

REFORMULATION OF REGIONAL HEAD ELECTION ADMINISTRATION DISPUTE POLICY BY THE GENERAL ELECTION SUPERVISORY BOARD AND THE STATE ADMINISTRATIVE COURT IN INDONESIA

Submission date: 14-Mar-2024 05:34AM (UTC+0700)
by Iza Rumesten

Submission ID: 2314736085

File name: 3169_Law.pdf (267.97K)

Word count: 8215

Character count: 47709

REFORMULATION OF REGIONAL HEAD ELECTION ADMINISTRATION DISPUTE POLICY BY THE GENERAL ELECTION SUPERVISORY BOARD AND THE STATE ADMINISTRATIVE COURT IN INDONESIA

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ABSTRACT

Purpose: The research objectives related to the reformulation of regional election administration dispute policies by Election Supervisory Agency and the State Administrative Court in Indonesia can include several things, one of which is to evaluate the effectiveness of existing policies. The purpose of this research can include evaluating existing policies related to dispute resolution administration of regional elections by Election Supervisory Agency and the state administrative court.

Method: The research method used in this research is a normative research method using a statutory approach and a conceptual approach

Results and Conclusion: The reformulation of regional election administration collection policies by the General Election Supervisory Agency and the State Administrative Court in Indonesia highlights efforts to increase effectiveness and efficiency in resolutions related to the regional head election process.

Implications of research: By strengthening the regional election administration dispute resolution process, especially through independent institutions such as the General Election Supervisory Body and the State Administrative Court, this can increase the legitimacy and trust of the public in the democratic process at the local level.

Keywords: election, administrative disputes, reformulation.

¹Received: 01/04/2024

Accepted: 02/26/2024

DOI: <https://doi.org/10.55908/sdgs.v1i2i3.3169>

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REFORMULAÇÃO DA POLÍTICA DE CONTESTAÇÃO DA ADMINISTRAÇÃO REGIONAL DAS ELEIÇÕES PELO CONSELHO GERAL DE SUPERVISÃO DAS ELEIÇÕES E PELO TRIBUNAL ADMINISTRATIVO DO ESTADO NA INDONÉSIA

RESUMO

Objetivo: Os objetivos de pesquisa relacionados à reformulação das políticas de disputa da administração regional eleitoral pela Agência de Supervisão Eleitoral e pelo Tribunal Administrativo do Estado na Indonésia podem incluir várias coisas, uma das quais é avaliar a eficácia das políticas existentes; o objetivo desta pesquisa pode incluir a avaliação das políticas existentes relacionadas à administração de resolução de disputas de eleições regionais pela Agência de Supervisão Eleitoral e pelo tribunal administrativo do Estado.

Método: O método de pesquisa usado nesta pesquisa é um método de pesquisa normativo usando uma abordagem estatutária e uma abordagem conceitual.

Resultados e Conclusão: A reformulação das políticas de cobrança da administração eleitoral regional pela Agência Geral de Supervisão Eleitoral e pelo Tribunal Administrativo do Estado na Indonésia destaca os esforços para aumentar a eficácia e a eficiência das resoluções relacionadas ao processo eleitoral regional principal.

Implicações da pesquisa: Ao fortalecer o processo de resolução de disputas da administração eleitoral regional, especialmente através de instituições independentes, como o Órgão Geral de Supervisão Eleitoral e o Tribunal Administrativo do Estado, isso pode aumentar a legitimidade e confiança do público no processo democrático a nível local.

Keywords: eleição, disputas administrativas, reformulação.

REFORMULACIÓN DE LA POLÍTICA DE DISPUTAS DE LA ADMINISTRACIÓN REGIONAL DE ELECCIONES POR PARTE DE LA JUNTA GENERAL DE SUPERVISIÓN DE ELECCIONES Y EL TRIBUNAL ADMINISTRATIVO ESTATAL DE INDONESIA

RESUMEN

Propósito: Los objetivos de investigación relacionados con la reformulación de las políticas de disputa de la administración electoral regional por parte de la Agencia de Supervisión Electoral y el Tribunal Administrativo Estatal en Indonesia pueden incluir varias cosas, una de las cuales es evaluar la efectividad de las políticas existentes; El propósito de esta investigación puede incluir la evaluación de las políticas existentes relacionadas con la administración de resolución de disputas de las elecciones regionales por parte de la Agencia de Supervisión Electoral y el tribunal administrativo estatal.

Método: El método de investigación utilizado en esta investigación es un método de investigación normativa que utiliza un enfoque estatutario y un enfoque conceptual.

