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"Comparative Law System of Procurement of Goods and Services around Countries in Asia, Australia and Europe"



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PROBLEMS OF DISPUTE RESOLUTION REGIONAL CHIEF ELECTION (GOVERNOR, REGENTS AND MAYOR)

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ABSTRAK

The aim of research conducted in this study, is to analyze the problems of the settlement of disputes local election. The problems of settlement of disputes in the implementation of local elections is problematic power of the judiciary in resolving disputes elections daerahmatika power of the judiciary in resolving disputes local elections, and Problems In Dispute Settlement local elections which disputes the results of the local elections of powers MA into the power of the Court, power in the State Administrative Court judge Decision Penyeleenggara local elections, the power of the General Court in dealing with criminal abuses Daeran elections and enforcement of the code of conduct by the Honorary Board of the General Election Organizer.

A. Preliminary

Ambassador of the United States (US) Scot Alan Marciel praised the functioning democracy in Indonesia today. He said "People Indonesia early risers can continue to criticize the government". It dianalogkannya by the Americans themselves, which also has a similar behavior. This case is quite encouraging and is one product of the Reformation Era began in 1998.

Formally democracy in Indonesia is shown among others by the representation of beings in the legislature is elected directly by the people, or public officials in the executive elected by the General Election. Another embodiment of the democratic instruments, namely through the Regional Head Election (Election). Instrument democracy in the form of elections can not be separated from the concept of devolution to the local implementation of government affairs (Decentralization), but also devolution of power (political decentralization).¹ This election is a momentum for local people to distribute its autonomy in

¹ William Tordoff, 1994, *Decentralisation: Comparative Experience in Commonwealth Africa*, The Journal of Modern African Studies Nomor 32, Volume 4, halaman 573.

determining who will lead the development in the region, so that the presence of this development will be based regional welfare interests of society.

The elections are important, this can be seen in Article 18 paragraph (4) NRI Constitution of 1945 where it has been confirmed that the Governors, Regents and Mayors as the respective heads of provincial governments, counties, and cities are chosen democratically. Furthermore, Article 18 paragraph (7) NRI Constitution of 1945 states that: The composition and procedures of governance are set out in legislation. Meaning setting the elections as one of the regional administration submitted at the level of legislation.

Direct election is the best way to break the ice democracy. The strength of direct elections lies in the formation and implications of legitimacy. Regional Head requires its own legitimacy and should be elected by the people. They also must be responsible to the people. With the separate election of Parliament, Regional Head has the power balance with Parliament so that the mechanism of checks and balances will undoubtedly work. Head of regional administration are required to optimize function (protective, public service, development).

Improvements in the rules concerning the elections continue to be made, but in practice the elections are free, confidential, honest and democratic as diamatkan in Article 22 E of paragraph (1) in conjunction with Article 18 paragraph (4) Constitution NRI 1945 has not in fact reflect the spirit of the two the article. Still there are many violations that occur in the implementation of the elections starting from 2005. For example, in the organization of the elections of 2010 were held in as many as 244 regions that both provincial and regency / municipality, with a span of elections varied / asynchronous be found for 1179 report / findings of violations of the election administration submitted to the Election Supervisory Committee (Panwaslu). Which for the report / findings of the administrative violation, then the existing Supervisory Committee forwarded to the Commission for 1125 and the violation of which is forwarded to the Election Commission, which was followed up by the Commission only a total of 27 violations.² Election criminal offense is also not much different from the number of reports / findings of criminal offenses elections are a number of 572 reports / findings. While the report / findings were forwarded to the police is the number of 532 reports / findings, and reports / findings were forwarded to the Police Department data

² Data Pelanggaran ini didapatkan dari Materi Konferensi Pers Bawaslu Republik Indonesia Divisi Hukum dan Penanganan Pelanggaran pada Pemilukada tahun 2010, halaman 1.

showed bahwa 168 reports / findings of which were stopped by the Police.³ For the code of conduct before the formation of the Honorary Board of Election (DKPP) out of a total of 35 recommendations Bawaslu which was forwarded to the Commission which followed the Commission only 6 on a code of conduct, with details 5 decision proved to have violated the code of conduct so that the organizers of the election are given sanction by DKPP and 1 decision stating no evidence of code violations committed by the organizers of the elections.⁴

