

# Legal Enforcement of Local Election through Legal Sociology Approaches

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**ABSTRACT**--Law enforcement in solving problems can be done with two approaches, namely litigation approach and non-litigation approach. It is chosen in order to fulfill the certainty and sense of legal justice in the community. One legal problem is the election dispute as happened in Lampung Province. This dispute is caused by allegations of fraud starting from the pre-campaign, the campaign period, the voting period, and the reporting period to the Lampung Province KPU. This study aimed to find the cause of the election dispute and its resolution with a sociological approach. This research was juridical by looking at facts in the field and then analyzed using descriptive analysis. There were several causes of the election dispute in Lampung, among others: (1). There was a cheating practice committed by one of the participants in the election or the winner of the election in Lampung according to the party that lost the election. (2). There was a presumption that there has been a practice of political money carried out by one of the pairs of governor candidate and vice governor candidate. There is an effort to enforce the law through a normative approach by 2 (two) pairs of governor candidate by submitting claims to the General Election Commission (KPU) even though there has been an act of resolution by KPU, but there are other parties two governor dan vice governor pairs were not satisfied and continue the resolution efforts to the Constitutional Court. Efforts to uphold the law through the approach of legal sociology was approaching the disputing parties with KPU mediation, Lampung Provincial government officials, religious leaders, and traditional leaders in Lampung in order to achieve peace.

**Key words**--law enforcement, legal sociology approach, local election deception

## I. INTRODUCTION

Election is a means for the people to participate in determining the direction of governance. Election has experienced the change beginning with reforms in the late 90s which are then followed by changes to the 1945 Constitution so that it has an impact on changing the general election system. After the amendment of the 1945 Constitution, both the election of legislative members and the election of executive power are implemented directly by the people. The amendment makes every citizen has the right to choose their representatives in institutions such as the DPR, DPD and DPRD and to elect the pair of candidates for president and vice president as promulgated in the 1945 Constitution in article 22E paragraph 1 and 2

The change in the electoral system inspired the development of democracy at the regional level (Provincial, Regency and City) so that regional heads can be directly elected by the people. This spirit was then set out in Law Number 32 of 2004 concerning Regional Government as a legal umbrella for the implementation of direct regional head elections by the people which were ratified and enacted on October 15, 2004 (Zoelva 2013).

Local election (Pilkada) from time to time has experienced political dynamics and leaves legal issues. Rahardjo (2000) states that changing the way of legal settlement through legal and justice approaches. Political dynamics

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during the elections makes the winner will be disputed by the parties of the candidates from political opponents. This is what makes the need for resolution through the approach of legal sociology.

Election dispute cases have occurred a lot, in 2009 from the 627 cases filed with the Constitutional Court, only 68 of that were declared accepted (about 10 percent). The lawsuit submitted to the Constitutional Court by Paslon 1 and Paslon 2 in the Pilkada in Lampung has two possibilities, namely rejected or accepted because the Constitutional Court has the duty and authority over election results as in PMK No. 15 of 2008 concerning Guidelines for Procedure in Dispute over Regional Head Election Results.

This legal basis can be used as a reference by the Constitutional Court in resolving regional election disputes. Considering that the Constitutional Court's responsibility in the resolution of Pilkada Dispute cases is that the deadline is limited to only 14 (fourteen) working days in practice and it is only effective for 7 working days, so it becomes an opportunity for justice seekers to propose election disputes carefully and quickly.

Law enforcement is carried out as an effort to resolve dispute on a theoretical level, that is also known as alternative resolution or litigation (Rahmadi 2011). In the practical level the election dispute resolution in Lampung has been taken through non-litigation road, but found no way out. Even from paslon 1 (Herman HN and Satono), they had been holding demonstrations for days at the Kota Gajah, Bandar Lampung.

Arguing the opinions through demonstrations got resistance from the winners of the elections by holding demonstrations with a lot of time in front of the Lampung Provincial KPU Office. As a result of this, Paslon 1 and Paslon 2 (Ridho Ficardo and Bachtiar) joined and agreed to bring the Lampung regional election dispute, but in the process of traveling to the Constitutional Court in Jakarta the result still won the pair Arinal Djunaidi and Nunik. This is the starting point of the conflict that leads to legal issues. Looking optically in sociology, local wisdom in Lampung people should have a noble cultural value that can be used as a reference for conflict resolution that results in balance, justice, and Lampung people should maintain Lampung's traditional marwah and culture can be offered as an alternative in resolving regional election disputes in Lampung Province.

Disputes that occur in the community can be classified into two channels, namely through the court and outside the court. Kubasek and Silverman (1997) use the term litigation (litigation process) for resolving disputes in court, and extrajudicial settlement of disputes or popularly known as alternative dispute resolution (ADR) for resolving disputes outside the court (Kubasek and Silverman 1997).

Based on the background above, this article was aimed to examine how the legal paradigm in resolving disputes. The problem being examined whether the dispute resolution is more inclined to use litigation or non-litigation institutions? And what problems can be solved through the two trends above?

