



Reformulation Requirements for the Nomination of People's Representative Council in Law Number 7 of 2017 Concerning General Elections in a Progressive Legal Perspective and the Imamah Al-Ghazali Concept

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Abstract

Discussion of the participation of former corruptors as candidates for members of the People's Legislative Assembly (hereinafter referred to as the DPR) and the Regional People's Representative Council (hereinafter referred to as the DPRD) with the title: Reformulation of Arrangements for the Requirements for the Nomination of Members of the People's Legislative Assembly Based on Law Number 7 of 2017 Concerning General Elections from a Progressive Legal Perspective and the concept of Imamah Al-Ghazali. The author considers that the KPU's stance as outlined in PKPUa Number 20a Tahun 2018 regarding the statement of disapproval of the former criminal act of corruption as a candidate for the DPR is the best solution for resolving the problem of corruption in this country. However, what happened was the Supreme Court's decision regarding the judicial review of PKPUa Number 20 of 2018 as outlined in the Supreme Court Decision Number 46 P/HUM/2018 rejecting these ideas and ideas on the grounds that the rules made by the KPU are contrary to higher laws and regulations and human rights. Likewise, with the same decision through the same decision by the Constitutional Court Number 56/PUU-XVII/2019 returning its legal stance to the Constitutional Court Decision Number 4/PUU-VII/2009 Affirming that the cumulative requirements in the nomination of former convicts apply to all types of criminal acts, not limited to former corruption convicts, drug dealers, or sexual crimes against children. According to the writer's opinion, it is necessary to reform and improve the implementation of democracy, so that the power of the oligarchs and elites does not block the birth canal and the presence of a democratic process that is equal and in favor of justice and is able to give birth to leaders who are ready and loved by the people, our democracy must not give birth to equality politics hindered by material inequalities that are almost unlimited.

Keywords: *Law Number 7 Of 2017; Candidacy for Members of the People's Representative Assembly; Corruption*

Introduction

The Unitary State of the Republic of Indonesia is a legal state, as stipulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia). The purpose of the law is to provide the benefit and welfare of all citizens, but recently the law has been used as a tool for the ruler's power, so that the implementation of the

purpose of the law has become tarnished, as has happened recently, acts of corruption are increasingly unresolved. and almost acts that harm the community and the country are infected throughout the body of public officials, so in this study the author directs the discussion of the participation of former corruptors as candidates for members of the People's Representative Council (hereinafter referred to as the DPR) and the Regional People's Representative Council (hereinafter referred to as the DPRD) with the title: Reformulation of Regulations for the Nomination Requirements for Members of the House of Representatives Based on Law Number 7 of 2017 Concerning General Elections from a Progressive Legal Perspective and the Concept of Al-Ghazali Imamate.

After a judicial review was carried out on the permissibility of former corruption convicts to run as candidates for members of the People's Legislative Assembly and Regional People's Legislative Council by the Supreme Court (hereinafter referred to as the MA) in accordance with decision Number 46 P/HUM/2018, before the decision was enacted there was debate from various among the two state institutions, namely the General Election Commission (hereinafter referred to as KPU) and the Election Supervisory Body (hereinafter referred to as Bawaslu) so that upon the birth of the Supreme Court decision No. 46 P/HUM/2018, the debate between the two state institutions met common ground and gained a constitutionally valid way out, thus the General Election Commission Regulation (hereinafter referred to as PKPU) Number 20 of 2018 must be revised immediately, so that it is in line with the Supreme Court decision and Law Number 7 of 2017 concerning General Elections.

As for referring to this article, the General Election Commission Regulation Number 20 of 2018 concerning the nomination of Members of the Provincial Regional People's Legislative Council and the Regency/City Regional People's Representative Council are included in laws and regulations which are hierarchically under statutory regulations. in the form of a law, on the other hand there are also those who consider the decision to be inappropriate because it is considered not in favor of the people, how is it possible that the DPR which was formed as a representative of the people in a government but is not trustworthy can be trusted anymore, especially if no one is ready to provide guarantees for ex-corruptors The said party will not repeat the act of violating the mandate that has been given, even if it is in the name of human rights, because after all the stipulation of allowing former corruptors to become legislative candidates on the basis of human rights values has violated a bigger value, namely being fair to the people rakyat.

