



**The Theory of Fairness with Integrity in Indonesia’s
Electoral Justice System**

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Article Info	Abstract
<p>Keywords: General Election, Fairness Integrity.</p> <p>DOI: 10.25041/fiatjustisia.v18no2.3432</p>	<p><i>This paper describes the concept of a fairness theory of justice with integrity applied in elections in Indonesia, drawing on the transformation of John Rawls' fairness theory. This theory is employed to examine various components of the electoral legal framework, focusing on the technical implementation of elections and the resolution of electoral disputes to achieve electoral justice in Indonesia. The research utilizes normative legal methodology, characterized by dogmatic legal analysis and theoretical-rational reasoning, employing a logical-deductive approach. It constructs the facts of electoral justice through an extensive review of legal literature and relevant data sources concerning the electoral process in Indonesia. The study addresses electoral practices as instruments of popular sovereignty, highlighting dissatisfaction among stakeholders regarding the election process. The theoretical variables associated with fairness with integrity are critically analyzed for their applicability in fostering electoral justice in Indonesia, emphasizing that a fundamental aim of electoral law enforcement is to ensure the realization of electoral justice.</i></p>

A. Introduction

Elections serve as a fundamental mechanism in a democracy for the transfer of political power, encompassing both executive power through the election of the President and Vice President, and legislative power through the election of members of the *DPR* (People's Representatives Council), *DPD* (Regional Representatives Council), and *DPRD* (Regional People's Legislatives Council). In this regard, elections are viewed as a manifestation

of popular sovereignty, which is the core principle of democracy. Article I, paragraph (2) of the 1945 Constitution of the Republic of Indonesia affirms that sovereignty resides in the hands of the people and is exercised in accordance with the Constitution.¹ In a democratic system, popular sovereignty represents the highest authority, ensuring that government power (*de macht van de overheid*) is limited and that political power is passed down through democratic method² such as elections, where people choose their leaders. Elections are therefore a critical element in upholding popular sovereignty, as they empower the people to exercise their primary authority.

Furthermore, elections represent a democratic instrument for citizens, constituting a right guaranteed by the constitution. This right is enshrined in the 1945 Constitution, which ensures equal opportunity in law and governance. The Constitution asserts: "All citizens are equal before the law and government, and shall uphold the law and government without exception, and everyone is entitled to recognition, guarantees, protection, and certainty of a fair law and equal treatment before the law, as well as the principle of equal opportunity."

Unfortunately, several electoral violations often occur. Violations are then resolved through an election law dispute mechanism. Therefore, it is necessary to regulate the concept of election dispute resolution to realize electoral justice. Electoral violations in Indonesia, include administrative election violations, election process disputes, election crimes, violations of the election code of ethics, and disputes over election results.

The concept of electoral justice is only understood to the extent that the electoral process runs according to the rules and the availability of mechanisms for resolving electoral disputes and violations within a specified time. IDEA notes that *electoral justice is a means a). for ensuring that each action, procedure and decision related to the electoral process is in line with the law (the constitution, statute law, international instruments and treaties, and all other provisions) 1; b). for protecting or restoring the electoral rights, giving people who believe their electoral rights have been violated the ability to make a complaint, get a hearing and receive an adjudication*³

Electoral justice is a mechanism that relates to the elements of electoral dispute prevention, electoral dispute resolution, and alternative electoral dispute resolution outside of existing mechanisms. Law Number 7 of 2017 states that election law is the basis of resolving election disputes. The Election Supervisory Body (*Bawaslu*) is assigned with the control and management of electoral disputes. The handling and resolution of an election dispute is

¹ Article 1 Paragraph (1) UUD Negara Republik Indonesia Tahun 1945

² Affan Gafar, Politik Indonesia, *Transisi Menuju Demokrasi*, Yogyakarta, Pustaka Pelajar, 2005, p. 15.

³ Khairul Fahmi, Menelusuri Konsep Keadilan Pemilihan Umum Menurut UUD 1945, *Jurnal Cita Hukum*, Fakultas Syariah dan Hukum UIN Jakarta Vol.4 No.2. 2016.

managed by three judicial bodies. District Court is tasked with examining, hearing and deciding on election crimes and civil lawsuits such as claims for compensation. The State Administrative Court has the authority to examine, listen, and decide disputes arising in electoral state administration between election participants and the General Election Commission due to the issuance of General Election Commission decisions. Meanwhile, the Constitutional Court is authorized to examine, hear, and decide disputes over election and election results. The Constitutional Court is authorized to resolve disputes related to the acquisition of election results that can affect the vote acquisition of election participants.⁴ Effective electoral dispute resolution processes and mechanisms are a *sine qua non* for free and fair elections. Election violations can occur all stages of elections; planning, preparation, and implementation.

