



ISSN NO. 2320-5407

Journal homepage: <http://www.journalijar.com>
Journal DOI: [10.21474/IJAR01](https://doi.org/10.21474/IJAR01)

**INTERNATIONAL JOURNAL
OF ADVANCED RESEARCH**

RESEARCH ARTICLE

The Legal position and function of elections supervisory Institution; A Review of Indonesian Election System.

Ratna Dewi Pettalolo, aminuddinilmar, A pangerangmoenta and Anwar Borahima.

Graduate School, Hasanuddin University.

Manuscript Info

Manuscript History:

Received: 15 May 2016
 Final Accepted: 13 June 2016
 Published Online: July 2016

Key words:

Election, Democratic,
 Supervisory

***Corresponding Author**

Ratna Dewi Pettalolo.

Abstract

The implementation of democratic elections in accordance with the principles of the election, then it is very necessary function of oversight by the Elections Supervisory Institution to carry out the function of oversight over the organizers, participants and the public (constituent). As it turns out in practice, however, it has certain weaknesses, particularly in view of the accountability and legitimacy aspects of its establishment. In fact, the dispute settlement authority granted to the Election Supervisory Institution is limited. The type of research in this article is a normative-legal research or also called as doctrinal research.¹ This legal research was conducted by examining library materials or secondary and primary materials. The results of the research indicated that the legal position and function of Election Supervisory Institution deemed important presence in the general election. In order to ensure the implementation of democratic elections in the future it is very necessary to election oversight body through setting in concrete in the Constitution as the highest law.

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¹ Soerjono Soekanto and Sri Mamuji, *Penelitian Hukum Normatif*, 13th editions, Rajawali Press, Jakarta, 2011, page.13

Introduction:-

The general election is one manifestation of a democratic system of state administration. Election administration with different variants, such as direct and indirect election, have been carried out in modern democracies has a specific purpose. According Asshiddiqie,² the aim of the elections are: to allow an orderly transition of leadership governance; to allow the change of public officials who will represent the interests of the people; to implement the principle of constitutional rights of the citizens as well as the embodiment of the people's sovereignty.

Practically, to guarantee the implementation of democratic elections in accordance with the principles of the election, then it is very necessary function of oversight by the Elections Supervisory Institution to carry out the function of oversight over the organizers, participants and the public (constituent). The supervisory function shall include, a) Supervision at all stages undertaken by the Commission starting from the early stages (updating of voter data and preparation of voter list) until the final stage (recapitulation); b) receive and follow up reports on the occurrence of an election offense; and c) resolve election disputes, which decision will be final and binding.

Indeed, the election watchdog agency is typical of Indonesia. In those countries that experienced the democratic elections held no supervisory institution. International standards of democratic elections also did not require the establishment of supervisory agencies to ensure compliance with all the rules of the election.

Thought of the existence of election monitors who are on two different poles that is between the will to preserve the one hand by providing strengthening the position and function of the all-round responsibility and on the other hand intends to abolish this institution with the presumption can not perform the functions optimally and simply as a "postman".

Therefore, there is a need for a scientific investigation process for the purpose of determining the status of parties involved in a case. In-depth studies are necessary and coherent to help lay the scientific notion of election supervisors with a variety of functions, duties and powers and the system of democratic governance and the rule of law.

Method of Research:-

The type of research in this article is a normative-legal research or also called as doctrinal research.³ This legal research was conducted by examining library materials or secondary and primary materials. The approach used in this study was 1) Statute approach, an approach by examining all relevant laws and also concerned regulation with the legal issues. The results of examination are argued in the form of laws study; 2) Conceptual approach, an approach that starts from the views and doctrines that developed in the jurisprudence. This understanding will provide a basis for researchers to construct legal arguments to resolve the issues faced.⁴

Analysis and Discussion:-

Democracy and the Essences of General Election:-

For the modern democratic state elections are the primary mechanisms must exist in the stages of implementation of state and government formation. Election is considered the most visible manifestation of sovereignty in the hands of the people and the most concrete manifestation of popular participation in the administration of the state. Election has a close relationship with the state of democracy and state of law. The essence of democracy is to involve the people in the establishment and governance through participation, representation, and surveillance.

According to N.D. Arora and S.S. Awasthy, as cited in Jenedjri M. Gaffar, say that one of the characteristics of democracy is that the government should be accountable to the ruled, the government should be elected by the governed or at least by the representative of the governed. In line with this thinking, Mahfud MD confirms the

² Jimly Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara*, Jilid II, Sekretariat Jenderal & Kepaniteraan Mahkamah Konstitusi RI, Jakarta, 2006, pg. 175.

