



Urgency of Socialization Regarding Regulation of Village Head Election in Prasung Village, Buduran District, Sidoarjo

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Abstract

The rule of law and democracy carries the consequence that the actions of the government in administering the government system must be in accordance with or limited to laws and regulations and include the community as well as in the village government system. Democracy is manifested in the implementation of village head elections. Election of Village Heads is different from general elections (in general) this is seen from several things. In addition there is the dynamics of legislation related to the election of village heads so the government and the community are bound and obey the laws and regulations. Therefore it is important if the village government and the village community understand the regulation, so socialization is needed so that the same understanding occurs. Likewise with the election of village heads in Village Prasung, Buduran District, Sidoarjo Regency, East Java Province should be in accordance with the laws and regulations that have been enacted. However, there is a dispute related to the statutory provisions governing the election of village heads, namely the prohibition of candidates who are sentenced to imprisonment based on a court decision that has the legal force fixed for a minimum of 5 (five) years or more to nominate as a candidate for village head. However, there are exceptions when completed and announced in connection with the conviction. Therefore, there are several results of the analysis that then arise, among others, it is correct that the organizer of the election of the village head if the implementation of compliance with applicable regulations, there is less explicit meaning of the exclusion in the terms of the prohibition of the convicted or after serving a crime.

Keywords: Socialization, Village Head Election, Rule of Law, Democracy, Village

I. Introduction

A country is not separated from two main things namely government and citizens because it is an element of forming a country. *Article 1 Montevideo Convention on The Rights and Duties of States, The States as a person of international law should have the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and, (d) capacity to enter into relations with the other states.*¹ The relationship between the government and its citizens is manifested in a process called governance. The government in running its government requires the participation of the community (especially its citizens). The relationship between the government and the people can be realized in a democratic system. Democracy itself has principles including the existence of general elections, the results

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¹Syaiful Bakhri, 2018, Ilmu Negara, RajaGrafindo Persada. Depok, p. 5.

of which are intended to fill certain positions, one of which is filling government officials. This is a manifestation of the candidates chosen by the community because they are trusted by the community to fill certain positions in the government. Therefore this system is referred to as a system of community participation where the source of power that is in the government comes from the people, the government runs its government for the people, and also the system that is carried out by the people. In fact, besides that there is also an element of the government running its government together with the people, because in the principles of democracy it is also known as giving an opportunity to the people to raise an objection, meaning that there is a possibility for the public to submit an objection if the things done by the government in the government are detrimental to the people. The explanation is enough to bring the understanding that a government or government is implementing the delegation of community goals. Therefore, the vote count in the electoral process must be measured or counted fairly so that what becomes the principle of democracy and the objectives of democracy are realized. The participation and vote of the people, the general election is a mechanism for the selection and delegation of people's sovereignty or sovereignty to people or political parties that are trusted.² This becomes an important relationship between government and society for the implementation of government. The democratic system is actually a system that limits what is done by the government so it does not conflict with the goals of the state for example so that there is no arbitrary and so forth. Therefore, the principles of democracy are actually closely related to the principles of the rule of law.

The rule of law in Indonesia is listed in the constitution in Article 1 paragraph (3) of the constitution after the amendment to the 1945 Constitution of the Republic of Indonesia. The article states that the Indonesian state is a constitutional state. The rule of law referred to in the 1945 Constitution of the Republic of Indonesia after this amendment does not refer to a single rule of law system. This is as it was known before the amendment to the 1945 Constitution of the Republic of Indonesia in its explanation mentioning the state of law referred to is *rechtstaat* and not *machstaat*, meaning that based on the rule of law is not based on mere power. Whereas in the general system of the rule of law referred to *rechtstaat* is a rule of law that refers to the principles of the Continental European tradition with a legal system called the civil law system. When

² Ramlan Surbakti, 1982, *Memahami Ilmu politik*, Jakarta, Grasindo, p. 181.

the constitution after the amendment does not mention certain terms, the rule of law adopted by Indonesia is a rule of law with certain characteristics that are suitable to the needs of the Indonesian state. The essence of the rule of law is essentially a limitation. The limitation is not only for people who are regulated by law, but also applies to the government. One of the principles is the existence of a government based on laws and regulations, which means that the government in carrying out its duties and authorities in the government must not conflict with the laws and regulations. Lord Acton, *power tends to corrupt, absolute power corrupts absolutely*, therefore power needs to be limited.³ This limitation is in essence to reduce or eliminate arbitrary governmental conduct. This restriction is intended to avoid arbitrariness and protect human rights (ie people or citizens) from power.

