

The Nature of Village Head Election Dispute Resolution in North Maluku Province

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ABSTRACT

This study aims to analyze the essence of dispute resolution over the results of village head elections in North Maluku Province. And to know and analyze the process of resolving disputes over the results of village head elections in North Maluku Province. The method used by researchers here is that research, in general, can be classified into two types, namely sociological (field) and empirical research, namely research conducted with an approach to legal reality in society. and normative research. The process of resolving disputes over village head election results in North Maluku province has been less effective. Factors that influence the resolution of disputes over the results of village head elections in North Maluku Province include legal substance, legal structure, legal culture, facilities and infrastructure. In Law Number 6 of 2014 concerning Villages, if there is a Village Head Election Dispute (Pilkades) it should be resolved by the Judicial Institution, not the Regent/Mayor, the position of the Regent/Mayor is limited to Making Regional Regulations (Perda) to further optimize the settlement of Village Head Election Disputes.

Abstract: Disputes; Election; Village head

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I. Preliminary

Law No. 6 of 2014 concerning Villages has regulated villages by the 1945 Law by placing villages domiciled in districts/cities, which are recognized and respected in the Government System of the Unitary State of the Republic of Indonesia. The objectives of enforcing the Village Law include:

- 1) provide recognition and respect for existing villages with diversity before and after the formation of the Unitary State of the Republic of Indonesia;
- 2) preserving and advancing the customs, traditions and culture of the village community, and strengthening the village community as a subject of development.

The village is a representation of the smallest legal community unit that has existed and has grown in line with the history of Indonesian people's lives and has become an inseparable part of the Indonesian nation's life order. As a form of State recognition of villages, especially in the context of clarifying village functions and authorities, as well as strengthening the position of villages and village communities as subjects of development, a policy of structuring and regulation regarding villages is needed which is manifested by the enactment of Law Number 6 of 2014 concerning Villages.

Decentralization can be seen as part of realizing a rule of law because it contains the intention of limiting the powers of the central government. In connection with the implementation of regional government by the mandate of the 1945 Constitution of the Republic of Indonesia, that regional government, which regulates and manages its government affairs according to the principle of autonomy and co-administration, is directed to accelerate the realization of social welfare through improvement, service, empowerment and community participation, as well as increasing regional competitiveness by taking into account the principles of democracy, equity, justice, privileges and specificity of a region within the system of the Unitary State of the Republic of Indonesia. The efficiency and effectiveness of regional government administration need to be increased by paying attention to aspects of the relationship between government structures and between regional governments, regional potential and diversity, opportunities and challenges of global competition by giving the widest possible authority to the regions accompanied by the granting of rights and obligations to carry out regional autonomy in a unified system. administration of state government.

Regional autonomy cannot be separated from the government bureaucracy system in Indonesia. Because the regional government system that implements autonomy aims to further optimize the independence and ability of the region to manage its region. Within the framework of regional autonomy, a strong bureaucratic system is required to support regional development.^[1]

The definition of regional autonomy is explained in Article 1 paragraph 6 of Law Number 23 of 2014 concerning Regional Government, "Regional autonomy is the right, authority and obligation of an autonomous region to regulate and manage its government affairs and the interests of the local community in the system of the Unitary State of the Republic of Indonesia". Previously, the meaning of regional autonomy was regulated in Article 1 paragraph 5 of Law Number 32 of 2004 concerning Regional Government, that "Regional autonomy is the right, authority and obligation of an autonomous region to regulate and manage its government affairs and the interests of the local community by the Laws and Regulations. invitation".

Regional government reforms continued to be carried out, namely by promulgating Law Number 22 of 1999, which was later refined by Law Number 32 of 2004 concerning Regional Government, as a substitute for Law Number 5 of 1974 concerning Fundamentals of Governance in the Regions. This legislation is a legal product that brings changes to the form of the regional government system with a philosophical basis of diversity in unity. This change has fundamentally changed the practice of administering the government, including the management of village finances.^[2]

Law of the Republic of Indonesia Number 6 of 2014 concerning Villages which is a product of the reform era has marked the beginning of an era towards village independence, both in administering government and in managing village finances. Village development aims to improve the welfare of rural communities and the quality of human life as well as reduce poverty through meeting basic needs, developing village facilities and infrastructure, developing local economic potential, and using natural resources and the environment sustainably.

