



UDC 34

ANALYSIS OF LEGAL IMPLICATIONS DUE TO DISPUTE RESOLUTION OF VILLAGE HEAD ELECTION RESULTS THAT MUST BE CARRIED OUT BY THE REGENT / MAYOR

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ABSTRACT

The government is bound by the principle of law (*rechtmatige van het bestuur*), which obligates the government to act in accordance with the law. Acting in accordance with the law, as stipulated in Article 8 paragraph (2) of Law Number 30 of 2014 concerning Government Administration (UU AP), must be based on statutory regulations and general principles of good governance (*algemene beginselen van behoorlijke bestuur*). Based on the aforementioned, an important issue arises that warrants examination regarding the legal implications arising from the mandatory Settlement of Disputes over Results to be conducted by the Regent/Mayor as stipulated in Article 37 paragraph (6) of Law Number 6 of 2014 concerning Villages (UU Desa). Therefore, in line with the existing issue, this research adopts a normative approach with conceptual approach, statute approach, and case approach for examination. The legal implications arising from Article 37 paragraph (6) of the Village Law, based on the research findings, reveal several outcomes: legal uncertainty, lack of legal protection for village head candidates, inadequate dispute resolution, and potential for prolonged conflicts within the community.

KEY WORDS

Legal implications, outcome, dispute resolution, head elections, regent, mayor.

The regulation regarding villages has been in existence since the Dutch East Indies era in 1954 when the Colonial Government of the Netherlands issued the "Regeeringsreglement," which served as the precursor to the regulations concerning regions and villages. Subsequently, during the Japanese occupation, the regulation concerning villages was governed by Osamu Seirei No. 7, which was established on March 1, Showa Year 19 (2604 or 1944). The provisions of Osamu Seirei affirm that the *Kucoo* (Village Head) is appointed through an election process. Following Indonesia's independence on August 17, 1945, the regulation of villages began, which became an initial concern in formulating the birth of the Constitution of the Republic of Indonesia of 1945 (UUD NRI Tahun 1945).

During the Old Order era (1945-1965), regulations pertaining to villages were indirectly or directly governed by several laws. These include Republic of Indonesia Law Number 22 of 1948 concerning the Establishment of Basic Rules for Self-Government in Their Own Areas, Republic of Indonesia Law Number 1 of 1957 concerning the Principles of Regional Government, and Republic of Indonesia Law Number 19 of 1965 concerning *Desapraja*. In the New Order era (1967-1998), institutional regulations concerning villages were addressed in Republic of Indonesia Law Number 4 of 1974 concerning the Principles of Regional Government, and Republic of Indonesia Law Number 5 of 1979 concerning Village Government (Rosadi, 2015). The dynamics of village regulation continued into the Reform era with the regulation of Village Governance addressed in Republic of Indonesia Law Number 22 of 1999 concerning Regional Governance. Critiques and studies of the Reform era law led to a commitment to village renewal, resulting in the enactment of Republic of Indonesia Law Number 32 of 2004 concerning Regional Governance. After a long process of struggle regarding Village Regulation from independence until 2014, the specific regulation of villages was concretely addressed with the enactment of Republic of Indonesia Law Number 6 of 2014 concerning Villages (UU Desa).



The Village Law (UU Desa) is derived from the Constitution concerning Regional Governance, as stipulated in Article 18 paragraph (1) of the Constitution of the Republic of Indonesia Year 1945 (UUD NRI 1945), which states: “The Unitary State of the Republic of Indonesia is divided into provinces and provinces are divided into districts and cities, each province, district and city has a regional government, which is regulated by law.” Local government is the administration of government affairs by regional governments and regional representative councils in accordance with the principles of autonomy and delegation of authority, with the widest possible autonomy within the system and principles of the Unitary State of the Republic of Indonesia as stipulated in the Constitution of the Republic of Indonesia Year 1945 (Yamin, 1959). In the governance system of the Unitary State of the Republic of Indonesia, the village is the lowest-level government structure and possesses inherent characteristics.

