

DISPUTE SETTLEMENT OF SIMULTANEOUS VILLAGE HEAD ELECTIONS BASED ON LAW NUMBER 6 OF 2014 ABOUT VILLAGES IN SELUMA REGENCY

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ABSTRACT

In general, the implementation of village head election does not escape from a conflict. Seluma Regency of Bengkulu Province is one of the regencies that has held simultaneous village head elections based on the Regulation of the Regent of Seluma Regency Number 26 of 2019 in conjunction with the Regulation of the Regent Number 21 of 2019 concerning Guidelines for Implementing Simultaneous Village Head Elections in the Seluma Regency Region. In the implementation of village head elections in Seluma Regency, conflicts have occurred. This study aims to analyze, to describe and to explain the disputes settlement of village head election which is conducted simultaneously in Seluma Regency in terms of Law Number 6 of 2014 about Villages. The study of this research was carried out by referring to juridical sociology view. The result showed that in Law no. 6 of 2014 concerning Villages, if there is a dispute in the implementation of Village Head Election, the Regent / Mayor is the party given the authority to resolve the dispute.

Keywords: Settlement, Dispute, Village Head

A. INTRODUCTION

1. Background of the Research

Looking at the provisions under the 1945 Constitution of the Republic of Indonesia and seeing the implementation of a democratic state in Indonesia, it

will be found that direct elections by the people are outside of the 2 (two) forms of election regulated by the Constitution of the Republic of Indonesia Year 1945. One of them is the Village Head Election, although the position of

the Village Head Election is still on debate whether it belongs to the village legal regime or the General Election legal regime. This is not baseless, considering that the organizer of the Village Head Election is not the General Election Commission, and the dispute resolution institution is not the Constitutional Court. Basically, the 1945 Constitution of the Republic of Indonesia affirms that the state recognizes and respects the unity of indigenous peoples and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Republic of Indonesia.¹ Law of the Republic of Indonesia Number 23 of 2014 concerning Regional Government recognizes the existence of autonomy that is owned by the village, and the village head can be given control or delegation from the government or local government to carry out certain government

¹ Article 18 B paragraph (2) of the 1945 Constitution of the Republic of Indonesia

affairs. The village government is the lowest level of government structure that directly interacts with the community, so that improving services and empowering the community becomes the authority of the village government.²

Observing the provisions in the laws and regulations in Indonesia, it will be found that laws specifically regulate the technical implementation of direct elections by the people in Indonesia. The election for members of the *DPR*, *DPD*, President, Vice President and *DPRD* is regulated in Law No. 7 of 2017 concerning Elections. Regional Election is regulated in Law No. 10 of 2016 concerning the Election of Governors, Regents and Mayors. And the Village Head Election is regulated in Law of the

² See Law of the Republic of Indonesia Number 23 of 2014 concerning Regional Government.

Republic of Indonesia Number 6 of 2014 concerning Villages. The presence of Law of the Republic of Indonesia Number 6 of 2014 concerning Villages cannot be denied that the existence of a village as the smallest regional unit in the Republic of Indonesia has received special regulation and recognition in the state structure. The term village as stated in the Village Law is a legal community unit that has territorial boundaries that has the authority to regulate and manage its own interests based on local origins and customs which are recognized and respected in the Republic of Indonesia Government system.³

Furthermore,

Article 32 of Law of the

Republic of Indonesia Number 6 of 2014 concerning Villages states that the institution that has the right to carry out Village Head Elections is the Village Consultative Body (hereinafter will be referred as *BPD*). Starting from the BPD giving written notification 6 (six) months before the end of term of office to the village head who is still in office regarding the expiration of the term of office of the village head. Then, the BPD forms a Village Head Election committee as referred to in paragraph (2) which is independent and impartial, and the Village Head Election committee as referred to in paragraph (3) consists of elements of village apparatus, social

³ Risma Handayani, *Pembangunan Masyarakat Pedesaan*, Alauddin University Press, Makasar, 2014, p.55.

institutions, and village community leaders.⁴

Seluma Regency, Bengkulu Province, is one of the districts that has held simultaneous Village Head Elections. Based on the Regulation of the Regent of Seluma Regency Number 26 of 2019 in conjunction with the Regulation of the Regent Number 21 of 2019 concerning Guidelines for Implementation of Concurrent Village Head Elections in the Seluma Regency Area, it is stated that the implementation of the simultaneous Village Head Election in Seluma Regency is carried out in waves at intervals of 2 (two) year, namely implemented in 2015, 2017, and 2019.⁵

⁴ See Article 32 of Law of the Republic of Indonesia Number 6 of 2014 concerning Villages.

