

Disputes Settlement on the Village Head Election (A Study on Positive Law and Local Wisdom)

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ABSTRACT--*This study aims to find out and analyze disputes settlement on the village head election based on the applicable positive law in Indonesia as well as disputes settlement mechanism on the village head election based on local wisdom values, especially in Kuningan District which is based on Kuningan District Regional Regulation No. 4 of 2017 concerning Amendment to Regional Regulation No. 14 of 2015 concerning Village Head Election. The method used in this study was a normative juridical method which is a research on the problem by looking at applicable legislations. One of the uses of legal research is to find out how the law regulates a matter and how the rule of law is applied. The results indicated that the disputes settlement mechanism on the village head election, both relating to the stages and the results of the election, is submitted to the Regent/Mayor.*

Keywords: *disputes, village head election, positive law, local wisdom*

I. INTRODUCTION

Democracy is a conception of humanity and social relations that was born from the history of human civilization throughout the world [1]. In this modern era, almost all countries claim to be the followers of democracy. According to a study conducted by UNESCO in 1994, it was probably for the first time in the history where democracy is declared to be the best and the most appropriate name for all systems of political and social organization [2]. Indeed, it cannot be denied that democracy is the best principle and system in the political and state administration system [3]. There is almost no administration system that is willing to accept an undemocratic stamp so that all administration systems do run elections. It means that the implementation of elections is a characteristics of democracy. The reason is that election is considered to give birth to a representative of people's aspirations which are closely related to legitimacy for the government [4].

The era of reform has brought a great change on the administration system in Indonesia, especially at the level of regional and village government in the spirit of promoting community participation. The implementation of the regional autonomy law is expected to create a closer relation between the government and the community as well as the private sectors so that the synergy

established between the three pillars can lead to the realization of good governance. Further, the change on the administration system from centralized to decentralized is expected to be able to increase community participation in the administration of village governance [5].

Village government has a crucial role in managing social processes in the community. The main task that must be carried out by the Village Government is how to create a democratic life and provide good social services so that the community can have a prosperous, peaceful, safe and fair life. The administration of village governance is a subsystem of the governance system so that villages have the authority to regulate and manage the interests of their community [6]. Democracy in the context of Village Head Election (Pilkades) can be understood as recognition of the diversity of political attitudes of the community in the frame of democracy at village level. Village Head Election (Pilkades) is a form of direct democracy in village as the community participates in electing leaders in their villages. Village Head Election, which is direct, public, free, confidential, honest and fair, has been done for a long time and has been understood as recognition of the diversity of political attitudes of the community in the frame of democracy at village level. Yet, the implementation of general elections in Indonesia has caused various disputes [7].

The emergence of disputes on Village Head Election begins with dissatisfaction, suspicion of fraud and manipulation, and excessive reaction of a number of interested parties over a case. Fanaticism of a community group, suspicion, and the loss of mutual respect are attitudes leading to disputes on Village Head Election. Referring to the above description, the main issues discussed in this study are; (1) how is the settlement of a dispute on the village head election based on the applicable positive law in Indonesia? and (2) how is the mechanism of a dispute settlement on the village head election based on local wisdom values, especially in Kuningan District which is based on Kuningan District Regional Regulation?

II. RESEARCH METHOD

The term research method consists of two words, namely method and research. The word

‘method’ comes from the Greek *methodos* which means a way. Method is a scientific activity related to a way of working (systematic) to understand a subject or object of research in an effort to find answer that can be justified scientifically, including its validity [8]. Meanwhile, research is a process of collecting and analyzing data carried out systematically to achieve a certain goal. The data collection and analysis is carried out scientifically, either quantitative and qualitative, experimental and non-experimental or interactive and non-interactive [9]. This research applied a normative juridical approach which is a research on the problem by looking at applicable legislations. One of the uses of legal research is to find out how the law regulates a matter and how the rule of law is applied. The collected data will be presented selectively and systematically and then analyzed by employing descriptive analysis method. It means that the collected legal materials are used to describe the issues.

