

**REKONSTRUKSI KEBIJAKAN
INDEPENDENSI PEMBERITAAN MEDIA TELEVISI
TERHADAP PEMILU PRESIDEN 2019
DALAM PRANATA HUKUM PUBLIK BERBASIS KEADILAN**

Oleh :

RUDY ISKANDAR ICHLAS

NIM PDIH. 10301700101

DISERTASI

**Untuk memperoleh gelar Doktor dalam Ilmu Hukum
pada Universitas Islam Sultan Agung (UNISSULA)**

Dipertahankan pada tanggal.....

Di Universitas Islam Sultan Agung



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FAKULTAS HUKUM
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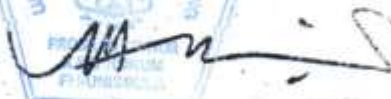
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(Rudy Iskandar Ichlas)
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DISSERTATION SUMMARY

A. Background of The Problem

Television as a means of mass communication has advantages when compared to magazines, newspapers, radio and a number of other mass media. It is so easy for television products to be accessed that news objects that are broadcasted are then disseminated to the public and with one watch the viewer has received a variety of information that is not limited by time and space.

Television media as the news media is also part of the press. This can be understood because in producing television news also carries out journalistic functions. So it is not surprising if there are also known as television journalism.

The strategic role played by television as the press is also in the context of social control which prevents the three other pillars from acting abuse of power. The parameters of a healthy democracy often use the press as an indicator. If the press develops well then democracy will be good. Therefore television as a news media should be neutral so that democracy is maintained.

In matters relating to the press and democracy can be seen from the interaction between the press and the general election or election. The press carries out its functions properly when the news does not favor one of the participants in the General Election. Even the election will run democratically when the press on the agenda performs its control function properly.

Television media as a means of electoral reporting has been in the spotlight of its independence aspect since the holding of the 2014 Presidential Election or Presidential Election. This form of reporting which tends to take sides really reap the spotlight. Even the largest news division in the world, such as BBC News, releases news that is felt so bitter for Indonesia's democratic life.

In order to protect the public interest in obtaining information, the existing regulations also determine the direction of broadcasting which is oriented towards meeting the public interest in a healthy manner. Therefore broadcasters such as television media are demanded to present the news correctly, in a balanced and responsible manner in accordance with what is stated in Article 5 letter i of Law Number 32 Year 2002:

"Broadcasting is directed to provide true, balanced and responsible information."

The things mentioned above are also intended for those who are engaged in the press industry. To fulfill one of the roles of the press including developing public opinion. Of course, because it involves the public interest, there must be legal protection so as not to cause harm to the community.

Ahead of the 2019 Presidential Election, television media began to be seen that did not maintain their independence. At least it was seen from the side of the Presidential candidate team. The National Candidate Team (BPN) pair of Presidential Candidates (Capres) Prabowo Subianto -Sandiaga Salahudin Uno (Prabowo-Sandi) assessed that the coverage carried out by Metro TV was considered too biased towards the Candidate pair Joko Widodo-KH Ma'ruf Amin (Jakowi-Ma ' ruf) even tendentious. Even as a result of feeling aggrieved by the news, the BPN Candidate Parbowo-Sandi boycotted the Metro TV.

The phenomenon of media owners who joined one of the Presidential Candidates caused public scrutiny. Society considers that television media that are pro to one partner have a tendency to expose the negative sides of the opposing party continuously without the balance of news. Even though the television media must prioritize data and facts and uphold accountability. Siding media can present data and facts but unfortunately ignore the balance of news that is far from public accountability. This situation is clearly very far from the order of Article 6 letter e of the Press Law which instructs that the Press must fight for justice and truth.

