



Effort for constitutional rights of candidate village head in dispute on the result of village head election

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Abstract

Efforts to realize full Village autonomy through the ratification of Law Number 6 of 2014 concerning Villages, do not seem to have fully accommodated the interests of the people in the Village. The condition of the community that is required to be able to participate in regulating government in the village, in fact still leaves several problems that have not been completely formulated. The village with the potential and independence in regulating its territory has given birth to a pure democratic system which is then adopted and determined by the state as the basis for direct elections, through national legal policies that apply in Indonesia. So the result is that the current Village Head election system already has a strong legal standing to be carried out officially with all the risks inherent in it. The dispute over the results of the village head election is one of the risks included in the unfinished issue of Law Number 6 year 2014 concerning Villages. The existence of differences in understanding in the implementation of legal procedures between the Law on Villages and the Law on State Administration is a serious problem, considering that this will result in confusion in the implementation of efforts to resolve village election disputes that occur in the community. Through an effort to integrate normative understanding concerning the implementation of legal procedures in interrelated laws, it is hoped that it can provide a recommended solution to the implementation of the settlement of pilkades disputes that occur in the future.

Keywords: constitutional rights efforts, village law, disputes, village head election

Introduction

Law is a collection of normative rules that are arranged to regulate life in the nation and state. Indonesia is one of the countries that recognizes and upholds the existence of the rule of law. This is as stated in the mandate of the Constitution Article 1 Paragraph 3 of the 1945 Constitution which reads "The State of Indonesia is a State of Law". So that on this fundamental basis, the state represented by the government and its staff is legally obligated to act, based on the law in force in the Unitary State of the Republic of Indonesia. Normatively, the implementation of the rule of law in Indonesia has been adapted to the nation's multicultural character. So to realize a just general welfare, the application of the system is to use a legal system based on the five precepts contained in Pancasila, namely Belief in One Supreme God; Just and civilized humanity; The unity of Indonesia; Democracy led by wisdom in representative deliberation; and social justice for all Indonesian people. The essence of the values contained in the body of Pancasila is juridically contained in the 1945 Constitution as the basis for the development of the formation of legislation, which is hierarchically under it.

Indonesia as a country that adheres to a Pancasilaist legal system, it is automatically obligatory for the state to guarantee the existence of human rights. This was also stated by Prof. Jimly Asshidiqie on the 9th element in his 13 main ideas related to the main elements that must be adhered to by a rule of law, among the 13 elements are as follows:

1. The Rule of Law
2. Equality in Law;
3. Legality Principle;

4. Limitation of Power;
5. Executive organs that are independent;
6. The judiciary is free and impartial;
7. State administrative court;
8. Constitutional Court;
9. Protection of Human Rights;
10. It is democratic;
11. Serves as a means of realizing the goals of general welfare;
12. Transparency and social control;
13. The Principle of Belief in One God.

Thus, as a consequence of upholding the rule of law in Indonesia, a fundamental basis is needed to be used as a patent parameter in building the nation and state. This was then manifested in a Constitution of the Unitary State of the Republic of Indonesia, hereinafter known as the 1945 Constitution of the Republic of Indonesia. In a constitutional state, a Constitution has a very important role, namely as a determinant of the direction and goals of a country in the future. Which will come. Therefore, in realizing the ideals of a dignified legal state, juridically the guarantee of Human Rights for citizens in Indonesia has been formulated in the Preamble and Body of the Constitution of the 1945 Constitution of the Republic of Indonesia. also known as Constitutional Rights which legalize the rights of citizens in it.

Regarding the discussion of the rule of law, it will always be balanced by the implementation of a political system known as the democratic system. Democracy itself is implemented as a form of representation of the ideals of the rule of law, which seeks to create state stability in order to avoid the

absolutism of power and the potential for immoral anarchism movements. So that in practice, a human rights-based power regeneration system was born which is also known as the General Election. In Indonesia, the implementation of General Elections has basically been mandated in the Constitution of the 1945 Constitution of the Republic of Indonesia as stated in Chapter VIII B Article 22 E, which in Paragraph (2) emphasizes that the election is carried out to elect members of the DPR, DPD, President, and its Vice President, as well as to elect members of the DPRD. As for the implementation of the election of the Head of Regional Government consisting of the Governor (in the Province); Mayor (in the Municipality area); and the Regent (who is in the Regency area); based on Law No. 22 of 2014, the election is carried out democratically by the DPRD as the regional people's representative which has previously gone through a public examination process. The electoral system seems different from the electoral system in Article 22 E Paragraph (2) of the 1945 Constitution of the Republic of Indonesia. This is due to the difference in the use of diction between the provisions of Article 22 E Paragraph (2) of the 1945 Constitution of the Republic of Indonesia and the provisions of Article 18 Paragraph (4) of the Constitution. NRI 1945. Article 22 E Paragraph (2) of the 1945 Constitution of the Republic of Indonesia expressly states that:

“General elections are held to elect members of the People's Representative Council, Regional Representative Council, President and Vice President, and Regional People's Representative Council.”

