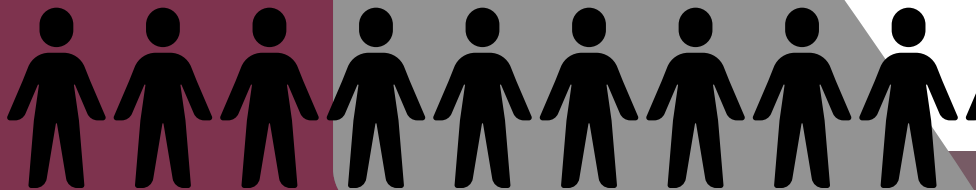


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# **Chapter -1**



## **HUMAN RIGHTS AND POLITICAL PARTICIPATION IN INDONESIA**

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### **Introduction**

Political participation in general elections is an essential element of democratic governance. This is because of the fact that it enables people to have their voices be heard as well as influence the decisions which pertain to their daily lives. People also taken part in the electoral vote by taking part in elections. People elect politicians to depict individuals; normally, elected representatives act as their delegates in deciding policy initiatives that influence their lives. It is a civil right that protects people as well as other civil society from marginalization and prejudice (Lee & Sun, 2018: United Nations High Commissioner for Human Rights, 2022).

The freedom to engage in politics has been based on the idea that any individual is entitled to be participating in making choices that impact his or her public interest (Lee & Sun, 2018). Every individual has the right to take part in societal structure, not only to protect their rights but also to contribute to the development of a functioning democracy. The individual liberty to elect and run for office as well as the liberty to organize and assemble, are democratic manifestations of that willingness to participate. Such rights serve as the basis for effective representation, participatory governance, and civilized society, making sure that government administration are truly accessible to the general public. The entitlement to participate in politics also is intrinsically tied to

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other rights, such as the right to education as well as the right to religious and moral freedom (United Nations High Commissioner for Human Rights , 2022).

Participation encompasses more than just the right to vote or the freedom to associate. The idea of political participation maintains that all people must be participated in decision-making processes that impact one another. Moreover, participation is at heart of a basic dignity strategy to poverty alleviation and growth where the poor should be viewed as main actors as well as key development affiliates (United Nations Development Program, 2003).

This chapter restricts the topic to rights to vote, nominate (be elected), and express ideas in national elections. This section elaborates how social inclusion and human rights law should apply and perform in Indonesia during the electoral cycle. It is crucial to note that in the election period, the right to political engagement is protected. That seems to be, each and every restriction towards this right constitutes an exception subject to the limits imposed in the Siracusa Principles (American Association for the International Commission of Jurists) (1985). Nevertheless, it is essential to acknowledge that the right to political expression does not rationalize acts of racial or religious violent action or hostility, or any other unlawful behavior. The freedom of expression must not endanger the freedoms and rights of the others.

## **Human Rights and Political Participation**

The right to engage in elections is affirmed or secured widely as in Convention on Human Rights and the International Covenant on Civil and Political Rights, and is therefore identified by a number of many other international international treaties. These basic rights have indeed been acknowledged now at regional scale through incorporation of individual people throughout international

conventions like the ASEAN Human Rights Charter, the African Charter, the European Human Rights Convention, and the American Human Rights Convention.

The global society's intense fight for free and impartial elections demonstrates how crucial the above right would be for individual people. States as well as individuals from all over the world had already acknowledged the significance of free and impartial elections in the persistence of democratic governance and as way to express the people's will people, where it is the foundation of governmental power (United Nations High Commissioner for Human Rights, 2017). After all furthermore, concepts concerning human and civil rights have a strong tradition in the development of humanity itself. Latest developments have contributed to a debate that classic idea of human rights, characterized as fundamental freedoms which belong to individuals particularly regarding "mostly because of humanity" (Fasel, 2018; OHCHR, 2022), must be replaced with Tasioulas' (2010) political notion, that designates two major components of misunderstanding about civil liberties.

The first point of disagreement would concern what would be destined by civil rights and human rights, whereas the later would revolve around how individual liberties can be considered appropriate. Individual rights, based on the traditional understanding, are moral rights held by living beings who've already differentiates human attributes. These characteristics are linked to basic needs or privileges (for example, the Council of Europe 2022) or who are aspects of individual capabilities or competences (Sen 2005). Conversely, the ideological idea of human rights is just an accumulation of special rights inferred from pertinent characteristics of current civil rights practice (Verdirame, 2014).

A few author suggested combined notions of human rights in addition to conventional as well as political concepts (Ernst & Heilinger,

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2012). Proponents of mixed ideas recognize this same ideological idea in terms as to what personal freedoms are, and yet integrate it with belief that moral reasoning is really what legitimizes civil rights. Forst (2010) is much more focused with in opposite principle, going to define civil rights relying on important and relevant characteristics of a person's entity, even so, the idea of human rights addresses the question of how such rights are deemed acceptable while using public justification factors.