The helplessness of the press professionals in the television media sector to refuse the intervention of the investors is not merely counteracted by an adequate educational background and foresight as suggested by H.A.W. Widjaya because beyond that there is the integrity and expertise of the editorial crew in dealing with the phenomenon of intervention during the electoral agenda. With the integrity and expertise possessed, television journalists will not be tempted by financial factors and even intimidation which will ultimately sacrifice the educational interests and information needed by the people in facing the electoral agenda. News that tends to meet the interests of investors is certainly a great potential to plunge the people into the wrong choice. If this happens then the television media has failed to carry out its mission to provide healthy information for the people. Increasing the capacity of human resources for the media crew is not merely focused on knowledge and skills alone. Beyond that the formation of their character is no less important considering their challenges are more than just skills and knowledge namely financial temptation and intimidation from within by the capital (financiers).

Responding to the phenomena that occur on the agenda of the two presidential elections, namely the 2014 presidential election and the 2019 presidential election, there is a real threat to press independence. Various existing legal and legislative instruments seem unable to prevent the alignment of television coverage in Indonesia. Such conditions indirectly also threaten the democratic side of the Presidential Election itself. The freedom fighters in Indonesia seemed to have forgotten their services. Those who are involved in the television media enjoy press freedom at this time are indicated

to strongly mortgage the idealism of the press which was fought fiercely by its predecessor. This phenomenon is something bad for the future development of television journalism. There should be an effort to prevent the bad side of the press business that overrides this idealism. The practices of journalism through reporting such televisi media certainly must be kept away because it is detrimental to the public interest. One of the instruments to prevent this unhealthy practice of television media is to improve existing legal instruments. These unhealthy practices occur because the law has lost its control over the news on television media that tend to be pro-capitalists. To face the obstacles faced in the practice of television journalism, it is necessary to have a legal reconstruction in the field of television media. The existence of sanctions as stipulated in Article 75 of the Indonesian Broadcasting Commission Regulation Number 02 / P / KPI / 03/2012 mentioned above apparently did not stop the practice of alignment of media coverage in the 2019 Presidential Election.

B. Problems

Based on the background described above, the issues raised in this dissertation are as follows:

1. Why is the independence policy of television media reporting on the 2019 Presidential Election in public law institutions not based on justice?
2. What is the impact of television media coverage on the 2019 Presidential Election in public law institutions not based on justice?
3. How is the reconstruction of the independence policy of television media coverage of the 2019 Presidential Election in a justice system based on public justice?

C. Research Methods

1) Research Paradigm

The paradigm used in this study uses the classical paradigm (classical paradigm), which includes a positivist paradigm. A positivist paradigm is a paradigm that places social science as well as natural science where reality is placed as something real and waiting to be discovered, and as an organized method for combining deductive logic with empirical observation in order to probabilistically find or obtain confirmation of the legal cause and effect that can be used predict general patterns of certain social symptoms. This paradigm has the thought that the main purpose of a study is scientific explanation to find and document universal laws that govern human behavior so that it can be controlled and used to predict an event. This study is to uncover the Independent Policy of Television Media News Against the 2019 Presidential Election in Justice-Based Public Legal Institutions.

2) Research Type

This study involves a study of legal norms so that they can be grouped into types of normative legal research This study concerns studies of legal norms so that they can be grouped into types of normative legal

research. In accordance with the normative nature of the study, the main approach used in this study is the statute approach. The law approach is used to find out the consistency and compatibility between one law and another law or between the law and the constitution. In addition, this study also uses a historical approach which is used to track the dynamics of legal recognition of customary justice in the development of judicial power politics.

3) Approach Method

The approach method used in this research is empirical normative, Roni Hanitijo Soemitro stated in the normative juridical approach that is an approach with a positive positivistic conception that views the law as identical with written norms that are legal, made and promulgated by an authorized or ruling state institution or official, and the law as a normative system that is autonomous, closed regardless of community life.

