

## Political Transformation of Electoral Lawmaking: Towards Fair and Transparent Elections

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### KEYWORDS

elections, substantive justice, regulatory reconstruction, representation, transparency

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### ABSTRACT

General elections are the main pillar of democracy that aims to guarantee the political rights of every citizen in a fair manner. However, election regulations in Indonesia still face obstacles, such as inequality in the allocation of legislative seats, the dominance of political elite interests, the lack of representation of marginalised groups, and the lack of transparency in the legislative process. This research uses a normative juridical method to analyse the gap between the principles of substantive justice mandated by the constitution and the reality of the implementation of election regulations, as well as to offer a political reconstruction of law based on substantive justice. The novelty of the research lies in the proposed incentive mechanism in the form of additional funding for political parties that succeed in increasing women's representation in parliament as well as the application of a technology-based open legislative system to increase transparency and public participation. Reconstruction based on three main pillars - equality, representation, and transparency - is expected to improve the legitimacy of elections, create inclusive democracy, and strengthen the values of Pancasila and the 1945 Constitution.

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### Introduction

General Elections (Elections) have a strategic position in building a fair democracy. As a formal mechanism in determining political leadership, elections are a means for citizens to exercise their political rights directly. In Indonesia, elections not only function as an instrument of democracy, but also as a reflection of national values contained in Pancasila and the 1945 Constitution. However, behind the urgency, the implementation of elections often faces fundamental challenges, especially in ensuring that the principle of justice can be realized in every aspect of its implementation (Bawamenewi, 2019; Hoesein, 2010; Triono, 2017).

The phenomenon of inequality in the electoral system in Indonesia has become more and more apparent in recent years. One striking example is the allocation of seats in constituencies (dapil) which often does not reflect the principle of fairness. As an

illustration, constituencies with a larger population often get a smaller allocation of seats than constituencies with smaller populations. This imbalance not only causes injustice in political representation but also has the potential to weaken public trust in the electoral system itself (Sholikin, 2019).

In addition, the legislation process in the formation of the Election Law is often colored by the pragmatic interests of political parties. The dominance of large parties in determining the regulatory framework of elections, such as parliamentary threshold rules or seat allocation systems, is often detrimental to small or independent parties. This situation narrows the space for political pluralism which is one of the important elements in democracy. On the other hand, marginalized groups such as women, indigenous peoples, and people with disabilities also still experience a significant representation gap (Aminuddin et al., 2015; Kamuli et al., 2023).

This phenomenon shows that there is a considerable gap between the principle of substantive justice mandated in the constitution and the reality in the practice of legal politics in the formation of the Election Law. The Indonesian Constitution clearly guarantees the political rights of every citizen without discrimination, but the reality shows that the exercise of these rights is often distorted by the interests of the political elite. Shortcomings in the legislation process with minimal transparency and public participation further exacerbate this situation. The closed political locomotives that dominate the decision-making process often ignore the aspirations of the wider community and the principles of accountability.

Failure to create fair election regulations not only has an impact on inequality of political representation, but also risks creating potential social conflicts. Dissatisfaction with election results that are considered not to reflect the will of the people often leads to lawsuits or even mass protests. Therefore, building a fair election regulatory system is not only a legal necessity, but also a necessity to maintain social and political stability (Suhendarto, 2024).

In this context, the reconstruction of legal politics in the formation of the Election Law is an urgency. This reconstruction not only aims to correct the technical weaknesses of the regulation, but also to ensure that the resulting regulation is able to reflect the principles of substantive justice, such as representation, equality, and inclusivity. A more transparent, participatory, and fair-based approach must be the main foundation in every process of forming the Election Law (Bubu, 2019; Fauzani & Rohman, 2019).

This research seeks to make an academic and practical contribution in building a fair election system. The main focus of this research is to analyze the phenomenon of inequality in election regulations in Indonesia, identify weaknesses in the prevailing legal politics, and offer concrete steps to reconstruct election regulations. Thus, this research is not only relevant for policymakers, but also for the wider community who yearn for fairer and more democratic elections.

## **Research Methods**

This research employs a normative juridical approach to analyze laws, regulations, legal doctrines, and principles related to the formation of the Election Law in Indonesia. This method is chosen to identify normative weaknesses, evaluate the legal politics influencing the regulation, and propose solutions based on the principle of justice. The study involves a multi-stage analysis, starting with the identification of the existing legal framework, followed by an evaluation of how these regulations align with the principle of fairness and constitutional standards, and an examination of the political dynamics that

often shape the legislation process. Comparative secondary data, including academic literature, journals, and prior research, are utilized alongside case studies on electoral implementation to explore the practical application and impact of existing regulations on substantive justice. Using qualitative analysis with an inductive approach, the study draws conclusions from specific findings to ensure that its recommendations are contextual, relevant, and focused on reconstructing legal policies to promote fairness, equality, and justice in Indonesia's electoral system.