Village administration is explained in the General Provisions of Article 1 paragraph 2 of Law no. 6 of 2014 concerning Villages, that village administration is the implementation of government affairs and the interests of the local community within the system of government of the unitary state of the Republic of Indonesia. Village administration is the administration of the lowest position of the government that has the authority to regulate the interests of the local community in its territory. In carrying out its administration, village administration consists of the village government, village apparatus and the Village Consultative Body (BPD) which have different functions and authorities.^[3]

The village head is a community leader in a village to exercise his authority in an area consisting of several hamlets. The term of office for a village head is based on direct election by village communities in certain areas with a term of office of six years. The village head is directly elected by the community, the community should choose based on the knowledge of the village head candidate in carrying out village administration and behaviour towards the community. In general, those who are elected as village heads are people who have good social interaction skills, such as traditional leaders, religious leaders and wealthy people. This social interaction is carried out with its citizens. So that the elected village head will not be the person who has sufficient human resources to run the village administration.^[4]

Along with the enactment of Law Number 6 of 2014 concerning Villages which was promulgated on January 15 2014 and Government Regulation Number 43 of 2014 concerning Regulations for Implementing Law Number 6 of 2014 regarding Villages which was promulgated on May 30 2014, then issued Government Regulation of the Republic of Indonesia Number 47 of 2015 concerning Amendments to Government Regulation Number 43 of 2014 concerning Implementation of Law Number 6 of 2014 concerning Villages.^[5]

The existence of the Legislative Regulations above provides an understanding of the importance of administering Village Government, therefore the village is currently the prima donna and has become the focus of attention after the issuance of Law Number 6 of 2014 concerning Villages, because the village is the smallest basis of a genuine democracy so that the principle of caution is needed, in the management and arrangement of villages.

Politically, the Village Law provides for the delegation of government authority by the central government to the village government. Furthermore, the village government has the authority in administering and operating village government, to increase the effectiveness of services to the community. Meanwhile, economically, this law gives authority to the village government to manage regional finances and seek legitimate sources of village income. This has two impacts at once, namely that the village government must carry out budget efficiencies and must actively seek alternative sources of income.

As an administrative area, the village has authority in administering village administration and managing village finances. This of course has implications for the ability of the village government as the executor of autonomous authority and potential financial sources that must be found. Administration of government requires human resources that are quite anticipatory and initiative. The village government must be anticipative of all problems, both those that already exist and those that will potentially burden the village. These problems arose

as a result of the inability of village officials to identify the problems they were facing. This relates to government initiatives.

The structure of centralized authority is still inherent in the implementation of village authority. It is feared that the village administration will still have the old pattern of waiting for orders from the government hierarchy above it. As a result, the ability of village officials to improve public services, village planning, and village financial management depends on the government hierarchy above them. This paradigm must be removed, and replaced with a participatory, anticipatory, and initiative paradigm.^[6]

The Village Head and Village Officials in the administering government are obliged to coordinate, integrate and synchronize. Each head of the Village Government organizational unit supervises and evaluates the implementation of its functions and duties. Each organizational unit leader reports the results of the implementation of his functions and duties to his superiors in writing, routinely and/or periodically. In addition to the obligations referred to above, each head of the village government organizational unit is responsible for leading and coordinating his subordinates and providing guidance and instructions for carrying out their respective duties. The Village Secretary coordinates the technical implementation of the administration of village governance. The Village Secretary represents the Village Head if the Village Head is not present or temporarily unavailable.^[7]

In addition to his duties, powers and obligations, the village head also has rights as stipulated in Article 26 paragraph 3 of Law Number 6 of 2014 concerning Villages: "In carrying out their duties, the Village Head has the right to propose the organizational structure and work procedures of the Government Village; submit drafts and stipulate Village Regulations; receive a fixed monthly income, allowances and other legal receipts, as well as receive health insurance; obtain legal protection for implemented policies, and giving the mandate to carry out other tasks and obligations to village officials.

In village governance, the village head is a leading figure where a village head has a very large role in leading the administration of village governance, fostering village community life, maintaining peace and order in society, reconciling village community disputes and fostering the village economy to improve village welfare and progress. The ability of the village head to lead greatly determines the success of the village in achieving its goals and aspirations. Of course, this can be realized with the election of an effective village head who can carry out his duties as well as possible.

Village head elections are an instrument in the formation of a modern and democratic government. This democratic party which is held at the smallest regional level is regulated in the Regulation of the Minister of Home Affairs (Permendagri) Number 112 of 2014 concerning Village Head Elections. Article 1 Number 5 Permendagri No. 112/2014 Concerning Village Head Elections states "Village head election is the implementation of people's sovereignty in the village to elect village heads that are direct, public, free, confidential, honest and fair". Because village heads are produced through selection, not appointment, the position of the village head can be categorized as an *elected public official*, just like the regent/mayor or member of the DPR/D or DPD, including the president and vice president.

