STANDING ASSEMBLY ELECTION DISPUTE SETTLEMENT VILLAGE HEAD (STUDIES IN WEST SUMBAWA REGENCY)

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Abstract: This study aimed to analyze the Status of Assembly Resolution Election Dispute village head (studies in western Sumbawa district). This research is a normative under consideration that this study departs from the analysis of the regulations legislation that describes the legal aspects related the position of the Assembly on Electoral Dispute Settlement village head. 

The approach used is regulatory approach legislation, the conceptual approach and the approach to the case. Technics collection of legal materials to the study of literature. After that legal materials processing performed by holding systematization then do reasoning logically and systematically with descriptive qualitative analysis and draw conclusions in a manner deductive. Based on the results of this study concluded that based It can be concluded, that the authority of the Assembly Dispute settlement in the settlement village election dispute over village elections in West Sumbawa regency true West Sumbawa Regent is the authority granted by Article 37 paragraph (6) of Law No. 6 of 2014 on the village through Attribution in order to dispute election results village. The authority delegated by the Regent of West Sumbawa to Village Head Election Committee of the Regional level (PPKD District) through The mandate and the authority delegated back by PPKD District the MPS Village Head Election through Sub Mandate.

Keywords: assembly resolution, dispute, Pilkades

I. INTRODUCTION

In the process of electing the village head resulting in a dispute over the election result of the Village Head, the Regent/Mayor shall settle the dispute as referred to in Article 37 paragraph (6) of Law No. 6 of 2014 on the Village, stating “In the event of a dispute over the election result of the Village Head, the Regent/Mayor shall settle the dispute within the period referred to in paragraph (5)”.

Observing Article 37 Paragraph (6) of Law Number 6 Year 2014 on the Village up to the implementing regulations, the Regent/Mayor shall settle disputes over the election result of the Village Head within 30 (thirty) days. In the implementation of the implementation of the
settlement of village head disputes, the Regent/Mayor shall establish a committee in the district/municipality whose task is to facilitate the settlement of village head election disputes as referred to in Article 5 paragraph (1) and paragraph (2) letter f of the Minister of Home Affairs Regulation Number 112 Year 2014 on Village Head Election, which states as follows:

(1) Regent/Mayor shall establish election committee in Regency/City.
(2) The election committee in the Regency/Municipality as referred to in paragraph (1) has the duty to cover: facilitate the settlement of the problem of village head election at district/ municipality level.²

Based on Article 5 paragraph (1) and paragraph (2) letter f of the Minister of Home Affairs Regulation No. 112 of 2014 on Village Head Election, the Regent of West Sumbawa established a Village Head Election Committee (PPKD Regency), one of the tasks to facilitate the settlement of problems or disputes Village Head election.

District PPKD on behalf of the Regent of West Sumbawa formed a Special Assembly Team tasked to facilitate and decide dispute over disputes on the election result and vote count of village head election in West Sumbawa Regency.

Urgency of the establishment of MPS Village Head Election (hereinafter referred to as Pilkades) by PPKD of the district due to the implementation of the first village head election which was followed by 16 (sixteen) villages on 6 November 2016, there has been a dispute over the election result of the village head in 3 (three ) villages, including Poto Tano Village, Temekan Village and Bukit Damai Village resulting in unsafe and comfortable situation in the village as well as the ineffectiveness of the village government's wheel in performing its functions.

MPS Pilkades is an innovation of PPKD Regency which is ad hoc (temporary) in order to solve the dispute on election result of village head through mechanism outside court or non-litigation. The settlement of disputes over the election result of the village head through a non-litigation mechanism conducted by MPS Pilkades is one of the solutions to accelerate the settlement of disputes over village head elections in order to realize the way of good governance and village administration.

The method used by the MPS Pilkades in the settlement of disputes over the election results of the village head adopts a method of arbitration settlement that has undergone a transformation (change) from civil law to administrative law.

However, in the regulation of the position of the MPS Pilkades there have been several significant problems. So the authors are interested to conduct research. Based on the description of the above background, it can be formulated as follows: 1. What is the authority of the Settlement Assembly of Dispute for the election of the village head in the settlement of the dispute over the election of the village head in West Sumbawa regency? 2. What are the shape and nature and the implications of the decision of the Settlement Assembly of the Dispute of the Village Head Election on the Implementation of the Village Head Election in West Sumbawa Regency?

