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## Election process dispute settlement system through adjudication method by Aceh Panwaslih

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### Abstract

This study aims to analyze the dispute resolution system of the general election process owned by the Panwaslih institution of Aceh Province. This research uses a normative juridical method with a statutory approach, a conceptual approach, and a historical approach. This study also uses an empirical juridical method with a socio-legal approach. The results showed that the electoral process dispute resolution system in Panwaslih Aceh Province was basically almost the same as the courts in general, only that the election process dispute resolution time was very short, namely 12 (twelve) working days in accordance with Article 466 to Article 469 of the Law. Number 7 of 2017 concerning General Elections. The procedure for resolving disputes in the general election process is regulated in more detail in Regulation of the General Elections Supervisory Agency Number 5 of 2019 concerning procedures for resolving disputes over the general election process.

**Keywords:** election process dispute, adjudication, Aceh Panwaslih

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### Introduction

According to the Election Law, there are two sorts of electoral process disputes: those involving election participants and those involving election administrators. Election process disputes are disagreements that arise between election participants and between election participants and election organizers as a result of decisions or minutes issued by KPU/Provincial KPU/Regency/City KPU or Provincial KIP and Regency/Municipal KIP in Aceh. Election participants who feel offended can, of course, utilize the decision or official report as a matter of dispute (subjectum litis). Election breaches and disagreements were common during the 2019 elections, particularly in Aceh Province. Typically, disputing parties petition to the Panwaslih of Aceh Province for the dispute's subject matter. The Election Law allows the Provincial Bawaslu and the Regency/Municipal Bawaslu the jurisdiction to address disputes over the electoral process through mediation or adjudication. In addition to possessing supervisory jurisdiction, Bawaslu is also authorized to perform judicial tasks. Settlement of electoral disputes by adjudication is a process for resolving disputes or conflicts between two parties by employing a third party to arbitrate and produce a conclusion that is fair and acceptable to both sides. The procedure for adjudicating electoral process disputes is governed by the General Election Supervisory Agency Regulation No. 5 of 2019 pertaining to the third amendment to the General Election Supervisory Agency Regulation No. 18 of 2017 pertaining to Procedures for the Settlement of General Election Process Disputes. In general, adjudication hearings performed by the Bawaslu, Provincial Bawaslu, and Regency/City Bawaslu institutions are comparable to trials. Nonetheless, the adjudication trial conducted by the Bawaslu institution has numerous flaws and deficiencies, particularly in terms of human resources (HR). The verdict rendered by Bawaslu in this case is final and cannot be overturned. Bawaslu is not a branch of the judicial power, hence the panel of judges that conducts adjudications and issues rulings cannot be overseen by the Judicial Commission.

### Research method

Research is the process of discovering the truth through a scientific method in order to answer specific questions. Research is conducted in numerous scientific domains, including law, and is hence known as legal research. Legal research is the act of identifying legal rules, legal concepts, and legal doctrines in order to address a variety of developing legal concerns. This study aims to analyze the dispute resolution authority of the general election process delegated to the Aceh Provincial Panwaslih institution, the electoral process dispute resolution system implemented by the Aceh Province Panwaslih, and the ability of the Aceh Province Panwaslih to resolve disputes over the general election process.

### Results and Discussion

#### Election Process Dispute Resolution System in Aceh Panwaslih Through Adjudication Metho

Adjudication is one approach for resolving disputes between two parties. Adjudication is a method for resolving disagreements or disputes through a third party, in this case, a panel of judges. Adjudication is a judicial practice

that expedites the court's ruling on a dispute between the parties. The outcome of the process is legally binding court judgements and opinions. Only if mediation is deemed unsuccessful or the parties withdraw from mediation is adjudication conducted. A decision rendered by an adjudicator is a final decision that is anticipated to conclude the dispute. Accommodation is exemplified by adjudication. Adjudication in an election process dispute application is a trial for dispute settlement in the election process conducted by a panel of judges involving the disputing parties in order to reach a conclusion <sup>[1]</sup>.