According to Jimly Asshiddiqie, the starting point for the success of governance and village development also starts from the election of the village head. Village head election is a form of democracy in the village. Democracy in general means government of, by and for the people. If the ongoing Village Head election process has been completed, starting from the preparation, nomination, and voting, to determining the elected Village Head candidate, some parties are dissatisfied with the results of the Village Head election or in other words, there is a dispute or dispute over the results of the Village Head election, then it is necessary settlement mechanism and institution or institutions authorized to resolve the dispute. At present, there is indeed an article in Law Number 6 of 2014 which regulates which institution or institution has the authority to resolve disputes over the results of the Village Head election, namely Article 37 paragraph (5) and paragraph (6) which reads: Paragraph 5 that "Regent/ The Mayor certifies the elected Village Head candidates as referred to in paragraph (3) to become Village Heads for a maximum of 30 (thirty) days.

Problems related to the election of the village head, among others: the emergence of various community reactions after the election of the village head in the regions which is a manifestation of increased participation or community concern for their village. But on the other hand, this shows that the village head election mechanism has so far been tinged with fraud. These frauds will certainly trigger village head election disputes that must be resolved. But unfortunately in Law no. 6 of 2014 concerning Villages and even Regional Regulation No. 4 of 2017 concerning Pilkades and Regent Regulation No. 37 of 2014 concerning Pilkades and other related government regulations, do not specifically regulate election dispute resolution, so this can raise various obstacles in its resolution.

Several obstacles arise in resolving election disputes, including *First*, the emergence of disputes throughout time related to reporting protests or filing objections to the determination of the village head election results between Law No. 6 of 2014 with the applicable Regent Regulation. *Second*, in Law no. 6 of 2014 explains that if there is a village head election dispute, the Regent/Mayor is given the authority to resolve the

election dispute. However, this is not effective because the Regent/Mayor is a political position and each Regional Head General Election (Pilkada) requires votes to run again as Regent/Mayor, so this policy can certainly disrupt democracy in Indonesia. Thus, this provision does not yet accommodate the process of resolving disputes over the Village Head election results.

Furthermore, Article 46 of Government Regulation Number 43 of 2014 states that "Further provisions regarding the election of Village Heads are regulated by a Ministerial Regulation". However, until now there has been no Ministerial Regulation regarding the election of Village Heads. Likewise, the settlement of disputes over the results of village head elections in Law Number 6 of 2014 concerning Villages. Furthermore, in Government Regulation no. 43 of 2014 concerning Regulations for Implementing Law Number 6 of 2014 concerning Villages and their implementing regulations are carried out outside the court (resolved by the regent/mayor) or known as alternative dispute *resolution*.

II. Research Methods

This type of research is descriptive research with a juridical-empirical approach, which is research that examines positive legal rules to obtain answers to existing problems by associating them with facts or phenomena regarding the settlement of disputes the over results of the elections village head of the Province of North Maluku, while the normative determines what is allowed and what is not allowed. This research was conducted in North Maluku Province, with the consideration that the settlement of disputes results in head elections village north Maluku Province, which is classified as the newest province, still needs to be made effective. Therefore, it is necessary to study the resolution disputes of the over-election village head so that the next village head election will no longer cause lasting problems that can harm the community and the village itself.

III. Discussion

The Nature of Village Head Election Dispute Resolution

Indonesia is a country that adheres to democratic principles. With the principle of democracy, sovereignty is in the hands of the people, carried out for and on behalf of the people. The 1945 Constitution, which is one of the basic written laws, guarantees the implementation of democracy in Indonesia. In Article 1 paragraph (2) of the 1945 Constitution, it is stated that "Sovereignty is in the hands of the people and implemented according to the Constitution." In a democratic country where the people are required to intervene (participate) in the administration of government and the state, one of which is in the form of political participation. Political participation is an activity to participate actively in political life by electing state leaders and directly or indirectly influencing government policy (public policy).^[8]

One form of implementing democracy at the lowest level is the Pilkades (Village Head Election). Pilkades proves that sovereignty is fully in the hands of the people. The people determine their future by individually electing their own Village Head. This has been emphasized in Article 34 paragraph (1) of Law Number 6 of 2014 concerning Villages which states that the village head is directly elected by the villagers. This is one of the real manifestations of the implementation of democracy in Indonesia.