Election law is designed to uphold justice within society, with justice serving as the guiding principle and spirit behind the law itself. All legal theories position justice as the ultimate goal of the law. The fairness theory of integrity is particularly relevant in the context of electoral legal frameworks, where it functions as a core component across various aspects and variables. This focus on fairness arises from the central objective of elections: to promote and uphold justice. The implementation of electoral justice encompasses both the technical aspects of conducting elections and the resolution of electoral disputes, ensuring that fairness prevails throughout the electoral process.

In the General Election of Candidates for DPRD Members in Solok Regency, West Sumatra in 2024 has eliminated various fundamental problems that both procedurally and substantially have implications for the invalidity of the vote acquisition results determined by the General Election Commission. Allegations of election fraud have harmed the principles of democracy and popular sovereignty that should be upheld by all parties, especially by election organizers.

Gerindra Party raised concerns during the 2024 Election Results Dispute at the Constitutional Court, alleging election fraud during the voting process. One key issue involved violations at Village/Nagari, Polling Station 5, where there was an unexplained alteration in the vote count for Indonesian Solidarity Party candidate Zulhafzi, ST (candidate number 6), whose vote total changed from zero to one, without any accompanying explanation or change in the data on valid and invalid votes.

Irregularities were reported at Polling Station 13, where the vote count for the NASDEM Party was reduced from 28 votes to 24. Moreover, the total number of valid votes was adjusted from 231 to 223, despite only a 4-vote reduction for the NASDEM Party. This discrepancy raised questions about the

⁴ Sahran Raden, *Hukum Pemilu Pendekatan Interdisipliner Dari Dekonstruksi Sampai Implementasi*, Yogyakarta, Cakrawala, 2019, p. 238.

whereabouts of the remaining 4 valid votes, as the data failed to account for their absence.⁵

In a related legal matter, the Constitutional Court partially granted Case No. 98-01-05-26/PHPU.DPR-DPRD-XXII/2024, filed by the NasDem Party, concerning the election of candidates for the Banggai Islands Regency *DPRD* in Electoral District (*Dapil*) Banggai Islands 2 and Palu City 1, Central Sulawesi Province. The Court found that the petitioner's request regarding the filling of seats in the Banggai Islands Regency *DPRD* for Electoral District Banggai Islands 2 was well-founded according to law. As a result, the Court ordered a re-vote (PSU) to be conducted at Polling Station 01 in Tatakalai Village, North Tinangkung District. This re-vote is to be carried out for one type of ballot only, specifically for the election of candidates for the Regional House of Representatives of Banggai Islands Regency, Electoral District Banggai Islands 2, Central Sulawesi Province.⁶

Legal incidents involving electoral violations show the need for a stronger electoral legal framework based on fairness and integrity. The ideas of fairness and justice with integrity are important in achieving electoral justice in Indonesia. One key goal of enforcing electoral laws is to ensure fair elections. To make this happen, clear concepts of electoral justice are needed to support dignified elections. The theory of fairness with integrity is expected to play a key role in promoting democratic, honest, and fair elections in Indonesia.

The main question is how the idea of fairness with integrity can be used to resolve electoral disputes and ensure electoral justice in Indonesia. Understanding how this concept can be applied in practice is crucial to building a fair and democratic electoral system.

This research was performed as a normative or doctrinal legal research methods. Normative legal research, often referred to as legal research, examines systems of legal teachings about reality, incorporating both analytical and prescriptive approaches. This research analyzed the application of fairness with integrity as a system of teachings concerning legal norms and real-world behavior, reflecting the living legal reality in the conduct of elections and the resolution of disputes.

A statutory approach was employed in analyzing Law Number 7 of 2017 on General Elections. The article also utilized a legal concept analysis approach (Analytical & Conceptual Approach), examining legal views and doctrines that have developed within legal science through the lens of rational theoretical dogmatics. The reasoning model applied was deductive logic. This normative legal research constructed the facts of electoral justice by drawing

⁵ See Constitutional Court Decision Number 145-01-02-03/PHPU.DPR-DPRD-XXII/2024

⁶ See Constitutional Court Decision Number 98-01-05-26/PHPU.DPR-DPRD-XXII/2024

from a range of legal literature and data sources relevant to the electoral process in Indonesia.

B. Discussion

1. The Concept of Electoral Justice and Dispute Resolution

General elections serve as a mechanism to actualize the principle of popular sovereignty, as outlined in Article 1, paragraph (2) of the 1945 Constitution, which states, "Sovereignty shall be in the hands of the people and shall be exercised according to the Constitution."⁷ In the context of elections in Indonesia, this constitutional principle implies that all aspects and processes involved in conducting elections must ensure the realization of popular sovereignty. Beyond this, elections must adhere to the principles of direct, general, free, secret, honest, and fair elections while also upholding the principle of legal certainty, as mandated by the 1945 Constitution.