## **Results and Discussions**

### **Legal Politics Analysis in the Formation of Election Law in Indonesia**

The politics of law in the formation of the Election Law in Indonesia reflects the complex dynamics between political interests, democratic principles, and demands for justice. The Election Law is a legal product that directly affects the distribution of political power in parliament, so the process of its formation often becomes an arena of fierce debate among political parties. This phenomenon shows that the formation of the Election Law is more influenced by political compromise than the principle of justice which is the main principle in the Indonesian legal system (Basuki, 2020; Faizal, 2017; Paradita & Triadi, 2024; Saputra et al., 2024; Setiawan, 2023).

One of the striking aspects is the application of the parliamentary threshold. This threshold is designed to simplify political fragmentation in parliament, but in practice it is often a tool to limit small or new parties that want to compete in elections. Consequently, the dominance of major parties is getting stronger, while political pluralism is weakening. This is contrary to the principle of democracy which prioritizes open access to politics for all groups, including small and independent parties.

In addition, the formation of constituencies (dapil) and the arrangement of the allocation of legislative seats also often cause debate. In some cases, seat allocation is based more on political considerations than on a fair distribution of the population. For example, constituencies with large populations often get a disproportionate number of seats compared to constituencies with small populations. This inequality not only hurts the principle of equality of votes (one person, one vote), but also creates the potential for horizontal conflicts in people who feel that their political rights are neglected.

The process of forming the Election Law also shows a lack of openness and public participation. Many crucial decisions in election regulation are taken through closed political lobbies, without adequate consultation with civil society, academia, or other independent groups. This kind of legislation procedure creates a gap between the resulting regulations and the needs and expectations of the community. For example, while the Election Law aims to ensure fair representation, its implementation often results in persistent inequality because it is not based on the aspirations of the wider community (Zuhri, 2018).

On the other hand, the representation of marginalized groups, such as women, people with disabilities, and indigenous peoples, is still not the main focus in the legal politics of the formation of the Election Law. In fact, the existence of regulations that favor these groups is very important to ensure inclusivity in the democratic process. The 30% quota for women's representation, for example, although regulated, is often only met administratively without any mechanism to ensure that such representation is actually realized in practice. This shows that existing regulations have not been able to overcome the structural discrimination experienced by these groups.

Furthermore, the analysis shows that the politics of law in the formation of the Election Law often fail to integrate the principles of transparency and accountability. For example, the process of drafting a draft law rarely involves the community actively, either through public discussion forums or online platforms. In fact, community participation is an important element in ensuring that the resulting regulations truly reflect the will of the people.

By observing these phenomena, it is clear that the legal politics of the formation of the Election Law in Indonesia still need to be reconstructed. The legislative process must be directed at the principle of substantive justice that not only prioritizes political efficiency, but also respects the constitutional rights of every citizen. In this case, openness, community participation, and justice must be the main pillars in building legal politics oriented towards inclusive and equitable democracy

### **The Gap between the Principle of Fairness and the Reality of Election Regulation**

The principle of justice is the main foundation in the formation and implementation of election regulations, as mandated by the 1945 Constitution and the values of Pancasila. However, in reality, election regulations in Indonesia are often far from reflecting substantive justice. This can be seen from several crucial aspects in the implementation of the election which show that there is a gap between the ideals of justice and the implementation of the law (Anwar et al., 2024; Fahmi, 2016; Wiguna, 2021).

One of the most striking issues is the imbalance in the allocation of legislative seats based on constituencies (dapil). The seat allocation system used today often does not take into account the number of people proportionally. For example, a constituency with a large population has almost the same number of seats as a constituency with a much smaller population. This inequality is contrary to the principle of equality of votes (one person, one vote), where each vote should have equal weight in determining political representation. As a result, certain regions feel underrepresented in the decision-making process in parliament, which in turn weakens the legitimacy of the electoral system.

In addition, election regulations tend to be more accommodating to the interests of large political parties, while small and independent parties are often marginalized. The parliamentary threshold, for example, has created structural barriers for smaller parties to gain seats in parliament. Although the main reason for the enactment of this rule is to simplify political fragmentation, in practice, it has narrowed the opportunities for political pluralism. This gap shows that election regulations have not been able to create equal opportunities for all political participants.

