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Reconstruction of election process dispute settlement regulations in aceh province based on justice value

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Abstract
The background of this research is to find the weaknesses of the current electoral process dispute resolution regulations in Aceh province and how is the reconstruction of the electoral process dispute resolution regulations based on justice values in Aceh province. This research is a normative-legal type of research that is used to examine the function of a norm that lays the law as an instrument that regulates and controls society. The approach used in this research is conceptual, a statute approach, a philosophical approach, and a comparative approach. The analysis used in this research is descriptive-qualitative.
The results show that there are several regulations for the completion of the election process that is not based on the value of justice because in the content of the mediation agreement there is no obligation to include a clause on the obligations of the parties to implement the agreement. this makes the parties question the legal strength of the mediation agreement as one of the factors of failed mediation was because the parties considered that the results of the mediation had no legal force. By regulation, the obligation for the respondent to follow up on adjudication decisions is still weak because there are no firm and concrete clauses. Based on the analysis of the implementation of dispute resolution in the election process in Aceh, there is a need for reconstruction of law which is in Article 14 letter j, article 15 letter i, article 17 letter j, article 20 letter j, and article 462 of Law Number 7 of 2017 in conjunction with article 39 of the *Bawaslu* Regulations related to firm action, and the decision of the *Bawaslu*/*Panwaslih*. Then, in Article 468 paragraph (2) of the Election Law in conjunction with Article 6 paragraph (1) of the *Bawaslu* Regulation regarding the period of the dispute resolution process. And article 28 of the *Bawaslu* Regulation regarding mediation reaching an agreement as well as article 1 points 9 and 10 of the Supreme Court Regulation Number 5 of 2017.

Keywords: reconstruction, election dispute, justice value

Introduction
The dispute resolution mechanism for the election process in Indonesia is basically divided into two mechanisms, namely: first, the dispute resolution mechanism for the election process at *Bawaslu*, Provincial *Bawaslu*, and Regency/Municipal *Bawaslu* as regulated in Articles 466 to 469 of the Election Law. The dispute resolution process through *Bawaslu* can be reached through mediation based on the fast principle and through adjudication. Second, the dispute resolution mechanism for the election process at the State Administrative Court is regulated in Articles 470 to 472 of the Election Law.
Further regulation regarding the scope and mechanism for dispute resolution of the election process at *Bawaslu* is regulated through the Election Supervisory Body Regulation (or known as *Perbawaslu*) Number 18 of 2017 concerning Procedures for Dispute Resolution of the General Election Process. For the sake of perfection, this *Perbawaslu* has been revised or amended three times. The first change to *Perbawaslu* number 18 of 2018, the second change to *Perbawaslu* Number 27 of 2018. and the third change to *Perbawaslu* Number 5 of 2019. This rule was formed as a technical guideline for *Bawaslu* in handling and resolving electoral process disputes.
In particular, the dispute resolution of the election process in *Bawaslu* can be done with two settlement models, namely mediation and adjudication. First, mediation is also referred to as deliberation, which is a systematic process that involves the parties to obtain an agreement. Mediation gives the parties a feeling of equality and an effort to determine the final outcome of the negotiations is reached by mutual agreement without pressure or coercion.
The regulation of the mediation mechanism has not provided a wider space, because based on the current regulations if the efforts to resolve through mediation fail then the settlement process will automatically proceed to an adjudication trial. If the case has entered the adjudication stage, then legally there is no gap or opportunity for the parties who initially failed to mediate but later changed their minds to return to wanting to negotiate through mediation because there was already a meeting point for an agreement as a win-win solution (Febriansyah, 2019). Then in the *Perbawaslu* the results of the mediation agreement between the parties are formulated in a decision called a decision on the occurrence of an agreement, without a clause on the obligations