Resultados y conclusión: La reformulación de las políticas de recaudación de la administración electoral regional por parte de la Agencia de Supervisión Electoral (General) y el Tribunal Administrativo Estatal de Indonesia pone de relieve los esfuerzos para aumentar la eficacia y la eficiencia en las resoluciones relacionadas con el proceso de elección de los jefes regionales.

Implicaciones de la investigación: Al fortalecer el proceso de resolución de disputas de la administración electoral regional, especialmente a través de instituciones independientes como el Órgano de Supervisión de las Elecciones Generales y el Tribunal Administrativo Estatal, esto



puede aumentar la legitimidad y la confianza del público en el proceso democrático a nivel local.

Palabras Clave: elección, disputas administrativas, reformulación.

1 INTRODUCTION

General elections are a means for the people to elect leaders who will represent them and run the government.⁴ General elections can be interpreted as the process of directly electing public officials by the people through voting. In Indonesia, General Elections can be referred to as Regional Head Elections. Regional Head Elections are not just a democratic party to determine leaders, but a democratic means for the people to maintain the continuity of a system that has been built.⁵ Regional elections also talk not only about figures of officials who have come to power or political elites who have a great desire to gain power, but efforts to determine the fate of the people for the next five years. In its implementation, the Regional Head Election raises many problems, both in terms of the framework of understanding the rule of law, the readiness of implementing institutions, the readiness of political parties, and the readiness of the people. Legal framework problems at the Regional Head Election stage starting in 2010, 2014, 2015, 2016 to 2017 and 2020 have caused confusion and ambiguity for the organizers and participants of the Regional Head Election which lies in law enforcement within the Integrated Law Enforcement Center, the District/City General Election Supervisory Committee, the General Election Supervisory Agency, the Supreme Court and the Constitutional Court. Ambiguous and multiinterpretive regulations contribute to a series of problems in the stages of holding Regional Head Elections, namely voter list problems, candidacy disputes, uncontrolled campaigns, problematic voting and vote counting to horizontal conflicts between communities. If analyzed, some horizontal conflicts in Regional Head Elections are caused by two things, first; there is a feeling of dissatisfaction from the candidate pair or supporters of the candidate spouse when the

⁴ Chasnul Qotimah Nita Permata, and Nur Barokah Uswatan Khasanah. "Money Politics Culture and Identity Politics in Indonesian General Elections." *Legislature* (2020). pp 93-105.

⁵ T. Triono. "Elections and the Urgency of Community Political Education in Realizing Good Governance." *Journal of Aggregation: Government Reform Action in Democracy* 5.2 (2017). pp 31-40.



² candidate pair fails in the nomination stage, second; there is a feeling of dissatisfaction between the candidate pair and the results of the Regional Head Election calculation.⁶

Regional Head Election Disputes are disputes that occur due to conflicts of interest. Therefore, along with the development of society, laws emerged that tried to minimize various conflicts of interest in society. Regional Head Election disputes according to the provisions in the Supreme Court Circular Number 7 of 2010 are divided into 2 (two) types, namely state administrative disputes which are the authority of the State Administrative Court, and disputes regarding results that are not the authority of the State Administrative Court. Administrative disputes are disputes arising related to Regional Head Elections which include administrative processes before the implementation of regional head elections.

In substance, this study focuses on three problems, namely: a) Analyze and explain the fundamental differences in Regional Head Elections after the issuance of Law Number 10 of 2016 concerning the settlement of administrative disputes for Regional Head Elections (governors, regents and mayors) which are examined and decided by the General Election Supervisory Board; b) Analyze and review the Decree of reasons for the need for legal reformulation, keeping in mind the importance of the decision of the General Election Supervisory Board in resolving disputes over Regional Head Elections which determines the acceptance of the dispute process to the next level of state administrative court; and c) Analyze and offer an ideal legal reformulation model for the General Election dispute resolution system by adopting the administrative justice system in Indonesia, which begins with judicial adjudication by the General Election Supervisory Board.

This research is a normative research conducted by reviewing library materials or secondary data as the main activity. The method used is a doctrinal method, by proposing deductive logic to build positive law, especially state administrative law in its application to administrative dispute resolution that reflects the values of legal certainty and justice in law enforcement.

⁶Titi Anggraini *et.al.* *Reorganize regional elections*. (Jakarta: Perludem Research Team). (2011). p. 23.



2 THEORETICAL FRAMEWORK

2.1 ADMINISTRATIVE DISPUTES

Administrative disputes Refer to disagreements or disagreements between individuals, companies, or organizations and the government in an administrative context. The form of administrative administration varies greatly, covering tax issues, state administration, licensing, and various other legal issues related to government policies and actions. In this paper, we will explore the main aspects of organizing administration, the challenges that arise, and the solutions that can be implemented for their resolution. One of the root problems in administrative arrangements is the inequality of information between the parties to the dispute. Private parties may lack knowledge of complex regulations and administrative procedures.

