

Term of Reference
The Fifth National Conference of Constitutional Law

**“CHALLENGES IN PRESERVING SOVEREIGNTY OF THE
PEOPLE IN GENERAL ELECTION”**

Held by:
Center for Constitutional Studies (PUSaKO) Faculty of Law Andalas University

A. Background

Election is an instrument to actualize the sovereignty of people. As the main source of the power, election must be prevented from any misuse, fraud, and any action that could prey democratic government. As the consequence, election must be enforced consistently by upholding the transparent, fair, and democratic principle.

In order to realize a fair and democratic election, every aspects of election such as regulation, organizer, and commitment of stakeholders must be settled wisely in one atmosphere. Among all of those aspects, regulation on election is one of the primary factor. Because the regulation works as guidance for the people to participate in election and accelerate their function. As guidance, electoral regulation should be able to interpretate the principles and mechanism which is demanded by the constitution.

Regarding the principle of implementation, Article 22E Paragraph (1) of the 1945 Constitution explicitly stated, general elections must be carried out based on the principles of direct, free, confidential, honest and fair. Norms which are later known as the principles of the election must be translated in such a way into the electoral law, so that the contestation that occurs in elections runs honestly, fairly and democratically.

According to Ramlan Surbakti, there are at least seven criteria that must be met to realize fair and integrity elections. Those criteria are: 1) equality between citizens, not only in voting and counting of votes, but also in the allocation of seats in the DPR and DPRD and the establishment of electoral districts; 2) legal certainty formulated based on the principles of democratic elections; 3) free and fair competition between election contestants; 4) participation of all stakeholders in all stages of the implementation of the election; 5) professional, independent and impartial election management bodies; 6) integrity of voting, counting, tabulation and reporting of election votes; 7) settlement of fair and timely election disputes. (*Kompas*, 2014, 14/02).

Apart from being able to absorb and emphasize the principles of honest and democratic elections, the mechanism of the election organizers as outlined in the electoral regulation must also be able to maintain the mandate of the constitution inherently. In Article 22E Paragraph (2) of the 1945 Constitution it is affirmed that general elections are held to elect members of the DPR, DPD, President and Vice President and members of the DPRD. In addition, several other constitutional norms such as Article 6A, Article 22E Paragraphs (3) and (4) of the 1945 Constitution. These norms contain directives related to the mechanism for organizing elections, both regarding the subject of the office position to be elected and the relationship between the Legislative and presidential election management bodies.

Furthermore, besides being able to translate the mandate of the constitution, electoral regulation must also be able to absorb various evaluations of the previous elections. In this context, all weaknesses regarding both the procedure and the substance of the exercise of the right to vote must be consistently corrected. At the same time, electoral regulation is in the path and agenda of strengthening the presidential system in Indonesia by encourage simplification of political parties, establishment of strong authority and legitimacy for the implementation of elections and creating a culture of civilized democracy and not hijacked by the political oligarchy and capital strength (money).

All of the expectations above were initially superimposed on the establishment of Law No. 7 of 2017 concerning General Elections (Election Law). Because, as the first election regulation stipulating the simultaneous elections, the existence of the law was an important momentum to improve the mechanism for organizing election. Moreover, Law No. 7 of 2017 was also born on the mandate of the Constitutional Court Decision Number: 14 / PUU-XI / 2013 which stated that the implementation of the legislative and presidential elections will be held simultaneously in 2019 onwards. With this decision, the legal politics of legislator in Indonesia entered a new era. The necessity to rearrange electoral regulation becomes very important in these transition.

Unfortunately, new regulations in the new round of Indonesian elections has not been able to meet the expectations that are attached to them. Even though there are a number of content material that can be appreciated, some crucial materials such as maintaining the presidential threshold, electoral participation requirements, electoral arrangements and their respective authorities are still far from idealized conditions.

In fact, the new Election Law has not been able to answer the regulatory needs and problems in the implementation of previous elections. Such as in terms of prevention and law enforcement against the practice of money politics and thequalified and integrated legislativecandidacy process. Another challenge that has not been answered is how the process of law enforcement of process of disputes over election results does not exclude balanced aspects of verification and still in the concept of a speedy trial process. In some of these areas, the Election Law still not able to change and improve the situation significantly, so that the quality of elections is still difficult to be improved better than previous elections. Finally, as a means of implementing popular sovereignty, simultaneous elections will continue to be haunted by various problems which are actually very potential to make the people's sovereignty porous as stipulated in Article 1 Paragraph (2) of the 1945 Constitution.