4) Research Specifications

The nature of this research is explanatory, which explains in detail about the reconstruction of the Independence of Television Media News Against the Presidential Election in Justice-Based Public Legal Institutions

Specifically this research is intended to maintain the independence of the Television Media News Against the Presidential Election in Justice-Based Public Legal Institutions is a form of perspective research

5) Types and Sources of Data

This research uses:

- a. Primary data, data directly from the public, in the form of management behavior of the Press
- b. Secondary data:
 - a) Primary Legal Materials
 - b) Secondary Legal Materials
 - c) Tertiary Legal Materials

6) Material Collection Method

Data collection methods for primary data through:

- 1) Observation, which is observing from the perpetrators of television media coverage of the Presidential Election
- 2) Interview, is a process of interaction and communication between researchers and the parties studied (members of the press manager) and aims to find out the patterns and behavior of press actors in relation to the independence of television media coverage of the 2019 Presidential Election

7) Data Analysis Method

The data collected will be analyzed qualitatively Inductive. The method used to describe an ongoing condition with the aim of getting data

as thoroughly as possible about the research material so that it is able to explore the ideal nature and then explained and explained in depth in the form of sentence descriptions that are prepared scientifically, in order to reveal the independence of television media reporting to Presidential Election.

D. Theoretical Framework

1. Justice Theory H.L.A. Hart as Grand Theory

To explain the characteristics of law as a means of social control cannot be built from ideas about orders, threats, obedience, habits, and publicity. Too many legal characters are biased by attempts to explain them in simple terms. In the view of H.L.A.Hart between law and morality have a necessary or necessary relationship in which the whole does not seem real. Claims on this matter require deep and technical thinking in which there are many possible interpretations of the key terms 'necessary' and 'morality' and they are not always distinguished and discussed separately by supporters and critics. The relationship between law and morals is confirmed by various theories involving moral philosophy. As the legal morality theory also reinforces this case where moral rules will receive strong recognition and operationalization when they can be backed up by the legal sector.

Theoretically justice presented by Hart, is a picture of the principles of justice as a fruit of his thoughts. According to him, what is interesting for legal experts is the word "fair" and "unfair" when facing the good and bad laws and their implementation.

The special relationship between the characteristics of justice and the law can be seen from the majority of criticisms made in fair or unjust reviews. Similar to the words "fair" (balanced) and "unfair" (not balanced). If it is related to social behavior, the issue of equilibrium needs to also consider ethics related to harmony. Frans Magnis Suseno argues that the ethics of harmony is a benchmark for social behavior to find harmony, balance and social harmony by avoiding conflict or the possibility of conflict.

The existence of certain equality or inequality in applying the concept of justice is necessary to consider pertimbangan when it involves individuals. The consideration was given due to social life that has no certainty at the time the burden and benefits are distributed. This requires recovery when interference occurs. Regarding equality or inequality it concerns the lives of individuals who also intersect with human rights as human existence. Where the right to life is the right of every person to exist or exist above the world.

When speaking at an empirical level, law as an entity must be sorted. In a concrete situation the law and its application must be examined in such a way as to avoid confusion. Where when dealing with certain cases must be distinguished between the law and its application. The separation occurs is closely related to human similarities and differences over a fair or

unjust legal order. A picture of the law and its application that is so lame looks so good when Andrew Manuel Crespo, came to the conclusion of his research entitled "Probable Cause Pluralism" where judge Robert Jackson argues about an amendment to the constitution.

A general rule that is implemented in different cases in practice is absolutely not accompanied by personal prejudices, interests or desires. This fact is related to the aspect of justice and the concept of assessment of the intended regulation.

When it comes to judging justice or legal injustice the criteria of similarity (similarity) and relevant differences may differ according to the fundamental moral review of a particular person or society. It may be confronted with opposing opinions led by a different morality. This is reasonable personally or collectively, in terms of fair or unjust there are subjective elements of each because it is influenced by their respective backgrounds. As a result a fair or unfair review is determined based on these background considerations. An assessment of justice or legal injustice can motivate a person to innovate by offering a new provision. This can be observed when Thomas Hutchinson tries to offer new provisions through his book "The History of the Colony of Massachusetts-Bay"

2. Election Theory and Democracy and Legal System Theory As Middle Theory

a. Election Theory

Elections as a means of implementing democracy have been understood together. However, the general election which is based on Pancasila is a democratic tool based on Pancasila values. To further understand, of course, it is examined through the theory of Pancasila democratic elections. Therefore we need further understanding of what the Pancasila Democracy Election Theory is.