Elections also represent the guarantee for citizens' rights; the right to vote, the right to be elected, and the right to participate in government. The right to participate includes the right to equal opportunities in legal and governmental matters, as enshrined in the 1945 Constitution, which asserts that "All citizens are equal before the law and government, and shall uphold the law and government without exception. Everyone is entitled to recognition, guarantees, protection, and certainty of a fair legal process, as well as equal treatment before the law and the principle of equal opportunity."

Elections serve as a mechanism for translating the will of the people into representation within state institutions. As a result, officials elected to these institutions are expected to carry out the people's mandate. The system of electoral justice plays a critical role in ensuring that elections are conducted with honesty and fairness. This system is a fundamental element in ensuring the effective administration of elections, serving as a key instrument for achieving democratic elections. Furthermore, it guarantees legal certainty in the enforcement of election laws. For a democratic state governed by law, the existence of elections with integrity and dignity is both essential and non-negotiable. Elections represent the clearest expression of popular sovereignty and the most concrete form of public participation in state governance. They also act as a vital link between the political infrastructure and superstructure. When elections are conducted fairly and transparently, the state is seen as properly implementing democratic principles.

In practice, the General Election Commission (*KPU*) oversees the election of candidates for government positions both legislative and executive typically nominated by political parties, following specific electoral stages. However, challenges can arise regarding the political rights of candidates. As an integral part of the constitution, the constitutional rights to vote and to be elected must be safeguarded. To protect these rights, a legal mechanism is required to ensure

⁷ See Amandemen Pertama UUD 1945, Pasal 1 ayat (2)

their enforcement. This enables individuals to defend their electoral rights in the event of any violations during the election process.

To address issues that may arise in upholding constitutional rights, Law Number 7 of 2017 on General Elections provides mechanisms for resolving disputes. These include administrative disputes and disagreements related to the electoral process, as well as disputes concerning election results.

Key stages with potential for violations and disputes include: first, the registration, verification, and determination of election participants for the *DPR* (People's Representative Council) and *DPRD* (Regional Representative Council); second, the nomination of candidates for members of the *DPR*, *DPD* (Regional Representative Council), Provincial *DPRD*, and Regency/City *DPRD*; third, updating voter data; fourth, the election campaign; fifth, the voting and counting process; and sixth, the recapitulation of vote results.

The potential for election violations aligns with Ramlan Surbakti's concept of electoral justice, which outlines criteria necessary for achieving fair and credible elections. These requirements include: first, equal treatment of citizens in voting, counting, and seat allocation; second, legal certainty based on democratic principles; third, free and fair competition among candidates; fourth, participation of all stakeholders in every election stage; fifth, a professional, independent, and impartial election management body; sixth, integrity in the voting, counting, tabulation, and reporting processes; and seventh, prompt and fair resolution of election disputes.⁸

Regarding the verification stage for political parties participating in the 2024 elections, there is a notable case, Case Number: 002/PS.REG/BAWASLU/X/2022, involving the People's Party Adil Makmur (Prima), represented by Agus Priyono and Do Minggu Oktavianus Tobu. This case pertains to allegations of election administrative violations and disputes over the electoral process.

In this instance, the applicant requested the *KPU* (General Election Commission) to issue minutes (Number 232/PL.01.1-BA/05/2022) concerning the recapitulation of the results of administrative verification for political parties seeking to participate in the general election on October 13, 2022. The applicant claimed that their rights were harmed because they were deemed ineligible to participate in factual verification. The request was submitted to *Bawaslu* (Election Supervisory Body) on October 18, 2022, and was officially registered on October 20, 2022, under number 002/PS.REG/BAWASLU/X/2022. The outcome of the case involved a partial cancellation of BA No. 232/PL.01.1-BA/05/2022 concerning the administrative recapitulation of political parties participating in the election on October 13, 2022. The ruling ordered the respondent (*KPU*) to allow the applicant to submit corrections to the required documents within 1 x 24 hours.

⁸ Fritz Edward Siregar, *Dimensi Hukum Pelanggaran Administrasi Pemilu*, Jakarta: Konpres, 2020. p. 8

The *KPU* was also instructed to conduct administrative verification of the revised documents submitted by the applicant and to issue a new recapitulation of the results of the verification of political parties as candidates for the election, in accordance with the procedures for addressing election administrative violations and disputes.⁹

The potential for election violations at each stage of the electoral process is primarily related to unmet requirements during the document verification process conducted by the *KPU* (General Election Commission) for both political parties and candidates. This election administration is closely linked to the criteria that candidates must fulfill, which include those for *DPR* (People's Representative Council), *DPD* (Regional Representative Council), *DPRD* (Regional People's Representative Council) members, as well as presidential and vice-presidential candidates in the electoral contest.