Another gap can be seen in the representation of marginalized groups, such as women, people with disabilities, and indigenous peoples. Although there are affirmation policies such as a 30% quota for women's representation in the list of legislative candidates, their implementation is often a formality. Many political parties only meet the quota on paper without providing adequate strategic support to ensure women's electability in elections. This shows that election regulations have not succeeded in overcoming the structural obstacles faced by these groups in politics.

Another significant weakness is the lack of transparency in the process of forming election regulations. Important decisions are often taken through closed political lobbying without involving the community or independent groups that should be part of the deliberation process. This lack of public participation reflects a dysfunction in the political accountability mechanism. In fact, openness in the legislation process is very important to ensure that the resulting regulations not only reflect the interests of the elite, but also meet the needs of the wider community.

This reality shows that there is a significant gap between the principle of justice mandated by the basic law and the implementation of election regulations. If this gap continues, the legitimacy of the electoral system will be further threatened. Democracy, which is actually based on justice and representation, is at risk of turning into a competition arena that only benefits certain groups.

To bridge this gap, strategic steps are needed that prioritize the reconstruction of election regulations. This reconstruction must rest on the principles of substantive justice, which include equality, representation, and transparency. Thus, future election regulations can be an instrument that is not only democratic, but also inclusive and fair for all levels of society.

### **Reconstruction of Election Regulations Based on the Principle of Substantive Justice and Its Impact on Democracy**

The reconstruction of election regulations based on the principle of substantive justice is a strategic step to overcome various weaknesses that have hurt the principles of democracy in Indonesia. This approach places the value of justice at the core of every process of forming and implementing election regulations. In this context, the reconstruction is carried out by integrating three main pillars: equality, representation and transparency.

Equality is the first foundation in this reconstruction. One of the key steps is to revise the legislative seat allocation system so that it is more proportional to the number of people in each constituency (dapil). By strengthening the principle of one person, one vote, this reconstruction is expected to be able to reduce inequality that has been detrimental to areas with large populations, while ensuring that all votes have equal weight in determining political representation. This approach is important to build public trust in a fair election system.

The second pillar is representation, which aims to strengthen the participation of marginalized groups such as women, people with disabilities, and indigenous peoples. To make this happen, this reconstruction proposes the implementation of incentive mechanisms, such as additional funding for political parties that have succeeded in meeting and significantly exceeding the target of women's representation in parliament. This mechanism is designed not only to ensure that the 30% quota of women's representation is met administratively, but also to provide tangible structural support, so that women and other marginalized groups have greater opportunities to contribute to politics.

Transparency is the third key element in this reconstruction. An open legislation process through the application of technology, such as an online legislation system, allows the public to monitor and provide direct input on the draft election law. With this approach, the legislation process is not only more accountable, but also more inclusive, thereby reducing the dominance of closed political lobbies that have often harmed the principle of justice in the formation of regulations.

The impact of this reconstruction on democracy in Indonesia is very significant. By strengthening vote equality, the legitimacy of the election results will increase, because people feel that their political rights are respected fairly. Political participation will also be wider because trust in a fair election system is increasing. In addition, better representation of marginalized groups will result in a parliament that is more inclusive and responsive to the needs of society as a whole. The resulting policies are expected to better reflect the diversity and aspirations of the Indonesian people.

Increased transparency in the legislation process will also strengthen deliberative democracy in Indonesia. By actively involving the community, the resulting regulations will be more in line with public needs and have stronger legitimacy. Overall, this substantive justice-based reconstruction is not only corrective to existing weaknesses, but also transformative in building an inclusive, fair, and sustainable election system. This approach offers hope to realize a stronger democracy, based on the values of Pancasila and the 1945 Constitution.

## **Conclusion**

General elections are a cornerstone of democracy, ensuring the political rights of citizens, but Indonesia's election regulations face persistent challenges, including unequal allocation of legislative seats, dominance of political elite interests, underrepresentation of marginalized groups, and a lack of transparency in the legislative process. This study proposes reconstructing election regulations based on three key pillars: equality, representation, and transparency. The novelty of this research lies in introducing incentive mechanisms to increase women's representation in parliament and advocating for a technology-based open legislative system to enhance public participation and accountability. Key reforms include revising the seat allocation system to reflect population proportionality, ensuring structural support for marginalized groups, and integrating technology to create an inclusive and transparent legislative process. These efforts aim to strengthen democracy, build public trust, and align election regulations with the principles of Pancasila and the 1945 Constitution, ensuring fairer and more sustainable governance that reflects the aspirations of all citizens.

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