

The Formation of Election Law Number 7/2017 in the Perspective of Collaborative Governance

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Abstract. The main argument in this article is the law making of Electoral Law Number 7/2017, based on collaborative governance perspective, can be seen as formal and ceremonial things. This study uses a qualitative method, data collection was conducted using observation, interview, and documentation. DPR RI members actively played as the main actors during deliberation phase in this law-making process. The main reason is this Law has strongly impact factors to the existence and sustainability of parliament members and political parties in the future. The law-making process was almost closed and has limited access for stakeholders. Some crucial and alternative agenda from CSOs (civil society organizations) were not fully accommodated. It also means that the collaborative governance principles did not apply to this case while the involvement of election stakeholders was limited to access the process.

Keywords: Collaborative Governance, Public Policy, Stakeholder, Election Regulation.

1 Introduction

Since the 1998 Reform, democratization in Indonesia has shifted the relations between the state and society from confrontational relations to more collaborative relations. Freedom of expression and also freedom to have association and win the role of the community in reducing the potential for repression carried out by the State [1]. The state understood that society organizations and other interest groups are important actors to work together in development sectors. Therefore, it calls a collaborative relationship. One example of a collaborative relationship is the involvement of the community in the formulation of a policy to be ratified or even to endorse alternative policies in particular issues.

Article 22E paragraph (2) of the 1945 Constitution regulates "General elections held to elect members of the People's Legislative Assembly, the Regional Representative Council, the President, and Vice President, and the Regional People's Representative Council". Elections held by national, permanent, and independent general election commissions in five years. The election means a manifestation of the circulation of new mandate assistance by the people to their representatives in the Legislature and the President and Vice President as manifestations of popular sovereignty.

In this reform era (1998 until this day), Indonesia has held four legislative elections, four presidential elections, and three regional elections. Each election has different regulations that must be followed by all stakeholders. These regulations have caused three major problems in building democracy over the past 20 years. These problems are the implementation model, the management of the administration and the format of the administration of election results which

are important to be evaluated each election. In that case, in order to create certainty and fairness, the election arrangements must be integrated or codified [2].

Beginning in 2014, the Constitutional Court (MK) issued a ruling that had a significant impact in terms of the formulation of election regulations and would open a new chapter in the development of democracy in Indonesia. In Decision Number 14 / PUU-XI / 2013, January 23, 2014, stated that non-simultaneous elections that had been held (legislative elections before the presidential election) conflicted with the 1945 Constitution. However, the implementation of the Constitutional Court's ruling would only apply to the 2019 elections and forward. In other words, the Election of President and Vice President and the Election of Representative Institutions (Legislative Election) will be held simultaneously.

The issuance of the Constitutional Court's decision was then used as a momentum by civil society organizations (CSO) to restate the idea of the importance of unifying the electoral law into one text. The CSO component then forms a consortium which will carry out this project. The consortium then formed a team to compile the Election Law Codification Study [3]. This article describes a strategy in government management called "collaborative governance". This management strategy brings together many stakeholders together in a forum to engage in public interest-oriented decision making using a case study approach.

2 Research Method

Directly, the case study approach empiric investigation of a phenomenon (or case) in depth and contextual [4]. Data collection techniques used in this study were interviews and literature studies. Interviews were conducted with actors from CSO, while data collected in the form of meeting documents, the results of previous research with related topics and online mass media reporting [5].

For gathering data in the law-making process, the study use process tracing method [6]. This method traces various activities which have been done by policymaker in the past and connected with Collaborative governance perspective. Pattern and activities in collaborative governance could read from any recorded events which are shown by news in media or previous study literature and any clarification on in-depth interviews with the stakeholder [7].

3 Result

3.1 The concept of Collaborative Governance

Collaborative governance is a governance process that involves public institutions and non-government stakeholders directly in the formal process of joint decision making that is oriented towards consensus and goals [8]. In essence, collaboration puts stakeholders in a position of mutual need for one another. Collaboration also implies that non-state stakeholders will have real responsibility for policy outcomes. Therefore, that stakeholders must be directly engaged in decision making and participate "in all stages of the decision making process" [9].

Collaborative governance is also understood as the process and structure of public policy making and management that involve people outside the boundaries of public agencies in a constructive manner, the level of government and or government, the business world and CSO in order to find common goals that cannot be conveyed [10]. Collaborative governance is not

limited to the formal process initiated by the government but is a multi-partner governance process.

