Toward The Deepening of Democracy in Indonesia: A Habermasian Assessment of The Prospects and Problems of The General Election in Indonesia

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Abstract. The present article evaluates the ideal democratic principles that are espoused by the Indonesian constitution vis-à-vis the actual practice of the general election. It addresses two questions: "Do the actual practices of the general election in Indonesia uphold the democratic principles espoused by the Indonesian constitution?" and "What democratic principles must be adhered to by the Indonesian government to deepen democracy in Indonesia?" The paper argues that the inclusion of the democratic general election in the constitution is a substantive contribution to the nation's democratization since it provides the citizens with the opportunity to exercise their freedom and rights of suffrage. There is, however, the lack of implementation of rules and regulations to fully embody the vision of the constitution and the lack of political commitment on the part of the political elites to democratic principles and values. The deepening of democracy in Indonesia demands that the government, its citizens, and state institutions perceive the general election not merely as a means to gain political power but as a democratic way to exercise popular sovereignty. This includes shaping public discourse and reasoning about political programs and policies and making rational decisions about new leadership. The conduct of the democratic general election should be based on several key principles. These include sovereignty as a procedural foundation, ensuring individual legal protection, upholding administrative legality, and maintaining a clear separation between the state and society.

Keywords: General Election . Habermas . Indonesia . Problems . Prospects

1 Introduction

One of Indonesia's major innovations in democratization is the provision of the democratic general election. Article 22E of the present constitution of Indonesia states that "General Election shall be conducted in a direct, general, free, secret, honest and fair manner once every five years" (Section 1). To be elected are "the members of the House of Representatives (*Dewan Perwakilan Rakyat,* DPR), the Regional Representative Council (*Dewan Perwakilan Daerah*, DPD), the President and Vice President, and the Regional House of Representatives (*Dewan Perwakilan Rakyat Daerah*, DPRD) [Section 2]. The participants shall be composed of the political parties

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for the election of the members of the DPR and the members of the DPRD (Section 3), and of individuals for the election of the members of the DPD (Section 4). And, "the general election shall be organized by a general election of a national, permanent, and independent character" (Section 5).

The above articles are a substantive contribution to the general election since they provided the citizens with the opportunity to exercise their rights of suffrage. From 2004 to 2019, Indonesian people exercised their political autonomy through the direct general election in a peaceful and competitive manner. This achievement affirms "Indonesia's status as an electoral democracy" [1] and is "one of the pillars of the democracy in the region" [2].

Nonetheless, the conduct of the direct general election showed several shortcomings in safeguarding and promoting the right to political participation and the autonomy of citizens. Some intellectuals even witness that electoral democracy in Indonesia tends to regress [3]. This is characterized by political practices which deteriorate "civil liberties and the rule of law" [4] and "shallow commitment to individual rights, liberties, checks, and balances" [5]. These characters indicate "a growing cognitive dissonance between the validity suppositions of constitutional democracy and the way things actually happen in the political process" [6]. In fact, there are malpractices conducted by citizens and the participants during the general election period in the forms of money politics, the politicization of military leadership, and the recruitment of civil servant services. These malpractices are incremental deterioration of liberal democratic institutions and democratic principles of the electoral system to eliminate political competition for personal or collective political benefits [7].

The present article evaluates the ideal democratic principles that are espoused by the Indonesian constitution vis-à-vis the actual practice of the general election. The questions addressed are: Do the actual practices of the general election in Indonesia uphold the democratic principles espoused by the 1945 NRI Constitution? What democratic principles must be adhered to by the Indonesian government to deepen democracy in Indonesia? The framework used in gauging both the democratic character as well as the potential of the general election is Jürgen Habermas's theory of law and democracy as expounded in his monumental treatise *Between Facts and Norms*.

The primary objective of this article is to utilize the Habermasian theory of law and democracy as a novel framework for evaluating the disparity between constitutional norms and the practical implementation of general elections in Indonesia. The article employs an expositive-critical approach and is structured as follows: In Part Two, an expositive approach is employed. This approach elucidates Habermas's theory by examining diverse sources such as books, journals, periodicals, and the internet [8], offering comprehensive insight into the theory. Part Three adopts a critical approach. It conducts an in-depth analysis of normative principles and real-world practices, evaluating the alignment between practices and principles [9]. It underscores the inconsistencies between the Indonesian constitution's provisions and the actual implementation in the context of realizing democracy. Finally, in Part Four, Habermasian democratic principles are presented as alternative solutions for enhancing democracy in Indonesia.

2 The Habermasian Theory of Law and Democracy

Habermas stands as arguably the most influential German philosopher and a "political thinker whose ideas find eerie applicability in contemporary global politics" [10]. Among his ideas, a subject of ongoing debate across various disciplines is his theory of law and democracy expounded in his monumental work *Between Facts and Norms.* In this treatise, he expounds on two interconnected facets of his project: his contributions to discourse theory regarding law and democracy, and the potential of discourse theory within intricate modern societies. Central to his argument is the notion that "the rule of law cannot exist or be sustained without radical democracy" [11]. He contends that modern law's legitimacy can no longer rest upon tradition or external sources of authority. Instead, he posits that "[t]he responsibility of legitimization rests fully upon the democratic process" [12]. This implies a profound link between law and democracy, whereby the legitimacy of contemporary law hinges on the democratic lawmaking process. This process involves the participation of citizens as autonomous and equal members within a legal community.

