



# AUTHORITY AND JURIDICAL REVIEW OF DECISIONS OF THE HONORARY BOARD OF ELECTION ADMINISTRATION IN PRODUCING DEMOCRATIC ELECTIONS IN INDONESIA (Analysis of Law Number 7 of 2017 Concerning General Elections)

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**Abstract:** *The Election Organizing Honorary Council (DKPP) is one of the triumvirate election organizers in Indonesia. Election law politics in Indonesia in the a quo status gives the DKPP such coercive authority related to the enforcement of the code of ethics. Based on this research, it was found that the electoral code of ethics is correlated as the embodiment of the rules of the organizers that were formed together to create honest and fair elections in order to create a substantially democratic election, not just procedural. In addition, it was found that the coercive authority of the DKPP is to ensure that the Election Organizers comply with the Code of Ethics which is the organizer's rules in the administration of elections. When DKPP does not have such coercive authority, it will make DKPP seem like a blunt sword that will lead to elections that do not reflect substantive democracy.*

**Keywords :** *Democracy, Election Administration Honorary Council.*

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## I. INTRODUCTION

### General Elections In Indonesia

As a country that adheres to democracy as stated in Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia<sup>1</sup>, Indonesia also applies elections as a power transition mechanism. This can be seen in the articles of the 1945 Constitution including, Article 6A which regulates In order to ensure that the elections carried out truly reflect the will of the people substantially, the principles

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<sup>1</sup> The use of the phrase of the 1945 Constitution of the Republic of Indonesia to indicate that what is meant is the Constitution after the amendment, see Xavier Nugraha et al., "Reconstruction of the Minimum Age for Marriage as a Form of Legal Protection for Women (Analysis of the Constitutional Court Decision No. 22/PuuXv/ 2017" , Lex Scientia, Volume 3, Number 3, p. 41

of elections are regulated in Article 22E paragraph (1) of the 1945 Constitution. The principles are direct, general, free, confidential, honest and fair. This was also confirmed by the Constitutional Court, as the sole interpreter of the constitution<sup>2</sup>, for example in the Decision of the Constitutional Court Number 14/PUU-XI/2013, where in its legal considerations, the Constitutional Court asserts that: "The constitutional norms mean that elections are held in a direct, general, free, secret, honest and fair manner. once every five years it is mandated." <sup>3</sup>

From the decision of the Constitutional Court, it can be seen that the conditions for democratic elections are substantially,<sup>4</sup> According to the Constitutional Court, it must be implemented based on these six principles. In order to realize a substantially democratic election, Indonesian legal politics places the General Election Commission (KPU), the Election Supervisory Body (Bawaslu), and the Election Organizing Honorary Council (DKPP) as one unified institution that conducts permanent elections,<sup>5</sup> as regulated in Law no. 7 of 2017 concerning General Elections.<sup>6</sup> The three institutions have different main tasks and functions but complement each other in order to maintain a perfect implementation of the General Election so that the election results truly reflect the will of the people.

In accordance with the postulate *id perfectum est quod ex omnibus suis partibus constant*<sup>7</sup>, which means something will never be said to be perfect, unless every part is complete. So that the triumvirate consisting of KPU, Bawaslu, and DKPP is expected to be every part that is able to realize a substantially democratic election. One of the triumvirate election organizers is DKPP. DKPP is tasked with examining and deciding complaints and/or reports of alleged violations of the code of ethics by the Election Organizer. In carrying out its duties, the DKPP has the authority, such as, summoning election organizers suspected of violating the code of ethics,

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<sup>2</sup> The Constitutional Court as the sole interpreter of the constitution means that the Constitutional Court is the sole interpreter of the constitution, further see Nanang Sri Darmadi, "The Position and Authority of the Constitutional Court in the Indonesian Constitutional Law System", *Journal of Legal Reform*, Volume 2, No.2, p.265.

<sup>3</sup> Considerations [3.11] Constitutional Court Decision No.14/PUU-XI, p.73

<sup>4</sup> Substantial democracy is a democracy that actually represents the will of the people substantially, not just a kind of procedural mechanism which ultimately does not represent the will of the people. Volume 2, No. 1, p.83-84.