Prior to the enactment of Law No. 6 of 2014 concerning Villages, the position of Village Government regarding village regulation was still governed by the Regional Government Law, which defined Village Regulations (Perdes) as part of the regulations of the District/City Regional Government (Ilwan, 2015). However, after the enactment of Law No. 6 of 2014 concerning Villages, the position of Perdes is no longer part of Regional Regulations (Perda) but exists separately from them (Ilwan, 2015). This separate drafting of the Village Law strengthens the mandate and meaning of Article 18 of the Constitution of the Republic of Indonesia Year 1945 and the Village Law clarifies the position, authority, and meaning of village autonomy (Sukriono, 2013).

Village autonomy in the Village Law regulates various aspects related to villages, ranging from their position, organization, authority, governance arrangements, rights and obligations of villages and indigenous communities, village regulations, village finances and assets, village development and rural area development, village-owned enterprises, and notably, village head elections.

The election of the Village Head in the governance succession in the village is regulated in Part Three of the Village Law, from Article 31 to Article 39. The election of the Village Head is conducted directly in accordance with the provision of Article 34 paragraph (1), which states, “Kepala Desa dipilih langsung oleh penduduk Desa”. In case of disputes, it is explicitly stipulated in Article 37 paragraph (6) that “In the event of a dispute over the results of the Village Head election, the Regent/Mayor is obliged to resolve the dispute within the time period as intended in paragraph (5)”. The Village Law grants attribution authority to the Regent/Mayor to resolve disputes over the results of the Village Head election (Village Head Election Dispute, or PHP Pilkades).

The authorization to the Regent/Mayor by the Village Law to resolve Village Head Election Disputes (PHP Pilkades) through attribution has resulted in a lack of objectivity in seeking justice. This is because the Regent/Mayor is an executive authority and often presents new challenges, leading to many unresolved cases. This situation has led to prolonged conflicts, as evidenced by two examples: the Village Head elections in Leowatu Village, Lamaknen District, Beli Regency, East Nusa Tenggara Province, and Sidomukti Village, Brondong District, Lamongan Regency, East Java Province. These cases have persisted from 2019 and continued into 2021 even after the final and binding legal decision (inkracht van gewijsde) of the Cassation Court. Another example of Village Head election issues that persisted until an extraordinary legal review (Peninjauan Kembali) from 2020 until the final and binding decision in 2021 includes the Village Head elections in Matanair Village, Rubaru District, Sumenep Regency, East Java Province, and Subo Village, Pakusari District, Jember Regency, East Java Province.

Based on these circumstances, there is a need for an analytical discussion to unravel the legal implications of settling disputes arising from Village Head elections that are mandatory for the Regent/Mayor to resolve.

The authors relied on a system of methods of normative legal research (Syafiuddin et al, 2021). The preparation of the paper was based on legal research aimed at seeking legal principles, rules, and doctrines to find answers to legal issues encountered, thereby producing argumentative responses, concepts, and theories (Widiarto, 2023). This study



employed legislative approach, case approach, and conceptual approach (Marzuki, 2013) to understand the urgency resulting from legislative regulations. The technique of collecting legal materials involved literature review (Soekanto, 2003) aimed at examining issues with theoretical analysis to obtain a comprehensive discussion.

RESULTS AND DISCUSSION

Regional governance has been regulated in Article 18 paragraph (1) of the Constitution, the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), which states: "The Unitary State of the Republic of Indonesia is divided into provinces and provinces are divided into districts and cities, each province, district and city has a regional government, which is regulated by law." Regional governance is the administration of government affairs by regional governments and regional representative councils according to the principles of autonomy and delegation of authority, with the widest possible autonomy within the system and principles of the Unitary State of the Republic of Indonesia as stipulated in the Constitution of the Republic of Indonesia Year 1945.

