
Appeal for People's Power: Legal Perspectives in The 2019 Presidential And Vice-Presidential General Elections

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ABSTRACT: On April 17, 2019, Indonesia conducted a simultaneous general election involving five ballots for various political offices. The objective was to reduce election costs and improve efficiency. Despite a well-established electoral system, certain political elites contested the results using calls for 'people power.' This research aims to examine the legal implications of such calls and their compatibility with the law. Using a normative approach and legal behavior case studies, this study utilizes primary data from laws and secondary sources, such as books on democracy and freedom of expression. The theoretical contribution lies in clarifying that freedom of expression should not be considered seditious, as sedition entails efforts to overthrow the government. However, if demonstrators violate regulations, particularly Article 6 of the Freedom of Expression Law, it may be considered sedition. It is recommended to handle the results of the presidential and vice-presidential elections maturely by entrusting them to the competent authority, the Constitutional Court.

Keywords: Call for People Power, Freedom of Expression, Sedition



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INTRODUCTION

In the current statecraft, determining the holders of supreme authority and power within a nation is a fundamental necessity, especially in countries like Indonesia, which adhere to democratic systems. Since Indonesia gained independence up to the present day, the dynamics of the electoral system have undergone significant changes. This is a natural progression, given Indonesia's current status as a nation in democratic transition. This evolution is a consequence of its highly diverse population, where each community seeks representation in expressing its political aspirations (Ricknell, 2020; Väliverronen & Saikkonen, 2021).

During the era of reform, marked by the overthrow of President Soeharto's government in 1999, Indonesia held general elections that involved 48 political parties, ushering in a breath of fresh air into the country's democratic landscape. Subsequently, in 2004, the second general election of the reform era took place, signifying a significant maturation of Indonesia's democratic

processes. This election was notably democratic, as it allowed the direct selection of members of the People's Representative Council and the Regional Representative Council, along with the election of the President and Vice President as leaders of the executive branch. Both the executive and legislative branches held equally strong democratic legitimacy, as they were directly chosen by the people (Cleary & Hogan, 2016; Copus & Dadd, 2014; Geelan, 2022; Hagelskamp et al., 2022; Yeboah-Assiamah, 2016).

Discussing general elections means discussing the participation of the people, which signifies that the populace has the right to determine who their leaders will be and who will make public policies (Geenen et al., 2015; Millar, 2018; "State Power and Trans-Border People in China's Himalayan Borderlands: A Study of the Taman People in Kyirong Valley, Tibet Autonomous Region," 2022). There are various electoral systems, but they generally share two fundamental principles:

1. Single-member constituency (where one electoral district chooses one representative, commonly referred to as a district system).
2. Multi-member constituency (where one electoral district chooses several representatives, often known as proportional representation system).

The meaning of democracy as the foundation of societal and state living implies that it is the people who determine matters related to their lives, including assessing government policies. It underscores the presence of power in the hands of the people, both in the administration and decision-making processes. This concept encompasses three key aspects, namely:

1. Government of the People: This concept relates to a legitimate and recognized government in the eyes of the people. Conversely, there are governments that are deemed illegitimate and unrecognized. A recognized government is one that receives acknowledgment and support from the people. The significance of legitimacy for a government lies in its ability to effectively administer bureaucracy and implement its programs.
2. Government by the People: Government by the people means that a government exercises power on behalf of the people and not based on its own interests. Oversight by the people (social control) can be carried out directly by the citizens or indirectly through representative bodies like the legislature (e.g., parliament or congress).
3. Government for the People: This notion implies that the authority granted by the people to the government is wielded for the benefit of the people. The government is expected to ensure the utmost freedom and liberties for its citizens.

The literal meaning of democracy is government by the people, which is a fundamental understanding and widely accepted definition. It is a way of life that prioritizes equal rights and responsibilities, as well as equal treatment for all citizens.

In relation to the elaboration on democracy above, Indonesia recently concluded its democratic event, the General Election, held simultaneously in 2019. During this election, the pair of Joko

Widodo and Ma'ruf Amin, supported by nine political parties - namely PDIP, PKB, Golkar, Perindo, Nasdem, Hanura, PKPI, PSI, and PPP - formed the Indonesian Working Coalition (KIK). Their competitors, Prabowo - Sandiaga Uno, were supported by five political parties under the banner of the Just and Prosperous Indonesia Coalition, which included Gerindra, Demokrat, PKS, PAN, and Berkarya.