III. FINDINGS AND DISCUSSION

A. *The settlement of a dispute on the village head election based on the applicable positive law in Indonesia*

1. *The 1945 Constitution of the Republic of Indonesia;*

Article 18 Paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that the Unitary State of the Republic of Indonesia is divided into provinces and a province is divided into district and city, with each province, district and city having its own regional administration, regulated by law. Based on this provision, it can be understood that the Unitary State of the Republic of Indonesia is divided into hierarchical regions, namely provinces, districts and cities in accordance with the principle of territorial or regional division of power. In this case, each province and district/city has its own regional administration regulated by law. Here, the term administration is in a broad sense so that it is not only related to executive government, such as the notion of administration in the political system in the United States which is different from the notion of administration in the UK in which it is only related to a narrow sense, namely executive government. Besides, Article 18B Paragraph (2) states that the state shall recognize and respect, to be regulated by law, the homogeneity of societies with customary law along with their traditional rights for as they remain in existence and in agreement with societal development and with the principle of the Unitary State of the

Republic of Indonesia. From this provision, it can be understood that the state recognizes and respects the homogeneity of societies with customary law along with their traditional rights as long as they meet four conditions, namely (1) they remain in existence, (2) in agreement with societal development, (3) in agreement with or not contrary to the principle of the Unitary State of the Republic of Indonesia, and (4) in agreement with law. The Unity of Indigenous and Tribal Peoples (KMHA) is essentially more than an indigenous people unit that is only traditional in nature. KMHA is the Unity of Indigenous and Tribal Peoples in which legal rights and legal obligations are reciprocal between the community unit and the surrounding environment as well as the state [10].

With the existence of regional autonomy, region has the right to regulate and run its own administration following the applicable rules. Hence, all administration processes are handed over to regions, including the Village Head Election which is then regulated by Regional Regulation. According to Article 1 Paragraph (1) of Law No. 7 of 2017 concerning General Election, it is stated that General Election, hereinafter referred to as election, is a sovereignty means of the community to elect members of the People’s Representative Council, members of the Regional Representative Council as well as the President and Vice President which is carried out directly, publicly, freely, confidentially, honestly and fairly in the Unitary State of the Republic of Indonesia based on the Pancasila and the 1945 Constitution of the Republic of Indonesia.

Yet, in general, the term ‘election’ often refers to legislative and presidential elections held every 5 years. The participation of the community in elections is one of the characteristics of democratic governance. Village head election, hereinafter referred to as Pilkades, must be held based on the principles of direct, public, free, confidential, honest and fair in which its implementation is the same as Presidential and Regional Head Election although Pilkades is not specifically regulated in Law No. 8 of 2012 concerning General Election. Pilkades seems to be a stepchild in elections in Indonesia, whereas Pilkades is more vulnerable compared to other elections. However, Pilkades is now specifically regulated in Law No. 6 of 2014 concerning Village. Beforehand, Pilkades was regulated in Law No. 32 of 2004

concerning Regional Government which contains regulation on autonomous region recognizing village government as a sub-system of the administration in which village has the authority to take care of its households [11].

2. *Law No. 6 of 2014 concerning Village;*

Pilkades, as stipulated in Law No. 6 of 2014 concerning Village, begins with the stages of Preparation, Nomination, Voting, and Determination of the elected candidates. The disputes on the Village Head Election are divided into two parts, namely; 1) dispute in the preparation stage relating to whether or not the requirements of Village Head Candidate are met (Administrative Process); and 2) dispute concerning the election results which is closely related to the stages of voting and determination of the elected candidates. In the event of a dispute over the election results, the Regent shall settle the dispute no more than 30 (thirty) days from the date of receipt of the submission of the Village Head election results from the election committee in the form of decision of Regent/Mayor. The mechanism of a dispute settlement over the Village Head election results is specifically regulated in Article 37 Paragraph (6) of Law No. 6 of 2014 concerning Village stating that: "In the event of a dispute over the Village Head election results, the Regent/Mayor shall settle the dispute within the period as referred to in paragraph (5)".

3. *Government Regulation of the Republic of Indonesia No. 47 of 2015;*

Article 41 Paragraph (7) states "in the event of a dispute over the results of the election of village head, regent/mayor shall settle the dispute within 30 (thirty) days". Accordingly, it can be concluded that the mechanism of disputes settlement over the Village Head election results is only limited to the authorized officials and period of time. Thus, a dispute settlement over the Village Head election results has not been accommodated.

