

Study of Law and Democracy on Lex Semper Dabit Remedium During the Pandemic 2020 in Banten Province

**Septia Salikhah Utami¹, Bambang Herlambang Irawan Nurraid²,
Citraresmi Widoretno Putri^{3*}**

Faculty of Law, Universitas Pembangunan Nasional Veteran Jakarta

ABSTRACT: During the Pandemic Period 2020, there are 48 countries that postponed or continued general elections. In Indonesia during the 2020 pandemic, the concern is regarding the post-conflict local election considering the right time to be able to implement democracy while still taking precautions against the Covid 19 pandemic. So the author is concerned with reviewing Law and Democracy in 2020 As Lex Semper Dabit Remedium during the Pandemic Period in Banten Province. With the law as lex semper dabit remedium, namely where the law will always give medicine in democratic activities during the pandemic, democratic activities by rearranging their schedules in several countries including Indonesia can still be carried out but by using health protocols to prevent the transmission of the covid 19 virus.

Keywords: *democracy, law, lex semper dabit remedium, pandemic 2020*

Submitted: 6 March; Revised: 19 March; Accepted: 26 March

* Corresponding Author: citraresmikimifira@upnvj.ac.id

INTRODUCTION

Democracy places humans as owners of sovereignty which is then known as the principle of popular sovereignty. Elections are an instrument or a means to implement democracy, even in many democratic countries, elections are considered as symbols as well as benchmarks of democracy. Elections are used as one of the main criteria that a democratic political system lives and is used in a country. Because citizens have the right to participate and vote on political issues. Free, fair and periodic elections are very much needed to implement democracy. Free elections are defined as conditions in which citizens can go to the polls without fear of retaliation. A fair election is an election in which all voters must be judged and positioned equally. Periodically conducted are elections that are held within a certain period of time to provide opportunities for citizens to defend or evaluate the agenda of government decisions. The World Health Organization (World Health Organization) after declaring Corona Virus Disease 2019 (COVID-19) as a pandemic by what happened in most countries around the world, including in Indonesia, has caused many fatalities and shows an increase from time to time. and has been declared a national disaster. Then on August 11, 2020, Perpu Number 2 of 2020 was stipulated to become Law Number 6 of 2020 concerning Stipulation of Government Regulation in Lieu of Law Number 2 of 2020 concerning Third Amendment to Law Number 1 of 2015 concerning Stipulation of Government Regulation in Lieu of Law. Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors becomes a law. The Banten Province General Election in 2020 is a democratic event, as four regions in Banten are confirmed to hold simultaneous regional head elections in 2020 along with a number of other regions in Indonesia. Banten KPU commissioner Eka Satyalaksana said in Serang, Tuesday, that the four regions in Banten that will take part in the simultaneous regional elections in 2020 are Serang Regency, Pandeglang Regency, South Tangerang City and Cilegon City. In Banten Province, Eka said, four were to regions whose terms of office ended in 2021 and had to carry out simultaneous regional elections in 2020, namely the Mayor of Cilegon whose term of office ended on February 17, 2021. Then the Regent of Serang will expire on February 17, 2021, the Regent of Pandeglang expires. his term of office on March 23, 2021 and the Mayor of South Tangerang expires on April 20, 2021. (Mulyana, 2019). During the COVID-19 Pandemic, there were 48 countries that postponed or resumed general elections during the Corona Pandemic Period, namely Botswana, Chad, Ethiopia, Gabon, Gambia, Kenya, Liberia, Nigeria, Somalia, South Africa, Zimbabwe, Argentina, Bolivia, Brazil, Canada, Chile, Colombia, French Guiana, Mexico, Paraguay, Peru, Falkland Islands, Uruguay, Australia, Bangladesh, Hong Kong, New Caledonia, India, Indonesia, Maldives, New Zealand, Kyrgyzstan, Pakistan, Solomon Islands, Armenia, Bosnia and Heregowina,, Isle of Man, Guernsey, Cyprus, France, Germany, Kosovo, Romania, Slovakia, Switzerland, England, Gibraltar and Oman. This is sourced from the Institute for Democracy and Electoral Assistance (IDEA) in its report stating, from February 21 to September 20 2020 there were 71 countries and territories that had decided to postpone national and regional elections due to the COVID-19 pandemic. However, of the 71 countries,

