



URGENCY OF THE POSITION OF DISTRICT ELECTION SUPERVISORY BODY IN THE RESOLUTION OF DISPUTES BETWEEN PARTICIPANTS IN THE REGIONAL HEAD ELECTION IN INDONESIA

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ABSTRACT

The ad hoc position of the District Election supervisory body will have an impact on actions to carry out the functions and duties of the District Election supervisory body during the election of regional heads. This study aims to determine the urgency of the position of the District Election supervisory body in the formation of effective supervision in the Pilkada and to find out the Mechanism of Dispute Resolution between Election Participants by the District Election supervisory body in the election of regional heads. This study uses a normative juridical research method, with secondary data and a conceptual approach. The data were analyzed qualitatively. The result of the first study is that the decision of the Election supervisory body an ad hoc institution is binding but still limited and not final because the aggrieved party can file a lawsuit to the State Administrative High Court. The mechanism for resolving disputes between participants in the Pilkada organizers by the District Election supervisory body is regulated technically through Election supervisory body Number 2 of 2020. Disputes between participants are carried out on the principle of the quick and simple, same-day to achieve legal certainty and benefit in regional head elections.

Keywords: supervision; district; election; supervisor; regional; head; election

INTRODUCTION

The government of the Republic of Indonesia both at the central and regional levels has been trying to overcome the corona pandemic and minimize the fatalities caused by the corona pandemic, such as by applying an appeal for people to keep their distance in *interacting (Social Distancing)*, Large-Scale Social Restrictions (PSBB) in some areas that submit PSBB to the minister of health.¹

Although the policies issued by the central government and local governments aim to break the chain of the spread of the corona virus, it still has an impact on political, economic, social, cultural

and religious aspects. In the political aspect, the government's policy has caused disruption of the process of holding simultaneous Regional Head Elections (Pilkada) and the emergence of the option of simultaneous postponement of elections that should be held in September 2020 to December 2020.

The 2020 regional head elections were held on December 9, 2020, which was held in 270 regions in Indonesia, covering 9 provinces, 224 districts, and 37 city areas.² The implementation of the election on December 9, 2020 is a delay in the implementation of the regional head election schedule due to the situation of the covid 19 pandemic that hit the world including in Indonesia.

¹ Rizkan Zulyadi, "Analisis Kebijakan Pemerintah Kota Medan Dalam Penanganan Pandemi Covid-19," in *Segi Hukum Terhadap Implikasi COVID-19 di Indonesia : Hasil Pemikiran Kritis Pimpinan APPTHI*, ed. Ahmad Redi dan Ibnu Sina Chandranegara (Jakarta: Kencana, 2020), 125.

² Nur Rohmi Aida, "Berikut Daftar 270 Daerah yang Gelar Pilkada Serentak 9 Desember 2020," *www.kompas.com*, last modified 2020, diakses Januari 30, 2021, <https://www.kompas.com/tren/read/2020/12/05/193100165/berikut-daftar-270-daerah-yang-gelar-pilkada-serentak-9-desember-2020?page=all>.

Under normal conditions, the election of regional heads is held through 2 (two) stages, namely preparation and implementation. In this stage, the state must allocate a very large budget for the implementation of the election. In the current covid 19 pandemic conditions, the allocation of election funds in 2020 will also be greater than normal conditions³.

The holding of regional head elections in 2020 in the pandemic period received pros and cons from various parties and also had a positive and negative impact⁴. However, the Government remains consistent to carry out elections on December 9, 2020. The implementation of the 2020 election is carried out based on health protocols implemented by the Government. The implementation of the 2020 Election is based on Government regulation in lieu of law No. 2 of 2020 on the Third Amendment to Law No. 1 of 2015 on the Establishment of Government Regulations in Lieu of Law No. 1 of 2014 on the Election of Governors, Regents, and Mayors into Law⁵.

Government Regulation in Lieu of law number 2 of 2020 is the legal basis for delaying the implementation of regional head elections simultaneously from September 23, 2020 to December 9, 2020⁶. To follow up on Government regulation in lieu of law No. 2 of 2020, the Election Commission established a technical regulation for the implementation of elections simultaneously with the Decision of the Election Commission No. 5 of 2020 concerning the third Amendment to the Amendment of the Election Commission Regulation No. 15 of 2019 concerning the Stages, Programs, and Schedules of The Election of Governors and Deputy Governors, Regents and/ or Deputy Regents, Mayors and Deputy Mayors in 2020⁷.

³ Sri Sundari. Rahmat Hollyson MZ., *Pilkada Penuh Euforia, Miskin Merana* (Jakarta: Bestari, 2015), 64.

⁴ Rahmat Riadi, "Strategi Penanganan Bencana Non-Alam Covid-19 Dalam Pemilihan Serentak 2020," *Electoral Governance: Jurnal Tata Kelola Pemilu Indonesia* 2, no. 2 (2021).

⁵ Siti Chadijah. Sarjan., Kemal AL Kindi Mulya., "Problematika Dan Teknis Penyelenggaraan Pemilihan Kepala Daerah Pada Masa Pandemi Covid 19," *Jurnal Ilmu Hukum Rechtsregel* 3, no. 1 (2020): 65–66.