After the presidential and vice-presidential election voting was conducted, the General Election Commission (KPU) announced the results of the national vote recapitulation, as documented in number 987-PL.01.8-Kpt/06/KPU/V/2019. Based on the official determination of the results of the 2019 general election for the President and Vice President, members of the People's Representative Council, Regional Representative Council, Provincial Regional Representative Council, and Regency/City Regional Representative Council at the national level, the Joko Widodo - Ma'ruf Amin pair secured 55.50% of the national valid votes, while the Prabowo Subianto - Sandiaga Uno pair obtained 44.50% of the national valid votes. This led to their official designation as the winners of the presidential and vice-presidential election by the General Election Commission.

However, some political elites who were supporters of certain presidential and vice-presidential candidates expressed dissatisfaction with the results announced by the General Election Commission. They called for a rejection of the presidential and vice-presidential election results and encouraged people to take to the streets in what was referred to as a "people power" movement. This eventually led to the identification of individuals involved in organizing street demonstrations as suspects in legal proceedings.

Based on the background that has been outlined, Indonesia aspires to be a nation governed by the rule of law, a vision championed by its founding fathers. The constitution explicitly states that Indonesia is a state governed by the rule of law, as articulated in Article 1, Paragraph (3) of the 1945 Constitution. This implies that within the unitary state of the Republic of Indonesia, the law serves as an instrument or means to conduct activities in all aspects of nationhood and governance. Therefore, the principles of the rule of law must evolve in line with societal developments. Consequently, the question that arises is whether the call for "People Power" is an exercise of freedom of expression in the public sphere or an act that warrants suspicion of sedition. Based on these considerations, the researcher is interested in examining the legal perspective of the "People Power" movement in the context of the 2019 presidential and vice-presidential general elections.

METHOD

This research employs a normative legal approach, specifically using a case study of legal behavior. The primary data source for this study is statutory law (statute approach), which holds juridical binding authority. Secondary legal materials include books and related documents on the subject of "People Power," democracy, and criminal law. The study focuses on elucidating issues derived from primary legal materials. Secondary legal materials are gathered through a comprehensive literature review, involving the inventory and identification of legislative

regulations, as well as the classification and systematic organization of legal materials in accordance with the specific legal aspects relevant to this research.

RESULT AND DISCUSSION

1. General Elections and the Realization of the Rule of Law

The debate regarding the electoral system has often revolved around legislative elections. In a presidential democracy, the presidential election is equally significant as the legislative election. Given that the executive branch holds greater power than the legislative branch, the presidential election becomes just as crucial, if not more so, than the legislative election.

In political science, various electoral systems are known, and they can generally be categorized into two main principles: district-based systems and proportional representation systems. District-based systems have their drawbacks, one of which is their limited consideration for small parties and minority groups, especially if these groups are dispersed across several districts. Additionally, this system lacks representativeness in the sense that candidates who lose in one district lose all the votes that supported them. This means that a significant number of votes may not be counted at all.

On the other hand, proportional representation electoral systems have the advantage of addressing the shortcomings of district-based systems. They allocate the number of seats a party or group obtains based on the number of votes it receives, typically determined by a certain ratio, such as 1:400,000. This ratio means that a specific number of voters, in this case, 400,000 voters, are represented by one member of the legislative body. This system ensures that every vote counts, as any surplus votes obtained by a party or group in one electoral district can be added to the total votes they received in another district. This proportional representation system is exemplified in Indonesia's general elections.

Just like democracy, the term "rule of law" has various interpretations, and its realization can be understood through two main concepts: the Anglo-Saxon (English) Concept and the Continental European Concept. How a country actualizes its rule of law status depends greatly on its historical development in the governance of the state. In Europe, the emergence of the rule of law concept occurred as a reaction to the absolutist rule of monarchs, known as the "police state". In this context, the state took responsibility for security, prosperity, and the economy, often accompanied by absolute governance as reflected in the phrase "L'État, c'est moi" (The state is me). The rule of law in this concept evolved as an effort to restrain the absolutist power of the monarch and regulate the state according to the law. On the other hand, in the Anglo-Saxon perspective, the rule of law can be observed through the struggle of the English people to participate in overseeing and administering the government. This led to the creation of representative bodies like the House of Commons, representing the common people of England, rather than the landlords or nobility (House of Lords).

Representing the Anglo-Saxon concept of the rule of law, the British constitutional scholar A.V. Dicey, in his book titled "Introduction to the Study of the Law of the Constitution," presented three elements of the rule of law: (1) Supremacy of law; (2) Equality before the law; (3) A constitution based on individual rights.