⁵ Article 4 paragraph (4) Regulation of the Regent of Seluma Regency Number 26 of 2019 in conjunction with Regulation

Referring to the implementation of the Village Head Election that has been held in Seluma Regency, there are things that should be reviewed and evaluated juridically in its implementation. This is regarding the settlement of Village Head Election disputes, in which in the previous implementation there were 3 (three) disputes which in the end had to be resolved through the court.

Regulatively, referring to the Local Regulation of Seluma Regency Number 1 of 2019 in conjunction with Local Regulation Number 2 of 2015 concerning Procedures for Nominating, Election, Inauguration, and Dismissal of Village

of the Regent of Seluma Regency Number 21 of 2019 Concerning Guidelines for Implementing Simultaneous Village Head Elections in the Seluma Regency Region

Heads, it is stated that the results of the vote counting for the Village Head Election are submitted to the BPD which later from The BPD is forwarded to the district head to be stipulated and ratified in a district head's decision. Provisions regarding the settlement of disputes over the results of the Village Head Election are basically regulated in the *a quo* Local Regulation and the resolution of problems in the Village Head Election is the authority of the village head election committee at the Regency level.⁶ However, the provisions and roles given to the election committee at the Regency level cannot

⁶ See Article 6 paragraph (3) point f of Seluma Regency Regional Regulation Number 1 of 2019 in conjunction with Seluma Regency Regional Regulation Number 2 of 2015 concerning Procedures for Nominating, Election, Inauguration, and Dismissal of Village Heads.

resolve the disputes over the results of several existing Village Head Elections, so it must drag on in disputes at the State Administrative Court (known as *PTUN* in Indonesian).

Based on the above background, the writer was interested in further researching and writing it in a thesis entitled "**Dispute Settlement of Simultaneous Village Head Elections Based on Law Number 6 Of 2014 About Villages in Seluma Regency**".

2. Identification of the Problem

How was the settlement of simultaneous village head election dispute resolution at Seluma Regency in terms of Law Number 6 of 2014 concerning Villages?

B. RESEARCH METHOD

This research was a legal research with a sociological juridical type. This research described the settlement of simultaneous village head election dispute resolution at Seluma Regency, Bengkulu Province. The primary data collection was carried out through literature studies that can provide directions and references or reference material in the field of law, with matters relating to the problems in this research. The secondary data came from library sources in the form of laws and regulations, books, journals, and articles both online and offline media related to the settlement of simultaneous village head election dispute resolution.

C. RESEARCH RESULTS AND DISCUSSION

The Settlement of Simultaneous Village Head Election Dispute Resolution Based on Law Number 6 of 2014 concerning Villages at Seluma Regency.

A. Description of the Research Area

Seluma Regency is one of the districts in Bengkulu Province of Indonesia with its capital Tais, formed under Law no. 3, In 2003, the population was around 297,876 people with a composition of 145,180 people (men) and 129,187 people (women). The Seluma Regency has 14 sub-districts, 20 sub-districts and 182 villages. Its area reaches 2,400.44 km² and a population of 207,587 people (2017) with a distribution of 87 people / km².⁷

B. Arrangements for the Election and Dismissal of Village Heads in Seluma Regency

In PP No. 43 of 2014 concerning Implementation Regulations of Law Number 6

⁷Minister of Home Affairs Regulation Number 137 of 2017 concerning Code and Data for Government Administration Areas. *Ministry of Home Affairs of the Republic of Indonesia*. Retrieved 27th of October 2020

of 2014 concerning Villages
Article 41 (paragraph 1):

1. The Village Head Election is carried out through stages
 - b. Preparation
 - c. Nomination
 - d. Voting and
 - e. Determination.
1. The Preparation Stages as meant in paragraph (1) letter a consist of the following activities:
 - a. A Notification of the Village Consultative Board to the Village Head regarding the term of office which is submitted 6 (six) months before the end of the term of office
 - b. The formation of the Village head election committee by the Village Consultative Board shall be determined within a period of 10 (ten) days after the notification of the end of the term of office;
 - c. The report on the end of term of office of the village head to the regent / mayor is submitted within 30 (thirty) days after the notification of the end of the term of office
 - d. planning for election costs is submitted by the committee to the regent / mayor through the *camat* or other designations within 30 (thirty) days after the