Meanwhile, Article 18 Paragraph (4) of the 1945 Constitution of the Republic of Indonesia states that:

“Governors, Regents, and Mayors, respectively, as heads of provincial, district, and city governments are democratically elected.”

For the difference in the use of the diction, it will have an impact on the different interpretations of the general election administration system in Indonesia. Therefore, the existence of Law Number 22 year 2014 concerning the Election of Governors, Regents, and Mayors, then received a lot of opposition from various groups in society. This is caused by the complexity of the problems that occur in the election of Governors, Mayors, and Regents, which are carried out indirectly as stipulated in Law Number 22 year 2014. As a replacement, the position of Law Number 22 year 2014 was then replaced by Law Number 1 year 2015 on the Decision of the Constitutional Court Number 138/PUU-VII/2009. Normatively, the implementation of democratic general elections in Indonesia is a manifestation of the implementation of human rights guarantees that have been mandated by the 1945 Constitution of the Republic of Indonesia. This is as stated in the provisions of Article 28 D Paragraph (3) and Article 28 E Paragraph (3) of the 1945 Constitution of the Republic of Indonesia concerning the political rights of Indonesian citizens, which essentially guarantees equal opportunities in government and guarantees the existence of non-discriminatory freedom of opinion. Henceforth, in order to realize people's sovereignty as democratically as possible, the amendments to the Law on the Election of Governors, Regents, and Mayors are always carried out conditionally in line with the developments of the times. Until now, Law Number 1 of 2015 concerning the Election of Governors, Regents, and Mayors, has undergone 3 changes, namely through Law

Number 8 year 2015, Law Number 10 year 2016, and the last is Law Number 6 year 2020.

In managing government affairs in the regions, the Indonesian people have agreed to apply the concept of control based on regional autonomy and assistance tasks, as a manifestation of the implementation of the mandate of the 1945 Constitution of the Republic of Indonesia. This then has an impact on the division of assignments in managing government issues, which consist of the authority of the central government and the authority of local governments. Constitutionally, the legality of local government has been recognized as described in the provisions of Chapter VI Article 18, Article 18 A, and Article 18 B of the 1945 Constitution of the Republic of Indonesia. Then legally, the mandate of the 1945 Constitution of the Republic of Indonesia is implemented through the application of Law Number 32 year 2004 which replaced by Law Number 23 year 2014 and then amended through Law Number 9 year 2015 as the Law that regulates the current Regional Government. In relation to the implementation of regional government, there is a unit of indigenous peoples whose existence is legally recognized as part of the regional government under the Regency/City.

The customary community unit is known as a traditional village or village or it can also be called another similar designation. A village can be realized or eliminated through a Regional Regulation on the basis of certain interests as regulated in Article 8 to Article 14 of Law Number 6 year 2014 concerning Villages. In making the Regional Regulation, its implementation is carried out through the approval of the Raperda by the Regent and DPRD, based on the considerations and/or proposals of the village community concerned (based on the provisions of Article 8 Paragraph (2), Article 10, Article 11 Paragraph (1), Article 12 Paragraph (1) and Article 15 Paragraph (1) of Law No. 6 year 2014). After obtaining approval from the Regent and DPRD, the Raperda is then submitted to the Governor for in-depth evaluation (based on the provisions of Article 15 Paragraph (1) and (2) of Law No. 6 year 2014). If the Raperda is approved or not responded to by the Governor, then within 20 working days after receipt of the Raperda, it must be immediately stipulated as a Regional Regulation by the relevant Regency/City Government (sourced on the provisions of Article 16 Paragraph (1), (2), and (4) Law No. 6 year 2014).

However, if it is rejected by the Governor, the consequence of the Raperda is that it cannot be ratified by the relevant Regency/City Government and its existence will be suspended for 5 years after the Governor's refusal (sourced on the provisions of Article (3) of Law No. 6 year 2014). Based on Law Number 6 year 2014 concerning Villages, the autonomy authority that exists in a village is expanded by the application of the principles of recognition and subsidiarity. This has an impact on the emergence of complexities in the management of village government, which must then be carried out independently and in a participatory manner. In order to maximize the implementation of autonomy in the administration of government in the village, this can be carried out through village deliberations on the participation of the Village Consultative Body, the Village Government, and the participation of the village community.

The purpose of realizing village independence as regulated in Law Number 6 year 2014 concerning Villages, it is

accompanied by the regulation of the implementation of Village Head elections which are carried out democratically through independent and participatory election procedures. The implementation of the Village Head election is legally regulated through Government Regulation Number 47 year 2015. In short, the stages of implementing the Village Head election are carried out with the following stages:

1. Preparation for the implementation of Pilkades activities (Article 41 Paragraph (2) PP 47/2015);
2. Nomination of Village Head (Article 41 Paragraph (3) PP 47/2015);
3. Voting (Article 41 Paragraph (4) PP 47/2015);
4. Determination of the elected Village Head (Article 41 Paragraph (5) PP 47/2015).

