opens up opportunities for political parties to prepare prospective leaders who will sit in government. Yves Many and Andrew Knapp said a democratic system without political parties or with a single party is impossible or at any rate hard to image. A governance will be defined as a good one only if the public resources and public matters is well managed and it is also a term of respond toward the society needs. Good governance have principles:

1. Participant: every citizen have their choice right in making the decision, both directly thought the mediation of legitimation of institution who are representing their interest;
2. Rule of law: the rule of the law, decision, government policy, organization and institution which are related to the society is conducted based on the law;
3. Transparency: transparency is defined as the deliberacy of the information flow, can be unknowledged, monitored, by many parties about its policy, the process of the governance organization;
4. Responsiveness: all those governance institution will have to be perceptive, responsive the interest its stakeholders;
5. Consensus Orientation: it is oriented to the deal which can become the mediator for the different interest as a way of looking for the best alternative and defending a broader interest;
6. Equality: the equivalence all men and women, minority or majority, by not looking at their wealthy status, have the similar opportunity to get the prosperity right;
7. Effectivity and Efficiency: all of the activity process, the activity of the governance institutions can carried out their tasks;
8. Accountability: the decision maker in a governance, public servant and civil society is responsible toward the public and the institutional stakeholders;
9. Strategic Vision: the leader and the public will have to the perspective of the good governance and a broad human resources development in line to the need of the development.

The limitation of political parties participating in the election is a factor hampering the democratic party in Indonesia, not only the problem of political parties participating in the election who do not have the same rights in carrying out candidates for president and vice president but in the election of executive

\[27\] Yves Meny Andrew Knapp, Governance and Politics in Western Europe (Oxford University Press 1988).[86]. 
institutions in the region can also run independently without through political parties, this has become inconsistent in the holding of elections in Indonesia because regional elections are also very important and the same as the presidential and vice presidential elections. Given that the president is a state official who has the position of head of state as well as head of government.29

The implementation of the Presidential Threshold has resulted in the loss of opportunities and citizens’ rights through political parties that did not participate in previous elections to carry their candidates. It is therefore necessary to pay attention, in accordance with the principles of democratic electoral justice, in determining the threshold of the Presidential Threshold it must not be detrimental to the community groups, especially minorities. Talking about the implementation of good governance in the public sector as well can not be separated from the vision of Indonesia’s future as the focus of goals good governance development. A good government can be said to be a government that respects the sovereignty of the people and has a main task which includes protecting the entire Indonesian nation and all spilled blood Indonesia, advancing public welfare, educating the nation’s life, carry out world order based on freedom, eternal peace, and social justice. All that should be the basis for local government in running the government so that it can manifested good governance in accordance with the principles of good governance.30

Determination of the Presidential Threshold must pay attention to the diversity of society reflected in political aspirations.31 Determination of Presidential Threshold needs to be done proportionally and pay attention to the political balance of the law simplifying the party and protecting political diversity. Determination of the Presidential Threshold must not be made based on consideration of the advantages and disadvantages that will be obtained by political parties.32

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29 Philipus M. Hadjon, *Pengantar Hukum Administrasi Indonesia* (Gadjah Mada University Press 2015).[205].  
32 *ibid.*, [365].
The location of my research in Indonesia, the form of research is to observe observations of political developments and the electoral system in Indonesia. The main ingredient in analyzing the constitution and the applicable law while the electoral system is associated with a system of good governance in order to create elections that are fair, free and open to voters. Good governance can control the actions of arbitrary authorities and form laws for the purposes of the authorities so that the expected elections will be far from a sense of justice due to a bad system and authoritarian rule. 33

The general election is a very important means to elect the President and Vice President as heads of state and heads of government who will work in the process of administering the country and take a policy. Each country has a different electoral system. This difference is caused by the party system, social and political conditions of the community, population, type of political system, and culture. With the existence of good governance the general election is getting better, good governance is the basis of comparison of seats with the number of votes, accountability to voters, winning the majority vote but giving minority groups can sit in public positions, make policies and issue based on people’s goals, and not form rules on behalf of the people the people by legalizing their goals based on their power (abuse of power).

The awareness of democracy is higher if the people’s participation in giving their rights is also high in forming a good government, the increasing involvement of the community in the holding of elections shows that democracy is also stronger in a country. Good governance is a system that is able to encourage people to participate and openly give rights in elections. The function of good governance in the electoral system is to be able to distribute power and manage resources and various problems faced by the community because the concept of governance contains elements of democratic, fair, transparent, rule of law, participation and partnerships with Indonesian people as written in the constitution and the law on election.

33 Peter Mahmud Marzuki, *Penelitian Hukum* (Kencana Prenada Media Group 2017).[35].
A second and more specific criticism pertains to the nature and the extent of party fragmentation at the local level, which is insufficiently recognised in the book. As mentioned above, Horowitz generally argues that fragmentation is actually not a bad thing as it solidifies multipolar fluidity and thus helps minimise polarisation and conflict. However, his rather succinct statement that “the party fragmentation prevailing at the national level is often replicated, but in varying configurations, at the regional level” does not at all capture the reality of many local parliaments in Indonesia, which often feature much higher numbers of parties (both absolute and effective) than the national parliament in Jakarta. Especially in eastern Indonesia, fragmentation is often so extreme that parties merely represent individuals or family clans rather than broader communities. In this context, fragmentation contributes fairly little, if anything at all, to conflict management between social groups. Instead, it simply renders parliamentary processes meaningless and paralyses regional development. The most recent changes to the election laws, which will lead to the elimination of most small parties from local parliaments, should therefore not simply be seen as a threat to multi-polarity and regional autonomy, but as a necessary adjustment to a flawed electoral rule.

Good governance can reduce abuse of power and make the system good and under control.

Conclusion

The existence of the Presidential Threshold as a system in the general election of president and vice president in Indonesia is very contrary to the principles of fair elections that are associated with a good, orderly, and fair system of good governance by protecting citizens’ voting rights, guaranteeing equal rights of citizens countries to be elected, determine the equality of the requirements of political parties as election participants. The existence of power in a country is inseparable from the democratic election process. Elections held by the state through political parties sourced from people’s representatives based on good governance are the goals of the constitution.

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34 Donald L. Horowitz, *Constitutional Change and Democracy in Indonesia* (Cambridge University Press 2013).[131].
The existence of the Presidential Threshold system established as a condition for nominating candidates for president and vice president is very contrary to the spirit of the 1945 Constitution of the Republic of Indonesia, where the constitution requires presidential elections to be directly elected by the people (article 6A paragraph 1), proposing presidential candidates and the vice president is carried out by a political party or a combination of political parties participating in the general election (article 6A paragraph 2) which means that all political parties that have passed the verification by the General Election Commission (KPU) have the right to nominate candidates for president and vice president, proposals are conducted before the general election, that is, the election at that time, not the previous election (article 6A paragraph 2), the terms of the candidates for President and Vice President candidates were delegated based on Article 6A paragraph (2).

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