

Settlement of Village Head Election Disputes

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ABSTRACT

The simultaneous selection of village heads in all districts / cities is intended to avoid negative things in their implementation, village head elections simultaneously consider the number of villages and the ability of election costs charged to the district / city revenue and spending budget so that it is possible to carry out bumpy implementation as long as it is regulated in the District / City Regional Regulation. As a result of the implementation of the policy of Simultaneous Village Head Election, in this Law is regulated regarding the filling of the position of Village Head who quits and is dismissed before the expiration of the term. In accordance with the background, the problem is formulated as follows; The regulation of the authority of the Regional Head resolves the dispute over the results of the Village Head Election and the resolution of the dispute over the results of the village head election by the Regional Head. The type of research used is normative legal research, with the approach used is the approach of legislation. Based on the results of the research found that the granting of authority to the Regional Head in order to resolve disputes over the results of the village head election, will raise new problems, the problem is related to the authority of the Regional Head as an executive state institution that is limited to the authority to carry out the Law only, and also the authority to resolve disputes over the results of village head elections will potentially be objective and not independent, Considering that the Regional Head is a state power formed by a political party, so his authority to resolve disputes over the results of the election of the village head will be political and impure to uphold the law

INTRODUCTION

Each Village has origin rights and traditional rights in regulating and managing the interests of the local community and plays a role in realizing the ideals of independence based on the 1945 Constitution of the Republic of Indonesia. Empowered to become strong, advanced, independent and democratic so as to create a strong foundation in implementing governance and development towards a just, prosperous and prosperous society.

The village as a legal community unit or public legal entity has authority, although not as broad as the authority possessed by the local government. Village authority is the right of the village to regulate, manage, and be responsible for government affairs and the interests of the local community. To carry out the functions of village authority in managing its government, it is necessary to have a village head who can carry out the functions of village administration, this is confirmed in the Village Law. The village head has a significant role in regulating the running of the village governance system in accordance with the state rules that have been mandated to the village head so as to create an independent and high-quality village

Village Head Election is a direct democratic party as is the case with the Presidential Election (Pilpres) and Regional Head Election (Pilakada), the potential for disputes or disputes over the results is very likely to occur in a Village Head Election. In Law Number 7 of 2017 concerning General Elections, it has been regulated in detail from nominations to the mechanism for resolving disputes over election results. However, different things are not found in the Village Law or its implementing regulations. At present, there is indeed an article in Law Number 6 of 2014 which regulates which institution or institution has the authority to resolve disputes over the results of the Village Head election, namely Article 37 paragraph (6) which reads: "In the event of a dispute over the results of the Village Head election, the Head Regions are obliged to resolve disputes within the period referred to in paragraph (5)"

It seems that in the presidential and regional elections there is potential for fraud in the electoral process both by election participants and candidates, as well as in village head elections the potential for violations is also unavoidable. In Article 37 Paragraph 5 of the Village Law it is stated that regional heads certify candidates elected as referred to in paragraph 3 to become the Village Head no later than 30 (thirty) days from the date of receipt of the submission of election results from the village head election committee in the form of a Regional Head decision. Followed by paragraph 6 in the event of a dispute over the results of the Village Head Election, the Regional Head must resolve the dispute within the period referred to in paragraph 5

Handing over dispute resolution over the Village head election results to the Regional Head raises legal issues. Regional heads are elected through a political process, have a support network down to the village level so that they cannot escape political interests. According to the author, such provisions are norms that are not clear and contain their own problems when it comes to resolving disputes over Pilkades results. First, the issue of independence. Submitting dispute resolution to the Regent or Mayor, so that it is feared that the

decision will not be truly independent, because from a political background it is very possible that the Regent or Mayor has personal ties and interests with one of the village head candidates.