of the parties to carry out the contents of the agreement and there are no arrangements related to the outcome of the agreement, a determination can be submitted to the court.
Next, the arrangements for settlement by adjudication are contradictory, as seen in Article 469 paragraph (2) of the Election Law states that if the decision on an election process dispute is related to the verification of the Election Contesting Political Parties, the determination of the final list of candidates for members of DPR, DPD, Provincial DPRD, and Regency/Municipal DPRD and the determination of the Candidate Pair is not accepted by the parties, then the parties may submit legal remedies to the state administrative court.
Then the construction of article 470 of the Election Law, formulated in Supreme Court Regulation (Perma) Number 5 of 2017 concerning Procedures for Settlement of Election Process Disputes in the Administrative Court. In Perma 5, the KPU was not given room to sue because the Perma only mentioned political parties, legislative candidates, and election participants as plaintiffs and KPU as defendants. So if it is a new trial, not as a legal effort or an appeal from *Bawaslu*, then the object of the lawsuit is not the *Bawaslu* decision, but the KPU's decree.
In the dispute resolution process, *Bawaslu* should apply election principles. In relation to this, Article 2 of the Election Law states that elections are conducted on the basis of direct, general, free, confidential, honest, and fair principles. Then article 3 states, the implementation of elections must also be based on the principles of being independent, honest, fair, with legal certainty, orderly, open, proportional, professional, accountable, effective; and efficient. These election principles and principles were later reformulated in Article 2 of *Perbawaslu* which regulates the issue of dispute resolution in the election process.
In The 2019's election, *Bawaslu*/*Panwaslih* was faced with various electoral process disputes that were proposed by justice seekers. Based on data from the 2019 election, *Bawaslu* has completed 816 process dispute requests. A total of 43 applications were completed by the RI *Bawaslu*, 172 applications were completed by the Provincial *Bawaslu*, and a total of 596 applications were completed by the Regency/City *Bawaslu*. The data includes requests for dispute resolution processes which are completed by *Bawaslu*/*Panwaslih* of Aceh Province and Regency/Municipal *Bawaslu*/*Panwaslih* within Aceh province.
During the 2019 election stages in Aceh province, there were 43 applications. Among them, 5 applications were completed by the Aceh *Bawaslu*/*Panwaslih* and 38 applications were completed by the Regency/City *Bawaslu*/ *Panwaslih*.

The electoral process disputes that arose in Aceh were divided into 5 (five) issues for submitting a dispute resolution request, which was related to (Bickerstaff, 2016)

1. Domicile of the office of a political party.
2. Nomination requirements
3. Candidate requirements
4. Support terms
5. Initial Campaign Fund Report (LADK).

The five disputes that arose due to the existence of decrees and minutes issued by the Aceh KIP and Regency/city KIPs, for example, are legally caused an impact on election participants as all applications for the dispute over the electoral process as mentioned above are resolved through two models, namely through mediation and adjudication. The enthusiasm and awareness of election participants in Aceh in seeking justice through legal remedies at *Bawaslu*/*Panwaslih* are relatively significant. This illustrates that the process of implementing the stages of the election, if in the implementation there are things that can harm election participants, then efforts can be taken to resolve the election to the election supervisory agency as Aceh's *Panwaslih* and Regency/city *Panwaslih* as the RI *Bawaslu* hierarchy, have a high commitment to carry out their duties and functions in resolving electoral process disputes. This problem is what urges the author to study it further in a research with the main problem as follows

1. What are the weaknesses of the current electoral process dispute resolution regulations in Aceh province?
2. How is the reconstruction of the regulation on dispute resolution in the electoral process based on the value of justice in Aceh province?

Method of Research

In this study, the research method that the author uses is a normative, juridical method. With the method, researchers examine issues based on the juridical aspect, i.e. norms, regulations, legislation, legal theories, opinions of legal experts (Faisal, 2010). The specification of research used in this study is descriptive-analytical: it provides a relevant description of the nature or characteristics of a problematic situation in research to be analyzed based on legal theories and general practices of implementing positive law on solving problems.
The type of data used in this research is secondary data, obtained from laws and regulations, official documents, textbooks, academic papers concerning with the research problems (Pratama, 2020).

Research Result and Discussion

1. Weaknesses Of The Current Electoral Process Dispute Resolution Regulations In Aceh Province

The issue of quality and quantity of regulations in Indonesia has often been in the spotlight of various parties, both national and international. In 2012, The Organization for Economic Co-operation and Development

(OECD) published a Study Report on Indonesian Regulatory Reform. One of the findings in this study is that there is no comprehensive approach to reforming the laws and regulations in Indonesia (Liany, 2018).

The formation of laws is part of the activity in regulating society which consists of a combination of human individuals with all their dimensions so that designing and forming laws that can be accepted by the wider community is a difficult task. This difficulty lies in the fact that the activity of forming laws is a form of communication between the institutions that determine the legislative power holder and the people in a country.