<sup>5</sup> When the phrase used is holding elections, it means the process of implementing the stages of the election, according to Article 1 point 2 U of Law no. 7/2017, whereas when the phrase used is election organizers, it means that the institution that organizes the general election consists of the General Election Commission, the Election Supervisory Body, and the Election Organizing Honorary Council in accordance with Article 1 point 7 U of Law no. 7/2017 permanent.

<sup>6</sup> Dewi Haryanti, "Legal Construction of General Election Organizing Institutions in Indonesia Judging from Sutefnbau Theory, *Journal of Legal Reform*, Volume II, Number 2, p. 270.

<sup>7</sup> Legal Dictionary, <https://legaldictionary.thefreedictionary.com/Id+perfectum+est+quod+ex+omnibus+suis+partibus+constat>, downloaded 2 January 2021.

summoning witnesses and/or other related parties for questioning, including for documents or other evidence.

DKPP has the authority to impose sanctions on election organizers who are proven to have violated the code of ethics. Once the coercive authority that DKPP has, it actually raises a fundamental question, which is related to the correlation of the Code of Ethics for election organizers with the creation of a democratic election. Because there should be no correlation between the existence of the Code of Ethics for Election Organizers and the creation of democratic elections in order to maintain the sovereignty of the people and the very reforms that have drained the minds and souls of democracy fighters to create true democracy.

## II. DISCUSSION

Elections are the realization of people's sovereignty to produce a democratic government based on Pancasila and the 1945 Constitution. The democratic standard of elections requires the holding of elections with integrity, where one of these standards is the election organizers (electoral management body) who also have integrity.<sup>8</sup> In the framework of a strong democracy, the election process must be based on two basic standards: credibility and integrity, namely the credibility of the Election Organizer and the integrity of the entire election administration process itself.<sup>9</sup> This is because the Election Organizer has a very important and strategic role in maintaining the running of democracy in Indonesia.

The Election Organizer is the party that regulates the conduct of the Election, starting from designing the stages of organizing the Election to its implementation as well as supervising the implementation of the Election. Therefore, the success or failure of the General Election in realizing its ideal goals is largely determined by the performance of the Election Organizers. Seeing the importance of the role of the Election Organizer, every step and action of the Election Organizer must always be guided by the laws and regulations and the applicable code of ethics. The code of ethics is an aspect that is also considered in addition to statutory regulations.

In contrast to positive legal rules which make provisions in laws and regulations as guidelines for behavior, the code of ethics refers to ethics as moral values that become the main reference. According to Aristotle, ethics is a means of orientation

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<sup>8</sup> Mudiwati Rahmatunnisa, "Why is Election Integrity Important?", *Bawaslu Journal*, Volume 3, Number 1, p. 9.

<sup>9</sup> Ifah N, "Efforts to Prevent Money Politics for the sake of Realizing Elections with Integrity", *Bawaslu Journal*, Volume 3, Number 3, p. 410.

for humans to measure the right or wrong of human actions.<sup>10</sup> When associated with a profession, the code of ethics has a function to regulate a person's behavior in relation to the profession he carries,<sup>11</sup> One form of regulation that wants to be provided through this code of ethics is so that a person in carrying out his profession does not have a conflict of interest or conflict of interest that can eliminate his objectivity in carrying out a certain profession.<sup>12</sup>

The code of ethics also has a function as morale control whose sanctions are psychological and institutional, demanding the formation of moral integrity among professional bearers. This has consequences for the dignity and identity of professional organizations because the quality of these professional organizations is determined by the quality of the ethical empowerment of the professional bearers themselves. Thus, it is not only the interests of the profession whose rights are articulated, but also the interests of the state in general that must be protected.<sup>13</sup>

The importance of the existence of a code of ethics is also needed for Election Organizers. Election organizers in carrying out their duties in addition to complying with the laws and regulations must also comply with the existing code of ethics that they have created together. This is also in line with the opinion of Mochtar Kusumaatmadja stating that every profession places a person in a special situation, either because of the extraordinary power entrusted to him or because of the fate of the interested person entrusted to him. Therefore, the bearer of the profession in carrying out his duties must be based on certain ethics.<sup>14</sup>