Type of research used to examine the subject matter in this study, using normative legal research methods. the problem approach used is the Statutory Approach, the Conceptual

² Indonesia, Minister of Home Affairs Regulation No. 112 of 2014 on Village Head Election, Article 5 paragraph (1) and paragraph (2) letter f.
Approach and the Case Approach. Legal Material Collection Technique used in this research is through library research (library research). The analysis of legal materials obtained in this study will then be sorted out to obtain legal materials that have legal principles governing the Position of the Settlement of Disputes over the election of the village head. Then the legal materials are systematized so that classification can be produced in line with the problems of this study. Furthermore, the legal material obtained will be analyzed by deductive, namely the conclusion of a problem that is general to the problems of a special nature.

II. RESULT AND DISCUSSION

2.1 Authority of the Dispute Assembly of the Village Head Election in the settlement of the dispute over the election of the village head in West Sumbawa Regency

2.1.1 Sources of Authority of the Settlement Assembly Dispute the election of the village head

The authority of the Constitutional Court in the settlement of disputes over the results of the election of the village head is actually the authority of the Regent as regulated in Article 37 paragraph (6) of Law No. 6 of 2014 concerning the Village, stating “In the event of a dispute over the election result of the Village Head, the Regent / / disputes within the period referred to in paragraph (5) “.4

Further provisions concerning the obligations of the regents / mayors in the settlement of disputes over the results of the election of village head shall be regulated in Article 41 paragraph (7) of Government Regulation No. 43 of 2014 concerning the Implementation of Law Number 6 Year 2014 concerning Villages as amended by Government Regulation Number 47 Year 2015 on Amendment to Government Regulation Number 43 Year 2014 regarding the Implementation of Law Number 6 Year 2014 on Village.

Observing Article 37 Paragraph (6) of Law Number 6 Year 2014 concerning Villages, Regents / Mayors in the settlement of disputes over election results of village heads, is granted the authority of attribution, whose authority is obtained from the law. From the authority of the attribution, the Regent of West Sumbawa gives a mandate to the district PPKD on behalf of the Regent to facilitate the settlement of disputes over the election result of the village head, as referred to in Article 102 paragraph (2) of West Sumbawa Regency Regulation No. 6 of 2016 concerning the Election, Appointment and Dismissal of the Village Head, that state:

“In the event of a dispute over the election of the Village Head as referred to in paragraph (1), the District PPKD on behalf of the Bupati shall resolve the dispute within 30 (thirty) days of receipt of the complaint / report from the Village Head / Complainant / Applicant Candidate”.5

2.1.2 Implementation of the authority of the Settlement Assembly Dispute the election of the village head

Implementation of authority of MPS Pilkades in order to facilitate and decide dispute result of election of village head in Sumbawa Regency based on West Sumbawa Regency Regulation Number 6 Year 2016 about Election, Endorsement and Dismissal of Village Head

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4 Indonesia, Law Number 6 Year 2014 on Village, Article 37 Paragraph (6).
5 Indonesia, West Sumbawa District Regulation No. 6 of 2016 on Election, Appointment and Dismissal of Village Head, Article 102 paragraph (2).
and further elaboration regulated in Regulation of West Sumbawa Regent Number 30.A Year 2016 on Guidelines for Village Head Election and Decree of West Sumbawa Regent No. 1429. c Year 2016 on the Formation of Dispute Settlement Assembly Election of Village Head First Serentak Wave of West Sumbawa Regency Year 2016.

2.1.3 Conflict of norm in determining the boundary of disputes result of election of village head

Observing the conflict of norms that occurred in the determination of the boundary of the dispute on the election result of the village head, the juridical conflict of norms was solved by using the legal principle, namely: “lex superior derogate legi inferior (higher regulation put aside the low regulation)”.

This is in line with what Salim HS has said that “the hierarchy of legislation is the disposal of any type of legislation based on the principle that lower regulations should not conflict with higher legislation”.

The normality of lex superior derogate legi inferior principle is regulated in Article 7 paragraph (1) and paragraph (2) of Law Number 12 Year 2011 on the Establishment of Laws and Regulations, which states as follows:

1) Types and hierarchies of Legislation consist of:
   a. 1945 Constitution of the State of the Republic of Indonesia;
   b. Decision of the People's Consultative Assembly;
   c. Law/Government Regulation in Lieu of Law;
   d. Government regulations;
   e. Presidential decree;
   f. Provincial Regulations; and
   g. Regency / City Regulations.

