

## **Model Dispute Resolution Nomination in the Election of the Governor, Regents and Mayors the Pursuit of Democratic Elections**

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**Abstract** : *One of the stages who often generates dispute between participants election and organizers of an election in stage nomination the election of the governor, regents and mayors is the determination of candidate couple participants election. Candidate couple were disadvantaged and objections on the decision general election commission provincial or general election commission districts and city given the chance to suing the determination of the decision. The authority dispute resolution nomination done by monitors election and the judiciary administrative can affect stage election. Even harmful candidate couple and organizers of election. The resolutions of disputes nomination the election of the governor, regents and mayors is a prerequisite to embodying an democratic. Building on the approach taken the writing of law normative can be conducted the perfecting ketentuan-ketentuan which regulates regional with the resolution of disputes the candidacy of in the election of the governor , regents and mayors .*

**Keywords** : *A model , the candidacy of dispute , the election of the governor , the card can be used and democratic*

### **1. PREFACE**

The general election is a medium for people to declare its sovereignty. According to Mustafa Lutfi, (2010: 115) Understanding the sovereignty of the people means that the highest authority in a country is the people, also it is the people who determine the pattern and manner of government to be held. It gets along with the implementation of the general election and the election of Governor, regent or mayor who is the embodiment of the people's sovereignty principle.

Mandate of the Law of 1945 Article 18, paragraph 4 that "Governors, Regents and Mayors are the heads

government of provincial, district and municipal which are elected democratically", meaning it becomes the platform of the Indonesian people to fight the elections of governor, regent or mayor to elect directly. The direct elections of governor, regent or mayor technically began in 2005 after the enactment of Law No. 32 of 2004 on Regional Government.

In practice each ahead of the local elections, legislation on the electoral system is always changing and it tends to be in disharmony with other legislation. Thus it results to many problems, both in terms of understanding the framework of the rule of law, the

readiness of the providers, the readiness of political parties, and the readiness of society.

The election juridical basis of governor, regent or mayor is in Law No. 32 of 2004 on Regional Government, as amended by Law No. 12 of 2008 and 2016 and have made changes for the second time in Law of the Republic of Indonesia No. 10 of 2016 About the Second Amendment of the law No. 1 of 2015 on the establishment of a government regulation in lieu of law No. 1 of 2014 on the election of the governor, regents, and mayors to be a law.

In practice of the elections election, one that caused disputes between participants of the election or pair of candidates with the organizers of the election is at the stage of nomination which resulted in the establishment of the pairs of candidates by the General Election Commission in province, district or city as decision clerical state, with benchmarks concrete, individual and final. These decisions are often sued by candidates who feel disadvantaged by the election commission.

According to Philip M. Hadjon (Irvan Mawardi, 2014: 159), the basis of dispute over the judicial administration is the decision of the judicial administration, as a logical consequence of a dispute over the judicial administrative decisions or statutes (*beschikking*). In the context of article 61 paragraph 4 law No. 32 of 2004 on Regional Government, it can be understood that the inclusion of the phrase "final and binding" toward the decisions or decrees issued by the organizer of the election showed that the administrative law enforcement in the process of such determination will not run optimally due to the absence of the testing process to administration product

issued by the organizers of the official administrative election. .

While the law procedural of the Judicial Administrative Court as in Article 1, paragraph 9 and 10 of Law No. 5 of 1986, as amended by Law No. 9 of 2004 and Law No. 51 of 2009 on the second amendment to Law No. 5 of 1986, gives opportunity for the public or private law legal entities for disputing or test any administrative official decision that harm the State or private legal entities. In this case this is included any of the decisions regarding the determination of the election organizers of pairs of candidates in the election of Governors, regent or mayor. But in fact, article 61 paragraph 4 of Law No. 32 of 2004 on Regional Government does not regulate the administration of test conditions to the decision of the organizers of the election to the Judicial Administrative Court.

From the description of the dispute settlement of the election of Governor, regent or mayor, actually there are inaccuracies in the construction of the legislation governing the settlement of election disputes that affect to legal uncertainty, confusion of the election organizers, as well as violations of constitutionality rights of the pairs of candidates or selected candidates of the election of the governor, regent or mayor.

When examining these issues, it can be concluded that there is disharmony between the election systems with the system of Administrative Courts, it philosophically reflects that these two systems are not qualified to fulfill the Principle of Legality, as been mentioned by Lon L. Fuller (1971: 39 -91) which is: (i) a regulation should not contain contradictive regulations one another; (ii) there shoul be a suitability between the regulations and the implementation.

