



The Replacement of Elected Members of The House of Representatives Prior to Inauguration and Principle of Legal Certainty

Valensia Lie ¹, Bachrul Amiq ², Zevanya Gerdiman ³

¹ Faculty of Law, State University of Surabaya, East Java, 60231, Indonesia

² Faculty of Law, State University of Surabaya, East Java, 60231, Indonesia

³ Faculty of Business Management, IBMT University of Economics, Surabaya, East Java, 60189, Indonesia

* valensialie.22024@mhs.unesa.ac.id

Article	Abstract
<p>Keywords: Legal Certainty; Electoral Law; Replacement of Elected Candidates.</p>	<p><i>General elections are the main means of realizing people's sovereignty in Indonesia's democratic system, which is based on the principle of the rule of law. In practice, legal issues arise regarding the mechanism for replacing elected members of the House of Representatives of the Republic of Indonesia (DPR RI) before their inauguration, especially when the replacement is not entirely based on the highest number of votes. This condition has sparked debate regarding its compatibility with the principles of legal certainty and democracy. This study aims to analyze the compatibility of the mechanism for replacing elected DPR RI members prior to inauguration with the principle of legal certainty and to examine the legal consequences of this practice. The research uses a normative legal method with a legislative, case, and conceptual approach. The legal materials consist of primary legal materials in the form of legislation related to elections and secondary legal materials in the form of literature and legal doctrine. The analysis is conducted in a prescriptive-analytical manner. The results of the study indicate that the provisions on the replacement of elected candidates in Law No. 7 of 2017 on General Elections still contain unclear norms, particularly regarding the reasons for resignation and the authority of political parties in determining replacement candidates. This ambiguity has the potential to cause legal uncertainty, disregard the will of the voters, and reduce the legitimacy of the election results. Therefore, it is necessary to strengthen and affirm election regulations in order to guarantee legal certainty and protect the sovereignty of the people. This article contributes by critically examining the normative ambiguity of pre-inauguration replacement mechanisms and its impact on legal certainty and popular sovereignty.</i></p>

INTRODUCTION

Indonesia is a country based on the rule of law that prioritizes a democratic system. Democracy is defined as a system based on the principle of popular sovereignty and established by the people (Prasetio, Masnun, & Noviyanti, 2025). This

concept defines democracy as a government that comes from the people and is for the people, with liberty and equality as two fundamental values inherent to it (Prasetio, Masnun, & Widodo, 2025). One concrete example of the implementation of the democratic system is the general elections held in Indonesia. Elections are not held without purpose, but to elect representatives who can carry out the aspirations of the people from all walks of life.

In constitutional law, legislative bodies, particularly the Indonesian House of Representatives (DPR), play an important role in safeguarding democracy. One of the main roles of the DPR is to formulate legislation that reflects the aspirations and needs of the people (Nashrullah & Lohalo, 2022). The legislative process begins with the drafting of the National Legislation Program (Prolegnas), in which the DPR formulates a plan for the laws to be discussed. After that, the DPR receives and discusses the Draft Law (RUU) submitted by the government or the Regional Representative Council (DPD), ensuring that each RUU goes through a thorough and comprehensive review and discussion process (Hananto Widodo, Pudjiastuti, Budi Hermono, Dita Perwitasari, 2024). In addition to its legislative function, the DPR also has a supervisory role over the government. This oversight is carried out to ensure that government policies and actions are in accordance with laws and regulations as well as the aspirations of the people (Purwanto et al., 2024). Thus, the DPR not only plays a role in making laws, but also as a social control over the implementation of policies taken by the government.

The existence of the DPR is not only a symbol of democracy, but also a means of articulating the interests of the people in the public policy-making process. It is important for the people to directly elect DPR members who will represent their voices. Members of the DPR are elected directly through elections held every five years. Elections are a means of exercising the sovereignty of the people, which is expressed through direct, public, free, confidential, honest, and fair elections by the people for their representatives who will sit in representative institutions at both the central and regional levels (Prasetio, Masnun, & Noviyanti, 2025)(Amancik, Putra Perdana Ahmad Saifulloh, Zainal Amin Ayub, Sonia Ivana Barus, 2024). This is stated in Article 22E paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which reads: General elections shall be held directly, publicly, freely, confidentially, honestly, and fairly every five years.