Meanwhile, Indonesia as envisioned by its founding fathers is envisioned as a rule of law state. The constitution explicitly states that Indonesia is a rule of law state, as stated in Article 1, Paragraph (3) of the 1945 Constitution. This implies that within the unitary state of the Republic of Indonesia, the law serves as an instrument or means to conduct activities in all aspects of nationhood and governance. Therefore, the principles of the rule of law must evolve in line with societal and state developments. It can be argued that Indonesia is essentially a democratic rule of law state. In the essence of this, in the 2019 elections, Indonesia sought constitutional supremacy and the realization of the highest social contract. With an understanding of the rule of law and democracy, the aim is to limit government power and reject all forms of unlimited authority.

2. The Principles and Objectives of the General Election System in Indonesia

As formulated in the explanation of Law No. 15 of 1969 on General Elections, which remained in effect until the 1997 elections, the objective of general elections is stated as follows: "In realizing the establishment of a way of life that embodies the spirit and ideals of the Independence Revolution of the Republic of Indonesia proclaimed on August 17, 1945, as enshrined in Pancasila and the 1945 Constitution, the formation of this way of life must be achieved through general elections. Therefore, general elections are not merely a means of selecting representatives to sit in legislative bodies or choosing representatives to create a new state. Instead, they are a means of selecting representatives by the people themselves, representatives who carry the conscience of the people in continuing the struggle, preserving, and developing the independence of the Unitary State of the Republic of Indonesia, which originates from the Proclamation of August 17, 1945, in order to fulfill and bear the mandate of the people's suffering. General elections are a tool that, when used, must not result in the erosion of the foundations of democracy or inflict suffering on the people. Instead, they must ensure the success of the New Order, which means upholding Pancasila and preserving the 1945 Constitution."

The principles governing general elections in Indonesia, as stipulated in Article 22E, Paragraph (1) of the 1945 Constitution and Article 2 of Law No. 12 of 2003, are commonly abbreviated as "Luber Jurdil." These principles are as follows:

- (1) The first principle is "langsung" (direct). This means that eligible voters have the right to directly cast their votes according to their beliefs without any intermediaries.
- (2) The second principle is "umum" (universal). This means that voters are guaranteed equal and comprehensive opportunities, open to all citizens, without discrimination based on ethnicity, religion, race, social class, gender, occupation, or social status. Elections can be participated in by all citizens who meet the requirements.

- (3) The third principle is "bebas" (free). This principle means that every voter has the freedom to make their choice without any form of coercion or pressure from other parties.
- (4) Rahasia (Secret): The secrecy of the vote ensures that each voter's choice remains confidential, preventing any external pressure or intimidation.
- (5) Jujur (Honest): In the conduct of elections, every election organizer, official, election participant, election observer, monitor, voter, and all individuals involved must act honestly in accordance with the laws and regulations.
- (6) Adil (Fair): Fair elections guarantee that the electoral process is conducted impartially and without favoritism, ensuring equal opportunities for all candidates.

These principles are fundamental to the conduct of elections in Indonesia and are designed to uphold the integrity and fairness of the electoral process.

3. Implementation of the 2019 Presidential and Vice Presidential General Elections

One significant change in Indonesia's political system was the introduction of direct presidential and vice-presidential elections. Direct presidential elections represent the realization of popular sovereignty, where the people can directly choose their government's leaders. In fact, this is not entirely new to Indonesia's governance system, as direct presidential elections have been implemented since 2004.

The simultaneous elections in 2019 were a logical and juridical consequence of the Constitutional Court Decision No. 14/PUU-XI/2013 regarding the Judicial Review of Law No. 42 of 2008 on Presidential and Vice Presidential Elections. To address the technical implementation and serve as the legal foundation for the simultaneous elections starting in 2019, Law No. 7 of 2017 concerning General Elections was enacted. This law was created with the principal aim of simplifying, harmonizing, and consolidating the regulations related to elections, which were previously covered by three separate laws: Law No. 42 of 2008 on Presidential and Vice Presidential Elections, Law No. 15 of 2011 on the Organization of General Elections, and Law No. 8 of 2012 on the Election of Members of the People's Consultative Assembly, Regional Representatives Council, and Regional Legislative Councils. Additionally, it was intended to respond to political dynamics concerning the organization and participants of elections, the electoral system, election management, and law enforcement in one comprehensive election law (general explanation of Law No. 7 of 2017).