In implementing the implementation of a general election, it will always be related to the existence of a dispute or dispute. A dispute or dispute in the general election arises as a result of the dissatisfaction of the losing elected candidate regarding the results of the vote count which affects the determination of the results of the general election that occurs. This condition is the same as what happened in the implementation of the Village Head election held in their respective regions. Basically, although it is not the scope of the general election as referred to in Article 22 E Paragraph (2) of the 1945 Constitution of the Republic of Indonesia, the election of a Village Head as the implementation of the Village Law also has the same potential impact (the occurrence of disputes/disputes).

This is because in its application, the implementation of the Village Head election is carried out directly and simultaneously, as is the case with general election techniques. In order to anticipate the occurrence of such disputes or disputes, based on the provisions of Article 37 Paragraph (6) and Article 37 Paragraph (5) of the Village Law, Law no. 6/2014 has provided a breakthrough as a means to resolve disputes over the results of the Village Head election by giving the authority to settle disputes to the Regent/Mayor. Furthermore, the Regent/Mayor is given the opportunity to resolve the case in a maximum of 30 working days, after receiving the results of the Village Head election from the Pilkades committee.

With regard to the existence of a dispute or dispute over the results of the Village Head election, it has an impact on the enactment of constitutional rights for the elected candidate who feels that his rights have been impaired over the determination of the results of the village head election in order to obtain legal justice as stated in Article 28 D Paragraph (1) of the Constitution of the Republic of Indonesia. 1945. With regard to legal procedures that can be taken for disputes or disputes that occur in the election of the Village Head, based on Law Number 6 year 2014 concerning Villages, the only legal procedure that can be taken is in the form of non-litigation legal procedures carried out by the Regent or Mayor of the relevant region by prioritizing the principle of deliberation which is also a final settlement effort.

Efforts to realize autonomy in the village through the Village Law (UU Number 6 of 2014), the fact is that it has not been able to fully resolve the problems that exist in the village. This is because in practice, there are various kinds of inhibiting factors that can affect the non-maximal application of the law in force in society. Among the inhibiting factors are the existence of political interests;

economic factors; social factors; as well as cultural factors that develop in society. On the occasion of writing this paper, it was found that there were urgent problems related to the settlement of disputes/disputes over the results of the Village Head election. Although the Government has realized village independence through the ratification of Law No. 6 year 2014 concerning Villages, the state should not reduce the constitutional rights of rural communities, especially in terms of fighting for justice. With the finalization of efforts to resolve disputes over the results of the Pilkades by the Regent/Mayor through the 2014 Village Law, it can be interpreted that the decision of the Regent/Mayor regarding the settlement of the results of the Pilkades cannot be carried out other legal procedures even though it is not the last legal step. Based on Article 1 Paragraph (3) of Law no. 5 year 1986 Jo. Article 1 Paragraph (9) of Law no. 51 year 2009, the Decree of the Regent/Mayor regarding the settlement of disputes over the results of the village head election which has legal consequences for the elected village head candidate is a STATE ADMINISTRATIVE DECISIONS which is included in the absolute competence of the State Administrative Court. So if the determination is included in the STATE ADMINISTRATIVE DECISIONS classification, then the legal procedures that can be taken are administrative efforts and filing a lawsuit through the State Administrative Court if you are not satisfied with the results of administrative dispute resolution.

Basically, the provisions regarding the settlement of disputes over the results of the Pilkades, so far do not regulate a clear and definite mechanism. In Article 46 of PP Number 47 of 2015 concerning Amendments to PP Number 43 of 2014 regarding the Implementation of the Village Law, it is stated that further provisions regarding the election of Village Heads will be further regulated through a Minister of Home Affairs Regulation. Although in practice then Permendagri Number 65 of 2017 concerning Amendments to Permendagri No. 112 of 2014 related to the Village Head Election has been ratified, but it has not provided a clear and definite mechanism for resolving disputes over the results of the Pilkades. In the end, the ambiguity regarding this regulation was attributed to the district/city government (based on Article 49 of the Minister of Home Affairs Regulation Number 65 of 2017. This of course gave rise to a new problem, namely confusion regarding the implementation of dispute resolution over the results of the village election. occurred in the dispute over the results of the Pilkades in Sinduadi Village, Sleman Regency, DIY Province, which was held on December 20, 2020. The request for objection to the determination of the results of the Pilkades by one of the elected Village Head candidates whose rights felt disadvantaged by the stipulation, was only responded to by the Regent of Sleman by means of a letter The only response to the Regent's objection, without the Regent's Decision Letter as stipulated in Article 48 Paragraph (2) of the 2015 Sleman Regional Regulation concerning Procedures for the Election and Dismissal of Village Heads in the Sleman Regency area, is of course a special concern considering the conditions This kind of thing will create legal uncertainty and this is very contrary to the ideals of the rule of law in realizing legal justice that is as fair as possible.

Based on the thought above, the author intends to examine the constitutional rights efforts that can be taken by related

parties in resolving disputes over the results of the Village Head election. So that in realizing the ideals of a just legal state, it can provide clear juridical certainty for the community, especially in this discussion related to the settlement of disputes over the results of the Village Head election.

