

# *Reconstruction of the Completion of Presidential Election Dispute by Progressive Law Approach*

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**Abstract-** *The implementation of elections must refer to the principles of honesty and justice. The occurrence of violations in a systematic and massive structure has given a dominant position. This dominant position is the main cause that influences vote acquisition. Thus, determining the existence of electoral fraud must be seen from the existence of structured and systematic actions in the form of a dominant position that results in massive vote acquisition. The dominant position is very decisive in terms of proving electoral fraud qualitatively. The massive vote acquisition is resultant. Referring to the progressive law paradigm, related to the violation of the Presidential Election which is in TSM, the approach is to ensure the existence of a causality relationship between the dominant position and illegal vote acquisition. So it is a qualitative approach. As long as it can be proven that there is a correspondence between systematically structured actions that given a dominant position, then the results of massive fraud by itself can be easily proven.*

**Keywords:** *Develop Progressive Law, Dominant Position, Causality Relation.*

## I. INTRODUCTION

Indonesia has positioned itself as a law state (*rechtsstaat*) not a state based on power (*machtsstaat*), having the sovereignty of the people. These two fundamental principles are inseparable unity, both are interrelated. The people's sovereignty is manifested by the electoral system to fill elected official positions. Elections as instrument of democracy is carried out in a general, free, confidential, honest and fair every 5 (five) years as stipulated in Article 22E of the 1945 Constitution. In addition, the election must also be based on ethics and morality, free from intimidation, compulsion, manipulation, vote buying, and corruption. [1]

Election problems, particularly the Election of the President and Vice President, refer to the legal system, both substance, structure and culture. The Election Law distinguishes between the settlement of election violations through the Election Supervisory Board (Bawaslu) and the settlement of disputes over the Presidential Election results through the Constitutional Court. The authority of the Bawaslu is aimed at the existence of administrative violations. [2]

Election administrative violations occur in a Structured, Systematic and Massive (TSM). On the other hand, in the event of a dispute over the election results of the President and Vice President. The Constitutional Court also refers to violations that are TSM based on

jurisprudence. Referring to the explanation of Article 286 paragraph (3) of Law Number 7 Year 2017 concerning General Elections (Election Law), the proof of TSM is based on three things: (1) Structurize, that is carried out by structural apparatus, both government official and election organizer collectively (2) systematic, that is planned carefully, arranged, even very neat; and (3) massive, that is the impact of violations has a wide influence on election results, not only partially. In addition, the Election Law has not clearly formulated of definitive criteria for violations of a TSM, which have a systemic impact on vote acquisition. [3]

The Constitutional Court decides the dispute based on material truth as stated in Article 45 paragraph (1) of the Constitutional Court Law which states, "*The Constitutional Court decides the case based on the 1945 Constitution of the Republic of Indonesia in accordance with the evidence and belief of the Judge*". Article 24C Paragraph (1) of the 1945 Constitution which states, "*The Constitutional Court has the authority to adjudicate ... and decide on disputes regarding the results of general elections*". In this provision, it is clearly stated that the Constitutional Court adjudicates and decides on "the results of the general election" rather than just "the results of the general election". [4]

The Constitutional Court as a judicial institution becomes more appropriate if it adjudicate "the results of the general election" and not as "the judiciary of the number of votes", but rather as a judiciary that adjudicate problems that also occur in the election implementation processes. Such formulation is certainly still causing polemic.

The authority of the Constitutional Court based on jurisprudence is seen by a number of people who have lost their object, so it is no longer relevant at this time. Besides, the correspondence between the qualitative and quantitative models whether it is absolute or relatively become a main problem. Both the Constitutional Court Law and the Election Law, there is no certainty that confirms. Seeing the verdict of the 2014 and 2019 PHPU-President, both of them emphasized on the quantitative model. Therefore, a restructuring model for the resolution of the PHPU-President is needed which prioritizes the principle of justice through a progressive approach.

## II. RESEARCH METHOD

The research method refers to normative or doctrinal legal research and it is prescriptive. It is said so, because this writing is scientific research to find truth based on scientific logic in terms of law. The approach applied is statute approach, *case approach*, and conceptual approach. The type of legal material used is primary data, including primary legal materials, secondary legal materials and tertiary legal materials. The research was conducted by pointing to written regulations and forms of official documents (secondary data), namely data obtained by collecting materials from books that related with the problems discussed. [5]

The data analysis technique used in this study is a qualitative normative analysis method. The purpose of the normative is the starting point of legislation that exists as a positive law, while the purpose of the qualitative is data derived from secondary data. In this study, method of deductive reasoning is used. This model is carried out in three stages, namely reducing data, presenting data and drawing conclusions. [6]

## III. FINDINGS AND DISCUSSION

Indonesia as a law state does not allow the State and its means of power (read: the government) to act on its authority alone, but must be based on the basis of the legal truths that have been positivized namely laws which in turn stand above the truth of the most basic law, namely the 1945 Constitution. According to the provisions of Article 28D paragraph (1) of the 1945 Constitution, legal axiology is stated expressively *verbis* as "*fair legal certainty*", as stated "*Every person has the right to recognition, guarantee, protection and fair legal certainty and equal treatment with the law*". It can be said that the constitution follows the legal axiology of the flow of natural law by referring to the fundamental values of justice and the flow of legal postivism by referring to the value of legal certainty which refers to formal law (legislation). The phrase "*fair legal certainty*" in Article 28D paragraph (1) of the 1945 Constitution is also related to the axiology of the Implementation of Elections, which is based on the principle of "*honest and fair*" is an order of the 1945 Constitution. [7]

