

Administrative Dispute Settlement Local Leaders Election in Indonesia

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ABSTRACT

The legal norms for resolving administrative disputes over local leaders elections in Indonesia are stipulated in the legislation. The Provincial and District/City Election Supervisory Agency is in charge of resolving administrative disputes, and the decisions are binding. The research problems in this study are: 1) How is the rationale for the legal norms in the resolution of administrative disputes in the regional local leaders elections? and 2) Can a binding legal decision be canceled or corrected?. This research employed a normative juridical analysis. The results showed the rationalization of legal norms of administrative dispute resolution is appropriate from the philosophical, juridical, sociological and political aspects, that are based on the principles of Pancasila as the state law. Provincial and Regency / City Election Supervisory Agency has the attribute and absolute authority to receive, examine and decide election disputes. Its role and function is to conduct a complete assessment of the aspects of certainty and usefulness. Decisions are final and binding. They must be implemented and cannot be canceled except by law and based on authority. Therefore, it is hoped that this authority must be carried out credibly and competently. It should also be consistent with the principles of law and good governance, while reducing the remaining weaknesses.

Keywords : *administrative disputes, regional head elections*

1. INTRODUCTION

Elections are a series of political activities carried out democratically to accommodate the interests of the community, which are then formulated in various forms of policy. Elections are carried out to represent the people as the holders of sovereignty, especially in determining the leader in the context of the realization of Pancasila democracy [1].

In the regional elections in Indonesia, the electoral justice system was developed to prevent and identify "irregularities" in elections, as well as a means and mechanism to correct these irregularities and provide sanctions for violators [2]. Step by step the elections often lead to disputes or conflicts of legal interests between the participants and the Provincial and Regency / City Election Commission as a result of issuing legal actions, in the form of decisions. Administrative disputes are one of the disputes. The settlement mechanism is conducted by administrative appeal following Law No. 8/2015.

This dispute resolution norm is something new and certainly has both legal consequences and effects. In this law, it is determined that the Election supervisor is in charge to accept, examine and decide the disputes occurred in the election process. In reality, administrative disputes often arise during the nomination or registration stages of the candidates. The function of the election supervisory agency is equal to an administrative appeal where the

decision made is binding on the parties if the claim is granted.

2. The Problem

1. How is the rationale for the legal norms in the resolution of administrative disputes in the regional local leaders elections?
2. Can a binding legal decision be canceled or corrected?

This research was an analytical descriptive and normative juridical research.

3. Results And Discussion

3.1. Ratio Legis Norms

Dispute is " a conflict between two or more parties originating from different perceptions of an interest or property that can have legal consequences for both" [3]. An understanding this dispute, can be divided into several elements, including [4] : (1) two or more parties involved; (2) the equal relationship or interests towards certain objects; (3) the contradictions and differences in perception; and (4) legal consequences.

However, the definition of the concept of

election disputes, in the Bawaslu Regulation Number 15 Year 2017 in article 4 paragraph 1), defines that disputes arising due to two reasons. First, the differences in interpretation or a lack of clarity regarding a problem of activities and or events related to the election implementation, as regulated in the provisions and legislation. Second, the different recognition and or rejection of avoidance between election participants or between election participants and the election organizer; and provincial or district / city election agency. Based on the two definition above, disputes the existence of two or more parties, a relationship with a particular problem or object, a conflict / recognition of different / rejection / avoidance and the existence of legal consequences.

Referring to the concept of the rule of law F.J. Sthal, who adopted the liberal thinking of J.J Rosseau, in his book *Philosophie des Recht* (1878). It revealed that one of the main elements of the state law is that if the government violates the rights of citizens in implementing its authority, there must be an administrative court that resolves it. Then the legal norms for administrative dispute resolution regulated in Law Number 8 of 2015 are the embodiment of the state law, that is expected to provide access for the public to seek justice. The aim is to guarantee and protect the citizens' rights of legal actions from the general election commission when issuing legal decisions that harm the legal interests of the electoral participants (candidates).

3.1.1. *Basic Norms*

What is the basis of logical considerations so that legal norms for dispute resolution are needed in the regional leaders election process in Indonesia. Discussing the logical basis of legal norms for resolving disputes over regional leaders elections is considered appropriate by considering its validity. As for the basis of this norm, it can be seen from four main aspects why the norms of the law is applied. The basis of the legal norms for dispute resolution is applied on the basis of philosophical, juridical, sociological and political considerations. These four basic considerations form the basis so that they are logically acceptable and valid.

3.1.2. *Form and Method of Settlement of Disputes*

The pattern of resolving legal disputes in Indonesia generally applies two available dispute resolution systems, namely: using the adjudication channel, court or arbitration and the non-court or non-court route. Dispute resolution by adjudication can be divided into two: public and private law adjudication.

