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Submission date: 24-Mar-2024 08:11AM (UTC-0400)
Submission ID: 2329339724
File name: 12_The_Value_Of_Justice_In_Dispute_Resolution_BAWASLU.pdf (1.33M)
Word count: 6807
Character count: 35875

LITERACY : International Scientific Journals Of Social, Education and Humaniora
E-ISSN: 2829-3649
P-ISSN: 2829-3908
Vol. 2 No. 3 December 2023
http://jurnal-stiepari.ac.id/index.php/LITERACY
DOI: https://doi.org/10.56910/literacy.v2i3.960

The Value Of Justice In Dispute Resolution BAWASLU

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ABSTRACT

Elections in Indonesia have experienced many obstacles, including money politics, data manipulation, deliberately eliminating other people's voting rights, deliberately providing untrue information about themselves or others about a matter required for filling out the voter list, determining the number of ballots printed exceeds the number determined by law, and so on, which causes election disputes. The settlement of legislative election disputes is resolved by Bawaslu, and if an election crime occurs, it will be forwarded to the police. In fact, in resolving disputes in the regional elections that occur, Bawaslu is still unable to accommodate the sense of justice of the parties to the dispute. Therefore, it is necessary and very important to reconstruct the substance, structure, and culture of the electoral management institution to resolve electoral disputes, especially the regional election, in order to produce a fair regional election (election of governors, rectors, and mayors).

Keywords: Value of Justice, Dispute Resolution, Bawaslu

INTRODUCTION

Elections in Indonesia have experienced many obstacles, including money politics, data manipulation, deliberately depriving other people of their voting rights, deliberately providing untrue information about themselves or others about a matter required for filling out the voter list, determining the number of ballots printed exceeding the number determined by law, and so on, that cause election disputes[1]. Dispute resolution for legislative elections[2] resolved by Bawaslu and if there is an election crime, it will be forwarded to the Police,[3] while the resolution of electoral disputes is generally regulated in Law of the Republic of Indonesia Number 15 of 2011 concerning the General Election Organizer, although the report begins with the findings of the District City Panwaslu.[4]

In fact, in the settlement of disputes in the regional elections that occurred, Bawaslu was still unable to accommodate the sense of justice of the parties to the dispute. This occurs because of the weak legal arrangements regarding election disputes, including Bawaslu's authority as an institution that oversees elections and has the authority to resolve disputes, which is limited to providing reports to law enforcement officials and not directly becoming or

[1] Lihat Pasal 257 UU No. 8 Tahun 2012 tentang Pemilihan Umum Anggota DPR, DPD dan DPRD berbunyi: Sengketa Pemilu adalah sengketa yang terjadi antar peserta Pemilu dan sengketa Peserta Pemilu dengan penyelenggara Pemilu sebagai akibat dikeluarkannya keputusan KPU, KPU Provinsi, dan KPU Kabupaten/Kota.

[2] Lihat Pasal 258 UU No. 8 Tahun 2012 tentang Pemilihan Umum Anggota DPR, DPD, Dan DPRD.

[3] Pasal 250 UU No. 8 Tahun 2012 tentang Pemilihan Umum Anggota DPR, DPD dan DPRD.

[4] Pasal 77 ayat (1) huruf b-f.

Received August 20, 2023; Revised September 20, 2023; Accepted October 10, 2023

playing a role in resolving disputes, especially for the settlement of simultaneous regional head elections held in Binjai City on December 9, 2015. The implementation of a democratic party through regional head elections in the Indonesian legal system is a manifestation of democracy. The holding of elections can never be separated from citizens, because it is the constitutional right of citizens, both to vote and to be elected. Regional head elections are held on the basis of the manifestation of the principle of equality before the law and equal opportunity in government (equal opportunity principle).[5]

Therefore, it is necessary and very important to reconstruct the substance, structure, and culture of the election management institution to resolve election disputes, especially the regional election, in order to produce a fair regional election (election of governors, rectors, and mayors). During the implementation of simultaneous regional elections organized by the election organizer, namely Panwaslu, election disputes often accumulate because they are resolved through institutions that are divided into different institutions. So the discussion for each case takes a long time plus the lack of understanding of the general judiciary regarding the election results in the obstruction of the law enforcement process in the implementation of the election and the election results are doubtful in integrity. So a very special election law enforcement system is needed for everything so that the electoral system produces fair elections. Because of the various problems that often occur in the implementation of the regional elections in Indonesia, this shows that there is still no effective law enforcement tool that fulfills a sense of justice.