In the conduct of elections, ethics acts as a code of conduct for election organizers. The code of conduct is stated in the form of DKPP Regulation Number 2 of 2017 concerning the Code of Ethics and the Code of Conduct for Election Organizers. The Code of Ethics is prepared based on the internal awareness of election organizers

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<sup>10</sup> Haryo Kunto Wibisono (et.al), "Dimension of Pancasila Ethics in Bureaucracy: Discourse of Governance" in the book Philosophy, Ethics and Local Wisdom compiled by Siti Syamsiyatun and Nihayatul Wafiroh, Geneva: Globethics, p. 19.

<sup>11</sup> There are three functions of the code of ethics according to Bigs and Blocher, namely (1). Protect a profession from government interference. (2). Prevent internal conflicts within a profession. (3). Protecting practitioners from mispractice of a profession where the core function of the code of ethics according to Bigs and Blocher is to protect someone related to the profession they carry, further see Biggs and Blocher, *The Cognitive Approach to Ethical Counseling*, Albany: Suny, p. 10.

<sup>12</sup> *Ibid*

<sup>13</sup> Muhammad Nuh, *Ethics of the Legal Profession*, Bandung: Faithful Library, p. 125-126

<sup>14</sup> Mochtar Kusumaatmadja, "Renewal of Legal Education and Professional Development", Magazine of Law and Public Knowledge "Padjajaran", Volume V, Number 3-4, p. 18.

who bind themselves voluntarily (voluntary norms imposed from within the consciousness of the subjects).<sup>15</sup>

This is also as explained in Article 157 paragraph (2) of Law no. 7 of 2017, which in compiling the code of ethics, DKPP includes the KPU and Bawaslu. So it is logical, when this code of ethics is made jointly by DKPP, KPU, and Bawaslu, then they are obliged to obey the rules that they have formed together. According to Article 1 point 4 of DKPP Regulation Number 2 of 2017, the Code of Ethics for Election Organizers is a unity of moral, ethical, and philosophical principles that serve as behavioral guidelines for Election Organizers in the form of obligations or prohibitions, actions and/or words that should or should not be carried out by the Election Organizer. Election Organizer.

Furthermore, in Article 5 paragraph (1) it is explained that the Code of Ethics for Election Organizers is based on:

- a. Pancasila and the 1945 Constitution.
- b. TAP MPR RI No. VI/MPR/2001 concerning the Ethics of National Life.
- c. the oath/promise of Members as Election Organizers.
- d. election principles.
- e. Election Organizer principles.

The Code of Ethics for Election Organizers can actually be said to be the rules of the game for Election Organizers in carrying out their duties and functions, which are binding and must be obeyed by Election Organizers. Considering that the election is a power transition mechanism that contains many interests in it, everyone will struggle to gain power even by justifying any means.

The existence of a Code of Ethics as a function of moral control and behavior control requires the formation of moral integrity among professional bearers, in this case the Election Organizer.<sup>16</sup> so that it is expected to be able to prevent fraud and violations in an election such as buying and selling votes, bribery, negligence, carelessness, electoral fraud and or electoral corruption. The existence of a Code of Ethics for Election Organizers, actually also has a logical consequence for the implementation of a democratic election as regulated in Article 22E paragraph (1) of the 1945 Constitution, namely that the General Election shall be conducted in a direct, general, free, confidential, honest and fair manner.

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<sup>15</sup> Jimly Asshidiqie, "Constitutional Basis for Ethical Justice", *Journal of Ethics & Elections*, Volume 1, Number 1, p. 102.