However, Habermas discerns an inherent tension within modern law, which he views as integral to its very natural essence. This tension is seen between, on one hand, the law operating as a system of norms necessitating citizens' adherence, and thereby demanding enforcement and the imposition of penalties for breaches while, on the other, the legitimacy and rational acceptability of the law emerge from a discursive process and democratic procedure entailing the participation of citizens as autonomous and equal entities. Within this paradigm, no alternative wellspring of legitimacy, such as authority, holds sway over modern law. Its legitimacy pivots solely upon the democratic nature of the process through which it is crafted. The legitimacy of the law is only manifest when it arises as a product of the democratic lawmaking endeavor undertaken by citizens as free and equal constituents of a legal community. Due to this, Habermas asserts that the bedrock of democracy lies in the consent of those governed, thus rendering it imperative that the autonomy of citizens remains paramount and unimpeded. Consequently, modern law bears the responsibility of safeguarding and operationalizing this autonomy. It achieves this through statutes and initiatives that both ensure and advance the political participation of the populace. To echo this sentiment, "The legitimacy of the rule of law hinges on its deep-rootedness in radical democracy, while the legitimacy of democracy relies on the safeguarding of citizens' autonomy facilitated by the instrumentality of law" [13].

Modern law should protect and guarantee the individual rights and freedom of citizens. These two concepts correspond to each other, in the sense that "rights… fix the limits within which a subject is entitled to freely exercise her will" [14]. Therefore, the exercise of the rights and freedoms of the citizens should be guaranteed by the law. The legal guarantee of the political autonomy of all citizens is assured through the political recognition and institutionalization of the system of rights, namely the right of (1) equal individual liberties; (2) the status of a member in a voluntary association of consociates under the law; (3) individual legal protection; (4) political autonomy; and (5) social welfare [15]. These rights "state precisely the conditions under which the forms of communication necessary for the genesis of legitimate law can be legally institutionalized" [16].

One essential requirement to actualize the formal conditions for legitimate lawmaking is the adoption of the discourse principle. This principle claims that the only valid action norms are just those "which all possibly affected persons could agree as participants in rational discourses" [17]. The adoption of this principle means that any justification of a norm shall be arrived at through the collaboration of all those affected by the norm. The process involves the practice of communicative action which respects the rights of all to participate equally and their freedom to decide the outcome of the discourse. It is only when the use of communicative liberties is ensured that the basic right to political participation in the enactment of the law is exercised by the citizens. The discourse principle must be vested, accordingly, with the legal shape of a democratic principle.

In the case of modern democratic states, the legitimacy of the lawmaking process cannot always be automatically presumed. One of the features of modern democracies is that they are representative. The adoption of the system of representative democracy has become a matter of expediency and necessity, given the status of modern societies. The task of lawmaking is assigned to an official assembly called the parliament or the legislature. There is nothing wrong with the system itself. There is, however, an ironic situation whereby the law is enacted by members of the legislative body who are tasked to represent their constituents and yet the needs and interests of the latter are often neglected or excluded in the making of the laws. This is the ironic situation of the external tension between social facts and the legal process.

The social reality that prevails in modern society further complicates the project of legitimating the law. One crucial fact that must be considered in relation to the political processes is that politics is "primarily… an arena of power processes" that involves mostly "strategic interactions governed by interests" [18]. Notwithstanding the characterization of modern politics, "one cannot adequately describe the operation of a constitutionally organized political system, even at an empirical level, without referring to the validity dimension of law and the legitimating force of the democratic genesis of law" [19].

Responding to the social reality of modern law, Habermas incorporates the idea of deliberative politics or deliberative democracy into his theory. This politics takes the form of intersubjective communication and its success depends "on the institutionalization of the corresponding procedures and conditions of communication, as well as on the interplay of institutionalized deliberative processes with informally developed public opinions" [20]. He insists that democratic processes are not limited to electoral exercises and the representational compositions of legislative bodies. There are also discourses outside the formal governmental exercises and bodies which form part of the democratic process inasmuch as they are "meant to guarantee that influence and communicative power are transformed through legislation into administrative power" [21].

Habermas further demands the institutionalization of coordination and cooperation between the central axis in the formal political sphere and the periphery axis in the informal public sphere. The central axis consists of the three equal branches of the government, namely, the administration, the legislature, and the judiciary. It is within these formal bodies that binding decisions for the whole society are decided upon. Only the central government, therefore, has the official authority to issue policies and programs and the power to implement them. The peripheral axis refers to the

various associations and organizations in the informal public sphere "that, before parliaments and through the courts, give voice to social problems, make broad demands, articulate public interests or needs, and thus attempt to influence the political process more from the normative points of view" [22].