³ Soerjono Soekanto and Sri Mamuji, *Penelitian Hukum Normatif*, 13th editions, Rajawali Press, Jakarta, 2011, page. 13

⁴ Asri Wijayanti and Lilik Sofyan Ahmad, *Strategi Penulisan Hukum*, 1st edition, Lubuk Agung, Bandung, 2011, page. 71

election closely associated with democracy since the elections is one way of implementing democracy. It is given in modern times is almost no country that can implement direct democracy.⁵

The proximity of understanding between elections and democracy, seen from a number of definitions of democracy, as the concept is proposed Joseph Schumpeter sect known as 'Schumpeterian', which puts penyelenggara free and periodic elections as the main criteria for qualifying whether a political system in a country as a democracy.⁶ The conduct of elections has become customary to use the election system. Characteristics of the electoral system in each country is different from country to country.

In the context of Indonesia's elections, Article 5(1) of the Act. No. 8 Year 2012 concerning the Implementation of Elections, confirmed that 'election to elect members of DPR, Provincial and Regency DPRD implemented with open proportional system'. In this system, besides the listed party emblem, also contained a list of names of candidates. Thus, voters can vote for parties and candidates of your choice. Then Article 5 paragraph (2) Elections to select members of the DPD conducted with many systems have as a deputy district.

In contrast, the district system that is used in the election of DPD is not the same as the district system used in the United States, Canada, India, and so forth. The difference is not taking into account the number of inhabitants. Under this provision, there are two electoral systems in Indonesia which was held simultaneously at the same time the open proportional system and the system of district. Furthermore, in Article 6 A paragraph (3) and (4) the presidential candidate was declared the winner when it received at least 50 + 1 votes with at least 20 percent of the vote in each province are scattered in more than half of the provinces in Indonesia.

Comparative Perspectives on Election Supervisory Concepts:-

Literally, the term supervision known and developed in management science, because supervision is one element in the management activities. Naturally, when the notion of the term is more widely shared by management science from the legal science.⁷ The term 'supervision' in English equated with the term 'control'. Then, the term of "control" in Blacks Law Dictionary is defined as, "To exercise power or influence over (the judge controlled the proceedings); To regulate or govern (by law, the budget office controls expenditures); To have a controlling interest in."⁸

George R. Terry, put forward the concept of supervision control is to determine what is accomplished evaluate it, and apply corrective measures, if needed to insure result in keeping with the plan.⁹ Control consist in verifying whether everything occur in conformity with the plan adopted, the instruction issued and principles established. It has for object to point out weaknesses and errors in order to rectify then and prevent recurrence.¹⁰ Meanwhile, Mockler,¹¹ said supervision as:

Controlling is a systematic effort by business management to compare performance to predetermined standard, plans, or objectives to determine whether performance is in line with these standards and presumably to take any remedial action required to see that human and other corporate resources are being used in the most effective and efficient way possible in achieving corporate objectives.

The concept of surveillance of Mockler above, focusing on four issues, namely: First, plan, standards or goals as benchmarks to be achieved; Second, the process of implementation of the work to achieve the desired objectives; Third, the existence of effort compared to what has been achieved with the standard, plans, or goals that have been set; and fourth, take corrective action as necessary. Thus the concept of oversight of this Mockler contained the important objectives to be achieved based on the criteria, norms and standards of oversight.

Furthermore, Paul Effendie Lotulung distinguish forms of control in several ways, namely: (a) the terms of the

⁵As cited in Jenedjri M. Gaffar, *Demokrasi dan Pemilu di Indonesia*, Konstitusi Press, Jakarta, 2013, pg.35

⁶Nur Hidayah Sardini, *Restorasi Penyelenggaraan Pemilu Di Indonesia*, Fajar Media Press, Yogyakarta, 2011, pg 1.

⁷ Muhsan, *Sistem Pengawasan Terhadap Perbuatan Aparat Pemerintah dan Peradilan Tata Usaha Negara di Indonesia*, Liberty, Yogyakarta, 2000. pg. 36.