The regulation regarding the settlement of disputes over the results of Village Head elections (PHP Pilkades) is stipulated in Law Number 6 of 2014 concerning Villages, Government Regulation Number 43 of 2014 concerning the Implementation Regulations of Law Number 6 of 2014 concerning Villages, Government Regulation Number 47 of 2015 concerning Amendments to Government Regulation Number 43 of 2014 concerning the Implementation Regulations of Law Number 6 of 2014 concerning Villages, as well as its implementing regulations, which are resolved by the Regent/Mayor.

The resolution of disputes over the results of Village Head elections (PHP Pilkades) in Article 37 paragraph (6) of the Village Law states, "In the event of a dispute over the results of the Village Head election, the Regent/Mayor is obliged to resolve the dispute within the time period as intended in paragraph (5)." According to the above provision of the Village Law, if any party objects to the results of the Village Head election, they may submit their objection to the Regent/Mayor in accordance with the rules in the Village Law and other applicable regulations.

In Government Regulation Number 43 of 2014 concerning the Implementation Regulations of Law Number 6 of 2014, Article 41 paragraph (5) letter c stipulates: "The Regent/Mayor issues a decision regarding the ratification and appointment of the Village Head no later than 30 (thirty) days after receiving the report from the Village Consultative Body."

Article 41 paragraph (7) of Government Regulation Number 47 of 2015 concerning Amendments to Government Regulation Number 43 of 2014 concerning the Implementation Regulations of Law Number 6 of 2014 concerning Villages states: "In the event of a dispute over the results of the Village Head election, the Regent/Mayor is obliged to resolve the dispute within a period of 30 (thirty) days." Furthermore, Minister of Home Affairs Regulation Number 112 of 2014 concerning the Election of Village Heads states in Article 44 paragraph (3): "The Regent/Mayor determines the ratification and appointment of the Village Head with the decision of the Regent/Mayor."

The resolution refers to the legal protection of seekers of justice, which essentially recognizes that every human is born as a creature created by God Almighty, who inherently receives fundamental rights such as freedom, the right to life, the right to protection, and other rights (Siboy, 2018). Law can be utilized to realize protection that is not only adaptive and flexible but also predictive and anticipatory (Rasjidi & Putra, 1993). Legal protection, according to Satjipto Rahardjo, is a right as power granted by law to an individual with the intention of safeguarding their interests (Rahardjo, 2007). Legal protection is also reflected in Sunaryati Hartono's opinion that law is needed for those who are weak and not yet socially, economically and politically strong to obtain social justice (Hartono, 2020). Legal protection is a form of human rights protection as a form of realization of substantive state institutions. Protection towards social justice which is the ideal is the estuary of legal protection for the



community, in this case, candidates for Village Heads, need to understand and search in finding material truth by applying legal principles (Permadi, 2023).

The justice obtained by the people is created as a result of the legal struggle process by the authorities, in this case, according to the Village Law, the PHP Pilkades settlement is the authority of the Regent/Mayor, the authority in this case is based on its nature, namely the bound authority (*gebonden bevoegd*) which is the authority of government officials that has been determined limitatively in the laws and regulations as a basis for action and the need for authority limits (Hippy et al, 2020). In general, government actions can be interpreted as actions taken by government agencies/officials with the aim of providing public services to the community. Related to this, Sadjiono stated that government actions are every action carried out by government equipment (*bestuursorgan*) in carrying out government functions (*bestuurfunctie*) (Sadjiono, 2008). Normatively, Article 1 point 8 of Law Number 30 of 2014 concerning Government Administration determines "Government Administrative Actions, hereinafter referred to as Actions, are actions by Government Officials or other state administrators to carry out and/or not carry out concrete actions in the context of administering government."