4. The Constitutional Court as a Venue for Resolving Disputes Regarding the Results of Presidential and Vice Presidential General Elections

The conduct of general elections always carries the potential for irregularities. Therefore, measures need to be in place to anticipate such issues so that parties feeling aggrieved can accept the election results. To address such matters, the Constitution grants the Constitutional Court authority under Article 24C of the Third Amendment to the 1945 Constitution. Specifically, the Constitution states that the Constitutional Court has the authority to adjudicate, as the first and

final instance, with its decisions being final, disputes related to the results of general elections after they have been nationally announced by the General Election Commission, affecting:

- (1) The election of candidates for Regional Representative Council (DPD) members.
- (2) Determination of candidate pairs competing in the second round of Presidential and Vice-Presidential elections.
- (3) Determination of the candidate pair chosen to become the President and Vice President.
- (4) The seats won in an electoral district by a competing political party.

In the event that a petitioner's request is granted as stipulated in paragraph 2, the Constitutional Court shall declare the annulment of the vote count announced by the General Election Commission and establish the correct vote count. However, if the request is found to be without merit, the court's judgment shall declare the dismissal of the petition.

5. The Call for People Power from a Legal Perspective

In the political developments that followed the results of the Presidential and Vice-Presidential elections, it was surprising for the Indonesian society to encounter the term "people power" used in the rejection of the 2019 presidential election results. Interestingly, this term had previously been employed by the people when they sought to overthrow the Soeharto government in 1999, which had been in power for 32 years. "People power" signifies a movement comprising individuals who unite their strength to achieve a common goal in the pursuit of freedom and justice. It is part of a political and social movement that opposes authorities as holders of power.

The concept of "people power" has actually been known since the Filipino People Power movement in 1986, known as the EDSA Revolution. However, "people power" has existed long before the EDSA revolution. In the past, "people power" was known by terms such as "popular participation," "empowerment of the people," and "community organizing and mobilization."

As explained above, the call for "people power" is a movement composed of a group of individuals who join forces to achieve common goals in the pursuit of freedom and justice. This occurs in the context of countries with authoritarian systems. In Indonesia, however, the general public often associates the term "people power" with protest actions. Demonstrations or protests are activities carried out by one or more individuals to express their thoughts verbally, in writing, or in a demonstrative manner in public. Furthermore, demonstrations are a fundamental right guaranteed by the 1945 Constitution and the Universal Declaration of Human Rights.

The expression of opinions by every citizen is an obligation and responsibility to respect the rights of others, adhere to universally recognized moral standards, obey the laws and regulations in force, maintain public peace and order, and preserve the unity and integrity of the nation. It means conveying information and opinions in any way without regard to boundaries.

Meanwhile, the term "makar" originates from the Dutch word "aanslag," which means attack or "aanval," which means an assault with malicious intent (misdadige aanranding). In literal terms, "makar" means an attack or assault.

The crime against the security of the State ("makar") according to Article 104 of the Indonesian Penal Code.

"Makar" with the intent to take a life, seize independence, or incapacitate the President or Vice President from governing is punishable by the death penalty, life imprisonment, or temporary imprisonment for up to 20 years. The crime of "makar" must imply the necessity of the commencement of the criminal act, and it is not sufficient with only one perpetrator; it must already represent the beginning of the act, not just preparatory actions.

Makar itself is divided into 3 types, including:

- (1) Makar that attacks the legal interests for the security of the Head of State or their Deputy (Article 104 of the Indonesian Penal Code).
- (2) Makar that attacks the legal interests for the territorial integrity of the State (Article 106 of the Indonesian Penal Code).
- (3) Makar that attacks the legal interests for the stability of the State's Government (Article 107 of the Indonesian Penal Code).

Acts of rebellion related to post-election demonstrations here fall under Article 107 of the Indonesian Penal Code (KUHP), which must fulfill the elements of action with intent and initiation. However, it's important to understand that there are multiple articles related to rebellion in the KUHP, and this diversity can lead to different interpretations, such as Article 110 of the KUHP.

CONCLUSION

As a rule of law that adheres to a democratic system, it is clear that there are rights related to freedom of expression and freedom of speech protected by the law. Calls for People Power to reject the election results announced by the General Election Commission for the president and vice-president should not be considered as ethical in a democratic country. However, freedom of speech and expression cannot be classified as rebellion because, fundamentally, rebellion involves an attack against the government with the aim of overthrowing it. Therefore, freedom of speech or criticism of the government cannot be labeled as rebellion since it is not an attack capable of overthrowing the government. Nevertheless, if protesters violate the regulations, such as those outlined in Article 6 of the Freedom of Speech Law, and the initiation of their actions has already begun, then this can be considered as rebellion.

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