

# TRANSCENDENTAL DEMOCRACY: ELABORATION OF THE CONCEPT OF GENERAL ELECTIONS IN THE PERSPECTIVE OF SHARIAH AND FIQH SIYASAH

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**Abstract** - This study aims to expound upon the concept of general elections within the framework of democracy and people's sovereignty in Indonesia from the perspective of Sharia law and fiqh siyasah. Employing juridical-normative research methods, this investigation scrutinizes legal norms and regulations governing the values and mechanisms of conducting elections. The analysis utilizes a comparative approach with Sharia law and fiqh siyasah. The findings reveal that the manifestation of democracy in Indonesia, employing elections as a tool for legitimization, aligns with the principles advocated by Prophet Muhammad SAW, emphasizing the concept of people's sovereignty. However, on a technical level, the implementation of elections in Indonesia exhibits several weaknesses and inconsistencies with the tenets of fiqh siyasah. Fiqh siyasah underscores elections as a conduit for people's sovereignty in selecting virtuous leaders based on the values of transcendental democracy and justice.

**Keywords:** Fiqh Siyasah; General Elections; Transcendental Democracy; Sharia

## INTRODUCTION

The formulation of policies aimed at democratizing Indonesia's political landscape and governance has unfolded as a dialectical, dynamic, and eclectic process, intricately interwoven with the country's historical reality since achieving independence in 1945.[1] A watershed moment in this trajectory occurred with the inaugural general election in 1955, marking a substantial leap towards broadening the protection of human rights in politics and the freedom of expression.[2] However, the periods characterized by guided democracy (1959-1965) and the New Order (1966-1998) witnessed a marked deterioration in the state of Indonesian democracy.[3] Jimmly Asshiddiqie categorizes these two eras based on their shared authoritarian tendencies.[4] In the face of criticisms spanning the Old and New Orders, subsequent reforms addressed the public's clamor for freedom and equity in constitutional elections. The conceptual underpinning of this democratic ethos is explicitly articulated in Article 1, Paragraph (2) of the 1945 Constitution, unequivocally asserting the principle that "Sovereignty is in the hands of the people and is exercised according to the Constitution".[5]

The rejuvenation of democratic principles, marked by a paradigmatic shift towards the concept of sovereignty, not only entails alterations in the status and position of the People's Consultative Assembly (MPR) as the paramount institution of the state but also symbolizes the restoration of sovereignty to its rightful owners.[6] In a comparative context, Article 1, Paragraph (2) of the 1945 Constitution, post-amendment, liberates the consolidation of state administrative power previously assimilated by the MPR and the President into civil rights, accessible collectively on the basis of the principle of equality.[7] Moreover, the comprehensive management of General Elections following the amendment of the 1945 Constitution is directed towards realizing the manifestation of people's sovereignty imbued with a sense of justice through the principles of directness, generality, freedom, secrecy, honesty, and fairness.[8] In its teleological aspect, elections serve as a space for the implementation of social values, mutual assistance, and deliberation.[9]

However, the actualization of the chosen concepts and fundamental principles of ideal democracy through the electoral mechanism evolves in its technical dimension, leaning towards a more pragmatic inclination.[10] In essence, there exists a gap in values between the concept of electoral

democracy and the tangible realities on the ground. This condition is a result of the intensity of practical interests, rendering elections an arena of conflict and a commodity of power.[11] In Indonesia's electoral history, various technical phenomena have muddled the democratic atmosphere, encompassing issues such as money politics, black campaigns, and other fraudulent practices.[12] The repercussions of this gap between democratic conceptualization and realization are evident in Indonesia's position in the 2021 Democracy Index by The Economist Intelligence Unit (EIU), ranking at 6.71 points and 52nd among 167 countries. Although showing improvement annually, this statistic underscores the disjunction between the conceptual ideals of democratic values and the actualities of conducting elections in Indonesia.

Issues identified in the implementation of democratic values in Indonesia, as delineated above, can be categorized into two domains. First, policy decisions that render elections as a tool for realizing the principle of people's sovereignty in Indonesia.[8] This decision is intricately linked to the legitimacy obtained by leaders and representatives of the people in the government. Legitimacy acquired through means and procedures aligned with democratic values yields exemplary leaders and governments. In a binary opposition framework, legitimacy obtained through means and procedures contrary to democratic values results in the accumulation of corrupt power (as power tends to corrupt).[13]