Metode

As an effort to answer the problems that have been raised in the previous section, this writing is carried out through a normative law research method approach. The normative research method can be interpreted as a way of studying legal issues that can be taken through a conceptual deepening of norms or legal rules. The normative research method was then systematized by the author to examine problems based on the statutory approach and conceptual approach). Pendekatan terhadap peraturan perundang-undangan dilakukan dengan cara melakukan analisis terhadap peraturan perundang-undangan yang berkelindan dengan pengaturan penyelesaian perselisihan hasil Pilkadaes. Sedangkan pendekatan konseptual diterapkan dengan cara menganalisis konsep penyelesaian sengketa Tata Usaha Negara (TUN) untuk dikorelasikan dengan cara penyelesaian perkara perselisihan hasil pemilihan Kepala Desa (Pilkades) Desa Sinduadi, Sleman, Yogyakarta.

Discussion

Settlement of Village Head Election Disputes based on Law Number 6 of 2014 concerning Villages

The village is the smallest part in a state territory that is formed due to the political will of the people who live in it, as an effort to achieve general welfare by optimizing the existing potential independently and participatively. Soetardjo Kartohadikoesoemo argues that the term village was born from the Sanskrit language, namely *swa desi*, which means homeland, homeland, or homeland. The understanding of the village according to Soetardjo Kartohadikoesoemo can be interpreted that the existence of the village is fundamental in the order of a country, it is as a result of the existence of original rights that are always attached to the formation of a village. Meanwhile, based on the explanation of Article 1 Number (1) of Law Number 6 year 2014 concerning Villages, the definition of village can be understood as follows:

“Village is a village and traditional village or what is called by another name, hereinafter referred to as Village, is a legal community unit that has territorial boundaries that are authorized to regulate and manage government affairs, the interests of the local community based on community initiatives, origin rights, and/or traditional rights. recognized and respected in the system of government of the Unitary State of the Republic of Indonesia.”

With the village regulation through Law Number 6 year 2014 concerning the Village, then legally the village has a definite and clear legal standing in implementing autonomy in its territory. Soetardjo Kartohadikoesoemo also explained village autonomy as follows:

“...village areas are the oldest autonomous regions. It was founded before the birth of the larger coordinating regions and before the birth of states (kingdoms). Therefore, it has full autonomy rights. Its power does not only contain government in a narrow sense (bestuur), but also contains government in a broader sense (regering), because the

village also has power over: courts, legislation (legislature), the police, and even defense. So the village area has a very broad autonomy, much wider than the autonomy of the larger regions that were established later...”

Based on the opinion above, it shows that before village autonomy was legalized through the laws and regulations in force in Indonesia, in essence the village autonomy had manifested itself which was born from the customs/customs of a village community. In order to optimize the potential for freedom in managing its territory, a village needs a leader who can lead the achievement of common goals. Deliberation and consensus is an old habit of the village community to find solutions to solve problems together, including in determining the leader. Until in the 1811-1816 range, Mr. Raffles as the Governor General of the Netherlands who colonized Indonesia at that time, brought the influence of western democracy by introducing the Lurah election system. The existence of a deliberation system and the Lurah election system confirms that the existence of democratic values has existed since the occurrence of socio-political practices in the daily life of village communities that have occurred for generations.

Currently, the election of the lurah as carried out in the past has transformed into a new system based on Law Number 6 year 2014 which is referred to as the election of the Village Head. In order to realize the constitutional mandate as stated in Article 28 D Paragraph (3) of the Constitution of the 1945 Constitution of the Republic of Indonesia, the Village Law stipulates provisions regarding the time limit and opportunity to serve as a Village Head is for 6 years from the time of his inauguration as Village Head and can only be served a maximum of 3 times in a row or not (Number 8 Elucidation of Law No. 6 year 2014 concerning Villages). Based on the provisions of Article 31 Paragraph (1) and Article 34 Paragraph (1) Law No. 6 year 2014 explains that the Village Head Election is carried out simultaneously and is directly elected by the villagers in their respective regions. Furthermore, related to the principle of village head election, it is as stated in Article 34 Paragraph (2), namely:

“Village head elections are direct, general, free, confidential, honest and fair.”

Based on the foregoing, it can be concluded that the technical implementation of the village head election is similar to the technical implementation of direct elections through public voting at the election site that has been provided by the election executive committee. However, this does not mean that the Pilkadaes regime is the same as the general election regime. In the implementation of the Pilkadaes, it is constitutionally legally mandated through Article 18 B Paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states 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 the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in the Act.”

On the fundamental basis as mentioned above, it then gave birth to a village head election system which was carried out independently and participatively. This is based on further arrangements, as formulated in the provisions of Article 32 Paragraph (2) of Law no. 6 of 2014 concerning Villages which states that:

“The Village Consultative Body forms a village head election committee.”

So, based on the explanation of the provisions as mentioned above, it shows that the Pilkades regime is very different from the existing election regime. The implementation of the general election is legally held by the General Election Commission as mandated in the provisions of Article 22 E Paragraph (2) of the 1945 Constitution of the Republic of Indonesia. Meanwhile, the Village Head election is held by the Village Head election committee as described in Article 1 Number 12 of the Minister of Home Affairs Number 112 2014 concerning the Election of Village Heads which states that:

“The Village Head election committee in the village is a committee formed by the BPD to carry out the Village Head election.”

