

IDENTITY POLITICS IN THE CONSTRUCTION OF ELECTORAL LAWS: A QUALITATIVE ANALYSIS

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Citation:

Jukari, Ahmad, Suud Sarim Karimullah, and Muhajir Muhajir. 2023. "Identity Politics in the Construction of Electoral Laws: A Qualitative Analysis." *Walisongo Law Review (Walrev)* 5(2):139–54. doi: <https://doi.org/10.21580/walrev.2023.5.2.14414>.

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Abstract: This article examines the construction of electoral regulations in Indonesia concerning representational and identity politics. Although Law No. 7 of 2017 on General Elections governs electoral processes to safeguard national identity and interests, gaps remain in addressing the legal dimensions of identity politics. This study aims to analyze how identity politics is constructed within Indonesia's electoral law and to assess the extent to which these laws accommodate the principle of representation without fostering identity-based discrimination. Employing a non-doctrinal research method with a normative approach, this study utilizes documentation and literature analysis as its primary data sources. The findings reveal that electoral regulations are designed to make elections an instrument for protecting national identity and interests. While the Election Law does not explicitly incorporate regional, ethnic, or religious representation, its implementation reflects the influence of specific legal arrangements, such as those governing the Special Autonomy of Papua Province, the Aceh Government, and the Special Region of Yogyakarta. These special regulations provide limited space for representational politics based

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on regional, cultural, and religious affiliations. Furthermore, electoral regulations prohibit various campaign practices that may evoke or exploit identity politics. This study contributes to a deeper understanding of the dynamics between representation and identity politics within the legal framework of Indonesia's electoral system.

Artikel ini mengkaji konstruksi peraturan perundang-undangan pemilu di Indonesia dalam kaitannya dengan politik representasi dan politik identitas. Meskipun Undang-Undang No. 7 Tahun 2017 tentang Pemilihan Umum mengatur penyelenggaraan pemilu untuk menjaga identitas dan kepentingan nasional, masih terdapat kesenjangan dalam pengaturan dimensi hukum terkait politik identitas. Penelitian ini bertujuan untuk menganalisis bagaimana politik identitas dikonstruksikan dalam hukum pemilu Indonesia serta menilai sejauh mana regulasi pemilu mengakomodasi prinsip representasi tanpa menimbulkan diskriminasi berbasis identitas. Dengan menggunakan metode penelitian non-doktrinal melalui pendekatan normatif, penelitian ini memanfaatkan studi dokumentasi dan kepustakaan sebagai sumber data utama. Hasil penelitian menunjukkan bahwa regulasi pemilu dirancang untuk menjadikan pemilu sebagai instrumen dalam melindungi identitas dan kepentingan nasional. Meskipun Undang-Undang Pemilu tidak secara eksplisit memuat unsur representasi berdasarkan daerah, etnis, atau agama, implementasinya dipengaruhi oleh pengaturan khusus seperti Otonomi Khusus Provinsi Papua, Pemerintahan Aceh, dan Daerah Istimewa Yogyakarta. Pengaturan khusus tersebut memberikan ruang terbatas bagi praktik politik representasi berbasis daerah, budaya, dan agama. Selain itu, regulasi pemilu juga melarang berbagai bentuk kegiatan kampanye yang

berpotensi menimbulkan atau mengeksploitasi politik identitas. Artikel ini berkontribusi dalam memperdalam pemahaman mengenai dinamika antara representasi dan politik identitas dalam kerangka hukum sistem pemilu di Indonesia.

Keywords: General Election, Identity Politics, Legal Construction, Electoral Law, Indonesia

INTRODUCTION

Identity politics is one of the interesting issues to study ahead of the 2024 elections. The discussion on identity politics became more interesting after President Joko Widodo reminded presidential candidates and vice-presidential candidates not to use identity politics in contesting the 2024 presidential election. The President reminded that identity politics is very dangerous for Indonesia, therefore the politicization of religion and ethnicity, religion, race and intergroup (SARA) should be avoided. This was conveyed by President Jokowi when giving a speech at the 2022 National Conference of the Indonesian Young Entrepreneurs Association held in Solo (Anon 2022).