General Election, hereinafter referred to as Election, is a means of implementing the people's sovereignty which is carried out directly, publicly, freely, confidentially, honestly and fairly in the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia. Elections are carried out effectively and efficiently based on the principle of direct, general, free, confidential, honest and fair. In the view of Moh. Kusnardi and Hermaily Ibrahim, Election is one of the fundamental rights of citizens who are very principled. Therefore, in the context of implementing these rights, it is a necessity for the government to carry out general elections. . It is a violation of human rights if the government does not hold elections, or slow down elections without the consent of people's representatives.

On the other hand, B. Hestu Cipto Handoyo, stated, theoretically the general election was considered to be the earliest stage of a series of

democratic constitutional life, so that election was the driving force of the democratic political system mechanism.

The definition of general election is to elect a ruler, official or other by writing down the name chosen on a piece of paper or by voting in an election. Theoretically, elections have several objectives concerning the relationship between the community and the government:

"First, as a mechanism for selecting government leaders and alternative public policies. Secondly, elections can also be said to be a mechanism for transferring conflicts of interest from the community to the agency. the way to participate in the political process "

In addition to Abu Nashr, Jimly Asshiddiqie also wrote down the theoretical objectives of holding elections, namely that the objectives of holding elections in a country are as follows.

1. To enable an orderly and peaceful transition of government leadership.
2. To enable the replacement of officials who will represent the interests of the people in representative institutions.
3. To implement the principle of popular sovereignty.
4. To implement the principle of the rights of citizens.

Joseph Schumpeter assured the importance of elections for those who want to be involved in decision making. According to him that to arrive at political policy making where individuals are required to have the power to decide what they get from the competition to get the votes of the people (through elections). For this reason, elections should be of good quality so that political policy making by the power holders is also of high quality and beneficial to the people. And the quality of the election should continue to increase in the direction of better (higher quality).

For the election organizer is the General Election Commission. According to Patrick Merloe: KPU is the body responsible for holding elections that are independent and capable of effectively holding elections. If this is not the case, the public and political competitors will not believe in the election and they will not trust the government of the election results. Public perception of the true freedom of electoral institutions is vital to guarantee the validity of the electoral process and the perception of the validity of the new government.

b. Democracy Theory

The term democracy appeared in the middle ages of the 5th and 4th centuries BC (BC) precisely in Athens, a city in ancient Greece. Democracy from the Greek language is democracy (people's power), which is formed from the words demos (people) and kratos (power).

On the other hand, democracy does not work directly with a system of representation which is embodied in an institution which is the

incarnation of the people. The consequence is that all decisions concerning the interests of the state are determined by the people's representative institutions and the government.

During the early establishment of Indonesia, the most impressive implementation of democracy was the general election held in 1955.

The role of the people which is so central in the dynamics of democratic state life has indeed been felt since the formation of a state. A country will not be formed without the existence of the people. This is understood together, one of the elements of the formation of a country is the people outside the elements of the region, the sovereign government and the suspension of other countries.

c. Lawrence M. Friedmann's Legal Systems Theory

The widely known legal system theory is the legal system theory proposed by Lawrence M. Friedmann. In the legal system theory derived from Friedmann that whether or not a successful law enforcement depends on the following things:

1) Legal Substance

The substance of the law referred to by Friedmann that includes norms, rules and real human behavior that exists in a system. The rule as one of the above is a strategic matter in a country that adopts a continental European system such as Indonesia. This means that written rules in the form of legislation which is positive law in Indonesia is crucial for law enforcement.

As one of the determinants of the success of law enforcement, it is important to understand carefully the meaning of the laws and regulations. As for legislation means everything related to the law, the ins and outs of the law. While the ins and outs related to the law include many things, such as: the legislation system, the process of making it, its interpretation, testing, enforcement and so on.

If you look at it more technically, the legal substance in the perspective of legislation in Indonesia must refer to Law Number 12 of 2011 concerning the Formation of Legislation. What is meant by statutory regulations in this Law are written regulations that contain generally binding legal norms and are formed and established by state institutions or officials authorized to take the procedures stipulated in statutory regulations.

