



Implementation electoral dispute resolution (EDR) in the settlement of election process disputes by Bawaslu

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Abstract

Bawaslu is given additional authority to conduct mediation and adjudication. Dispute resolution through adjudication is a new election dispute resolution channel, which has not been used in previous elections. The General Elections Supervisory Body in the settlement of election disputes in 2019 receives and reviews applications for settlement of election administrative disputes and disputes over the election process. There are two stages of dispute resolution in the election process, namely mediation and adjudication. In the first stage of mediation, Bawaslu will bring together the disputing parties, if in mediation there is no agreement between the parties on what is being disputed, the settlement will enter the stage of an adjudication trial. This research is descriptive, which describes a situation or a phenomenon related to the problem to be studied. Analytical descriptive, in this research will examine the applicable regulations, and is associated with legal theories and implementation practices concerning the problems that have been identified.

Keywords: dispute resolution, administration, election process

Introduction

Bawaslu's journey to become an election organizer is not instant. From election to election, lawmakers have agreed to continuously strengthen the role and function of this election supervisory agency. As stated by Didik Sukriono, considering that Bawaslu's function is very much needed, then Bawaslu is designated as a permanent election organizer and has the authority to oversee the election. This is in accordance with the opinion that the existence of an election supervisory agency will be weaker if it does not have maximum authority, resulting in the less than optimal performance of the Bawaslu. The weaknesses possessed by Bawaslu due to the limitations of their duties and authority in supervising the implementation of the General Election will ultimately jeopardize the journey of democracy in Indonesia (Didik Sukriono, 2009:11)

So in order to strengthen the role and function of Bawaslu and to strengthen the legitimacy of the election process in Indonesia, Law Number 7 of 2017 strengthens the role of Bawaslu as an institution for dispute resolution in the election process. In the implementation of the 2019 General Election, there are several new tasks and powers that have been mandated to Bawaslu. Previously, Bawaslu functioned and served only as a supervisor for the implementation of the General Election, while in the 2019 Election, the duties and authorities of Bawaslu were increased. The new tasks and powers are regulated in Article 468 of the Election Law, which states that Bawaslu has the authority to resolve election administrative disputes and election process disputes. The authority to settle disputes as mandated by Bawaslu is a new task for the institution, because in previous elections this rule has not been regulated. The dispute resolution handled by Bawaslu is the settlement of election administrative disputes and election process disputes, in the election process dispute resolution there are 2 (two) stages, namely Mediation and Adjudication. In the first stage, namely mediation, Bawaslu will bring together the disputing parties, if in mediation there is no agreement between the parties on what is being litigated then the settlement will enter the stage of the adjudication trial.

Dispute resolution through adjudication is a new election dispute resolution channel that has not been used in previous elections. The Adjudication Session is a new legal product in alternative election dispute resolution. In practice, through the adjudication session, Bawaslu has issued many contradictory decisions and invalidated the decisions issued by the KPU. One of them is the Crescent Star Party (PBB) which was passed by Bawaslu to be able to participate in the 2019 election. Through the adjudication session, Bawaslu overturned the KPU's decision not to pass the PBB, and the PBB became the only election participant who took part through the Bawaslu adjudication session. In the Election Law, it is regulated that the KPU must follow up on the Bawaslu decision no later than 3 (three) days after the decision is read out.

However, in several cases there were adjudication decisions issued by Bawaslu relating to the resolution of electoral process disputes that were not followed up by the KPU. Such as the dispute that occurred in the prospective member of the Regional Representative Council (DPD) RI, Abdullah Puteh with KIP Aceh.

Abdullah Puteh is a former corruption convict who was sentenced to 10 years in prison on April 11, 2005 for being involved in a corruption case while serving as the Governor of Aceh.⁷

Based on General Election Commission (PKPU) Regulation number 20 of 2018 which prohibits corruptors from becoming legislative candidates. On the basis of the PKPU, KIP Aceh decided not to pass Abdullah Puteh into the Provisional Candidate List (DCS) for the DPD RI candidates because Abdullah Puteh did not meet the administrative requirements because he had been a prisoner in a corruption case. As a result of the Aceh KIP's decision not to let Abdullah Puteh into DCS and become a candidate for DPD RI, Abdullah Puteh submitted an application to the Aceh Bawaslu to resolve the dispute over the election process resulting from the issuance of the KPU's decision regarding the determination of DCS for the DPD RI candidate.