One of the most compelling strategies for institutionalizing a democratic process for lawmaking, thereby ensuring the framework of political rights, is the Constitution. Functioning both as a legal and historical text, the Constitution holds a dual role. In its legal aspect, the Constitution stands as the foundational document encapsulating the nation's declared ideals and aspirations. It mandates the establishment of a government that embodies and advances the realization of these very ideals. Consequently, the constitution also operates as the yardstick by which the efficacy and alignment of the political structures erected by the government are assessed, ensuring their functionality and alignment with the principles and decrees enshrined within the constitution [23].

As a historical document, the Constitution represents a period in the history of the country when the citizens decided to establish their society. This historic period is not the culmination but only the beginning of the struggle of the citizens to form an autonomous and organic legal entity. It is equally true that the establishment of a society is a continuing project. This is what Habermas meant when he wrote that "historical constitutions can be seen as so many ways of construing one and the *same* practice – the practice of self-determination on the part of free and equal citizens – but like every practice, this, too, is situated in history" [24]. He adds that "the constitutional state does not represent a finished structure but a delicate and sensitive—above all fallible and revisable—enterprise, whose purpose is to realize the system of rights *anew* in changing circumstances, that is, to interpret the system of rights better, to institutionalize it more appropriately, and to draw out its contents more radically" [25].

The democratic process of legitimate lawmaking plays a crucial role in establishing institutionalized mechanisms for both reinterpreting the framework of rights and adapting it to the evolving demands of the present circumstances. What holds even greater significance is that these mechanisms inherently adhere to democratic principles, thereby securing the legitimacy of newly enacted laws. For modern law to truly achieve its purpose of harmonizing the entirety of society, it must genuinely reflect collectively agreed-upon determinations. The fulfilment of this aim hinges upon modern law accurately embodying the intent of the free and equal citizens who compose the legal community.

3 Prospects and Problems of the General Election in Indonesia

A constitution functions as a guiding framework for establishing policies and initiatives that align with the ideals and objectives outlined within the charter. While implementing rules and regulations might be well-crafted, relevant, and driven by good intentions, their efficacy and adherence can be impeded by unlawful behaviors or overshadowed by self-serving motivations. The subsequent section undertakes a critical evaluation of the application of constitutional norms concerning the general election in Indonesia. This analysis delves into the endeavors of the Indonesian government to actualize these constitutional norms through precise electoral regulations. Specifically,

it examines the principles that underpin these regulations, the extent of their coverage, and the participants involved in the general election process.

3.1 The Principles of the General Election

One of the main avenues for exercising popular sovereignty is the holding of a general election in a direct, free, just and fair manner "at regular intervals on the basis of universal, equal and secret suffrage" [26]. These provisos ensure that "all voters can choose their representatives in conditions of equality, openness and transparency that stimulate political competition" [27].

The principles of the general election cited above appeared in the Elucidation of Law No. 12 of 2003 on the General Election of Members of the House of Representatives, Regional Representatives Council, and Regional House of Representatives, I. General, 3. Principle, to wit: (1) *Direct* – Every citizen can directly present himself or herself in the voting place without intermediaries or without being represented by others to cast his or her vote for individuals or parties; (2) *General* – Every citizen who meets the specified qualifications is entitled to vote and to be elected; (3) *Free* – Each citizen is free to choose without any pressure from anyone and in any form that will disrupt the principle of freedom. (4) *Secret* – Each voter is guaranteed the confidentiality of his or her choice. (5) *Honest* – Every election organizer, government apparatus, participant, supervisor, observer, and voter must honestly follow the statutory regulations; (6) *Fair* – Both participants and voters must be treated equally without discrimination. The principles are essential since they ensure that the legitimacy of the elected leaders "stems from a majority vote reached in elections that are free, equal, and secret" [28].

The aforementioned electoral principles affirm the essential principle that every citizen has an equal right to vote for the president and representatives in the general election [29]. The emphasis on the equal right of everyone to vote is essential because, "the right to vote, interpreted as a positive liberty, becomes the paradigm for rights in general not just because it is constitutive for political self-determination but because its structure allows one to see how inclusion in a community of equal members is connected with the individual entitlement to make autonomous contributions and take positions of one's own" [30].

The same universal electoral principles affirm the procedural principle that guarantees "the individual's right to an equal opportunity to participate in democratic will-formation" [31]. The general election is, therefore, to be seen not merely as a means to elect national leaders but also as a procedure to generate a "more or less discursively formed public opinion" [32]. It comes from the citizens which can also serve as the basis for the candidates to form their political agenda and for the government to plan its policies and programs [33].