As seen in **Figure 1**, the concept of collaborative governance in the form of three interrelated circles driven by a number of factors to make an impact that would be adapted to each circle [10].

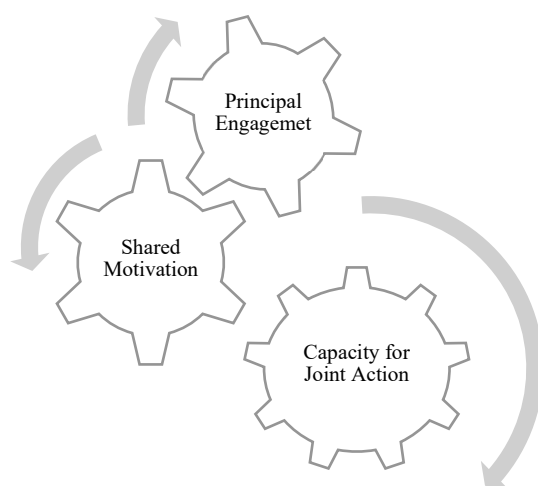


Figure 1. Collaborative Governance Framework,

Collaborative governance begins with an external push towards collaborative government to set policies through the dynamics of collaboration. Collaborative dynamics relate to 3 aspects: Principal Engagement, Shared Motivation, Capacity for Joint Action.

In the first aspect, Principal Engagement is a forum where people who come from groups with different goals, levels of relations and identities work together across their jurisdiction to try to solve the problems being faced, resolve conflicts and create value [10]. The critical first step is how the government / parliament selects actors who will be involved in collaboration. Then the joint principle mobilization activity is realized, which can be explained in the following three elements:

1. Discovery, reveals the interests of each actor, the actor's values, and the construction of shared interests. In the formation of this Act all parties agreed to carry out the results of the Constitutional Court's decision with the codification of the Election Law.
2. Deliberation, building quality deliberation requires advocacy expertise to direct collaboration, as well as actors to keep going on the goals of collaboration, resulting in conflict resolution strategically and effectively
3. Determination, is an act of determining the intended purpose, divided into primary and substantive. Primary determination, is a number of procedural decisions (first level discussion meeting for the Election Law). Whereas substantive determination, is the result of collaboration products (achieving collective agreement)

The second aspect is Shared Motivation, emphasizing the interpersonal and relational elements of the dynamics of collaboration which is sometimes referred to as social capital. The interpreted Shared Motivation as a cycle of self-strengthening consisting of four elements, namely: mutual trust, mutual understanding, internal legitimation and commitment [10]. These four things develop and influence each other, so creating shared motivation continues.

The last aspect is the Capacity for Joint Action, the goal of collaboration is to produce a shared desired outcome that cannot be achieved individually or by just one actor. Because collaboration involves cooperative activities to increase the capacity of self and others in achieving common goals. The capacity for joint action can be explained in the following elements :

1. Procedural and institutional arrangements, are various procedures and protocols and collaboration structures needed in the management of interactions between actors. Often the agreements that exist in collaborations are initially informal. Good collaboration structures are flexible and not hierarchical.
2. Leadership, holds an important importance in collaboration. The various roles of leaders during the collaboration process are 1) as the party who seeks support for collaboration, 2) initiates meetings, 3) facilitators and mediators and 4) advocates for the public.
3. Knowledge, is a combination of information and capabilities, lives on people's thoughts, knowledge guides actions.
4. Resources, the existence of an exchange or pool of resources is one of the advantages of collaboration. In collaboration there is always a big difference in resources between actors (resource disparities). In practice it is not easy, because it is influenced by other elements namely Procedural and institutional arrangements and also the role of leadership and the distribution of existing knowledge encourage the exchange of resources.

Departing from the notion that election policy is a policy with a very high complexity of interests and concerns the interests of the wider community, so that the discussion of election law will always be an arena of contestation for the interests of political actors. Based on this assumption, a collaborative governance model is needed in the formation of the policy in order to obtain input from various stakeholders and aim for the public interest.