Besides that, the settlement of disputes over the results of the village head election being submitted to the Regional Head will likely lead to a long and tortuous process. The Regional Head as a State administration official so that his decision in resolving disputes over the results of the Village head election is a state administration decision (*beschking*) because, the decision contains a legal action which is normally a stipulation and is individual-concrete, so that it can become the object of a state administrative court lawsuit. This opens up opportunities for a state administrative lawsuit against a regent or mayor's decision by a dissatisfied party. This means that the decision of the regent or mayor as referred to in the regulation cannot effectively resolve the dispute over the results of the Pilkades completely title "Dispute Resolution of Village Head Election Results"

THEORETICAL REVIEW

Based on the description in the background above, the problems to be discussed in this thesis are;

1. Regulating the authority of the Regional Head to resolve disputes over the results of the Village Head Election
2. Settlement of village head election disputes by the Regional Head.

Research Objectives

1. To analyze the arrangement of the authority of the Regional Head to resolve disputes over the results of the Village Head Election.
2. To analyze the resolution of disputes over the results of village head elections by the Regional Head.

METHODOLOGY

This type of research is legal research that examines and analyzes laws and regulations related to disputes over the results of this research. This research is legal research. Legal research is conducted to find solutions to legal issues that arise. The result to be achieved is to provide a description of what should be. 3 The approach used is the statutory approach (statute approach), conceptual approach (conceptual approach and case study approach).

Sources of legal materials consist of primary legal materials and secondary legal materials. The primary legal material is in the form of laws and regulations in particular relating to the issue of dispute resolution over the results of the head election village. Secondary legal materials in the form of literature, journals, research reports, scientific papers in the form of papers, magazines, newspapers relating to the issues being discussed.

DISCUSSION

Arrangements of Authorities of Regional Heads for Village Head Election Dispute Resolution

1. Village Head Election Dispute Resolution Arrangements

Indonesia is a country that adheres to the principles of democracy. With the principle of democracy, sovereignty is in the hands of the people, carried out for and on behalf of the people. The 1945 Constitution, which is one of the basic written laws, guarantees the implementation of democracy in Indonesia. In Article 1 paragraph (2) of the 1945 Constitution it is stated that "Sovereignty is in the hands of the people and implemented according to the Constitution." As a democratic country where the people are required to intervene (participate) in the administration of government and the state, one of which is in the form of political participation. Political participation is an activity to participate actively in political life by electing state leaders and directly or indirectly influencing government policy (public policy).

One of the manifestations of implementing democracy at the lowest level is the Pilkades (Village Head Election). Pilkades proves that sovereignty is fully in the hands of the people. The people determine their own future by individually electing the Village Head his own. This has been emphasized in Article 34 paragraph (1) of Law Number 6 of 2014 concerning Villages which states that the village head is directly elected by the villagers. This is one of the real manifestations of the implementation of democracy in Indonesia.

Regulations regarding villages, including those which include arrangements regarding settlement of village head election disputes, continue to experience development from time to time, the culmination of the developments referred to was when Law No. 6 of 2014 was enacted. However, before entering into the discussion of how to resolve village head election disputes after the enactment of Law No. 6/2014 concerning Villages.

Settlement of village head election disputes in Law No. 6 of 2014 is regulated in Article 37 paragraph (6) which explains that if there is a dispute related to village head elections, the Regional Head can resolve it within 30 days. Provisions regarding disputes over village head election results are also regulated

in PP No. 43 of 2014 concerning Regulations for Implementing Law No. 6 of 2014 concerning Villages, however this regulation also does not stipulate in detail regarding how the process of resolving disputes over village head election results. In this PP, provisions regarding village head election dispute resolution are regulated in Article 41 paragraph (7) which only states that: "In the event of village head election results disputes, the Regional Head must resolve the dispute within 30 (thirty) days"

In addition, the ministerial regulation also does not find the basis and/or form of settlement of disputes over the election of village head results, for this reason, in order to make it easier for readers to understand this article, the following will describe how the arrangements regarding settlement of disputes over village head results at this time will be described.

Article 41 paragraph (6) of Law No. 6 of 2014 concerning Villages explains that in the event of a dispute over the results of the Village Head election, the Regional Head is obliged to resolve the dispute within the period referred to in paragraph (5).

Article 41 paragraph (7) of Government Regulation No. 43 of 2014 concerning Regulations for Implementing Law Number 6 of 2014 concerning Villages explains, In the event of a dispute over the results of the Village head election, the Regional Head is required to resolve the dispute within 30 (thirty) days.