Second, the technicalization of procedures for conducting direct elections, despite having a strong foundation in democratic values, holds the potential for violating its teleological purpose.[2] In this context, translating abstract values into practical reality necessitates organizers to adapt to complex socio-political-economic conditions, capacities, and considerations.[14] However, this technicalization cannot be engineered in a manner that violates the fundamental principles of democracy, both those outlined in the value dimension and the constitutional principle in Article 22E of the 1945 Constitution.[15]

To assess and evaluate these two issues, a comparison must be made using standards of values that surpass the reality of state sovereignty. Acknowledging that the state represents the highest form of sovereignty, the evaluation of state policy in implementing democracy must be juxtaposed with perspectives rooted in more abstract, universal truth values, one of which is transcendental values. A transcendent perspective involves viewing reality beyond what is visible, guided by a higher intersubjective reality, in this case, referring to the Godhead as the embodiment of humanity's highest belief.[16] In the Indonesian context, the Godhead is defined as the first precept in the national ideology, thereby necessitating a comparison of electoral policy decisions and technicalization in state administration with transcendent religious values that are appropriate and unavoidable.[17] In Islamic teachings, democratic values are ingrained and integral to the discipline of *fiqh siyasah* (Lukman, 2019). Islam, with its aim to be the religion of *rahmatan lil alamin* (a source of mercy for all worlds), manifests through basic guidelines that are transcendental in nature, offering direction to humanity in achieving a harmonious relationship in both worldly and Hereafter life through the guidance of Allah SWT and the Sunnah of the Messenger.

This study seeks to assess the compatibility of the conceptualization and technicalization of elections in realizing democratic values in Indonesia from the perspective of *sharia* and *fiqh siyasah*. Aligning electoral values and techniques in positive legislation and their implementation with Islamic religious values can foster the realization of transcendental democracy, which entails the manifestation of godly popular sovereignty.

The research employs a juridical-normative legal research methodology to examine the subject matter. In legal studies, the juridical-normative approach is a problem-solving pattern involving a comparative analysis of laws and regulations with the practical realities in the field.[18] This approach aims to offer a comprehensive understanding of the legal gap between *Das Sollen* (what ought to be) and *Das Sein* (what is) and proposes solutions to address the resulting issues.[19] The analysis of positive law in Indonesia concerning elections and democracy is conducted comparatively using *Sharia* law and *fiqh siyasah* as variables.[20] The divergence in values and technicalization of democratic manifestations between those implemented in Indonesia and Islam during the era of Prophet Muhammad forms the basis for synthesizing conclusions inductively. To support the research, literature reviews are conducted by scrutinizing relevant, credible, and academically accountable laws, regulations, books, and journals.

## 1. Electoral Legitimacy and Compatibility of Democratic Values in Islam

In the order of state life, the structure of intersubjective reality needs to be built with a network of bureaucracies and administrative processes that divide and exercise domains of power to engineer and control common life. Aristotle assigned the character of *Homo sapiens* to the characteristics of *zoon*

politikon, a creature that is political, engineering reality by dividing the space of power in various forms.[21] The earliest form of bureaucratic network concept in the history of Homo sapiens was primus inter pares, a method of selecting bureaucrats (leaders) based on strength and personal advantages so as to lead, protect, and defend territory and communal safety (Brosio, 2010). In the development of thought along with the increase in population and the need for more complex bureaucratic networks, the Ancient Greek era has formulated democratic principles that open up a freer space in the division of power.[22] In all its forms, from the simplest with primus inter pares to the most complex with electoral democracy, the zoon politikon manifestation in statehood has similarities to the uniform goal, which is to give legitimacy by the public to certain people to run the government.

Indonesian democracy distributes the legitimacy of power through electoral mechanisms. In Article 22E Paragraph (1) of the 1945 Constitution, elections are oriented to give legitimacy to two branches of state power, namely the executive with the election of the President and Vice President, and the legislature with the election of members of the DPR, DPD, and DPRD.[23] In accordance with Article 28D of the 1945 Constitution, every eligible citizen has the right to vote on the principle of one man one vote.[24] This concept provides space for equality and equal opportunities for every citizen to be able to contribute to the administration of government. The legitimacy obtained from elections is expected to produce leaders with majority political support from constituents in their administrative regions, qualified, competent, and have good integrity based on public perception.