When political parties or candidates fail to meet these requirements or provide valid documentation, they may be deemed ineligible during the verification process. This unqualified status (*TMS*) can lead candidates or political parties to file disputes with the Election Supervisory Board (*Bawaslu*) or judicial bodies authorized to resolve such disputes. These constitutional complaints represent a legal right for political parties and candidates to protect their constitutional rights as election participants.

Electoral justice is often understood in terms of the electoral process adhering to established rules and having mechanisms in place for resolving disputes and addressing electoral violations within a specified timeframe. Within this framework, electoral justice encompasses three elements: preventing electoral conflicts, resolving electoral disputes, and providing alternative resolution methods. The resolution of electoral disputes can be further divided into two categories: correcting electoral fraud through challenges and penalizing those who commit fraud, either administratively or criminally.¹⁰ Thus, the fairness of an election is contingent upon the availability of legal instruments and mechanisms for addressing electoral issues. In Law Number 7 of 2017, the electoral justice system is implemented through the chambers designated for resolving electoral disputes.

Electoral justice systems are crucial for preventing irregularities, ensuring free, fair, and honest elections, and enhancing the credibility of the electoral process. They contribute to societal legitimacy and trust in electoral outcomes. A key instrument in upholding electoral justice is the enforcement of electoral law, which establishes a legal framework for effectively resolving disputes.

In democratic nations, the presence of an independent and professional judiciary is vital. The principles of electoral dispute resolution underpin the

⁹ See Putusan Bawaslu atas Perkara Nomor: 002/PS.REG/BAWASLU/X/2022

¹⁰ Khairul Fahmi, Menelusuri Konsep Keadilan Pemilihan Umum Menurut UUD 1945, *Jurnal Cita Hukum*, Fakultas Syariah dan Hukum UIN Jakarta. Vol.4 No.2. (2016).

enforcement and resolution of electoral issues. To achieve electoral justice, these mechanisms must protect citizens' political rights, including their right to participate in government. A well-designed electoral justice framework is essential for maintaining democratic legitimacy. Electoral justice extends beyond legal enforcement; it also influences stakeholder behavior and varies based on socio-cultural, historical, and political contexts.¹¹

Electoral disputes are critical for analysis, defined by the Institute for Democracy and Electoral Assistance (IDEA) as "any complaint, challenge, claim, or contest relating to any stage of the electoral process." This broad definition highlights that electoral disputes can arise at all stages of elections.¹²

Election problems in Indonesia primarily include (1) criminal and administrative violations and (2) disputes over election results. The resolution of these disputes is governed by Article 24C of the 1945 Constitution and Article 10 of the Constitutional Court Law. In practice, the Constitutional Court's authority has evolved from merely examining the quantitative aspects of election results to addressing qualitative aspects, such as the fulfillment of constitutional principles.¹³

Topo Santoso defines a dispute in election administration as a case involving violations of electoral processes or dissatisfaction with the decisions made by election organizers.¹⁴ According to Oliver Joseph and Frank McLoughlin, a robust electoral justice system is essential for ensuring that elections are conducted honestly and fairly. This system encompasses both preventive measures and mechanisms for dispute resolution.¹⁵

One of the core objectives of electoral law enforcement is to achieve electoral justice. Numerous experts and institutions, particularly the Institute for Democracy and Electoral Assistance (IDEA), have formulated concepts of electoral justice. IDEA emphasizes that electoral justice includes the means and mechanisms available at various levels local, regional, or international to attain fair electoral processes.

1. Ensure that every action, procedure, and decision related to the electoral process complies with the legal framework;
2. Protect or restore electoral rights; and

¹¹ *Ibid*

¹² Baysriyidi, dkk, 2012, *Komparasi Mekanisme Penyelesaian Sengketa Pemilu di Beberapa Negara Penganut Paham Demokrasi Konstitusional*, *Jurnal Pusat Penelitian dan Pengajuan Perkara*, Mahkamah Konstitusi Jakarta, 21.

¹³ Topo Santoso, dan Ida Budhiati, 2018, *Pemilu Indonesia, Kelembagaan, Pelaksanaan dan Pengawasan*, (Jakarta : Sinar Grafika) p.57.

¹⁴ *Ibid*.

¹⁵ Oliver Joseph, dan Frank McLoughlin, *Electoral Justice System Assessment Guide*, International IDEA, Stockholm. (2019).p.19.

3. Enable citizens who believe their electoral rights have been violated to file a complaint, have a hearing, and obtain a ruling.¹⁶

In a democratic system, a key indicator of its electoral integrity is the presence of an independent and professional judiciary. Mechanisms for addressing and resolving electoral disputes are essential to uphold electoral justice, ensuring that citizens' political rights including their right to participate in governance are protected.

Irregularities refer to any actions, procedures, or decisions during the electoral process that do not comply with established laws. Such irregularities can lead to disputes, highlighting the electoral justice system's role in preventing them and guaranteeing free, fair, and authentic elections. The effective design of this system is crucial for maintaining the legitimacy of democracy and the credibility of electoral processes.