Essentially, a dispute cannot exist without a conflict. Disagreements of opinion on a certain subject can undoubtedly result in conflict. Conflicts created by disputes in general elections are experienced by all elements involved in elections; consequently, it is crucial that we comprehend the conflicts that arise in order to develop a method for resolving them <sup>[2]</sup>. Bawaslu, Provincial Bawaslu, and Regency/Municipal Bawaslu are governed by the General Election Supervisory Agency Regulation Number 5 of 2019 regarding the third amendment to the General Election Supervisory Agency Regulation Number 18 of 2017 regarding Procedures for Settlement of General Election Process Disputes in resolving this election process dispute. Article 468, paragraph 1, of the Election Law states that Bawaslu, Provincial Bawaslu, and Regency/Municipal Bawaslu are empowered to address election process problems, and election dispute resolution in the Panwaslih of Aceh Province can be settled by mediation and adjudication. According to Andreas Soeroso, adjudication is an attempt to create a consensus in the judicial system, where individuals hold differing ideas and insist on being the most correct.

The Bawaslu institution's emergence of this authority now conforms to public expectations. In conducting the 2014 elections, Bawaslu lacked sufficient authority, particularly as an election supervision agency that was physically present to ensure electoral justice. Its rulings are simply considered recommendations, which the KPU is frequently unwilling to adopt. This was the impetus for the institutional strengthening of the Bawaslu, both in terms of structure and authority, until Law No. 7 of 2017 regarding General Elections was enacted. According to Fritz Edward Siregar, one of the most significant changes made by legislators to Bawaslu is the addition of the adjudication role to the election process. With the addition of this authority, Bawaslu is no longer merely a recommender, but also an implementer or decision-maker for election administration and electoral process issues <sup>[3]</sup>. In addition, according to Rahmat Bagja, the electoral dispute resolution mechanism in Bawaslu consists of three components: corrective, punitive, and alternative. When a deviation occurs, formal dispute resolution that is corrective will cancel/rescind, modify, or correct the decision. According to Rahmat, "the corrective aspect of this decision consists on its ability to be reversed in the event of a mistake." In punitive dispute resolution, the decision will include punishments for election administration infractions and electoral offences. Disputes between contesting parties are typically informal. Bawaslu's dispute resolution authority serves to safeguard the right to vote and to be elected. This authority is also a technique of institutionalizing electoral dispute in order to achieve the three legislative goals (justice, benefit, and certainty).

The General Elections Supervisory Agency Regulation Number 5 of 2019 regarding the third amendment to the General Elections Supervisory Agency Regulation Number 18 of 2017 regarding Procedures for Settlement of Disputes in the General Election Process stipulated that the dispute resolution process of the General Election will be conducted in two ways: a) mediation and b) adjudication. Mediation is a strategy for settling problems through negotiation to reach an agreement, with the assistance of a mediator <sup>[4]</sup>. One of the significant developments made by Bawaslu is the concept of resolving election-related disputes through mediation. So far, mediation has only been applied to civil issues, whereas election disputes are within the jurisdiction of public law. In his research, Bambang Hariyanto explains that national law gives an alternative to court-based dispute resolution; it can also try to find an agreement that will lead to peace <sup>[5]</sup>. Essentially, mediation is a form of dispute settlement that has a long history in Acehnese culture. The mediation method in Acehnese society arose from the practice and experience of earlier generations in resolving numerous community disputes. The fact that the Acehnese social structure from the past to the present adheres to religious principles based on Islamic values, which are the beliefs of the majority of the Acehnese people, is a significant strength <sup>[6]</sup>.

After a dispute request has been submitted as outlined in Article 12 of the General Elections Supervisory Agency Regulation Number Number 5 of 2019 concerning the third amendment to the General Election Supervisory Agency Regulation Number 18 of 2017 concerning Procedures for Settlement of Disputes Election Process, election process disputes are resolved through mediation by the Aceh Provincial Panwaslih. Article 1 stipulated that Applications for dispute resolution in the election process shall be made directly to the office of Bawaslu, Regency/City Bawaslu, and Regency/City Bawaslu; then indirectly via the dispute resolution page on the official Bawaslu and the Provincial Bawaslu website. Then, article 2 mention that the application referred to in paragraph (1) must be submitted no later than 3 working days from the date that the KPU, Provincial KPU, or Regency/Municipal KPU issues its decision. Then, Article 13 paragraph 1 explains that the Application referred to in Article 12 is submitted to Bawaslu, Provincial Bawaslu, or Regency/City Bawaslu in writing in Indonesian containing: the identity of the applicant consisting of the applicant's name, address, telephone number, and fax number, along with a photocopy of the identity card or other valid resident identification; b. The identity of the applicant consisting of: the name of the respondent, the address of the respondent, and a telephone or fax number; c. A clear description of the authority for dispute resolution in the election process; d. The legal position of the applicant in the administration of the General Election; e. The legal position of the respondent in the administration of the General Election; f. A clear description of the deadline for submitting the application; g. A clear declaration regarding the object of the disagreement in the election process that includes the applicant's direct interest in the settlement of the dispute in the election process and the problem/object in dispute; h. A