The second reality is that the both system are contradictive when viewed from the principles contained therein. So that, there is incompatibility between its concept and purpose in governing these two systems as they are implemented in the field in the Election of Governor, regent or mayor.

## 2. RESEARCH PROBLEMS

How their model with settling disputes to be a nomination in the election of the governor , regents and mayors for manifesting democratic elections?

## 3. DISCUSSION

### a. The administrative dispute on the election of governors, regents or mayors.

Disputes occur because of a conflict of interest. Therefore, along with the developments of society, appears law that seeks to minimize the various conflicts of interest in the community. Several centuries ago, a philosopher named Cicero said, "*Ubi Societas Ibi Ius*" means, where there is a community of society there is law. This statement is precisely because of the existence of the law is functioning as a rule or norm in the society. According Soerjono Soekanto (1986: 9) rule or norm is standards concerning the appropriate behavior . The rule is useful to align the interests of each member of society. So that in society there will be no conflict of interest between members of one society to another.

Subsequently According to Van Kan (1982: 7-17) human interests could collide if not controlled by a rule, so there are rules consisted, such as the religious rules, rules of decency and the rules of politeness. Those are the efforts to harmonize those interests. However,

the three rules above turned out to have drawbacks, such as:

- 1) The rules of religion, morality and the rules of politeness are not enough to protect the interests of of human in society because these rules do not have any strict sanctions and enforceable.
- 2) Rule of religion, morality and the rules of politeness have not set the overall interests of human beings as human interest in the sector of, forestry, marine, air and others.

Therefore, it takes one more rule that can answer the above two drawbacks. The rule is a rule of law. The rule of law has the nature of coercive means if someone is violating the interests of other people, then he will be forced by law to indemnify or even deprived of their liberty by putting in jail in order to protect the interest of others .

Law is needed to regulate the order and rhythm of social life, which consists of a wide range of these interests. By its nature to force, the law may penalize parties who are trying not comply with the applied laws and regulations. According to Nandang Alam "Dispute of local elections" can be interpreted as a conflict of interest that occurs between candidates of head region with one another in elections event.

The discussion about the disputes arising in the election of the governor, regent or mayor, in Law No. 32 of 2004 and Law No. 12 of 2008 used the term disputes, rather than conflict. According to Indonesian dictionary published by the ministry of national education, the dispute is something that causes differences of opinion,. While the conflict is strife, discord, disagreement. Richard L. Abel (Lawrence Fiedmen 2001: 37) defines a dispute as a public statement regarding the demands that are not aligned against anything valued.

Another definition proposed by Nader and Todd (Valerina Kriekhoff, 2001: 74) dispute is "a state in which the conflict is declared in advance by the parties involved." Then they put the terms of preconflict and conflict. Preconflict is a state where underlying the dissatisfaction of a person. While conflicts are circumstances where the parties realize or know the dissatisfaction."

But in the context of non-legal studies, political experts or sociologists often use the term conflict of election of Governor, regent or mayor. In this study, the term used is the dispute in election of Governor, regent or mayor. Because juridically, maker of Law uses the term "dispute". In election of governor, regent or mayor as a political event that has a potential and likely to cause dispute in politic and social interests. The dispute of interest between a person with another person or a group with other groups can not be avoided in social life. So that it is necessary for norms and laws in making the arrangement of the various interests, considering the difference in interest is often the initial trigger of conflict or dispute itself.

Article 66 Paragraph 4 letter C of Law No. 32 of 2004 on local government, explained that the Supervisory Committee has the duty and authority to: resolve disputes arising in the implementation of the election of local head and deputy of local head. Furthermore, the Act No. 12 of 2008 Article 236 c mention that, handling disputes vote count results of the local head and deputy local head by the Supreme Court, transferred to the Constitutional Court no longer than 18 (eighteen) months since this Law was enacted, While in article 69 paragraph (1) letter f Law No. 22 of 2007, states that, the secretary of the Election Commission, in the province, district or

city, has a function to facilitate the resolution of problems and disputes of the election of local head and deputy head of the district / city. Based on those three laws, none of which regulate conceptually discuss about the dispute over the election of Governor, regent or mayor. So that, until now there is no provision of the legislation governing the definition of the disputed election.

with the provisions of Law No. 32 of 2004 on Regional Government, which regulates the implementation of the election, particularly article 61 paragraph 4 of "the determination and announcement pair of candidates as referred to in paragraph (3) shall be final and binding" This indicates the existence of discrepancies with the law event in Administrative Courts, which became the object the dispute is the determination or decision (*beschikking*) issued by administrative official that detriment a person or institution of civil law.