The village is a reflection of the state because the village is the smallest and lowest part of the government of the state. The village government consists of the village head and village apparatus as elements of village administration. In village administration, the village head is a village leader figure where a village head has a very large role in leading the administration of village governance, fostering village community life, maintaining peace and order in village communities, reconciling community disputes in the village and fostering the village economy to improve welfare. and village progress. Wherever a village head leads will determine the success of the village in achieving its desired goals.

Even though the Village Head Election is a form of democracy in the village which is packaged in the form of direct election by all villagers, in its development it is by governance regulations, the Village Head Election cannot be separated from the rules stipulated by laws and regulations made by the government with the approval legislative body.

This arrangement cannot be separated from the existence of a village government hierarchy as the lowest government, which must be regulated by a government at a higher level without neglecting the aspirations of the village community. The arrangement itself is more intended so that the process of selecting a village head who at least fulfils the requirements of a village head, such as those who are educated, have good behaviour, are not involved in a banned organization and are not currently serving a sentence, as well as avoid the village head election process from all forms of disgraceful acts, for example, violations of regional regulations governing issues regarding Village Head Elections which seem to have become an inseparable part of the Village Head Election process.

Based on the current Village Law, village head elections must be held simultaneously in all districts and cities with the enactment of regional regulations to regulate policies regarding village head elections.

Technically, juridically, the word "with" must be interpreted that the regulation regarding Pilkades must be in a regional regulation and not delegated to other forms of regulation. In contrast to the word "based on" which freely the arrangement can be delegated with other regulations. However, in reality, several districts and a small number of villages located in cities still do not thoroughly regulate pilkades in regional regulations, so it must be explained again in the form of other regulations, for example, a Regent's Regulation (Perbup). Sometimes the Perbup contradicts each other and the arrangements are increasingly unclear.

This is the obstacle for each region in holding village head elections because the Village Law stipulates that in holding village head elections, each region must have a Regional Regulation governing head elections. village simultaneously. Not only with regional regulations, by the provisions of the law stipulating that village head elections must also be regulated in government regulations as implementing regulations for laws and Permendagri as a reference for each village in making regional regulations governing village head elections. Currently, the PP that regulates the implementation of the Village Law which includes village head elections is Government Regulation Number 47 of 2015 concerning amendments to Government Regulation Number 43 of 2014 concerning implementing regulations of Law Number 6 of 2014 concerning villages and the Permendagri which contains technical provisions in village head elections is Minister of Home Affairs Regulation No. 112 of 2014 concerning Village Head Elections. The issuance of this government regulation and Permendagri is considered to be very slow because village head elections in some areas of village administration have become the main agenda that must be implemented as soon as possible. This is because many villages experienced a vacancy for village heads after the issuance of the Village Law and had to immediately draw up regional regulations to realize village head elections in most regions which could only be implemented in 2015 because the Permendagri which technically regulates village head elections was only ratified in December 2014. Regulations regarding villages, including those which include arrangements regarding settlement of village head election disputes, continue to experience developments from time to time, the culmination of the developments referred to was when Law No. 6 of 2014 was enacted. However, before entering into the discussion of how to resolve village head election disputes after the enactment of Law No. 6/2014 concerning Villages.^[9]

Regulations regarding villages are currently regulated in Law No. 6 of 2014 Concerning Villages, the issuance of this Law is intended to advance villages, and make them independent and more democratic, so it is hoped that these village regulations can produce outputs namely the creation of villages and rural communities that are just, prosperous and prosperous.^[10]

In this discussion, the author will explain how the existence of Law No. 6 of 2014 currently regulates and handles village head election dispute settlement processes. The birth of this Law resulted in the birth of several implementing regulations such as government regulations, to ministerial regulations, this aims to perfect and act as implementing regulations of Law No. 6 of 2014, to answer questions about how the process of resolving village head election disputes. At present it is necessary to carry out a comprehensive analysis of the rules governing disputes over the results of village head elections both at the level of laws, government regulations, and ministerial regulations related to the settlement of village head election results disputes in Law No. 6 of 2014 regulated in Article 37 paragraph (6) which explains that if there is a dispute related to the village head election, the Regional Head can resolve it within 30 days. Provisions regarding disputes over village head election results are also regulated in PP No. 43 of 2014 concerning Regulations for Implementing Law No. 6 of 2014 concerning Villages, however, this regulation also does not stipulate in detail how the process of resolving disputes over the results of village head elections. In this PP, the provisions regarding village head election dispute resolution are regulated in Article 41 paragraph (7) which only states that: "In the event of a dispute over the results of the Village head election, the Regional Head is obliged to resolve the dispute within 30 (thirty) Days.