description of the reasons for the petition for dispute over the election process in the form of the disputed facts accompanied by a description of the evidence submitted; and i. Matters requested to be decided. Paragraph 2 clarifies that the application referred to in paragraph 1 must be signed by the applicant or his legal representative and accompanied by evidence in 4 copies, including 1 original affixed with stamp duty and 3 copies, as well as a digital document in MsWord format submitted to a data storage unit. The evidence referred to in paragraph (2) must subsequently be gathered into a list of evidence in line with the description of the written application, as specified in paragraph (3). Bawaslu, Provincial Bawaslu, or Regency/Municipal Bawaslu specify that the application cannot be accepted if it is filed after the deadline specified in paragraph (1). The evidence referred to in paragraph (2) must subsequently be gathered into a list of evidence in line with the description of the written application, as specified in paragraph (3). Bawaslu, Provincial Bawaslu, or Regency/Municipal Bawaslu specify that the application cannot be accepted if it is filed after the deadline specified in paragraph (1). In addition, Paragraph (5) stipulates that Bawaslu, Provincial Bawaslu, and Regency/Municipal Bawaslu shall send written notification if the application is not accepted as outlined in Paragraph (4).

After the entire process has been completed, members of the Panwaslih secretariat of the Aceh Province will schedule the registered applications prior to conducting mediation in accordance with Article 19 of the General Elections Supervisory Agency Regulation Number 5 of 2019 regarding the third amendment to the General Elections Supervisory Agency regulation Number 18 of 2017 concerning Procedures for Dispute Resolution of the General Election Process. Before conducting mediation, the Panwaslih of Aceh Province would establish a mediation schedule, according to the report. After establishing a timetable, the Panwaslih summoned the parties; both the applicant and responder must be present during the mediation process. If the applicant / respondent is absent from the first summons, the officers will reschedule and recall the disputing parties. If the applicant / respondent is still absent from the second summons, the application will be ruled null and void. This mediation procedure is overseen by a mediator who is a member of the Aceh Provincial Panwaslih, and the mediation is conducted in a closed setting with the applicant and responder for a maximum of two days. Article 21 Regulation of the General Elections Supervisory Agency Number 5 of 2019 concerning the third 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 stipulates that the stages of the mediation process are as follows; a. The mediation leader delivers an opening statement; b. Delivering the chronology of the problems of the parties; c. Negotiating an agreement on dispute resolution in the election process; d. Preparation of the agreement of the parties by the mediator; and e. Signing the minutes of agreement or disagreement.

The Mediation team comprises of two Bawaslu officials, one secretary, and one notetaker. Administrative, operational, and documentation assistance are the responsibilities of this secretary. While the minutes record the major topics of discussion at the time of the mediation, whether or not electronic evidence or supporting applications are included. In the event that a settlement is reached through mediation, the Aceh Provincial Panwaslih will prepare an official report that will be signed by both disputing parties and the mediator. Alternatively, if no agreement is achieved, the Aceh Provincial Panwaslih will create an official report stating that no agreement was reached, which will be signed by the opposing parties and the mediator. In addition, the mediator will announce the time and location of the adjudication session verbally in the mediation forum before the official summons is issued.

Adjudication is a way for settling conflicts between two parties by using a third party as a mediator or arbitrator to address issues and create a judgement that is fair and agreeable to both sides <sup>[7]</sup>. Sociologically speaking, adjudication is an attempt to establish an agreement through litigation between two disputing parties, each of whom claims to be the most righteous. This agreement can be achieved through the judicial system, and it will be decided based on a variety of facts and specific grounds in compliance with the existing laws. Using the term "conflict" reveals the epistemological nature of election disagreements. The word disagreement implies that there are issues associated with the election. The Institute of Democracy and Electoral Assistance (IDEA), in their research, defines electoral dispute as "any complaint, challenge, claim, or controversy relating to any stage of the electoral process". According to this conception, the scope of electoral conflict is expansive and encompasses all phases of the general election. According to Topo Santoso, the implementation of the General Election would result in poll administration breaches in cases of discontent with the decision to hold the election <sup>[8]</sup>.