4. *Kuningan District Regional Regulation No. 4 of 2017 concerning Village Head Election*

Article 2 of Kuningan District Regional Regulation No. 4 of 2017 concerning Village Head Election states that Village Head Election is carried out through the stages of: a. preparation; b. nomination; c. voting; and d.

determination. As for the implementation, Kuningan District regional government issued Kuningan District Regional Regulation No. 37 of 2017 concerning the Implementation of Kuningan District Regional Regulation No. 4 of 2017 concerning Village Head Election. Both in Regional Regulations and Kuningan District Regional Regulation No. 37 of 2017 concerning Village Head Election, there is no chapter that explicitly regulates the settlement of a dispute of the election of village head. Besides, there is no law that specifically regulates how courts resolve Pilkades disputes. Based on the explanation, related to the mechanism of the settlement of Pilkades disputes, both related to the stages and the results of the election, especially when the settlement of a dispute is submitted to Regent/Mayor, it is feared that there will be a conflict of interests, for example the elected candidate is a candidate who has an emotional or political relationship with Regent/Mayor.

B. *The Mechanism of a dispute settlement on the village head election based on local wisdom values, especially in Kuningan District*

Conflict or dispute is a result of different opinion or perception between two or more parties. Here, perception is a portrayal of the environment based on the knowledge a person has, while environment itself can be physical and social environment. A conflict develops into a dispute if the aggrieved party has expressed dissatisfaction or concern, either directly or indirectly, to the party deemed as the cause of the loss.

A dispute cannot be separated from a conflict. Hence, if there is a dispute, there must be a conflict. Basically, there are so many conflicts in everyday life, either a small conflict or a large and severe conflict. Everyone has their own conflicts because life will always be related to conflict. Accordingly, it is necessary to learn what dispute is and how to resolve it. According to Ali Achmad, a dispute is a conflict between two or more parties which starts from different perceptions about an interest or property right that can lead to legal consequences for both parties [12].

Indonesia has a variety of ethnic groups with a diverse cultural ownership. Hence, each region has its own culture which is popularly known as 'local wisdom' or 'cultural identity' [13]. The term 'local wisdom' can be understood as local ideas embedded and followed by the members of a community [14].

Local wisdom is important to be discussed as it is the basic idea of a culture of a community/custom/region. This issue needs to be explored and developed to foster cultural identity, tolerance, independence and responsibility. Local wisdom can be in the form of oral, written, symbolic, traditional ritual ceremonies, performances, pictures, etc. which are conveyed or carried on for generations. The values of local wisdom are feared to disappear or experience extinction if they are not explored and conveyed by a generation to the next generation.

The values of local wisdom describe the relationship among humans in society and the state. There is a term in Sundanese culture, namely '*hirup sauyunan*', which shows the attitude of togetherness and mutual cooperation. Further, a Sundanese proverb insists that in living together, a person must "*Sareundeuk saigel, sabobot sapihanean. Ka cai jadi salewi ka darat jadi salebak.*" It means that a person must show attitudes and behaviors that are able to work together in a compact and harmonious manner. It is the principle of life which is based on an attitude of responsibility and togetherness; the attitude that must be applied in life, both in family, neighbor or community.

Human relations in social community must be reflected in "*kawas gula jeung peueut*". It means that a person must live in harmony with one another and can respect one another. Therefore, a person must realize and understand the purpose of social life and must hold to the principles of good values and honesty. As a Sundanese proverb says "*Tong marebutkeun paisan kosong.*" It means that we shall not argue on an unclear topic. Besides, in social life, a person must be able to maintain his personality and self-identity as stated in a Sundanese proverb that "*ulah ngaliarkeun taleus ateul.*" Concerning human relations with the state, humans as citizens are the main elements of the state. As citizens, humans must uphold the laws and regulations.