2) Legal Structure

The legal structure as intended by Lawrence M. Friedmann, describes the matter of how the law is carried out in accordance with applicable provisions. With this structure, it can be seen that the judiciary, the institutions that make laws and regulations and those who enforce the rules in relation to the legal process itself. However, according to Friedman, the legislators are racing against the dynamics of community development that keep changing in line with values that

are considered good by the community. Thus, the formation of laws as part of a broader process of law formation is not static, but experiences the dynamics of change.

What is meant by legal structure is related institutionalization which is covered by law. The legal structure is included in it regarding court instances, prosecutors and the police which are generally recognized by the Indonesian people. Through the authorities who take shelter in this legal institution they enforce the law. However, the current state of law enforcement in Indonesia is experiencing a weakening due to corruption that engages in various state institutions (executive, legislative and judiciary). Law enforcement agencies should understand the importance of the professional code of ethics. This understanding is important because of the essence that the code of ethics will be effective if it is imbued by the legal profession. Because in the professional code of ethics contained ideals and values within the scope of the legal profession.

3) Legal Culture

According to Friedmann, legal culture or legal culture is closely related to society as a group that has a collective pattern of knowledge, attitudes and behavior. With all the patterns in the community concerned, integration is seen with the legal system. The existence of a legal culture in society is decisive because those who use it or do not want to use the law or also obey or disobey the law are determined by a number of components in the legal culture. With this legal culture also determines the occurrence of good social change. For Roscoe Pound, it connects that law is a social engineering tool.

Low knowledge of the community will certainly have implications for the legal culture. That is, if the public's knowledge is low then a good legal culture will not be realized quickly. With limited knowledge by the community, it is difficult for them to understand what the law wants. This limited understanding of society has the potential to produce authoritarian rulers who have difficulty making policies to realize the legal ideals desired by the people of a country. Because in various literatures, people's sovereignty is interpreted as the highest authority that gives legitimacy to the state in implementing policies.

3. Theory of Communication Agenda Setting as Applied Theory

The election of the President of the United States in 1968 was the starting point for the emergence of the Agenda Setting Theory, which later emerged based on the research of Maxwell McComb and Donald L. Shaw. This theory was published by the two of them through a paper entitled "The Agenda Setting Function of the Mass Media" Public Opinion Quarterly in 1972. Both researchers proved that editors and broadcasters had a significant role in shaping a social reality. This role is seen in their work

activities when highlighting a message. The public will consider the extent of the importance of the issues raised as described in the mass media.

In the optics of agenda setting theory there is a tendency that an issue that has won a lot of public attention will become more familiar to the audience. This is of course considered important in that period. And conversely an issue that is not of public interest is, of course, minimal in media publications. This is in line with mass communication where the media still tends to choose the audience, and vice versa the audience also chooses the media.

This agenda setting communication theory has the notion that the media greatly influences the public on an issue because the media itself has power and is interesting. Based on this theory also that the media is very selective in presenting news to the public because of the consideration of news value (news value) and sell value (value selling). Agenda setting theory sees a good link between the judgment conveyed by the media of an issue and the public's attention to the same problem.

Stephen W. Littlejohn states that the agenda setting operates in three parts which include:

- a) The media agenda itself must be formatted. This process will raise the issue of how the media agenda occurred at the first time;
- b) The media agenda in many ways influences or interacts with the public agenda or interests of certain issues for the public. This statement raises the question of how much media power can influence the public agenda and how the public does it;
- c) The public agenda influences or interacts in the policy agenda. The policy agenda is public policy making which is considered important for individuals.

E. Framework for Thinking

The research framework is based on the gap between *das sein* (what should be / ideally) with *das sollen* (the reality):

- *Das sein*:

1. Fulfill the right of the public to know
2. Develop public opinion based on appropriate, accurate and true information.
3. Carrying out supervision, criticism, correction, and suggestions on matters relating to the public interest.
4. Fight for justice and truth

- *Das Sollen*:

1. People get unbalanced news
2. News Media Television tends to benefit certain candidates
3. The public interest during the Presidential Election is not fulfilled by television media news
4. With news that is not neutral and independent the television media only sees justice and truth subjectively

The gap between Das Sein and Das Sollen above is:

1. Television Media Coverage of the Presidential Election does not meet the provisions of Article 6 of the Press Law
2. Television Media Coverage of the 2019 Election does not meet the broadcasting behavior guidelines as instructed in Article 48 of Law Number 32 Year 2002 concerning Broadcasting.