2) The legal power of the Legislation shall be in accordance with the hierarchy as referred to in paragraph (1).

2.2 Form and Properties and Implications of Decision of Dispute Settlement of Village Head Election Against the Implementation of Village Head Election in West Sumbawa Regency

2.2.1 Form of Decision of Dispute Assembly of Village Head Election Dispute

MPS pilkades in the settlement of disputes election results village head through mechanism of dispute settlement outside court or non litigation. The settlement of disputes over the election results of village heads through non-litigation mechanisms conducted by MPS Pilkades is one of the solutions to accelerate the settlement of disputes over the election of village heads in order to realize the way of good local government and village administration. This process is considered faster and cheaper, since the term of dispute resolution of village head

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6 http://jokopas.blogspot.co.id/2013/09/asas-asas-dalam-peraturan-perundang.html, accessed on June 13, 2017 at 15.00 pm.
8 Indonesia, Law Number 12 Year 2011 on the Establishment of Laws and Regulations, Article 7 paragraph (1) and paragraph (2).
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Election is 14 (fourteen) working days based on Article 107 paragraph (1) of West Sumbawa Regency Regulation No. 6 of 2016 concerning Election, Endorsement and Dismissal of Village Head and Article 57 paragraph (1) of West Sumbawa Regent's Regulation No. 30.A Year 2016 on Guidelines for Village Head Election.

The method used in dispute settlement by MPS pilkades adopts an arbitrage settlement method that has undergone a transformation from civil law to administrative law. The transformation of the method is caused by the emergence of new problems or disputes within the community, especially the disputes over the election result of the village head, requiring quick settlement, low cost and providing justice and legal certainty for the parties to the dispute.

Stages of the trial process conducted by MPS pilkades, namely: the reading of claims by the Petitioner, mediation, responded reply, replik, duplik, examination of witnesses and evidence, verdict. From the stage of the trial process conducted by the MPS pilkades as described above, the MPS pilkades decided on the dispute over the election result of the village head as stated in 3 (three) decisions in the table below:

<table>
<thead>
<tr>
<th>NO</th>
<th>Decision of Mps Pilkades</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Putusan Nomor: 01/S/XII/2016/MPS PILKADES</td>
</tr>
<tr>
<td>2</td>
<td>Putusan Nomor: 02/S/XII/2016/MPS PILKADES</td>
</tr>
<tr>
<td>3</td>
<td>Putusan Nomor: 03/S/XII/2016/MPS PILKADES</td>
</tr>
</tbody>
</table>

2.2.2 Nature of Decision of Dispute Settlement Panel of Village Head Election

The final and binding decision of MPS pilkades has been regulated in Article 107 paragraph (4) of West Sumbawa Regency Regulation No. 6 of 2016 concerning the Election, Appointment and Dismissal of Village Head, stating “The decision of the PPKD District Assembly as referred to in paragraph (3) final and binding.” And Article 57 paragraph (4) of West Sumbawa Regent's Regulation No. 30.A of 2016 concerning Guidelines for the Election of Village Head, stating “The decision of the PPKD District Assembly as referred to in paragraph (3) shall be final and binding.”

Observing the final and binding decision of MPS Pilkades gives legal consequences for prospective village heads who feel harmed by their interests, which no further legal action can be taken. Thus the prospective village head who feels aggrieved his interest is limited to his right to seek justice. This is a problem for justice seekers, so it is important to be observed the nature of the fair.

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9 Indonesia, West Sumbawa District Regulation No. 6 of 2016 on Election, Appointment and Dismissal of Village Head, Article 107 paragraph (4).
10 Indonesia, West Sumbawa Regent's Regulation No. 30.A Year 2016 on Guidelines for Implementation of Village Head Election, Article 57ayat (4).
2.2.3 Implication of the Decision of the Dispute Resolution of the Head of Villages Social and Political

Implementation of the first wave of village head elections in West Sumbawa regency, able to reduce social and political turmoil in the community in 3 (three) disputed villages, including: Poto Tano Village Poto Tano Subdistrict, Tamekan Village Social and political implications of the decision of MPS Pilkades against the District Taliwang and the village of Bukit Damai, Maluk sub-district, from 16 (sixteen) villages after the implementation of village head election held on November 6, 2016 in West Sumbawa Regency. The safe and controlled situation provides positive implications for the local government of West Sumbawa Regency and Village Government in performing their functions and the creation of social and political order in local village communities. Thus the position of the MPS Pilkades in West Sumbawa Regency is very significant and necessary, as it is capable of resolving the dispute over the election results of the first wave of village heads effectively.