- formation of the election committee; and
 - e. Approval of election fees from the regent / mayor within 30 (thirty) days of being submitted by the committee.
2. The stages as referred to in paragraph (1) letter b consist of activities.
 - a. Announcement and registration of prospective candidates within 9 (nine) days;
 - b. Completeness research of administrative requirements, clarification, as well as determination and announcement of candidate names within a period of 20 (twenty) days;
 - c. Determination of Village head candidates as referred to in letter b at least 2 (two) people and a maximum of 5 (five) candidates;
 - d. Establishing a final voter list for the implementation of Village head elections;
 - e. The implementation of the Village head candidate campaign within a period of 3 (three) days; and
 - f. A period of calm in a period of 3 (three) days.
 3. The stages of voting as referred to in paragraph (1) letter c consist of the following activities:

- a. The implementation of voting and counting of votes;
 - b. Determination of the candidate who receives the most votes; and / or
4. The stages of determination as referred to in paragraph (1) letter d consist of activities.
- a. The report of the election committee regarding the elected candidate to the Village Consultative Board no later than 7 (seven) days after voting;
 - b. The Village Consultative Board's report regarding the elected candidate to the regent / mayor no later than 7 (seven) days after receiving the committee's report;
 - c. The regent / mayor issues a decision regarding the ratification and appointment of the Village head no later than 30 (thirty) Days after the report is received from the Village Consultative Council; and
 - d. The regent / mayor or other official appointed to inaugurate the elected Village head candidate no later than 30 (thirty) days from the issuance of the decision to ratify and

appoint the Village head by procedures in accordance with statutory regulations.

6. Other officials appointed as referred to in paragraph (5) letter d, the deputy regent / mayor or *camat* or other names
7. In the event of a dispute over the election results with the village, the regent / mayor is obliged to resolve the dispute within a period of 30 (thirty).

C. Village Head Election Dispute and its Resolution

In this research, several State Administrative Decisions will serve as case studies to answer questions from the formulation of the problem. The decision of the State Administrative Court is as follows:

1. State Administrative Decision Number: 14 / G / 2017 / PTUN.BKL

----- JUDGING -----

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In Exception;

- Stating that the Defendant's exception was not accepted;

In the Main Case;

1. To reject the Plaintiff's claim in its entirety;
2. Sentenced the Plaintiff to pay court fees incurred in this case amounting to Rp. 210,000, - (Two Hundred and Ten Thousand Rupiah);

This was decided at the Bengkulu *TUN* Court Deliberation Meeting on Thursday, February 15th 2018.

2. State Administrative Decision Number: 15 / G / 2017 / PTUN.BKL

----- JUDGING -----

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In Exception;

- Stating that the Defendant's exception was not accepted;

In the Main Case;

1. To reject the Plaintiff's claim in its entirety;
2. Sentenced the Plaintiff to pay court fees incurred in this case amounting to Rp. 241,000, - (Two Hundred and Ten Thousand Rupiah);

This was decided at the Bengkulu *TUN* Court Deliberation Meeting on Thursday, February 15th 2018.

3. State Administrative Decision Number: 16 / G / 2017 / PTUN-BKL

----- JUDGING -----

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In Exception;

- Stating that the Defendant's exception was not accepted;

In the Main Case;

1. To reject the Plaintiff's claim in its entirety;
2. Sentenced the Plaintiff to pay court fees incurred in this case amounting to Rp. 210,000, - (Two Hundred and Ten Thousand Rupiah);

This was decided at the Bengkulu *TUN* Court Deliberation Meeting on Tuesday, February 20th 2018.

4. State Administrative Decision Number: 17 / G / 2017 / PTUN.BKL

----- JUDGING -----

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In Exception;

- Stating that the Defendant's exception was not accepted;

In the Main Case;

1. To reject the Plaintiff's claim in its entirety;
2. Sentenced the Plaintiff to pay court fees incurred in this case amounting to Rp. 199,000, - (One Hundred and Ninety Nine Thousand Rupiah);

This was decided at the Bengkulu *TUN* Court Deliberation Meeting on Thursday, February 15th 2018.

From the four decisions of State Administration above, three decisions go to the appeal stage. The State Administration decisions that have reached the appeal stage are as follows:

1. Bengkulu State

**Administrative Decree
Number 99 / B / 2018 /
PT.TUN-MDN jo Number
14 / G / 2017 / PTUN-BKL**

----- JUDGING -----

- Receiving an appeal from the Plaintiff / Appeler;
- Strengthening the Decision of the Bengkulu State Administrative Court Number: 14 / G / 2017 / PTUN-BKL dated February 20th, 2018 which was petitioned for an appeal;
- Ordered the Plaintiff / Appellant to pay court fees at both court levels and for the appeal level of Rp. 250,000, - (two hundred and fifty thousand rupiah)

This was decided in a deliberation meeting of the Medan State Administrative High Court Judge on Wednesday, July 18th 2018.