THEORY

1. Grand Theory

a. Theory of Justice

The theory of justice, as a grand theory, is also based on other theories that are used in discussing the problems formulated in this research. There are several theories of justice, according to philosophers, used in writing this dissertation. Legal theory cannot be separated from its environment and era, which provide answers to legal problems or challenge the dominant legal thinking at a given time. One of the tasks of legal theory is to answer the question of what is justice and how is a just law.

Justice has been a subject of serious discussion since the beginning of Greek philosophy. The discussion of justice has a wide scope, ranging from ethical, philosophical, legal, and social justice. Many people think that acting fairly and unfairly depends on their strength and power. To be fair, this is quite easy, but of course, this is not the case in its application in human life. The word justice in English is justice, which comes from the Latin iustitia. The word justice has three different meanings, namely: (1) attributively means a quality

[5] Dalam *Theory of Justice* buku karya John Rawls dikemukakan bahwa jabatan-jabatan dan posisi-posisi harus dibuka bagi semua orang dalam keadaan dimana adanya persamaan kesempatan yang adil, lihat Pan Mohamad Faiz, *Teori Keadilan John Rawls*, Jurnal Konstitusi, Setjen dan Kepaniteraan Mahkamah Konstitusi Volume 6 Nomor 1, Jakarta, 2009, halaman 141. Lihat juga Pasal 28 D ayat (3) UUD NRI Tahun 1945

that is fair or just (synonym justness), (2) as an action means the act of carrying out the law or the act of determining rights and rewards or punishments (synonym judicature); and (3) a person, namely a public official who has the right to determine the requirements before a case is brought to court (synonym judge, jurist, magistrate).[6]

1) Justice in the General sense

Justice is often defined as an attitude or character trait. The attitude and character that makes people act and expect justice are justice, while the attitude and character that make people act and expect injustice are injustice. The formation of attitudes and character comes from observing certain objects that are double-sided. This can apply to two propositions, namely: If the good condition is known, then the bad condition is also known; A good condition is known as something that is in good condition.

To know clearly what justice and injustice are, it is necessary to have a clear knowledge of one side in order to clearly determine the other side. It is generally said that an unjust person is unlawful, lawless, and unfair, while a just person is law-abiding and fair. Since the act of fulfilling or obeying the law is fair, all law-making acts by the legislature in accordance with existing rules are fair. The purpose of lawmaking is to achieve public happiness. Thus, all actions that tend to produce and maintain the happiness of society are fair. Thus, justice can be equated with basic social values; complete justice is not only achieving happiness for oneself but also the happiness of others.

Justice, which is defined as the act of fulfilling the happiness of oneself and others, is justice as a value. Justice and values in this case are the same but have different essences. As a person's relationship with others, it is justice, but as a specific attitude without qualification, it is a value. Injustice in social relations is closely related to greed, which is the main characteristic of unfair actions. Justice as part of social value has a very broad meaning and, at some point, can even conflict with the law as one of the social value systems. A crime is wrong. However, if it is not greed, it cannot be said to cause injustice, whereas an action that is not a crime can cause injustice.

For example, an employer paying a worker less than the minimum wage is a violation of the law and a wrong. However, this action does not necessarily create injustice. If the company's profits and ability to pay are limited, then the amount paid is fair. On the other hand, even if an employer pays his workers the minimum wage, which is not a crime, it can be unjust because the employer's profits are very large and only a small portion is taken for workers' wages. This injustice arises because of greed. The above is justice in a general sense; justice in this sense consists of two elements: fairness and accordance with the law, which are not the same thing. To be unfair is to break the law, but not all unlawful acts are unfair. Justice in the general sense is closely related to compliance with the law.