Administrative processes often involve complex bureaucracy, which can be a source of conflict. Poor understanding or different interpretations of rules can lead to peace. Conflicts of interest between the private sector and the government can encourage the creation of administrative stability. Economic, environmental and social interests are often in conflict and require careful balancing. The process of completing administrative settlements can take significant time and expense. Complicated bureaucracy and legal requirements can slow down the process, resulting in a large financial burden on the disputing parties. A lack of transparency in the administrative process can create poor quality and poor quality, complicating rescue resolution efforts. Openness and accountability need to be increased. Legal uncertainty can be a major obstacle in resolving administrative stability. Unclear interpretations or regulatory changes can create situations where disputing parties have difficulty planning future steps.

The use of mediation and arbitration can be an effective solution to resolve administrative settlements. This approach allows disputing parties to reach an agreement outside of court, saving time and money. Increased openness and communication between the government and the private sector can help prevent defense. The private sector must be provided with clear information regarding the administrative process and policy changes. Reforming regulations governing administrative procedures and increasing legal clarity could reduce the potential for peace. More responsive and easy to understand regulations facilitate this. Increasing legal education and awareness of the rights and



obligations of each party can reduce information inequality and prevent conflict in the first place. Increasing public participation in administrative decision-making processes can help create more inclusive policies and reduce the likelihood of breakdowns. By recognizing the complexity of government and implementing holistic solutions, society and government can work together to create a more favorable environment for economic growth and increased shared prosperity. Ultimately, effective resolution will result in an administrative system that is more fair, transparent and competitive.

2.2 REGIONAL HEAD ELECTION

Regional Head Elections are one of the crucial political events in the democratic system at the local level. When people elect regional leaders, this not only reflects democratic principles, but also plays an important role in development and progress at the regional level. In this article, we will explore the significance, dynamics and impact of Regional Head Elections. In responding to the dynamics and challenges of Regional Head Elections, it is important for the community to be actively involved in the democratic process, voice their interests, and elect leaders who are considered capable of bringing positive change to regional development. In this way, regional elections can be a vehicle for the progress and welfare of society as a whole.

2.3 GENERAL ELECTION SUPERVISORY BODY

The General Election Supervisory Body, commonly known as Bawaslu, plays a pivotal role in ensuring the integrity and fairness of electoral processes in democratic nations. As an independent and impartial institution, Bawaslu functions as the watchdog that oversees general elections, upholding the principles of democracy and safeguarding the rights of citizens. In this essay, we will delve into the significance, responsibilities, and challenges faced by the General Election Supervisory Body. In conclusion, the General Election Supervisory Body serves as a crucial pillar in upholding the democratic values of a nation. Its commitment to impartial oversight, adherence to election laws, and proactive response to challenges contribute to the vibrancy and legitimacy of democratic processes. Empowering Bawaslu ensures that the electoral arena remains a fair, transparent, and accountable space for citizens to exercise their democratic rights.



3 METHODOLOGY

The research method used in this research is a normative research method using a statutory approach and a case study approach related to the Reformulation of Regional Head Election Administration Dispute Policy by the General Election Supervisory Board and the State Administrative Court in Indonesia

4 RESULT AND DISCUSSION

4.1 ABOUT LEGAL IMPLICATIONS OF ADMINISTRATIVE DISPUTE RESOLUTION BY THE GENERAL ELECTION SUPERVISORY BOARD IN REGIONAL HEADS

4.1.1 Regional Head Election Regional Head Election Violation of State Administration Participating in Regional Head Elections

The law defines administrative violations as violations that include procedures, procedures, and mechanisms related to the holding of General Elections at every stage of holding General Elections in addition to General Election crimes and violations of the code of ethics for General Election organizers.⁷ This definition does not provide a clear formulation of legal criteria, either in body or in legal explanation, thus creating confusion because it is difficult to distinguish between violations of "ordinances", "procedures" and "mechanisms" on a practical level.⁸ Although restricted as violations outside of criminal acts and codes of ethics, the Regional Head Election Law still opens up overlapping space between administrative violations and Regional Head Election crimes. In a sense, an act that is regulated as a criminal offense is also regulated as a violation of the holding of Regional Head Elections. This is contained in a number of violations such as acts of providing compensation in the nomination process, changing officials and abuse of government program authority by prisoners, as well as promising or providing money or other materials, which in addition to being subject to criminal sanctions are also subject

⁷ Republic of Indonesia, Law Number 1 of 2015, Article 138.