In terms of determining voters for elected representatives, the electoral system provides two options, namely the district system and the proportional system. These two systems are implemented in accordance with the development and needs of a nation's society. The Indonesian House of Representatives election uses an open proportional system that has been in place since the 2004 election. This system is the choice for legislative elections, in which the people can vote directly for legislative candidates, not just for political parties. This system differs from the closed

proportional system, which only allows voters to vote for participating political parties, while legislative members are selected by the parties, so that the people's choice can be more accurate.

Provisions regarding legislative candidates elected based on Article 422 of Law Number 7 of 2017 concerning General Elections state that the determination of elected candidates for the DPR, Provincial DPRD, and Regional Representative Council (DPRD) of Regencies/Cities from Political Parties Participating in Elections are based on the number of seats obtained by political parties participating in elections in a certain electoral district, which is determined based on the majority of votes obtained by each candidate for the DPR, Provincial DPRD, and Regency/City DPRD in one electoral district listed on the ballot.

The implementation of elections in Indonesia cannot run smoothly if it is not in line with the principle of legal certainty. The principle of legal certainty is one of the fundamental principles in a constitutional state (*rechtsstaat*), in accordance with Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that Indonesia is a constitutional state, requiring that all actions of the government and citizens be based on applicable law and carried out consistently and predictably. This principle guarantees that the law is applied fairly, is not subject to change, and is clearly known to the entire community, so that individuals can understand and plan their rights and obligations in social and state life.

In the context of the rule of law, legal certainty serves as a safeguard against abuse of power, ensuring that there are limits and controls on the actions of public authorities, and guaranteeing the protection of citizens' constitutional rights. However, in practice, the implementation of DPR elections still faces various problems, whether technical, political, or normative. One example is the legal issue related to the replacement of elected DPR RI candidates before their inauguration.

The mechanism for replacing elected legislative candidates is regulated in Article 426 paragraph (1) of Law Number 7 of 2017 concerning General Elections, which states that the replacement of elected candidates for the DPR, DPD, Provincial DPRD, and Regency/City DPRD shall be carried out if the elected candidate:

- a. has passed away;
- b. has resigned;
- c. no longer meets the requirements to be a member of the DPR, DPD, Provincial DPRD, and Regency/City DPRD; or
- d. is proven to have committed an election crime in the form of money politics or document falsification based on a court decision that has obtained permanent legal force.

With the mechanism for replacing elected members of the DPR-RI prior to inauguration, particularly in Article 426 letter b of Law Number 7 of 2017 concerning

General Elections, there have been many instances of replacement that are considered to be inconsistent with the established regulations.

One such phenomenon occurred in the 2024 elections, when Sri Rahayu, a candidate for the House of Representatives who won the most votes in the East Java VI electoral district covering Blitar, Kediri, and Tulungagung, resigned. This position should have been filled by Arteria Dahlan, who received the second highest number of votes after Sri Rahayu. However, the vacant position was filled by Romy Soekarno, the grandson of Indonesia's first president, Ir. Soekarno. This replacement was made in order to repay Arteria Dahlan's debt of gratitude to the extended family of Ir. Soekarno.

The phenomenon of replacing elected members of the Indonesian House of Representatives before inauguration also occurred in the 2019 elections. The elected DPR RI candidate from the Indonesian Democratic Party of Struggle (PDIP) from the South Sumatra I electoral district, Nazarudin Kiemas, who had received the highest number of votes, passed away. As a result, the General Elections Commission (KPU) transferred the votes to Riezky Aprilia, who implemented an interim replacement (PAW). This was because Riezky had received the second highest number of votes. However, the elected candidate who replaced Nazarudin was Harun Masiku, based on the PDIP Plenary Meeting, because Harun was considered to have a good background, namely as a scholarship recipient from the Queen of England, and was deemed competent in the field of international economic law.

The replacement of elected members of the Indonesian House of Representatives prior to their inauguration for irrelevant reasons raises questions regarding whether the mechanism for replacing elected members of the Indonesian House of Representatives prior to their inauguration has the legal certainty that is a sign of a democratic election process in Indonesia, where the people can make clear choices, as well as what the legal consequences are of replacing elected members of the Indonesian House of Representatives prior to their inauguration.