Likewise in the general election process. The election process should be regulated in legislation. Legislation that governs general elections should be obeyed not only by the government, the organizers of the general election, but also the candidates who will nominate themselves to be elected in the election activities. Of course there are elements that embody the principles of democracy. That element is that if there is a party feeling aggrieved then it can raise objections, this can be done because the legislation provides the possibility for that. This explanation is a picture related to government or the state process in Indonesia. A small part of the organization of a country in Indonesia is a village. The village is part of the state system in Indonesia when viewed from the aspect of state organization as well as the electoral process also reflected or realized in the village administration. The election process was manifested in the village head election process. The village head is one element in the government organization, namely the village. The village head directly elected by the people is a form of democracy.⁴ The process of selecting Village Heads is a form of selection in fulfilling the requirements to become a Village Head.⁵ The village head election process needs to be done properly and correctly so that the results of the village head election process are reflected in justice so

³ Yuslim, 2015, Hukum acara Peradilan tata Usaha Negara, Jakarta, Sinar Grafika, p. 2.

⁴ Zaini, 2019, Pengaturan Penyelesaian Sengketa Hasil Pemilihan Kepala Desa Dalam Konsep Negara Hukum Indonesia, Simposium Hukum Indonesia., Jurnal Trunojoyo, Volume 1 Nomor 1, p. 565-573.

⁵ Bisma Anggara Putra et.all, 2015, Model Penyelesaian Perselisihan Hasil Pemilihan Kepala Desa, Jurnal Hukum, Universitas Brawijaya, Sarjana Ilmu hukum, Maret. p. 1-21.

that what is expected or the goals of the community and the laws and regulations can be realized properly and correctly.

The village is a small part of an organization called a state. In essence, the village is the government organization closest to the community because of the wide area that has a range that is not far from the central government (ie village government). With the existence of a rule of law, the implementation of village governance is also regulated in statutory regulations. The laws and regulations related to village governance have dynamics. The existence of village recognition is contained in the constitution of the 1945 Constitution of the Republic of Indonesia after the amendment, namely Article 18 B paragraph (2) which implies recognition of the existence of the village. These legal community units are recognized and respected, meaning that they have the right to live as important as other government units.⁶ The existing provisions or provisions in the constitution are then derived in the form of legal products, namely Law of the Republic of Indonesia Number 6 of 2014 concerning Villages. The Republic of Indonesia Law Number 6 Year 2014 concerning Villages also regulates the election of village heads. Republic of Indonesia Law Number 6 of 2014 concerning Villages increasingly strengthens the position of villages as a government system that has genuine and democratic autonomy rights.⁷ Villages in this law receive special attention because they are regulated separately in the Law of the Republic of Indonesia Number 6 of 2014 concerning this Village, which previously governed village governance or village regulations were regulated in laws relating to regional government . The law is Law of the Republic of Indonesia Number 32 of 2004 concerning Regional Government. Legislation relating to the election of village heads is Law of the Republic of Indonesia Number 6 of 2014 concerning Villages. For these laws and regulations to be implemented, there are other laws as derivatives of the Republic of Indonesia Law Number 6 of 2014 concerning Villages, namely the Government of the Republic of Indonesia Number 43 of 2014 concerning Villages, Minister of Home Affairs Regulation Number 65 of 2017 concerning Amendment to Regulation of the Minister of Home Affairs Number 112 of

⁶ Bagir Manan, 2001, Menyongsong Fajar Otonomi Daerah, Pusat Studi Hukum Fakultas Hukum Universitas Islam Indonesia, Yogyakarta, p. 7-17.

⁷ Rudiadi, R. and R. Herawati. (2017). Pemilihan Kepala Desa Serentak Dalam Perspektif Otonomi Desa (Studi Kasus Pelaksanaan Pemilihan Kepala Desa Serentak Tahun 2016 di Kabupaten Rokan hilir, Provinsi Riau), Law Reform, 13 (1), 132-151, Mar. 2017. <https://doi.org/10.14710/lr.v13i1.15956> .

2014 concerning Election of Village Heads and Decision of the Constitutional Court of the Republic of Indonesia Number 128 / PUU-XIII / 2015. These laws and regulations have dynamics due to changes in legal products. The dynamics of community life run fast and the law, especially legislation is required to adapt to follow the development of the community in order to accommodate or include solutions to problems that exist in society. Legislation regarding the election of village heads also experiences dynamics, so the community, especially the village administration, is required to understand what is meant in the legislation. Therefore it is important for the socialization related to the election of regional heads so that an understanding of the meaning of the implementation of laws and regulations will occur so as to reduce the occurrence of disputes related to village head elections.