Members of the People's Legislative Assembly, are the result of General Elections based on orders from the 1945 Constitution of the Republic of Indonesia, members of the legislature are members of the government who are in charge, act and speak on behalf of the people, their existence has a big role in improving government, prospering the people, and realizing good governance. The writer's savings to realize this is to create a country that is clean and free from acts of corruption. As later stipulated in the TAP MPR Number VIII/MPR/2001/TAHUN 2001 concerning Recommendations for Policy Directions for Eradicating and Preventing Corruption, Collusion and Nepotism, however, nowadays, as time goes by, the image of the legislature is decreasing, the culture of corruption can be said to be a image that is familiar in the legislature, both in the regions and at the center, moreover the level of inequality and inequality of power that has occurred today is increasing, the justice we echo is decreasing. Martin Luther King stated in his famous speech in 1968 that " The arc of the moral universe is long but it leads to justice."¹

In the writer's opinion, it is difficult to deal with and overcome this culture of corruption in Indonesia, one of which is that the sanctions given to the perpetrators of corruption have not been able to have a deterrent effect, it is not even rare that law enforcement agencies tasked with imposing sanctions on corrupt perpetrators cooperate with the perpetrators, either by remission or with other policies that

¹ Dr. Martin Luther King Jr., " **Tetap Sadar Melewati Revolusi Besar.**" Pidato di sampaikan di National Cathedral, Washington, D. C., 31 Maret 1968.

benefit corruptors. Of course such a thing will have an impact on the perpetrators who are not deterred so that they commit corruption for the umpteenth time again, this will result in annoyance, injustice and public distrust of law enforcers, the government and the legislation itself. Based on a survey conducted by Transparency International IT in 2017 based in Germany, Indonesia is classified as the 78th most corrupt country out of 180 countries. The tendency of people to take bribes is most vulnerable at non-construction points, defense and security, oil and gas, banking and property.²

As with the violations committed by the Regional People's Legislative Council of Malang City, during the history of criminal acts of corruption at the People's Legislative Assembly in Indonesia, the Malang City DPRD received the highest points scoring the history of corruption for the most DPRD members, because in fact the number of Malang City DPRD members reached 45 people. In the office that were not caught in corruption cases, only 4 people, meaning that as many as 41 members of the Malang City DPRD were caught in corruption cases, of course the violations were committed en masse by members of the Malang City DPRD, clearly this violation was not only embarrassing and detrimental to the people of Malang City, but also harm and embarrass the people and the Unitary State of the Republic of Indonesia.³

Research Method

The type of research used is normative juridical research and can also be called theoretical legal research or adogmatic legal research.⁴ This concept views law as synonymous with written norms made and promulgated by authorized state institutions or apparatus. This conception is used as a normative system that is independent, closed and usually the implementation of this concept is used as a normative assistant that is detached from real community life.⁵ As for what is related to this research, namely studying Law Number 7 of 2017 concerning General Elections from a Progressive legal perspective and the concept of Imamah Al-Ghazali.

Results and Discussion

a. Progressive Law Theory of Satjipto Rahardjo

Satjipto Rahardjo's progressive law is a law that is based on the basic assumption that law is for humans not the other way around, progressive law in Satjipto Rahardjo's book, namely changing quickly, carrying out basic reversals both in theory and in legal practice, and making breakthroughs. The current progressive legal concept, according to the author, is a legal concept that is capable of handling and resolving law enforcement problems in this country, because today's progressive law has challenged the existence of modern law which is considered established in this country, progressive law has also exposed legal failures. modern that still exists today. Which interpretation of today's law is based on the will of those who interpret it so that what is called justice is only a rhetorical slogan used by the majority group to explain what they desire.

Satjipto Rahardjo believes that the language used as a tool to convey ideas and thoughts has many shortcomings, so this is the basis that makes the regulations that are made need to be explained. Satjipto Rahardjo believes that the law has been flawed since it was promulgated or born, that law can also be criminogenic, in the sense that it is the origin of crime, in this case that is related to negligence, inaccuracy, fostering a diverse society, especially in our country, the Unitary State of the Republic of

² www.transparency.org/news/feature/corruption/perceptionsdiakses_pada_5_oktober_2018,pukul_14.01.

³ Detik News, *Perjalanan Kasus Korupsi 41 Anggota DPRD Malang, Selasa 11 September 2018*, 18: 12 Wib.

⁴ Abdulkadir Muhammad, *Hukum dan Penelitian Hukum*, (Bandung,: PT. Citra Aditya Bakti, 2004), hlm, 102.

⁵ Johnny, Ibrahim, 2006, *Teori dan Metodologi Penelitian Hukum Normatif*, Malang: Bayumedia Publishing, hlm, 295.