To ensure that the conduct of the elections complies with the constitutional directive, the government passed several electoral laws which specified certain conditions. One of these is the prohibition from involvement in the political party and political activities during the election process by the members of the army, the police, and civil servants [34]. The legal prohibition is very explicit but it is not always followed. Edward Aspinall and Marcus Mietzner explained that in August 2018, one year before the election, President Joko Widodo directed the police and military officers

to help the government to promote its success. From March 2019 until election day, a month later, the military camps displayed posters featuring the military commander and police chief calling on all the citizens to cast their vote and not to abstain. This was irregular, to say the least, because mobilizing the citizens to vote, "especially, in order to help the incumbent, is not part of the job descriptions of military and police forces in democratic states" [35].

One of the main obstacles is that the "military's senior leadership" [36] has been politicized to such an extent that they have become partisan. This is unfavourable to democracy since "if the military took partisan positions or exercised partisan loyalties, voters might reasonably assume that the opposition party would not be able to control the military if voted into office… Such conditions would break down the public's confidence in either the disfavored party or in the military itself and damage the functioning of the government" [37].

There have been instances where certain presidential candidates, particularly those in office, have enticed civil servants with promises of job promotions. In response, these civil servants often found it difficult to decline, especially considering their roles as supporters or members of the campaign teams of the incumbents, who coincidentally held positions of authority within their workplaces. This unwavering obedience and sense of duty created a challenge for them to uphold a nonpartisan stance [38]. This partisan involvement of civil service personnel in electoral activities poses a threat to the impartiality and professionalism of the bureaucracy. It blurs the distinction between democratically elected politicians and the administrators who serve them [39].

Furthermore, Law No. 7 of 2017 on the General Election provides that citizens should be able to freely choose the candidates whom they want to serve as their leaders. Article 286(1) of the law states that vote buying and other forms of influence peddling should be avoided. Further, Article 286(2) mentions that the law is clear about cancelling the candidacy of the violators of this provision or facing criminal charges if it is proven that they used government funds for these illegal practices (Article 286(4)) states.

In spite of the prohibitions, however, patronage politics is still rampant in Indonesia. The pre-election vote buying is done by "mobilizing large teams to draw up lists of voters and deliver cash to them" [40]. The post-election payoff is also prevalent. Some candidates want to be sure that they give money only in exchange for actual support in the polls. Aside from cash, there are candidates who deliver food like rice and sugar, calendars that double as promotional materials, and even religious items [41].

There are also other candidates who sponsor community parties, sports competitions, singing contests, and "funded community services" like free medical and dental check-ups and treatment, scholarship programs, and many others. The targets are not just individual voters but communities as well through "club goods" that are disguised as donations for the basic needs of the people in a particular urban area or rural village. Incumbent candidates often leverage their pork barrel funds to sponsor social initiatives that are effectively aimed at benefiting specific regions and are publicly funded. These initiatives are essentially mechanisms for reciprocating or anticipating political backing [42].

The electoral laws governing the election of the representatives to the legislative department can be cited also as a contributory factor to the prevalence of patronage

politics. Article 241(1) of Law No. 7 of 2017 on the General Election stipulates that it is the prerogative of the political party to determine who will be the candidates for members of the DPR as well as the provincial and the regency or municipal DPRD. Furthermore, Article 241(2) of the same law requires that political parties should conduct the selection process democratically and openly in accordance with the articles of association, by-laws, and/or internal regulations of political parties. And, Article 242 of the law states that they are prohibited from receiving compensation in any form in the selection of candidates.

In actual practice, the legal proviso is seldom observed. The party members who want to be in the good graces of the party management and wish to be included in the list of those who will be considered the legislative candidates of the party often ensure their harmonious relationship with the party officials by bribing them under the guise of donating financial contributions to the party. These transactions are often done under the table so that they cannot be stopped by election administrators like the General Elections Commission and the Election Monitoring Agency. This implies that the exclusive and decisive power vested in the political party has routinely become a source of corruption for its officials and the members of its candidate selection committee: "Candidacy processes have become increasingly closed and transactional, with little public participation in the supervision of the processes. Rather, a view has emerged among the public that transactional politics in candidacies is both legal and natural" [43].

3.2 The Coverage of the General Election

Article 22E(2) of the 1945 NRI Constitution provides for a general election to elect the members of the DPR, the DPD, the President and Vice-President, and the DPRD. This institutionalization of the general election and its expanded coverage in the constitution ensures a more democratic Indonesian nation. This enables the citizens to exercise their right and freedom to actively and directly participate in the political life of the country, privileged withheld from them for almost three decades.

The first direct general election for all the 550 members of the DPR, the 132 members of the DPD, and all the members of the DPRD at the provincial, regional, and city levels took place on April 5, 2004 [44]. The second general election for the members of the national and regional parliaments was held on April 9, 2009 [45]. The citizens elected the members of the DPR whose number was raised to 560 and the members of the DPRD as well which consisted of "several thousand seats in the thirty-three provincial legislatures and about 500 district legislatures around the county" [46]. The third general election on April 19, 2014, was to elect the members of the DPD whose number was expanded to 136, the members of DPR, and "19,697 members of regional assemblies at the provincial and regency/municipal levels" [47]. The latest general election on April 19, 2019, was for the election of "575 members of the national parliament, as well as some 20,000 seats in the country's many provincial and local legislatures, including 2,207 provincial MPs from 34 provinces and 17,610 local councilors from more than 500 local authorities" [48].