⁸ Ratna Dewi Petalo in Ahsanul Minan (editor). *Evaluation Series for the Implementation of the 2019 Concurrent General Elections: Regarding General Election Law Enforcement*. (Jakarta: General Election Supervisory Agency). (2019). p. 38.



to administrative sanctions. That is, the act is a criminal offense as well as an administrative offense.

During the 2020 Concurrent Regional Head Elections, as an institution authorized to handle allegations of administrative violations, the General Election Supervisory Agency has handled 1,532 allegations of administrative violations nationwide.⁹ Allegations of administrative violations occurred at all stages of the Regional Head Elections. Handling administrative violations is carried out using the mechanism for handling administrative violations regulated in the Law on Regional Head Elections and General Election Supervisory Board Regulation Number 8 of 2020 concerning Handling Violations in the Election of Governors and Vice Governors, Regents and Vice Regents, as well as Mayors and Vice Mayors. According to this regulation, if based on a preliminary review it is determined that there is a suspected violation of the administration of the General Election, the Provincial Election Supervisory Board or the District/City General Election Supervisory Board will provide recommendations related to the report or findings. Recommendations are submitted to the General Elections Commission, Provincial General Election Commission or District/City General Election Commission along with all existing study files and evidence.¹⁰ The Law on Regional Head Elections does not explicitly regulate the types of recommendations that the General Election Supervisory Board can provide regarding administrative violations. The sanction arrangement is only in the form of administrative sanctions for cancellation as a candidate. Compared to Law Number 7 of 2017, the settlement of administrative violations submitted by the Decree by the General Election Supervisory Board is accompanied by provisions regarding the decision to resolve administrative violations in the form of administrative improvements or mechanisms, written warnings, not included in certain stages or other administrative sanctions.¹¹

Based on the Regional Head Election Law, election supervisors are authorized to receive reports of alleged election violations. Related to this report, the General Election Supervisory Board and its staff are authorized to follow up by conducting examinations or requesting information from parties, both whistleblowers, reported persons and

⁹General Election Supervisory Agency, *Alleged Violations in the 2020 Governor, Regent and Mayor Elections*, TLP Section TP3 Bureau of the General Election Supervisory Agency of the Republic of Indonesia, February 7, 2021.

¹⁰General Election Supervisory Agency, *General Election Supervisory Board Regulation Number 8 of 2020*, Article 34 paragraph (5).

¹¹Republic of Indonesia, *Law Number 7 of 2017, Article 461*.



witnesses and evidence. If based on the results of the study it is concluded that there has been an allegation of administrative violation, the Provincial Election Supervisory Board or the District/City General Election Supervisory Board will make recommendations related to administrative violations. Furthermore, recommendations are submitted to the General Elections Commission according to their level. The recommendation document is accompanied by a copy of the violation file consisting of a report or finding form, review and evidence. From the aspect of the functions of the General Election Supervisory Board and the General Elections Commission, there is a conflict of authority in the aspect of examining alleged violations. The General Election Supervisory Agency conducted investigations by requesting information from various parties, while the General Elections Commission also conducted investigations by re-examining parties related to the alleged violations. In this context, the General Elections Commission is conducting a re-examination of alleged administrative violations that have been committed by the General Election Supervisory Agency. The existence of two inspection processes opens up space for uncertainty in the process of handling violations. This is because the examination by the General Elections Commission will indirectly be the stage of verifying the correctness of the results of the examination conducted by the General Election Supervisory Agency. Furthermore, the results of the General Election Supervisory Agency's investigation will be a "contested" object with the information obtained by the General Elections Commission through its examination process.

To maintain the certainty of the process of handling administrative violations, the dualism of handling administrative violations needs to be reviewed. The goal is that various problems that arise, especially inconsistencies in the results of examinations by the General Election Commission and the General Election Supervisory Agency do not occur and the certainty of the process of resolving violations of the administration of Regional Head Elections can be maintained. One alternative to end it is to fully submit the investigation process and the decision to resolve administrative violations to the General Election Supervisory Board. Thus, the function of the General Election Supervisory Board, which only receives and reviews reports/findings in handling administrative violations,¹² is expanded by fully handing over the process of handling administrative violations to the institution. This is also in line with the dual function of

¹² Didi Supriyanto et.al. *Strengthening the General Election Supervisory Agency: Optimizing Position, Organization and Function in the 2014 General Election*. Jakarta: Perludem (Association for Democracy and General Elections). (2014). p. 77.