The principle of legitimacy is not only applicable but also constitutes an integral aspect of the teachings of sharia and fiqh siyasah.[25] Islam, as a religion, imparts democratic values aimed at fostering good governance in alignment with the teachings of the Qur'an and Hadith. A profound examination of the content of verses in the Holy Qur'an and the sunnah of the Prophet Muhammad SAW reveals guidance on the principles of good governance. Prophet Muhammad SAW, having held two crucial positions as a religious and state leader in the development of Islam in Medina, exemplified these principles. From Micheal Hart's perspective, Prophet Muhammad stands out as the most influential leader ever.[26] His ability to integrate Islamic da'wah and establish socio-political order in the multicultural Arabian Peninsula, renowned for its barbaric culture, underscores the success of Islamic governance methods in its nascent stages. The religious framework seamlessly integrates state life with religion, making the principles of sharia serve as guidelines for fiqh siyasah, as mandated by the Prophet Muhammad SAW.[27]

Several events during the time of the Prophet Muhammad (PBUH) exemplify democratic values, the legitimacy of power, and principles of good government:

a. Sermon during Hajj Wadâ'

Prophet Muhammad's (PBUH) sermon during Hajj Wadâ' declared a mandate to safeguard human rights. These rights encompassed the protection of life, safety of property, equality of rights and obligations, as well as tolerance and freedom of religious practice. This aligns with the guidance of Allah SWT in Q.S Al-Fil Verse (5).

b. Aqobah Agreement

The Aqobah Agreement provided an opportunity for the community to agree and voluntarily submit to the authority of Prophet Muhammad SAW, who, at the time, was requested by Arab tribes to become a civil ruler (non-religious). This agreement affirmed the dual legitimacy of Prophet Muhammad SAW. In addition to being Rosulullah who received the word from Allah SWT, he officially became the leader of the Arabian Peninsula through voluntary oaths of allegiance from residents and tribal leaders.

c. Medina Charter

The establishment of the Medina Charter marked the creation of the first constitution in human history. Formed through an agreement between Muslims, Jews, and other tribes in Medina, the charter inclusively protected human rights, allowed the freedom to practice religion, and implemented a policy of non-discrimination for all groups. Thus, the government of the State of Medina during the era of the Prophet Muhammad SAW was characterized by constitutionalism.[28]

d. Diplomacy and Defensive Policy

In external relations with tribes and groups opposing the spread of Islam, Prophet Muhammad prioritized diplomacy, reflecting Islamic values that promote peace. However, in cases of urgency where no agreement was reached, Muslims adopted a defensive policy, engaging in wars such as the Battle of Badr, the Battle of Uhud, the Battle of the Trench, the Battle of the Confederates, and the Conquest of Mecca (Fath al-Makkah).

Despite the compatibility and similarity of the fundamental principles that underpin democracy between Indonesia and those applied by Prophet Muhammad SAW, disparities exist in terms of the source

of these fundamental values (staatsfundamentalnorm), which serve as the highest guideline for state life.[29] In the Indonesian context, the source of fundamental values is Pancasila, encompassing the values of God, Humanity, Unity, Peoplehood, and Social Justice. Just as elections are the optimal choice to manifest democracy, this selection of values is also the best approach to unite the pluralistic Indonesian nation. On the other hand, in Islam, the source of fundamental values is Sharia law, derived from the Qur'an and Hadith as complementary sources. In essence, the foundation of fundamental values in Indonesia is built upon the formulation of the founding fathers articulated in the five principles of Pancasila, whereas the source of fundamental values in Islam directly originates from Allah SWT as the al-Syâri' (legislator), with humans positioned as faqîh (interpreters according to the limits of their abilities) of His laws. In the Islamic perspective, Allah is the ultimate authority, as emphasized in the words of Allah in Surah Al-A'raf verse 54:

إِنَّ رَبَّكُمُ اللَّهُ الَّذِي خَلَقَ السَّمَوَاتِ وَالْأَرْضَ فِي سِتَّةِ أَيَّامٍ ثُمَّ اسْتَوَى عَلَى الْعَرْشِ يُغْشِي اللَّيْلَ النَّهَارَ يَطْلُبُهُ حَثِيثًا وَالشَّمْسُ وَالْقَمَرُ وَالنُّجُومُ مُسَخَّرَاتٌ بِأَمْرِهِ أَلَا لَهُ الْخَلْقُ وَالْأَمْرُ تَبَارَكَ اللَّهُ رَبُّ الْعَالَمِينَ

"Truly, your Lord is the God who created the heavens and the earth in six days, and He dwells on the 'Arsh. He closes the night to the day that follows quickly. (He created) the sun, moon, and stars, subject to His command. Remember! All creation and affairs are His right. Blessed is Allah, Lord of all nature." (QS. al-A'râf: 54).