The Election Law stipulates that Bawaslu, Provincial Bawaslu, and Regency/Municipal Bawaslu shall conduct dispute resolution in the election process as follows: (a) receiving and reviewing applications for dispute resolution in the election process; and (b) bringing the disputing parties together to reach an agreement through mediation or deliberation and consensus. In the case that an agreement is not reached between the disputing parties as alluded to in paragraph (3) letter b, Bawaslu, Provincial Bawaslu, Regency/Municipal Bawaslu shall settle the election issue by adjudication. There are eight principles in the implementation of adjudication for dispute resolution in the election process, including; 1). It is conducted if the mediation of the election process issue does not result in an agreement, both in terms of the applicant's claims and the respondent's failure to attend the mediation after receiving two summonses; 2). It is conducted through a trial procedure that is public and accessible. According to the Election Law, the entire Bawaslu decision-making process must be conducted in a transparent and accountable manner. Similarly, in Perbawaslu regarding election dispute resolution procedures, which stipulates, among other things, that election dispute settlement shall be driven by the idea of openness. 3) The parties are permitted to be represented by a solicitor. Article 10 paragraph 3 of Perbawaslu concerning procedures for dispute resolution in the Election process stipulates that the applicant, the respondent, or related

parties may be accompanied or represented by a legal representative; 4). In accordance with Article 25 and Article 27 paragraph (1) of Perbawasul establishing procedures for the resolution of election-related disputes, the trial assembly examines the application for dispute during the adjudication hearing; 5). Article 31 of Perbawasul outlines the procedures for resolving election-related disputes and applies the legal standard of proof to the judicial examination of election-related dispute applications; 6). In accordance with Article 27 paragraph (3) and Article 34 of Perbawasul pertaining to dispute resolution in the election process, the examination of disputes in court shall give parties with an equal opportunity to defend their legal interests prior to trial; 7). An applicant is required to attend the adjudication hearing; if the applicant or his/her proxy does not attend following 2 (times) summons, the applicant's application is ruled null and void. In contrast to the respondent, if he fails to appear at the adjudication hearing after receiving two summonses, the adjudication procedure will proceed to make a determination; 8). Both the provisions of laws and regulations as well as the principles of good governance/election administration inform decisions on election process issues<sup>[9]</sup>.

The dispute resolution of the election process by the Aceh Provincial Panwaslih through the adjudication route was carried out after the mediation stage had declared that no agreement had been reached between the two parties. At this adjudication stage, Article 25 of the General Elections Supervisory Agency Regulation Number 5 of 2019 concerning the third amendment to the General Election Supervisory Agency regulation Number 18 of 2017 concerning Procedures for Dispute Resolution of the General Election Process explains that in carrying out the adjudication process, the Aceh Provincial Panwaslih must establish an adjudication panel led by a trial assembly of at least 3 (three) members of the Aceh Province Panwaslih, 1 person as chairman and 2 people as members. The assembly assembly is also assisted by an adjudication team of at least 4 Panwaslih employees of Aceh Province, each consisting of 1 secretary who is in charge of providing administrative, operational, documentation and support for the implementation of the trial, then 1 assistant session assembly who assists the chairman of the trial assembly in leading adjudication and drafting a decision. Then there is also 1 note taker who is in charge of recording the main discussion at the time of the trial, and 1 person who is in charge of documenting or recording the course of all stages of the trial starting from the applicant's application, the respondent's answer, the answer of the related party, witness testimony, expert testimony, and institutions providing information and trial facts.

Article 27 of Regulation of the General Elections Supervisory Agency No. 5 of 2019 regarding the third amendment to Regulation of the General Elections Supervisory Agency No. 18 of 2017 concerning Procedures for Settlement of Disputes in the General Election Process explains that the trial assembly leading the adjudication session of the election process dispute resolution must consider the interests of the parties in a balanced manner and also make a decision regarding the election process dispute resolution procedure. When Panwaslih conducts an adjudication hearing, several stages are carried out in the trial process, including the submission of the principal application by the applicant; at this stage, the trial assembly allows the applicant to read the contents of the application for dispute resolution in the election process. In addition, the procedure continues by listening to the respondent's response; the trial assembly gives the respondent the opportunity to read his or her response to the petition for dispute settlement in the election process. The trial assembly then affords relevant parties the option to submit comments to the applicant's petition for dispute settlement of the election process. After that is the evidentiary process, during which the parties may submit witnesses and experts in the adjudication process, pending trial assembly permission. On the basis of its deliberations, the trial assembly may additionally attend the information-giving institution relating to the disputed object. Lastly, the assembly permits parties to provide final judgments or conclusions prior to determining election process disagreement cases. Except for decisions relating to the verification of political parties participating in the General Election, determination of DCT members of DPR, DPD, Provincial DPRD, and Regency/Municipal DPRD, and determination of candidate pairs, the Aceh Provincial Panwaslih's decision on election dispute resolution is final and binding.