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[6] http://www.bartleby.com/61/83/P0398300.html; diakses tanggal 6 November 2002 diakses penmulis http://alikafaat.wordpress.com/2008/04/10/pemikiran-keadilan-plato-aristoteles-dan-john-rawls/ , tanggal 3 Januari 2015.

2) Justice in the Special sense

Justice in a specific sense is related to the following notions:

a) Something that manifests itself in the distribution of rewards, money, or other things to those who have their rightful share.

This justice is equality among members of society through collective action. Equality is an intermediate point. So justice is an intermediate point or a relative equality (arithmetical justice). The basis of equality between members of society is highly dependent on the system that lives in that society. In a democratic system, the basis of equality to obtain the midpoint is the freedom of human beings who are equal from birth. In an oligarchic system, the basis of equality is the level of welfare or honor at birth. In an aristocracy, the basis of equality is privilege (excellence). These different bases make justice more equal in the sense of equality as proportion. This is a special species of justice, namely intermediates and proportions.

b) Improvement of a part of the transaction

Another specific meaning of justice is rectification. Rectification arises from a voluntary person-to-person relationship. The relationship is just if each person gets his or her to share up to an intermediate point of equality based on the principle of reciprocity. So justice is equality, and injustice is inequality. Injustice occurs when one person gains more than another in a relationship of equals. To equalize this, the judge or mediator performs the task of equalization by taking some of the more and giving it to the less so as to reach a middle point. This action of the judge is done as a punishment.

This is different if the relationship is not based on the voluntariness of each party. In relationships that are not based on voluntarism, corrective justice applies, which decides the midpoint as a proportion of the gainers and losers. Simply giving the gains made by one party to the other in retaliation does not constitute corrective action. One who is injured is not remedied by allowing the injured person to injure themselves back. In this situation, reciprocity entails exchanging a specific value in order to achieve a certain level of proportion. Money is used for this exchange. Justice in this case is the midpoint between acting unfairly and being treated unfairly.[7]

Justice and injustice are always done voluntarily. Voluntariness includes both attitudes and actions. When people perform actions involuntarily, they cannot be categorized as unfair or just, except in some special ways. Performing actions that can be categorized as fair must have room for choice as a place of consideration. Thus, in human relations, there are several aspects to judge the action, namely, the intention, the action, the means, and the end result. When (1) an injury is contrary to rational expectations, it is a misadventure; (2) when it is not

[7] Kedua macam keadilan dalam arti khusus ini kemudian banyak disebut sebagai keadilan distributi dan keadilan konstitutif. Lihat Darji Darmodiharjo dan Shidarta, op cit. hal. 137 – 149, diakses penulis http://alisafaat.wordpress.com/2008/04/10/pemikiran-keadilan-plato-aristoteles-dan- john-rawls/, tanggal 3 Januari 2015.

contrary to rational expectations but does not cause harm, it is a mistake. (3) When acting with knowledge but without judgment, it is an act of injustice, and (4) when one acts on the basis of choice, he is an unjust and evil person.

Doing an unjust act is not the same as doing something in an unjust manner. It is not possible to be treated unjustly when others have not done anything unjustly. One may willingly suffer from injustice, but no one wishes to be treated unfairly. Thus, justice has a wide range of meanings, some of which are determined by nature and some of which are the result of human decree (legal justice). Natural justice is universal, while human-determined justice is not the same in every place. This human-determined justice is called value.