Law No. 51 of 2009 on the second amendment to Law No. 5 of 1986 concerning the State Administrative Court in article 1, paragraph 9 and 10, includes:

Paragraph 9; An administrative decision is a determination in writing issued by the agency or administrative official , which contain measures administrative law by the legislation in force, which is a concrete, individual and final, which give rise to legal consequences for the person or private legal entities.

Paragraph 10; Dispute administrative is a dispute arising in the field of administration between people or civil legal entity by entity or administrative official , both in national and the region, as a result of the issuance

of the decision clerical , including the dispute over staffing based on the legislation in force ,

Based on the conception, it can be found that the initial source of their dispute in judicial administrative court is a decree issued by the judicial Administrative official. In the absence of a decree issued by the judicial administrative official, it is impossible to have judicial administrative dispute.

**b. A model with the resolution of disputes for the nomination of administration in the election of the governor , regents and mayors for manifesting democratic elections**

**1) The improvement substance in Legislation Provisions**

In a conceptual manner , variety of handling an election dispute available divided into two , namely that in nature corrects ( corrective mechanism and hold of the people of funitif ) .According to deborah blandira sinambela ( 2015: 100 ) in settling disputes increase one election mechanism , so that there are three types of the main mechanisms namely

- a. The mechanisms used in the formal or corrective applied for or have been general election is now being muslim groups said charlie hebdo a lawsuit .This mechanism result in a decision to undo , a substantial impact on the , or acknowledge the occurrence of of deception or deviations in the electoral process.
- b. Punitive mechanism, such as the criminal offences.This

mechanism produce sanctions and individual agency responsible for the deception, including the responsibility of criminal or administration of general elections

- c. Informal mechanisms / an alternative, that is a mechanism that can be selected parties to the dispute

According to Friedman (1984: 6) about the legal system, explaining that one of the pillars of the establishment of the legal system is the substance of legislation that is good and integrative. In the context of improvement of the system of administrative law enforcement in Governor, regent or mayor, in particular the establishment of dispute settlement candidate, then what is needed is improvement of the substance of the legislation. the revised legislation is governing the procedural law in administrative court, legislation that governing the election and the election organizer, in this case the Law No. 32 of 2004 junto Law No. 12 of 2008 concerning the election, as well as Law No. 22 of 2007 as amended by Law No. 15 of 2011 concerning the election organizer.

Synchronization in the legislation is also related to the judicial authority of administrative court in examining the administration disputes that arise in election of Governor, regent or mayor. Although in fact the candidate pairs pricing decision issued by the Election Commission, in rprovince, district or city sued by candidates or parties who feel aggrieved by the publication of this decision to the judicial administrative cour, then the legal action is based on the principle

of *lex generalis* alone. The logical consequence from settling the *lex generalis* in resolving the dispute in the process of determination of the pairs of candidates by the Election Commission in province, district or in administrative court. so that, the proceedings in the dispute is solved with *lex generalis* following the law procedural of Administrative Courts.

Based on the Supreme Court Circular No. 7 of 2010 which essentially distinguishes dispute the local elections in two types, namely an administrative nature under the authority of Administrative Courts, while the election result is not the authority of Administrative Courts. Thus the scope of authority of the Administrative Court against administrative disputes relating to elections the election of Governor, regent or mayor essentially covers only administrative processes in the implementation stage of the election.

Nevertheless, it is needed to keep in mind that the process of settlement of disputes between the participants and the organizers that are taking place in the realm of Administrative Courts, does not stop or delay the election stages of Governor, regent or mayor who has been assigned by the Election Commission in province, district or city. Dispute resolution process and stages of the election of Governor, regent or mayor, both need to go hand in hand without disturbing each other. This condition eventually will potentially be profanity in the stages of the election of Governor, regent or mayor.

the Improvements of provisions of the legislation related to violations and disputed provision in the election of Governor, regent or mayor as well as the authority associated with the Administrative Court in resolving

disputes in determining pairs of candidates in the the election of Governor, regent or mayor. Some indicators that have been the problem to be improvements in the legislation are:

a. The period of lawsuit

There is a difference in the system of the local elections during the 1980s that before the reform of the system today, resulting in some substances of Law No. 5 of 1986 are no longer relevant in resolving administrative disputes in election. One substance that is anticipated in that Law is a matter time of resolving the dispute of the election. In the context of the implementation of *ius constitutum*, the time limit to sue based on Law No. 5 of 1986 should be revised in order to adapt to the activities of government that are temporal incidental, such as general election or local election. This means that the limit for suing in government activities that are temporal, the regulation need to be shorter. so that the law procedure of the Administrative Court does not conflict with the statutory provisions in the election og governor, regent or mayor. With this, the solution can be found between the stages of election which has been assigned by the Election Comission, with the lawsuit to the adminstrative court that are appearing anytime during time period given in the appropriate conditions.