Despite the distinct sources of fundamental values, there is no inherent conflict between Pancasila and Sharia law as long as Pancasila values are applied appropriately. Pancasila, with its recognition of religion as the first precept guideline, specifically emphasizing the One and Only Godhead, incorporates transcendent values that uphold the overarching truths of religion and belief, particularly the teachings of Islam, which is the predominant religion in Indonesia. At an abstract level, the sources of fundamental values in Indonesia and those derived from the teachings of Prophet Muhammad SAW are interrelated and complementary. This relationship holds true as long as the implementation of these values is directed towards the attainment of truth, order, and the public good (bonus publicum) within the framework of democracy.[30]

## 2. Disparity in the Manifestation of Transcendental Democracy in Indonesian Elections

The protracted discourse surrounding the integration of living law principles into the formulation of the Indonesian Penal Code has evolved into a protracted and intricate dialogue, persisting through the meticulous creation of 14 successive drafts. At the epicenter of this extensive deliberation lies the pivotal inquiry of how the forthcoming Penal Code will assimilate the dynamic concept of living law [31]. Advocates of a progressive legal framework assert that the fluidity inherent in living law should not be confined within the boundaries of positive legal regulations, as such a restrictive approach jeopardizes the fundamental essence of a dynamic legal system. Barda Nawawi Arief posits that living law should be granted the autonomy to evolve organically, without undue positivization.[32] He contends that the efficacy of living law should be measured by its fidelity to core values and moral principles, surpassing the necessity for rigid adherence to positive norms. The prevailing concern is that the excessive formalization of norms might relegate living law to a mere reflection of positive law, eroding its distinctiveness in comparison to conventional national legal frameworks.[33]

The ideal of Indonesian democracy, aligned with the foundational values of Pancasila, is instrumental in achieving the goal of popular sovereignty with a transcendental character.[34] The first precept of Pancasila mandates that all forms of governance consider the values of God within society. Given the demographic reality of Indonesia, where Islam constitutes 88% of the total population, Islamic values become an integral and inseparable comparative aspect in public life, coexisting with other religious values and beliefs. Democratic processes and elections, involving direct participation of the people, are not divorced from religion. Thus, Indonesian democracy is not value-free; instead, it is inclusive and aimed at a form of divine democracy or transcendental democracy.

The technicalization of democracy through elections is governed by various regulations, including the latest Law No. 7 of 2017 concerning General Elections. This legislation outlines the terms, procedures for implementation, and dispute resolution processes related to general elections (Triana dkk., 2023). Complementary legal instruments, issued by both the legislative power and state institutions under the executive, further guide the conduct of elections in Indonesia.

However, the technical aspects of holding elections in Indonesia still face disparities from the perspective of fiqh siyasah.[25] This is attributed to certain provisions that do not align with Sharia values, despite being established with good intentions and goals. For instance, a policy permitting



individuals previously convicted of corruption to participate again in general elections highlights a discrepancy.[35] This condition indicates that the Indonesian electoral system provides room for candidates who have previously breached their oaths and commitments in the name of a higher authority. In this regard, the Indonesian electoral system has been influenced by liberal values, lacking the steadfastness idealized in a godly democracy based on Islamic teachings.[36]

In fiqh siyasah, the position of a leader (*amir*) is very important, noble, and full of risks, because he must account for his leadership before Allah SWT [26]. For this reason, the mechanism for selecting leaders must be oriented towards the selection of competent candidates, and not provide space for candidates who have openly demonstrated their incompetence by committing criminal acts of corruption. Allah SWT said in Surah An-Nuur Ayat 55-56: *"Allah promises to the believers who do righteous deeds among you, will make them the rulers of the name, just as those before them have been appointed, the position of their religion which is approved by Allah will be strengthened; and will replace a life of fear with a life of peaceful security, they worship me and do not associate Me with anything. And those who disobey after that, they are the ungodly"*.

The aforementioned verse suggests that Allah Almighty has bestowed upon Muslims, in every place and era, the responsibility to choose, appoint, or pledge allegiance to someone to become a leader or caliph on Earth. The chosen caliphs should meet specific criteria, including:

- a. Faith in Allah;
- b. Engaging in righteous charity in the broadest sense;
- c. Worshipping only God;
- d. Not associating God with anyone or anything.