So with the differences in legal regulations, of course, it will also affect the differences in legal procedures that can be taken in the event of a dispute/dispute on the results of its implementation.

Arrangements for the implementation of the Pilkades are legally regulated more specifically through Regency/City Regional Regulations in their respective regions. This is as mandated in Article 49 of Permendagri Number 65 year 2017 concerning Amendments to Permendagri Number 112 of 2014 concerning Election of Village Heads in conjunction with Article 46 of PP Number 47 year 2015 concerning Amendments to PP Number 43 year 2014 concerning Implementing Regulations of the 2014 Village Law in conjunction with Article 31 Paragraph (3) Law Number 6 year 2014 concerning Villages. Then in making arrangements for the implementation of the Village Head election, the Regency/City Regional Government pivots on PP Number 47 year 2015 concerning Amendments to PP Number 43 year 2014 which regulates the Implementing Regulations of Law Number 6 of 2014 concerning Villages. Based on PP Number 47 year 2017, it clearly explains the important points that can be used as a reference for the implementation of the Village Head election. One of the important points is regarding the procedures that must be followed in carrying out the election of the Village Head. As mentioned in the introduction above, in carrying out the election of an independent and participatory Village Head, based on Article 41 Paragraph (1) of Law Number 6 year 2014 it is carried out through the following stages:

1. Preparation for the implementation of Pilkades activities;
2. Nomination of the Village Head;
3. Voting;
4. Determination of the elected Village Head.

Furthermore, the specifications for the technical implementation of each stage are regulated more clearly through a Regency/City Regional Regulation which still refers to the explanation of Article 41 Paragraph (1) to Paragraph (7) of PP Number 47 of 2015 concerning Amendments to PP Number 43 of 2014 which regulates concerning Implementing Regulations of Law Number 6 of 2014 concerning Villages.

In the implementation of a general election, there will always be a risk of causing a dispute/dispute in its implementation. These disputes/disputes usually occur when the election results are determined by the relevant general election organizing committee. This is also stated in the opinion of Steven F. Huener who believes that in holding a general election it is possible to have a dispute/dispute

against him, which then in his formulation has accumulated several factors supporting the occurrence of disputes over election results, as follows:

1. Faund (the existence of fraud committed by the parties as elected candidates in the ongoing election).
2. Mistake (there is an error in the vote count either intentionally or not by the election officer on duty).
3. Non-fraudulent misconduct (there is a provocation to the election results that have been determined).
4. Extrinsic events or acts of God).

So that in regulating a rule related to general elections, it is obligatory for a legal state to be able to formulate a dispute resolution mechanism / dispute over election results in accordance with the applicable laws and regulations. This is done as an effort to realize legal certainty in the context of meeting the ideals of a just and dignified legal state. However, the fact is that this has not been fully accommodated in the provisions of Law Number 6 year 2014 concerning Villages and in its implementing regulations. Technically, the implementation of the Village Head election is carried out through direct elections, as is the case with the general elections that apply in Indonesia. This is because even though the two systems are in different legal regimes, the principles applied are basically the same, namely direct, general, clean, honest, and fair. Therefore the risks that may occur in its implementation will also be relatively the same. The risk of disputes/disputes over the results of the Village Head election is very likely to occur, as long as the implementation is carried out on the basis of the interests of the several parties concerned. As long as there is politics in a competition, that is where disputes or conflicts of interest will develop.

In the midst of the recognition and guarantee of the Village through Law Number 6 year 2014, this is not balanced with the existence of a clear guarantee of legal certainty for the constitutional rights of the elected Village Head candidate in fighting for legal justice. This is evidenced by the limitation of legal procedures for disputes/disputes over the results of the Pilkades at the stage of deciding the case by the Regent/Mayor serving in the jurisdiction of the party concerned. This is as explained in the provisions of Article 37 Paragraph (6) of Law Number 6 year 2014 concerning Villages, which states that:

“In the event of a dispute over the results of the Village Head election, the Regent/Mayor is obliged to settle the dispute within the period as referred to in paragraph (5).”

The purpose of the period as mentioned above is an opportunity for the relevant Regent/Mayor to be able to settle disputes over the results of the Village Head election through a decision of the Regent/Mayor with a maximum time limit of 30 working days after the handover of the results of the Pilkades by the implementing committee (based on Article 37 Paragraph (5) Law Number 6 year 2014 concerning Villages). The settlement of disputes over the results of the village election is only regulated to that extent, both in Law Number 6 year 2014 concerning Villages and the implementing regulations under it. This certainly creates legal uncertainty in seeking justice for disputes / disputes over the results of the village head election. So that in the end the implementation of the dispute resolution / dispute over the results of the Pilkades experienced multiple interpretations of its implementation. The author has found a ambiguous interpretation of the

regulation of dispute resolution/disputes in the village head election at the Regional Regulation level, which in this case is the Sleman Regency Regional Regulation Number 5 year 2015 concerning Procedures for the Election and Dismissal of Village Heads. In the provisions of the Regional Regulation, there is one Article that is detrimental to the constitutional rights of the elected Village Head candidate as a result of restrictions on legal steps that can be taken, namely the final stage of the case decision by the Regent/Mayor concerned. This is as stipulated in Article 48 Paragraph (3) of the Sleman Regency Regional Regulation Number 5 year 2015 concerning Procedures for the Election and Dismissal of Village Heads as follows:

“The Regent settles the dispute over the results of the vote count as referred to in Paragraph (1) and Paragraph (2) within a maximum period of 30 (thirty) working days as referred to in Article 47 Paragraph (5).”