⁶ Supriyadi, "Menakar Nilai Keadilan Penyelenggaraan Pilkada 2020 Di Tengah Pandemi Covid-19," *Kanun: Jurnal Ilmu Hukum* 22, no. 3 (2020): 495.

⁷ Aloysius Eka Kurnia. Farida Azzahra., "Konstitusionalitas Pemberlakuan Government

The changes stipulated in Article 120 Government Regulation in Lieu of Law No. 2 of 2020 only add one phrase from Article 120 stipulated in Law No. 1 of 2015, namely "non-natural disasters". It's just that the addition of the phrase "non-natural disasters" due to Covid 19 has been declared a non-natural disaster based on Presidential Decree No. 12 of 2020 on The Determination of Non-Natural Disasters Spreading *Corona Virus Disease 2019 (Covid 19) as a National Disaster*⁸. If referring to the current condition of Indonesian society hit by Covid 19, Bivitri criticized the Government for carrying out elections on December 9, 2020 with the large number of people who were victims of Covid 19. But the reality is, simultaneous elections in 2020 are still implemented.⁹

The implementation of regional head elections that have been held on December 9, 2020 has left several problems including:

- a. The issue of disputes over the administration of regional head elections;
- b. The disputed issue of the regional head election process;
- c. Disputes over the results of regional head election votes;
- d. Disputes between election participants and election organizers;
- e. Disputes between regional head election participants

Based on the provisions in Law No. 10 of 2016 concerning regional head elections, the Election supervisory body has the main task as a supervisor of regional head elections. So in line with Law No. 10 of 2016, based on the provisions of Article 93 of Law No. 7 of 2017 concerning the Implementation of General Elections stipulates that one of the duties of the Election supervisory body is to prevent and act against election violations, and dispute the election process.

With the implementation of elections in 2020 there are several problems and obstacles faced by Election supervisory body as a supervisory institution. On the supervision side, the problems faced by Election supervisory body are:

regulation in lieu of law *Pemilukada Dan Implikasinya Terhadap Penundaan Pemilukada Serentak Tahun 2020*," *Majalah Hukum Nasional* (Jakarta, 2020), 248.

⁸ Bivitri Susanti, "Pilkada di Tengah Pandemi Covid 19, Haruskah tetap dilaksanakan," *www.hukumonline.com*.

⁹ *Ibid*.

- 1) Election Dispute Resolution in the form of money political practices, campaign finance reports,
- 2) The issue of neutrality of the State Civil Apparatus (ASN, Structured, Systematic, and Massive Violations (TSM),
- 3) Resolution of administrative disputes and disputed electoral processes.
- 4) The rise of hate *speech and spin*, politicization, SARA, politicization of identity, social media content (*SocialMedia*), Single Candidate Couples.

In 2020, the supervision of elections simultaneously gets extra challenges because it is held in the Covid 19 Pandemic. At this time there were many adjustments to the mechanism of organizing elections by putting forward health protocols. Therefore, election supervision requires more strategy by-election supervisory body institution as a supervisory agency.

The authority, duties, and functions of the General Election supervisory body stipulated in the Election Law are with Law No. 7 of 2017 general elections so that the authority and function of the Election supervisory body can be said to be the same as supervision in elections and regional head elections.

Based on the provisions in the Election Law and the Election Law, Election supervisory body's position is an independent state institution in the implementation of its functions and duties. Institutionally, Election supervisory body is based in the State Capital. Institutionally, Election supervisory body, Election supervisory body Province, and Election supervisory body Regency / City, Election supervisory body Subdistrict, Election supervisory body Village / Village, Foreign Affairs, and TPS Supervisor are Hierarchical. This has implications that between Election supervisory body at the Central level and the Election supervisory body in the area has institutional relations. In the institutional position of election supervisor, Election supervisory body institutional, Election supervisory body Province, and Election supervisory body Regency / City is permanent, while Election supervisory body Subdistrict, Election supervisory body Kelurahan / Village, Election supervisory body Abroad and TPS supervisors are *Ad Hoc (temporary)*.¹⁰

In Article 90 paragraph (1) and (2) of Law No. 7 of 2017, it is said that the District Council, Election supervisory body Kelurahan / Village, and Foreign Affairs Committee are formed no later than 1 (one) month before the first stage of the election starts and ends no later than 2 (two) months after all stages of holding elections are completed.

The position of Adhoc then Election supervisory body Subdistrict results in the actions of the District Election supervisory body still requires coordination with Bawaslu Regency / City as a mandate, it will open the opportunity of intervention to the District Election supervisory body in carrying out its duties. The next problem is, it is still unclear the position of the Subdistrict Election supervisory body in resolving criminal violations of elections, whether the legal responsibility of the Subdistrict Election supervisory body in carrying out its duties is attached to the Subdistrict Election supervisory body or only as a facilitator.

In addition, the Subdistrict Election supervisory body Adhoc in the election process has limited human resources, education, and election case management capabilities during the covid 19 pandemic to be an obstacle and obstacle for the District Commissioner to maximize and optimize its functions and duties in the supervision of the election process, especially in the election process of regional heads.

