

Electronic Voting: Towards Indonesian Democratic Constitutional Election

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Abstract--Electronic voting (e-voting) is an constitutional electoral system that can be applied to create effective and efficient democratic elections. The vast territory of Indonesia and a large number of logistics preparation, it turns into costly elections. The problem of miscalculation, inaccuracy counting is the object of Constitutional Court election disputes. The main argument is that e-voting will be able to realize the constitutional democratic vote as the election by manual voting, which applies in Indonesia. However, the question arises whether the local government is preparing itself to guarantee data security related to the election results. This article aims to review in-depth the interpretation of the Constitutional Court regarding e-voting and related to the fair and democratic election theories. Decision Number 147/PUU-VII/2009 is a progressive interpretation which states that e-voting based on objective considerations, namely the election organizers, sources of funds, and technology. Therefore, the implementation of e-voting inseparable from the aspects of financing, human resources, and software, public awareness in the area concerned, as well as other requirements needed to realize constitutional democratic elections.

Keywords- *Electronic Voting; Indonesian Constitutional Court; Constitutional Democratic Elections*

I. INTRODUCTION

E-voting as one of the constitutional court's decision has become a milestone of gradual changes in the electoral system. As a country that puts forward constitutional democratic constitutional, The Constitutional Court's decision provided fundamental changes in the arrangement of the electoral system based on the constitution. Since Indonesia declare its independency in 1945, a number of elections is held from 1995 to 2019, which is during that periode, the e-voting system has not yet been implemented. The Decision Number 147/PUU-VIII/2009 as a response to constitutional issues that have not been regulated in the local government act. This Constitutional interpretation will later become a reference when Indonesia is ready to implement an e-voting system both in regional head elections and general elections and even the presidential / vice presidential elections.

In a democratical law country, it is absolutely necessary to have a leadership succession process and a representative system as stated by C.F. Strong, *the contemporary constitutional state must be based on a system of democratic which guarantees the sovereignty of the people.* [1] The constitutional state at this time must be based on a democratic representative system which guarantees the sovereignty of the people. Democracy that develops in every nation-state cannot be implemented uniformly, because in many ways, the understanding and implementation of democracy is influenced by the ideology or philosophy of that nation-state's life. Therefore, Bagir Manan argued that democracy is a growing phenomenon, not a form or a result of creation. [2]

One of the characteristics of a democratic country is to carry out the general elections to form a government or fulfill a state or government positions. A.S.S. Tambunan said that the general election is a means of implementing the principle of people's sovereignty which is essentially an acknowledgment and manifestation of the people's political rights as well as the delegation of these rights by the people to their representatives to run the government. [3] Henry Campbell Black said that *General election is an election held in the state at large. A regularly recurring election to select officers to serve after the expiration of the full terms of their predecessors.* In the Blacks's Law Dictionary, it is found that the classification of 'election' divide into 2 (two) kinds, namely general election and special election. [4]

That in the implementation of people's sovereignty through direct elections, the method of voting is a very important factor in determining the quality of democracy. Voting methods that can minimize vote count errors, multiple voters, and other violations will improve the quality of general

elections. In several general elections in Indonesia, voting is carried out by punched a hole through the ballot and also by put a check mark. With advances in technology, apart from being held in these two ways, namely punched a hole through the ballot and put a check mark, it can also be done in other ways according to technological developments, by means of e-voting. This new method has been used in many countries and if it is properly prepared, it can significantly reduce the weaknesses of voting by punched a hole through the ballot and put a check mark.

In the conditions of the global covid-19 pandemic, the constitutional court's interpretation of e-voting is very relevant. The constitutional framework to be built in this decision is to guarantee the fulfillment of constitutional rights as guaranteed by the 1945 Constitution of the Republic of Indonesia, but in an effective and efficient manner ways. This is coupled with Indonesia's experience of carrying out the National Simultaneous Election in 2019 (first simultaneous legislative and presidential elections) which is safe and peaceful. The awareness of citizens to participate in choosing the leader of the nation must be fully guaranteed by the state by means of an effective and efficient method.

The study of the possibility of implementing e-voting in the regional head elections at the end of year of 2020 and even for the year of 2024's election is very interesting to discuss considering that currently election organizers have prepared an e-recap system. In other words, Indonesia has been trying to gradually implement electronic elections, although not yet fully or not a whole. This conditions indicate that both the organizers elections, the electors and policy makers have prepared themselves to welcome the new electoral system in the upcoming elections.

With this study, it can be found that the fundamental elements of constitutional democratic elections are related to the necessity of implementing e-voting which is in line with the principles of direct, general, free, confidential, honest, and fair as stated in article 22E of the 1945 Constitution of the Republic of Indonesia.

This study have objectives to assess the privacy protection and the readiness of electronic voting through citizen perspective and expert recommendation by looking back previous study as the learning curve and ingredient for comparison.