2. Bengkulu State

**Administrative Decree
Number 92 / B / 2018 /
PT.TUN-MDN jo Number
15 / G / 2017 / PTUN-BKL**

----- JUDGING -----

- Receiving an appeal from the Plaintiff / Appeler;
- Strengthening the Decision of the Bengkulu State Administrative Court Number: 15 / G / 2017 / PTUN-BKL dated February 20th, 2018 which was petitioned for an appeal;
- Punish the Plaintiffs The appellant paid court fees at both court levels and the appeal level was Rp. 250,000, - (two hundred and fifty thousand rupiah)
- Strengthening the Decision of the Bengkulu State Administrative Court Number: 17 / G / 2017 / PTUN-BKL dated February 20th, 2018 which was petitioned for an appeal;
- Ordered the Plaintiff / Appellant to pay court fees at both court levels and for the appeal level of Rp. 250,000, - (two hundred and fifty thousand rupiah)

This was decided in a deliberation meeting of the Medan State Administrative High Court Judge on Wednesday, July 17th 2018.

**3. Bengkulu State
Administrative Decree
Number 93 / B / 2018 /
PT.TUN-MDN jo Number
17 / G / 2017 / PTUN-BKL
----- JUDGING -----**

- Receiving an appeal from the Plaintiff / Appeler;

This was decided in a deliberation meeting of the Medan State Administrative High Court Judge on Thursday, July 12th 2018.

Through four State Administration decisions and three of them proceed to the appeal stage with the results of the demands of the plaintiffs all of them Rejected. There were several violations in the Village Head Election (*Pilkades*), which resulted in a dispute over the Village Head Election, in Law No. 6 of 2014 Regarding Villages Article 37 Paragraph

(5), the Regent / Mayor approves the Village Head candidate no later than 30 (thirty) days from the date of receipt of the submission of the election results from the Village Head Election committee (*Pilkades*) in the form of a Regent / Mayor decree, Paragraph (6).

The village head elections are held to elect the village head so that it is in line with the aspirations of the village community, the vacant position filled by the acting village head from the civil servant element by the regent / mayor is clearly not the aspiration of the village community and can cause rejection or problems.

In Law No. 6 of 2014 concerning Villages, it has been explained that if there is a Village Head Election Dispute (*Pilkades*), the Regent / Mayor is given the authority to resolve Village Head Election (*Pilkades*) disputes, according to the author is not effective because the Regent / Mayor is a political

position and every General Election Regional Heads (*Pemilukada*) need votes to step back into regents / mayors and this could disrupt democracy in Indonesia.

The concept of village independence that is carried out by Law Number 6 of 2014 concerning villages as described in the Literature Review Chapter above states that village independence does not certainly stand alone, but it is very important to see the relationship between the village and the government (state), including paying attention to the approach of Government against the village. The state's presence in the village should not be an intervention, interference, or even coercion that would weaken the original autonomy of the village. But if the state is not present it is also not the right thing. The state in interpreting the village should provide facilities such as in the constitution, namely respect and recognition. This is done by the

state through the creation of laws and regulations that strengthen genuine autonomy.

According to the author, the settlement of Village Head Election (*Pilkades*) disputes outside the executive is more effective because there is no political interest or intervention in the settlement of Village Head Election Disputes. The settlement of village head election disputes based on regional regulations is the responsibility of the regional government, in this case the regent as happened in Seluma Regency , but in the resolution according to the researcher, it does not describe the principles of village administration as stated in the Law of the Republic of Indonesia Number 6 of 2014 concerning Villages. , Article 3 Village Regulation based on letter (i). Independence; because the village government is not given the independence to resolve village head election disputes.

The villagers have their own dispute resolution mechanism, namely deliberation. The dispute resolution model of the village head election result is a simple description that shows how activities are to realize and strengthen the village's original autonomy. This model is intended to restore the original autonomy of the village. In accordance with what should be mandated by the 1945 Constitution of the Republic of Indonesia.

D. CLOSING

1. Conclusion

There were several violations in the Village Head Election (*Pilkades*), which resulted in a dispute over the Village Head Election, in Law No. 6 of 2014 Regarding Villages Article 37 Paragraph (5), the Regent / Mayor approves the Village Head candidate no later than 30 (thirty) days from the date of receipt of the submission of the election results from the

Village Head Election committee (*Pilkades*) in the form of a Regent / Mayor decree, Paragraph (6). In this case there is a dispute within the period referred to in paragraph 5.

2. Suggestion

In Law Number 6 of 2014 concerning Villages, in the event of a Village Head Election Dispute (*Pilkades*) it should be resolved by a Judicial Institution not a Regent / Mayor, the position of Regent / Mayor is limited to Making Regional Regulations (*Perda*) to further optimize the settlement of Village Head Election Dispute.

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