Identity politics has become an academic study since the election of governor and deputy governor of the Special Capital Region of Jakarta in 2017. The Jakarta gubernatorial election, which at that time was held in two rounds, was marked by 212 demonstrations demanding that the candidate for governor, Basuki Tjahaja Purnama, be tried for blaspheming religion. The action labeled 212 became a turning point in the 2017 gubernatorial election contest, the pair Basuki Tjahaja Purnama-Djarot Saiful Hidayat (PDIP, Golkar, Hanura and Nasdem), who were initially favored by survey

institutions, were finally defeated by the pair Anies Baswedan-Sandiaga Uno (Gerindra-PKS). The victory of Gubernatorial Candidate Anies Baswedan and Sandiaga Salahuddin Uno in the 2017 Jakarta Pilkada is considered to show that identity politics can be used as a tool to attract voter sympathy by a candidate who has the same identity background. This success can result in political elites who have candidates running mates with certain identity backgrounds from the majority of voters in a region decide to use identity politics to attract the sympathy of voters with the same identity (Lestari 2019). Post In the 2017 Jakarta gubernatorial and deputy governor elections, identity politics also colored the implementation of the 2019 presidential and vice-presidential elections, thus popularizing the term 'desert lizard' for supporters of the Prabowo Subianto-Sandiaga Uno pair and 'cebong' for supporters of the Jokowi-Ma'ruf Amin couple.

If pulled back, politics that raise differences in SARA identity have occurred since the independence movement in Indonesia. It shows in the debate in meeting of the Investigating Board for Preparatory Efforts for Indonesian Independence (BPUPKI) and the Preparatory Committee for Indonesian Independence. The Islamic group proposed that the state policy include seven words, "With the obligation to observe Islamic law for its adherents." The proposal was approved by the BPUPKI meeting, June 22, 1945, but finally there was a compromise so that the formulation agreed by the PPKI was Pancasila which became the basis of the state until now (Rubaidi and Setianingsih 2019). After Indonesia's independence, identity politics with a religious spirit gave birth to Darul Islam and the Indonesian Islamic Army (DI/TII) (Wahid, 2019). Whereas after the 1998 reform

movement, several political parties based on religious or religious-based constituencies were established in Indonesia, but only a small number were able to pass restrictions electoral threshold so that they can participate in the next election. A range of studies have explored the role of identity politics in shaping electoral laws and processes. Díez-Prados (2020) and Alabi (2023) both highlight the significant impact of identity construction on political discourse and voter behavior, with Díez-Prados specifically focusing on the role of linguistic means in this process. Pande and Deleon (2004) further emphasize the influence of identity on policy choices and political culture, with Pande's work demonstrating the potential of electoral laws, such as those reserving seats for minority groups, to promote minority interests (Alabi, SulaimanJamiu, and Akinkunmi 2023; Deleon and Naff 2004; Díez-Prados and Cabrejas-Peñuelas 2020). These studies collectively underscore the complex and multifaceted role of identity politics in shaping electoral laws and processes. Zilis (2020), emphasize support for the rule of law stems in part from the intersection of legal policy and group identity in the political system (Blue 2022), Corrias (2016) with Populism is a constitutional theory (Corrias 2016), and Prasad (2015) withi identity activation in the new institutional setting is a comparison of Sarawak and West Kalimantan (Prasad 2015).

The construction of electoral laws in Indonesia is heavily influenced by identity politics, particularly in the use of religious narratives (Muhaimin, 2020). This is evident in the prevalence of identity appeals, especially under plurality electoral rules, and the use of religious and nationalist appeals in specific regions. The 2019 presidential election further highlighted the role

of identity politics, with issues related to religion, communist ideology, and China's influence being prominent (Susilowati, 2019). Identity politics is a powerful tool in Indonesian politics, often used for specific purposes such as resistance or identity assertion (Manullang 2021; Muhaimin and Wahab 2020; Susilowati, Zahrotunnimah, and Yunus 2019). Then, Romli (2019), political identity emerged in some regions where candidates used ethnicity and religion-based political issues in the 2018 national regional head elections (Romli 2019).

This article is a type of non-doctrinal research with a normative approach. Data collection using documentation and literature studies. The analysis used is juridical and normative analysis.

RESULT AND DISCUSSION

Identity politics, according to Lukmantoro, prioritizes the interests of members of a group because they have similar identities or characteristics, whether based on race, ethnicity, gender, or religion (Nasrudin and Nurdin 2019). Agnes Heller defines identity politics as a politics focused on distinction as its main category that promises freedom, tolerance, and freedom of play (*free play*). Although in practice it gives rise to patterns of intolerance, violence, and ethnic conflict. Identity politics can include racism, biofeminism, *environmentalism*, and ethnic strife (Lestari 2019) Dina Lestari:2019, Abdillah: 2002 and Wening Purbatin Palupi Soenjoto:2019). Identity politics is a political action with efforts to channel aspirations to influence policy, control over the distribution of values that are considered valuable to the most fundamental demand, namely self-determination based on aspects of primordialism (Rubaidi and Setianingsih 2019).