In carrying out the administration, the government often faces various problems, including political, economic, developmental, and environmental problems. Yet, these problems can be resolved by deliberation. Kuningan District is one of the districts in West Java where the majority of the residents are Sundanese. In 2019, Kuningan District Regional Government held democratic elections of Village Head in 175 villages. This democratic party is possible to cause disputes. Therefore, the authors try to provide alternative disputes settlement by applying Sundanese customary procedures in accordance with the culture in Kuningan District, namely:

1. ***Kudu nyanghulu ka hukum, nunjang ka nagara, mupakat ka balarea*** (must lead to the law, lead to the state, and hold deliberation to solve problem);
2. ***Bengkung ngariung bongkok ngaronyok*** (being cooperative in facing problems or solving problems collaboratively and harmoniously);
3. ***Nyuhunkeun bobot pangayon timbang taraje*** (asking for consideration/everything must be done with full consideration);
4. ***Mufakat jeung Balarea*** (all decisions to be taken must be done by deliberation in order to maintain the togetherness that is the hallmark of indigenous peoples).

All in all, the Sundanese proverbs mandate that law is the first thing that must be upheld in order to sustain a steady administration system established through mutual agreement. Based on these proverbs, it is clear that horizontal conflicts between communities and vertical conflicts between communities and the state will not occur because Sundanese indigenous people firmly hold the law, the state and mutual agreement.

IV. CONCLUSION

Based on the above description, related to the mechanism of the settlement of Pilkades disputes, both related to the stages and the results of the election, especially when the settlement of a dispute is submitted to Regent/Mayor, it is feared that there will be a conflict of interests, for example the elected candidate is a candidate who has an emotional or political relationship with Regent/Mayor. Therefore, as stated in Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, the state of Indonesia is a state based on the rule of law. Accordingly, the settlement of a dispute on the village head election must be carried out by deliberation. Deliberation is a model of dispute settlement that has been used for a long time in Indonesian society, especially by village community which is famous for its local wisdom.

REFERENCES

- [1] Jimly A, "Hukum Tata Negara dan Pilar-Pilar Demokrasi", Sinar Grafika, Jakarta, 2011.
- [2] Miriam B, "Dasar-Dasar Ilmu Politik", PT Gramedia Pustaka Utama, Jakarta, 2010.
- [3] Ni'matul H, "Hukum Tata Negara Indonesia", PT Raja Grafindo, Jakarta, 2012.
- [4] Titik Triwulan T, "Pokok-Pokok Hukum Tata Negara Indonesia Pasca Amandemen UUD 1945", Cerdas Pustaka Publisher, Jakarta, 2008.
- [5] Moch. S, dalam kata pengantar buku berjudul "Penyelenggaraan Pemerintahan Desa Berbasis

- Partisipasi masyarakat”, Setara Press, Malang, 2014.
- [6] M. Firmanhadi, “Hubungan Fungsional Antara Pemerintah Desa dengan BPD dalam Menjalankan Pelaksanaan Pemerintahan Desa Berdasarkan Undang-Undang Nomor 32 Tahun 2004 tentang Pemerintahan Daerah”, *Jurnal Ilmiah Fakultas Hukum Universitas Mataram*, 2013.
- [7] Umar S dalam artikel berjudul “Regulasi Penyelesaian Sengketa Pilkada Serentak dalam Undang-Undang Nomor 6 Tahun 2014 tentang Desa”, *Kuningan Mas*, 3 Agustus 2017.
- [8] Rosady R, “Metode Penelitian Public Relations dan Komunikasi”, Rajawali Pers, Jakarta, 2003.
- [9] Nana Syaodih S, “Metode Penelitian Pendidikan”, Rosda Karya, Bandung, 2005.
- [10] Jimly A, “Konstitusi dan Konstitusionalisme Indonesia”, Sinar Grafika, Jakarta, 2010.
- [11] Musdar, “Analisis Hukum Penyelesaian Sengketa Pemilihan Kepala Desa di Kabupaten Kolaka”, *Halu Oleo Legal Research, Faculty of Law, Halu Oleo University, Volume 1 Issue 1, April 2019*.
- [12] Ali Achmad C, “Seri Hukum Pertanahan III Penyelesaian Sengketa Hak Atas Tanah dan Seri Hukum Pertanahan IV Pengadaan Tanah Instansi Pemerintah”, Prestasi Pustaka, Jakarta, 2003.
- [13] Ajip R, “Kearifan Lokal”, Kiblat, Bandung, 2011.
- [14] Yayat S, “Wawasan Kesundaan”, Bandung: Jurusan Pendidikan Bahasa Daerah, FPBS, UPI, 2015.