Electoral justice extends beyond merely enforcing legal frameworks; it is also a vital consideration in the design and execution of electoral processes. It influences the behavior of various stakeholders involved. While electoral justice systems vary worldwide, they are shaped by each country's socio-cultural conditions, historical contexts, and political environments.

Therefore, electoral justice is defined as the condition in which all electoral procedures and actions adhere to established regulations. Additionally, these regulations must provide mechanisms for restoring violated electoral rights. An effective electoral legal framework should outline procedures for addressing violations as a prerequisite for achieving electoral justice. This concept encompasses not only the existence of legal structures but also includes equal voting rights, an independent electoral authority, vote integrity, and the timely resolution of disputes.

2. Conceptualization of the Theory of Fairness Reasonableness Integrity

The fairness theory of justice with integrity arises from an examination of John Rawls's theory of justice, particularly its transformation. This concept was developed in a dissertation titled "The Existence of *Bawaslu* in the Settlement of Administrative Disputes and Disputes over the Legislative Election Process in Indonesia", authored by Sahran Raden.¹⁷ The theory reflects the author's insights gained during his experience as an election organizer and aims to address practical issues related to electoral justice. It serves as both an analytical tool and a foundational framework for understanding electoral justice in Indonesia, particularly concerning electoral law enforcement.

¹⁶IDEA, 2010, *Keadilan Pemilu: Ringkasan Buku Acuan International IDEA*, (Jakarta: Indonesia Printer), p.5.

¹⁷ Sahran Raden, The existence of Bawaslu in the settlement of administrative disputes and disputes over the legislative election process in Indonesia, Doctoral Dissertation at the Indonesian Muslim University Makassar, (2021).

In the modern era, John Rawls introduced the concept of justice as fairness in his influential work "A Theory of Justice". Rawls contends that justice can only be achieved if the state adheres to the principles of fairness, ensuring that everyone has equal rights to fundamental liberties and access to opportunities.¹⁸ The principle of justice as fairness is one that free and rational individuals would endorse when defining the basic structure of society, considering all parties in the original position as equals. This principle establishes an equal system for all individuals within society, thereby promoting fairness in the pursuit of justice.¹⁹

Rawls' theory is grounded in the principles of equal rights and economic equality, arranged lexically to ensure that different principles respect human rights without conflict. He argues that economic inequality is permissible only if it does not infringe upon fundamental human rights. To achieve a public conception of justice, Rawls emphasizes the need for a well-ordered society, governed by a shared understanding of justice, and the presence of moral individuals, connected through the concept of the original position, where everyone is an ethical subject capable of initiating principles of justice. However, this framework can become contradictory if society is not well-ordered. Rawls posits that justice is the primary virtue of social institutions, while also asserting that the overall virtue of society must encompass the sense of justice developed by individuals who have acquired a sense of justice.²⁰

John Rawls developed principles of justice through the concept of the original position, establishing an equal system for all individuals in society. This framework rejects hierarchical differentiation in status, enabling balanced agreements based on rationality, freedom, and equality, which in turn fosters equal treatment defined as justice and fairness.²¹ The objective of law enforcement is to create legal justice, which requires methods rooted in professional ethics and morality. Justice is a political policy governed by rules that define what is right within state regulation. In this context, Rawls promotes the idea of justice as fairness, emphasizing equality and the provision of equal rights and opportunities for individuals' fundamental freedoms. This concept, rooted in a deontological moral framework, does not interpret rights merely as a means to maximize benefits but as principles to be upheld. However, Rawls' theory must be accompanied by integrity in the enforcement of electoral justice in Indonesia to be effectively realized. Thus, the notion of fairness with integrity emerges as a framework for achieving electoral justice, grounded in values and morality among those responsible for

¹⁸Fadhilah, Refleksi Terhadap Makna Keadilan sebagai Fairness Menurut Jhon Rawls, *Jurnal Kybernan*, Vol. 3 No. 1, (2012).

¹⁹Sahran Raden, *Opcit*.

²⁰John Rawls, 2006, *A Theory of Justice*, diterjemahkan oleh Uzair Fauzan dan Heru Prasetyo, *Teori Keadilan*, (Pustaka Pelajar: Yogyakarta) p. 90.

²¹*Ibid*

its enforcement. This new idea of the fairness theory of integrity is informed by various scientific philosophical paradigms, including theological ontological, constitutional law, epistemological, and axiological aspects.