Permendagri No. 65 of 2017 concerning Amendments to Permendagri No. 112 of 2014 concerning PILKADES. Permendagri No 65 of 2017 Concerning Pilkades or regarding Amendments to Permendagri No 112 of 2014 concerning Village Head Elections are not regulated.

It can be seen from the 3 provisions above, both Law No. 6 of 2014, PP No. 43 of 2014 and Permendagri Number 65 of 2017 concerning Amendments to Permendagri No. 112 of 2014 concerning Village Head Elections there is not a single rule that states the form and mechanism of dispute resolution regarding the results of the village head election. The provisions as above only explain that a dispute over the village head election, its resolution is shown to be the authority of the Regional Head. However, with regard to procedures, mechanisms and forms of resolution, they are not clearly regulated, so that it can be emphasized that arrangements regarding procedures and mechanisms for village head election dispute resolution are absolutely left to the respective Regency and City regional governments.

2. Authority of the Regional Government in Resolving Village Head Election Disputes

One of the basic principles of village government regulation is democracy in the form of implementing free village head elections as a real manifestation of village community sovereignty over the sustainability of village governance. The implementation of village head elections must really produce a substantive democratic government and not just a ritual procession. For this reason, there must be clear and consistent rules of the game in the implementation of village head elections, including a dispute resolution mechanism that is certain to occur. Village head election disputes can occur between participants and organizers or between

participants and participants. It can even be said that everyone has the potential to be involved in village head election disputes.

Potential parties involved in a dispute include among others:

1. Village Head Election Organizers which include the Election Committee, the Election Technical Committee and the BPD as the person in charge of organizing the Village Head Election;
2. Election participants, namely Village Head Candidates, Village Head Candidates and their campaign team;
3. Village apparatus and other elements of village administration, which are not directly involved in the implementation of village head elections;
4. Voters and general public.

3. Legal Consequences That Arise to Village Heads Who Are Appointed Without Resolving Village Head Election Disputes First

Based on Law Number 6 of 2014 concerning Villages, the authority to carry out inauguration is in the hands of the regent, this is because Article 37 of the village law states that:

- (1) The candidate for Village Head who is declared elected is the candidate who has received the most votes.
- (2) The Village Head election committee determines the elected Village Head candidate.
- (3) The Village Head selection committee submits the names of the elected Village Head candidates to the Village Consultative Council no later than 7 (seven) days after the determination of the elected Village Head candidates as referred to in paragraph (2).
- (4) The Village Consultative Council no later than 7 (seven) days after receiving the election committee report shall submit the name of the Village Head candidate elected to the Regional Head.
- (5) The Regional Head certifies the elected Village Head candidate as referred to in paragraph (3) to become the Village Head no later than 30 (thirty) days from the date of receipt of the submission of election results from the Village Head election Committee in the form of a Regent/Mayor decision.
- (6) In the event of a dispute over the results of the Village Head election, the Regent/Mayor is obliged to resolve the dispute within the period referred to in paragraph (5).

The legal consequences that arise for a village head who is appointed without first having resolved the village head election dispute is a violation of one of the stages of several stages in the village head election.

RESULT

Settlement of Disputes on Village Head Election by Regional Head

1. Problems with Mechanisms for Dispute Resolution of Village Head Election Results According to Law No. 6 of 2014 concerning Villages.

So far, the rules for settlement of election results in Indonesia are still unclear, the law determines explicitly the model for resolving election disputes. However, after the formation of Law Number 32 of 2004 concerning Regional Government, then the issuance of Government Regulation Number 72 of 2005