⁸ Bryan A. Garner, *Black's Law Dictionary*, op. cit, pg. 378

⁹ Muchsan, *Loc. Cit.*

¹⁰ *Ibid*, h. 37

¹¹ Samuel C. Certo dan S. Travis Certo, *Modern Management*, Pearson Prentice Hall, 2006. p. 480.

position of the body or organ exercising control; (b) in terms of time implementation of control; and (c) the terms of the essence of the control that the supervised object.¹²

In terms of the position of the body/organ being controlled, it can distinguish between types of control called internal control and external control. An internal control means that the monitoring carried out by a body which is the organizational/ structural environment is still included in the government itself. In contrast, external control is carried out by the supervisory organ or institutions that the organizational/ structural is outside the Government in terms of executive power.¹³

Based on the time of the execution, supervision distinguished two types of control a priori and a-posteriori control. A priori control when monitoring was conducted prior to the issuance of a decision or a government decree or other regulation is the authority of government expenditure. A posteriori supervisory control how it had happened after the issuance of the decision or decree Government or after the occurrence of the actions.¹⁴

In terms of the supervised object distinguished between legal point control (rechtmatigheid toetsing) and control group in terms of its benefits (doelmatigheid toetsing).¹⁵ Control, in the perspective of law is one of the principal characteristics of the task of the judiciary is to do ratings (toetsing) concerning the validity of an act of government. In terms of expediency controls focused on assessing the usefulness of the relevant measure.¹⁶

After describing and analyzing a wide concept of supervision of the various sources mentioned above, it is known that there are differences of opinion among the experts on this subject. Various disagreements that we can know that the actual elements of supervision include: a) as a way to fix an act; b) as a means to determine the performance according to plan and as a means of evaluation; c) in an effort to ensure an action in accordance with the plan; d) as a process to ensure the implementation of activities in accordance with the plan; e) the characteristics as a function and as a right; f) contains the essence of the restrictions; and g) has some form of, among other things (i) the shape of the organ in terms of conducting surveillance, (ii) form of time in terms of its implementation, and (iii) the form in terms of the nature of the supervision of the monitored object. Thus, supervision simply is defined as an act of organ / body to ensure the implementation of the activities as planned or set. In the electoral law and electoral administration law there is no concept or understanding (definition) election monitoring.

As stated previously that the basic principles regarding elections 'representativeness', of the sovereign, ie the people to the people's representatives. To ensure the process in determining the representation in question, it is very important to prevent the election administration practices which violate fundamental principles of the organization of the elections and violate the norms of election administration are contained in the positive field of electoral law.

In addition, it is also necessary guarantees to prevent disputes between the organizers of the election by the election participants and disputes among participants in the elections. Efforts to prevent these things should optimally would apply principles of the good governance, which is now known as the concept of government into the principle of the good election.

One characteristic of a democratic constitutional state is the change of leadership in an orderly manner through the mechanism of elections. Therefore, General Election must always be based on the principles of direct, general, free, confidential, honest and fair¹⁷ as a consequence of the realization of a democratic state.

Democracy and democratization process is substantially not enough just to compliance with the formal attributes of democracy, such as the existence of representative institutions, the presence of more than one political party competing in the elections, and the elections periodically. Democracy and democratization process must be based on

¹²Paulus Effendie Lotulung, *Beberapa Sistem tentang Kontrol Segi Hukum Terhadap Pemerintah*, Bhuana Ilmu Populer, Jakarta-Indonesia, 1986, pg. xv-xvi.

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *Ibid.* p xvi-xvii.

¹⁶ *Ibid.* p xvii

¹⁷ See, Article 22E paragraph (1), The 1945 Constitution of the Republic Indonesia

the human rights standard to make it more meaningful participatory and emancipatory, because if not, democracy will easily co-opted and corrupted.¹⁸

In Indonesia, the most significant changes as a result of the amendment of the Constitution of 1945 is that procedure of positions in the legislature and executive, both at the national and local level, should be done by means of elections, and not appointment, or inheritance, assuming of course will be more democratic, in accordance with the principle of popular sovereignty. As stated in Article 1 paragraph (2) of the Constitution of 1945, that "Sovereignty belongs to the people and carried out in accordance with the constitution".

All modern democracies carry out elections, but not all elections are democratic, because a democratic election is not just symbols, but a democratic election should be competitive, periodic, inclusive (large), and definitively determine the leadership of the government. The size that a democratic election or not, have to meet three conditions, namely (a) the presence or absence of recognition, protection and human rights development; (b) the establishment of public confidence in the election that produces a legitimate government, and (c) there is a fair competition of the participants.¹⁹

Based on the elements mentioned above, the principle of good governance is basically concerned with the principles of good governance. In accordance with election system, electoral affairs is essentially an integral part of the concept of governance in the broadest sense, so that the election administration can be categorized as part of governance that are more specific and have specificity functions. In the Indonesian context, application of principles of good governance in the administration of elections would have prevented the existence of a variety of fraud that is going to be done by all stakeholders in the election. Therefore, by using the concept of good governance into the organization of the elections, the term used is a good electoral governance or good election.