Based on the description above, the author intends to analyze this issue with formulation problem as following:

1. Is the mechanism for replacing elected members of the House of Representatives of the Republic of Indonesia prior to inauguration in accordance with the principle of legal certainty?
2. What are the legal consequences of replacing elected members of the House of Representatives of the Republic of Indonesia prior to inauguration?

This study aims to understand whether the mechanism for replacing elected members of the Indonesian House of Representatives prior to inauguration is in accordance with the applicable principle of legal certainty.

METHOD

This study uses a normative legal research method that aims to examine and analyze legal issues based on applicable legal norms (Masnun, Muh. Ali, Prasetyo, Dicky Eko, 2025). The approaches used include the statute approach, the case approach, and the conceptual approach. The statute approach was conducted by examining the legal provisions governing general elections and the mechanism for replacing elected legislative candidates, while the case approach was used to analyze the practice of replacing elected members of the Indonesian House of Representatives prior to their inauguration. The conceptual approach was used to understand the principles of legal certainty and democracy as the basis for analysis.

The legal materials in this study consisted of primary and secondary legal materials. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, Law Number 7 of 2017 concerning General Elections, and other relevant laws and regulations. Secondary legal materials include legal textbooks, scientific journals, articles, and opinions from legal experts relevant to the research topic. All of these legal materials were collected through a literature study in order to obtain comprehensive and systematic data.

The legal material analysis technique was carried out in a prescriptive-analytical manner, namely by examining the legal materials that had been collected, identifying the legal issues that arose, and interpreting the relevant legal provisions (Rohman et al., 2024). This analysis is aimed at assessing the suitability of the mechanism for replacing elected members of the DPR RI prior to inauguration with the principles of legal certainty and democracy, as well as formulating conclusions and recommendations as answers to the research questions.

RESULTS AND DISCUSSION

In Indonesia's constitutional democracy, general elections are a direct manifestation of the sovereignty of the people as stipulated in Article 1 paragraph (2) and Article 22E of the 1945 Constitution of the Republic of Indonesia (Hananto Widodo, 2021). Therefore, every stage of the election, including the determination of elected candidates and the mechanism for their replacement, must guarantee legal certainty, fairness, and protection of the people's votes.

Normatively, the mechanism for replacing elected members of the Indonesian House of Representatives prior to inauguration is regulated in Article 426 paragraph (1) of Law Number 7 of 2017 concerning General Elections. This provision states that replacement may be carried out if the elected candidate dies, resigns, no longer meets the requirements to be a member of the legislature, or is proven to have committed an election crime based on a court decision that has permanent legal force. However, the formulation of this norm, particularly the phrase "resigns," is not accompanied by clear limitations, criteria, or objective reasons.

From the perspective of the principle of legal certainty, the ambiguity of this norm raises serious issues. Legal certainty requires clarity of norms (*lex certa*), predictability in the application of the law, and consistency in its implementation (Dicky Eko Prasetyo, Muh Ali Masnun, 2024). The provisions of Article 426 paragraph (1) letter b of the Election Law actually open up broad room for interpretation for political parties and election organizers to determine whether the resignation of an elected candidate is justified or not. As a result, the replacement mechanism is no longer fully controlled by law, but is highly dependent on the dynamics and internal interests of political parties.

The phrase “resign” can be grammatically interpreted as a voluntary act by a person to relinquish a position or office. However, in the context of constitutional law and electoral law, the resignation of an elected member of the Indonesian House of Representatives cannot be viewed as a purely private act. The status of “elected candidate” is a public status attached to the mandate of the people, so the relinquishment of this status should be subject to strict and rational legal restrictions (Syarifudin & Septiani, 2023).

This study confirms that the resignation of an elected candidate can only be justified if it is based on objective and legally accountable reasons, such as being appointed to another state office or certain conditions that actually prevent the execution of the mandate. Resignation for political reasons or internal party interests clearly contradicts the principle of people's sovereignty and the principle of legal certainty.

In practice, the mechanism for replacing elected members of the DPR RI prior to inauguration shows inconsistencies in its application. In some cases, the General Elections Commission (KPU) has accepted proposals for replacement based on political party decisions, while in other cases the KPU has rejected them on the grounds that there is no clear legal basis. This inconsistency in application demonstrates the weakness of normative stability and opens up opportunities for arbitrary actions.