As a result of this inequality, there is a class distinction between universal justice and legal justice that allows for the justification of legal justice. It may be that all laws are universal, but at any given time, it is impossible to make a universal statement that must be true. It is important to speak universally, but it is not possible to get things right all the time because laws are inevitably fallible in certain cases. When a law contains a universal, but then a case arises that is not included in the law, that's why equity and natural justice correct mistakes. In the book Nicomachean Ethics, it can be called Aristotle's theory of justice, and John Rawis' theory of social justice in the book A Theory of Justice.

a. Aristotle's Theory of Justice

Justice in Aristotle's view can be found in the works Nichomachean Ethics, Politics, and Rhetoric. More specifically, in Nichomachean Ethics, the book is entirely devoted to justice, which, according to Aristotle's general philosophy, should be considered the core of legal philosophy since law can only be applied in relation to justice.[4] In some literature, there are several periodizations of the development of legal philosophy from era to era. The usual developments are as follows:[5]

1) Antiquity, also called the Greco-Roman Age, where the law came out of the sacred sphere and began to be questioned as a natural phenomenon (VI century BC to the V century after AD)
2) In the Middle ages, law was responded to in a close relationship with God and religion (from the fifteenth to the fifteenth centuries).
3) Renaissance Age: law began to be seen in relation to human freedom and with national states (XV century until 1650).
4) The New Age, also called the Age of Rationalism, is when law is seen rationally only in state and legal systems (1650–1800).
5) In the modern age or XIX century, the law is seen as a factor in the development of culture and as an object of scientific inquiry (1800–1900).

[4] Theo Huijbers, *Filsafat Hukum Dalam Lintasan Sejarah*, Cet VIII, Yogyakarta: Kanisius, 1995, hlm.196

[5] *Ibid*, halaman 14, lihat juga Theo Huijbers, *Op, Cit*, halaman 16.

The theory of justice has been discussed by philosophers since ancient times with thinkers including Socrates, Plato, Aristotle, and other philosophers. Socrates in his dialog with Thrasymachus argues that measuring what is good and what is bad, beautiful and ugly, entitled and not entitled should not be left solely to individuals or to those who have power or oppressive rulers. Objective measures should be sought to assess them. The question of justice is not only for the powerful, but it should also apply to the whole of society.[10]

Plato meant that the rules of a just state can be learned from the good rules of the soul, which consist of three parts: the mind (logos), feelings or passions, and the sense of good or evil (Thucydides). In the harmonization of these three parts, justice can be found. Likewise, the state must be organized in balance according to its parts in order to be just.[11] For Aristotle, justice is a moral virtue, the highest human virtue, that comes from obeying the written and unwritten laws of the polis. By practicing this justice, man realizes the other virtues because everything else is required by the law of the state. Thus, for Aristotle, justice according to the law is the same as general justice.[12]

Aristoteles distinguishes justice into two types: distributive justice and corrective justice. Distributive justice focuses on the distribution of honor, wealth, and other goods that are equally available to people. A just distribution may be one that is in accordance with the value of the good, that is, its value to society. Corrective justice, on the other hand, focuses on righting wrongs. If an agreement is broken or a wrong is committed, then corrective justice seeks to provide adequate compensation for the injured party. If a crime is committed, then appropriate punishment needs to be given to the perpetrator.[13]

Aristoteles made an important distinction between numerical equality, which equates every human being as a unit and says that all citizens are equal before the law, and proportional equality, which gives each person what he or she is entitled to according to ability, merit, and so on. It then differentiates justice into distributive and corrective types of justice. Distributive justice, according to Aristotle, focuses on the distribution of honor, wealth, and other goods that are equally available in society. Putting aside mathematical "proofs", it is clear that what Aristotle had in mind was the distribution of wealth and other valuables based on the prevailing values among citizens. A just distribution may be one that is in accordance with the value of the good, i.e., the value to society.[14]

Corrective justice focuses on righting what is wrong. If an offense is violated or a wrong is committed, then corrective justice seeks to provide adequate compensation for the injured party. If a crime has been committed, then appropriate punishment needs to be given to the offender. However, justice will result in the disruption of established "equality". Corrective justice is tasked with re-establishing that equality. It appears that corrective justice is the

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[10] *Ibid*, halaman 18

[11] Theo Huijbers, *Op. Cit*, halaman 23.

[12] *Ibid* halaman 28

[13] Carl Joachim Friedrich, *Filsafat Hukum Perspektif Historis*, Nuansa dan Nusamedia, Bandung, 2004, halaman 24.