¹¹ the General Election Supervisory Board as a supervisory institution as well as solving General Election legal problems that occur.⁶ Furthermore, the function of the General Election Supervisory Board to receive, examine and decide administrative violations has also been regulated in Law Number 7 of 2017, so that the Regional Head Election Law is sufficiently adjusted to the function of the General Election Supervisory Agency in the General Election Law.⁸

4.2 REFORMULATION AND REVITALIZATION OF IDEAL ARRANGEMENTS FOR DISPUTE RESOLUTION FOR REGIONAL HEAD GENERAL ELECTIONS

4.2.1 The Urgency of the Special Judicial Body for Regional Head Elections

One of the structural designs of the implementation of Regional Head Elections that can encourage law enforcement for the effective and efficient implementation of General Elections is the existence of a Special Judicial Body that handles, decides and resolves disputes and violations of General Elections.¹⁴ This study argues that the existence of *Ad Hoc* specifically for Regional Head Elections is one of the alternative choices that can be a legal policy for the government and the House of Representatives to realize a fast and efficient Regional Head Election dispute resolution process.

The urgency of *Ad Hoc* specifically for post-conflict Regional Head Elections is increasingly important because the draft implementation of post-conflict simultaneous Regional Head Elections is a decision of the House of Representatives which is planned to be tested in 2020, following the simultaneous Regional Head Elections that will begin in 2019. With simultaneous Regional Head Elections, potential violations and disputes over General Elections will take place sporadically and massively. According to this study, ordinary courts currently lack the ability to respond and quickly resolve disputes and violations in the aftermath of Regional Head Election conflicts that occur. The general criminal court and the State Administrative Court administrative violations after the conflict in the Regional Head Election have not contributed much to encourage

¹³ Saldi Isra and Khairul Fahmi. *Democratic Elections: Principles in the Indonesian Constitution*. (Jakarta: Rajawali Press). (2019). p. 217.

¹⁴ Mudiyati Rahmatunnisa. "Why election integrity matters." *Journal of the General Election Supervisory Board* 3.1. (2017): pp 1-11.



consistent, integrative and accountable enforcement of the General Election law.¹⁵ Some of the disadvantages with the current Election court model are:

- 1) The problem of speed in resolving and providing legal certainty to ongoing General Election cases and lack of integration of legal dispute resolution processes and violations, namely in cases of criminal law violations and violations of general administrative disputes.
- 2) The problem of the quality of judges handling election disputes. Judges who have the capacity and expertise in the field of law or politics are needed, especially those related to General Elections. So far, efforts to increase the capacity of judges related to General Election disputes have not been effective considering that *capacity building training* only focuses on material that is mostly on understanding the procedural law of each court, not on the material or substance of the wider General Election.

The most specific thing in the idea of forming a *special ad hoc* post-conflict Regional Head Election is the integration of General Election dispute resolution, namely the settlement of criminal violations as well as administrative violations and disputes. Integrating the resolution of criminal acts and administrative disputes is important to be realized quickly, effectively and accountably. With the concept of ad hoc elections that examine and prosecute two types of lawlessness, the uncertainty of the Integrated Law Enforcement Center/Election Supervisory Agency can be resolved by preliminary hearings on ad hoc elections.¹⁶

4.2.2 The substance of the improvement of the provisions of laws and regulations

In order to improve the administrative law enforcement system in post-conflict Regional Head Elections, especially in resolving disputes over the determination of candidate pairs, it is necessary to improve the substance of laws and regulations. The revision of the law specifically regulates the procedural law of the state administrative court, laws and regulations governing the implementation of Regional Head Elections and post-conflict Regional Head Elections, in this case Law Number 32 of 2004 *juncto*

¹⁵ Achmad Anifulloh. "The implementation of simultaneous regional elections that are democratic, peaceful and dignified." *Journal of Legal Reform* 3.3. (2016). pp 301-311.

¹⁶ Deboru Sanur LS Sos, Juniar Laraswinda Umagapri S. IP, and Aryo Wasisto. *Challenges in holding general elections and regional head elections in the pandemic era.* (Jakarta: Publica Indonesia Utama). (2021). pp 12-13.



Law Number 12 of 2008 concerning the Law After Regional Head Elections of 2007 Law Number 22 of 2007 as amended by Law Number 15 of 2011 concerning Holding General Elections.

The improvement of statutory provisions is based on discussions related to the provisions of violations and disputes in post-conflict Regional Head Elections contained in the post-conflict Regional Head Election Law and related to regulatory authority in resolving disputes regarding the determination of candidate pairs in post-conflict Regional Head Elections.¹⁷ Some thoughts on improving laws and regulations are summarized in the results of research in the field with several respondents which are then analyzed by the author so as to give birth to several main ideas in the form of indicators that can be used as a starting point in improving laws and regulations, namely the issuance of the Deadline for Filing Lawsuits and the Mechanism for Delaying Decision Implementation (*Schoorslag*).

