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Reconstruction of the Implementation of Direct General Election Law (A Study of the Implementation of General Election Law Number: 7 of 2017)

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Abstract. The Indonesian Constitution that has been directed to provide social welfare through a legal system and popular democracy led by wisdom in the representation of representatives has become the legal ideals (Rechtsidee) of the Indonesian people as intended in the opening of the 1945 Constitution of the Republic of Indonesia. The phrase “inner wisdom” is interpreted as a unity of words and the core “deed” of which is taqwa, and “deliberations amongst representatives” is interpreted as representative democracy in the MPR, instead of direct democracy which actually produces something that is counterproductive.

Keywords. Direct General Election, Implementation General Election, Reconstruction of Direct Election

A. Introduction

The third paragraph of the opening of the 1945 Constitution said: “By the grace of God Almighty and urged by the lofty aspiration to exist as a free nation, now therefore, the people of Indonesia declare herewith their independence.” Meanwhile, in the fourth paragraph, it is called: “Pursuant to which, in order to form a Government of the State of Indonesia that shall protect the whole people of Indonesia and the entire homeland of Indonesia, and in order to advance general prosperity, to develop the nation’s intellectual life, and to contribute to the implementation of a world order based on freedom, lasting peace and social justice.” Then, it continues with, “Indonesia’s National Independence shall be laid down in a Constitution of the State of Indonesia, which is to be established as the State of the Republic of Indonesia with the sovereignty of the people and based on the belief of the One and only God, on just and civilized humanity, on the unity of Indonesia and on democratic rule led that is guided by the strength of wisdom resulting from Deliberation / Representation, so as to realize social justice for all the people of Indonesia.”

The principles that exist in the opening of the 1945 Constitution of the State of Indonesia are none other than Pancasila, which is then spelled out in the articles.

Pancasila consists of: 1. Belief in the One and only God, 2. Just and Civilized Humanity, 3. The Unity of Indonesia, 4. Democracy Guided by the Inner wisdom in the Unanimity Arising out of Deliberations amongst Representatives, 5. Social Justice for the Whole of the People of Indonesia.

The simultaneous 2019 general election presented five elections at the same time starting from the election of President and Vice President, House of Representatives (DPR RI), Provincial and Regency / Municipality Regional House of Representatives (DPRD), and Regional Representative Board (DPD RI). It was a very tiring process and there were a number of problems in the implementation.

Thus far, there are at least 600 dead polling station working committee (KPPS) officers. MER-C humanitarian agency¹, since two weeks after the simultaneous election on April 17, 2019, had determined the death of hundreds of KPPS officers as a humanitarian disaster. MER-C had formed **the 2019 Election** Disaster Health Mitigation Team² as well. Therefore, MER-C urged the government and KPU to pay attention, that was by directly seeing the sick victims and handling them including the hospital funding and so on until they were fully recovered. There had to be concrete steps to prevent more deaths. The pattern of handling victims of election disasters, according to Rizal, should also be in the framework of handling disasters as Extraordinary Events (KLB). "Death can indeed be caused by fatigue, as long as the man has a history of other illnesses such as heart attacks. However, it must be explored. It cannot be merely a hypothesis. The proof must be through COD (cause of death). Another thing is that many voters are confused when they have to choose a candidate for legislative members because the information is drowned by the election of presidential and vice-presidential candidates. Abroad, voters lose their rights because of the limited duration of voting."

Not to mention the issue of direct election frauds that made as if the Indonesian citizens were divided into 2 (two) sides with non-educative language jargon by the words "kampret" and "cebong", which means that the effects of direct and simultaneous elections on April 17, 2019 still exist and the National Election Agency (BPN) of Prabowo-Sandi claimed that there were 1200 frauds in the election. The alleged election frauds were found at the polling station levels both in the voting process and vote counting process.³

Various problems of shortcomings and weaknesses in the implementation of general election both domestically and abroad were recognized by the Director General of Politics and Public Administration of the Ministry of Home Affairs, Soedarmo.

Will the simultaneous elections that have been through will be repeated again in 2024? This indubitably requires the reconstruction of legislation in accordance with the philosophy of democracy guided by the inner wisdom in the unanimity arising out of deliberations amongst representatives.