there are still holding elections. A total of 23 countries or territories. Meanwhile, 48 other countries until 23 September 2020 are still postponing the election process. Some have not even set a replacement date for the election in their country. The right to vote is a major component in the implementation of general elections because the people's vote according to the constitutional mandate is the most important part of participation. Political participation is the activity of a person or group of people to participate actively in political life, for example in the election of state leaders, influencing state policies and various other activities. (Miriam Budiarjo, 1995). If you look at the urgency of holding general elections, one of them is for the rotation of power which is periodically carried out for the sustainability of a system of government. This will be a consideration when the general election must be held in person but also consider the prevention of the covid 19 virus.

General Election is a cycle that must be carried out in a country that adheres to a democratic system in order to determine members of the People's Representative Council and members of the Regional Representatives Council in the People's Consultative Assembly, the Pair of President and Vice President, members of the Regional People's Representative Council in the Provincial Government, District and City Regions, members of the House of Representatives, members of the Regional Representatives Council, Pairs of Governors and Deputy Governors, Pairs of Mayors and Deputy Mayors and Pairs of Regents and Deputy Regents. General Elections are held every 5 (five) years. Participants in the general election to elect members of the Regional Representatives Council are individuals, while those to elect members of the People's Representative Council and members of the Regional People's Representative Council are political parties. In practice the people's sovereignty is the people's representative who sits in the people's representative institution called the parliament. The people's representatives act on behalf of the people and it is the representatives of the people who determine the style and way the government works and what goals are to be achieved both in the long term and in the relatively short term. In order for people's representatives to truly act on behalf of the people, the representatives must be determined by the people themselves, namely through general elections. (Jimly Asshiddiqie, 2014) In Banten Province in 2019 there were 8.5 million voter data, namely 6,791,166 who exercised their right to vote while those who voted for abstention were 1,726,170. According to the Head of the Socialization, Human Resources and Community Participation Division of the Banten KPU, Eka Satyalaksana, voter participation in the 2019 general election increased significantly compared to voter participation in the 2014 legislative elections of 64.7 percent and the 2014 presidential election of 68.7 percent. The factor is that in addition to the simultaneous election of legislative and presidential elections, the high voter participation in the 2019 elections is due to the Banten KPU and massive city districts conducting socialization. Although voter participation exceeded the target, Eka admitted that the abstention rate was still in double digits, or approximately 21.1 percent. This is an evaluation material for the next general

election. (Radar Banten, 2019). In Indonesia, during the 2020 pandemic, the concern is related to the 2020 post-conflict local election where the implementation considers the right time to be able to implement democracy while still taking precautions against the Covid 19 pandemic. So the author is concerned with reviewing Law and Democracy in 2020 as Lex Semper Dabit Remedium during the Pandemic Period In Banten Province with the problem of How Law and Democracy in 2020 As Lex Semper Dabit Remedium During the Pandemic Period in Banten Province.

METHODOLOGY

The research method in this journal is normative legal research which puts the law as a building system of norms. In this normative legal research using a concept approach (Conceptual Approach). This means that researchers using concepts in legal science can be used as a starting point or approach for legal research analysis, because many concepts will emerge for a legal fact. In this case the author uses the concept approach of Lex Semper Dabit Remedium of Pandemic Democracy in Banten Province.

DISCUSSION

How is Law and Democracy in 2020 as Lex Semper Dabit Remedium during the Pandemic Period in Banten Province.