If you look at these two types, the nature of the administrative adjudication of elections to the regions is included in public adjudication because it is done through state institutions that are not purely judicial. The parties cannot choose and determine their own judges with the disparity already set in the rules. The parties to the

dispute are candidates or participants in the election and the election organizer on the other party. The plaintiff pursues the path of a state institution that is submitted to the election supervisory agency to resolve the disputed object. Election commissions is positioned as state administration officials who carry out government functions in the area of regional head elections. This condition is recognized by the lawmaker because of the potential for conflicts. Conflicts and legal disputes in the process and stages always occurs.

Lawmakers are aware that adequate means should be available to resolve the conflicts/disputes that occur the in the process of organizing regional leaders elections. This argument is in accordance with the theory of the state law, stating that if the government violates the rights of citizens in implementing its authority, there must be an administrative court that resolves it. . [6]

Referring to this theory, every dispute that arises in the regional leaders election process, requires a legal structure of dispute resolution, namely the election supervisory agency that carries out artificial adjudication procedures in the form of mini trials. The object of the dispute is the decision issued by the election commission in the process of conducting the election. Every decision made by this institution has the opportunity to be sued or refuted by candidates or election participants who feel disadvantaged over the decision.

According to Jimly Asshiddiqie [7] , the state as a public power organization can make three types of legally binding decisions for legal subjects related to those decisions. They are decisions that are general and abstract, usually regulating; the individual and concrete decisions containing administrative decisions (*beschikking*); or decisions in the form of 'vonnis' judge commonly referred to as the verdict.

Based on article 142 (b) the electoral law is described as : a) disputes b) election participants c) election organizers d) decisions and e) provincial and district / city election commissions. Based on this identification, it is related to the formulation of norm provisions in Law Number 5, the Year 1986, concerning state administrative justice. It will be clear that the decision issued by the general election commission is a state administrative decision that can be disputed because it meets the decision criteria as long as the stipulation is written, concrete, individual, final and have legal consequences for a person or legal entity. This decision is the object of the dispute adopted by the administrative appeals mechanism to the election supervisory agency. The method of resolution is carried out by a mechanism to bring the parties together, offer alternative solutions or decide on the subject of the dispute if no consensus is reached.

3.2 *Principles of Justice Simple, Fast and Low Cost*

M. Yahya Harahap, gave a firm explanation about the meaning of a simple, fast, and low cost court, as follows.

"... an examination process that relatively does not take years to do following the simplicity of the procedural law itself. What already simple should not be deliberately made difficult by the judge to have a complicated and prolong examination process. Do not let the examination process delayed several times for various illegal reasons [8]".

Also it is linked to the concept of mutual cooperation which has been raised as a political concept of the Indonesian people, the initial source was found in Soekarno [9] and Soepomo's [10] speech at the session of the Indonesian Independence Preparatory Committee on June 1, 1945. Soekarno said: "... *The country of Indonesia that we found must be a country of mutual cooperation! How great! mutual cooperation country! ...*". Likewise Soepomo said: "... *In an atmosphere of unity between the people and their leaders between the groups of the people with each other, all groups are covered by the spirit of mutual cooperation and the spirit of kinship ...*".

If we relate it to article 143 of law on regional elections, stating [11]: "(1) Provincial and Regency / City Election Supervisory Bodies, etc.

... carry out dispute resolution through stages (a) receiving and reviewing reports or findings; and (b) bring together disputing parties to reach agreement through deliberation and consensus"

So, the experts' opinions previously mentioned are the relevance underlying the legal norms of dispute resolution. The goal is that the spirit of kinship and mutual cooperation is maintained and put forward following the philosophy of the Pancasila state law. The method of resolving disputes through deliberation and consensus must actually be encouraged effectively as a means to correct mistakes made by state officials, especially in the area of regional leaders elections. Errors or mistakes made by election commission officials, either at the provincial or at the district/city level can be examined in the administrative appeals mechanism at the election supervisory agency. The purpose of establishing an administrative justice mechanism for regional leaders elections is always related to the philosophy of the Indonesian state, namely creating a kinship spirit and mutual cooperation through deliberations for consensus. The aspects tested are the substance, procedures and authority of the election commission officials in issuing decisions that are the object of the dispute.

The purpose of establishing administrative justice, built on the basis of a liberal and democratic philosophy, is to provide legal protection for various individualistic interests. The administrative justice aims to prevent acts of state administration which are against the law and are detrimental. It is also repressively directed to

the acts of state administration that are against the law and harming the people so that it is necessary and must be subject to sanctions. This also applies if administrative disputes occur in regional leaders elections in Indonesia.

3.3 *The Election Commander's Decision is Binding*

The role of election supervisors in resolving disputes is no longer categorized as an informal mechanism because it has been formally institutionalized with legislation related to general elections and regional head elections. Disputes that arise can be due to ignorance or misunderstanding, that can be resolved earlier through the mechanisms regulated and compiled without bringing this case to state courts. This special justice mechanism is what referred to as alternative dispute resolution through an appeal mechanism for regional leaders election administration.