## II. METHODOLOGY

This research is a juridical research by looking at facts in the field then analyzed using descriptive analysis. The method used in this research was the study of literature. The literature study conducted was looking for data cheating Lampung Provincial Election both from the internet and other media then looking for a solution with sociological theory sourced from books and scientific articles.

### **III. DISCUSSION**

#### ***II. Definition of Sociology Law***

##### ***A. Study of Sociology of Law***

An understanding of the sociology of law can be used as a basis for resolving several cases or disputes in the future. Soekanto (2005) states that the sociology of law is useful for providing abilities for understanding law in social contexts; (b). as social control, a means to change society, and regulate social interaction in order to achieve certain social conditions; (c). The sociology of law provides the possibilities and the ability to evaluate the effectiveness of law in a society. Based on this, the sociology of law can be a means of criticizing the effectiveness of law in the community, especially related to the election dispute in Lampung.

##### ***B. Legal Process in Solving Local Election Disputes***

Settlement of disputes in the community can be pursued through several mechanisms including through the means of punishment (through the judiciary) and non-penal means with a normative approach only, but also through the sociology of law approach. Legal sociology offers several concepts to resolve disputes, including disputes in the elections in Lampung. This is due to:

Law as a tool to change society, that is, the law can be an agent of change or a pioneer of change in a person or group of people who get the trust of the community as the leader of one or more social institutions (Soekanto 2005). This opinion is addressed to each party to the dispute to be able to sit together to resolve local election conflicts and the people or institutions involved consist of each party from the candidate for governor, leader of the party bearing the candidate, local government, KPU and several religious, custom leaders, politicians, legal practitioners and academics can sit together in settling regional election disputes with a win-win solution, it means that it can be resolved through a sociological approach to law that does not resolve by taking the normative course, through the judiciary.

Law as a means of regulating behavior or commonly called social engineering. Law is a means intended to change people's behavior. Then what is meant by a role is a system of rules that contains standards of behavior in positions of individuals or groups holding roles (rule occupant) and behavior (Soekanto 2005). This statement can be understood that there must be a willingness from all parties to prioritize a good behavior by making local wisdom and customary and cultural values a foothold in resolving disputes and it can be applied in the dispute resolution of the Lampung Province elections.

#### ***III. Implementation of Local Election in Indonesia***

Election held in Indonesia is a peaceful process of changing power that is conducted periodically in accordance with the principles outlined in the constitution. Election is a very important political activity in the process of exercising power in a country that adheres to the principles of democracy. The principle of constitutional sovereignty of the people (democracy) is marked by the fact that every citizen has the right to participate actively in every process of state decision making as enshrined in article 18 paragraph (4) of the 1945 Constitution that confirms that the regional head is democratically elected. The democratically chosen formula is born from a long

debate in the ad hoc committee I of the MPR Workers' Board in 2000 between opinions that wanted regional heads to be elected by the DPRD and other opinions that wanted to be directly elected by the people (Zoelva 2013).

The legal basis for the Election of Regional Heads is to realize the election of the Governor and Deputy Governor, Regent and Deputy Regent, Mayor and Deputy Mayor that is held democratically but still based on the stipulated local election law. In the implementation of the elections, it can not be separated from the role of KPU, Bawaslu, Local Government, Mas Media, Political Organizations and Society in general. This provides an opportunity for citizens to exercise their constitutional rights by contributing votes in order to realize popular sovereignty. Political participation like this is built on the basis of freedom of association, freedom of speech, and freedom of choosing the leaders at the regional level to the central level.

The development of the election can be seen as follows: In 1999 there was a change in Law Number 5 of 1974 into Law Number 22 of 1999 felt to be more democratic and decentralized; In 2000, Law No. 22/1999 only emphasized decentralization without democracy, so that it encourages the revision of the Law specifically concerning direct elections; Subsequently in 2004 with the enactment of Law Number 32 of 2004 concerning Regional Heads which was carried out directly and organized by the Election Commission; In 2005 the first direct local election was held in Kutai Kertanegara Regency, East Kalimantan, that the election was governed by Law no. 32 of 2004 in Article 56 jo. Article 119 and PP Number 6 of 2005 concerning procedures for Election, Endorsement, Appointment, and Dismissal of Regional Heads and Deputy Regional Heads; In 2008 with the enactment of Law No. 12 of 2008 concerning the Second Amendment to Law Number 32 of 2004 concerning the Regional Government of the Constitutional Court was given the authority to decide upon disputes over the results of regional head elections. But in its development the Court has issued Decision No. 97 / PUU-XI / 2013, that the election dispute is no longer the authority of the Constitutional Court. However, there is no new regulation yet, so the Constitutional Court still has the authority to handle regional election disputes in Indonesia. Furthermore, the Constitutional Court gained legal certainty to settle regional election disputes after Law Number 1 of 2015 was stipulated concerning the stipulation of Perpu No. 1 year. 2014 concerning the election of the Governor, Bujapati, Mayor who was recently approved into law by the Parliament mandated the Constitutional Court to handle the election dispute (Kosasih 2016).