4.3 DEADLINE FOR FILING A LAWSUIT

In the deadline for filing a lawsuit, Article 55 of Law Number 5 of 1986 does not specifically regulate the deadline for filing a lawsuit in post-conflict Regional Head Election disputes, but the provisions for filing a lawsuit are still general. Therefore, at present, plaintiffs who are aggrieved in the issuance of decisions of the Regional General Election Commission such as the determination of candidate pairs can be submitted to the State Administrative Court only within ninety days from the date of receipt or promulgation of the Decision of the State Administrative Agency or Officer.¹⁸

Ideally, legal settlements in political events such as elections should be carried out and completed in a relatively short time. The period stipulated in Article 55 is much longer than the very short period of time to submit a dispute over the post-conflict Regional Head Election to the Constitutional Court, which is limited to only 3 (three) days after the determination of the results of the General Election (Article 94 PP No.6/2005 jo Law No. 12/2008). The most proportional formal law is the provision of Article 55 of Law Number 5 of 1986 concerning the State Administrative Court, that in

¹⁷ Levi Wiliantoro, "Analysis of the conflict between the bureaucracy and the Mayor of Tegal for the period 2014-2019," *Journal of Political and Government Studies* 6.01. (2016). pp 141-150.

¹⁸ Irvan Mawardi, and Moh Nizar. *Electoral Fairness: Substantive Justice in TSM Testing and Achieving Justice in the Supreme Court*. (Magelang: Nusamedia). (2021). p. 12.



the case of dispute resolution of Regional Head Elections or post-conflict, the grace period for filing a lawsuit is 7 (seven) days from the issuance of the decision of the General Election Commission / Regional General Election Commission and the General Election Supervisory Agency or the Integrated Law Enforcement Center or announced.

4.4 DETERMINATION OF DELAY

One part that needs synchronization arrangements between the State Administrative Court Law and the General Election Law is in terms of delaying the implementation of the post-conflict Regional Head Election stage due to administrative disputes.¹⁹ In anticipation of how long the dispute resolution process in Peratun, especially in resolving disputes over the determination of candidate pairs for the Regional Head Election, several respondents in this study also recommended that all stages of the Regional Head Election stop when there is a dispute lawsuit after the conflict of the Regional Head Election in Peratun. The choice to postpone the post-conflict Regional Head Election process was conveyed by Fatmawati Rachim, a member of the Gowa Regency Regional Election Commission. According to Fatmawati Rachim, to avoid more complicated and complex issues in the future, the post-conflict Regional Head Election stage should be stopped until there is a final legal decision.

Technically, the procedural law in Peratun recognizes the mechanism for delaying the implementation of the challenged State Administrative Decision. The provisions regarding the postponement of the decision are regulated in article 67 (1) of Law number 5 of 1986 which governs:

- a) The lawsuit does not delay or hinder the execution of decisions by the State Administration Agency or the Officer and the actions of the State Administration Agency or the Officer being sued.
- b) The plaintiff may apply for the implementation of the State Administrative Decision to be postponed while the examination of the State Administrative dispute is ongoing, until the Court's decision has permanent legal force.
- c) The application as referred to in paragraph (2) can be filed simultaneously in the lawsuit and can be decided in advance from the subject matter of the dispute.

¹⁹ Abdul Kahar Maranjaya. "Implications of direct local elections." *Journal of Social and Technology* 2.3. (2022). pp 250-261.



As referred to in paragraph (2) are:

- a) The sued State Business Delay is still ongoing;
- b) It cannot be given if the public interest in the framework of development requires the implementation of decisions.

Although procedurally there is an opportunity to delay a decision, in the context of administrative law, the general principle applies that a lawsuit against a state administrative decision does not delay the implementation of the administrative decision or that the lawsuit cannot hinder its implementation. This principle is known as *Praesumptio iustae causa*.²¹ The author argues that in the context of the implementation of post-conflict Regional Head Elections which have stages that are systemic, regular and certain, it can simply be seen that the substance of interest in general is quite profound. Given that the post-conflict Regional Head Election is a process of changing regional leaders involving various parties and costs a lot, the choice of postponing the post-conflict Regional Head Election is not a simple matter. But whether it continues the post-conflict stage of the Regional Head Election and ignores the ongoing legal process in court where the process still opens the possibility that the plaintiff can win and the Regional Election Commission loses or vice versa.

According to the author, if it is related to the decision of the Regional General Election Commission that cannot be executed in the form of re-election, then what is needed in order to improve the substance of the legislation is to improve or revise the provisions of laws and regulations governing post-conflict Regional Head Elections, especially those that regulate the reasons for postponing the post-conflict stages of Regional Head Elections. According to the author, it is good for Article 236 A as mentioned above to add a clause that another reason that can be used by the Regional Election Commission in postponing the Regional Head Election after the conflict is because of a court decision ordering it to postpone. This is to align the Decree with the conditions contained in article 67 of the State Administrative Court Law.