In terms of the implementation of the task of the District Election supervisory body to resolve disputes between participants, then Election supervisory body based on a mandate from Bawaslu Regency / City can resolve disputes between participants, the problem is what indicators of circumstances can be used as a reason for the District Board to resolve the problem into the category of disputes between participants. Indicators of circumstances that can fall into the category of disputes between participants are not found in the electoral law and the regional head election law. This will have an impact on the decision of the Subdistrict Election supervisory body the act of resolving dispute disputes between participants in general elections, especially in regional head elections during the covid 19 pandemic.

¹⁰ See Article 89 paragraph (5) Law No. 7 of 2017

concerning the Holding of General Elections (Republic of Indonesia, 2017).

The problem is with the position of the District Election supervisory body which is *ad hoc* with functions and duties that bind the institution will potentially have legal consequences for every action and decision of the District Election supervisory body at the time of the general election, especially during the regional head election.

The existence with the *ad hoc* function, there are so many problems to fulfill their authority. Especially, in the regional head election, there is no District Election supervisory body in the regional sector, so it must analyze the urgency of their existence.

Supervision in the implementation of elections is one of the factors for the success of the general election. Likewise, in organizing regional head elections, effective supervision is needed¹¹. Therefore, Election supervisory body has a central role in the creation of honest, fair, and legal elections, especially in regional head elections. Therefore, Election supervisory body's actions up to the TPS Supervisor must have the power of law, to create a general election with legal needs.

The purpose of this study is to recommend innovation in the form of an election supervisory body at the district level.

METODE RESEARCH

Research with the title Urgency Of Position Of District Election supervisory body In The Resolution Of Disputes Between Participants In The Regional Head Election In Indonesia using normative legal research methods¹². The type of research conducted in the preparation of this research is normative juridical research¹³. Also referred to as doctrinal *research*¹⁴. The data sources used in this study are secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials¹⁵.

¹¹ Lukman Ilham. Sulaiman., *Peran Panitia Pengawas Pemilu Dalam Pelaksanaan Pemilihan Umum Legislatif Di Kota Makassar* (Makassar, 2020), 36.

¹² Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: UI Press, 1986), 3.

¹³ Johny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif* (Surabaya: Bayumedia, 2008), 295.

¹⁴ Bismar Nasution, *Metode Penelitian Hukum Normatif dan Perbandingan Hukum* (Medan: Universitas Sumatera Utara, 2003), 2.

¹⁵ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2006), 14.

This research uses a conceptual approach¹⁶. Then the qualitative analysis is done to find the answer to the problem¹⁷

The technique of collecting legal materials used in this research is library research Data analysis is the process of organizing and sorting data into categories and basic description units, so that themes are found and work hypotheses can be formulated, as suggested by the data. Data (legal materials) that have been obtained from library research are analyzed using qualitative methods based on the logic of deductive thinking. Deductive means using theory as a tool, measure, and even an instrument to build hypotheses.

DISCUSSION AND ANALYSIS

1. The Position of District General Election supervisory body

The dynamics of the 2019 Election not only stand out in the contestation room but also the dimensions of organizing and participation are also turbulent. One indicator is the crowded issue of elections into the discussion, not only in the news in the mainstream mass media but also in the discussion of netizens on social media. The issue of suffrage and candidacy is a big concern that continues to occupy the headlines of the mass media¹⁸. In terms of suffrage, the General Election Commissions seeks to ensure the electoral register is accurate and up-to-date by Indonesian citizens who do have the right to vote in the 2019 election.

The birth of the concept of supervision in the first general election in 1982 under the name Election supervisory body¹⁹. The formation of the Election Commission was motivated by distrust of the implementation of elections that were considered to have been set up by the power of the ruling regime²⁰. The election supervisory body was a surveillance organ formed by the Election

¹⁶ Zainuddin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2009), 23.

¹⁷ Muslan Abdurrahman, *Sosiologi dan Metode Penelitian Hukum* (Malang: UMM Press, 2009), 121.

¹⁸ Rama Agusta, "Evaluasi Pemilu 2019, Abhan: Dinamika Beda dengan Pemilu Sebelumnya," www.bawaslu.go.id (Jakarta, 2019).

¹⁹ Musfaldy, "Mekanisme Pengawasan Pemilu Di Indonesia," *Jurnal Sosial Budaya* 9, no. 2 (2012): 45.

²⁰ Bainung. Ratnia Solihah, Ratnia. Bainus, Arry. Rosyidin, "Pentingnya Pengawasan Partisipatif Dalam Mengawal Pemilihan Umum Yang Demokratis," *Jurnal Wacana Politik* 3, no. 1 (2018): 15.

Committee in Indonesia. So, since independence until 2009, the Election Supervisor became subordinate to the Election Committee because it was formed and responsible to the Election Committee.

The existence of election supervisors in Indonesia is very unique because Indonesia is one of the countries that have an independent Election supervisory body. Generally, election supervision in other countries is carried out by the Election Commission. This commission becomes the event organizer of the election, as well as the supervisor of the election. In several countries, the General Election Commissions is given quasi-judicial “power”, to break election violations²¹.