The general election system is to be hailed as an essential factor towards the wider democratization of the Indonesian nation. It extends to a greater number of individual citizens the inclusive right of access to political institutions, parties, legislative bodies,

and so on. They are thus empowered to exercise their political rights and freedom. The importance to the status of the citizens of their being able to exercise their rights of political participation – such as in their enjoyment of the right of suffrage – is what grounds "the citizen's reflexive, self-referential legal standing" [49].

The direct presidential election is conducted in accordance with the provisions of Article 6A(1-4) of the 1945 NRI Constitution. The first direct presidential election was held on July 5, 2004. There were five candidate pairs of candidates. The election was conducted through a second round and won by Susilo Bambang Yudhoyono-Muhammad Jusuf Kalla with 60.62% of the votes [50]. The second direct presidential election took place on July 8, 2009. There were three pairs of candidates contested in the election, and it was easily won by the pair of Susilo Bambang Yudhoyono-Budiono who received 60.8% of the votes nationwide. In the third presidential election in 2014, two candidate pairs competed for top posts. The election was won by the pair of Joko Widodo-Jusuf Kalla with 17 million votes or 53.15%. The latest presidential election was held last April 19, 2019, and was contested by two pairs of candidates. The pair of Joko Widodo won 55.5% nationwide [51].

The adoption of the general election system for the president and vice president as well as for the members of the national and regional legislative assemblies is a crucial element in the further democratization of the Indonesian nation. It signals a radical shift as it indicates that sovereignty is no longer exercised solely by the MPR but "has been returned to the people who… directly vote for the president and vice-president and the legislative members" [52].

The general election strengthens the position of the president since it is obtained directly from the electoral will of the people. It forestalls a random move by the DPR to overthrow the president and the vice president from office [53]. According to the present Constitution, Article 7A, the only legitimate ground to remove them from office is when "they are either proven to have violated the law by engaging in treason, corruption, or other high crimes or misdemeanours, or proven to no longer fulfil the requirements of the office of President and/or Vice President." The clear separation of powers as well as the checks and balances which are key elements of a democratic polity are also maintained since the members of the legislature are elected separately. Their mandate is guaranteed directly by the people such that they are not beholden to the president. They retain their independence and can thus exercise their oversight function over the executive branch of the government.

In modern democracies, the principle of representative democracy requires the legislators to "act as 'delegates'" of their constituents and to 'represent' their views and positions in the legislative assembly rather than act as "trustees" who present and advance their private views and opinions and vote accordingly [54]. Article 20A(1) of the 1945 NRI Constitution defines the functions of the national legislature as follows: "The DPR shall have legislative, budgetary, and supervisory functions." The constitution explains further that the legislative function refers to the right and duty of the DPR to make laws (Article 20(1)) and to discuss every Bill with the president to reach a mutual agreement (Article 20(2)). The budgetary function is the right and duty of the DPR to examine the proposal for the national budget submitted by the president and to pass the official national budget of the government (Article 23(2)). The supervisory function means the right of the DPR to oversee the government's execution of policies and use of the national budget.

The present constitution of Indonesia, however, has no explicit provision with regard to the representational function of the legislators. The absence of provision has proved to be a loophole in the constitution and may explain why the legislators do not seem to feel that they have an obligation to represent their constituents and are thus unresponsive to the needs and interests of citizens in general: "In Article 20a of the Indonesian constitution, which lists parliamentary functions, a representative function is not assigned to parliament. Some analysts say that this explains why legislators do not feel obliged to represent the population in general and their voters in particular" [55].

Law No. 12 of 2011 on the Formation of Laws and Regulations, Article 1(9) explains that at the beginning of their five-year term, the newly elected members of the DPR prepare the national legislation program (*Program Legislasi Nasional, Prolegnas*). Article 17 of the law explains that the *Prolegnas* contains a list of the priority bills that the DPR intends to pass. It is instituted in order that the legislators may be able to exercise their representative function. During the deliberation of the proposed bills, representatives are supposed to solicit oral or written inputs or feedback from their constituents through public hearings, seminars and workshops, and by holding with the latter public discussion on the proposed draft of the bills.

The avenues for civic participation in the lawmaking process are hardly established, however. The deliberation process in the parliament itself is not open to dialogue with the public at large, including civil society groups, and thus barring public participation from having any significant impact on its legislative work [56]. Perhaps the indifference towards or even rebuff of the political right of the citizens can be explained in terms of a misunderstanding of the concept of civic participation.

Bivitri Susanti explains that the Indonesian parliament members generally understand the concept of citizen participation as "consultation" (*konsultasi*) and "socialization" (*sosialisasi*). Consultation is often limited to a forum where experts offer the participants their opinion or advice based on their expertise. There is no active participation by the different stakeholders to give their respective inputs based on their activities and experiences. Socialization is usually a meeting where policies are deliberated "with a very limited interaction" and "without critical engagement" between the speaker and the audience [57]. The law that the parliament eventually passes, therefore, has practically no contribution from the citizens at large. Thus, socialization is a "strategy… to increase the popularity of political leaders at the expense of substantive application of democratic rules and regulations" [58].