2.1. Epistemological Aspects of the Theory of Justice Fairness Integrity

In an epistemological framework, justice can be conceptualized as deriving its essence from a divine source, with God as the sole proprietor of justice. An epistemology of justice in law encompasses a thorough examination of all aspects associated with the terminology of justice, both formally and substantively, within the domain of legal scholarship.²² Justice is understood as both the ideal and the objective of law, intersecting with legal philosophy by positing that justice is actualized through statutes. Dworkin asserted that justice embodies a value, with integrity serving as its foundational principle. Within the context of legal sovereignty, justice emanates from the state, which wields absolute power to govern its citizens with the ultimate aim of achieving justice.²³

In the positivist paradigm, the legal order represents one facet of the broader social order that facilitates the establishment of a relatively orderly and consistent communal life. August Comte posited that law serves as a principle of truth and justice, characterized by its natural and universal attributes. He argued that the method employed to ascertain truth should acknowledge reality as it manifests within the practices of community order.²⁴ Satjipto Rahardjo contended that a distinguishing feature of the legal order, as compared to other forms of order (such as customs and decency), is the intentional creation of pure law by an organized body established within society. Article 5, paragraph (1) of the Judicial Power Law stipulates that judges must explore, adhere to, and comprehend the values of law and the sense of justice that permeate society.²⁵ This provision underscores the necessity for judges' considerations to extend beyond formal legal parameters to incorporate socio-substantive dimensions, ensuring that legal reasoning encompasses not only formal-legal norms but also substantive moral justice.

²²Diah Imaningrum Susanti, *Penafsiran Hukum Teori dan Metode*, Jakarta: Sinar Grafika, 2019, p. 42.

²³Munir Fuady, *Teori Teori Besar (grand Teori) Dalam Hukum*, Cet, ke 3, Jakarta: Prenadamedia Grup, 2014, p. 92.

²⁴H.R. Otje Salman dan Anton F. Susanto. *Teori Hukum, mengingat, Mengumpulkan dan Membuka Kembali*, Cet, ke 2, Bandung: Refika Adhitama, 2005, p. 78.

²⁵Absori, *Pemikiran Hukum Profetik, Ragam Paradigma Menuju Hukum Berketuhanan*, Cet. I, Yogyakarta: Ruas Media, 2018, p. 7.

2.2. Ontological Aspects of Fairness Justice with Integrity

In the ontological dimension, justice is manifested through the treatment of the state or individuals in relation to society and others. Ontological justice is exemplified by actions that provide protection, equality, and equitable treatment. Within the legal context, justice is fundamental to safeguarding absolute human rights. One of the core principles enshrined in law is the principle of justice, which mandates that legislation must reflect justice proportionally for all citizens. Laws that embody justice should be applied in a manner that is consistent with a sense of legal fairness and equity.²⁶ In a state governed by legal sovereignty, the essence of law is fundamentally tied to justice, as Aristotle posited that it is not individuals who govern a country, but rather fair minds and moral considerations. An exemplary state is characterized by its constitution and legal sovereignty, wherein a democratic state committed to the principles of justice acknowledges and protects human rights as the foundation of justice. Thomas Hobbes contended that every individual possesses a natural right to liberty, enabling them to utilize their power to defend their inherent right to life. However, conflicts arise when individuals perceive one another as threats, leading to a state of war. To resolve such conflicts, humans establish governments led by rulers endowed with absolute power to ensure fair dispute resolution.²⁷

In this context, ontological fairness, intertwined with integrity, is found in the respect for human rights that are recognized and protected by the state with dignity. Essentially, the manifestation of fairness and integrity resides in the commitment of actors to uphold and protect human rights as fundamental rights that warrant safeguarding. In Indonesia, the ontological legal-constitutional aspects of justice are rooted in Pancasila and the 1945 Constitution. Justice, as a value based on Pancasila, must be reflected in every regulation governing public relations. The essence of justice lies in acknowledging and treating others as fellow human beings. This conception of justice is embodied in forms such as *justitia commutativa*, which regulates relations between equals; *justitia distributiva*, which delineates societal obligations to promote individual welfare; and *justitia legalis*, which establishes the obligations of individuals toward society. Pancasila underscores social justice, ensuring an equitable distribution of justice and legal guarantees. The ontological aspects of fairness and the integrity of elections in Indonesia derive from Pancasila, regarded as the nation's soul (*Volkgeist*). The electoral philosophy, reflecting this national essence, is grounded in the juridical logic of existing laws and regulations. The principle of justice is formally articulated in the Preamble of the 1945

²⁶Ni'matul Huda, *Hukum Tata Negara Indonesia*, Jakarta: PT Raja Grafindo Persada, 2006, p. 73.

²⁷I Dewa Gede Palguna, *Pengaduan Konstitusional (Constitutional Complaint), Upaya Hukum Terhadap Pelanggaran Hak Hak Konstitusional Warga Negara*, Cet. 1, Jakarta: Sinar Grafika, 2013, p. 115.

