

Formulating *Kitab Hukum Pemilu* (Book of Election Law) for Effective Presidential Government in Indonesia

Issue

An electoral system functions not only as a procedure and mechanism to convert votes into seats within legislative bodies. It also functions as a set of instruments for democratization of a political system.

Post-*Reformasi* Indonesia has witnessed four democratically managed general elections and more than a thousand of local elections. It uses a proportional electoral system to elect members of the House of Representatives and at the provincial and district level. It adopts direct election for the executive at all levels. However, the current system is deeply flawed and the election law is revised every alternate election period to suit the shortsighted ambitions of political parties. Thus, the proportional representation, the timing of elections and a confused presidential system are having a negative impact on Indonesia's democratic development. The existing election law is lacking of the principles of electoral justice resulting in ineffective presidential government.

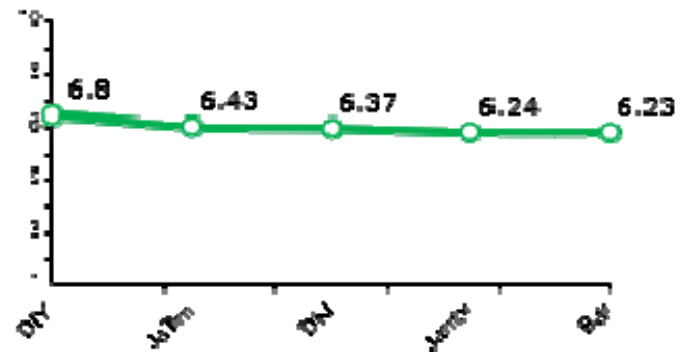
This brief will describe the results of the flawed election system, its flaws and recommendations.

Policy Implications

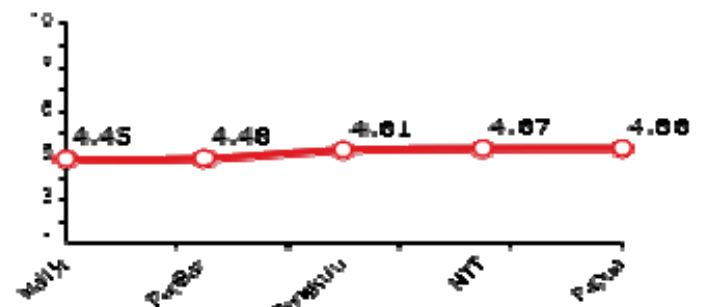
Any Indonesian president elected under the election law depends on the support of various political parties in parliament outside his/her coalition parties. He/she is thus forced to engage in time-consuming negotiations and compromises, often at the smallest denominator. This "consensus-style" of decision-making obviously leads to a loss of efficiency in the executive's policy planning and implementation.

Additionally, the government's capacities are still far from being optimal. The co-ordination of policies between the presidential palace, various state ministries, other government agencies and local executives is too often costly in terms of time and content. Differences of party affiliation between these political office holders due to multi-party system and coalition politics is one of the major reasons for this situation.

Indonesia Governance Index (IGI) 2012 and 2014 found that the governance performance of provincial and regency/city does not fare better than the national government. Decentralization of government with direct elections under the existing electoral system contributed to ineffectiveness in local governance.



As shown in the diagram above, the best province in 2012 IGI report, Daerah Istimewa Yogyakarta, barely reach 7 in the scale. While the poor performing provinces were at the scale of 4 out of 10 as shown in the diagram below:



Findings

The proportional electoral system in Indonesia contains a number of contradictions or inconsistencies:

First, with 70 out of 77 constituencies having six to 10 allocated seats, the result is medium-sized, multi-member constituencies. This size of a constituency is believed to foster the presence of large numbers of political parties in the House of Representatives. This contradicts with the 3.5 percent threshold to gain

membership in the House that was specifically set to reduce the number of political parties in the DPR.

Second, the medium multi-members constituency is designed to ensure an adequate degree of representation. However, the voting mechanism and determination of winning candidates based on the plurality of votes would not only nullify the role of political parties as election participants, but most importantly would steer political representation into efforts to ensure accountability of the people's representatives. The political representation system would shift from promoting representation of the people to promoting the representatives' accountability.

Third, the candidacy pattern is determined based on party list. But winning candidates are determined based on an open list. It results in competition between candidates from the same political parties, within the same constituency; not the competition between political parties. Thus, the political parties are like event organizers rather than true participants in an election.

Fourth, although political parties are obliged to have at least 30 percent female candidates in each district and at least one woman for every three candidates on the party list in each district, winning candidates are determined based on the plurality of votes. As a consequence, candidate quotas and small-number quota policies for women become void. The increase of elected women as members of the House in 2009 was not the result of the electoral system but due to Indonesian voters, who tend to vote for candidates listed first, second or third on a ballot paper.

Fifth, the 1945 Constitution mandates political parties as participants in the legislative elections. But votes for election participants are valued less (because the votes only help securing seats for political parties) than votes cast for candidates (which help secure not only seats for the party but also for the candidate). This mechanism certainly contradicts the one person, one vote, one value (OPOVOV) principle as stated in Article 27, Paragraph (1) of the 1945 Constitution. The value of votes for parties is unequal to the value of votes for candidates.

Sixth, to reduce the number of parties in the parliament, a 3.5 percent threshold was created. At the same time, the election law adopts three elements of an electoral system that enables political parties to secure seats: (i) size of a constituency; (ii) a proportional electoral formula using the Hare quota method while outstanding seats are allocated to parties based on remaining

plurality of votes; and (iii) an election calendar that has three months between the legislative and presidential elections.

Recommendations

To have an effective presidential system, presidential and legislative elections need to be held simultaneously to contribute to the development of a moderate pluralism in the party system. What we are witnessing today is two government systems: political parties showing parliamentary behavior in the legislature and presidential behavior within the executive.

The flaws in the existing laws can be rectified through the formulation of *Kitab Hukum Pemilu* (Book of Election Law). The Book shall contain: Law on the election of members of Indonesian parliament (DPR, DPD and DPRD); Law on the election of President and Vice President; Law on the election of Governor, Regence and Mayor; and Law on the Election Organizer. The codification of these laws into one Book of Election Law shall result in, among others:

1. To provide a guarantee of democratic election law and legal certainty;
2. To standardize different aspects of election arrangement processes;
3. To simplify the election system that can be easily understood by the general voters;
4. To simplify the electoral result system that will allow the presentation of integrity election result and the timeliness of its delivery/announcement;
5. To create effective systems of election law enforcement and election disputes;
6. To develop and establish a model of citizen participation in politics as: member of political party, voter, constituent and tax payer;
7. To strengthen the institution of political party and party system (moderate pluralism);
8. To establish an effective presidential and local governments; and
9. To create a long-lasting election law that can withstand the threat of regular revision every election period.

Further Reading

Details about the flaws in the existing election laws can be read in *Naskah Akademik Draft Undang-Undang Pemilu: Usulan Masyarakat Sipil*, Kemitraan, 2015 (This has been submitted to the Indonesian Parliament on 29 September 2015). The complete report of the IGI

2012 and 2014 can be accessed from our website
<http://www.kemitraan.or.id/igi/>