In 2010, the election watchdog became an independent agency. This is the impact of testing Law No. 22 of 2007 concerning Election Organizers. In Decree No. 11 / PUU-VIII / 2010 there is the phrase “an election commission” in the view of the Constitutional Court does not mention one of the names of certain institutions, but the appointment of the function of election organizers who have a national nature, permanent and independent. With the ruling, it is expressly stated that the function of the election organizer is not only the authority of the General Election Commission but also includes the General Election supervisory body which becomes a unit of the implementation function that is national, permanent and independent²².

The election supervisory body’s position in the structure of Indonesian statehood is an additional state institution that is independent (auxiliary state organs)²³. The implementation of existing authority in the Election supervisory body is related to the main state institution. In the form of Election supervisory body institution because the government no longer has the credibility to hold fair and democratic elections. This has been taught with the experience of seven elections in the New Order which last held a general election in 1997²⁴.

To strengthen the electoral system in Indonesia, with Decree No. 81 / PUU-XV / 2011 which interprets the clause “an election commission” Article 22E Paragraph (5) of the 1945 Constitution does not refer to the name of the institution but also includes the election supervisory institution in this case Election supervisory body and DKPP as a unitary function of the general election organizer²⁵.

The constitutional court’s decision is considered more fulfilling the provisions of the constitution that mandate the holding of independent, direct, public, free, and secret elections and honest and fair. Holding elections in the absence of supervisors would threaten the principles mandated by the constitution. In addition to Election supervisory body, there is an Honorary Board of Election Implementation (DKPP) which is also a joint organizing unit with the General Election Commissions and Election supervisory body.

The latest development of arrangements against the election watchdog is regulated in Law No. 7 of 2017 on general elections. Election supervision delegations are given to the Election supervisory body through Law No. 7 of 2017. In-Law No. 7 of 2017 is one of the legal bases for strengthening election supervisory body authority. This is evidenced by Election supervisory body having more authority because it has a product in the form of a verdict, whereas against the ruling the General Election Commissions must follow up. The obligation of the General Election Commissions to follow up on the Election supervisory body’s verdict signaled that the state believes in Election supervisory body’s performance because Election supervisory body has surveillance data, so it can be a strong reference in making a verdict. In this case, supervision and enforcement become a relationship that is not separate from the duties and functions of the Election supervisory body.

The election supervisory body in the position structure of Indonesian state institutions is a

²¹ Harun Husein, *Pemilu Indonesi, Fakta, Angka, Analisis, Dan Studi Banding* (Jakarta: Perludem, 2014), 600.

²² M Afifuddin, *Membumikan Pengawasan Pemilu* (Jakarta: PT. Elex Media Komputindo, 2020), 5.

²³ Lusy Liani, “Kedudukan Dan Kewenangan Bawaslu Dalam Struktur Lembaga Negara Indonesia,” *Jurnal Lex Jurnalica* 15, no. 3 (2018): 319.

²⁴ Winardi, “Menyoal Independensi dan Profesionalitas Komisi Pemilihan Umum Daerah Dalam

Menyelenggarakan Pemilu di Daerah,” *Jurnal Konstitusi* III, no. 2 (2010): 52.

²⁵ R. Nazriyah, “Kemandirian Penyelenggara Pemilihan Umum (Kajian terhadap Putusan Mahkamah Konstitusi No. 81/PUU-IX/2011),” *Jurnal Hukum* 18, no. Khusus (2011) see also Pipit R.Kartawidjaja dan Sidik Pramono, *Akal-Akalan Daerah Pemilihan, Perludem Bekerjasama USAID dan drsp*, Jakarta, 2007, page. 3.

reformed child who has a strategic position in preventing fraud in elections in Indonesia. The election supervisory body's authority consisting of prevention, enforcement, and adjudication related to elections proves that Election supervisory body's position as a state institution is very strong because it has 3 (three) functions. So, when compared to the institution of the court can only decide (adjudicate) not to have to conduct supervision, but limited to the function of the judiciary.

Based on Law No. 7 of 2017 the Election supervisory body is given a mandate with attached tasks including identifying and mapping potential vulnerabilities and election violations. In addition, it also coordinates, supervises, guides, monitors and evaluates the holding of elections. On that basis, the implementation of Election supervisory body's duties always involves cooperation with various institutions and professionals, such as Universities, Community Institutions, NGOs, Law Enforcement Agencies and others.

Election supervisory body has a strategic role in realizing the process and results of elections with integrity. According to M Afifuddin as the institution responsible for preventing and carrying out the crackdown, Election supervisory body became the key to the equal and fair stage of elections. The creation of equality and electoral justice must begin by ensuring transparency and accountability of election participants in managing campaign funds. This is a prerequisite for creating healthy competition among election participants. Creating equality and fairness in healthy competition aims to realize the balance of election participants' campaigns in influencing voters so that the information and campaign material received by voters in a relatively equal position.²⁶

The position of The District Commissioner as stipulated in Article 72 and Article 73 of Law No. 15 of 2011 consists of three members who meet the requirements and have taken the stages of selection and are declared passed by the District / City Commissioner. The requirements referred to in the recruitment of Election supervisory body are stipulated in article 85. Furthermore, in articles 79 and 80 special arrangements regarding the duties and authorities of the District Commissioner,

²⁶ M Afifuddin, *Op.cit.* page. 104

and for the smooth running of the duties of the District Commissioner assisted by secretarial as stipulated in article 108 of Law No. 15/2011 and PP No.49/2008.