<sup>16</sup> Muhammad Nuh, *Ethics of the Legal Profession*, Bandung, Faithful Library, p. 125-126 as quoted in Yovita Arie Mangesti, *Construction of Professional Code of Ethics in Indonesian Values Frame*, *Scientific Journal of Administration and Secretarial Science*, University of Surakarta, 2017, p. 12

The code of ethics aims to maintain the independence, integrity, and credibility of all levels of election organizers so that elections can be carried out based on these principles, especially the principles of honesty and fairness. The principle of honesty and fairness is an election principle that is integrated with the principles of direct, general, free and secret (Luber) post-reform.<sup>17</sup>

Throughout the history of the State of Indonesia, it was recorded that there were two changes in the principles of the General Election in Indonesia. Beginning in 1955, elections were held based on the principles of honesty and togetherness, direct, public, free and secret. In the new order era, namely in the 1971 general election, there was the first change related to the principle of general election to be direct, general, free and secret (Luber). After the new order and replaced by the reform era, the principle of general elections underwent a second change by adding a new principle, namely honesty and fairness. So that the implementation of elections in Indonesia is carried out on the basis of direct, general, free, confidential, honest and fair principles.

He added that the principles of honesty and fairness as one of the principles in organizing democratic elections are not without reason. The principle of "honest" means that in the implementation of the General Election, every party related to the implementation of the General Election, starting from the election organizers, government officials, election participants, election supervisors, election observers and voters must behave and act honestly.<sup>18</sup> Therefore, honesty is meant for all parties, not only for voters. Honesty is an important thing as part of the integrity of the election because that is what determines the quality of democracy. This is also agreed in the Universal Declaration on Democracy which states that the element of democratic government is free and honest elections with the freedom of everyone to choose and by upholding the values of accountability.<sup>19</sup>

Furthermore, the adoption of the "fair" principle in the constitutional norms related to elections shows that the realization of Indonesia as a democratic legal state as stipulated in Article 1 paragraph (2) and paragraph (3) of the 1945 Constitution of the Republic of Indonesia must be carried out and implemented fairly. The implementation of people's sovereignty through democratic elections should not be carried out unfairly. In other words, the will or voice of the people in

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<sup>17</sup> Sun Fatayati, "The Relevance of Election Principles as an Effort to Create a Democratic Election with Integrity", *Tribakti Journal*, Volume 28, Number 1, p. 148.

<sup>18</sup> Arifudin, "The Election of Regional Heads as a Form of Implementation of People's Sovereignty", *Bawaslu Journal*, Volume 3, Number 3, p. 397

<sup>19</sup> Cheriff Basiouni, *Democracy: Its Principles and achievement*, Geneva: Intra-Parliamentary Union, p.6-7.

the election should not be betrayed by fraudulently turning it into the will of the elite.

Justice is a principle as well as a mandate that must be reflected in the implementation of elections.<sup>20</sup> This is because the implementation of the General Election as the gateway to the transition of power will determine the fate of the nation for the next several periods of time, so it must be held in the fairest way possible. The implementation of a fair election is not only limited to how to create fair rules of the game and with legal certainty, but also guarantees the rights of every citizen from various possibilities of fraud.<sup>21</sup>

In connection with the importance of the principle of honesty and fairness, this has actually been stated in the Constitutional Court Decision No. 01/PHPUPRES/XVII/2019 which states that the main pillar of a democratic country is the holding of honest and fair elections as mandated by the constitution. Honesty and justice are norms that place a positive obligation on the administration of the state in carrying out public mandates. Honesty and justice as stated normatively in the constitution must be transformed into honesty and substantive justice in the administration of elections. Thus the Code of Ethics guarantees that the implementation of elections is not only carried out based on the principles of Direct, General, Free and Confidentiality but also Honest and Fair so as to create substantially democratic elections, namely those that truly reflect the will of the people. Violations of the Code of Ethics will be dealt with strictly in the form of sanctions. This is important because compliance with the code of ethics or code of behavior is a guarantee for the quality (quality assurance) of a substantially democratic election administration and an election that runs with integrity (election with integrity).<sup>22</sup>

DKPP started from the establishment of the Honorary Council of the General Elections Commission (DK-KPU). This institution was formed based on Law 12 of 2003 concerning General Elections for Members of DPR, DPD and DPRD. The DK-KPU is ad-hoc, and is part of the KPU.<sup>23</sup> DK-KPU was officially changed to DKPP on June 12, 2012 based on Law No. 15 of 2011 concerning the Implementation of General Elections (Law No. 15/2011). UU no. 15 of 2011 was later replaced by Law

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<sup>20</sup> Khairul Fahmi, "Exploring the Concept of General Election Justice according to the 1945 Constitution", *Journal of Cita Hukum*, Volume 4, Number 2, p. 168.