Law Number 7 of 2017 concerning General Elections is inseparable from the legal politics of elections in Indonesia. There are at least three consequences that must be implemented after the decision of the Constitutional Court Number 14/PUU-XI/2013. First, holding simultaneous general elections, meaning that simultaneous election regulations must be made. Second, harmonization of laws and regulations related to general elections to formulate regulations on simultaneous elections. Third, make the design of simultaneous election regulations which were previously carried out separately, then combined into one in an integrated manner.

Currently, the issue of regulation regarding elections continues to be searched for a better and more appropriate normative format. The goal is to realize the implementation of quality and fair elections. Law number 7 of 2017 concerning General Elections was re-discussed for a try for revision, there is already a new draft made in the spirit of improving the rules that are still weak to be stronger in the future. However, the draft law has not been ratified or has been postponed for ratification in the 2021's National Legislation Program (*Prolegnas*) Priority by the government. The government is of the opinion that in general election regulations are still relevant to be implemented because so far they have not been implemented in their entirety. In Actuality, every rule has its drawbacks, which are influenced by the rapid development of the times (technological developments).

Even though *Bawaslu* has made more technical *Bawaslu* regulations (*Perbawaslu*) to deal with electoral process disputes in the stages of organizing elections. There are several *Perbawaslu* that have been created by *Bawaslu* related to the regulation of electoral process disputes, namely (Fahmi, 2020):

a. Regulation of the General Elections Supervisory Agency of the Republic of Indonesia Number 18 of 2017 concerning Procedures for Settlement of Disputes in the General Election Process.
b. Regulation of the General Elections Supervisory Agency of the Republic of Indonesia Number 18 of 2018 concerning Amendments to the Regulation of the General Elections Supervisory Agency Number 18 of 2017 concerning Procedures for Settlement of Disputes in the General Election Process.
c. *Bawaslu* Regulation Number 27 of 2018 concerning the Second Amendment to the Regulation of the General Elections Supervisory Agency Number 18 of 2017 concerning Procedures for Settlement of Disputes in the General Election Process.

However, there are still certain weaknesses in its regulation, this can be seen when the implementation in the field of the Election Law or *Perbawaslu* as one of its derivatives, it is clear that there are still weaknesses, the Election Law can be said to have not highlighted all elements of the electoral system. One of the election monitoring institutions (*Perludem*) assessed that the Election Law had not been made in the long term and created inconsistencies in its implementation. This makes the organizers always adapt to new rules that make it not optimal as it needs to be pushed for the revision of the Election Law this time to take into account the long-term implementation of the general election. This is so that the regulations are relevant and important to strengthen the quality of electoral governance in Indonesia. Meanwhile, the government and the DPR itself are of the opinion that the Election Law does not need to be revised because it is still so new that it does not need to be revised at this time. Ideally, according to the researcher, a revised law is not a matter of being new or old, but rather looking at the substance of the regulatory norms, it could be that a new law that has not been ratified for five years has to be revised because the regulation is not appropriate or even contradicts other regulations.

In particular, what is regulated in the 2017's Law relating to disputes over the election process should require better arrangements than those currently in force, so that the regulation does not have weaknesses such as the regulation of legal remedies against *Bawaslu* decisions and objects of the dispute between election participants and the *Bawaslu*'s decision letter which has a phrase "*final and binding*".

Regarding disputes over the election process, the Election Law does provide space for parties who do not accept the *Bawaslu* decision, so the parties may file legal remedies by suing the State administrative court. Of course, this specifically related to the decision on disputed processes relating to the verification of the political parties participating in the election, the determination of the permanent list of candidates for DPR, DPD, Provincial DPRD, and Regency/Municipal DPRD, and the determination of candidate pairs. This is as regulated in Article 469 paragraph (1) and paragraph (2) of the Election Law.

Article 469 paragraph (2) states that if the decision on the dispute over the election process related to the verification of the Election Contesting Political Parties, the determination of the final list of candidates for members of DPR, DPD, Provincial DPRD, and Regency/Municipal DPRD and the determination of the Candidate Pairs are not accepted by the parties, then the parties can file a legal action to the state administrative court.

However, if you look at Article 470 of the Election Law, it is implied that the Administrative Court is not an institution to make appeals to ordinary judicial institutions or as a new judicial institution. Here it can be seen that the object of the lawsuit or the object of the dispute is not the *Bawaslu* decision that annuls the KPU's decree, but the KPU's own decision.