[14] *Ibid*, him 25

domain of the judiciary, while distributive justice is the domain of the government.[15] In constructing his argument, Aristotle emphasized the need to distinguish between verdicts that base justice on the nature of the case and that are based on common and customary human dispositions, and verdicts that are based on the particular views of a particular legal community. This distinction should not be confused with the distinction between positive law established in statute and customary law. According to Aristotle's distinction, the latter two judgments can be sources of reasoning that refer only to a particular community, while other similar judgments, even if embodied in legislation, remain natural law if they can be derived from the common human nature.[16]

b. John Rawis' Social Justice Theory

John Rawis explains in the book A Theory of Justice that social justice is the difference principle and the principle of fair equality of opportunity. The essence of the difference principle is that social and economic differences should be organized so as to provide the greatest benefit to those who are most disadvantaged. The term socio-economic difference in the difference principle refers to inequality in one's prospects for obtaining the basic elements of welfare, income, and authority. Meanwhile, the principle of fair equality of opportunity refers to those who have the least opportunity to achieve the prospects of welfare, income, and authority. They are the ones who must be given special protection.[17]

Rawis argues that in a society governed according to the principles of utilitarianism, people will lose self-respect and that service for the common good will disappear. It is true that sacrifices are demanded in the public interest, but it is not justifiable that sacrifices are demanded from the disadvantaged in society. John Rawis further emphasized that justice enforcement programs with a populist dimension must pay attention to two principles of justice, namely, first, providing equal rights and opportunities for the broadest basic freedoms as well as the same freedom for everyone. Second, being able to reorganize the socio-economic disparities that occur so that they can provide reciprocal benefits for everyone, both those from advantaged and disadvantaged groups.[18] Thus, social justice must be fought for two things: First, to correct and improve the conditions of inequality experienced by the weak by empowering social, economic, and political institutions. Second, every rule must position itself as a guide to developing policies to correct the injustices experienced by the weak. The first statement of the two principles reads as follows:

First, everyone has an equal right to the broadest basic freedoms, as well as the same freedoms for all people. Secondly, social and economic inequality must be regulated in such a way that (a) it can be expected to benefit everyone and (b) all positions and offices are open to everyone. There are two ambiguous phrases in the second principle, namely "everyone benefits" and "equally open to all". A more precise definition of these phrases would lead to

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[15] *Ibid*

[16] *Ibid*, hlm.26.

[17] *Ibid*, hlm.27.

[18] John Rawis, *A Theory of Justice*, London: Oxford University Press, 1973, yang sudah diterjemahkan dalam Bahasa Indonesia oleh Uzair Fauzan dan Heru Prasetyo, *Teori Keadilan*, Yogyakarta: Pustaka Pelajar, 2006, hlm.69.

the second formulation. The final version of the two principles is expressed by considering the first principle.

As formulated, these principles consider the social structure to be divisible into two parts: those aspects of the social system that define and guarantee citizens' freedoms and those aspects that demonstrate and reinforce socioeconomic inequality. The freedoms of citizens are political freedom (the right to elect and be elected to public office), along with freedom of speech and association, freedom of belief and freedom of thought, freedom of the person with the freedom to maintain personal property rights, and freedom from arbitrary arrest according to the concept of the rule of law. Thus, freedom, according to the first principle, is required to be equal because the citizens of a just society have the same basic rights. Secondly, this principle deals with the distribution of income and wealth and with organizational designs that employ differences in authority and responsibility, or chains of command. While the distribution of wealth and income need not be equal, positions of authority and positions of command must be accessible to all. A society that applies the second principle by making its positions open to everyone, thus subject to these restrictions, will organize socioeconomic inequality in such a way that everyone benefits.[78]