Identity politics motives attributed to the opinion of Manuel Castells (2010) in *The Power of Identity* can be divided into three categories, first, legitimate identity, i.e., identity is used in the process of introducing dominant institutions of a society to expand and rationalize their domination over social actors. Second resistance identity, that is an identity that is maintained by fighting to maintain identity from the stigma of those who do dominance. Third project identity, that is, the actions of social actors who build a new identity that aims to redefine their position in society by trying to transform from the social structure as a whole (Volume and Funay 2021). Regardless of the Manuel Castells category, many worry about the negative impact identity politics can have on presenting the threat of conflict. Identity politics has the potential to be used as a strategy for political elites to gain electoral gains without thinking about the fate of the wider community (Tansal, Latief, and Sanusi 2020). Similar concerns were expressed by Denny J. A, It is said that identity politics will produce a conflict (Tome and Funay 2021). Siti Musdah Mulia considers identity politics to show two patterns, positive and negative.

This concern seems to be dismissed by some other groups, at least shown in the film *212 the Power of Love* which tries to show the other side of the politics of Islamic representation by presenting apolitical Islamic discourse and apathetic Islamic discourse. Apolitical Islam tends to be disseminated through actors who always express peace, love, and trust without an interest in power. While apathetic Islam is disseminated through actors who like to express noise, accusations are baseless, always prejudiced, controlled by demons, liberals, and marxists (Gatara 2020). The amount of

concern about the negative impact of identity politics is certainly interesting, it is also interesting to examine how the legal construction of identity politics in the election law, namely Law Number 7 of 2017 concerning General Elections.

Elections as a means of safeguarding national identity and national interests

If we look at the norms contained in Law Number 7 of 2017 concerning General Elections, it aims to make elections a means of maintaining national political identity and national interests. Elections as a means of maintaining national identity can be seen in the requirements for election organizers (KPU) who must be Indonesian citizens (Article 21 (1) letter c of Law 7/2017). This requirement also exists in the previous Election Law, namely Article 11 of Law Number 15 of 2011 concerning General Election Organizers (Election Organizer Law).

Similar requirements are also applied to presidential candidates and vice-presidential candidates, DPD candidate requirements and DPR candidates, Provincial DPRD and District/City DPRD candidates. In the requirements that must be met by presidential and vice-presidential candidates, national identity is more prominent than the requirements for election organizers. Presidential candidates and vice-presidential candidates must be Indonesian citizens since their birth and have never received other nationalities of their own will, the husband or wife of the presidential candidate/vice presidential candidate is an Indonesian citizen, and the presidential candidate/vice presidential candidate resides in the territory of the Republic of Indonesia (Article 169 Law 7/2017).

Prospective DPD members must meet the requirements to reside in the territory of the Unitary State of the Republic of Indonesia, and be able to speak, read, and/or write in Indonesian (Article 182 Law 7/2017). Meanwhile, prospective members of the DPR, provincial DPRD, and district/city DPRD, must have the status of Indonesian citizens and reside in the territory of the Republic of Indonesia and be able to speak, read, and/or write in Indonesian (Article 240 (1) Law 7/2017). Meanwhile, elections as a means of safeguarding national interests are reflected in the requirements as an election organizer who must be loyal to Pancasila, the 1945 Constitution, the Unitary State of the Republic of Indonesia, Bhinneka Tunggal Ika, and the ideals of the Proclamation of August 17, 1945. This requirement also exists in the previous Election Law, namely Article 11 of Law Number 15 of 2011 concerning General Election Organizers (Election Organizing Law). The same conditions also apply to presidential candidates and vice-presidential candidates (Article 169 Law 7/2017), DPD candidates (Article 182 Law 7/2017), and prospective members of the DPR, Provincial DPRD and District/City DPRD (Article 240 Law 7/2017). This article shows the purpose of elections as a means of realizing national interests in maintaining and implementing the values of Pancasila as the basis of the state, the 1945 Constitution, the integrity and form of the Indonesian state, and the ideals of the proclamation.

The Politics of Representation in Electoral Law

Law Number 7 of 2017 concerning General Elections does not accommodate representation politics based on racial discrimination. However, in the implementation of the Election Law, other special laws

apply, namely the Special Autonomy Law for Papua Province, the Aceh Government Law, and the Special Region of Yogyakarta Law. Representation based on regionalism and ethnicity with special conflicts is shown in Article 6 paragraph (1) of Law Number 21 of 2001 (Special Autonomy Law for Papua Province) which states that the Papuan DPR must be indigenous Papuans. The same applies to the election of members of DPR K (Article 6A (1) of Law Number 21 of 2001).

Political representation on a regional basis is also seen in the implementation of the Election Law in Aceh with the participation of local political parties regulated in Law Number 11 of 2006. Local political parties in Aceh Province can be formed Indonesian citizens domiciled in Aceh and can fight for their interests in the DPRA, DPRK, Governor and deputy governor elections, as well as mayors and deputy mayors in Aceh Province (Article 1 number 14).