Democracy is a system of government whose main objective is to empower all citizens and allow them to participate in the practice of governance. One of the main venues where this can be actualized is in the lawmaking process. This process requires the legislature to "remain porous, sensitive, and receptive to the suggestions, issues and contributions, information and arguments that flow in from a discursively structured public sphere, that is, one that is pluralistic, close to the grassroots, and relatively undisturbed by the effects of power" [59].

The fourth principle of the Pancasila recognizes the element of consensus that Habermas proposed as an essential component of a democratic lawmaking process. The principle declares the establishment of a "democracy guided by the inner wisdom in the unanimity arising out from deliberations amongst the representatives."

In actual practice, however, the above declarations on consensus-building in the legislature are not properly observed. Stephen Sherlock observes that although the individual members of the parliament can take their position on a proposal during the deliberation process, the final decision on the kind of law to be passed is made by the party leaders in the deliberative body [60]. Even decisions are often the outcome of "internal negotiations" rather than "are rarely made by majority vote." This has resulted in laws "often including contradictory or deliberative vague stipulations in order to please all those involved in the negotiations" [61].

3.3 The Participants of the General Election

In constitutional democracies, the political parties wield social power and can, therefore, serve as catalysts in the shaping of public opinion. They compete with one another in this function and so the parties have "to distinguish themselves in the contest over the appropriate interpretation of the needs and promotion of relevant issues, in the dispute over the correct description of problems and the best proposals for their solution" [62]. They can assist in public education programs to promote among the citizens a "democratic ethos" [63] and "constitutional patriotism" [64]. Their collaboration and support are also instrumental in political will-formation. The political parties, moreover, are agencies for political recruitment. They dispatch into the political system qualified individuals who can take on leadership positions in the executive and legislative branches of the government.

Article 22E(3) of the 1945 NRI Constitution guarantees the rights of citizens to participate in the general election either through political parties or as individuals. The explicit provision for political participation through the party system is notable. The political parties in Indonesia do not only represent ideological and nationalist interests. Some of them also promote religious ideals. There are also several established parties at both the regional and national levels. There is, in other words, a thriving multi-party system in the nation.

The multi-party system can be seen as an indication of the vibrancy of democratic culture and practice in the Republic of Indonesia. The system provides a wider range of political platforms for the voters to choose from. In 1999, 48 political parties were declared eligible to participate in the elections. In the 2004 elections, 24 political parties qualified to participate in the elections. In the next general elections, the participation of political parties was decreed to 38 in 2009 [65], 12 in 2014 [66], and 14 in the 2019 elections [67]. It can indeed be said that the multi-party system has made a comeback in the political landscape of Indonesia.

Some intellectuals, however, have noted that the multi-party system is not advantageous in a presidential system of government. In the experience of Indonesia, it has resulted in factionalism in the parliament. This results in difficulty in securing its support in the implementation of presidential policies and programs [68]. To remedy the problem, the legislators sought to limit the number of political parties represented in the parliament. They prescribed an electoral threshold for a political party to be given a seat in the parliament. The target was to reduce the number of political parties in the parliament to at most two so there would be less fragmentation of political agenda and interests [69, 70].

The electoral threshold began in Indonesia with the enactment of Law No. 3 of 1999 on the General Elections which governed the conduct of the general elections in the same year. Article 39(3) of the same law mandated that to qualify for a seat in the DPR, the party must have garnered at least 2% of the 462-seat composition of the DPR. In 2004, Law No. 12 of 2003 on the General Election of the DPR, DPRD, and DPD Members, Article 7(1) increased electoral to 3% of the 500-seat membership of the DPR. Law No. 10 of 2008 on the General Election of the DPR, DPRD, and DPD Members, replaced the electoral threshold with the parliamentary threshold. The electoral threshold was redefined to refer to a minimum number of votes that must be obtained by a political party for it to be allocated a seat in the parliament [71].

Similar alterations in the electoral law were made in the succeeding general elections. According to Law No. 10 of 2008 on the General Election of the DPR, DPRD, and DPD Members, Article 202(1), the parliamentary threshold was adjusted as follows: in 2009, 2.5% of total votes were cast nationally to gain at least one of the 560 seats in the DPR. In 2014, Law No. 10 of 2008 on the General Election of the DPR, DPRD, and DPD Members, Article 208 raised it up to 3.5%. And, in 2019, Law No. 7 of 2017 on the General Election, Article 414(1) added the threshold to 4% to secure one of the 575 seats in the DPR. Of the 38 political parties that participated in the 2009 general election, only 9 met the parliamentary threshold; of the 12 parties in 2014 only 10; and, of the 14 parties in 2019, only 9 [72].