The second principle demands that everyone benefit from inequality in the underlying structure. This means that it must make sense for any representative person defined by this structure, when he views it as a point of concern, to choose his future with inequality over his future without inequality. One should not justify differences in income or organizational power because the weak benefit more from the gains of others. Fewer deprivations of liberty can be balanced in this way. Applied to the basic structure, the utility principle will maximize the sum of the expectations of representative people (emphasized by the number of people they represent, in the classical view), and this will make us compensate for some losses by achieving others. These two principles state that everyone benefits from social and economic inequality. But it is clear that there are many ways in which everyone can benefit when the default setting of equality is taken as the standard. How do I choose between these possibilities? The principle must be clear in order to come to a definite conclusion.[79]

c. Gustaf Radbruch's Theory of Justice

The theory of justice is in accordance with the opinion of Gustaf Radbruch that there are three basic values in law, namely justice, legal certainty, and benefit. These three theories are antithetical to the principle of legal certainty that characterizes criminal law throughout the world. Justice is the ultimate goal in the legal process that must be concretized by the court judge.

The concept of justice is not singular but continues to evolve over time. For Ulpianus, justice is a permanent and continuous will to give people what they deserve. The development of the concept of justice shows interesting dynamics both in legal studies and other social studies that pay attention to the human dimension.

2. Middle Theory

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[78] *Ibid*., hlm.73.
[79] *Ibid*.

a. Democracy Theory

1) Hans Kelsen's Theory of Democracy

His description of democracy became more organized and structured. This is to prove that democracy is a continuous process towards perfection. The idea of democracy, according to Hans Kelsen, is the idea of freedom in the human mind. At first, the vocabulary of "freedom" was considered something negative. The definition of "freedom" was originally considered to be free from ties, or the absence of all ties, or the absence of all obligations. But this is what Hans Kelsen rejected. The reason is that when humans are in a social construction, the idea of "freedom" can no longer be judged simply; they are no longer merely free from ties, but the idea of "freedom" is analogized to the principle of self-determination. This is what later became the basis of Hans Kelsen's thinking about democracy.[21]

In society, of course, there will be sortings of ideas or wills, and opinions about a problem will appear randomly. It is from this point that the emergence of patterns of interest leads to the existence of majority and minority voices, each of which has rights and obligations. The majority vote does not give birth to absolute dominance or dictatorship of the majority over the minority, so the principle of majority in a democratic society can only be implemented if all citizens in a country are allowed to participate in the formation of the legal order, which then gives birth to the term compromise.[22]

2) Farabi's Theory of Democracy

Hans Kelsen argues that the idea of freedom in the context of social life is in line with the thinking of the Muslim scholar Abu Nashar bin Mohammad bin Tharkam bin Unzalagh, otherwise known as Farabi. For Farabi, human life cannot be separated from society because humans are essentially social creatures. This is a natural tendency. The tendency to live in society is not merely to fulfill the basic life but also to produce the completeness of life that will give human happiness, not only materially but also spiritually. One of the amenities of life is the generation of various thoughts or ideas. This could mean that the idea of freedom in Farabi's version is a natural tendency, with the aim of happiness in life.[23]

3. Applied Theory

Systems Theory, Authority Theory, and Progressive Law

1) Systems Theory

In an effort to create a harmonious and orderly community life, a legal system is needed.[24] The system is a unity consisting of elements that interact with each other. The system does not want a conflict between the elements in the system, if there is a conflict, it will be resolved immediately by the system. Law as a system means that the law is a whole unit

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[21]Hans Kelsen, *Teori Umum Tentang Hukum dan Negara* , Cetakan pertama, Penerbit Nuansa dan Penerbit Nusamedia, Bandung, 2006, him.406.

[22]Hans Kelsen, *Op Cit* , him. 407.

[23]Munawir Sjadzali, *Islam dan Tata Negara, Ajaran, Sejarah, dan Pemikiran*, Edisi Kelima, UI Press, Jakarta, 1993, him.51.