The phenomenon of replacing elected candidates in the 2024 elections in the East Java VI Electoral District is a concrete example of this legal uncertainty. The elected candidate with the most votes, Sri Rahayu, resigned without giving a transparent reason to the public. The position that should have been filled by the candidate with the next highest number of votes was instead given to another candidate based on internal party considerations. This practice shows that the will of the voters can easily be overridden by internal political decisions, thereby reducing the meaning of elections as a means of channeling the sovereignty of the people.

Based on Gustav Radbruch and Utrecht's theory of legal certainty, legal norms should provide protection for individuals from arbitrary actions by those in power (Prasetyo, Masnun, Disantara, et al., 2025)(Al-Fatih, 2020). In this context, elected

candidates and voters are in a vulnerable position because there is no guarantee that the election results will be respected until the inauguration stage. Thus, the mechanism for replacing elected members of the DPR RI before inauguration as currently regulated does not fully meet the elements of legal certainty.

The replacement of elected members of the Indonesian House of Representatives prior to inauguration not only raises normative issues, but also has significant legal consequences for the democratic system and the rule of law. The determination of elected candidates by the General Elections Commission (KPU) is a concrete, individual, and final decision of state administration. In administrative law theory, this decision should create legal certainty for the subjects determined.

However, the practice of replacement before inauguration shows that the status of “elected candidate” does not yet have stable legal force. The legal consequence is legal uncertainty, whereby the rights and position of elected candidates can be revoked at any time through non-electoral mechanisms. This contradicts the principle of legitimate expectation, which is the right of individuals to expect consistency and continuity from public bodies' decisions.

From the perspective of people's sovereignty, the replacement of elected candidates before inauguration reduces the meaning of the people's vote. The votes cast by voters in elections, which should directly determine their representatives, can ultimately be nullified by political party decisions. Thus, the people's right to vote is degraded from a decisive political right to a mere administrative formality.

Another legal consequence is the disruption of the principle of electoral certainty, namely the certainty that election results will be directly proportional to the composition of representative institutions. When the candidate with the most votes can be replaced by a candidate with far fewer votes, the causal relationship between the people's votes and political representation is severed.

In addition, the practice of replacement that is not based on clear legal grounds opens up opportunities for transactional politics. Elected candidates can “sell” their positions to other parties with the support of their parties, thereby potentially trading the people's mandate. This condition not only contradicts the principles of fair and honest elections, but also undermines the integrity of democracy.

The case of the replacement of candidates for the House of Representatives in the 2019 elections illustrates the complexity of these legal consequences. Despite the existence of regulations on mid-term replacements, the conflict between the KPU's decision, the Supreme Court's ruling, and the interests of political parties shows that the electoral legal system is not yet able to provide complete certainty. Differences in interpretation and the tug-of-war between institutions further reinforce the impression that the mechanism for replacing elected candidates has not been regulated in a clear and comprehensive manner.

Overall, the legal consequences of replacing elected members of the Indonesian House of Representatives prior to inauguration include: (1) uncertainty regarding the legal status of elected candidates; (2) weakening of protection for people's voting rights; (3) shift of people's sovereignty to political parties; and (4) decline in the legitimacy of election results. Therefore, this practice requires strict restrictions, transparent procedures, and strengthened regulations in order to be in line with the principles of the rule of law and constitutional democracy.

CONCLUSION

The mechanism for replacing candidates for the House of Representatives of the Republic of Indonesia who were elected before their inauguration, as stipulated in Law Number 7 of 2017 concerning General Elections, still does not fully comply with the principles of legal certainty and democracy. The ambiguity of the norms, particularly regarding the reasons for resignation and the authority of political parties in determining replacement candidates, creates broad room for interpretation and has the potential to disregard the will of the voters as expressed through the majority vote.

The practice of replacing elected candidates before inauguration also has legal consequences in the form of uncertainty regarding the legal status of elected candidates, a reduction in the meaning of the people's right to vote, and a decline in the legitimacy of the election results. Therefore, it is necessary to strengthen and reinforce election regulations, especially by formulating clear, objective, and measurable limits on the reasons for replacing elected candidates, as well as limiting the role of political parties so that they do not conflict with the principle of people's sovereignty. Thus, it is hoped that the implementation of elections in Indonesia can be more democratic, fair, and guarantee legal certainty for all parties.

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