Constitution, which emphasizes that (1) independence is a universal right grounded in humanity and "justice"; (2) the independent Indonesian State is united, sovereign, "just," and prosperous; (3) it aims to promote general welfare and social justice; and (4) the structure of the Republic of Indonesia is predicated on social justice for all citizens. These principles provide a formal guarantee of justice and social equity for all Indonesians. Further elaboration is found in various articles of the 1945 Constitution, such as Article 24, paragraph (1), and Article 28 D, paragraphs (1) and (2). Justice is explicitly referenced in Pancasila, particularly in the second precept of just and civilized humanity, which reflects respect for human rights, and in the fifth precept of social justice for all Indonesian people, which pertains to economic justice and welfare. The principle of justice, as articulated in the values of Pancasila, asserts that every individual has the right to live reasonably, secure employment, and earn a livelihood.

2.3. Axiological aspect, Fairness Justice with Integrity

Justice, as defined in various literatures, is characterized as an attitude or disposition that compels individuals to act in anticipation of fairness. This manifestation of justice in attitudes and actions is rooted in the context of fairness with integrity, which emphasizes professionalism and impartiality. Professional conduct must be harmonized with the values of morality, religion, and customs prevalent in society. Fairness with integrity is predicated on the principle of impartiality, ensuring that attitudes and actions remain unbiased toward any party. Immanuel Kant posited that justice embodies the ultimate freedom of individuals, constrained by the freedom of others. Thus, justice represents a synthesis of equality and fairness.²⁸

Axiologically, justice, fairness, and integrity are expressed through a commitment to honesty, wherein individuals or state officials entrusted with legal authority must embody attitudes and behaviors that align with the norms of justice. The concept of fairness with integrity comprises two essential elements: first, the application of formal principles that dictate the equal treatment of similar cases and the differentiation of dissimilar cases; second, the establishment of criteria to determine the similarities or differences between cases. In this context, equitable justice entails the continuous realization of individual will and the provision of what is rightfully owed. The norms associated with fairness and integrity include transparency, accountability, equality, and fairness toward all parties involved. Upholding these principles necessitates honesty, characterized by consistency in the application of justice norms. Axiologically, the fairness of integrity in electoral processes requires election organizers to uphold values of

²⁸ Immanuel Kant, dalam Siti Malikhatun Badriyah, *Sistem Penemuan Hukum dalam Masyarakat Prismatic*, Cet. 1, Jakarta: Sinar Grafika, 2016, p. 31.

accountability and exhibit consistent and honest behavior in conducting elections.

Election organizers, particularly those responsible for enforcing electoral justice, must adhere to a defined set of behaviors and ethical standards. The implementation of propriety involves professionalism, independence, neutrality, and the avoidance of conflicts of interest. Fairness with integrity is thus grounded in ethical behaviors that exemplify electoral justice, demonstrating a commitment to the principle of propriety in their actions.

3. Application of Fairness with Integrity to the Electoral Justice System

Elections, as instruments of popular sovereignty, serve as a competitive arena for the acquisition of power.²⁹ Constitutionally, elections aimed at forming a government are conducted according to principles that are direct, general, free, secret, honest, and fair. To ensure electoral justice and foster a democratic process, mechanisms must be established to uphold the integrity of elections. The electoral justice system is codified within the Election Law, which encompasses two primary categories. First, regarding implementation procedures, the Election Law delineates all aspects necessary for conducting electoral stages, including the regulation of voting rights, the establishment of independent election organizers, and the mechanisms for addressing violations and disputes.³⁰ Second, concerning the resolution of violations, Law Number 7/2017 on Elections addresses two legal issues: (1) violations and (2) disputes. Generally, election violations are defined as actions that contravene established laws and regulations governing elections. The Election Law categorizes violations into two forms: ethical violations and administrative violations, alongside criminal offenses related to elections.³¹

Within the context of disputes, two distinct types can be identified: process-related disputes and outcome-related disputes. The resolution of disputes concerning election results falls under the jurisdiction of the Constitutional Court, as stipulated by the Constitution and the Election Law. In contrast, disputes regarding the electoral process are primarily addressed by the Election Supervisory Body (*Bawaslu*) and, for certain types of disputes, may also involve the authority of the State Administrative Court (PTUN). To uphold electoral justice, the justice system's application, viewed through the lens of fairness and integrity, introduces a novel perspective to the electoral justice system. The concept of fairness and integrity emphasizes dignified electoral justice, prioritizing equality for all parties involved. This approach reinforces the principles of morality and ethics for those charged with enforcing electoral justice.

²⁹ Sahran Raden, *Opcit*, p. 25.

³⁰ Fritz Edwar Siregar, *Op.cit*, p. 15.

³¹ Roni Wiyanto, *Penegakan Hukum Pemilu DPR, DPD dan DPRD*, Jakarta: Mandar Maju, 2014, p. 26.