The Organization for Security and Cooperation in Europe's (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) uses the standard term democratic elections. The agency publishes what they call The Copenhagen Document which contains standards for democratic elections. The document contains nine conditions or standards for democratic elections, namely as follows (1) Elections to be held at reasonable intervals; (2) All seats in one legislative chamber to be popularly elected; (3) Guaranteed universal and equal suffrage; (4) Respect for the right of citizens to seek office; (5) Respect for the right to establish political parties and ensure the parties can compete on the basis of equal treatment before the law; (6) Ensure that political campaigning can be conducted in a free and fair atmosphere without administrative action, violence, intimidation or fear of retribution against candidates, parties and votes; (7) Ensure unimpeded access to the media on a nondiscriminatory basis; (8) Ensure that votes are cast by secret by secret ballot, and are counted and reported honestly, with the results made public (9) Ensure that candidates who win the necessary votes to be elected are duly installed and are permitted to remain in office until their terms expire. The international community has also formulated other principles that are more commonly known as fair elections as campaigned by The United Nations Democracy Fund (UNDEF), Open Society Foundation, and TIRI. The principles for the implementation of fair elections and their respective meanings are as follows: (1) Integrity. This principle is an important element based on the spirit of honesty and accountability being the spirit in the

entire electoral process; (2) Participation. The principle that emphasizes that the voice of the people must be heard, respected and properly represented. Moreover, in a representative democratic system, the participation of citizens is the key to the success of democratic representation; (3) Law Enforcement. Law enforcement must be firm in order to strengthen the legitimacy of the representative democratic process. (4) Impartial. Every voter and candidate for representatives of the people is guaranteed their justice before the law; (5) Professionalism. Election administration requires technical knowledge of election administration that is qualified and has the competence to explain the process; (6) Independence. All parties that organize or have the authority to organize elections must be independent. Such independence must be guaranteed and respected in the eyes of the law; (7) Transparency. Is the main element that serves to disclose all relevant information about the election; (8) Timeslines. The importance of consistency in planning the implementation of elections; (9) Non-violent. All electoral processes must be free from elements of violence, intimidation, coercive action, corruption, and all acts that violate the rules of fair elections; (10) Regularity. Elections must be held periodically; (11) Admission. Election results must be accepted broadly (electoral integrity group). Robert Dahl tried to simplify the standards of democratic elections into five standards, namely (1) effective participation; (2) equality in voting; (3) gain a clear understanding; (4) carry out the final inspection without an agenda; (5) adult coverage. More broadly when compared to Robert Dahl, Butler put forward seven criteria for democratic elections, namely as follows (1) All adults have the right to vote; (2) regular elections within the specified time limit; (3) All legislative seats are subjects that are elected and contested; (4) No substantial group is denied the opportunity to form a party and nominate a candidate; (5) Electoral administrators must act fairly: no exceptions to the law, non-violence, non-intimidation of candidates to introduce views or introduce views or voters to discuss them; (6) Voting is made freely, confidentially, calculated and reported honestly, and converted to legislative seats as determined by regulations; (7) The results of the election are stored in the office and the remainder is stored until the election results are obtained. The Global Commission on Elections, Democracy and Security defines elections with integrity as elections held based on democratic principles of universal suffrage and political equality as reflected in international standards and agreements, professionalism, impartiality and transparency. There are five main challenges in realizing elections with integrity, namely: (1) establishing the rule of law to justify claims to human rights and electoral justice; (2) building a competent electoral management body (EMB) with complete freedom of action to hold elections that are transparent and earn the public's proper trust; (3) creating institutions and norms for multi-party competition and power sharing that support democracy as a common security system among political competitors; (4) remove legal, administrative, political, economic and social barriers to equal and universal political participation; (5) regulate political finance that cannot be controlled, closed and vague. In line with the above criteria, Ramlan Surbakti put forward the parameters of the democratic degree of the election. According to this expert on elections in Indonesia, there

are at least four parameters that are used as a measure of the process of organizing an election that can be said to be democratic. First, the regulation of each stage of the implementation of the election contains predictable procedures; Second, the arrangement of each stage is based on the principles of democratic elections, namely direct, general, free, confidential, honest and fair. Third, the regulation of the election monitoring system is carried out in accordance with the provisions. Fourth, setting up a dispute resolution mechanism for all types and forms of electoral disputes.