concerning Villages, the point is seen. The meeting regarding the pilkades dispute resolution mechanism is regulated in the Regency/City Regional Regulation⁶ Regarding the settlement of disputes over the election results, there are provisions in Article 37 paragraphs (5) and (6) of the Village Law. This provision stipulates that if there is a dispute over election results, the Regional Head has the obligation to resolve the dispute within a specified maximum period of 30 (thirty) days from the date of receipt of the election results report from the organizing committee in the form of a Regional Head decision. Arrangements regarding the settlement of election disputes are also stipulated in Government Regulation Number 43 of 2014, where this regulation further emphasizes the parties who have the authority to resolve disputes, namely Regional Heads and the dispute settlement period is 30 (thirty) days. However, the most unfortunate thing about this government regulation is that Article 46 stipulates that further rules regarding village head elections are regulated by a Ministerial Regulation. Ministerial Regulation Number 65 of 2017 concerning Village Head Elections focuses more on provisions for the duration of the village head's term of office, the rules for holding village head elections, and interim village elections. Regarding village head election disputes, this cannot be separated from the provisions resolved by the village consultative body. In the provisions of Article 5 paragraph (2) letter f does not explain the mechanism regarding how to resolve the Pilkades dispute in detail. The same goes for the Rules Government Number 47 of 2015, Article 41 paragraph (7) contains the same norms and is only added to the time available for dispute resolution for thirty days, the provisions in full state as follows, "In the event of a dispute over the results of the village head election, the Regional Head must settle the dispute within 30 (thirty) days."

Such an arrangement contains its own problems when it comes to resolving disputes over Pilkades results. Submitting dispute resolution to the Regent or Mayor, so that it is feared that the decision will not be truly independent, because from a political background it is very possible that the Regent or Mayor has personal ties and interests with one of the village head candidates. When the Regent or Mayor is elected, the success team reaches the Villages. Meanwhile, Village Head Candidates can only be part of the Regent's or Mayor's Success Team. Thus the Regional Head is indebted to one of the Village Head candidates, so that his position is feared not to be independent.

Based on the description above, it is more appropriate if the process of resolving disputes over the results of the Pilkades is not handed over to the Regent or Mayor, but first needs to be given local means of settlement through a kind of village meeting or other term which basically refers to the deliberations of all village stakeholders, both the committee election organizers, village government elements, village representative bodies, traditional leaders and community leaders. Because the real democracy that took place in

The village governance system is a democracy imbued with the principles of togetherness, mutual cooperation and kinship.

There needs to be a relationship between the government and the village, especially in solving problems in the village such as village election disputes, therefore the government must take an approach to the village. The government's

presence should not be in the form of intervention or interference that ends up weakening village autonomy. However, the presence of the government in solving a problem in the scope of the village is to provide facilities as stated in the provisions of the 1945 Constitution of the Republic of Indonesia, namely respect and recognition. The facilities referred to in this case are through the formation of statutory regulations, the government provides facilities to strengthen the original village autonomy.

The state needs to take an action in facilitating local institutions by carrying out local emancipation through recognition by the state. One of the government's efforts to resolve disputes over village head election results is to provide facilities in the form of legislation equipped with a legal basis to recognize and regulate the village deliberation system as the first and foremost mechanism in efforts to resolve village election disputes. Thus creating a relationship between the government and the village, as well as strengthening local democracy in the village.

In *ius constituendum*, it is necessary to have new provisions in the resolution of disputes over the election results, it is hoped that there will be an agreement system of the parties to determine an independent third-party mediator. In this agreement, the parties agree on the selection of a third party regardless of taking sides in the negotiation of dispute resolution. The settlement process needs to be limited to a maximum of 7 (seven) days, in order to avoid the potential for no agreement being reached.

Based on the description above, it is more appropriate if the process of resolving disputes over the results of the *Pilkades* is not handed over to the Regent or Mayor, but first needs to be given local means of settlement through a kind of village meeting or other term which basically refers to the deliberations of all village stakeholders, both the organizing committee elections, village government elements, village representative bodies, traditional leaders and community leaders. Because the true democracy that takes place in the village government system is a democracy imbued with the principles of togetherness, mutual cooperation, and kinship.

If indeed the local settlement process still cannot end the election dispute, then the last resort is to involve a court institution for the dispute resolution process. The election of judicial institutions is common and rational in resolving disputes over the results of the election of political leaders, such as disputes over the results of regional head elections and presidential elections which are resolved by the Constitutional Court. As for the matter of which court will be authorized to resolve, in the view of the author, the State Administrative Court (PTUN) is more relevant for consideration given this authority by the legislators, because as has developed in practice before the issuance of the Law Villages, State Administrative Court decides disputes over *pilkades* results (example in Mataram TUN Decision dated 24 June 2008, SK No. 9/G.TUN/2008/PTUN.MTR). It is time for the legislators to revise the provisions of the Village Law which regulate the settlement of disputes over *Pilkades* results by handing over the mechanism not solely to the Regional Government Cq. Regents and Mayors, for the realization of complete village autonomy.