Institutionally, Election supervisory body Subdistrict is an ad hoc Election supervisory body organ as stipulated in Article 89 paragraph (5) of Law No. 7 of 2017 concerning the Implementation of General Elections. which directly coordinates with Election supervisory body Regency / City. The existence of this Subdistrict Election supervisory body, normatively is a supervisory committee to oversee the implementation of elections at the subdistrict level. Election supervisory body Subdistrict has several duties as stipulated in Article 105 of Law No. 7 of 2017. Based on the duties as referred to in Article 105 of Law No. 7 of 2017, the Subdistrict Commissioner in carrying out²⁷ his duties, attached authority as stipulated in Article 106 U No. 7 of 2017. One of the authorities attached to the Subdistrict Election supervisory body is to be able to report and follow up on reports related to alleged violations of the implementation of regulations and conduct examinations and conduct assessments of the occurrence of election violations in the district.

The implementation of the existing authority in the Subdistrict Election supervisory body as stipulated in Article 106 of Law No. 7 of 2017 is followed by the obligations of the District Commissioner. Regarding the obligations of the Subdistrict Election supervisory body stipulated in Article 107 of Law No. 7 of 2017. One of the obligations of the District Commission related to election disputes is mandatory to submit reports of supervisory results and findings for alleged election violations to the Election supervisory body Regency / City.

Subdistrict Commissioner who has duties, authorities and obligations is a form of juridical that the District Commissioner, although its position at the subdistrict level in the District / City can carry out actions as stipulated in Article 105, Article 106, Article 107 of Law No. 7 of 2017 in the framework of supervision of elections.

The implementation of the functions, duties, authorities and obligations of the District Commissioner is also regulated in Law No. 10 of

²⁷ Article 106 Law No. 7 of 2017 concerning the Holding of General Elections (Republic of Indonesia, 2017).

2016 concerning the general election of regional heads. Election supervisory body Subdistrict also *mutatis mutandis* has functions, duties, authorities and obligations in conducting supervision in the framework of organizing regional head elections.

Although previously there were various polemics about the existence and position of Election supervisory body supervisory institutions, especially Election supervisory body Regency / City in supervision in the Election. This is because the phrase “Election supervisory body Regency / City” stipulated in Law No.15 of 2011 is contradictory and does not guarantee legal certainty to the position of the District / City Election supervisory body. On this issue, the Constitutional Court gave a verdict on judicial review of Law No. 15 of 2011. Through Decision No. 48/PUU-XVII/2019, the Constitutional Court stated that the phrase “District/City Election supervisory body” should be interpreted as “Election supervisory body Regency / City”, because the Regency / City Election supervisory body formed based on Law No. 15 of 2011 has undergone a metamorphosis into Election supervisory body Regency / City which was formed based on Law No. 7 of 2017²⁸. Therefore, based on Constitutional Court Decision No. 48 / PUU-XVII / 2019, law No. 15 of 2011 was declared invalid. This is seen from Article 571 letter b of Law No.7 of 2017 which affirms that Law No. 15 of 2011 concerning the holding of elections is revoked and declared invalid”

Through its ruling, the Constitutional Court affirmed that:

“Although the election law regime and elections are considered different, the election organizers who are given the task by Law No. 10 of 2016 to carry out elections are election organizers formed by Article 22E paragraph (5) of the 1945 Constitution. Therefore, the structure of the election and election organizers should remain the same despite carrying out the mandate of 2 (two) different laws.”

According to Fritz Edward Siregar, the Constitutional Court’s Decision has been in line and Election supervisory body’s policy in facing simultaneous elections in 2020, where Election

²⁸ Fritz Edward Siregar, *Dimensi Hukum Pelanggaran Administrasi Pemilu* (Jakarta: Konstitusi Press, 2020), 28.

supervisory body interprets The District / City Election supervisory body in the Election Law as Election supervisory body Regency / City formed by the Election Law. Because the institutional supervisory of elections and elections was formed with its own law, namely Law No. 15 of 2011 and then amended by Law No. 7 of 2017.²⁹

The Constitutional Court’s decision in real terms has given legal certainty to Election supervisory body to focus on carrying out supervision of the implementation of simultaneous elections in 2020 held in 270 regions in Indonesia. In 2020, the implementation of simultaneous elections held in 270 regions in Indonesia consisting of 9 Governors, 224 Regent Elections, and 37 Mayoral Elections. The holding of regional head elections is one form of democratic implementation³⁰.

Elections in Indonesia are carried out in accordance with the mandate of the constitution and laws and regulations, so it should be the implementation of elections carried out with constitutional supervision as well. But, as the collective collegial aspect, if there is District Election supervisory body for general election, so there are so many chances to make District Election supervisory body for regional head election, and construct it from the regulation perspective.

2. Mechanism for Resolving Disputes Between Participants by The Regional Head Election District Committee

The surveillance model carried out by Election supervisory body includes all matters related to elections and elections. The target of supervision carried out by Election supervisory body is not only related to the performance of the General Election Commission , but also all things that contain potential violations in the election process and elections.