Systematic and conceptual effort is required to position

the proportional deadline rule in the election of Governor, regent or mayor. Therefore the deadline set in legislation Article 55 in administrative court must be interpreted legally applicable at the level of judicial procedural law in general administration. But when such provisions dealing with cases such as the case of the disputed election of the governor, regent or mayor in which stages of the electoral require fast completion process, then the time limit provision in the legislation in administrative court shall be determined in particular in the dispute of election

- b. The delay of the enforcement mechanism (Schoorsing). One of the parts that need the synchronization settings between the Administrative Law and the Law on the election is in terms of delay the execution in the stages of the election due to administrative disputes. In anticipation of long process of settlement of litigation in the Administrative, particularly in the settlement of disputes in determining the candidate pairs election.

## **2) Refunctionalizing The Law Enforcement Institutions of Local Election.**

According to Lawrence Fiedman, (1984: 6) law enforcement is a part of the structure that is important in the formation of the legal system. Based on Law No. 32 of 2004 junto Law

No. 12 of 2008 on local government that also poses the implementation of the the election of Governor, regent or mayor, that elements are the Election Commission in the province, district or city, Elections supervisory committee, Police, prosecutors, courts and the constitutional court. In this context, recreation of the election law enforcement elements, is to restore both the functions of administrative law enforcement that has the responsibility as the law enforcement in the process of local elections:

### **c. Executorial authority towards administrative offences.**

The General Election Commission is not only as providers of provisions of the legislation that implement the electoral process, but also serves as law enforcement. As arranged in article 9 paragraph 3 letter n and o junto Article 10 paragraph 3 letter l and m Law No. 15 of 2011 on organizing general elections, duties and authorities of The General Election Commission are to follow up immediately the recommendation from Elections supervisory committee on the findings and reports of alleged election violations.

In the context of restructuring, the authority to execute the report of administrative violation from Elections supervisory committee needs to be streamlined and functioned well. Effectiveness in this case is the legal certainty of the alleged violation of Administrative reported by prospective partner to the The General Election Commission by the Elections supervisory committee. All this time, the potential dispute determining the candidate pair has actually been detected since the start of registration, verification of candidate pairs and other phases, for

example, the falsification of certificates and other documents.

But in fact, although the Election Supervisory Committee had reported the alleged violations in the verification process, in general, The General Election Commission in the province, district or city did not follow up and execute the report alleged. As a result, the issues of administrative violations are the reason and legal facts in the dispute over determining the pairs of candidates in the Administrative.

Efforts to streamline the execution of a report from the Electoral Supervisory Committee towards the violations of Administrative, aims to minimize the potential legal dispute continues in court, as well as providing legal certainty and justice elections (electoral justice) for those who feel aggrieved. Therefore, a report on administrative violations can be addressed and resolved quickly. then it is the time for the authority of the completion and the follow-up of administrative violation reports are handled and executed by the Elections Supervisory Committee. Administrative violations that became the object of Elections Supervisory Committee authority in this case is any administrative act performed by the participants of the election as well as the organizer of the election. While the administrative dispute is a dispute between participants of the election and the election organizers as a result of the issuance of The General Election Commission's decision in the province, district or city.

#### **d. The Election Supervisory Committee as Institutions of Administrative Appeals.**

One of the problems of the Elections Supervisory Committee that does not change even though there has

been a change in the Law, is the inability to follow up the violations reported by the public. It seems that the Elections Supervisory Committee has no strong power to execute the reports of violations. This condition is caused by several factors: First, the Elections Supervisory Committee has always argued that one of his tasks is to continue the findings and reports that can not be resolved to the relevant authorities; second, the lack of coordination with the relevant authorities in resolving violations.