Studies on the application of e-voting in elections in Indonesia are very important for stakeholders to understand comprehensively how the fulfillment of citizens' political rights (the right to vote and the right to be candidate) can be guaranteed by electronic-based elections. Through this Constitutional Court decision as a milestone that Indonesia is basically ready to implement e-voting, but gradually and gradually until all levels of society understand how the effectiveness and efficiency of elections by e-voting. As with the application of e-voting in various countries, Indonesia as the largest democracy with technological advances, should have been able to implement e-voting, even though gradually.

II. PROBLEMS

First, how is the interpretation of the constitutional court related to the implementation of e-voting system in a constitutional democratic election? Second, what are the implications of this decision on Indonesia's readiness tow support the election by e-voting from the aspects of the organizing institution, funds and technology?

III. RESEARCH METHOD

This research is a normative legal research by examining the Constitutional Court decisions related to e-voting or secondary data. Descriptive discussion is used to analyze the interpretation of the constitution in the context of the implementation of the election by e-voting. This research is a descriptive study, namely writing done to provide a general description without preceded by a hypothesis. This research reveals the constitutionality of norms in relation to e-voting and the interpretation of the constitution in judicial review of the Constitution. In addition, regarding the implications of the Constitutional Court's decision on the future elections in the future.

IV. DISCUSSION

In a global context, various countries in the world have different systems for holding general

elections. With different mechanisms, the constitutions of countries in the world regulate how an election is carried out. In other words, the general principles of Election administration are stated firmly and clearly in the supreme law of a country. Likewise for Indonesia, the 1945 Constitution gives a mandate to election organizers that the democratic party must be based on six basic principles, namely; direct, public, free, confidential, honest and fair.

Democracy as the basis of state life generally implies that at the last level the people provide provisions on basic issues concerning their lives, including in assessing the policies of the state government, because these policies determine the lives of the people. Thus a democratic state is a state that is organized based on the will and power of the people, or if viewed from an organizational point of view it means as a state organizing which is carried out by the people themselves or with the consent of the people because "Sovereignty is in the hands of the people and is exercised according to the Law".

Efforts to understand by providing a theoretical basis have shown how in the Indonesian state there has been a repulsive relationship between the "state" and "society" in playing their role. Indonesia as a country which was also born from the experience of colonialism after World War II, has also made democracy as one of the principles of state administration. The occurrence of several times changes in the constitution or the exchange of regimes and national leadership has never shifted this democratic principle, even the important theme that is always campaigned is "Upholding a Democratic Life" which is believed to be a very important political right for the people.

General election in a democratic country is a very important tool for the implementation of a democratic government, therefore in several countries in the world, general election is considered a symbol and at the same time a benchmark to be called a democratic country. To exercise people's sovereignty, members of the legislature are elected through general elections which are conducted democratically and transparently. Elections are a means of democracy in order to create a state government system with people's sovereignty. The state government that is inaugurated through the implementation of the election comes from the people and is carried out according to the will of the people and is dedicated to the welfare of the people

(government of the people by the people and for the people.

In the context of e-voting as stated in the legal considerations of the a quo decision, the people in Jembrana Regency are familiar with the application of the e-voting system through the election of the Head of the Hamlet, so that the application of e-voting in the 2010 Jembrana Regent Election will provide more assurance for the implementation of the General Election. democratic, direct, public, free, confidential, honest and fair. The reason is, technically, residents with citizen ID (KTP) can certainly exercise their voting rights without having to wait for an invitation card to vote, and it is certain to be honest and fair because the use of voting rights more than once can be avoided by this e-voting system.

Article 88 a quo states, "The voting for regional head and deputy regional head elections shall be conducted by casting a vote for one of the pairs of candidates in the ballot". According to the Court, if the contents of Article 88 of Law 32/2004 on procedures for voting only mean by casting one of the pairs of candidates in the ballot and not through other methods including e-voting, then Article a quo is inconsistent with Article 28C paragraph (1) and paragraph (2) of the 1945 Constitution, because the Petitioners are deprived of their right to obtain the benefits of science and technology, in order to improve their quality of life and advance themselves in fighting for their rights collectively to develop their society, nation and state.

Voting which is carried out by ticking one of the candidates as long as it does not contradict the principles of an overflowing and fair Election does not reduce the validity of the Election because it is still within reasonable limits. Likewise other methods, for example e-voting, are constitutional as long as they do not violate the principle of an overflow and fair election. However, the use of e-voting methods must be based on objective considerations, namely the readiness of the election organizers and the public, sources of funds and technology, and other related parties that must be thoroughly prepared.

In the interpretation of the Constitutional Court the article is conditionally constitutional to Article 28C paragraph (1) and paragraph (2) of the 1945 Constitution of the Republic of Indonesia so

that the word, "voting" in Article 88 of Law Number 32 Year 2004 concerning Regional Government also means using the e-voting method with the following cumulative conditions: not violating direct, general, free, confidential, honest and fair principles; and regions that apply the e-voting method are ready in terms of technology, financing, human resources and software, community readiness in the region concerned, and other necessary requirements.