And as stipulated in Article 48 Paragraph (5) of Sleman Regency Regional Regulation Number 5 year 2015 concerning Procedures for Election and Dismissal of Village Heads as follows:

“The decision of the Regent as referred to in Paragraph (3) is final and binding.”

This can happen because of legal ambiguity related to the regulation of legal procedures that can be taken in the settlement of disputes / disputes over the results of the village head election, both in Law Number 6 year 2014 and the implementing regulations under it. As a result of the enactment of the Sleman Regency Regulation Number 5 year 2015 concerning Procedures for the Election and Dismissal of Village Heads, there are examples of real cases related to ambiguity in the implementation of dispute resolution/disputes over the results of the village head election in Sleman Regency, DIY Province.

Based on the Application Letter of Objection to the Determination of the Result of the Election of the Sinduadi Village Head submitted by the candidate for the Head of the Sinduadi Village Number 2 (two), namely Mr. Subandi Kusuma, S.H., M.H. to the Regent of Sleman Regency dated December 23, 2020, it contains a statement that there has been a violation of the implementation of the Pilkades in Sinduadi Village, Sleman Regency, both technically and / practically which affects the acquisition of the vote count results. On the objection raised by Mr. Subandi Kusuma, S.H., M.H. The objection resolution team was then responded to by the Objection Response Letter by the Regional Secretary of Sleman Regency on behalf of the Sleman Regency Regent.

This was done based on Article 6 Paragraph (3) of the Sleman Regency Regent's Regulation Number 26.1 year 2020 concerning the Completion of Objections to the Determination of Village Head Election Results. On the other hand, based on 48 Paragraph (3) and Paragraph (5) of the Regional Regulation of Sleman Regency Number 5 year 2015 concerning Procedures for Election and Dismissal of Village Heads as mentioned above, it is explained that the settlement of disputes/disputes over the results of the Pilkades is carried out by the Regent through a Letter of Intent. Decree of the Regent of Sleman Regency. In this case, the authors found that there was confusion in the regulation and implementation of the law that occurred in the settlement of disputes / disputes over the results of the village head election.

The existence of provisions related to the submission of the

applicant's objection to the Regent/Mayor as an effort to resolve disputes/disputes over the results of the Pilkades, as well as administrative measures that can be taken against dissatisfaction with the issuance of a State Administrative Decree (based on Article 48 of Law Number 5 year 1986 and Points IV number 1 Circular Letter of the Supreme Court Number 2 year 1991 concerning Instructions for the Implementation of Several Provisions in Law Number 5 year 1986 concerning State Administrative Courts (SEMA 2/1991)). This means that the submission of objections to disputes/disputes over the results of the village head election can only be made by the applicant after the Regent's Decree stipulates the results of the Village Head election. Juridically, there is no provision that regulates the determination of the results of the Pilkades through the Decree of the Regent/Mayor. At the final stage of the Pilkades, the Decree of the Regent/Mayor is only issued in order to stipulate the ratification and appointment of the elected Village Head as the official Village Head in their respective regions (civil nature, not STATE ADMINISTRATIVE DECISIONS based on Article 2 of Law Number 9 year 2004). However, based on Article 48 Paragraph (5) of the Sleman Regional Regulation Number 5 year 2015, it was found that there were other provisions governing the Decree of the Regent which was issued as a response to the submission of applications related to the settlement of disputes over the results of the Pilkades.

Meanwhile, to be able to file an objection as an administrative measure as regulated in Article 48 of Law Number 5 year 1986 and Point IV number 1 of the Circular Letter of the Supreme Court Number 2 year 1991 concerning Instructions for the Implementation of Several Provisions in Law Number 5 year 1986 concerning State Administrative Courts (SEMA 2/1991), then there must be a STATE ADMINISTRATIVE DECISIONS which is determined in advance by the authorized TUN agency/official. Thus, due to the absence of a clear legal mechanism specification regarding the formulation of village election disputes/disputes in Law Number 6 year 2014 concerning Villages and in its implementing regulations, this has resulted in the birth of legal uncertainty such as cases of disputes/disputes over the results of the village election in Sinduadi Village, Sleman Regency. The legal uncertainty that occurs has also resulted in the limitations of existing legal procedures. In the end, it is difficult for the elected Village Head candidate whose rights have been impaired over the determination of the results of the Pilkades, to be able to litigate in court in order to obtain the fairest justice.