Moreover, for such a number of reasons, a main constituent of political idea of human rights can be more relevant. To begin, it is difficult to overlook that personal freedoms surfaced from natural - law heritage or were re - introduced as an ideological special project in 1948. According to Dorfman (2014), historical background somehow doesn't indicate a metaphysical argument as to what personal freedoms are and the power they possess. As a result, one might recognize its chronological argument while preserving the said human rights nowadays are indeed a phenomenon which contradicts this same notion that personal freedoms are moral privileges that all people have by due to their humanity.

The second factor to consider seems to be the significance of translating civil rights within in the perspective of the human rights culture. Recognizing the features as well as present system of civil liberties requires more than merely a perception. Modern human rights discipline takes place not only in an institutional setting, but also within a culturally diverse sense that needs to be taken into account (Potter, et al, 2012). Civil liberties derive their polarised not even from innate properties of human civilisation, but also from institutionally interactions between individuals, government agencies, and other political entities. This ideological view of human fundamental freedoms is much more appropriate for civil rights procedure than just the conventional one.

Most importantly, acknowledging that personal freedoms have been universal human rights doesn't always indicate that personal freedoms are linked to such human traits. Personal freedoms are still not infinite and are a principle which originally came mostly in Western countries (Anon, 2014), but that does not necessarily imply that they are not generally applicable. Personal freedoms, as Blumenson (2020) tried to point out, have been deeply embedded in cultural context, as well as the concept of such rights was indeed universal. That is, if personal freedoms have been viewed as basic values, then all those rights apply to anyone.

### **2.2.1 Human Rights and Political Participation in Indonesian Election**

The right to vote is enshrined in many statutory provisions, such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights, the 1945 Constitution, and Human Rights Law No. 39 of 1999. All such multiple records rule the country elections in Indonesia, and all of them dictate the universality of voting freedoms, fairness throughout general election voting polls, as well as cast a ballot secrecy warranties.

One of pillars of contemporary democratic governance is the principle of universal as well as equal voting rights for any and all eligible voters. Article 25(b) of the International Covenant on Civil and Political Rights emphasizes for every individual's right "to cast ballots and be elected at legitimate election process by universal and equitable voting rights."

**Table 2.1** Voting Rights Legal Framework in Indonesia

<b>Universal Declaration of Human Rights</b>	<b>ICCPR and Law No. 12 Year 2005 on ICCPR Ratification</b>	<b>Indonesian Constitution 1945</b>	<b>Law. 39 year 1999 on Human Rights</b>
Article-21; Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.	Article 2b Every citizen must have the right and opportunity, without any distinction, to vote and be elected in fair periodic elections, and with universal and equal suffrage, and be carried out through secret ballots to guarantee freedom in expressing the will of the electorate.	Article 1 paragraph (2) Sovereignty is in the hands of the people and implemented according to the Constitution.	Article 43 (1): Every citizen has the right to be elected and to vote in general elections based on equal rights through direct, public, free, secret, honest and fair voting in accordance with statutory provisions.

Source: UN Charter, ICCPR, the 1945 Constitution and Law No. 39 of 1999 on Human Rights.

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It is clear as from four statutory provisions which guide the rights to participate in politics that it is a fundamental right that should not be overlooked from the roster of basic human rights. The International Covenant on Civil and Political Rights (1966) and the Universal Declaration of Human Rights (1948) each acknowledge the right to participate in politics.

Article 21 of the Universal Declaration of Human Rights states:

- (1) Everyone has the right to participate in the government of his country, either directly or through freely chosen representatives, according to Article 21 of the Universal Declaration of Human Rights.
- (2) Everyone in his country has the right to equal access to public services.
- (3) The will of the people becomes the foundation of government power; this will must be expressed in regular and genuine referendums.

The International Covenant on Civil and Political Rights not only recognizes them as civil rights, but it also areas stronger emphasis on one's accomplishment. The Article 25 states, among many other factors: "Every individual has the right as well as potential, without classifications or limitations, as mentioned in Paragraph 2:

- 1) To participate in the conduct of public affairs directly or through freely elected representatives;
- 2) To elect and be elected at general elections conducted by universal and equal suffrage and held by secret ballot, ensuring freedom of expression of the electorate's will; and
- 3) To have equal access to public services in their country.

Furthermore, article 1 paragraph (2) of the 1945 Constitution recognizes political participation as a human right: "Sovereignty is in the hands of the people and implemented in accordance with the Constitution."

As a result, the right to political participation is part of the social contract, and also its status as a fundamental right is beset with discourse, both in international treaties and also in political ideology.