In the law on regional leaders election there are three articles that become the norm for the administration of regional leaders election administrative disputes, namely article 142 to 144. Based on the regulation, the elements of the norms are type of election dispute, legal authority authorized to settle disputes, deadline for settlement, the method of resolution, the nature of the decision and the principle of accountability. However, some issues have not been firmly resolved, including which decisions can be the object of the dispute. There is no clear boundary so that it can lead to broad interpretations. Whereas when referring to the theory by Roscoe Pound, legal certainty implies an understanding of the general rules that make individuals know what actions may or may not be done. What may and may not be the object of an administrative dispute to an administrative appeals agency must be clear. Of course, in addition to the limitations of the type of decision, there must be a qualitative limit, a decision that is detrimental to the legal interests directly and can be proven clearly which should be the object of this legal administrative dispute.

However, according to Jimly: "*if the provisions are not enough and further regulation is needed, the delegation of regulatory authority can only be done with three alternative conditions, namely (a) there is a strict order regarding the subject of the implementing agency, delegated with the authority, and the form of implementing regulations for presenting the delegated regulatory materials, (b) the existence of strict instructions regarding the form of implementing regulations for presenting the delegated regulatory materials, or (c) the existence of strict instructions regarding the delegation of authority from the law or the law-making agency to the agency that receives the authority delegation, without mentioning the form of regulations delegated [12]*" Therefore, the provisions on the procedure for dispute resolution regulated by an Election Supervisory Body Regulation are a necessity because they are strictly ordered by the electoral law to

provide interpretations and conceptual limitations on the unclear matter.

Furthermore, the construction of norms determining the decisions of election supervisory bodies, that are final and binding can be seen from both positive and negative sides. The positive side is that the appeals panel will conduct a complete assessment of a decision issued both in terms of legality and aspects of opportunities or benefits. The parties will not be faced the outcome of a win or lose decision but a deliberative approach. On the other hand, there is a drawback of the assessment objectivity because the State Agency/Official who issues the decision sometimes have direct or indirect interests related to the issue. Thus, it may reduce the robustness of the assessment.

Furthermore, the meaning of the final and philosophically binding judicial decision can be seen from three segments, namely: realizing legal certainty, the election supervisor acts as a final dispute solver, and as a tool of social control. However, this kind of decision can have both advantages and disadvantages. This decision can be advantageous in ending a legal dispute and maintaining the principle of checks and controlling. On the other hand, it provides no access to legal efforts for the respondents and creates a legal vacuum.

Referring to Lawrence M. Friedman [13], in relation to the election administration system, the general election commission, the election supervisory agency and the electoral honorary council must be "united" in a unified election management function^[14]. These three institutions are internal agencies that organize the elections. One unit of the implementation function must be connected and mutually supportive. The principles of equality and independence form the basis of these three agencies so they do not interfere with each other's authority or negate the authority of other institutions. The equality means that there is no supervising or superiority. Each must run in its own job descriptions following the legality of authority determined by the state law. Therefore, it can be said that administrative dispute decisions that are final and binding are absolute authority

4. SUGGESTIONS

This study presents some following recommendations.

1. It is necessary to emphasize and clarify the authority to form the Bawaslu Regulation, the types of decisions and the qualifications limitation of decisions that can be subject to disputes.
2. A uniform understanding between the stakeholders, including the Supreme Court, the General Election Commission, the Election Supervisory Agency, the Election Organizing Board and the Legislative Election, concerning the position of the final and binding decision of the election supervisory

agency in the resolution of administrative disputes over regional leaders elections. regulated and may not be intervened by anyone, including the unauthorized institutions /agencies. Such legal norms must be guaranteed and protected by the sake of legal certainty and a sense of justice in society. Revocation or correction of the law can be done and may only be carried out by law or must be done based on authority.

5. Conclusion

From the description and analysis previously presented, the following conclusions are drawn:

1. Rationalization of legal norms for administrative dispute resolution is appropriate and logically acceptable. The logical argument has legitimacy of validity with philosophical, juridical, sociological and political considerations. The aim is to guarantee the rights of citizens in seeking justice (access to justice) and legal protection for citizens as elements of the state law based on Pancasila.
2. The election supervisory agency is positioned as an administrative appeal to assess the object of the election commission decision that endanger the legal rights of candidates or participants in the election. The assessment is fully conducted in terms of certainty and usefulness through a pseudo judicial mechanism with the principle of simple, fast and free of charge. The administrative appeal's decision is final and binding which means that the decision is no longer a legal remedy and has an executive value (mandatory) if granted. The nature of the final and binding decision is to realize the legal certainty.

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- [12] Jimly Asshiddiqie, *Op.Cit.* p. 266
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- [14] See and compare Article 1 of Law Number 15 of 2011 concerning election organizers as amended by Law Number 7 of 2017, point 5) reads:
Election Organizer is an institution that organizes General Elections consisting of the General Election Commission and Election Supervisory Board as one the unitary function of the General Election ...
etc "*in point 22*) reads:" *The Honorary Board of the Election Provider, hereinafter referred to as DKPP, is the institution tasked with dealing with violations of the Election Organizational Code of Ethics and constitutes a unitary function of the General Election*".