Supervision carried out by Election supervisory body is very complex, for that the model of supervision carried out must also vary by the times. The supervision carried out by election supervisors is very large because not only at the time of the implementation of elections or elections

²⁹ *Ibid* p. 29

³⁰ M Fahri. Octaputri, Megawati Aliya. Adnan, “Hubungan Sosialisasi Politik Dan Partisipasi Politik Tentang Pemilu Serentak 2018 Di Pariaman,” *Jurnal Mahasiwa Ilmu Administrasi Publik* 1, no. 4 (2019): 40.

alone but from the beginning of preparations to the recapitulation of the determination of election results or elections. Meanwhile, according to Afifuddin under the context of elections or elections, there is also a reflection of the Decision of the Honorary Board of Election Organizers (DKPP) that cannot be predicted when the verdict is scheduled.³¹

The dynamics of the implementation of regional elections in 2020 to elect provincial heads and district/city regional heads are faced with problems. For example:

- a. In 2020, Voting Organizing Group officers died in the constituency due to limited means and infrastructure to the electoral area;
- b. Apathy and “stupid times” eventually gave rise to the movement of “White Group” or not voting in the election of regional heads who are a high percentage.
- c. There are many double voting cards. This has instructed the Government to verify voter data;
- d. There were many violations between participants at the time of the regional head election.
- e. Horizontal conflict of supporting communities in some areas
- f. The occurrence of disputes between participants and organizers and between participants and election participants

The implementation of regional head elections conducted simultaneously in 2020 also applies general provisions in elections such as the concepts of electoral law, the election process, election supervision, election law enforcement is also enforced in regional head elections³². Especially regarding the implementation of supervision by the Election supervisory body Institution whose authority applies *mutatis mutandis* in Law No. 7 of 2017, all forms of functions, duties, and authorities of Election supervisory body up to the TPS Supervisor also apply in the election of regional heads.

In electoral law, an election dispute or election dispute is anything that causes a difference

of opinion or disagreement between two or more parties that starts from differences in perception. This also applies to regional elections.

Election disputes can be categorized into two, namely *the first*, the dispute of the election process. The dispute of the election process is further divided into disputes between election participants and participants and disputes between participants. This election process dispute occurs during the election. Based on the provisions of the Election Law, Election supervisory body is the first institution that can resolve disputes over the *second* election process, disputed election results. The dispute over the results of this election occurred after the election was completed³³. Based on the provisions of the Election Law, the Constitutional Court is the only judicial institution that has the authority to decide the resolution of disputes over the results of the election.³⁴

The occurrence of disputes between participants due to certain differences in interpretation or vagueness is related to an activity or event related to the implementation of the election as stipulated in the provisions of the laws and regulations and circumstances in which there is a different recognition or rejection of avoidance between election participants.

Disputes between participants in the election process are the occurrence of actions or actions or things from other participants that cause the rights of other election participants to be directly harmed. In the implementation of regional head elections, it is also regulated regarding the regulation of disputes between election participants in Article 142 letter a, Article 143, Article 144 paragraph (4) of Law No. 10 of 2016 and Election supervisory body Regulation No. 2 of 2020, namely in Article 62 and Article 66.

To resolve disputes, the Principle of Dispute Resolution Between Participants (PSAP) must be based on:

1. Independent and fair principle
2. The basis of deliberation;
3. Principle of Legal Certainty;

³¹ M.Afifuddin, *Op.cit.* p. 217

³² Titi Anggraini, *Kajian Kodifikasi Undang-Undang Pemilu : Penyatuan UU No 32/2004, UU No 12/2008, UU No 42, UU No 15/2011, UU No 8/2012, Serta Beberapa Putusan Mahkamah Konstitusi Dalam Satu Naskah* (Jakarta: Perludem, 2014), 21.

³³ Aermadepa, “Penyelesaian Sengketa Proses Pemilu Oleh Bawaslu, Tantangan Dan Masa Depan,” *Jurnal Justitia: Jurnal Ilmu Hukum dan Humaniora* 1, no. 2 (2019): 5.

³⁴ *Ibid.*

4. The principle of honesty, openness, and accountability;
5. Principle of Public Interest;
6. Principle of Proportionality;
7. Principles of Professionalism, Efficiency, and Effectiveness;
8. Principle of legal order and administrative order

Dispute resolution between participants can be done on the principle of a quick event and can be resolved at the scene. The time of resolution of the dispute is three days from the time the application is submitted. The application is made by the respondent, namely the Candidate Pair. In the completeness of PSAP, the Applicant or the respondent as intended can be accompanied or represented by a lawyer. This aims to speed up the process of resolution of disputes.

The resolution of election disputes between election participants is regulated in detail in Article 62 of Regulation No. 2 of 2020. Some things develop through the Election supervisory body, namely in Article 62 paragraph (3) which gives authority to the District Commissioner to complete PSAP based on the mandate given by Election supervisory body Regency / City. The mandate of the District Election supervisory body was then established by the decision letter of the Election supervisory body Regency / City after consultation with the Election supervisory body Province.