These criteria set clear guidelines for Muslims in selecting candidates to be elected as leaders or representatives of the people. A person who has engaged in the criminal act of corruption is considered to have associated Allah Almighty with material wealth, thereby violating their oath and promise as mentioned in the Holy Qur'an.[36] While normatively, the policy allowing former corruption convicts to participate in elections may be justified according to prevailing legal provisions, it is inconsistent with the principles of democracy in Islam. Thus, it can be interpreted as a policy not aligned with the principles of Sharia and fiqh siyasah.[37]

Moreover, the implementation of the norms stipulated in the laws in Indonesia remains entangled with various fraudulent practices.[10] The contamination of democratic values persists with the prevalence of money politics, black campaigns, and various other deceptive practices, coloring the Indonesian electoral landscape and indicating that the focus of elections still revolves around power struggles and influence.[10] Additionally, the formation of political parties as a manifestation of people's political polarization has transformed elections into arenas for contention and power struggles, rather than serving as platforms for producing leaders capable of fulfilling the people's mandate and upholding divine values through a transcendent and just democratic process.[38]

The Islamic civilization established by Prophet Muhammad SAW viewed democracy as a mechanism to fulfill the commands of Allah SWT and bridge human life towards salvation in both the worldly and hereafter realms.[26] This perspective distances the competition paradigm from the implementation of democracy, emphasizing that power should not be a mere struggle, aligning with the teachings of Sharia law. The people's trust in the Caliph to manage, organize, and govern is accompanied by a pledge of allegiance in the name of Islam. The Khalifa, in turn, must guarantee the upholding of Islam and ensure security, order, humanity, justice, as well as the welfare and security of the soul, body, family, property, and religion—a comprehensive responsibility borne by the Caliph who receives a mandate from the people.

In Islam, the position of a leader entails a significant mandate.[39] Numerous hadiths of Prophet Muhammad SAW emphasize that leadership is not merely a position, but a responsibility that must be carried out in accordance with Islamic principles and values. This aligns with the Prophet's words to Abu Dharr Al-Ghifari (r.a) regarding the matter of leadership, stating, "Verily, it is a mandate. And on the Day of Judgment, it is a disgrace and regret, except for those who take it according to their rights and carry out what is required" (H.R. Muslim).

Imam Bukhari, in his Sahih, narrated from Abu Hurairah (r.a) that Prophet Muhammad (PBUH) said, which means: "If the commission is eliminated, then wait for the coming of the apocalypse." When asked, "O Messenger of Allah, how to eliminate the commission?" The Prophet (peace be upon him) replied, "When the matter is handed over to those who are not its members, then wait for the coming of the apocalypse" (Hadith Sahih Bukhari).

This hadith underscores the Prophet Muhammad's emphasis on entrusting responsibilities to experts in their respective fields.[40] Democracy, according to the Prophet, should be exercised to select leaders who are not only capable but also possess noble character, steering clear of reprehensible actions. This resonates with the current state of Indonesian elections, which still grapple with these challenges. The power struggle paradigm in elections allows parties to engage in various methods, from seeking support through the popularity of celebrities and comedians as election candidates to resorting to fraud and money politics. This entire process contributes to the emergence of leaders and representatives of the people with lower quality, susceptibility to corruption, and an inability to fulfill their mandates adequately. It becomes imperative to reform election policies in Indonesia to align them with the core values of transcendental democracy and fiqh siyasah.

## CONCLUSION

The conceptualization of elections in Indonesia, aiming to manifest the principles of popular sovereignty and democracy, aligns with the values of sharia law and fiqh siyasah practiced by Muslims and exemplified by Prophet Muhammad SAW. In a nomocracy state that safeguards human rights, the government operates through a mechanism of legitimizing leaders and representatives through fair elections, as outlined in Article 22E of the 1945 Constitution. This underscores Indonesia's commitment to implementing an orientative and substantive democracy that, at the values level, resonates with the principles of sharia and fiqh siyasah, accommodating transcendental democratic values.

However, at the manifestation level, a disparity exists between the concept of elections in Indonesia and the ideal implementation of democracy according to fiqh siyasah. Existing laws and regulations in Indonesia still provide leeway for the election of candidates with a questionable track record, such as former corruption convicts. Additionally, the electoral climate in Indonesia tends to foster competition, leading political parties and societal groups to view elections as arenas for power struggles and influence in government structures. This condition not only taints elections with numerous problems and fraud but also results in leaders gaining strong legitimacy but ultimately proving to be corrupt, incompetent, or unable to fulfill their mandates properly.

In contrast to fiqh siyasah, which emphasizes the importance of leaders being alhi (competent), not just popular, and possessing qualities of piety to Allah SWT along with a positive track record, Indonesia's electoral system appears to be out of harmony with the values of sharia and fiqh siyasah. Therefore, it necessitates reformulation by reevaluating transcendental democratic values to ensure the implementation of a just, orientative, and substantive democratic life.


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