Over the gaps that occur then formulated a problem that includes the following matters:

1. Why is the independence policy of television media reporting on the Presidential Election in public law institutions not based on justice?
2. How is the independence of television media reporting on the Presidential Election in a justice system based on public law?
3. How is the reconstruction of the independence of television media coverage of the Presidential Election in a justice-based public law institution

From a number of problems generated in the discussion will be analyzed with a number of hypotheses consisting of:

1. Theory of Justice (Grand Theory)
2. Election Theory and Law Enforcement Theory (Middle Theory)
3. Theory of Communication Agenda Setting (Applied Theory)

The discussion analyzed based on the theories that have been determined above is expected to produce a reconstruction of the independence of television media coverage of the presidential election

Based on the reconstruction of the independence of television media coverage of the presidential election, it would contribute theoretically and practically regarding the independence of television media coverage of the presidential election

F. Conclusions

Based on the research results that have been announced in Chapter III, Chapter IV and Chapter V, the conclusions obtained in this dissertation research are as follows:

- a). The independence policy of television media coverage in the 2019 Presidential Election which has not been based on compilation evaluation. Television media coverage is more of a political mouthpiece for the 2019 Presidential Election candidate pair. Television media owners or financiers as well as politicians are proven to be in accordance with Television Media which regulates news that does not meet the requirements that receive KPI criticism during the 2019 Presidential Election. The phenomenon that occurs cannot be anticipated by Law No.40 of 1999, because it is no owner has issued norms regarding the owner or television media who are concurrently the leaders of political parties. This is what makes the policy of independence of television media coverage in the 2019 Presidential Election in public law institutions not based on justice.

- b).The impact of television media coverage on the 2019 Presidential Election in public law institutions based on the facts governing Law Number 32 of 2002 concerning Broadcasting, proves the truth of the principle of partiality. Television media consisting of Metro TV, RCTI, Global TV, MNC TV received criticism from KPI because the broadcasts were carried out as much as television media that had benefited or harmed the presidential candidate pair. Non-independent television media coverage harms the Pancasila Democracy of the Indonesian people. The existence of framing the news, the coverage is equally quality, but empowerment is better from the bad side of the support. This is not in line with Article 5 letter i of Law Number 32 of 2002 concerning Broadcasting transferred to broadcasting which is intended to provide balanced information. Juridical coverage of media coverage which is not independent by juridical also opposes because it is not in line with Article 6 letter d of Law Number 40 of 1999 concerning supervising, supervising, correcting, and advising on matters relating to general issues, not the owners of television media the partisan.
- c).Reconstruction of the independence policy of television media coverage of the 2019 Presidential Election in a justice-based public law system related to two laws. Article 22 Paragraph 5 PKPI No.01 / P / KPI / 03/2012 needs to be reviewed. Its nature is as a technical regulation while the form of sanctions is administrative. This phenomenon proves that legal agreement needs to be done so that the relevant norms are adopted into the law so that court sentences that are more member can be applied. Reconstruction of Law Number 40 of 1999 is urgently needed by adding norms about news framing, owners of neutrality media and / or television capital media in the General Election and also corporations.

G. Recommendations.

Based on the conclusions produced in sub-discussion 6.1 above, it is hoped that the dissertation will be submitted as follows:

- a).Law Number 32 of 2002 concerning Broadcasting, revises with special additions to Article 7 by adding one more paragraph after paragraph (3) and inserting the phrase ".... externally ..." in paragraph (4)
- b).Establish internal supervisors at KPI and KPID for the approval of the honors and professionalism of the approved institutions.
- c).There are a number of weaknesses in Article 4, Article 9, Article 10, and Article 18 of Law Number 40 of 1999 concerning Percent in accordance with its accuracy which requires the review of academic texts required by Law Number 12 of 2011 concerning Formation of Legislation