The number of violations in the elections as this data further confirms that the elections in Indonesia at present is still far from a sense of justice being impregnated with various forms of violation of either the administrative, criminal or ethical code. Bawaslu as the state institutions assigned to oversee the conduct of elections in each stage which should serve as a counterweight to the Commission has a wide variety of limitations, such as the authority of the Supervisory Committee was limited to making recommendations, whereas if the Commission did not follow no sanction anything to KPU them. So that at least in the elections in 2010 concluded two (2) main problems that occurred the first number of data handled by the administrative violation Panwaslu but not comparable with the least amount of actions taken by the Election Commission of Provincial / District / City and ranks. The second is the number of data breach criminal offenses handled by the Election Supervisory Committee is not comparable with the least amount of actions taken by the Police. Factor is the lack of follow-up by the relevant agencies have an impact on nearly two-thirds of the conduct of the elections in 2010 ended in MK.⁵

The number of violations during the elections resulted in many complaints to the Constitutional Court has the authority to resolve the dispute over election results. For example, in the organization of the elections of 2010 were held in as many as 244 regions that both Provincial and District / City Court during 2010 received a request for dispute cases as much as 230 petition election results. 230 The request for the year 2010, 26 diantaranya granted, 149 rejected by the Court, 45 declared not acceptable, 4 withdrawn, and six more cases that remain continue in 2011.⁶

The number of cases to the Constitutional Court petition 230 of 244 organizing elections in 2010 showed public dissatisfaction will law enforcement during the process of

³ *Ibid*, halaman 5.

⁴ *Ibid*, halaman 7.

⁵ *Ibid*, hal 1

⁶ Rekapitulasi Perkara Perselisihan Hasil Pemilihan Umum Kepala Daerah dan Wakil Kepala Daerah, <http://www.mahkamahkonstitusi.go.id/index.php?page=web.RekapPHPUD>

elections. Figures 230 also shows that beyond dispute that the authority of the Court, many electoral violations were more like criminal, administrative and even codes of conduct are not resolved during the stages of the elections participated also reported to the Court that as many as 149 application was rejected and 45 others declared not acceptable by the Court.

B. Formulation of the problem

Based on the description in the background section above, the authors wanted to discuss and examine some of the problems "How can the problems of resolving disputes local elections?"

C. Research Purposes

Based on the formulation of the problems described above, the purpose of the research conducted in this study, is to analyze the problems of the settlement of disputes local election.

D. Settlement Problems In Local Elections

Based on the analysis of law enforcement through judicial institutions in the elections of both the Administrative Court, District Court and the Court are often ineffective resolve problems that occur or even a court decision is not acted upon by the organizers of the election.

The existence of the Administrative Court, the General Court and the Court can not be separated from human rights protection efforts of government administration decision. Commission Decision of Provincial / District / City of example that violate human rights and harms the constitutional rights must be judged by the judiciary. The judiciary has a role not only to correct errors on the KPU Provincial / District / City but also the rehabilitation of losses incurred by citizens.⁷

⁷ A. W. Bradley and K. D. Ewing, 1976, *Constitutional and Administrative Law Part IV: Administrative Law*, Longman, London and New York, page.618 menyatakan *There are two broad tasks that the courts perform within administrative law. The first (which we may call judicial review) arises when an individual seeks to review the legality of a decision taken by public authorities or specialised tribunals, and the court must in exercise of the supervisory jurisdiction decide whether to uphold or set aside the decision. The second task (public liability) arises when individuals seek compensation in the form of damages for loss caused by a public authority's unlawful act.* Lihat juga Sir Ivor Jennings, *The Law and The Constitution*, The English Language Book Society and Hodder And Stoughton, Great Britain, Great Britain, halaman 251 menyatakan *The Third Method of control consists in the use of*