In this context, implementing justice with integrity within the duties of the Election Supervisory Body (*Bawaslu*) necessitates a commitment to presenting electoral justice throughout its supervisory activities. *Bawaslu*'s prevention efforts are integral to the realization of electoral justice; for instance, if a citizen engages in money politics due to a lack of information, it signifies a failure in achieving electoral justice. Thus, *Bawaslu* must prioritize ongoing preventive measures. Their role extends beyond merely sanctioning violators; it encompasses a proactive spirit of supervision that balances both prevention and prosecution, with both aspects operating concurrently. *Bawaslu* must ensure justice is not only served during law enforcement processes but also through extensive public information campaigns aimed at prevention.³²

According to Joseph, Oliver, and Frank McLoughlin, a key aspect of upholding the principle of justice is the role of the judge in court. The primary function of a judge is to render decisions on cases presented before them, determining whether an event or infraction has been substantiated. This determination hinges not only on the presence of legally admissible evidence but also on the judge's moral integrity and sound judgment. In making decisions, judges must consider various factors related to the case, including the nature of the action, the character of the perpetrator, and the interests of the parties involved. Additionally, judges should reflect on the community's sense of justice.³³ Before arriving at a decision, judges must engage in self-reflection regarding their honesty, the correctness of their judgment, the potential for resolving disputes, the fairness of their decision, and the broader societal implications of their rulings.

This theory of fairness with integrity can be effectively integrated into the practices of electoral organizers. In this regard, the General Election Commission (*KPU*), as the technical organizer of elections, should embody the principles of electoral justice. This commitment is reflected in their regulatory framework, including the establishment of *KPU* Regulations and the provision of services to election participants and voters. Simultaneously, *Bawaslu*, charged with overseeing elections and resolving disputes, can uphold electoral justice through diligent supervision and equitable dispute resolution processes for all stakeholders involved.

In the application of fairness with integrity, election law enforcers, such as the Election Supervisory Body (*Bawaslu*) and judges in the Election Dispute Resolution Court, are tasked with examining, hearing, and adjudicating cases related to electoral administration violations and disputes concerning the electoral process. Their decisions should be grounded in legal reasoning or

³² Erga Yuhandra, Efektivitas Fungsi Pencegahan Badan Pengawas Pemilihan Umum Dalam Melakukan Pencegahan Pelanggaran Pemilu, *Jurnal Ius Constituendum*, Volume 8 Nomor 1 2023.

³³ Joseph, Oliver dan Frank McLoughlin, (2019) *Electoral Justice System Assessment Guide*, International IDEA, Stockholm, p.11.

interpretation that embodies the principles of legal justice. As representatives of the law, these electoral law enforcers utilize the norms established within electoral law as the foundation for determining the existence of any election violations.

In the context of electoral justice, organizers are expected to construct laws judiciously by interpreting electoral laws and regulations in light of the actual facts surrounding the electoral environment. *Bawaslu*, when examining cases, should avoid relying solely on literal interpretations that focus strictly on procedural or textual legal standards. Instead, they must explore the law in relation to the facts and realities that evolve within society, particularly concerning the substantive aspects of electoral justice. The role of *Bawaslu* within the dynamics of elections in Indonesia reflects a political policy rooted in democratic state law, aimed at upholding electoral justice.

Upholding electoral justice can also be framed through the lens of Rawls' theory of fairness, with adaptations to enhance its relevance to electoral dispute resolution in Indonesia. This modified theory emphasizes the application of fairness with integrity in resolving electoral disputes. Justice, as framed in this context, is anchored in the principle of equality, which ensures that individuals enjoy equal rights and opportunities for fundamental freedoms. This principle necessitates actions that are proportional, appropriate, balanced, and harmonious with the rights of all citizens. Moreover, it emphasizes that every action taken by the government or state administration must consider the prevailing values within society, including those related to religion, morals, customs, and other significant cultural norms.

C. Conclusion

The theory of fairness with integrity, as applied to electoral justice in Indonesia, is grounded on several key principles:

First Impartiality: This principle emphasizes that the attitudes and actions of election administrators, specifically the General Election Commission (*KPU*) and the Election Supervisory Body (*Bawaslu*), must be impartial and unbiased in organizing technical elections and resolving electoral disputes. Their conduct should not favor any party, ensuring that all stakeholders are treated equitably. Second, Fairness in Dispute Resolution: The resolution of election disputes must be rooted in fairness. This entails that the *KPU* and *Bawaslu* uphold attitudes and behaviors consistent with electoral norms, facilitating transparent, equal, and responsible processes for all parties involved. Moreover, fairness and integrity demand honesty, which includes the consistent implementation of electoral norms and adherence to fair dispute resolution procedures. Third, Ethical Behavior: The principle of fairness with integrity is further grounded in a set of ethical behaviors that guide the administration of elections and the resolution of electoral disputes. These ethical standards require that electoral organizers demonstrate professionalism, independence, neutrality, and avoid conflicts of interest.

Such conduct not only fosters trust in the electoral process but also ensures that disputes are resolved in accordance with ethical principles and the norms of propriety.

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