The same situation is also seen in the election law, namely Law Number 1 of 2015 which was amended by Law Number 8 of 2015, Law Number 10 of 2016, and Law Number 6 of 2020 also does not provide accommodation for representation based on SARA. The regional election law even guarantees that every citizen, regardless of racial background, has the right to have the same opportunity to run for Governor and Vice Governor, Regent and Vice Regent Candidates, as well as Mayor Candidates and Vice Mayor Candidates (Article 7 (1) of Law Number 10 of 2016).

Just like the Election Law, the implementation of the Election Law also does not ignore the enactment of the Special Autonomy Law for Papua Province, the Aceh Government Law, and the Special Region Law of

Yogyakarta). In Law Number 21 of 2001 (Special Autonomy Law for Papua Province), there is a politics of representation on the basis of ethnicity and regionality, namely candidates who can be elected as Governor and Deputy Governor of Papua are only Indonesian citizens who are indigenous Papuans (Article 12). In addition, the Papuan People's Council (MRP) has the authority to give consideration and approval to candidates for Governor and Deputy Governor proposed by the organizer of regional elections (Article 20 (1)). Meanwhile, the politics of representation on the basis of religion is seen in Law Number 11 of 2006 concerning the Government of Aceh. In Article 67 paragraph (2) of Law Number 11 of 2006, it is stated that candidates for Governor/Vice Governor, regent/deputy regent, and mayor/deputy mayor must meet the requirements of being an Indonesian citizen and implementing their religious law.

Meanwhile, the politics of representation based on culture is shown in Law Number 13 of 2012 concerning the Privileges of the Special Region of Yogyakarta. In Article 18 paragraph (1) of Law Number 13 of 2012, it is stated that the requirements for candidates for the governor of DIY are Indonesian citizens who have the throne as Sultan Hamengku Buwono and the requirements for candidates for the deputy governor of DIY are Indonesian citizens who are enthroned as the Duke of Paku Alam.

In contrast to ethnic, regional, and religious representation that is not mentioned in the Election Law but appears in the implementation of the Election Law due to the enactment of laws that are specific to certain regions, the guarantee of representation on the basis of gender is mentioned in the Election Law. The Election Law mentions the composition of KPU

membership, Provincial KPU membership, and membership. The District/City KPU pays attention to women's representation of at least 30% (Article 10 paragraph (7) of Law Number 7 of 2017). Likewise, the management of political parties at the central level must include at least 30% female representation (Article 173 paragraph (2)). In addition, the list of candidates for the DPR, Provincial DPRD and Regency / City DPRD must also contain at least 30% female representation (Article 243 paragraph (1) and Article 245).

Identity politics has the potential to occur during campaigns. In the implementation of campaigns, the practice of identity politics can be prohibited if in its implementation there are actions that question the state basis of Pancasila, the Preamble of the NRI Constitution of 1945, and the form of the Unitary State of the Republic of Indonesia. The practice of identity politics in campaigns is also prohibited if there are activities that endangering the integrity of the Unitary State of the Republic of Indonesia. Likewise, actions that meet the elements of insulting a person, religion, ethnicity, race, group, candidate, and/or other Election Participants, inciting and pitting individuals or communities, disturbing public order, threatening to commit violence or encouraging the use of violence against a person, a group of community members, and/or other Election Participants (Article 280 (1) Law Number 7 of 2017)

Identity politics carried out with the above actions is not only categorized as administrative violations, but also includes types of electoral criminal violations. This is stated in Article 521 of Law Number 7 of 2017, "Every implementer, participant, and/or Election Campaign team who

intentionally violates the prohibition on the implementation of the Election Campaign as referred to in Article 280 paragraph (1) letter a, letter b, letter c, letter d, letter e, letter f, letter g, letter h, letter i, or letter j shall be punished with a maximum imprisonment of 2 (two) years and a maximum fine of Rp24,000,000, 00 (twenty-four million rupiah)."

CONCLUSION

The Election Law designates the holding of elections as a tool to safeguard national identity and national interests. In this context, this law accommodates the representation of women in the role of organizers, administrators of political parties at the central level, and lists of candidates for DPR members, candidates for Provincial DPRD, and candidates for District/City DPRD members. However, this is not the case with regional, tribal, and religious representation politics, which are not accommodated by the Election Law. However, in its implementation, there are special regulations in force, such as the Special Autonomy Law for Papua Province which provides space for representation based on regionality, the Aceh Government Law (regarding religious and regional representation), and the Special Region Law of Yogyakarta (regarding cultural representation). In addition, the Election Law also prohibits several actions in campaigns that have the potential to create nuances of identity politics. [W]

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