Moreover, the right to political representation is indeed a fusion of the opportunities and rights to select and be voted into power, as well as the liberty of association, that contains the ability to form and join political groups or affiliations. The state guarantees peoples' election rights while also having the authority to limit these rights for predefined purposes.

In Universal Declaration article 25, the Human Rights Committee asserted:

"A right to vote in the elections as well as plebiscites should be formed by law and is only subject to certain restrictions, such as having a minimum legal age for voting public." It makes absolutely no sense to reject someone that the right to vote due to a major physical impairment or to impose like literacy, education, or income on people. Partisanship should never be a requisite for voting or a justification for electoral rejection. If the penalty for an offense is the basis for suspending the right to vote, the suspension period must be proportionate to the offense and penalty."

### **2.2.2 Barriers to Political Participation**

Several barriers to political representation commonly occur during the campaign and during the electoral or casting a vote process. One cause for voting disruptions is indeed a lack of care, which would be greatly exacerbated by a weakness from parties; a conventional point of view; a lack of self confidence; a poor



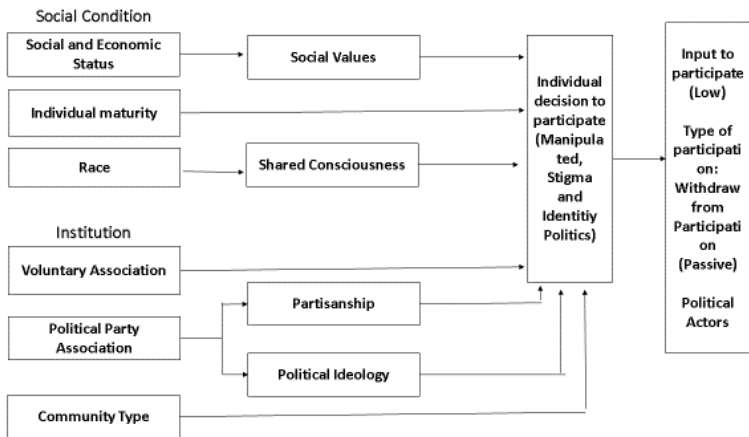
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infrastructure as well as funding; a lack of strength prospects; and an absence of availability to innovation (Labolo & Ilham, 2015). Khasnabis et al. (2010) noted a number of barriers to political participation, including:

1. Poverty - The poor are primarily concerned with survival; their basic needs must be met before they can participate, so they may have limited time or interests.
2. Education - meaningful political participation will be difficult without information and knowledge.
3. Social isolation - a network to support and encourage political participation is required.
4. Personal factors - people may lack confidence or motivation to vote in elections.
5. Discrimination and stigma - the majority group may harbor prejudice, fear, and discomfort toward people with disabilities, making it difficult for them to vote in elections.
6. A lack of disability-friendly processes - barriers such as a lack of access for people with disabilities, for example, can make it difficult for people with disabilities to participate. Sound booth is inaccessible.
7. Lack of role models - There are few examples of people with disabilities holding high-level political positions in many countries or groups of people.
8. Legal impediments - for example, in many countries, people with disabilities are not allowed to vote. people suffering from mental illnesses

In addition to the previously mentioned obstacles, registered voters have been prevented from casting ballots because of obstacles which limit access to polling sites. Such obstacles can take a

number of forms, such as restricting election season for all those present at the voting place, reducing or abolishing polling duration, casting a vote occurring relatively early than a predefined period, having to close voting places, or foisting regulatory standards. Voting identity is rigorously enforced. Several of these barriers occur as a result of hard - to - reach to polling locations. Scheme 2-1 illustrates the types and obstacles to political participation.



**Scheme 2.1** Barriers to political participation in Indonesia.

(Adopted from Verba and Nie, 1992).

### 2.3 Political Participation in Indonesian General Elections

Although Indonesia seems to be the most progressive nation in the world, such a claim still is questionable because of the obstacles to voting during general elections. Lipson (2019) asserts that 2019 voting has been the most credible in history, notwithstanding the unavoidable missteps as well as shady tactics was using to prove fraud. In practice, Indonesia is not

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genuinely democratic state due to actions which infringed political involvement rights during campaign as well as application of national elections, such as identity fraud, vote rigging, and counting of votes (Tangkilisan et al, 2022; Siahaan & Tampubolon, 2021 ). Numerous political polarization activities both prove that, based just on 2019 general elections, Indonesia is not a real democracy since religion as well as racial politics are all still polarized (Iswandi & Abdullah, 2020).

### **2.3.1 Manipulation of General Election Rules**

Articles 488 through 554 of Law Number 7 of 2017 Regarding National Elections categorize numerous campaign restrictions, which including trying to conduct campaigns outside of the timetable established by General Electoral Commission (KPU), as Election Criminal acts (Pilkada).