The development of the implementation of the elections from 1999 to 2015 is the basis for organizing elections in Indonesia, including in Lampung Province. In line with the spirit of reform and regional autonomy, the implementation of local elections in several regions in Indonesia certainly remains under the Unitary State of the Republic of Indonesia (NKRI) to promote unity and integrity, to be carried out honestly, fairly and responsibly in every stage of the local elections.

#### ***IV. Law enforcement of disputes through Legal Sociology approach***

Local election dispute resolution in the perspective of legal sociology can be through non-penal and or non-litigation, the sociological approach of Islamic law. This arrangement is based on the rules of *al masalah al mursalah* and *al urfi*. Both of these rules it can be the basis of the substance of Islamic law in the resolution of regional election disputes, especially in Lampung Province. Realizing that Islamic law cannot be fully used as a legal basis for the resolution of local election disputes, but at least this can be a reference for law in the future.

There are several alternative solutions to the election dispute through the sociological approach of Islamic law, including:

a. There is a political will from the administration of government along with the DPRD to take a preventive attitude (prevention) before the implementation of the elections and alternative solutions in the event of a localelection dispute.

b. KPUD must consistently carry out its duties and responsibilities in accordance with applicable regulations and neutral, without discrimination. Careful in counting and appropriately conveying the determination of the results of the elections.

c. Bawaslu besides being neutral, balanced, without discrimination. Also it must provide a sense of security, justice in the community, especially related to the implementation of the elections. Prioritizing the moral approach as glory in taqwa, exemplary. Deliberate to resolve local election disputes with parties to the dispute with the foundation of Lampung people's local wisdom and the foundation of Islam as the spirit in the resolution of each local election dispute.

d. Political organization of candidates for governor and deputy governor candidates who are alleged to have money politics, dowry and so on can explain to the public that there is no such thing anymore. But it must be clear about the acquisition of campaign funds, reporting the assets of candidates both before and or after obtaining party approval. Furthermore, if the candidate who is promoted by each of the affiliated parties must be prepared to lose and be ready to win. This means that it is necessary to pay attention to the conditions of social sociology for the losing couple not to manipulate and issue statements that spark conflict. Likewise, for those whose candidates lost the election, the party coalition should be able to sit together to address and fight for their aspirations, through the sociological approach of Islamic law as an effort to resolve the election dispute.

e. Mass media, both print and online should deliver news in accordance with the facts and based on good Islamic practice and local wisdom that can provide a stage towards calm and peace so that it can distance from the noisy atmosphere that can ignite conflict in the elections. The source of conflict, as stated by Zainudin Ali, is that one source of conflict in Indonesia includes "... discrimination, socio-economic, political, cultural life and feelings of injustice, dissatisfaction (Ali 2002).

f. The existence of a Candidate of Governor, candidate of Deputy Governor and supporter is very influential in the resolution of regional election disputes. According to Zainuddin Ali (2002), he states that "Democracy is concerned with awareness and behavior ...". In line with the existence of cagub and the Success team must have an awareness of the course of the political process to achieve democracy in the elections. There is the term "legowo" or sincerely accept the results of the elections that have been set by the Election Commission.

In line with the alternative offer of electoral dispute resolution in Lampung as one of law enforcement efforts in Indonesia, especially in Lampung, there are at least 3 stages of law enforcement, firstly pre-emptively (through legal education), secondly preventive (prevention) and third repressively (legal actions by law enforcement officers). In the course of the election dispute in the Constitutional Court, the normative settlement through the litigation approach was final with the Constitutional Court's refusal on Monday, August 13, 2018, rejected the lawsuit from Paslon 1 and 2 and set Arinal and Nunik as winners of the Lampung Pilkada in 2018. and was appointed with President Decree No. 49 / P of 2019 by President Joko Widodo (Detiknews 2019).

Based on the decision above, the disputing parties should take a wise and prudent attitude, prioritizing national unity, the sustainability of development in Lampung Province by prioritizing the attitude of local wisdom with the culture of the term "andap ashor" nrimo ing pandhum. Accepting defeat and realizing that God's destiny can become awareness to resolve local election disputes through the legal sociology approach.

#### IV. CONCLUSION

Local election dispute solution in Lampung is by litigation path to the Constitutional Court (MK) because of a joint desire between two candidates for governor and deputy governor. It looks at the facts put forward by their two partners in relation to fraud in the administration such as the existence of money politics carried out by both elected governors and deputy governors to cancel the decision of the Election Commission. Local election dispute resolution is carried out by the Constitutional Court on August 13, 2018 by rejecting all local election lawsuits and establishing the Arinal Junaidi and Nunik as winners in the Lampung province local election that were appointed through President Decree Number 49 / P 2019. This settlement has provided legal certainty regarding the election dispute in Lampung so that this shows the law as a tool to change society and the law as one tool to change the behavior of institutions related to the elections.

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