Some look so weak judicial decision in law enforcement functions such as Kupang Administrative Court Decision No. 14 / G / 2010 / KPG that although the administrative court has been disconnected and is legally binding is not adhered to by the Election Commission of North Central Timor regency. In a state of law, adherence to the law could occur both compliance, identification and Internalization. Compliance is compliance occurs because the coercive sanctions will be imposed if there are acts of non-compliance. While the identification of compliance that is put compliance as compliance inter human relationships. Moral and social sanction will be given if there are people who are not obedient. Compliance KPU Provincial / District / City against the decision of the Administrative Court, District Court and the Court is an action in order to enforce the law of the state pillar. Compliance with the decision of the Administrative Court, District Court and the Court can be said to be best when compliance KPU Provincial / District / City are Internalization. Internalization is the meaning of voluntary compliance and / or desire for conscious and obey the law of the deepest bottom of my heart. As a good citizen, Chairman and Members of the Commission Provincial / District / City showed a conscious and law-abiding attitude of the heart's deepest to carry out the determination and / or decision of the Administrative Court, District Court and the Court.

An administrative law principle that is important to note that: the Administrative Court to issue or revoke its decision under its control shall not have personal interest in the decision issued or revoked.⁸ That compliance or noncompliance of KPU Provincial / District / City is very strong with underlying interests. Achmad Ali gives an opinion that actually the most basic kind of obedience to someone to obey or not obey the law is for their interests.⁹ More Ahmad Ali explains the interest in the observance of which is compliance due to their interests in order not to get penalized, which is identification obedience due to interest as social creatures, while obedience is Internalization due to the interest that comes from within ourselves to obey the law.¹⁰

KPU Provincial / District / City obey or not obey the decision of the Administrative Court, District Court and the Constitutional Court over the observance of which is due to the

the ordinary remedies for proceedings where a public authority has committed unlawful acts, and so injured a private individual or another public authority.

⁸ Supandi, 2005, *Kepatuhan Pejabat Tata Usaha Negara dalam Melaksanakan Putusan Pengadilan Tata Usaha Negara di Medan*, Disertasi, Universitas Sumatera Utara, Medan, halaman 224.

⁹ Ahmad Ali, *Op, Cit*, halaman 349.

¹⁰ *Ibid.*

influence identification to obey come from outside KPU Provincial / District / City. Disobedience prevails in Timor Tengah Utara Commission did not exercise administrative court ruling Kupang No. 14 / G / 2010 / PTUN KPG, as well as the West Sumbawa Regency disobeys the administrative court ruling Mataram No. 24 / G / 2010 / PTUN.MTR stating void diploma candidates incumbent Dr. K. H. Zulkifli Muhadli, SH, M.M.,

As with the analysis of the case in which the Milky Kabupaten PN PN Raba Raba Milky Milky in decision No. 300 / Pid.B / 2010 / PN.RBI has sentenced a man named Bro. Suaeb Husen for committing the crime of elections in violation of Article 117 (2) of Law No. 32 of 2004 has been proven by the court ruling. However, because doing is a member of the campaign team of the incumbent enforcement is difficult to implement, whereas 117 (2) of Law No. 32 of 2004 can be concatenated to Article 82 paragraph (2) of Law No. 32 of 2004 which essentially set when money politics proven and legal power then performed even by members of the campaign team even, then the sanction of cancellation candidates. However, due to poor management and legal cultures also so weak enforcement of the rule of law is not going well. The intervention of the head of the region as holders of power are often included in the bureaucracy and cause obstructed law enforcement.

A. V. Dicey which explains the concept of a state of law or rule of law one of which is the absolute supremacy is on the law, not on policy actions or prerogative of the ruler. So what happens in the Bima district showed the weakness of the judiciary in the election law enforcement in terms of enforcing the criminal pidana elections comprehensible. Weak legal institutions that exist today are also linked in the elections is also related to administrative violations. Administrative violations in Law No. 32 of 2004 is also not clear. So understanding the violation of the electoral administration accepted and commonly used in the elections is a reference to the provisions contained in Act No. 10 of 2008 which states that an administrative violation is a violation of the election law which is not a criminal provisions of the election and to the other provisions set in a Commission regulation.

The definition is too broad and unclear, so it is not clear remedies can be done by parties who feel aggrieved over the publication of the decision / determination of the Election Commission. Though the legal remedies necessary to ensure the election process runs with democratic and fair for all parties involved in the organization of the elections. Moreover, in practice, when there are reports of alleged violations of administration due to the decision / determination KPU detrimental to the Supervisory Committee, the end result is only led to the recommendation that the Supervisory Committee would generally ignored by the

Commission. Supervisory Committee could not impose rekomendasainya to be followed, so that generally often happens is not successful after passing Supervisory Committee, which feels aggrieved party complained to the administrative court. However, when the administrative court ruling granting the injured party, the administrative court's decision can not be forced to undertaken by the Commission as normative in Act No. 32 of 2004 had never been a referral clause that administrative pelanggaran resolved through the mechanism of the Administrative Court.