The implementation of the government after PHP Pilkades is the next process based on the Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 112 of 2014 concerning Village Head Elections: Article 44 paragraph (3), "The Regent/Mayor determines the ratification and appointment of the Village Head by a Regent/Mayor decree." Based on the regulations governing and granting the authority of the Regent, there are several issues related to the legal implications of resolving disputes over the results of PHP Pilkades that must be carried out by the Regent/Mayor. The case approach to resolve the problem looks at the search for legal materials on Ordinary Legal Remedies, including the Election of the Village Head of Leowalu, Lamaknen District, Beli Regency, East Nusa Tenggara Province and the Election of the Village Head of Sidomukti, Brondong District, Lamongan Regency, East Java Province. Meanwhile, there were also several cases that made Extraordinary Legal Remedies, namely the Village Head Election of Matanair, Rubaru Subdistrict, Sumenep District, East Java Province and Subo Village, Pakusari Subdistrict, Jember District, East Java Province.

Table 1 – Village Head Election Cassation and Judicial Review Cases

Village Head Election Ordinary Legal Remedies				
No	Cassation	Cassation	Appeal	First Instance
1	Cassation	269 K/TUN/2021	153/B/2020/PT.TUN.SBY	102/G/2019/PTUN.KPG
		Cassation is not accepted	Strengthening the Decision	Rejecting the Lawsuit
Village Head Election in Leowalu, Lamaknen District, Beli Regency, East Nusa Tenggara Province				
2	Cassation	26 K/TUN/2021	119/B/2020/PT.TUN.SBY	184/G/2019/PTUN.SBY
		Cassation is not accepted	Strengthening the Decision	Rejecting the Lawsuit
Village Head Election in Sidomukti, Brondong District, Lamongan Regency, East Java Province				
Village Head Election Extraordinary Legal Remedies				
No	Judicial Review	Judicial Review	Appeal	First Instance
1	Judicial Review	79 PK/TUN/2021	223/B/2020/PT.TUN.SBY	37/G/2020/PTUN.SBY
		Rejecting the Judicial Review	Strengthening the Decision	Granting the Lawsuit
Village Head Election in Matanair, Rubaru District, Sumenep Regency, East Java Province				
2	Judicial Review	106 PK/TUN/2021	228/B/2020/PT.TUN.SBY	50/G/2020/PTUN.SBY
		Rejecting the Judicial Review	Strengthening the Decision	Granting the Lawsuit
Village Head Election in Subo, Pakusari District, Jember Regency, East Java Province				

Source: Repository of Administrative Court, Administrative High Court, and Supreme Court processed by the authors.

In the table above, the legal implications of settling Village Head Election disputes (PHP Pilkades) require a considerable amount of time for a seeker of justice. Justice is the condition aimed to be realized by law. However, concerning legal materials, it is noted that in the ordinary legal remedies up to the cassation level filed by 2 (two) example cases, the overall decision reads "Cassation is not accepted", as a regional official, in accordance with the provisions of Article 45A paragraph (2) letter c of Law Number 5 of 2004 concerning



Amendments to Law Number 14 of 1985 concerning the Supreme Court, regarding State Administration cases where the object of the lawsuit is a decision of a regional official within reach the decision is valid in the relevant regional area and cassation cannot be submitted, therefore the cassation petition from the cassation applicant must be declared not accepted. Meanwhile, extraordinary legal action or judicial review was proposed by 3 (three) cases, the overall decision reads “Rejecting the Judicial Review”. Based on several legal considerations by the judges, including in Decision Number 106 PK/TUN/2021:

“Considering, that these reasons cannot be justified, because the Judex Facti decision is in accordance with the applicable laws and regulations, there is no error by the Judge or real error in it with the following considerations...”