[24] Teguh prasetyo, *Hukum dan Sistem Hukum berdasarkan Pancasila* Media Perkasa Yokyakarta 2013, him 39-40

consisting of parts or elements that are closely related to one another. In other words, the legal system is a unit consisting of elements that interact with each other and work together to achieve these goals.[25] So in essence, the system, including the legal system, is an essential unity and is divided into parts, in which if the heart of every problem is an answer or solution, the answer is contained in the system itself.[26] So that the legal system carries out four functions as stated by Lawrence M Friedman, namely:

a. Law as part of a social control system that can regulate human behavior;
b. As a means to resolve disputes (dispute settlement);
c. As law has a social function (engineering function), and
d. Law as social maintenance, which is a function that emphasizes the role of law as a maintenance of the status quo that does not want change.[27]

2) Theory of Authority

The focus of the study of the theory of authority is related to the source of authority of the government in carrying out legal acts in relation to public law and private law. The emergence of authority is to limit so that state administrators in carrying out government can be limited in their authority so as not to act arbitrarily.[28] According to Ridwan HR's citation of F. A. M. Stronk and J. G. Steenbeek, there are two ways that government organs can acquire authority: attribution and delegation.[29]

3) Progressive Legal Theory

In the legal philosophy literature, it has been described above that the actions of the Constitutional Court that dismantle legal formalism can be categorized into the realm of legal realism. However, in the Indonesian context, there are legal thinkers who try to explore the concept of anti-formalism law. Satjipto Raharjo is one of the legal thinkers who tried to initiate a legal concept that he called Progressive Law. Progressive law starts with the basic assumption that law is for humans, not the other way around. Progressive law does not accept law as an absolute and final institution that is convinced by its ability to serve humans. Progressive law rejects the tradition of analytical jurisprudence, or rechtsdogmatiek, and shares notions or schools such as legal realism, freirechtslehre, sociological jurisprudence, interessenjuriprudenz in Germany, natural law theory, and critical legal studies.[30] Progressive law can develop with the birth of progressive courts that are full of compassion, which includes empathy, determination, conscience, and so on. To realize progressive courts, progressive judges are also

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[25] Sudikno Mertokusumo, ***Mengenal Hukum Suatu Pengantar***, Cetakan Keempat, Liberty Yokyakarta, 2008, hlm 122

[26] Op Cit, hlm 123

[27] Lawrence M.Friedman, *American Law*, WW Norton & Company, New York, 1984, hlm 5-6

[28] Damang, *Teori Kewenangan*, http://www.damang.web.id/teori-kewenangan.html, diakses 20 Februari 2015.

[29] Ardiansyah, *Op. Cit.*

[30] Satjipto Raharjo, *Hukum Progresif, Sebuah Sketsa Hukum Indonesia*, Genta Publishing, Yogyakarta, 2009, halaman 1.

needed, namely judges who make themselves part of society and who do not only work to pursue laws but also put their ears to the hearts of the people.[31]

CONCLUSION

1. Regional Head Election Organizer

The organization of general elections (elections) in Article 1 of the Law of the Republic of Indonesia Number 15 of 2011 concerning the Organizer of General Elections states that the institution that organizes elections consisting of the General Election Commission (KPU) and the Election Supervisory Agency (Bawaslu) as a unit of the function of organizing elections to elect members of the House of Representatives (DPR), Regional Representatives Council (DPD), Regional Representatives Council (DPRD), President and Vice President directly by the people, as well as to elect governors, regents, and mayors democratically.

The implementation of quality elections is needed as a means to realize the sovereignty of the people in a democratic state government based on Pancasila and the 1945 Constitution of the Republic of Indonesia. To improve the quality of elections that can guarantee the exercise of people's political rights, professional election organizers are needed who have integrity, capability, and accountability. In a unified system, election organizers are not only carried out by the General Election Commission (KPU), which includes the provincial KPU and regency/city KPU but also by election supervision carried out by the General Election Supervisory Agency (Bawaslu), which includes the provincial Bawaslu and the regency/city Election Supervisory Committee (Panwaslu).

Both are integral to the function of organizing elections.[32] One of the important characteristics of an EMB is its independence, which means that it is free from any form of influence or intervention from other parties, which may reduce the ability of the EMB to conduct free and fair elections. Independence is also referred to as independence. This independence is very necessary and held firmly by the organizers because, in essence, the implementation of elections is a competition. In a competition, there is the potential for efforts to influence the performance of the organizers to benefit or harm one of the election participants. Only with independence from the election organizers can the holding of elections be carried out, and jurdil can be guaranteed.