The adjustments made and the requirements for the party every time in the electoral threshold stem from the absence in the constitution of a more definitive provision regulating the conduct of the general elections. They can easily be changed, therefore, and suited to the advantage of the dominant political party in power. Although the intention may be to ensure a stronger base on the legislature in order to enjoy its support for the implementation of the policies and programs of the president, the practice is arbitrary and open to manipulation.

The election of the president and the vice-president is also problematic. In the 2004 elections, Law No. 23 of 2003 on the General Election of the President and Vice-President, Article 5(4) added the proviso that the pairs of presidential and vice-presidential candidates may only be proposed by a political party or a combination of political parties that obtained at least 15% of the total seats in the DPR or 20% of the votes cast nationwide during the election for members of the DPR. In the 2009 elections, Law No. 42 of 2008 on the General Election of the President and Vice-President, Article 9 increased the requirement to 20% and 25%, respectively. The threshold was retained by Law No. 7 of 2017 on the General Election, Article 222 for the 2014 and 2019 presidential and vice-presidential elections.

The introduction of the electoral threshold for the presidential and vice-presidential elections may be justified as a measure to strengthen the party system. However, it also serves as a huge legal hindrance to individuals who are not affiliated with political parties [73] since they are barred from running as independent candidates for the highest public office in the land. This recruitment model for the presidential and vice-presidential candidates presently in place in Indonesia is a clear violation of the political rights of individual citizens. It is a denial of the guarantee of the equal rights of all citizens.

The adoption of the threshold has in fact turned out to be the controlling mechanism of big political parties to narrow down the number of qualified candidates

to their own members. This has had a detrimental effect on smaller political parties which should enjoy as many political rights as the bigger ones [74]. It is definitely not a positive development for the deepening of democracy in the country. And the ultimate losers in this state of affairs are the citizens at large. Indeed, "the tightening threshold reduced the field of nominees and, therefore, the choice for voters: the number of presidential candidates decreased from five in 2004 to three in 2009 and two in 2014. In 2019, the same two presidential nominees re-registered, underlining the narrowing electoral range" [75].

4 Towards the Deepening of Democracy in Indonesia

The problems of the general election in Indonesia must be solved. It requires continual and cooperative efforts of the government, state institutions and citizens to deepen democracy in the country, that is to actualise social equality as well as the participation and representation of citizens "in the election of government and in the process of government, which eventually will strengthen the liberties and rights of citizens and groups" [76]. The government needs to develop democratic mechanisms that create trust in all political actors, build a strong administrative-technocratic capacity, and apply the law to all citizens with equal measure. State institutions shall deepen democracy as the only game in town by involving and practising "democratic values in society" [77]. And, citizens of the state must continue to strengthen their active participation in controlling the implementation of government programs and policies [78]. The citizens and groups, including civil society groups, non-governmental organizations, and the mass media, must continue to establish solidarity and to achieve communicatively subjective understanding through "the connection between the formation of opinion and the institutionalization of political aspiration, and the informal formation of opinion in the culturally mobilized public sphere" [79].

The deepening of democracy in Indonesia requires democratic principles. From the perspective of Habermas's theory, there are four principles that must guide the conduct of the general election in Indonesia as a democratic state ruled by law.

The first is the *principle of popular sovereignty as a procedure*. This principle means that "all political power derives from the communicative power of citizens" [80]. The implementation of this principle demands the institutionalization of democratic procedures that allow the communicative freedom of citizens to be implemented effectively, all interests can be considered fairly, and the conditions for bargaining can be sufficiently fulfilled. The democratic procedures should be based on the principle of political pluralism which says that opinion- and will-formation in the formal political public sphere must always remain open and include the communication of the informal public sphere. The state, therefore, must protect the informal public spheres since they are the arenas which provide opinions, valid claims, and significant judgements in deliberation and decision-making process and prevent the constitutional constraints of formal programs. In principle, Habermas argues, "parliamentary bodies should work within the parameters of what, in some sense, is a 'subjectless' public opinion, which naturally cannot form in a vacuum but only against the background of a liberal political culture" [81].

The conduct of a democratic general election in Indonesia necessitates the government, state institutions, and citizens to view the general election not only as a means to gain political power. On the contrary, the general election is a means of democracy that provides opportunities for free and equal citizens to exercise popular sovereignty, shape public discourse and reasoning about political programs and policies, and make rational decisions about new leadership. The democratic principle presupposes the ability of political elites to evaluate their political actions, taking futuristic-critical perspectives from experts, from society, and from themselves, which are opinion-forming concepts and wills. In the struggle for political power, they must always "submit to the deliberative system and stubborn nature of political discourse" [82]. Furthermore, the people's representatives in parliament must not be assimilated into the state apparatus and relativize party platform competition solely to recruit certain individuals into state institutions. Rather, they must be able to compete democratically and to train and form democratic leaders who provide the best response and solutions to the real needs and interests of society in general. And, finally, political parties must also be able to play their political functions properly. Article 11(1) of Law no. 2 of 2008 on the Political Party, explains that these functions include, among others (a) educating citizens so that they are aware of their rights and obligations in the life of the nation; (b) creating conducive conditions for national unity and integrity; (c) collecting and channelling citizens' political aspirations in forming and determining state policies; (d) facilitating citizen participation in the political process; and (e) recruiting personnel and leaders to fill political positions through democratic mechanisms based on gender equality and justice. These provisions outline the potential for political parties to contribute to the deepening of democracy in the country.