Efforts to achieve justice in law are often dominated by forces competing within the broader framework of political order to actualize it (Friedrich, 2008. Justice, according to Aristotle's perspective, “because the law can only be established in relation to justice” (Kusumaatmadja, 2000). This view of justice entails granting equality of rights but not equality itself. Aristotle distinguishes the equality of rights according to proportional rights. Equality of rights in human perspective, with humans being equal units or vessels. It is understood that everyone or every citizen is equal before the law. Meanwhile, justice according to John Rawls states (Rawls, 2017):

“The program of upholding justice with a popular dimension must pay attention to two principles of justice, namely first, providing equal rights and opportunities to the broadest range of basic freedoms as well as equal freedoms for everyone. Second, being able to reorganize socioeconomic disparities that occur so that they can provide reciprocal benefits.”

The Indonesian state based on law provides a form of justice that refers to the rule of law and is based on the theory of Legislation (Hadi et al, 2020) According to Hamid S. Attamini, explains “Legal Theory is a branch or side of legal science that is cognitive and oriented towards the pursuit of clarity and clarity of understanding, especially the basic understanding in the field of Law (among other things the understanding of the law, about the formation of the Law, about Law and so on)” (Soeprapto & Attamimi, 1998). Understanding of the making of laws and regulations is a legal embodiment of ensuring the implementation of state functions with integrity (Tuori, 2006).

If we consider all aspects of the formulation of legal regulations, it is necessary to evaluate policies by the government, academics, and the community (Karsayuda et al., 2023) because the law is a product of democracy (Harvelian et al., 2020) and should adhere to procedures while providing substantive justice. Substantive justice occurs when an individual does not receive the expected justice according to the rules, leading them to resort to the courts when disputes arise from the resolution by the Regent/Mayor. The judiciary in a democratic rule-of-law state must be independent and free from any interference from any source. A key concept of democracy is the trust of citizens in authorities and public institutions (Kawa & Holovko, 2023) such as the judiciary. Bagir Manan states that there are several reasons why the judiciary must be independent, including:

“(1) Independent judicial power is fundamental to democratic life and guaranteed protection and respect for human rights; (2) Independent judicial power is the joint upholding of state understanding based on the constitution which requires that state power be limited; (3) Independent judicial power is needed to guarantee neutrality, especially if disputes occur between citizens and the state/government; (4) The resolution of legal disputes by an independent judicial power is the basis for the proper functioning of the legal system” (Manan, 2002).

Referring to the constitutional basis governing justice and law enforcement, it is regulated in Article 24 paragraphs (1) and (2) of the 1945 Indonesian Constitution, which states:

- Judicial power is independent power to administer justice to uphold law and justice;
- Judicial power is exercised by a Supreme Court and subordinate judicial bodies in the general court, religious court, military court, state administrative court, and by a Constitutional Court.

The independent judicial power, free from the influence of governmental power as desired by the Constitution, is an effort to ensure and protect the freedom of the people from



the possibility of arbitrary actions by the government. If the judicial power is combined with the legislative power, then the lives and freedoms of individuals will be under arbitrary control. Similarly, if the judicial power is united with the executive power, judges may act arbitrarily and oppressively (Manan, 1998).

Based on an in-depth analysis using the overall theory of the rules and legal materials of court decisions, the legal implications arising from the PHP Pilkades that must be carried out by the Regent are first, there is a problem of incomplete norms governing the Village Law related to PHP Pilkades, second, there is legal uncertainty as evidenced by the completion of the Regent/Mayor level which is still a long process from Ordinary Legal Efforts to Extraordinary Legal Efforts which takes up to 2 (two) years, third, it does not provide legal protection for prospective village heads, and fourth, it can cause prolonged conflict in the community.

CONCLUSION

Regulations related to the analysis of legal implications arising from PHP Pilkades conducted by the Regent are intended in accordance with the attribution of the Village Law. However, the impacts arising from the completion of the PHP Pilkades conducted by the Regent bring classic problems with the incompleteness of the norms in Article 37 paragraph (6) of the Village Law, there is legal uncertainty, does not provide legal protection for candidates for village heads, does not resolve disputes properly, and may cause a prolonged conflict in the community.

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