Then the construction of article 470 of the Election Law, was revealed in the Supreme Court Regulation (Perma) Number 5 of 2017 concerning Procedures for Settlement of Election Process Disputes in the Administrative Court. In Perma Number 5, the KPU was not given room to sue because the Perma only mentioned political parties, legislative candidates, and election participants as plaintiffs and KPU as defendants. So if it is a new trial, not as a legal effort or an appeal from *Bawaslu*, then the object of the lawsuit is not the *Bawaslu* decision, but the KPU's decree.

On the one hand, the *Bawaslu* decision is a final and binding decision that needs to be followed up by the KPU, except for some decisions. This is regulated in article 469 of the Election Law which states that the *Bawaslu* decision regarding dispute resolution in the election process is a final and binding decision, except for decisions on election process disputes relating to the Verification of Election Contesting Political Parties, determination of the permanent list of candidates for members of DPR, DPD, Provincial DPRD and Regency/Municipal DPRD and determination of Candidate Pairs.

The meaning of final and binding in article 469 creates an ambiguity which then gives the impression that the phrase "final and binding" is only a formality, which is not practically the case. The regulation of the phrase Final and binding would need to be sharpened or reaffirmed that what is actually final and binding is specifically related to *Bawaslu*'s decision on election process disputes whose objects are between election participants, not SK or KPU Official Reports.

Disputes between participants are resolved through a quick event mechanism. Quick event means that the resolution is carried out by *Bawaslu* which is urgent, takes place in a short campaign stage, is resolved on the same day, and at the place where the dispute occurs using easy and simple dispute resolution administration.

In addition, regulations relating to the design of law enforcement for dispute resolution in the election process that occurs between Election Contestants also have weaknesses. Norm construction of articles 466, 467, 468, and 469 of the Election Law contains several weaknesses. Construction of the scope of dispute resolution between Election Contestants in Article 466 that relates the object of the election process dispute as a result of the issuance of a Decision on Election Organizers. With this construction, the essence of the dispute between Participants becomes irrelevant because the issuer of the object of the dispute is the Election Organizer but the contestant is the Election Contestant. The mechanism for resolving disputes between Election Contestants has different characteristics from disputes between Election Contestants and the Election Organizer, so it is necessary to regulate different settlement mechanisms. It is hoped that there will be restrictions on the character of disputes between election participants which can then be clearly distinguished from alleged election violations.

2. Reconstruction Of The Regulation On Dispute Resolution In The Electoral Process Based On The Value Of Justice In Aceh Province

Legal reconstruction is something that is closely related to legal reform, which of course is also related to legal politics. Political law in the field of elections has played a positive role so that the birth of rules or regulations that are increasingly responsive to the character of the Indonesian nation or people who implement a democratic system.

The development of electoral law politics from time to time has experienced a significant shift. Elections are considered a real form of democracy and the most concrete form of public participation in participating in the administration of the state. Considering the need for renewal of election law products to suit the needs of the community because the law is not only a complement to the administration but also has a very important role in advancing the constitutional system or elections in Indonesia. In general, the design of the electoral system in Indonesia after the reforms in 1999, 2004, 2009, and 2014 as well as for the 2019's election has always undergone significant changes and developments. With these changes, it proves that there have been socio-political changes in Indonesia that demand accommodation in elections.

In the process of changing electoral laws and regulations, of course, there have been many adjustments or synchronization of rules, norms and legal rules so that their implementation can run effectively. According to Hans Kelsen in Widodo (2018), every rule of law is an arrangement of rules, at the top of *Stufenbau* there are basic rules of a national legal system which are fundamental or basic rules called *Grundnorm*. Basic rules are legal principles that are abstract, general and hypothetical, then moved to general rules, which are then posited into real norms.

Election-related regulations are a part of statutory instruments as written legal instruments have a very important role in Indonesia, which is a state of law that idealizes the principle of the rule of law. Legislation is also often identified with the law in the civil law legal system, including in Indonesia. Legal positivism is still a role model, although basically the legislation is only one part of the sub-system of legal substance or legal substance. Lawrence M. Friedmann, in Widodo (2021) argues that in addition to legal substance, there are two other elements that are elements of a legal system, namely legal structure, and legal culture.