²¹ Syofyan Hadi, and Tomy Michael. "Principles of defense (Rechtmatigheid) in decision standing of state administration." *Journal of Legal Mind, Faculty of Sharia and Law UIN Jakarta* 5.2. (2017). pp 383-400.



4.4.1 Reformulation of the Implementing General Election Law Enforcement Agency

4.4.1.1 Authority over reports of administrative violations

In the context of refunctorialization, the authority to execute reports of administrative violations from the General Election Supervisory Agency or the Integrated Law Enforcement Center needs to be made effective and function properly. Effectiveness in this context is the existence of legal certainty regarding alleged administrative violations reported by prospective spouses to the Regional General Election Commission through the General Election Supervisory Agency or the Integrated Law Enforcement Center.²¹ Efforts to effectively execute the findings of the General Election Supervisory Agency or the Integrated Law Enforcement Center report on administrative violations aim to minimize the potential for legal disputes to continue in court and provide electoral certainty and *justice* for parties who feel aggrieved due to administrative violations.²² Therefore, in order for reports of administrative violations to be handled and resolved and acted upon, reports of administrative violations are handled and executed directly by the General Election Supervisory Agency or the Integrated Law Enforcement Center. However, according to the author, the authority of the General Election Supervisory Board in accepting and resolving disputes and/or administrative violations that are final must be limited in cases where legal proceedings can still be continued in the State Administrative Court. The decision of the General Election Supervisory Board regarding the resolution of post-conflict Regional Head Election disputes is final and binding, except for post-conflict Regional Head Election dispute decisions regarding the determination of candidate pairs to become official partner candidates.

²¹ Paramita Ersan. "Forgery of Letters in Concurrent General Elections." *Al-Qisth Law Review* 1.2. (2018). p. 20.

²² Ratnia Solihah, Arry Baimas, and Iding Rosyidin. "The importance of Participatory Supervision in safeguarding democratic elections." *Journal of Political Discourse* 3.1. (2018). pp 14-28.



4.5 GENERAL ELECTION SUPERVISORY BOARD AS AN ADMINISTRATIVE APPELLATE BODY

The provisions of Law Number 8 of 2012 provide a spirit of revitalization to the General Election Supervisory Agency as the General Election Supervisory Agency. The revitalization of this role can be seen from the authority of the General Election Supervisory Board to resolve administrative disputes, both disputes between General Election participants and disputes between General Election participants and General Election organizers. Number 8 of 2012 stipulates that the decision of the General Election Supervisory Board in resolving General Election disputes is final and binding except in 2 disputes, namely disputes arising in the process of verifying political parties as participants in the General Election due to the issuance of the General Election Commission decision on the determination of political party participants to verify legislative candidates by the General Elections Commission.²³ In the context of post-conflict Regional Head Elections, with the function of the General Election Supervisory Board as an Administrative Appeal, it is expected that there will be mediation and consensus between the disputing parties. The philosophy of placing the General Election Supervisory Board as an administrative appeal by carrying out non-litigation functions before reaching court aims to reduce the burden of disputes between parties in the litigation area.

By placing the General Election Supervisory Board as an administrative appellate body, the General Election Supervisory Board has the power or authority as an institution in the dispute resolution process, especially the determination of candidate pairs after the Regional Head Election conflict, considering the decision of the General Election Supervisory Board with the authority to examine and take a stand on the position or status of candidate spouses who are aggrieved by the issuance of the Regional General Election Commission Decision.

²³ Ahmad Rizqi Robbani Kuban, "Binding Force of Adjudication Decisions of the General Election Supervisory Board in Disputes over the 2019 General Election Process," *Journal of Adigawa Law* 1.2. (2018), pp 400-424.



4.6 COMPETENCE OF THE STATE ADMINISTRATIVE COURT IN STATE ADMINISTRATIVE DISPUTES

As explained by the Decree at the end of Chapter II, the Decree on the Determination of Pairs of General Election Candidates issued by the Regional General Election Commission is a decree (*beschikking*) which in theory administrative law is tested in the State Administrative Court.²⁴ In this study, the Decree of the Regional General Election Commission on the Determination of Pairs of Regional Head General Election Candidates can be tested or challenged by parties who feel their interests have been harmed by the issuance of the Decree. Currently or since the 2005 Regional Head Elections were held, the State Administrative Court in the first instance has received, decided and resolved many cases related to the Regional General Election Commission Decision on the Determination of Pairs of General Election Candidates.