As for the basis of the authority of the Administrative Court is only regulated in SEMA SEMA No. 7 of 2010. This stipulates that decisions are not or are not the result of the election can be classified as a decision in the field of government affairs and therefore all such decisions meet the criteria of Article 1 point 9 Law Number 51 Year 2009 regarding the Second Amendment to Law Number 5 of 1986 concerning the State Administrative Court, the Administrative Court remains the authority to examine and hear. As happened in Kupang administrative court ruling No. 14 / G / 2010 / PTUN KPG, although granted by the Administrative Court of Kupang but ignored by the Election Commission of North Central Timor regency.

This corresponds Paul Efendi Lotulung opinion stating that: Implementation of decision / execution in the procedural law in the Administrative Court specifically regulated, unlike the procedural law in PN (civil). Basically, the execution PTUN emphasis on a sense of self respect and legal awareness of officials TUN of the content of the judge's decision to implement them voluntarily without any coercion attempt (*dwang middelen*) that can be felt and imposed by the court against TUN officials concerned. So in this administrative offense as if the decision or determination of the Commission at this stage of the elections, in addition to dispute the results, it can not be touched and absolute, even when it has come out that the decision is legally binding though. Weak regulation in the handling of administrative pelanggaran This indicates the ineffectiveness of the judiciary in the election law enforcement.

Enforcement of election law by the Court regarding the dispute election results are still encountering many obstacles. The authority of the Court in law enforcement elections is in accordance with Article 10 paragraph (1) letter d of Law Number 24 Year 2003 regarding the Constitutional Court which reads the Constitutional Court authority to hear at the first and last decision is final to decide disputes concerning the election results. So should the case outside issues election results was dismissed by the Court. However, current developments eg

administrative violations of legality issues diplomas would be candidates as in the case Number 6 / PHPU.D-VIII / 2010 on the general election result disputes West Sumbawa regency, also concerns the election of a criminal offense of money politics in case Number 191 / Dispute. D-VIII / 2010 on the general election result disputes North Konawe.

MJK true in both cases is no longer merely assess the dispute but which has damaged justice assess violations and check up the stages of the election, which in turn provides for sanctions in its decision that must not only establish the correct sound acquisition. The number of criminal justice and administrative violations were also heard by the Constitutional Court will not actually happen when the violations have been resolved in a fair prior to submission to the Court. On the other hand, it means a lot of unfinished stages involved in providing access to justice. Finally, the Court used to expand the authority given to him as if the constitution is considered limited voting results KPU, while violations were also committed organizers organizers of the election, and the other parties did not participate rated it did not materialize principled elections free and fair.

The Court took a bold step this is appropriate if the associated distinction of three kinds of procedural justice John Rawls, that perfect procedural having independent criteria then produce fair as expected. While imperfect procedural justice, an independent criteria does not guarantee fairness generated as expected. For pure justice, not preceded independent criteria: justice was born in the procedure itself if implemented. Pure justice is achieved by building and managing a fair system of institutions as well.¹¹ Therefore, the Court also considered that the election process stages (including the issue of administrative violations and criminal offenses indirectly) to determine the final result (election results). Actually the main problem is the Indonesian state electoral court does not have a special judicial elections, so many criminal offenses and administrative issues that should have been completed during the stages they complained to the Constitutional Court. On the other hand, the PN and normative administrative court is not regulated by Act No. 32 of 2004 to resolve the problems of violations of the elections, and other factors as the Court today is a judiciary that is considered clean and respectable.