B. Research Methods

The approach utilized in this research was *socio legal study*. According to *socio legal studies*⁴, law is not merely conceptualized as the norm and at the same time interpreted as behavior. As a consequence, the search for the actual reality is expected to understand whether the existing positive law and the law that was born from the patterns between subjects in the society is a law that is fair or not. Therefore, this study also employed the data outside the judge's decision in the form of:

1. Primary data which were obtained from the field by conducting observations, in-depth interviews with interviewees / key informants, and Focus Group Discussion (FGD). Primary data in this study can be seen as the data on the legal behavior of the

¹ Medical Emergency Rescue Committee

² RRI.co.id

³ <https://tirto.id/dmMr>

⁴ Samekto, Adji, (2008), *Justice Not or All*, Semarang, Jogjakarta, Genta Press, hal.28

community, specifically the resolution of disputes over the election of regents and vice regents with empty box volunteers.

2. Secondary data which were obtained from library materials. The secondary data include:
 - a. Primary legal material in the form of statutory regulations related to the research, such as the 1945 Constitution of the Republic of Indonesia, the Constitutional Court Regulation (PMK) Number 2 of 2017 concerning Amendments to the Constitutional Court Regulation Number 2 of 2016 concerning Guidance for Procedure in Disputes on the Results of the Election of Governors, Regents, and Mayor with a Candidate Pair,
 - b. Secondary legal materials in the form of reference books and scientific articles.

The data collection techniques were carried out using a *Participative* model that prioritizes comprehensive, contextual and *multilevel analysis* that can be carried out through the placement of oneself as an activist / a participant in the process of social transactions. The primary data collection was performed by observation and in-depth interviews with *key informants* based on the characteristics of the study. The data collection can be committed by:

- a. Observation: Observation is expected to obtain a picture of the situation, phenomena, events and behavior that can provide an image regarding the focus of the research to be studied. By observation, a picture of the situation and condition of the location or *social setting* of the research as a whole can be obtained.
- b. Interview: This technique is carried out to informants using closed and open interviews. A closed interview is an interview the answers of which have been directed or already exist, while an open interview is an interview the answers of which are free. This technique is utilized to reveal the meaning and symbolic expressions of the phenomena that occur in the reality of society. Interview techniques are carried out deeply (*in depth interviews*) using interview guidelines.

In practical legal research, the problem is not so complicated as in academic research. Practical legal research only includes:⁵

1. Differences in the interpretation of regulatory texts due to unclear regulations
2. Lack of rule of law
3. Different interpretations of facts

Then, it is mentioned that:

1. Legal research is a process to find the legal rules, legal principles, and legal doctrines to address the legal issues encountered.
2. Legal Research is Not to test hypotheses, does not recognize the existence of *data*, is a *know-how* activity in the application of legal studies, which is to solve *legal issues* that arise and provide prescriptions about what should be performed.
3. For the purposes of legal practice, the results of a legal research are prescriptions in the form of recommendations or suggestions although it does not mean that the suggestions are merely suggestions, considering that legal study is an applied science. Thus, the advice generated from the research must be possible to apply.
4. For academic activities, legal practice does not always connote a dispute (litigation).

⁵ Peter Mahmud Marzuki, "*Penelitian Hukum*" Unair 2004 dan model penelitian ini sebagian ada yang menggunakan istilah penelusuran hukum

C. Theoretical Review

Everywhere, law will grow from the way of life, views of life and necessities of the life of the people. Therefore, law will grow and develop with the society. Consequently, in this dissertation, a legal culture is also utilized because in realizing legal ideas in reality an understanding of *legal* culture is required in the society as a legal *address*. Roscoe Pound believes that law is a *social institution* to meet the social needs.⁶ Such a view turns out to be in harmony with the legal concept of the historical school of thought put forward by its founder, Friedrich Von Savigny, where law is seen as an expression of the people's legal awareness or *Volksgeist* (the soul of the nation). *Volksgeist* is a philosophy of life of a nation or cultural pattern that grows as a result of past experiences and traditions. Law grows together *with the growth of society*, and *becomes strong along with the strength of a nation*. Law will disappear along with the disappearance of nationality.⁷ Law is understood as something that grows and develops naturally from within the society. The growth of applicable law in the society cannot be separated from its culture and the point of view of its people including the influencing environment. The main purpose of law is to create order. This can be traced back to the undisputed adage from Cicero (106-43 BC)⁸, a Roman philosopher, who stated "*ubi societas ibi ius*" which means "where there is a community, there is a law." The adage of Cicero is truly indisputable and can be interpreted in the perspective of normative juridical and sociological juridical. In a juridical-normative perspective, *ubi societas ibi ius* means that the purpose of law is to maintain order. The historical logic is that as a community grows, there is a need to unite more people with different desires. All of these require the presence of a ruler, which is the state, and the means to ensure order, which is law. Therefore, natural resource management policies as contained in the constitution must be elaborated in the form of laws and regulations by observing synchronization and harmonization of legal regulations in the administrative sphere, such as spatial planning, natural resource management and licensing that do not cause conflicts and disputes between the State and public.