Problems related to success in the formation of legislation is not only when a provision or norm has been passed in the form of a legal product, but the success of the achievement of a legal product can also be seen when a legal product forms a pattern of behavior in the community so that a rule becomes effective and the purpose of a regulation is well realized. Therefore, in order to realize an effective regulation, it is necessary to socialize a legal product to the public so that there is a harmonious understanding between the makers of the regulations related to the objectives of the formation of laws and regulations and the process up to that goal can be carried out, namely socialization to the community concerned village head election. In addition to socialization, it is also important to have a good legal product. In addition, a quality and firm legal product can also guarantee that the objective of forming a legal product can be achieved, so we need a quality resource for forming its legal product. In fact, there are several issues related to village head elections for example, in the Surabaya State Administrative Court there are 36 cases related to village head elections, namely in 2019 and 5 (five) cases in 2020 (the latest 2020 data is in April 2020).⁸ The data is taken based on the relative competence of the State Administrative Court which is regulated in Article 6 of the Republic of Indonesia Law No. 5/1986 concerning State Administrative Court in *conjunction with* the Republic of Indonesia Law No. 9/2004 concerning Amendment to the Republic of

⁸ Sistem Informasi Penelusuran Perkara, Pengadilan Tata Usaha Negara Surabaya, <http://sipp.ptun-surabaya.go.id/>, Kamis, 07 Mei 2020, Pukul 16.00 WIB.

Indonesia Law No. 5 Year 1986 concerning State Administrative Court. As in the case related to the election of village heads in Prasung Village, Buduran District, Sidoarjo Regency, East Java Province. Therefore, because of this explanation, this presentation is focused on the existence of socialization to the community, especially the community in Prasung Village, Buduran District, Sidoarjo Regency, East Java Province. Based on the explanation in the introduction in this article, problems can be drawn related to the urgency of socialization regarding the regulation of village head elections in Prasung Village, Buduran District, Sidoarjo Regency.

II. Method

Solution to increasing the understanding of the community regarding regulations relating to village elections is carried out with socialization related to the regulation on village head elections. The socialization is related to the understanding of village head election arrangements, especially with the Law of the Republic of Indonesia Number 6 of 2014 concerning Villages, Minister of Home Affairs Regulation Number 65 of 2017 concerning Amendments to the Minister of Domestic Affairs Regulation Number 112 of 2014 concerning Election of Village Heads. In addition it is also important to understand related to the Constitutional Court Decision Number 128 / PUU-XIII / 2015. The need for this socialization is for mutual understanding and understanding regarding regulations related to village head elections that have consequences or influence the implementation or process of village head election. Things that can be done to realize increased understanding related to the arrangement and process of village head elections, it is necessary to have limited socialization activities, namely understanding of the community in Prasung Village, Buduran District, Sidoarjo Regency, East Java Province. What is expected from the socialization associated with understanding village head elections is to minimize problems that occur related to village head elections.

III. Main Heading of the Analysis or Results

Village is an area inhabited by a number of people where one knows each other, lives in harmony, has customs and customs that are generally the same, and regulates his social life using his own procedures.⁹ The village is part of a country's state administration system when viewed from the aspect of constitutional organization. The village in the

⁹ Hanif Nurcholis. 2011. *Pertumbuhan dan Penyelenggaraan Pemerintahan Desa*. Jakarta: Erlangga. p.2.

theory of the emergence of the state, is the forerunner of a larger society that is called the state. Information on the Himad Walandit Inscription provides information that the Walandit Village and the Himad Village are in dispute regarding the status of the Walandit Village which then disputes about the status of the village are brought to the Kingdom of Jenggala - Kediri.¹⁰ The Himad Walandit inscription provides an understanding that a village has existed since time immemorial even before the Indonesian state was established. The village has the authority to manage and manage its own household, when viewed from the definition related to the village. The village's right to regulate and manage its own household is different from the right to regulate and manage its own household housing which is in the local government. The right to regulate and manage their own households by the village is given to the village government as the executor or run the government system, namely the village government. The right to manage and manage one's own household is commonly known as autonomy. This is certainly adjusted to the provisions of the legislation because of the consequences of a rule of law and democratic principles. Autonomy owned by the village is different from the existing autonomy in the regional government, meaning that the autonomy that exists in the village is genuine autonomy. Original autonomy means that autonomy in the village is not a branch of regional autonomy, therefore the rights that exist in the village, namely the rights of traditional communities cannot be interpreted partially but interpreted as a whole. The Constitution also provides provisions in Article 18 B paragraph (2) (after the amendment). The stipulation confirms that the state recognizes and respects the unity of the customary law community along with their traditional rights as long as they still live, meaning that the authenticity of the village is still recognized. Recognition of autonomy is given a limit that is in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia as stipulated in the law, so that independence or original autonomy does not mean broad but there are still limitations in legislation.