2. Regional Head Election Dispute

General Election Disputes are disputes that occur between election participants and disputes between election participants and election organizers as a result of the issuance of KPU, Provincial KPU, and Regency/City KPU decisions. Based on Law Number 8/2012, the Election Supervisory Agency (Bawaslu) has the authority to resolve the election dispute. Elections are not only determined by the implementation of voting but also by the resolution

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[31] *ibid*, halaman 57

[32] Jeneidri M. Gaffar, *Op Cit*, hlm 107 dan 108.

of disputes that occur. Based on Article 250 paragraph (1) of Law No. 8/2012 on the General Election of Members of the DPR, DPD, and DPRD, reports of election violations as referred to in Article 249 paragraph (5), which are:

a. Violations of the election organizer's code of ethics are forwarded by Bawaslu to the Election Organizer Honorary Council (DKPP);
b. Election administration violations are forwarded to the General Election Commission (KPU), Provincial KPU, or Regency/City KPU;
c. Election disputes are resolved by the Election Supervisory Body (Bawaslu), and
d. Election crimes are forwarded to the Indonesian National Police.

Violation of the election organizer's code of ethics, based on Article 251, is a violation of the ethics of election organizers who are guided by oaths and/or promises before carrying out their duties as election organizers. Meanwhile, election administration violations are violations of the provisions of the Election Law that are not election criminal provisions and other provisions regulated by the KPU, and election disputes are disputes that occur between election participants and disputes between election participants and election organizers as a result of the issuance of KPU, Provincial KPU, and Regency/City KPU decisions. The election criminal offense is a violation of the election criminal provisions stipulated in the Election Law. The dispute and/or offense is a dispute in the electoral process.

3. Regional Head Election Dispute Resolution

Disputes in the electoral process (especially those that occur between election participants or between candidates), which have been handled by the election supervisory committee, and disputes over election results In accordance with the provisions of the 1945 Constitution, the Election Law, and the Constitutional Court Law, the authority to resolve disputes over election results rests with the Constitutional Court (MK). Disputes or disputes over election results are based on Article 24C, paragraph (1) of the 1945 Constitution. The court authorized to decide disputes over election results is the Constitutional Court. The General Election Results Dispute (PHPU) is a dispute between election participants and the General Election Commission (KPU) as the election organizer regarding the determination of the vote acquisition of the election results nationally by the General Election Commission (KPU).

The Constitutional Court in the implementation of elections has a strategic position because it has the authority to hear PHPU at the first and last level, and its decision is final, so it will have a major influence on the final results of the election. To provide services to all parties in the General Election Results Dispute (PHPU) case optimally and best, as well as to provide easy, cheap, and fast access to applicants seeking justice and the court, the Constitutional Court operates video conferences and online. This means that the applicant can conduct case consultations, case registration, document submission, remote trials, and access minutes and decisions online.

Jimedjri M. Gaffar, Secretary General of the Constitutional Court, said that video conference facilities have been placed in 34 universities across Indonesia. Thus, all people in remote areas of Indonesia have equal access to the Constitutional Court. So distance is no longer an obstacle to the creation of equality before the law. To answer the problems as in the problem formulation above, Therefore, several relevant theories will be proposed in this research as an analysis tool. Theory is an opinion expressed by someone regarding a general principle that becomes the basis or guidance of a science.[31]

According to M. Solly Lubis, a theoretical framework is a thought or point of opinion regarding a case or problem that, for the reader, becomes comparison material or a theoretical challenge with which he may agree or disagree. It is an external input for the reader.[34] According to Meuwissen, the task of legal theory is to analyze and explain the meaning of law from various legal notions or juridical concepts (concepts used in law), such as subjective law, objective law, legal relations, legal principles, property rights, contracts, penalties, good faith, and the like.[35] Legal theory has a very important position in research because it is used as an analytical knife to reveal legal phenomena at both normative and empirical legal levels.[36] This research uses a theoretical framework based on the theories of justice as a grand theory, democracy as a middle theory, and authority in progressive law as an applied theory.

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