Laws and regulations are broadly divided into laws and regulations at the central level and legislation at the regional level. It is possible that there will be differences in interpretation or interpretation between laws and regulations at the center and in the regions or between basic laws and regulations and implementing regulations, resulting in synchronization and disharmony between laws and regulations in their implementation. This synchronization and disharmony of laws and regulations is caused by 6 (six) factors, namely (Ansori, 2019):

a. Formation is carried out by different institutions and often at different times;

b. Officials who are authorized to form laws and regulations change either because they are limited by the term of office, transfer of duties, or replacement;
c. The sectoral approach to the formation of laws and regulations is stronger than the systems approach;
d. Weak coordination in the process of forming laws and regulations involving various agencies and legal disciplines;
e. Public access to participate in the process of forming laws and regulations is still limited;
f. There are no definite, standard, and standard methods and methods that bind all institutions authorized to make laws and regulations.

As a result of the synchronization and disharmony of these laws and regulations, there are not only differences in interpretation in their implementation. However, it can also result in legal uncertainty, ineffective and inefficient implementation of laws and regulations, and legal dysfunction, namely where the law does not function to provide behavioral guidelines for the community, social control, dispute resolution, and provide means of social change in an orderly and orderly manner (Carmona, 2014). Problems like this will occur during implementation in the field, as there are many misunderstandings on the occurrence of multiple interpretations of regulations regarding elections. In Aceh, for example, almost in every moment of an election or regional election, there exist a kind of regulatory conflict and a long debate regarding election rules and this issue will certainly affect the effectiveness of the implementation of these regulations.
There are several principles regarding the synchronization of legislation known in the legal repertoire, namely (Utami, 2021):
a. The highest rules can be used as the foundation of the lowest regulations.
b. The lowest regulations must be sourced from the highest regulations.
c. The lower content of the legislation may not deviate from the above regulations.

Elections are held based on electoral laws which not only contain the elaboration of the principles of democratic elections, but must also contain legal certainty. Legal certainty in election arrangements will be realized if:
a. All aspects of elections are regulated comprehensively so that there is no legal vacuum;
b. All provisions governing elections must be consistent with each other, so that there are no contradictions between provisions or between regulations;
c. All provisions must contain a clear and single meaning, so that there are no provisions that give rise to multiple interpretations; and
d. All provisions made must be enforceable.

Then, if it is seen in article 6 paragraph (1) of the Law Formation of legislation, one of the materials that must exist in a legislation made is justice, equality in law and government and balance, harmony and harmony. Every election participant or community is treated equally in the dispute resolution process of the election process, does not discriminate and is treated fairly, both election participants from local parties and national parties or individuals.
However, sometimes there are factors that influence the substance of the law, such as regulations that are still contradictory, so there is a need for a legal reconstruction. Reconstruction is important to do to realize legal certainty and legal protection so that the regulations governing dispute resolution in the election process are based on the value of justice. Based on the explanation above, several articles that require reconstruction are article 14 letter j, article 15 letter i, article 17 letter j, article 20 letter j, and article 462 of Law Number 7 of 2017 in conjunction with article 39 of the *Bawaslu* Regulation regarding a firm follow-up actions. the decision of the *Bawaslu*/*Panwaslih*. Then Article 468 paragraph (2) of the Election Law in conjunction with Article 6 paragraph (1) of the *Bawaslu* Regulation regarding the period of dispute resolution process. And article 28 of the *Bawaslu* Regulation regarding mediation reaching an agreement as well as article 1 points 9 and 10 of the Supreme Court Regulation Number 5 of 2017.

Conclusion

1. The weaknessess of the Election Process Dispute Settlement Regulations In Aceh Province are caused by several regulations for the completion of the election process that is not based on the value of justice because in the content of the mediation agreement there is no obligation to include a clause on the obligations of the parties to implement the agreement. this makes the parties question the legal strength of the mediation agreement as one of the factors of failed mediation was because the parties considered that the results of the mediation had no legal force. By regulation, the obligation for the respondent to follow up on adjudication decisions is still weak because there are no firm and concrete clauses.
2. The articles that require reconstruction are article 14 letter j, article 15 letter i, article 17 letter j, article 20 letter j, and article 462 of Law Number 7 of 2017 in conjunction with article 39 of the *Bawaslu* Regulation regarding the firmness of the follow-up to the *Bawaslu*/*Panwaslih* decisions, followed by Article 468 paragraph (2) of the Election Law in conjunction with Article 6 paragraph (1) of the *Bawaslu* Regulation regarding the period of the dispute resolution process, and article 28 of the *Bawaslu* Regulation regarding mediation reaching an agreement as well as article 1 points 9 and 10 of the Supreme Court Regulation Number 5 of 2017.

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