The provisions of Article 62 of Regulation No.2 of 2020 terms in mandating the District Commissioner to be able to resolve election disputes between participants at the event during the regional head election process. Consideration of the handover of authority to resolve disputes between election participants to the Subdistrict Election supervisory body because the event of disputes between participants can be directly accessed and known by the District Commissioner who is an election supervisor located in the area.

The Subdistrict Election supervisory body as it has been given the mandate to resolve disputes between election participants can conduct the stages of Dispute Resolution Between Election Participants, namely:³⁵

1. Accept requests for dispute resolution of elections between election participants;
2. Examining the application for the resolution of election disputes between election participants;
3. Bringing together the complainant and the disputed respondent for deliberation;
4. Examining the evidence; and
5. Resolve the resolution of disputes between election participants.

Election supervisory body Subdistrict, before continuing the process of resolving disputes between participants in the examination of evidence, it can take the act of facilitating the applicant and the respondent to consult to reach an agreement. However, this action can be done but also can not be done by an election supervisory body. This is entirely a consideration of the District Commission to do so.

The results of deliberations conducted by the Subdistrict Election supervisory body against the applicant and the respondent of PSAP (dispute resolution between participants) can be in the form of an agreement or not reach an agreement. The results of deliberations conducted by the District Election supervisory body are stated in the news of the deliberation event as stipulated in Election supervisory body No.2 of 2020. Furthermore, if the deliberations conducted do not reach an agreement, then the District Election supervisory body decides the dispute between election participants. The decision of the District Election supervisory body was made based on evidence and deliberation facts after consultation with the Election supervisory body Regency / City. The PASP decision was signed by the District Minister, the applicant, and the respondent. Election supervisory body Subdistrict read the verdict openly and can be accounted for.

The legal power of the Subdistrict Election supervisory body Ruling is binding as stipulated in Article 66 of Regulation No. 2 of 2020. Therefore, with the binding legal force, the applicant and the respondent must and must carry out the contents of the ruling on legal grounds. If the applicant and the respondent do not carry out the contents of the ruling then, the applicant and the respondent have committed unlawful acts. However, based on

³⁵ See Article 64 paragraph (5) *Regulation of the Election Supervisory Board No. 2 of 2020 concerning Procedures for Resolving Disputes over the Election of Governors*

and Deputy Governors, Regents and Deputy Regents, as well as Mayors and Deputy Mayors (Bawaslu Republic of Indonesia, 2020).

the laws and regulations, if the applicant and the respondent do not carry out the PASP decision from the District Government until now no technical rules are governing it. So that the interpretation that can be used is if the applicant and the respondent do not carry out the act contrary to the law and fall into the category of unlawful acts and resolved by the mechanism of unlawful acts by the prevailing laws and regulations in Indonesia.

Resolution of election disputes on a quick and simple basis will be fulfilled if the resolution of disputes between participants is carried out on the same day at the time of the event. It's just that, there are some obstacles from the District Commissioner in carrying out these authorities, including:

1. Knowledge of the Subdistrict Election supervisory body on the events of disputes between election participants. This is an obstacle that occurs in the field because human resources who are members of the Election supervisory body Subdistrict in various regions in Indonesia do not have the same quality and knowledge. This is evidenced by the different levels of education, experience in the field of ownership, and the integrity of human resources from the Subdistrict Election supervisory body.
2. There is no request from the candidate's spouse. This becomes an obstacle/obstacle in the implementation of dispute resolution between election participants. Although it is known that the events that occurred are included in disputes between elections, because there is no application report, the Election supervisory body has difficulty registering it. Although in Article 64 paragraph (2) letters a and b it is said that the resolution of election disputes between election participants is based on: the application submitted by the Candidate Pair or consideration of Election supervisory body Province, Election supervisory body Regency / City, or District Commissioner to events at the scene. But because the condition of the Human Resources Election supervisory body Subdistrict is uneven, often this becomes a thing that is ignored in its implementation.
3. Remote, outermost and leading areas in Indonesia.
Remote, outermost and leading areas in Indonesia which is an area that is difficult to reach become an obstacle in the resolution of disputes between election participants. Although in Article 63 paragraph (1) of Regulation No. 2 of 2020 it is said that there are exceptions to resolve disputes between participants on the same day on the basis that there is difficult-to-reach geographical access and access to hard-to-reach communication. This becomes contradictory to the necessity to resolve disputes between participants on the same day. Although there are exceptions formed by Election supervisory body, to be able to implement certainty, justice, and benefits of the settlement process than with 3 days given, it is difficult to achieve. Therefore, the Subdistrict Election supervisory body based on the mandate given can make preventive efforts so that there is no dispute between participants in areas that fall into the category of Article 63 paragraph (1) of Regulation No.2 of 2020. Such as socializing with election participants and the public about matters related to the campaign at the time of the election.
4. Knowledge of candidate pairs regarding election disputes between participants.
In the reality of elections and regional head elections, it is not uncommon that election participants are not aware of any legal mechanisms that have been regulated by legislation to resolve events that fall into the category of disputes between election participants. Therefore, it is on the ground that sometimes the participants of the election do not consider that the events that occur can be resolved by the legal mechanism of ownership stipulated in the laws and regulations. This happens, because there is still a lack of socialization from the election organizers in the area to the election participants.