In accordance with the title of Reconstruction of the Implementation of Direct General Election Law (Study of Implementation of General Election Law Number: 7 of 2017), the paradigm used in this study is the Constructivist Paradigm. According to this school, law is seen as *law as relative and contextual consensus* (law in its essence is an agreement, both written and unwritten which is relative and contextual) where there will be interaction between the researcher and the object that is studied. Hence, there is the subjectivity of the researcher that will affect or influence the values held and can provide alternative views in seeking the truth of social reality. This view is reinforced by the opinions of F.X. Adji Samekto,⁹ who stated that constructivism departs from the belief that reality is diverse, and reality is in a variety of mental constructs that are subjective in human beings or society based on social experience, religion, culture and local values.

Methodologically, the constructivism paradigm applies the hermeneutic method in the process of achieving the truth. Methodologically, by conducting dialogic / dialectical¹⁰ relations with hermeneutic theory various constructions that were previously held can be

⁶ Sunarjati Hartono, *Capita Selecta Perbandingan Hukum*, Bandung, Alumni, 1968 hlm.58

⁷ Sulaiman Nitiatma, *Hukum Yang Baik*, Semarang, GUPPI –Undaris- 1997 hlm 29

⁸ Adji Samekto, Membangun Politik Hukum Pengelolaan Sumber Daya Alam Dalam Perspektif Cita Hukum Indonesia, Seminar, Kongres dan Call for Paper, Undip, Semarang, 15-16 April 2015, hlm.6

⁹ FX.Adji Samekto, *Ilmu Hukum Dalam Perkembangan Pemikiran Menuju Post-Modernisme*, Indepth Publishing, Lampung, 2012 hlm.71

¹⁰ Dialektika dimaksud sebagai cara untuk mencari kebenaran melalui kontradiksi/ perbedaan dan tidak menghancurkan tetapi dalam rangka mencapai keadilan.

reconstructed. The conduct of dialogue or dialectical relations using hermeneutic theory can be described as the following:¹¹

Ontology: philosophy / nature	Epistemology: theory / relationship between the researchers and the studied object	Methodology: science / problem solving
<i>Constructivism</i>	<i>Constructivism</i>	<i>Constructivism</i>
<u>Relativism:</u> <ul style="list-style-type: none"> - diverse and various, based on social-individual experiences, - local and specific, - mental construction. 	<u>Transactional / Subjectivist:</u> <ul style="list-style-type: none"> - relation between the researchers and the studied object is interactively related, - Findings are 'created' / 'constructed' together. 	<u>Hermeneutical / Dialectical:</u> <ul style="list-style-type: none"> - hermeneutical and dialectical search of 'construction' through the interaction between the researchers and the studied object.

D. Research results and discussion

In the Provisional People's Consultative Assembly (MPRS) Decree No.XX / MPRS / 1966, it has been confirmed that Pancasila is the source of all sources of law in the Republic of Indonesia. The definition of sources from all sources of law provided in the MPRS Decree is very broad, i.e. the view of life, awareness, legal ideals and moral ideals which encompass the mental atmosphere and character of the Indonesian people are the ideal of individual independence, national independence, humanity, social justice, national and mondial peace, political ideals regarding the nature, form and purpose of the state, moral ideals about social and religious life as the embodiment of human conscience.

The lengthy formulation aforementioned provides an understanding that the source of all legal sources comes from the view of life of the state (state ideology) contained in the ideals of the state. As is known, the view of life of the state is rooted in the view of life of the nation (national ideology), and the view of life of the nation is rooted in the view of the people of Indonesia.