3.2 Law-making process in Parliament (DPR)

The DPR has the authority to form laws. Every draft Law is discussed by the DPR and the President for gaining mutual agreement. The bill can come from the DPR and the President. During deliberation phase between DPR and representative of President, both groups are discussing and defending their position on the draft. After the draft is accepted by the Parliament leadership and have acknowledged by ministry as representative of President, then the draft is purposed in the plenary session to enact as the law [11]. During deliberation phase, DPR usually takes opportunities to discuss some crucial issues with non-government organizations (NGOs) [12]. Sometimes these NGOs insist to make open and public discussions on particular electoral issues that always invite members of the DPR and ministry.

4 Discussion

Discussion on the Election Draft was carried out through a Special Committee (Pansus). The Special Committee was formed by the DPR and is a temporary Parliament instrument. The Parliament Plenary Meeting determines the composition and membership of the special committee based on consideration and even distribution of the number of members of each faction. With a tough debate in determining the chair of the special committee, an agreement was finally reached with the composition of the special committee chairperson filled by Lukman

Edy (PKB). While the three representatives are Ahmad Riza Patria (Gerindra), Yandri Susanto (PAN) and Benny K Harman (Democrats) [13].

In discussing the draft of Election Law, the Special Committee formed a Working Committee (Panja) which was tasked with discussing various matters systematically on the Election Draft material. Panja then formed a Formulation Team (Tim perumus) and a Synchronization Team to formulate and synchronize all the substance material assigned by the Working Committee including discussing changes to the articles. The discussion of the Draft in the Special Committee is called the Level I Discussion, while the discussion at the Plenary Meeting is called the Level II Discussion [3].

Drivers

The drivers of Collaborative Governance in the discussion of the Codification of the draft of Election Law on the Decision of the Constitutional Court Number 14 / PUU-XI / 2013, dated January 23, 2014 stated that the general elections that had not been held simultaneously (legislative elections preceded the presidential election) were in conflict with the 1945 Constitution. Meanwhile, there were several inter-related electoral laws such as Electoral Commission Law and Local Government Law that were able to unite into one laws.

The Collaborative Governance mechanism starts when the draft of Election Law is accepted by the Parliament Leadership. Based on the president's letter and the draft related to the election received by the Parliament Secretariat General on October 21, 2016. Through the confidential presidential letter Number 66 / Pres / 10/2016 accompanied by two attachments regarding the draft of Election Law, the government assigns the Minister of Finance, the Minister of Home Affairs and The Minister of Law and Human Rights discussed the draft of Election Law. Through a meeting of the deliberative body (Bamus) the proposal to establish a Special Committee for the Election Law was determined in a Parliament plenary meeting. The Special Committee for the Election Law consists of 30 members from ten factions in the DPR and reports its work to the Parliament leaders through the Plenary Session.

Principal Engagement

In Collaborative Governance, the first aspect, Principal Engagement, can be seen in the agreement that all parties will codify the Election Law. Starting with the Special Committee on the draft of Election Law, the discussion will be held with the First Level Reading Phase. In the first reading, all factions agreed to codify the 3 Laws; Law Number 42 Year 2008, Law Number 15 Year 2011, Law Number 8 Year 2012. Election Law is expected to have an impact on legal certainty and has a long period of validity period of 10 to 20 years.

Other indicators of the Principal Engagement aspect are determination, such as several procedural decisions (first level discussion meeting, formation of Special Committee for the draft, formation of the Formulating Team and synchronization team for the draft of Election Law). Whereas substantive determination, is the result of collaboration products (achieving collective agreement)

In reading the First Level, the Special Committee members from each faction also submitted a Problem Inventory List (DIM). Based on the DIM, the Election Special Committee decided on five crucial issues, namely the issue which became an inter-factional debate in the Parliament. The five issues are: the legislative election system, the parliamentary threshold, the threshold of presidential nomination, the arrangement of seats per electoral district, and the method of converting votes to the legislative curriculum for discussion through the Working Committee (Panja) forum.

In this engagement, principal actors were coming from legislative and executive chambers who actively discussed the whole deliberation process. Meanwhile additional actors were NGOs and other interest groups from electoral stakeholders who also gave inputs and addressed crucial issues to DPR and government.

Shared Motivation

The second aspect is shared motivation means the involvement of various stakeholders in collaborating actions, such as in hearings, accompanied by appreciation / acceptance of each input into the DIM from various stakeholders. It is a form of mutual trust and understanding accompanied by commitment in the formation of the draft of Election Law. In addition to absorbing various community aspirations, the Special Committee conducted work visits to various regions and abroad, universities, invited leaders of relevant state institutions as well as experts / experts and involved CSO components as well as stakeholders of the draft of Election Law to convey DPR's aspirations, that describe in **Table 1** below.