The discussion on democracy confronts us with a complex, classical, fundamental, but still actual problem. It is said to be classic because the issue of democracy has been the focus of attention in philosophical discourse since the time of Ancient Greece, and has been implemented in Athens as a city-state at that time. It is said to be actual because nowadays democracy is the dream of every nation and country to implement it, including the Indonesian people in this reform era. Political scientists, after observing the practice of democracy in various countries, formulate democracy in various countries, formulate democracy empirically by using certain indicators, for example Juan Lin, G. Bingham Powell Jr., and Robert Dahl. From all the indicators proposed by the political scientists, it can be concluded that there are five indicators to see whether a country is truly democratic or not. The five indicators are as follows (1) Accountability. In a democracy, every office holder elected by the people must be able to account for the policies that he intends and has taken, his words and which is no less important is the behavior in the life he has lived, and will live; (2) Power Rotation. In a democracy the opportunity for a rotation of power must exist, and be carried out in an orderly and peaceful manner. So it's not just one person who always holds the position while other people's opportunities are completely closed; (3) Open political recruitment. To enable the rotation of power, an open political recruitment system is needed. This means that everyone who meets the requirements to fill a political position elected by the people has the same opportunity to compete to fill that position. (4) General election. In a democracy, elections are held regularly. Every citizen who is an adult has the right to vote and be elected and is free to use his rights according to the will of his conscience; (5) Enjoy basic rights. In a democratic country, every citizen can enjoy their basic rights freely, including the right to express opinions, the right to assemble and associate, and enjoy a free press.

Freidrich Julius Stahl, inspired by the thought of Immanuel Kant. According to Stahl, the elements of the rule of law are as follows (1). Protection of human rights; (2) Separation or division of powers to guarantee those rights; (3) Government based on laws and regulations and; (4) Administrative Court in dispute. In the Anglosaxon region, the concept of the rule of law emerged from A.V. Dicey, with the following elements: (1) The supremacy of the rule of law (suremacy of law); the absence of arbitrary power (supremacy of law); absence of arbitrary power (Absence of arbitrary power), in the sense that a person can only be punished for breaking the law; (2) The same position in facing the law (equality before the law). This proposition applies both to ordinary people and

to officials; and (3) The guarantee of human rights by law (in other countries by constitution) as well as court decisions. According to Franz Magnis Susseno, "Democracy that is not a state of law is not democracy in the true sense. Democracy is the safest way to maintain control over the rule of law. A state of law that is based on a democratic system can be called a democratic state of law (democratische rechtstaat). The democratic state rule is a concept born from the historical development of the rechtstaat, especially in the Netherlands from the classical rechtstaat (liberaal - democratische rechtstaat), with the social, political, economic and cultural background that accompanies it. The democratic rule of law referred to in this paper simply borrows the term to show the interest between law and democracy in a country. Thus a state organized with a democratic system is called a democratic state of law, although its history is different from what happened in the Netherlands. It is called a democratic state of law because it accommodates the principles of the state of law and the principles of democracy J.B.J.M ten Berge mentions the principles of the state of law and the principles of the state of law and the principles of democracy as follows the first principles of the state of law; (1) Basis of Legality. Restrictions on the freedom of citizens (by the government) must be found fundamentally in laws - laws that are general regulations. Laws in general must provide guarantees (to citizens) and actions (government) that are arbitrary, collusive, and various types of unjust actions. The exercise of authority by governmental organs must be found basically in written law (formal law); Protection of human rights; The government is bound by law; Monopoly Forcing the government to ensure that in the community there are juridical instruments of law enforcement. The government can force someone to break the law through the state judicial system. Enforcing public law in principle is the duty of the government; Supervision by an independent judge. The superiority of the law cannot be shown, if the rules of law are only implemented by government organs. Therefore, in every legal state, supervision by independent judges is required. Furthermore, the principles of democracy; (1) Political representatives. The supreme power in a country and in society is decided by a representative body, which is elected by popular vote; (2) Political accountability. The organs of government in carrying out their functions are more or less politically dependent, namely on representative institutions; (3) Distributing authority. Concentration of power in society in one organ of government is arbitrary. Therefore, the authority of these public bodies must be dispersed in different organs; (4) Supervision and control (Organization) of the government must be able to be controlled; (5) Honesty and openness to the public; (6) The people are given the possibility to file objections. With almost the same formula, H.D. Van Wijk / Willem Konijnbelt mentions the following principles of rechtstaat and principles of democracy. The principles of rechtstaat are (1) the government based on the law, the government only has the authority that is expressly granted by the Constitution or other laws; (2) Human rights; there are very fundamental human rights that must be respected by the government; (3) Power sharing; government authority may be centralized in one institution but must be divided into different organs in order to monitor each other which is intended to maintain balance. (4) Supervision of judicial