The state ideology contains the ideals of the state. One important aspect in ideals of the State of Indonesia is its legal aspect since this country has declared itself to be a state that is based on law, not based on mere power and not standing above the law. The legal aspect of the ideals of the state is called the legal ideals. In addition to the legal ideals, there are certainly other ideals such as political ideals, economic ideals, socio-cultural ideals that include the way to implement democracy in filling position democratically so that the legal consistency and legal certainty can run effectively and efficiently as a consideration of General Election Law No. 7 of 2017. Politics of law¹² is the official line to achieve the objectives of the country through the law in a more dignified democratic manner. The official line to achieve the objectives of the country in the reform era is manifested in national development program

¹¹ Erlyn Indarti, Ilmu, Teori Dan Filsafat, Suatu Kajian Paradigmatik, Focus Group Discussion Undip 2014

¹² Bandingkan dengan Bernad L.Tanya, *Politik Hukum Agenda Kepentingan Bersama*, Genta Publishinh, 2011, hlm.6 dikatakan *Politics of law* sering disederhanakan dengan *legal policy*, tanpa melihat *content*, *legal policy* memiliki *content* politik hukum ketika pencapaian tujuan ideal bersama menjadi fokus dari kebijakan tersebut.

(Propenas), national legislation program (Prolegnas), regional legislation program (Prolegda) and the background of law making, which only then enters the implementation of law. Therefore, establishing politics of law is not accompanied by an understanding that humans are the **primary human beings as the main actors in all activities to realize justice**, bearing in mind that *legal system is not a machine; it is run by human beings*,¹³ Thus, to realize justice, human factors - their behavior - are not only viewed from what is seen by our senses, but also understood from the process of law making and law enforcement who always interacts with their environment based on culture so that their relationships are more meaningful.

Democracy is the choice of the Indonesian people through a long process. Therefore, in consideration of Law No. 7 of 2017, it says, "that in order to guarantee the achievement of national ideals and objectives as stipulated in the Preamble of the 1945 Constitution of the Republic of Indonesia, there is a necessity to hold general election to select the President and Vice President, members of the House of Representatives, members of the Regional House of Representatives, and members of the Regional Representative Board, as a means of manifesting people's sovereignty to produce democratic people's representatives and government based on the Pancasila and the 1945 Constitution of the Republic of Indonesia."

According to the views of Friedrich Von Savigny, law is seen as an expression of the legal awareness of the people or the Volksgeist (the soul of the nation). Volksgeist is the philosophy of life of a nation or cultural patterns that grow as a result of past experiences and traditions. The law grows together *with the growth of society*, and *becomes strong along with the strength of a nation*. Therefore, the Indonesian national independence cannot be separated from the history of the nation that was colonized for too long by other nations (Netherland and Japan) so that it desires independence, have mutual cooperation, sharpen and foster one another, and is not individualistic. Then, the election of president and vice president can be reconstructed to go back to Pancasila, especially the fourth principle of "Democracy guided by the inner wisdom in the unanimity arising out of deliberations amongst representatives."

The next question is whether this thought shows a step back because based on the word, democracy is understood as from the people, by the people, for the people. According to the author, there is nothing to be considered as a "step back" in the context of looking for laws and formats that are "appropriate" for the people. There is an adage that says "*law is the cloth of society*," and it turns out that the practice of direct and simultaneous elections create an extraordinary frenzy even though any system in democracy certainly has advantages and disadvantages

If Pancasila is recited in an inverted cone model, then the outcome of the state of Indonesia would be "social justice" and social justice would not be achieved if it is not led by leaders who have inner wisdom – the unity of his words and his actions, in deliberations amongst representatives. The inner wisdom in the unanimity arising out of deliberations amongst representatives will not be achieved if there is no unity, and all three will not be achieved as well without considering just and civilized humanity under the guidance of the One Almighty God - the One Almighty God, not the almighty money.

E. Conclusion

The conclusions are as follows: (1) General election is not directly consistent with the fourth principle of Pancasila "Democracy guided by the inner wisdom in the unanimity arising

¹³ Friedman, dalam Esmi Warassih Puji Rahayu, *Pemberdayaan Masyarakat Dalam Mewujudkan Tujuan Hukum : Proses Penegakan Hukum dan Persoalan Keadilan ; Pidato Pengukuhan Guru besar madya* (Semarang, Undip, 2001) , hlm3

out of deliberations amongst representatives.” The phrase “inner wisdom” is interpreted as a unity of words and the core “deed” of which is Taqwa, and “deliberations amongst representatives” is interpreted as representative democracy in the MPR, (2) The deliberations amongst representatives is actually the representatives of the people who sit in the People’s Consultative Assembly as the result of legislative general election (political parties participating in the election) that needs to be empowered to create the people’s representatives who have the “inner wisdom.”

In addition, the recommendations are as follows: (1) changing the direct presidential election and returning to the choices made by the People’s Consultative Assembly, and (2) changing the system of simultaneity by dividing into national and regional simultaneously, or executive and legislative simultaneously.

F. Thank-you note

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