The concept of good election as a species may be placed on good governance, so that the principles of good governance is also the principle of good election, with demikian the application of the principles of good election using the principles of good governance as diuraikan earlier in this section. The existence of the principles of good election is expected to emerge confidence (trust) for all major election stakeholders. In addition, with respect to the existence of good election principles, the provisions of the national electoral legislation should contain formulations or measures of law derived from the values contained in each of these principles.

Conclusion:-

The legal position and function of Election Supervisory Institution deemed important presence in the general election. The importance of the election watchdog in order to ensure the implementation of democracy is based on the law, so the presence of the election watchdog substantially as guarantor and protector of the people's sovereignty political rights of citizens.

In order to ensure the implementation of democratic elections in the future it is very necessary to election oversight body through setting in concrete in the 1945 Constitution by changing the shape of the organs of the body into a commission, so do the name change of the Election Supervisory Institution to "Election Supervisory Commission".

In addition, to get the elections that have the dignity and the dignity are needed strengthen an institution that is truly independent and surveillance both enforcement and prevention, so was born an institution named Election Supervisory Commission as a new institution in the practice of democratic in Indonesia.

References:-

1. A. Mukhtie Fadjar, *Tipe Negara Hukum*, Bayumedia Publishing, Malang, 2005.
2. A.V. Dicey, *Introduction to the Study of the Law of the Constitution*, macmillan and Co. Limited, ST. Martin's Street, London, 1952.
3. Anthony H. Birch, *The Concept and Theories Modern Democracy*, Published by Routledge, New York, 2007.
4. Arend Lijphart, *Democrasies (Patterns of Majoritarian and Consensus Government In Twenty-One Countries)*, Penerbit: Yale University Press, New Haven and London, 1984.

¹⁸ A. Mukhtie Fadjar, *Pemilu Perselisihan Hasil Pemilu dan Demokrasi*, Setara Press, Malang, 2013, page. 27

¹⁹ *Ibid.*

5. Asri Wijayanti and Lilik Sofyan Ahmad, Strategi Penulisan Hukum, 1st edition, Lubuk Agung, Bandung, 2011.
6. Bagir Manan, Lembaga Kepresidenan, Penerbit: FH UII Press, Jakarta, 2003.
7. C.F. Strong, Modern Political Constitution (An Introduction to the Comparative Study of their History and Existing Form), The English Language Book Society and Sidgwick and Jackson Limited, London, 1966.
8. C.S.T. Kansil, Christine S.T. Kansil, Hukum Tata Negara Republik Indonesia, (Jakarta: Rineka Cipta, 2000.
9. Carl Joachim Friedrich,, Filsafat Hukum: Perspektif Historis, (Edisi Terjemahan oleh Raisul Muttaqien), Penerbit: Nuansa dan Nusamedia, Bandung, 2004.
10. David Estlund (Editor), Democracy, Published Black Well Ltd, Cowley Road, Melden, Massachusetts, USA, 2002.
11. Francois Venter, Constitutional Comparison, Japan, Germany, Canada, and South Africa As Constitutional States, Penerbit: Juta & Co, Ltd and Kluwer Law International, Massachusetts Avenue Cambridge USA, 2000.
12. Gunawan A Tauda, Komisi Negara Independen Eksistensi Independent Agencies sebagai Cabang Kekuasaan Baru dalam Sistem Ketatanegaraan, Yogyakarta: Genta Press, 2012.
13. Jenedjri M. Gaffar, Demokrasi dan Pemilu di Indonesia, Konstitusi Press, Jakarta, 2013.
14. Jimly Asshiddiqie, Pengantar Ilmu Hukum Tata Negara, Jilid II, Sekretariat Jenderal & Kepaniteraan Mahkamah Konstitusi RI, Jakarta, 2006.
15. Muhsan, Sistem Pengawasan Terhadap Perbuatan Aparat Pemerintah dan Peradilan Tata Usaha Negara di Indonesia, Liberty, Yogyakarta, 2000.
16. Nur Hidayah Sardini, Restorasi Penyelenggaraan Pemilu Di Indonesia, Fajar Media Press, Yogyakarta, 2011.
17. Paulus effendielotulung, beberapasistemtentangkontrolsegihukumterhadappemerintah, bhuanailmupopuler, Jakarta-Indonesia, 1986.
18. Samuel C. Certo dan S. Travis Certo, Modern Management, Pearson Prentice Hall, 2006.
19. Soerjono Soekanto and Sri Mamuji, Penelitian Hukum Normatif, 13th editions, Rajawali Press, Jakarta, 2011.