III. CONCLUSION AND RECOMMENDATION

3.1 Conclusion

Based on the results of research and discussion, the authors take the conclusion, namely as follows:

a. The authority of the Settlement Assembly The dispute over the election of the village head in the settlement of the dispute over the election of the village head in Sumbawa Barat Regency, namely:

1) The source of authority of the MPS pilkades is actually the authority of the Regent of West Sumbawa granted by Article 37 paragraph (6) of Law Number 6 Year 2014 concerning the Village through Attribution in the context of dispute resolution of the election result of the village head. The authority was delegated by the Regent of West Sumbawa to the Village Head Election Committee at the District level (PPKD Kabupaten) through the Mandate and the authority was re-transferred by the District PPKD to the MPS pilkades through Sub Mandate.

2) b) Implementation of the Authority of the Settlement Council The dispute over the election of the village head shall be regulated in the Regional Regulation of Sumbawa Barat Regency Number 6 of 2016 concerning the Election, Appointment and Dismissal of Village Head and Regulation of West Sumbawa Number 30.A Year 2016 on Guidelines for the Election of Head of Village and by Decision of Sumbawa Regent West No. 1429.c Year 2016 on the Formation of the Dispute Settlement Assembly of the Election of the First Sergeant Village Head Head of West Sumbawa Regency in 2016.

3) The resolution of the conflict of norms occurring in the determination of the disputed boundary of the election result of the village head is juridically solved by the principle of “lex superior derogate legi inferior” (higher regulation overrules the low rule which has been the norm in Article 7 paragraph (1) and paragraph (2) Of Law Number 12 Year 2011 on the Establishment of Laws and Regulations.

b. The form and nature and implications of the decision of the Settlement Assembly Dispute the election of the village chief against the election of the village head in West Sumbawa regency, namely:
1) The form of a legal product issued by the MPS Pilkades is a decision of the assembly that is almost identical to the arbitral body's decision and the judge's verdict (court decision).

2) Decisions issued by MPS Pilkades that are final and binding, are not exactly said to be final and binding because it can still be done further legal effort through the State Administrative Court.

3) Implications of the decision of the Settlement Assembly The dispute over the election of the village head to the election of the village head in West Sumbawa Regency is socially and politically capable of improving harmonious relations

3.2 Recommendation

There are several suggestions that the author can convey in this thesis, such as:

a. It is recommended that the MPS Pilkades be mandated by the Regent of West Sumbawa in accordance with the procedure of prolehan mandate authority set forth in the provisions of Article 14 of Law Number 30 Year 2014 on Government Administration. And its name is patented in the Regional Regulation of West Sumbawa Regency Number 6 Year 2016 on the Election, Appointment and Dismissal of the Village Head, so as to characterize the Government of West Sumbawa Regency that innovates in the settlement of disputes over the election of the village head in non-litigation.

b. It is recommended that the Regional Government revise the Articles in which there is conflict of norm in the position of the MPS Pilkades, namely Article 102 (3) and Article 107 paragraph (4) of West Sumbawa Regency Regulation No. 6 of 2016 concerning Election, Appointment and Dismissal of Village Head and Article 52 paragraph (3) and Article 57 paragraph (4) of West Sumawa Regent's Regulation No. 30.A of 2016 on Guidelines for Village Head Election as well as Title and Second Secretary of Decision point 1 (one) Decree of West Sumbawa Regent Number 1429.c Year 2016 concerning Establishment of Assembly Completed Dispute of Election of Head of Village Candidate First Serentak West Sumbawa Regency of 2016 in accordance with Law Number 12 Year 2011 on the Formation of Legislation.

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Indonesia, Government Regulation No. 43 of 2014 concerning the Implementation of Law No. 6 of 2014 on Villages as amended by Government Regulation No. 47 of 2015 on Amendment to Government Regulation No. 43 of 2014 on the Implementation of Law Number 6 Year 2014 Village (State Gazette of the Republic of Indonesia Year 2015 Number 58, Supplement to the State Gazette of Indonesia Number 5679).

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