The decision of the Regent which is final and binding as mentioned above, basically cannot be justified because it does not have a clear legal basis and is potentially unconstitutional to the 1945 Constitution of the Republic of Indonesia. a matter that is final and binding. Based on Article 24 C Paragraph (1) of the 1945 Constitution of the Republic of Indonesia, the authority to adjudicate a case in a final manner is the domain of judicial power, which in this case is mandated to the Constitutional Court. Thus, basically the provisions regarding the settlement of disputes/disputes over the results of the Pilkades in Law Number 6 year 2014 do not accommodate a clear legal basis in its regulation. With the application of the recognition and subsidiarity principles attached to Law Number 6 year 2014 concerning Villages, it does not mean that it can override the principle

of legal benefit and the principle of legal certainty.

Konsep Penyelesaian Sengketa Pemilihan Kepala Desa yang Melindungi Hak Konstitusional Calon Kepala Desa Terpilih
The concept of dispute resolution / dispute over the results of the village head election which is formulated in Law Number 6 year 2014, in fact still experiences technical problems related to the formulation of the implementation of legal procedures in it. Efforts to realize village autonomy independently and participatively do not mean that this is accompanied by a reduction in the constitutional rights of the community in taking legal procedures against disputes / disputes over the results of the village election. Although deliberation for consensus is recognized as a tradition inherent in rural communities, in reality it is not fully capable of guaranteeing the resolution of existing problems in a fair and complete manner. This is evidenced by the occurrence of disputes/disputes over the results of the village head election in Sinduadi village, Sleman Regency, DIY Province, as has been explained in the first discussion above. Regarding the occurrence of this case, there are basic things that cause complications in taking legal procedures related to the settlement of disputes/disputes resulting from the Pilkades. These causative factors include:

1. There is a lack of clarity in the provisions of the 2014 Village Law regarding the legal procedures taken in the settlement of village election disputes/disputes.
2. The legal procedure related to the settlement of disputes/disputes over the results of the village election as regulated in the 2014 Village Law is baseless and contrary to applicable law.
3. There are restrictions on the constitutional rights of elected Village Head candidates as a result of the finalization of dispute resolution/disputes over the results of the Pilkades by the Regent/Mayor in the 2014 Village Law.

Therefore, in the context of realizing the protection of constitutional rights for every villager who participates in the Pilkades in their area, the recommended solution for efforts to resolve disputes/disputes resulting from the Pilkades, can be taken through the following procedure

Administrative efforts in the form of filing an objection

To be able to understand the filing of an objection to the issuance of a State Administrative Court, it is necessary to understand the object of the objection that is used as the basis for filing an objection to a relevant State Administration Agency/Official. In a State Administrative Court dispute, the object of the dispute is a State Administrative Court issued by a State Administration Agency/Officer and has legal consequences for a person/a civil legal entity. In the context of cases relating to disputes/disputes over the results of the Pilkades, legally the object of dispute that can be objected to is the Regent/Mayor Decree concerning the Ratification of the Appointment of Village Heads elected through the Pilkades. In this case, the author tries to interpret it grammatically and systematically against the provisions of Article 44 Paragraph (3) of the Minister of Home Affairs Number 112 year 2014 concerning the Election of Village Heads which states that:

*“The Regent/Mayor stipulates the **ratification** and appointment of the village head by the decision of the Regent/Mayor”.*

Thus, if the provisions of the article as mentioned above are combined in a series together with the provisions of the article that regulates the procedure for selecting village heads in Permendagri Number 112 year 2014 concerning Village Head Elections as well as in other related legislation, then the existence of the word **“ratification”** the provisions explain that in the Decree of the Regent/Mayor concerning the Ratification of the Appointment of the Village Head, it contains a decision that gives recognition to the:

- a. Ratification of the elected Village Head / can also be interpreted as ratification of the results of the village head election;
- b. Appointment of the elected village head.

So, based on this analysis, it can be formulated that the Regent/Mayor Decree concerning the Ratification of the Appointment of the Village Head has 2 legal consequences at once, namely in the form of a State Administrative Decisions regarding the determination of the results of the Pilkades and a civil STATE ADMINISTRATIVE DECISIONS. On the basis of this, the authors suggest using the Decree of the Regent/Mayor concerning the Ratification of the Appointment of the Village Head as the object that is used as the basis for filing an objection to the relevant Regent/Mayor. The filing of an objection is legally regulated in the provisions of Article 48 of Law Number 5 year 1986 and Point IV number 1 of the Circular Letter of the Supreme Court Number 2 year 1991 concerning Instructions for the Implementation of Several Provisions in Law Number 5 year 1986 concerning State Administrative Courts (SEMA). 2/1991). In this case, Law Number 6 year 2014 concerning Villages and their implementing regulations limitatively only regulates administrative efforts in the form of filing objections to the relevant Regent/Mayor. So that an administrative appeal in this case cannot be carried out because there are provisions that regulate it in a limited manner as stated in Point IV number 2 letter a of SEMA 2/1991.