Actually, according to the authors, the judicial body semi DKPP so far since inaugurated on June 12, 2012 had their official duty in accordance with the mandate of Law Number 15 Year 2011 regarding the Election, the election organizer enforce a code of

¹¹ John Rawls, 2011, *Teori Keadilan, Dasar-Dasar Filsafat Politik untuk Mewujudkan Kesejahteraan Sosial dalam Negara*, terjemahan *A Theory of Justice*, Uzair Fauzan dan Heru Prasetyo, Pustaka Pelajar, Yogyakarta, halaman 156.

conduct. The presence of institutions DKPP in the structuring of the democratic system in the midst of a crisis of public confidence in the election organizer is the answer to the needs of the community will be a separate institution who have high integrity and understands and respects the civil and political rights of the citizens in order to honor an election can be maintained and escort dignity democratic elections in the context of checks and balances among the election management bodies.

As in the case of the analysis of authors in the previous discussion on the decision DKPP about cases of alleged violations of the code of conduct of election organizer by Regency Timor amid the North, in this case the decision DKPP No. 18 / DKPP-PKE-I / 2012, has provided a fairness previously obtained by the Kupang Administrative Court Decision No. 14 / G / 2010 / PTUN KPG. DKPP institutions in this regard has been successfully functioning as repair the nation's morality. So if there is election organizers who perform acts that violate, DKPP will run its constitutional functions ranging from reminding (warning penalties) even dismiss members of the KPU and Bawaslu and their staffs if proven to have violated the code of conduct of election organizer.¹² However, according to the author analyzes the deficiency is limited DKPP authority, heard only the behavior of election organizers (code of conduct) and DKPP also do not see the stage. So for those who seek justice because they feel aggrieved by the parties in the General Election of Regional Head, is less precise when a direct report to DKPP because DKPP authority merely stated that the organizers of the election violates the code of conduct or not is not annulled nor included in the phase problem.¹³

Another issue is the judiciary that exists today in addressing the issue of elections often contradictory verdict instance administrative court ruling results Mataram No. 24 / G / 2010 / PTUN.MTR on June 22, 2010 and the decision of the Court Number 6 / PHPU.D-VIII / 2010 on May 24, 2010. Where in the Constitutional Court decision No. 6 / PHPU.D-VIII / 2010, published earlier already won candidate Dr. K. H. Zulkifli Muhadli, SH, M.M., as

¹² Pasal 112 ayat (11) Undang-Undang Nomor 15 Tahun 2011 tentang Penyelenggara Pemilu menyatakan bahwa: Sanksi sebagaimana dimaksud pada ayat (10) dapat berupa teguran tertulis, pemberhentian sementara, atau pemberhentian tetap.

¹³ Pasal 109 ayat (2) Undang-Undang Nomor 15 Tahun 2011 tentang Penyelenggara Pemilu menyatakan bahwa: DKPP dibentuk untuk memeriksa dan memutuskan pengaduan dan/atau laporan adanya dugaan pelanggaran kode etik yang dilakukan oleh anggota KPU, anggota KPU Provinsi, anggota KPU Kabupaten/Kota, anggota PPK, anggota PPS, anggota PPLN, anggota KPPS, anggota KPPSLN, anggota Bawaslu, anggota Bawaslu Provinsi dan anggota Panwaslu Kabupaten/Kota, anggota Panwaslu Kecamatan, anggota Pengawas Pemilu Lapangan dan anggota Pengawas Pemilu Luar Negeri.

Regent (indirectly though sound judgment can not be accepted) while at the administrative court ruling Mataram No. 24 / G / 2010 / PTUN.MTR published later, a diploma from Dr. K. H. Zulkifli Muhadli, SH, M.M., indirectly when you see the nomination administrative prerequisites have been canceled because the certificate Dr. K.H. Zulkifli Muhadli, SH, M.M., Mataram administrative court has canceled the decision No. 24 / G / 2010 / PTUN. MTR, but whether these results overturned the verdict of the Court? Actually, according to the author if the country we have the special judicial election special authority prosecute election issue in stages, problems like this will not happen.

E. Conclusion

The problems of settlement of disputes in the implementation of local elections is problematic power of the judiciary in resolving disputes elections daerahmatika power of the judiciary in resolving disputes local elections, and Problems In Dispute Settlement local elections which disputes the results of the local elections of powers MA into the power of the Court, power in the State Administrative Court judge Decision Peneyelnggara local elections, the power of the General Court in dealing with criminal abuses Daeran elections and enforcement of the code of conduct by the Honorary Board of the General Election Organizer.

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