Mohammad Syaiful Aris, "Structuring a Fair General Election System for Strengthening the Presidential System in Indonesia", *Yuridika*, Volume 33, Number 2, p. 299.

<sup>22</sup> Nur Hidayat Sardini, "Comparative Study of the Integrity of Election Organizers in the Implementation of the General Election of Governor and Deputy Governor of Central Java and Maluku in 2013", *Scientific Journal of Government Science*, Volume 1, Number 1, p.12.

<sup>23</sup> Election Organizer Honorary Council, "History of DKPP", <http://dkpp.go.id/sejarah-dkpp/>, downloaded 2 January 2021.

No. 7 of 2017. Based on Article 155 paragraph (1) of Law No. 7/2017, DKPP is permanent, independent and domiciled in the national capital.

The institutional structure is more professional with duties, functions and authorities reaching all levels of Election Organizers and their staff from the center to the sub-district/village level, including ad-hoc Election Organizers such as PPK, PPS, KPPS, and even Overseas KPPS. DKPP membership as stated in Article 155 paragraph (4) of Law no. 7/2017, consisting of 1 (one) KPU element, 1 (one) Bawaslu element and 5 (five) community leaders. DKPP is a supporting state institution or states auxiliary organ<sup>24</sup> who is in charge of handling violations of the code of ethics for Election Organizers and is an integral part of the function of organizing the General Election.

The existence of the DKPP as a state auxiliary organ also gained legitimacy through the Constitutional Court Decision No. 005/PUUI/2003, where in its consideration the Constitutional Court stated that "in the Indonesian constitutional system, state institutions are not always intended as state institutions mentioned in the 1945 Constitution whose existence is based on constitutional orders, but there are also state institutions that are formed on the orders of the law."<sup>25</sup> In addition, according to the Constitutional Court, the formation of this state institution is a logical consequence of a modern democratic state that wants to perfectly implement the principle of checks and balances for the greater public interest.

The position of DKPP was reaffirmed in the Constitutional Court Decision No. 11/PUUVIII/2010 and the Constitutional Court Decision No. 81/PUU-IX/2011, which states that the position of DKPP is parallel to the KPU and Bawaslu.<sup>26</sup> The three parallel institutions become a triumvirate which is a unitary function of the election administration which is national, permanent and independent. DKPP as a unitary function of the General Elections Organizer compiles and stipulates a code of ethics that binds all Election Organizers and their staff to maintain the independence, integrity and credibility of Election Organizers as regulated in Article 157 of Law No. 7/2017. The Code of Ethics is binding and must be obeyed by all levels of Election Organizers. In this regard, DKPP is tasked with handling violations of the Election Organizer's code of ethics.

According to Article 159 paragraph (1) of Law no. 7/2017, DKPP is in charge of:

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<sup>24</sup> Dyan Puspitasari, *The Role of the Honorary Council for Election Organizers in Maintaining the Independence and Integrity of General Election Organizers in Indonesia*, Jurnal Lentera Hukum, Volume 5, Number 3, p. 384.

<sup>25</sup> Constitutional Court Decision No. 005/PUU-I/2003

<sup>26</sup> Dyan Puspitasari, Loc.Cit.



- a. receive complaints and/or reports of alleged violations of the code of ethics by the Election Organizer.
- b. conduct investigations and verifications, as well as examine complaints and/or reports of alleged violations of the code of ethics by the Election Organizer.

Furthermore, in paragraph (2), in carrying out its duties, DKPP is authorized to:

- a. summon the Election Organizer suspected of violating the code of ethics to provide explanations and defenses.
- b. summon the complainant, witnesses, and/or other related parties for questioning, including to be asked for documents or other evidence.
- c. to impose sanctions on Election Organizers who are proven to have violated the code of ethics.
- d. Terminate violations of the code of ethics.