Village government and village government are regulated in laws and regulations as a consequence of the rule of law. The village or village government is implicitly regulated

¹⁰ Bayu Surianingrat. (1992). *Desa dan Kelurahan Menurut Undang-undang Nomor 5 Tahun 1979*. Jakarta: Rineka Cipta. p.14-18.

by the customary law community unity phrase in Article 18 B paragraph (2) of the constitution after the amendment, namely the 1945 Constitution of the Republic of Indonesia. Furthermore, in order to be implemented, the legislation is derived. Law Republic of Indonesia Number 6 of 2014 concerning Villages. Laws and regulations, namely laws governing villages prior to the Republic of Indonesia Law Number 6 Year 2014 concerning Villages, the arrangements are made one Law of the Republic of Indonesia Number 32 of 2004 concerning Regional Government. After that, then Republic of Indonesia Law Number 6 of 2014 concerning Villages specifically regulates village government. This affirms that the village is increasingly recognized. Likewise with the derivative regulations, namely Republic of Indonesia Government Regulation Number 43 of 2014 concerning Villages. The administration of village government is left to the village government. Village government, namely the administration of government affairs by the Village Government (Village Head and Village Apparatus) and the Village Consultative Body which regulates and oversees the interests of the local community based on the origin and customs that are recognized and respected in the government system of the Republic of Indonesia.¹¹ The implementer of the village administration system is the village government, which is the village head and village apparatus as an element of village administration and in addition there is a village consultative body.

The rule of law and democracy have the consequence that the actions of the government in administering the government system must be in accordance with or limited to the laws and regulations and include the community as well as in the village government system. Implementing elements in village governance, one of which is the existence of the Village Head. A person who serves as a village head should be someone who has competence or has the qualifications as a village head so there is a village head who has quality. This is because the quality factor of human resources is one of the important factors in the implementation of governance, especially village government. Therefore the selection stage to bring up qualified village heads is important. The stages relating to filling the position of village head according to the law are the election of a village head. Democracy is manifested in the implementation of village head elections.

¹¹ Firman Sujadi. (2014). *Pedoman Umum Penyelenggaraan Pemerintahan Desa*. Jakarta: Media Pustaka. p. 241.

Village Head Elections are different from General Elections (in general) this is seen from a number of things: first, the implementation of village head elections by the village head election committee by the Village Consultative Body and not by the General Election Commission; secondly, the settlement institution related to village head election is not the Constitutional Court but is the authority of the Regent / Mayor to settle disputes related to village head elections within a specified period of 30 (thirty) days; third, based on Article 22 E paragraph (2) of the general election for members of the House of Representatives (DPR), the Regional Representative Council (DPD), the President, the Vice President, and the Regional People's Representative Council (DPRD) which does not mention regarding the Head of the Village; Fourth, judging from the grammatical aspects there are differences in Article 1 number 1 of the Law of the Republic of Indonesia Number 6 of 2014 concerning Villages compared to Article 1 number 12 of the Law of the Republic of Indonesia Number 23 of 2014 concerning Regional Government; Fifth, Article 18 paragraph (1) and paragraph (2) are different from Article 18 B paragraph (2). This can be interpreted that there is a difference between general elections and village head elections. Derivative arrangements relating to village head elections are Regulation of the Minister of Home Affairs Number 112 of 2014 concerning Election of Village Heads and after their existence Decision of the Constitutional Court of the Republic of Indonesia Number 128 / PUU-XIII / 2015, the regulations relating to the election of village heads are changed to Regulation of the Minister of Home Affairs Number 65 of 2017 concerning Amendments to the Minister of Domestic Affairs Regulation Number 112 of 2014 concerning Election of Village Heads, State Gazette of the Republic of Indonesia 2017 Number 1221. Basically, in the Decision of the Constitutional Court of the Republic of Indonesia Number 128 / PUU-XIII / 2015 that Article 33 letter g and Article 50 paragraph (1) pertains to the condition of a candidate for village head who according to the Constitutional Court is in conflict with the constitution. With the enactment of laws and regulations related to village head elections, the government and the community are bound and abide by these laws and regulations.