2. Settlement of Village Head Election Results Disputes

The basis for village regulation is the 1945 Constitution of the Republic of Indonesia. The Constitution stipulates that the state recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with community development and the principles of the Unitary State of the Republic of Indonesia, and mandates this to be regulated in law. Historically the village was the forerunner to the formation of law society and government in Indonesia long before the unitary state in the form of a republic was formed. Social structures, indigenous peoples, customary laws, developed local values have become social institutions which is very important in building a common life among its citizens.

As proof of the existence of a village or what is referred to by another name that existed long before the State of Indonesia was formed, the elucidation of Article 18 of the 1945 Constitution of the Republic of Indonesia before the amendment states that: "In the territory of the State of Indonesia there are more or less 250 *zelfbesturendelandschappen* and *volksgemeenschappen*, such as villages in Java and Bali, *nagari* in Minangkabau, hamlets and clans in Palembang and so on. these areas have an original composition and therefore can be considered as areas that are special.

Law Number 6 of 2014 concerning Villages was enacted on January 15 2014 as a renewal of regulations governing Villages. Sutoro Eko revealed that: "Law Number 6 of 2014 concerning Villages contains a noble mission, namely to protect and empower them to become strong, advanced, independent and democratic so that they can create a strong foundation in carrying out governance and development towards a just, prosperous society, and prosperous."⁸

The village as a legal community unit or public legal entity has authority, although not as wide as the authority possessed by the regional government. Village authority is the right of the village to regulate, manage, and be responsible for government affairs and the interests of the local community.⁹

Village autonomy is genuine, unanimous and complete autonomy and is not a gift from the government. On the other hand, the government is obliged to respect the original autonomy possessed by the village. As a legal community unit that has an original structure based on privileges, the village can carry out legal actions both public law and civil law, have wealth, property and can be prosecuted and prosecuted before the court.

In the history of village head election dispute resolution arrangements in Indonesia, there has been no law that explicitly regulates the mechanism for dispute resolution over village head election results only when Law Number 32 of 2004 concerning Regional Government comes into effect.

In Government Regulation Number 43 of 2014 concerning Regulations for Implementing Law Number 6 of 2014 concerning Villages, it again does not regulate in detail how the mechanism for resolving disputes over the results of Village Head Elections, Government Regulation Number 43 of 2014 only regulates the settlement period and institutions which party has the authority to resolve this provision contained in Article 41 paragraph (7) namely: "In the event of a dispute over the results of the Village head election, the Regional Head is obliged to resolve

the dispute within 30 (thirty) days." settlement of village head election results disputes. And Article 46 of Government Regulation Number 43 of 2014 states that "Further provisions regarding the election of Village Heads are regulated by a Ministerial Regulation".

In Indonesia the term ADR (alternative dispute resolution) is relatively new to be known but actually dispute resolution is by consensus it has long been carried out by the community which basically emphasizes efforts to reach consensus, kinship, peace, and so on.

In article 1 number 10 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution defines: "Alternative Dispute Resolution is an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely settlements outside the court by way of consultation, negotiation, mediation, conciliation, or expert judgment."

The most important thing in resolving disputes over the results of village head elections is which institution has the authority to resolve them, not to intervene or interfere with the district/city regional government as an institution that resolves this matter, of course this is not in accordance with the principle of genuine autonomy as meant in the Constitution of the Republic of Indonesia. Indonesia where the State respects and recognizes the origin rights of indigenous peoples, in this case villages.

The establishment of the Village Head Election Disputes Monitoring Agency is a matter of independence and efficiency in the formation and in the ongoing settlement process, the existence of the Village Head Election Results Dispute Monitoring Agency must be understood as only ad hoc and special, ad hoc in nature because it is only formed and works during the implementation of village head elections simultaneously (elections for village heads can be held simultaneously depending on the district/city concerned).