Based on Article 159 paragraph (2) letter c of Law no. 7/2017 jo. Article 21 DKPP Regulation No. 2/2017, DKPP has the authority to impose sanctions on Election Organizers who are proven to have violated the Election Organizer's Code of Ethics. 2/2017, sanctions can be in the form of a written warning, temporary dismissal or even permanent dismissal. A written reprimand can be in the form of a warning or a stern warning. Meanwhile, permanent dismissal can be in the form of permanent dismissal from the position of chairman or permanent dismissal as a member. This shows the existence of coercive authority and sanctions against Election Organizers who violate the Code of Ethics.

Enforcement of the Code of Ethics for Election Organizers is a substantial matter in the development and understanding of ethical awareness for Election Organizers to carry out their duties and functions professionally and independently. As previously described, the Code of Ethics for Election Organizers is important to realize a democratic election.

The presence and legitimacy of DKPP to enforce the Code of Ethics (code of ethics or code of conduct) and maintain the independence, integrity and credibility of Election Organizers is very much needed. The existence of DKPP authority and coercive sanctions is actually to ensure that Election Organizers comply with the Code of Ethics which is the rules of the game in the administration of elections. This is logical, considering that the goal to be achieved in the implementation of the General Election is the election of people's representatives who are truly in accordance with the will of the people. When the authority possessed by the DKPP is not coercive, then such a goal will not be achieved. For example, when DKPP does not have the authority to impose sanctions, then the code of ethics will only

become an imperfect norm because it cannot be enforced. It is also known as the *lex imperfecta* / imperfect norm.<sup>27</sup>

In creating a substantially democratic election, apart from being important to safeguard the dignity of the Election Organizer from violating the Code of Ethics, of course, the Election Organizer must not violate the provisions contained in the laws and regulations, for example, it turns out that the election organizer promotes voting, then in accordance with Article 517 UU no. 7/2017, it can be sentenced to a maximum imprisonment of 5 (five) years and a maximum fine of 60 million rupiah.

In order to create a substantial democratic system, it cannot only be procedural according to law, but is supported by "the rule of ethics" and "the rule of law" simultaneously. The Rule of Law works on the basis of the Code of Law, while the Rule of Ethics works on the basis of the Code of Ethics. In order to enforce the Code of Law, it is carried out through an independent, impartial, and open judicial process, namely the Court of Law, while the Code of Ethics is enforced through the Court of Ethics. That way the democratic system created in the 21st century is not only formal in accordance with laws and regulations, but also has integrity according to ethical standards election with integrity.

### **III. CONCLUSION**

The birth of DKPP as an ethical institution and the existence of a Code of Ethics for Election Organizers can actually be said to be a special rule for Election Organizers in carrying out their duties and functions during the implementation of the Election. The Code of Ethics is binding and must be obeyed by the Election Organizer. The existence of a Code of Ethics for Election Organizers, has a logical consequence for the implementation of a democratic election as mandated in Article 22E paragraph (1) of the 1945 Constitution of the Republic of Indonesia, namely that the General Election shall be conducted in a direct, general, free, confidential, honest and fair manner.

The code of ethics aims to maintain the independence, integrity, and credibility of all levels of Election Organizers so that elections can be carried out based on the principles of these elections, especially the principles of honesty and fairness, so as to create substantially democratic elections, namely those that truly reflect the will of the people.

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<sup>27</sup> Ramses A. Wessel, "Lex Imperfecta: Law and Integration in European Foreign and Security Policy", *European Papers*, Volume 1, Number 2, p. 449.

In order to enforce the code of ethics, the DKPP was born which is one of the triumvirate election organizers. The coercive authority possessed by the DKPP is to ensure that Election Organizers comply with the Code of Ethics which is the rules of the game in the administration of elections. This is logical, considering that the purpose of the General Election is to elect representatives of the people who are truly in accordance with the will of the people. When DKPP does not have such coercive authority, it will make DKPP seem to be a blunt sword which will lead to elections that do not reflect democracy substantially. With the existence of DKPP as an enforcer of the Code of Ethics, the democratic system created in the 21st century is expected to be not only procedural (formal) based on legal provisions, but also with integrity according to ethical standards (election with integrity) in order to produce democratic elections.

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