The objection must be submitted no later than 21 working days after the issuance of the relevant STATE ADMINISTRATIVE DECISIONS. After the objection to the issuance of the Decree of the Regent/Mayor concerning the Ratification of the Appointment of the Village Head is submitted to the Regent/Mayor, it must be responded to by the Regent/Mayor concerned through the Decree of the Regent/Mayor no later than 10 working days after receipt of the request for objection. If this matter is not responded to, then the objection submitted by the applicant is considered granted. The regulation regarding administrative efforts in the form of filing an objection is clearly regulated in the provisions of Article 77 of Law Number 30 year 2014 concerning Government Administration.

Filing a lawsuit to the Administrative Court

Juridically, a lawsuit related to the State Administration dispute can only be filed if the party concerned has carried out administrative efforts as stipulated in Article 48 Paragraph (2) of Law Number 5 year 1986 concerning the State Administrative Court below:

“The new court has the authority to examine, decide, and settle the State Administrative dispute as referred to in paragraph (1) if all the relevant administrative measures have been used.”

However, considering that the problems that occur are urgent issues that need legal certainty in ensuring justice in their settlement, then if there is confusion in the implementation of legal procedures as happened in the case of disputes / disputes over the results of the village election in Sinduadi Village, Sleman Regency, it can still be submitted to PTUN. The statement is based on the provisions of Article 10 Paragraph (1) of Law Number 48 year 2009 concerning Judicial Power which states that:

“Courts are prohibited from refusing to examine, try, and decide on a case that is submitted on the pretext that the law does not exist or is unclear, but is obliged to examine and try it.”

This is also supported by the existence of a precedent regarding the resolution of disputes/disputes outside the absolute authority of the Administrative Court that occurs as a result of legal uncertainty in the related case. This happened when there was no legal procedure regarding the settlement of civil disputes in Law Number 10 of 2008 concerning the Election of House of Representatives, Regional Representative Council, and Regional People's Representative Assembly. Because the legal conditions did not provide clear certainty, in the end the dispute resolution that occurred was submitted to the Administrative Court. In fact, one of the lawsuits against the Riau Provincial General Election Commissions's decision was granted by the Pekanbaru State Administrative Court and upheld by limited company state Administration Medan. In the 2009 election, the lawsuits by the four parties declared by the General Election Commissions as not qualified as participants in the 2009 election were granted by the Jakarta Administrative Court, and then based on the General Election Commission's decision, the political parties were accepted as participants in the 2009 general election.

So based on the above, the lawsuit against the Decree of the Regent/Mayor regarding the Ratification of the Appointment of the Village Head must be immediately submitted to the Administrative Court within 90 working days, starting from the announcement of the STATE ADMINISTRATIVE DECISIONS (based on Article 55 of Law Number 5 year 1986 concerning State Administration Courts). If the administrative Court has decided on the related case, then there are other legal remedies that can be taken if you are not satisfied with the administrative Court decision. These legal remedies are:

1. Examination at the Appeals Level (Article 122 of Law Number 5 year 1986 concerning State Administrative Courts).
2. Examination at the Cassation Level (Article 131 Number 5 year 1986 concerning State Administrative Courts).
3. Review (Article 132 Number 5 year 1986 concerning State Administrative Courts).

With a clear and based mechanism as recommended by the author in the description above, it can protect the Constitutional rights of every candidate for village head who wants to seek justice, especially in disputes / disputes over the results of the Village Head election.

Closing

In realizing an independent and participatory village autonomy, the state must always be present in order to guide the village to be able to reach the end point of the goal of

the establishment of Law Number 6 year 2014 concerning Villages. The creation of the Law on Villages is not just a formality of recognition, but it contains basic rights that we must preserve. Settlement of disputes/disputes resulting from the election of Village Heads that are not systematic and unfounded has the potential to be unconstitutional to the Constitution of the 1945 Constitution of the Republic of Indonesia. It becomes a homework for legal policy makers to revise the formulation of provisions regarding dispute resolution/disputes resulting from the Pilkades in order to provide clear legal certainty and so that it can be carried out in accordance with the applicable laws and regulations.

Everyone has the right to equal justice before the law. Likewise, a law is created to accommodate every right inherent in a person. Therefore, the law should provide the widest possible opportunity to be able to resolve a case fairly. The confusion regarding the settlement of disputes/disputes in the village head election in the Village Law and its implementing regulations, shows that there are restrictions on rights as a result of the finalization of dispute resolution/disputes over election results through settlement by the Regent/Mayor. As a result, this has led to disharmony of legal arrangements against the Administrative Law. Settlement of disputes/disputes through administrative efforts (submitting objections) and filing a lawsuit to the Administrative Court is a recommended solution at this time, because these efforts are able to accommodate the constitutional rights of the disputing parties in realizing the fairest justice.

Considering the existing legal conditions, the author suggests immediately revising the provisions regarding the settlement of village election disputes/disputes in the Village Law. Furthermore, in the context of the effectiveness of the settlement of the case, the author also suggests the establishment of a special court (Ad Hoc) which has the authority to adjudicate disputes/disputes resulting from the Pilkades so that problems that occur can be resolved immediately without compromising the constitutional rights of the parties concerned.

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