According to the author, in order to make the resolution of post-conflict Regional Head Election cases more effective, the authority to resolve disputes over the determination of candidate pairs should be carried out first at the General Election Supervisory Board. However, if any party is dissatisfied with the settlement at the General Election Supervisory Board, they can immediately appeal to the State Administrative Court, so that the authority of the State Administrative Court of first instance is removed. In addition, the issue of the quantity of caseload, other considerations eliminate the authority of the State Administrative Court level I in examining disputes quickly and accountably. The State Administrative Court experiences geographical problems when faced with post-conflict Regional Head Election disputes arising in districts or cities while in each province there is only one State Administrative Court.

In addition to removing the authority of the State Administrative Court of first instance, another effort to streamline the resolution of disputes over the determination of candidate pairs in post-conflict Regional Head Elections is to shorten or limit the stages of permanent legal action (*inkracht*), the parties do not have to resort to legal recourse up to the level of cassation in the Supreme Court. It needs to be redesigned so that the final legal remedy in post-conflict Regional Head Election disputes at the district or city level is sufficient to reach the State Administrative Court.

²⁴ Achmadudin Rajub. "The authority of the General Elections Commission in reactivating members of the General Elections Commission." *Journal of Usm Law Review* 4.1 (2021). pp 343-361.



4.7 THE EFFECTIVENESS OF QUICK, SIMPLE AND LOW-COST JUDICIAL PRINCIPLES

The speed of dispute resolution time for the determination of candidate pairs in post-conflict Regional Head Elections must be seen as part of efforts to realize the principles of efficiency, effectiveness and legal certainty.²⁵ In addition, quick and resolved election disputes can help or avoid the potential for prolonged conflict. The principle of fast and simple justice in resolving disputes regarding the determination of candidates for post-conflict Regional Head Elections is important to be implemented so that the dispute legal process has legal force in a relatively short time without legal certainty regarding ongoing disputes that have implications for the ongoing process or stages of post-conflict Regional Head Elections.

In this study, all respondents have the same views and main ideas regarding the first solution to dispute resolution, namely the dispute resolution process for determining the pair of candidates for the Regional Head Election must be continued quickly so that the dispute resolution has certainty in a short time. Fast speed of completion to meet the interests of the community in the Regional Head Election process that already has a certain schedule and stages. The time-saving design in the context of determining the General Election Supervisory Board as an administrative appeal as discussed in the section above can be regulated directly in the Law regulating the procedural law of the State Administrative Court, namely the revision of Article 55 of Law Number 5 of 1986. However, the essence or substance of the revised arrangement has something in common, namely accelerating the time for resolving post-conflict Regional Head Election disputes by applying the principles of fast, simple and low-cost justice; In the context of the current implementation of the law where there has been no revision of the amendment to the law, an effort that can be made by judges of the State Administrative Court to apply the principle of a quick and simple trial is to apply the court calendar system at hearings related to the determination of candidate pairs in post-conflict Regional Head Elections.

²⁵ Muhammad Yasin, S. H. "The Effectiveness of Resolving Election Administration Violations by the General Election Supervisory Agency." *Regarding Election Law Enforcement* (2019), p. 141.



5 CONCLUSION

After analyzing, reviewing the description of the research discussion, the following conclusions can be drawn:

5.1 LEGAL IMPLICATIONS IN RESOLVING REGIONAL ELECTIONS DISPUTES CAUSED BY LACK OF LEGAL CERTAINTY CAUSED BY, AMONG OTHERS

5.1.1 Overlapping Rules

That was the beginning of the overlapping regulations with the issuance of Supreme Court Circular Number 7 of 2010 which distinguishes disputes over regional elections into 2 (two) types, namely state administrative disputes which are the authority of the State Administrative Court and disputes regarding results that are not the authority of the State Administrative Court. Then there was the Constitutional Court Decision No. 97 / PUU-XI / 2013, the Constitutional Court stated that it no longer had the authority to resolve disputes over the results of the counting of votes for regional head and deputy regional head elections.

5.1.2 Differences in Interpretation

The many changes in legal regulations, both material and formal, that regulate the resolution of regional head election disputes as well as cause various interpretations, as evidenced by the government forming and involving many implementing bodies such as the General Elections Commission, District/City Integrated Law Enforcement Center, Provincial General Election Supervisory Agency, General Election Supervisory Board of the Republic of Indonesia, Integrated Law Enforcement Center, Election Organizer Honor Board General, State Administrative Court, State Administrative Court, Supreme Court and Constitutional Court so as to confuse the public and the organizing body itself,



5.2 REFORMULATION OF DISPUTE RESOLUTION

There are reasons for the reformulation of dispute resolution arrangements for Regional Head Elections, both material and formal law, namely for the sake of providing justice, To Realize Legal Certainty through Reformulation, and reformulation in the form of a special election court body.



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