The weakness in direct execution by the Elections Supervisory Committee can be seen in Law Number 22 of 2007 concerning that election organizers that set about the task and authority of the Elections Supervisory Committee, including;

Article 73 letters;

- a. receiving reports of alleged violations of laws and regulations regarding the implementation of the election;
- b. submit findings and reports to the The General Election Commission for further action; and
- c. forward the findings and reports that are not under its authority to the relevant authorities

This provision indicates that the Elections Supervisory Committee in fact just collecting reports of violations that occur in all stages of the elections. Outside the context of the implementation of the the election of Governor, regent or mayor, Elections Supervisory Committee have the authority to address and resolve electoral disputes as contained in Law No. 8 of 2012 on General Elections for members of DPR, DPD and DPRD in article 269 paragraph (1) set; submission a lawsuit



over disputed election administration as referred to in Article 268 to the High Court administration made after the entire administrative effort on the Election Supervisory Committee, as in Article 259 paragraph (2) have been used.

Construction positions, duties and authority of the Elections Supervisory Committee in Law on elections have not been set. All this time, only the Elections Supervisory Committee stated the acceptance or rejection of the decision of The General Election Commission in the province, district or city, about the determination of the candidate pairs. But without preceded by the act or the supervision process of the issuance decision in The General Election Commission, in province, district or city.

Enabling the Elections Supervisory Committee in resolving the dispute in determining the candidate pairs is when the Elections Supervisory Committee beforehand handles the complaints or reports from candidates who harmed on the publication of the Decree by the Election Commission. If the candidates who submitted disputes to the Elections Supervisory Committee is not satisfied with the inspection process and the Electoral Supervisory Committee's decision, then they may be appealed to the Administrative Court. This scheme puts the Elections Supervisory Committee as an administrative appeal (*Administrative Beroef*). Administrative Appeal happened if the dispute settlement system is carried out by other agencies of administrative official administration that issued the decision.

### 3) Closing

#### Conclusion

- a. The substance of legislation on the election of Governor, regent or mayor has not

arranged a comprehensive definition of disputes and violations administrasi. So that the administrative dispute settlement as the disputes in determining the candidates pairs has not been well systemized in integrative law enforcement.

- b. One of the most important elements in creating a fair election of Governor, regent or mayor is by settling the administrative dispute of determining the candidate pairs quickly, accountable and enforceable definite. Such efforts can be done by harmonizing between election systems of Governor, regent or mayor and Judicial administrative system, especially in terms of the time limit given by the claimant and the mechanism for the implementation of its decision.

### References

#### Books

- Irvan Mawardi, 2014, *Dinamika Sengketa Hukum Administrasi di Pemilu*, (Mewujudkan Electoral Justice dalam Kerangka Negara Hukum Demokratis), Cet.I. Rangkang Education & JPPR, Yogyakarta
- Lawrence M. Friedman, 1984, *American Law* (London. W.W. Norton & Company)
- Lawrence Fiedmen, 2001, *American Law Introduction*. Penerjemah; W

isnu Basuki.Jakarta.Tata nusa

Lon L. Fuller, 1971, *The Morality of Law*, Yale University, New Haven, conn.

Mustofa Lutfi, 2010, *Hukum Sengketa Pemilukada di Indonesia*, Jogyakarta, UII Press.

Soerjono Soekanto, 1986, *Mengenal Sosiologi Hukum*, Bandung : Alumni.

J. Van Kan dan J.H. Beekhuis, 1982, *Pengantar Ilmu Hukum* (Jakarta : PT Pembangunan Ghalia Indonesia, 1982)

Valerina Kriekhoff, *Mediasi (Tinjauan dan Antropologi Hukum)*.Sebuah Bunga rampai oleh Ihroni.T.O.Jakarta,Yayasan Obor,2001

### Legislations

1. Law No. 32 of 2004 on Regional Government, as amended by Law No. 12 of 2008 and 2016 have made changes for the second time which is the Law of the Republic of Indonesia No. 10 of 2016 About the Second Amendment of Law No. 1 of 2015 on

determining a government regulation in lieu of law No. 1 of 2014 on the election of the governor, regents, and mayors became law.

2. Law No. 15 of 2011 on organizing general elections
3. Law No. 8 of 2015 on organizing general elections
4. Law No. 5 of 1986, as amended by Law No. 9 of 2004 and the Law No. 51 of 2009 on the second amendment of Law No. 5 of 1986

### Papers/Articles

Nandang Alamsyah ,20014, Papers delivered on socialization the election of the governor, and vice governor west java 2004 in ppib bogor west java

### Internet

[www.http://bahasa.kemendiknas.go.id/kbbi/index.php/diakse](http://bahasa.kemendiknas.go.id/kbbi/index.php/diakse) on Wednesday, September 12<sup>th</sup>, 2016. 12.00 PM