The adjudication decision regarding the electoral process issue comprises multiple essential components. First, the adjudication decision is the culmination of a series of stages of dispute resolution in the election process, beginning with the reading of the main petition of the applicant, the respondent's answer, the response of the relevant parties (if any), and the evidence, and concluding with the decision. Second, the adjudication decision on election process disputes is a legal product with juridical worth, so that the legal implications resulting from the election process dispute adjudication decision are binding on the parties and, generally, on the public (*erga omnes*). If the adjudication decision states that it grants or partially grants the applicant's application, the election process dispute adjudication decision creates a legal obligation for KPU, Provincial KPU, and Regency/Municipal KPU to follow up, as stipulated in Article 39 of Perbawaslu regarding procedures for resolving election process disputes. Thirdly, the adjudication decision on the election process dispute, which contains a legal evaluation of the actions of the KPU, Provincial KPU, and Regency/Municipal KPU in issuing decisions in the form of decrees and official reports, will be evaluated to determine whether they have been based on or justified by law, or whether there is no legal basis or reason. This will also decide the outcome of the applicant's constitutional rights in the election dispute, including the right to be elected (right to be elected). Fourth, as with court decisions in general, for which the idiom "the crown of the judge is decision" is used in practice, the adjudication decision in election process dispute adjudication is the crown. It will determine the respect accorded to Bawaslu, Provincial Bawaslu, and Regency/City Bawaslu<sup>[6]</sup>.

The application may also be declared invalid in accordance with Article 35 of the General Election Supervisory Agency Regulation No. 5 of 2019 regarding the third amendment to the General Election Supervisory Agency Regulation No. 18 of 2017 regarding Procedures for Settlement of Disputes in the General Election Procedure. The article states that; (1) An application for dispute resolution in the election process shall be declared void if: a. the applicant dies; b. The applicant did not attend 2 times in a row in the first mediation process; c. The applicant does not attend 2 times in a row in the adjudication process; d. During the electoral dispute settlement process, the Respondent has met the petitioner's demands.; or the Applicant withdraws the application. Furthermore, In paragraph (2), it is explained that the applicant cannot reapply if their application is declared null and void pursuant to paragraph (1). In subsection (3), it is also specified that if the application for dispute resolution over the election process is ruled invalid pursuant to subsection (1), the trial assembly shall render a decision regarding the failure of the application for dispute resolution over the election process. In paragraph (4), it is stated that the decision referred to in paragraph (3) is contained in the decision to deny the application for election dispute settlement. In addition, Paragraph (5) specifies that the Secretary for dispute settlement shall notify the parties of the decision to disqualify the application and declare it on the bulletin board at the Election Supervisory Secretariat or in other information medium.

### Conclusion

In Panwaslih Aceh Province, the electoral process conflict resolution mechanism is virtually identical to that of courts in general. In accordance with Articles 466 to 469 of Law No. 7 of 2017 pertaining to General Elections, the dispute resolution period for the election process is extremely brief, at 12 (twelve) working days. The General Elections Supervisory Agency Regulation Number 5 of 2019 regarding processes for resolving complaints over the general election process contains more information regarding the procedure for resolving issues over the election process.

The decisions of the Bawaslu, Provincial Panwaslih, and Regency/Municipal Panwaslih are final and binding, with the exception of three matters: the verification of candidates for political parties participating in the General Election, the determination of candidates for members of the DPR, DPD, Provincial DPRD, and Regency/Municipal DPRD, and the determination of candidates. If the parties are not pleased with the decision given by the Bawaslu, Provincial Panwaslih, or Regency/City Panwaslih, they may also appeal to the Administrative Court. This is done when administrative efforts at the Bawaslu, Provincial Panwaslih, and Regency/City Panwaslih have been accomplished.

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