Indonesia, it is very possible gave birth to regulations that are criminogenic, in this case, namely law as a source of crime. Even though legislators have positive intentions, on the basis of not carefully reading the diversity of cultures that exist in Indonesia, it is clear that this will result in big problems when implemented in one of the lines of this nation.

b. The Concept of Imamat Al-Ghazali.

Al-Ghazalia's full name is Abua Hamida Muhammad bin Muhammad bin Muhammad Al-Ghazali. He was born in the small town of Thus which is included in the Khurasan region of Iran in 450 Hijri to coincide with 1058 AD.⁶ While Al-Ghazalia is taken from the name Ghuzalah which is the name of a village in Thus. It was also in this city that he died and was buried in 505 Hijri/111 AD. His father worked as a requester for a lawa, then he sold it at his shop, Thus. Which, prior to his wafa, the father of Al-Ghazalia entrusted his two sons, namely Al-Ghazali and his brother Ahmad, to his friend who was also a Sufi and gave him the amount of assets he had been saving all this time.

Al-Ghazali then studied jurisprudence at Thus with Ahmad al-Radzakani, when he entered his teens he went to the city of Jurjan to study with Abu Nashar al-Isma'il Al-Ghazali finally to Naisabur to study and sit under Abu al-Maali al-Juwaini who was nicknamed Imam al-Haramain.⁷ Al-Ghazali studied al-Asy'ari's kalam so that he became an expert in that field. After studying with Imam Al-Haramain, he visited the city of Askar (Mu'askar) to meet Nidzam al-Mulk, the Prime Minister of the Bani Seljuq. Nidzam finally appointed Al-Ghazali as a teacher at Nidzamiyah University in Baghdad. At the age of 34, Al-Ghazali lives in Baghdad and teaches at Nidzamiyah University. The name Al-Ghazalia is increasingly popular and is welcomed warmly and treated with great respect. According to Abdu al-Ghafir al-Farisi who lived at the time of Al-Ghazali as told by al-Subki, Al-Ghazali's popularity was one level below Imam Khurasan in defeating the popularity of Bani Seljuq officials and ministers. Imam Al-Ghazali is also known as an expert on Islamic law. Haramain al juwaini (419-478 H). His work is known as al Mankhul min Ta'liqat al Ushul which discusses methodology and legal theory. This book is one of the pearls of Al-Ghazali's works in the field of fiqh proposals that can be found and enjoyed today.⁸

Conclusion

Based on the discussion above, the researcher draws the following conclusions:

- a. Provide the benefit and welfare of all citizens, but recently the law has been used as a tool for the ruler's power, so that the implementation of the purpose of the law has become tarnished, as has happened recently, acts of corruption are increasingly unresolved, and almost acts that are detrimental to society and the country is infected with the entire body of public officials, so that in this study the author directs the discussion of the participation of former corruptors as candidates for members of the People's Representative Council (hereinafter referred to as the DPR) and the Regional People's Representative Council (hereinafter referred to as the DPRD) with the title: Reformulation of Arrangements for the Candidate Requirements for Council Members Representatives of the People Based on Law Number 7 of 2017 Concerning General Elections from a Progressive Legal Perspective and the Concept of Al-Ghazali Imamate.
- b. So in this case, to create responsible and worthy leaders, the author is based on the view of the concept of Imamah Al-Ghazali, that there are 8 conditions for the eligibility of an Imam or leader

⁶ Al-Ghazali, *al-Munqidz min al-Dhalal, tahkik 'Abdul Halim Mahmud alih bahasa Abdul Munip* (Yogyakarta: Mitra Pustaka, 2005), hlm. 33.

⁷ Al-Ghazali, *al-Munqidz min al-Dhalal, tahkik 'Abdul Halim Mahmud alih bahasa Abdul Munip*, hlm. 34.

⁸ Lihat Al Dzahabi,., hal. 335, George F. Hourani, *The Cronology Of Ghazali's Writings*, Jurnal, University of Michigan, hal. 226 dan M. Bouyges, *Essai de Chronologie des Oeuvres de Al Ghazali*, (Beyrouth: Imprimerie Chatholique, 1959), hal. 8-9.

(Internal and External). The personality traits that must be possessed by an Imam are as follows: Expert/Professional, able to guide the people and teach them, have Knowledge and Waro', and as for other requirements to complete it: Male, balik, Intellectual, independent, safe verbally, hearing (from sin), just and honest. So the authors argue, from the explanation above to resolve the problem of corruption in Indonesia, the law that applies in Indonesia must be in accordance with progressive law enforcement, and to produce responsible and trustworthy leaders, the method of appointing an Imam or leader must be in accordance with the concept of Imamate. Al-Ghazali.

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