institutions; the exercise of governmental power must have legal aspects assessed by an independent judge. Principles of democracy (1) Important decisions, namely laws, are taken together with representatives of the people who are elected based on free and secret elections; (2) The results of the general election are directed to fill the people's representative council and to fill government officials; (3) Openness of government; (4) Anyone who has an interest (violated) by the actions of the authorities, (must) be given the opportunity to defend his interests. (5) Every decision must protect the interests of minorities, and must as little as possible avoid untruths and mistakes.

With the law as *lex semper dabit remidium*, namely where the law will always give medicine in democratic activities during the pandemic, democratic activities by rearranging their schedules in several countries including Indonesia can still be carried out but by using health protocols to prevent the transmission of the covid 19 virus.

CONCLUSION

With the law as *lex semper dabit remidium*, namely where the law will always give medicine in democratic activities during the pandemic, democratic activities by rearranging their schedules in several countries including Indonesia can still be carried out but by using health protocols to prevent the transmission of the covid 19 virus.

REFERENCES

- Budiardjo, M. (2008). *Dasar – dasar ilmu politik (edisi revisi)*. Gramedia Pustaka Utama.
- Budiardjo, M. (1982). *Dasar – dasar ilmu politik*. Gramedia.
- Dahl, R. (2001). *Perihal Demokrasi, Menjelajah Teori dan Praktik Demokrasi Secara Singkat*, Diterjemahkan oleh A. Rahman Zainudin. *Yayasan Obor*.
- Gaffar, A. (2002). *Politik Indonesia*. Pustaka Pelajar.
- Global Commission on Elections, D. and S. (2012). *Pendalaman Demokrasi : Strategi untuk Meningkatkan Integritas Pemilihan Umum di Seluruh Dunia*, Laporan dari Komisi Global untuk Pemilihan Umum, Demokrasi dan Keamanan.
- Ibrahim, J. (2006). *Teori dan metode penelitian hukum normatif*. Boymedia Publishing.
- Kumparan News. (2020, September 23). 48 Negara Masih Menunda Pemilu Karena Pandemi Covid 19.
<https://Kumparan.Com/Kumparannews/48-Negara-Masih-Menunda-Pemilu-Karena-Pandemi-Covid-19-1uFqk4qRUDW/Full> accessed on January 15, 2021 at 23:36
- Pamungkas, S. (2009). *Perihal pemilu*. Laboratorium Jurusan Ilmu Pemerintahan FISIPOL UGM.
- Siswomihardjo, K. W. (2002). *Filsafat ilmu : sebagai dasar pengembangan ilmu pengetahuan*. Liberty.
- Supriyanto, D., & Surbakti, R. (Ed). (2014). *Integritas Pemilu 2014, Kajian Pelanggaran, Kekerasan dan Penyalahgunaan Uang pada Pemilu 2014. Kemitraan Partnership*.
- Surbakti, R., Supriyanto, D., & Santoso, T. (2008). *Perekayasa Sistem Pemilu Untuk Pembangunan Tata Politik Demokrasi. Partnership for Governance Reform in Indonesia*.
- Suseno, F. M. (1997). *Mencari sosok demokrasi, sebuah telaah filosofis*. Gramedia.

Ten Berge, J. B.J. M. (1996). *Bestuuren door de overheid*. W.E.J. Tjeenk Willink.

Van Wijk, H. D. K. (1995). *Hoofdstukken van administratief recht*. Uitgeverij Lemma BV.