In regards to electoral offences, Supreme Court Regulation Number 1 of 2018 states throughout Article 2 letter b:

"The district and high courts have the authority to investigate and adjudicate electoral crimes originating from findings of accusation electoral offences relayed to the Indonesian National Police by Bawaslu in twenty-four hours after General Election Supervisory Body proclaimed that alleged act was an election crime."

Indonesia has such a legal framework that endorses a principle of direct, general, free, and secret election process (LUBER). Votes for President and Vice President, as well as members of the People's Representative Council (DPR), Regional Representative Council (DPD), or Regional People's Representative Council (DPRD), are held every 5 years and they must be direct, public, free, confidential,

honest, and fair, according to Article 22E of the Republic of Indonesia's 1945 Constitution.

There are also general election regulations, such as the Joint Decree of the General Election Commission (KPU), the General Election Supervisory Body (BAWASLU), and the General Election Organizer Honorary Council (DKPP) on the Code of Ethics for Election Organizers. The code of ethics for election administrators is enforced by this regulation. Electoral campaign coordinators, contestants, and teams are not permitted to use government resources, religious sites, or educational facilities, according to Article 280 paragraph 1 letter h of Law Number 7 of 2017.

Notwithstanding, since these rules are not applicable in practice, Article 2 letter b of Supreme Court Regulatory Number 1 of 2018 is generally overlooked. Latest surveys on Indonesian politics expose efforts to try by political established parties and candidates to deceive electoral law, prevent unnecessary official transparency, utilise safeguard as well as thuggery for political advantage, or rather reinvigorate and preserve dominant party institutions (Simpser, 2013).

For example, during 2019 election, the Head of the Police Research and Criminal Authority did receive 554 reports regarding electoral crimes. His party asserted that 132 of these have been electoral crimes, entailing criminal charges. There were 31 of these included cases of vote buying, or the form remained prevalent (Gita, 2019). Additionally, the Election Supervisory Body (BAWASLU) garnered 16,043 reports of voting infringements mostly in 2019 general elections, and yet only 345 were criminal offenses (BAWASLU, 2019).

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### 2.3.2 Political Rights Manipulation

Manipulation of voting system was found at many voting places during the 2019 general elections (TPS). The above deception took place at voting places (TPS) all through the country as well as at voting stations oversea, such as Selangor, Malaysia, Sydney, Australia, Wan Chai, Hong Kong, and The Hague, Netherlands. Hundreds of immigrant community voters are voting in Malaysia days already when international ballot boxes are started opening. The accusation results from several ballots in Selangor, Malaysia, endorse President Joko Widodo and several legislative candidates (Aditya, 2019). Tempo also disclosed that many Indonesian citizens in Sydney, Australia, were not able to make it to the polls because of an alleged shortage of international electoral committee members (PPLN) (Lazuardi, 2019). Twenty Indonesians supposedly residing in Hong Kong have been reportedly forced into to the polling booth at Queen Elizabeth Stadium after already being unsatisfied with their impossibility to cast a ballot (Kabar24, 2019).

The Noken system is used as container to replace ballot boxes in several regions of Papua as just a method for casting a ballot and tallying votes in general elections at voting places (TPS). According to Suchahyo (2019), as cited by VOA Indonesia, the Noken scheme somehow doesn't practising real democracy. The Noken system refuses to acknowledge the individual the opportunity to vote of sense of morality as to which candidate to endorse. Since this traditional system utilizes a big man and tribal leader who purports the ballots of the settlers but also gives them to one of the several candidates.

Importantly, at least two upselling candidates to contend to win as many votes as they can. Initially, a contest for candidates inside the group is continuing to increase. Candidates who believe those who have such a strong chance of success will deceive elections by artificially boosting and lowering the voter support of his\her

opposition, somewhat more than other parties. Second, there will still be weaknesses with in voting system's support, which could also allow for election fraud. Trickery actually took place in for at least 2 direction: voting data gathering as well as layered voting numbers compilation. Voting data always poses a significant problem in each and every electoral cycle as it is never accurate. During the meantime, layered voting numbers recapitulation means allowing for having to count mistakes or deception of vote acquiring results.

Although Indonesia really has representative government, there have been a few obstacles to overcome in regards to fundamental rights and liberties. Formally, Indonesia has secured the right of political participation within the basic Law, Law Number 39 of 1999 concerning Human Rights, as well as Law Number 10 of 2008 concerning National Elections for Representatives of the People's Legislative Council and the Regional Representative Local authority. Nevertheless, democratic rule and the accomplishment of individual liberty have seemed to just be detrimental. The greatest contribution on people's freedom somehow doesn't pursue honesty to equality and non - discrimination throughout democracy, rules, as well as political systems.

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