The politics of electoral law and various issues surrounding the electoral regulation will be discussed in depth in an academic perspective through the 5th National Conference of Constitutional Law 2018.

B. Objectives

The conference aims to discuss, find solutions and provide recommendations in the form of an offer of answers to Indonesia's challenges in safeguarding the sovereignty of the people, especially in holding elections. At the same time, this forum is also expected as a medium to continuously maintain a healthy constitutional reasoning. In addition, this activity also aims to enrich the constitutional law which can be useful in addressing problems related to the simultaneous election that will be held in 2019.

C. Output

The result of the Fifth National Conference of Constitutional Law will be documented in the form of book and/or proceeding that has ISBN. The final offers derived from the PGD will be submitted to the legislators and government as a reference to reshaping the future of electoral regulations.

D. Programme

The National Conference on Constitutional Law is an academic forum that will bring together academics, civil society activists, researchers, representatives of government organizations or non-governmental organizations, students and others who are concerned or relevant to the study of Constitutional Law, especially related to the theme "Challenges to Preserve Sovereignty of the People in the General Election ". This forum is divided into the following sections:

1. Seminar

The seminar is designed as a forum to open and discuss ideas openly. It will presents analysts and figures who will convey their views related to the theme of the conference as key persons. The seminar will be attended by all conference participants consisting of call paper participants and non-call paper participants.

The seminar will be held in one session by presenting five speakers and guided by a moderator.

2. Parallel Group Discussion(PGD)

The formation of small discussion groups through the PGD is a way for participants to focus on the sub-themes that have been determined and then jointly formulate what solutions can be contributed at the conference this time.

The group of participants who will explore this study are divided into three sub-groups, where the determination of PGD participants is based on papers written or based on their respective interests for participants who does not write papers. Following is the distribution of sub-themes::

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| <i>PGD I</i> | Politics of Electoral Regulation <ul style="list-style-type: none">➤ Preference of Electoral System➤ Qualification of Political Parties as Participant of Election➤ Parliamentry Threshold➤ Presidential Threshold |
| <i>PGD II</i> | Prevention and Enforcement of Money Politics in Elections <ul style="list-style-type: none">➤ The Impacts of Money Politics in Election➤ Strategy in Eradicating Money Politics➤ Mechanism in Handling Money Politics |
| <i>PGD III</i> | Arrangement of the Authorities and Relationship between Election Management Bodies <ul style="list-style-type: none">➤ Arrangement of Structures and Authorities of KPU, Bawaslu and DKPP➤ Reconstructing relation between Election Management |

Bodies

***PGD IV* Resolving Disputes over Process and Results of Election**

- The role of Bawaslu in Surveilling Settling Disputes over Election Process
- Legal Actions against Decision on Election Process Dispute Settlement
- Problems in the Speedy Trial in Election Results Dispute Resolution in the Constitutional Court

In each PGD, four discussion key persons will be presented from academics and electoral law experts, both from national and international. The discussion process in the PDG will be guided by each one facilitator / moderator.

Furthermore, the results of the conference will be formulated by a Formulation Team consisting of five people. Two people from the Center for Constitutional Studies (PUSaKO) and three other people were facilitators who led the implementation of the PGD.

E. Participants

Participants consist of academics, civil society groups, researchers and experts, representatives of government or non-governmental organizations, students and other relevant parties with a total of approximately 400 people. The 90 participants is call paper participants. Participants with papers are determined based on the articles written related to each parallel group discussion. Besides and the rest are participants who register as general participants or are invited specifically because they have links with the themes raised in the conference.

For participants, the authors of the paper will get facilities in the form of reimbursement of transportation fee for airplanes, trains or buses to and from the destination, lodging and consumption costs during the conference, certificates and honorarium for writing papers. Whereas for participants who are not authors of the paper, only consumption facilities adn certificates. are provided for the event.

F. Time and Place

Time	: 9-12 November 2018.
Place	: Emersia Hotel and Istano Basa Pagaruyuang, Batusangkar Tanah Datar Regency, West Sumatera, Indonesia

G. Closing

The terms of reference are prepared as a guide in the implementation of event. Thank you for your attention and cooperation.

Padang, 26 February 2018
Best Regard
Center for Constitutional Studies (PUSaKO)
Faculty of Law Andalas University

Feri Amsari, S.H., M.H., L.L.M.
Director

Khairul Fahmi, S.H., MH.
Head of Organizer