Indonesia General Election and E-Voting

Since independence Indonesia has held 11 general elections national, namely the General Elections in 1955, 1971, 1977, 1982, 1987, 1992, 1997, 1999, 2004, 2009, 2014, 2019 12 election trips were a lesson valuable for Indonesian democracy, because the quality of elections is a reflection of the quality of a country's democracy. Elections, which are a medium for the conversion of people's sovereignty, must be done as well as possible.

Law Number 7 of 2017 concerning general elections consists of 573 articles, explanations, and 4 attachments. It clearly states that the Election is carried out based on the principles of direct, general, free, confidential, honest and fair. And in holding elections, the election organizer must carry out the Election based on the principles as intended, and its implementation must comply with the principles of: independent, honest, fair, legal certainty, orderly, transparency, proportional, professional, accountable, effective, and efficient. Based on these principles, Indonesia needs to apply new innovations to create a voting system in a simpler election, namely an electronic voting system.[5]

Meanwhile, the number of internet users in Indonesia is quite high. Based on the data found written by Kemp, it is stated that Indonesia, with a total population of 265.4 million, has 50% of internet users, of which half of the internet users are digital natives (From this result, Indonesia is in the sixth position which uses the most internet in the world. It is the sixth largest among the approximately 3.6 billion internet accesses in the world. So that Indonesia can take advantage of this E-voting system as a necessity to improve the quality of democracy in Indonesia. [6]

On the other side, Indonesia until recently has not used e-voting for election in a level of president, parliament, governor and sub-district, because many of Indonesian are not ready yet for e-voting and the system of e-voting as well. Indonesian who lives in

the rural area is not familiar with modern technology such as computer and internet. This is a barrier that hinders implementation of e-voting is electricity infrastructure. [7]

E-voting through the initiation of BPPT has made efforts to contribute concretely and significantly in the development of the e-voting system. This is based on BPPT RI data from 2013 to 2017, e-voting has been implemented in 683 village head elections in 12 districts. [8]

E-Voting and Data Security

The rule of law principle requires that decisions on the administration of elections must be based on laws. A cornerstone of electoral legislation is that it should be stable and not change frequently. But when elections rely on electronic solutions, frequent change is inevitable. Change is important for instance to ensure an adequate level of security over time. One obvious question then is: how does electoral legislation handle voting technology and how does it deal with the 'changing' aspect of e-voting?. [9]

Voting technology is a moving target, and that reality is unlikely to change any time soon. The present generation of electronic voting has the potential to reduce the number of lost votes, while effecting substantial improvements in racial equality, disability access, and multilingual access. Although the future of electronic voting is difficult to predict, next-generation technology may well do better at ensuring equal access, while also promoting secure and transparent elections. [10]

An electronic voting process must be designed in such a way as to guarantee the general, free, equal and secret character of elections. In a democratic context an electronic voting system should respect and ensure attributes and properties such as transparency, verifiability, accountability, security and accuracy. Only then can it foster and promote the participation of the citizens, the legitimacy and the democratic transaction of the election process. [11]

Governments are also constantly in search of new ways to improve the integrity of the voting system, such as by devising new methods of detecting voting irregularities in electronic voting systems. It undermines the governments' accountability to voters for not holding the government responsible through electoral laws, for

using inadequate methods of detecting voting irregularities, and for failing to redress systemic discrimination in voting laws in order to protect individual rights that are not in need of such protection. [12]

The use of information technology in the implementation of general elections will spur the effectiveness and efficiency of its implementation from the conventional process to the electronic voting or e-voting model. An e-voting system can be implemented with the assumption that the public have basic knowledge about the use of computers and the internet as well e-KTP (electronic ID) as an accurate validation tool because the KTP number has an arrangement different figures from each other.

It is important that the implementation of elections using the e-voting system does not violate the principles of election in the Indonesian constitution, namely direct, public, free, and confidential and honest and fair. It is said directly because the election of the e-voting system, each individual directly distributes rights select it without obstruction and cannot be represented.

The 2024 simultaneous elections with an e-voting system will result in elections that are more efficient in terms of budget, time, and ease of process. Elections that are more efficient will take place honestly because the more advanced systems are used to minimize fraud and be fair because all citizens who have an e-KTP can vote in elections without any more chaos in the voters list.

V. CONCLUSION

The Constitutional Court has provided a basic framework or offered a constitutional alternative in overcoming the impasse in holding elections that are high cost, with long time and high risk. E-voting is a constitutional election pattern / model, where every single vote is guaranteed its security and minimizes budget waste, as well as high effectiveness while upholding the principle of fair overflow. E-voting, with all its advantages, also has its drawbacks if it is not supported by a good, creative and transparent IT system. E-voting in the future will be one of the most logical choices in the midst of a world condition hit by a pandemic and as an effort to build an election system that is honest, fair and with integrity. Therefore, the

implementation of e-voting inseparable from the aspects of financing, human resources, and software, public awareness in the area concerned, as well as other requirements needed to realize constitutional democratic elections.

ACKNOWLEDGEMENT

Thanks you to Alia Harumdani Widjaja dan Meyrinda Hilipito who have helped in carrying out the research.

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