Likewise with the election of village heads in the Village of Prasung, Buduran District, Sidoarjo Regency, East Java Province should be in accordance with the laws and regulations that have been enacted. Election of village heads in the Village of Prasung,

Subdistrict of Buduran, Sidoarjo Regency, East Java Province, there was a dispute over the election of the village head and the dispute was brought to the Surabaya State Administrative Court (relative competency based on the Law of the Republic of Indonesia Number 5 of 1986 concerning State Administrative Court and amended by Law of the Republic of Indonesia Number 9 of 2004 concerning Amendment to Law of the Republic of Indonesia Number 5 of 1986 concerning State Administrative Court). The Plaintiff in the case decided by the Surabaya State Administrative Court Decision Number 44 / G / 2020 / PTUN.SBY related to the postponement was then adjourned and ordered to revoke Decree Number: 6 / PAN / W2020 dated February 19, 2020 concerning Prospective Head of Prasung Village Buduran Subdistrict, Sidoarjo Regency and Plaintiff have the right to be elected as Candidates for Village Heads. On the other hand that the Plaintiff is a convict of corruption based on a court decision that has permanent legal force. Conditions for nominating a village head according to the legislation related to the phrase has never been sentenced to imprisonment based on a decision of permanent legal power of at least 5 (five) years or more, unless completed and announced, are as follows:

1. Article 33 letter i of the Republican Law Indonesia Number 6 of 2014 concerning Villages.
2. Article 46 Government Regulation of the Republic of Indonesia Number 43 of 2014 concerning Villages related to further provisions shall be regulated by Ministerial Regulation.
3. Article 21 letter i Domestic Ministerial Regulation Domestic Ministerial Regulation Number 65 of 2017 concerning Amendment to the Minister of Domestic Affairs Regulation Number 112 of 2014 concerning Election of Village Heads.
4. Article 22 paragraph (1) letter j Sidoarjo Regency Regional Regulation Number 8 Year 2015 concerning Village Head Election.
5. Article 16 letter i Sidoarjo Regent's Regulation Number 5 Year 2016 concerning the Implementation Regulations of the Sidoarjo Regency's Regional Regulation Number 8 of 2015 concerning Election of Village Heads.

This is based on the explanation that has been clear on the prohibition for candidates

who are sentenced to prison based on a decision of permanent legal force of at least 5 (five) years or more to nominate as a candidate for village head. However, there are exceptions when finished and announced. It's just that this provision does not explain how the mechanism. While the Plaintiff sued the court the decision process was completed when the village head election process was also completed. This then brought the judicial consequences of the court's decision could not be implemented. Legislation relating to the requirements of candidates for election of village head seems to be not explicitly set. This certainly has an effect on the existence of legal certainty because of the lack of clarity in regulating the requirements for candidacy in the election of village heads, especially in relation to the exclusion mechanism. So there are several analyzes related to this problem, the first is that the organizer of the village head election is correct if the implementation is in conformity with the applicable laws and regulations; second, there is a lack of clarity about the meaning of exceptions to the provisions of the prohibition of the convicted person or after serving a crime; third, there is a lack of effectiveness of the legal product of the State Administrative Court decision because the village head election process has been completed; fourth, if there is an expansion of meaning related to the exclusion phrase, if it is seen from the hierarchical aspect on which the verdict is issued (ie according to statutory regulations) then the execution of the cancellation of the decision can be carried out so that the village head election process becomes invalid. This is like the concept of legal thinking on legal construction on issues related to the requirements of candidates for legislative elections who are bumped into two decisions. Two Decisions are between the State Administrative Court and the Decision issued by the Constitutional Court. The State Administrative Court and the Decision issued by the Constitutional Court which in the end the General Election Commission implements the Constitutional Court Verdict and does not implement the Decision of the State Administrative Court and it is true because the legal basis used to issue decisions is hierarchically higher to the Constitutional Court because it is based on the constitution and the State Administrative Court is based on the law.

IV. Conclusion

Conclusion that can be drawn from the discussion is that there are several analyzes that can arise, the first is that the organizer of the village head election is correct if the implementation is in conformity with applicable laws and regulations, secondly there is a lack of meaning in the meaning of the exception in terms of the prohibition of the convicted person or after serving a crime third, there is a lack of effectiveness of the legal product of the State Administrative Court decision because the village head election process has been completed, fourth, if there is an extension of meaning related to the exclusion phrase, then if it is seen from the hierarchical aspects on which the decision was issued (according to statutory regulations) invitation) then the execution of the cancellation of the decision can be carried out so that the election process for the village head becomes invalid. This is like the concept of legal thinking on legal construction on issues related to the requirements of candidates for legislative elections who are bumped into two decisions between the State Administrative Court and the Decision issued by the Constitutional Court which in the end the General Election Commission implements the Constitutional Court Verdict and does not implement the Decision of the State Administrative Court and it is true because the legal basis used to issue decisions is hierarchically higher for the Constitutional Court because it is constitutionally based on the State Administrative Court based on the law.

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