3. Analysis of Village Head Election Dispute Resolution Cases.

In Law Number 6 of 2014, Article 37 paragraph (6) only stipulates "in the event of a dispute over the results of the Village Head election, the Regent/Mayor is obliged to resolve the dispute within the period referred to in paragraph (5)", while in paragraph (5) Article 37 stipulates a maximum period of 30 (thirty) days from the date of receipt of submission of election results from the Village Head election committee. So Article 37 paragraph (5) and paragraph (6) of Law Number 6 of 2014 only determines who is authorized, namely the Regent/Mayor and the time period allocated, which is 30 (thirty) days to resolve disputes over Pilkades results, while how the procedures, procedures and mechanisms related to the settlement of election results to villages are not regulated at all.

Likewise Government Regulation Number 43 of 2014 Junto Government Regulation Number 47 of 2015 as a follow-up to Law Number 6 of 2014 also does not regulate the issue of resolving disputes over Pilkades results. In this Government Regulation there are only 7 (seven) articles, namely: Article 40 to Article 46 which regulates the issue of procedures for electing village heads and only 1 (one) paragraph, namely paragraph (7) in Article 41 whose norms are the same as Article 37 paragraph (6) of Law Number 6 of 2014, namely: "in the event of a dispute over the results of the Village head election, the regent/mayor is

obliged to resolve the dispute within 30 (thirty) days". As a follow-up to Government Regulation Number 43 of 2014, the Minister of Internal Affairs

The country issued Permendagri Number 112 of 2014 which was amended by Permendagri Number 65 of 2017. This Permendagri was issued specifically to regulate village head election issues, but it is very unfortunate that of the 50 (fifty) articles contained in this Regulation of the Minister of Home Affairs, it is not even mentioned in the slightest regarding the issue of resolving disputes over Pilkades results, let alone solutions to violations of the Pilkades implementation process. Even if there are provisions that pertain to settlement issues related to the implementation of village head elections in general, they are also very vague as stipulated in Article 5 paragraph (2) letter f of Permendagri No. 112 of 2014 as one of the tasks of the Regency/City Pilkades Committee which stipulates that "electoral committees at the Regency/City have tasks including facilitating the resolution of village head election issues at the district/city level". Of course, this provision is still very vague as to what is meant by "facilitating the resolution of village head elections at the district/city level".

CONCLUSIONS AND RECOMMENDATIONS

Conclusions

Based on the research and discussion obtained in the preparation of this thesis, the authors draw the following conclusions:

(1) The granting of authority to regional heads in the context of resolving disputes over the results of village head elections will raise new problems, these problems are related to the authority of regional heads as executive state institutions which are limited to the authority to implement the Law alone, as well as the authority to resolve disputes over the results of village head elections will potentially be not objective and not independent, considering that the Regional Head is a state power formed by political parties, so that his authority to resolve disputes over village head election results will be politically nuanced and not pure law enforcement. (2) Settlement of village head election disputes that prioritize deliberations in accordance with the principle of genuine village autonomy must be implemented by the government. The deliberation mechanism is a mechanism that existed before Indonesia's independence or since the customary law community unit called the village or other names existed and has grown strong roots so that it needs to be maintained and recognized by the state through law. If this mechanism fails, the deliberation mechanism for resolving disputes over the results of the village head election will be followed by the first alternative, namely the appointment of a neutral third party, and the second and last alternative, namely through a special court for settlement like this, it is hoped that this can be regulated in laws and regulations and implemented.

Recommendation

While the suggestions that can be given are: (1) Based on the conclusions above, the advice that the author can give is so that the Government of the Republic of Indonesia can consider establishing a special judicial institution to adjudicate village head election disputes, this is shown to create synchronization between state power, where in the context of law enforcement it is the realm and becomes the authority of state power in the judicial sector with the principle of checks and balance can be well created. (2) In the context of organizing pilkades, the Village Consultative Body (BPD) shall first form a Village Head Election Committee consisting of community organization officials and community leaders. This committee has the task of conducting screening and screening of prospective candidates based on the specified requirements, carrying out voting, and reporting the implementation of the Village Head election to the BPD.

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