" In addition, the ministerial regulation also does not find the basis and/or form of settlement of disputes over the election of village head results, for this reason, to make it easier for readers to understand this article, the following will describe how the arrangements for resolving disputes over village head results are currently underway: Article 41 paragraph (6) of the

Law -Law No. 6 of 2014 concerning Villages explains that in the event of a dispute over the results of the Village Head election, the Regional Head is obliged to resolve the dispute within the period referred to in paragraph (5).

Article 41 paragraph (7) of Government Regulation No. 43 of 2014 concerning Regulations for Implementing Law Number 6 of 2014 concerning Villages explains, In the event of a dispute over the results of the Village head election, the Regional Head is required to resolve the dispute within 30 (thirty) Days.

Permendagri No. 65 of 2017 concerning Amendments to Permendagri No. 112 of 2014 concerning PILKADES. Permendagri No 65 of 2017 Concerning Pilkades or regarding Amendments to Permendagri No 112 of 2014 concerning Village Head Elections are not regulated.

It can be seen from the 3 provisions above, both Law No. 6 of 2014, PP No. 43 of 2014 and Permendagri Number 65 of 2017 concerning Amendments to Permendagri No. 112 of 2014 concerning Village Head

Elections, there is not a single rule that states how the form and village head election dispute settlement mechanism. The provisions above only explain that in a dispute over the village head election, its resolution is shown to be the authority of the Regional Head. However, procedures, mechanisms and forms of resolution, are not regulated, so it can be emphasized that arrangements regarding procedures and mechanisms for village head election dispute resolution are left to the respective Regency and City regional governments.

Nevertheless, the nature of the settlement of disputes over the results of the village head elections is still carried out with legal certainty and justice by the following legal objectives:

1. The Creation of Legal Certainty

That the implementation of the settlement of disputes over the results of the village head elections in North Maluku has been carried out by fulfilling the orders of Law number 6 of 2014 (UU/6/2014) Article 37 paragraph (6) and Government Regulation Number 43 (PP/43/2014) Article 41 paragraph (7) that if there is a dispute over the results of the village head election, the Regent/Mayor must resolve it within 30 days.

Based on the settlement authority granted by Law/6/2014 and PP 43//2014 the district head formed a Village Head Election Results Dispute Resolution Team in the form of Decree Number 286 of 2016

the election of the village head has a clear wada even though the process of carrying out the settlement is not contained in the statutory regulations and is still subjective, but the orders of law number 6 of 2014 and PP 43/2014 have been carried out properly regardless of whether there is a sense of justice or not and this shows that The purpose of the law is still created in society, especially legal certainty itself.

2. The Creation of Legal Justice

In addition to legal certainty created in resolving village head election disputes in North Maluku, it also created a sense of justice for contestants for village head candidates who lost in several villages in North Maluku, such as Silang Village, South East Bacn District, Cango Village, North West Gane District, Babang Village and Bori Village. East Bacan District, Marabose Village, Bacan District.

The village head candidates who lost and felt disadvantaged because of various kinds of post-ballot legal issues objected by filling out the objection form that had been prepared by the village head election committee at the village level addressed to the village head election results dispute resolution team formed by the regent through the committee. The sub-district supervisor and the sub-district committee convey this to the district supervisory team and decide whether the objection falls within the realm of finalizing the results of the election for the village head or whether it belongs to another institution.

That if the district committee decides that the objection is included in the village head election results resolution team, it will be decided and recommended to the results dispute team to be resolved if it is a crime then it is recommended to the police act on it and if this is a dispute over village head election issues then the supervisory team itself which decides and is final and binding, the objection time is a maximum of 7 days and the time for completion by the supervisor is a maximum of 14 days must have decided where to recommend and the time for resolution of the dispute over the results is no later than 30 days since the Pilkades supervisory committee recommended a settlement to the results dispute resolution team pilkades.

The decision of the Dispute Resolution Team The Village head election results are in the form of:

1. Strengthening the Decision of the Village Head Committee Decision
2. Decided to order the Village Head Election committee to carry out a recount of the Votes.
3. Decided to re-vote and
4. Ordered to carry out re-election which is included in the next stage of simultaneous elections.

The above shows that legal justice has been created even though there are still certain parties who still feel that this kind of injustice is legitimate because extrajudicial justice is always inversely proportional to legal justice based on legal objectives which then also distinguishes between distributive legal justice and commutative legal justice

IV. Conclusion

The nature of the resolution of disputes over the results of village head elections in North Maluku Province is carried out orientated towards legal certainty and justice by legal objectives,

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