Table 1. List of Hearings meeting (RDP) with Election Law Stakeholders

No.	Strategic Feedback/ Issues	Date	Stakeholders
1	Electoral justice, criminal Provisions	14/12/2016; 18/1/2017	Supreme Court, Supreme Court Judge, Faculty of Law-UI
2	E-voting and E-counting infrastructure	11/1/2017	Ministry of Communication and Information, IT Company
3	Electoral system, parliamentary threshold, presidential threshold, conversion election method	12/1/2017; 8/2/2017	CSO from 'Kodifikasi UU', new political party, expert from University
4	Women representation in legislative election	1/2/2017	Ministry of Woman and Child and CSO
5	Election campaign (reporting, broadcasting and advertising)	25/1/2017	Ministry of Communication and Information, Mass media
6	Disability participation in election	16/2/2017	CSO from Disability Indonesia

Source: compilation data from DPR RI

These Hearing Meeting (RDP) aimed to receive various inputs from the leadership of the media and CSOs, Universities and other groups. Not only RDP as part of the collaboration agenda among actors in this Bill, NGOs were also attempted to deliver lobbying activities outside formal meetings in order to address particular and technical issues. Some public discussions and social media debates were showed up by these actors for gaining public supports. Overall the dynamics of the discussion of the Election Law requires 10 months in about 67 formal meetings and informal lobbies which are not counted [13].

Capacity for Joint Action

The leadership in the Special Committee for the Election Law plays more of a role as a facilitator / mediator for members of the special committee in fighting for the interests of his party, in this case the special committee members act as representatives of political parties / election participants. The role of MPs is still very dominant while other stakeholders only undergo the existing formal procedures. This can be seen from the decision making of most electoral law which were decided by consensus at the Special Committee level, such as strengthening institutional arrangements for elections (KPU, Bawaslu and DKPP). In addition it resulted in an agreement to reduce the election campaign period and win the vote recapitulation stage. As for the five crucial issues, namely, the legislative election system, the division of electoral districts for the legislative election system, the method of voting conversion, the presidential threshold and the parliamentary threshold, decision making is done through voting at the Parliament Plenary Meeting or at Discussion Level II. The case in the dynamics of determining the decision making process is illustrated in the **Table 2** below, that stakeholders can not participate in all stages of the decision making process [13].

Table 2. Dynamics Of Determination of The Decision-Making Process

No.	Strategic Issue	Decision-making process
1.	Structure Election Management Body	Consensus at the Special Committee level
2.	Presidential Threshold	Voting (by parliament member only)
3.	Parliamentary Threshold	Voting (by parliament member only)
4.	Electoral System	Voting (by parliament member only)
5.	Conversion Election Method	Voting (by parliament member only)
6.	Seat allocation by region	Voting (by parliament member only)

Source: compilation data from DPR RI

Based on the above description, the process of forming Law Number 7 of 2017 has not been carried out collaboratively. Related to the third aspect in the dynamics of collaboration, Capacity for Joint Action, the dynamics that occur in the Parliament's own internal meetings the discussion of this law is so high, the decision making of most electoral law is decided through consensus agreement at the level of the Special Committee meetings, such as strengthening Election Management Body (KPU, Bawaslu, and DKPP). As for crucial issues, decision-making is done through voting at the Parliament Plenary Meeting or Level II Talks without involving other stakeholders.

5 Conclusion

Factors that support the dynamics of collaboration are the same spirit, namely the Election Law Codification, which is based on the Constitutional Court's decision to unite the Election Law into a single text and the results of studies from civil society organizations (CSO).

Collaborative Governance model in the making of Law Number 7 Year is only formal and ceremonial. Parliament members play a dominant role because this regulation is related to the existence and sustainability of parliament members and political parties in the future. The decision-making process is not open and access by stakeholders is limited, impacting the issues offered by stakeholders are not accommodated.

The recommended model is Collaborative Governance which has been added to the dimensions of accessibility in all aspects of the dynamics of collaboration by all stakeholders. So that stakeholders can participate in all stages of the decision-making process.

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