Based on the mandate given to the District Commissioner to resolve disputes between participants is a form of expansion of the authority of election supervisors at the district level which has been only coordinated with Election supervisory body Regency / City as a

supervisor at the District / City level. Through the Election Law, the Election supervisory body as a supervisory institution transformed with the increase of adjudication authority. The impact is that Election supervisory body is no longer just a recommendation, but can be an executor or breaker of dispute cases and election settlements.

Based on the Election Law, the adjudication function owned by Election supervisory body can be carried out to accept, examine, consider, and resolve violations of election administration, and dispute the election process³⁶. When compared to Law 10 of 2016, the authority given to Election supervisory body is more developed. Thus, the Election supervisory body's actions to resolve *electoral dispute resolution* and dispute the election process has a strong legal basis to create legal certainty from each of Election supervisory body rulings³⁷. Election supervisory body's dispute resolution method is part of the establishment of election law by the laws and regulations. This also has an impact on the authority of supervisors at the subdistrict level or Subdistrict Election supervisory body which also undergoes expansion and development. The mandate given to the Subdistrict Election supervisory body to be able to complete the PSAP is the authority of the law or a form of *juridical authority*³⁸

CONCLUSION

The position of The District Commissioner in the supervision of elections in the supervision of the implementation of the Election is *an ad hoc* institution formed by the Election supervisory body Regency / City to conduct supervision on the implementation of elections in Indonesia. Although the position of the District Election supervisory body is *ad hoc*, in carrying out its functions and authorities, the legal power of the

Subdistrict Election supervisory body decision is binding. Therefore, the *ad hoc* position does not affect the nature of the districts decision in resolving disputes between participants. However, the decision from Election supervisory body Subdistrict is still limited and not final, because the aggrieved party (PT. TUN) can file a lawsuit with the High Court of State Administration, therefore, the decision of PT TUN is final.

In addition, in the implementation of duties, functions, and authorities of the Subdistrict Election supervisory body as stipulated in the laws and regulations of its implementers are still experiencing obstacles. These constraints must be evaluated by Election supervisory body, especially the Election supervisory body Regency / City and Election supervisory body Province to be able to run optimally and optimally, especially regarding the quality of human resources (HR) who are members of the District Commission.

The mechanism of dispute resolution between participants (PSAP) in the election organizers by the District Commissioner is technically regulated through Regulation No.2 of 2020 on Procedures for Resolving Disputes for The Election of Governors and Deputy Governors, Regents and Deputy Regents, as well as Mayors and Deputy Mayors. Disputes between Participants (PSAP) are carried out on the principle of quick and simple principles and carried out on the same day to achieve legal certainty and expediency in regional head elections.

It is recommended to Election supervisory body of the Republic of Indonesia to establish the Election supervisory body Regulation to regulate the position and duties and functions of the Subdistrict Supervisory committee so that it is clear the nature of coordination and institutional relations between the District Supervisory committee and Election supervisory body Regency / City. Election supervisory body Regency / City in recusing members of the District Supervisory committee must prioritize the requirements and professionalism in conducting selection, to avoid the practice of nepotism of electing members of the district supervisory committee. Institutional relations between Election supervisory body Regency/city with the Supervisory committee Subdistrict are carried out regularly, and continuously so that the working relationship can run professionally and obey the law. Supervisory

³⁶ Chrisandy M. Polii, Cevonie M Ngantung, dan Rudy M.K Mamangkey, "Penyelesaian Sengketa Administrasi Pemilihan Umum," *Jurnal Lex Et Societatis* IX, no. 1 (2021): 129.

³⁷ Wein Arifin. Ahsanul Minan., Delia Wildinanti., Erik Kurniawan., Jemris Fointuna., Khairul Fahmi., Marini., Paulus Titaley., Purnomo Satriyo P., Subair., *Serial Evaluasi Penyelenggaraan Pemilu Serentak 2019: Perihal Pelaksanaan Hak Politik*, ed. Mada Sukmajati (Jakarta: Bawaslu RI, 2019), 234.

³⁸ Efriza, *Kekuasaan Politik, Perkembangan Konsep, Analisis dan Kritik* (Malang: Intrans Publishing, 2016), 106.

committee Subdistrict as a supervisor of elections in the field that is closer to the facts and problems of the general election must be equipped with good ownership knowledge so that the District Supervisor in carrying out its duties and functions can run optimally.

SUGGESTION

Based on the results of the research, the author retired to make institutional improvements and strengthen district supervisors by the Election supervisory body including by harmonizing laws and regulations related to the supervision of regional head elections both vertically and horizontally. In addition, it is recommended to Election supervisory body Regency / City to improve the recusal system of district supervisory members. There are urgent things from the collective collegial aspect that the District Election supervisory body for the general election, and there are so many chances to make District Election supervisory body as the ad hoc committee for regional head election. The mechanism of dispute resolution between participants (PSAP) in the election organizers by the District Commissioner is technically regulated through Regulation No.2 of 2020 on Procedures for Resolving Disputes for The Election of Governors and Deputy Governors, Regents and Deputy Regents, as well as Mayors and Deputy Mayors.

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