The second is the *principle of individual legal protection guaranteed by an independent judiciary*. This principle derives from the understanding that although political decisions about public interests are conducted by the legislative body, and the administration implements those decisions through political programs, the realization of political decisions and programs must be controlled by law. There is still much work to be done so that the current political parties become what the 1945 Constitution aspires them to be. A necessary but difficult step is how political parties can abandon the politics of patronage, clientelism, vote buying, and other forms of electoral malpractice. The main point of this problem lies in the indecisiveness of a legislature that fails to exercise its authority to create democratic laws or law enforcement agencies that wash their hands against enforcing laws. The conduct of a democratic election in Indonesia demands law enforcement and political equality for all members of society. There are no individual or group citizens, including the state, who enjoy special rights over other individuals and groups. In practice and policy, this demand for law enforcement means that the law must be applied to all without fear or favouritism. Rights and privileges must be accorded to all citizens, and duties and penalties must be imposed on all in equal measure [83].

The third is the *principle of the legality of administration* which says that administrative power should generate itself only from the communicative power of citizens. The democratic general election in Indonesia demands the government to prioritize the law and not utilize its power to intervene in the legislative and judiciary branches of the government. Its power can only be employed insofar as it is needed to institutionalize rational discourse and to provide *enabling conditions* for making and

applying the law. On the contrary, the government will go beyond its function insofar as it provides interventions or *restriction conditions* to the legislative and adjudicative processes. Those interventions "violate the communicative propositions of legislative and legal discourses and distribute the argumentation-guided process of reaching an understanding that alone can ground the rational acceptability of laws and court decisions" [84].

Fourth is the *principle of state and society*. This principle refers to "the legal guarantee of a social autonomy that also grants each other, as an enfranchised citizen, equal opportunities to make use of his rights to political participation and communication" [85]. A democratic constitutional state should serve politically autonomous self-organizations and secure the effective exercise of socially autonomous citizens in the public sphere. This requires the state to enable the communicative power of citizens, including civil society, non-governmental organizations and the mass media, to participate in the political deliberation and final decision-making process.

It should be said that the electoral laws adopted by the government have not yet fully embodied the vision and intent of the revised constitution. The problem of weaknesses in election laws cannot be resolved simply through updating or changing laws and the electoral system because these laws can easily be changed and adapted to the calculation of the interests of the dominant political parties in power. Reform of election laws cannot be an excuse for lawmakers to wash their hands against the formation of democratic laws. The government, the DPR, and electoral institutions must always prioritize the principles of democracy and people's sovereignty in the law-making process. The making of election laws must be free from the political party's interests. The process of making laws and final decisions must be carried out in an open and transparent manner and put forward rational arguments rather than majority votes. Election laws in Indonesia can only be valid if they are implemented based on ideal procedures that prioritize the process of communicating and fighting ideas in a rational, honest, open, free of interests, and involve community participation. State and legislature must prioritize the public interest in the law-making process. These two institutions must protect the freedom of the public sphere which has access to information and high and independent mobilization of the social power of corporations in the form of monetary assistance and other instrumental facilities. They must protect the communicative power of citizens and incorporate autonomous social actors into the political process of shaping opinion and will to produce valid laws.

5 Conclusion

The general election is not merely a means to gain political power but rather a democratic means for citizens to exercise popular sovereignty, shape public discourse and reasoning about political programs and policies, and make rational decisions about new leadership. The conduct of the general election in Indonesia has been consistent with democratic principles espoused by the 1945 Constitution. It provides the opportunity for free and equal citizens to exercise popular sovereignty, forms public reasoning about political programs and policies, and makes rational decisions on the new leadership. However, certain issues persist that can be identified as shortcomings

of the general election system in the nation. Firstly, the regulations and directives implemented by the government have not entirely aligned with the vision and objectives outlined in the revised constitution. And secondly, there exists a deficiency in political dedication from leaders and elites to uphold democratic principles and values.

To conclude, the challenge of implementing rules and regulations can be addressed through the application of democratic principles advocated by the Habermasian theory of law and democracy, which is tailored for a state governed by democratic laws. This approach necessitates the establishment of ideal lawmaking procedures that embrace the equal participation of citizens. Essential to this is the conduct of legal and political discussions in a manner that is open, transparent, inclusive, and consultative, thereby ensuring authentic citizen involvement. Furthermore, the lack of political commitment to democratic values demands that political parties engage in competition through democratic means. This entails nurturing democratic leaders who are capable of offering optimal responses and resolutions that cater to the genuine needs and interests of citizens. Political parties must also undertake the role of educating citizens and recruiting and selecting personnel and leaders for political positions using a democratic mechanism rooted in the principles of gender equality and justice.

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