Elections are one of the characteristics that must exist in a democratic country. The purpose of the election according to Mohammad and Ibrahim is to allow the transition of government in a safe and orderly manner. Therefore, one of the objectives of the election is to enable a safe and orderly change of government. In the Election Law there is norms of conflict, related to TSM election violations. The formulation of Article 460 of the Election Law emphasizes the violation of the procedures or mechanisms related to the administration in each stage of the Election. Regarding this violation, the settlement is carried out by Bawaslu. [8]

On the other hand, the Constitutional Court also refers to TSM violations, but it must be proven in real terms related to vote acquisition which is a significant dispute. Arrangement of violations of the Presidential Election in the Election Law has not formulated the forms of TSM violations, so when PHPU -Pres occurs, the assessment of TSM violations was based only on the jurisprudence of PHPU of previous Regional Head decisions and constitutional interpretations. Thus, it can be said that TSM violations covering the types of violations with qualifications carried out by government officials and election organizers are structurally, carefully planned, systemic and have massive and non-sporadic impacts. [9]

TSM theoretical was born from the judges' considerations in the decisions of Constitutional Court. In its consideration, the Court stated that although what could be prosecuted was the result of vote calculation, but the violations that caused the dispute over the results of the vote must also be assessed to uphold justice. It can be said, that at the time, the Constitutional Court not only tried quantitative objections but also qualitative objections, to explore justice by assessing and adjudicating disputed. The Constitutional Court consideration is based on the consideration that any deviations that occur in the Election process will have a fundamental effect on the final outcome. The Constitutional Court decided that TSM violations had taken place in several regencies and cities, so it needs a re-voting. In this case, the Constitutional Court has issued a progressive verdict in which the Constitutional Court not only prosecutes the objections, but also substantially for upholding justice. [10]

Referring to the progressive law paradigm regarding the existence of TSM presidential violations, the approach that must be taken is to ensure that there is a causal relationship between violations that are not merely administrative, but also a fraudulent actions that make them the most dominant of their competitors. Thus, because the most important (dominant) basis for the increase in illegal vote acquisition. So, a qualitative approach emphasizes more on the existence of fraudulent actions which thus affect on the vote acquisition. The existence of progressive law departs from two basic components in law, namely rules and behavior. Law is placed as an aspect of behavior but also as a regulation. Regulations will build a positive law system, while behavior or human beings will move regulations and systems that have (will) be built. [11]

Presidential Election fraud is actually a criminal act, but because this is not regulated in the Election Law, legal interpretation is needed to assess the occurrence of fraud on a TSM basis. With the effectuation of the 2017 Election Law, the understanding of TSM is formulated in the Elucidation of Article 286 Paragraph (3) that structured violations are "fraud" carried out by structural officials, both government officials and election organizers collectively. Systematic violation is the

violation that is carefully planned, organized, and even very neat. Massive violation is the impact of violations which has broad influence on the results of the election not only in part. Thus, fraud refers to the existence of structured inclusion. [12]

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The application of structured fraud can be in the form of centralizing or mastering various resources both vertically and horizontally or from upstream to downstream. The occurrence of this structured action has made one of the Candidate have a dominant position. In such a position, the Candidate will not have a significant competitor in the Presidential Election. Fraud of the dominant position is indicated by the ability to access various resources that are illegally obtained. Besides that, it also includes the ability to "adjust" to the regulations (*electoral terms*) issued by election organizers. [14]

Furthermore, in order to identify the fraudulent competition of the Presidential Election, the theory of causality in criminal law can be used as references. This causality approach combines the *ante factum* (generalized theory) and *post factum* approaches (individualized theory). Both generalist and individualized theories only search for one of a variety reasons, which are the most dominant actions that cause an impact. In the context of the Presidential Election, fraud does not only occur after voting (*post factum*). However, incident must also be traced which one of the incidents occurred before the election (*ante factum*). It can be formulated, there must be correspondence and of course it can be proven the structured, systematic and massive cheating competition, both before (*ante factum*) and after voting (*post factum*).

The structured and systematic cheating competition actions correlate with such massive vote acquisition. Dominant position and massive effect patterns become a parameters in proving fraudulent competition in the Presidential Election. Structured and systematic action as a qualitative model, seeing as a truly unlawful act that occurs (*onrecht in actu*). The quantitative model refers to a massive impact/effect, seeing as a possible unlawful act (*onrecht in potentie*). Here, there is always a connection between systematic actions on the one hand. On the other

hand, a causal relationship exists between structured and systematic actions with the occurrence of these massive consequences.

Massive applicability is a result (resultant) of structured and systematic cheating competition. The occurrence of fraudulent competition is proven by the most dominant cause and by made the Candidate to have a dominant position. The dominant position makes the Candidate obtain a significant vote for his victory. This argument is in line with the Elucidation of Article 286 Paragraph (3) of the Election Law, which states that "massive violation" is the very broad impact of a violation on the outcome of the election not only in part. [17]

#### IV. CONCLUSION

In each election based on direct, general, free, confidential, honest and fair, describing the election law construction that refers to three identifications. *First*, the principle of "direct, general, free and confidential", refers to protection of voters. *Second*, the principle of "honest" refers to maintenance of free competition. *Third*, the principle of "fair" refers to prevention of abuse of economic power and abuse of power. The three criterias must be manifested in the substance of election legislation (*substance*), the structure of election organizers institutional (*structure*) and community culture (*culture*). Structured and systematic formulations become important and strategic in order to determine whether there are massive violations or not. As long as it can be proven that there is a correspondence between systematically and structured actions that caused a dominant position, then the results of massive fraud can be easily proven by itself.

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