Based on Article 468 of the Election Law, the Aceh Panwaslih brought together the Aceh KIP and Abdullah Puteh through mediation to discuss the disputes that occurred. However, in the mediation, KIP Aceh and Abdullah Puteh did not find an agreement so that the settlement process had to enter the adjudication stage. Through adjudication, the Aceh Panwaslih decided to overturn the Aceh KIP decision which stated that Abdullah Puteh did not meet the administrative requirements and could not be passed to enter the DCS as a candidate for DPD RI. With the annulment of the Aceh KIP decision, the Aceh Panwaslih ordered the Aceh KIP to pass Abdullah Puteh and stated that he had met the requirements so that he could be included in the DCS of the candidates for the DPD RI representative for Aceh.⁸

However, instead of immediately KIP Aceh taking action to accept or reject the adjudication decision of the Aceh Panwasli by filing a lawsuit to the State Administrative Court (PTUN), the Aceh KIP even delays following up on the adjudication decision of the Aceh Panwaslih.

The Aceh KIP reasoned for delaying responding to the Aceh Panwaslih's decision because it was waiting for the results of the judicial review of PKPU Number 20 of 2018. The delay in following up on the Aceh Panwaslih's adjudication decision by Aceh's KIP was contrary to several rules in the Election Law. Based on Article 14, Article 17, and Article 20 of the Election Law, it is clear that the Aceh KIP is obliged to implement the decision of the Aceh Panwaslih. Furthermore, Article 20 letter j of the Election Law also requires Aceh's KIP to immediately implement the Aceh Panwaslih's decision. The Aceh KIP's act of delaying following up on the Aceh Panwaslih's decision also contradicts Article 462 of the Election Law which states that the Aceh KPU/KIP must follow up on the Aceh Bawaslu/Panwaslih decision no later than 3 (three) days after the decision is read out.

Article 469 of the Election Law stipulates that the decision of the Bawaslu Adjudication session is a decision that is final and binding, except for disputes related to the election process;

1. Verification of the Election Contesting Political Parties;
2. Determination of the list of permanent candidates for members of DPR, DPD, Provincial DPRD, and Regency/Municipal DPRD. and;
3. Determination of Candidate Pairs.

By delaying and not following up immediately and not even filing a lawsuit to the Administrative Court after the 3 (three) day limit stipulated by the Election Law, it is very clear that the Aceh KIP has taken actions that are beyond the limits and violated existing regulations. In addition, the binding power of the Bawaslu Adjudication decision as regulated in the Election Law is also questionable, whether it is true that the Bawaslu Adjudication decision is final and binding or not and if there is binding force, what are the consequences of the Aceh KIP's action not following up on the decision beyond the stipulated time limit. specified in the Election Law. The act of delaying the KPU and the Aceh KIP's courage not to follow up on the decision of the Aceh Panwaslih shows the weakness of the Bawaslu decision to be able to bind the parties to comply with the decision. The phrase Bawaslu's decision is final and binding becomes meaningless.

Reflecting on the experience of dispute resolution in the past election process, which was not easy. It is proven by the many chaos in the election that started with the decision of Bawaslu and its staff in resolving the very complex 2019 election disputes, of course, the dispute resolution of the election process is not easy. For this reason, the author is interested in writing this article with the title Implementation of Electoral Dispute Resolution (Edr) In The Settlement of Election Process Disputes By Bawaslu.

Method

Legal research is a scientific activity based on certain methods, systematics, and thoughts that aim to study one or several certain legal phenomena, by analyzing them. the environments it faces.¹⁰ So that the legal research method is a scientific activity based on method, systematics, which is also based on analysis and construction, which is carried out methodologically and consistently.

1. Research Type

The type of research used in this research is the research method, normative. Normative legal research is to examine laws that are conceptualized as norms or rules that apply in society, and become a reference for everyone's behavior. Usually normative legal research that is examined is only library materials or secondary data, which includes primary, secondary and tertiary legal materials.¹¹

2. Types and Techniques of Data Collection

Data is the result of research, either in the form of factors or numbers that can be used as material for an information. In this study, the type of data used is the type of secondary data. The type of secondary data is data obtained from the results of a literature review or a review of various literatures or library materials related to research problems or materials which are often referred to as legal materials.¹² In terms of binding strength, secondary data are classified into:

a. Primary legal materials

Primary legal materials are legal materials that are authoritative, meaning they have authority. Primary legal materials consist of legislation, notes or minutes in the making of legislation, official records and judges' decisions.¹³ The primary legal materials used in this writing are:

The 1945 Constitution of the Republic of Indonesia.

Law Number 7 of 2017 concerning General Elections.

Bawaslu Regulation of the Republic of Indonesia Number 18 of 2018 concerning Amendments to Regulation of the Election Supervisory Body Number 18 of 2017 concerning Procedures for Settlement of Disputes in the General Election Process.

Regulation of the General Election Commission of the Republic of Indonesia Number 20 of 2018 concerning the Nomination of Members of the House of Representatives,

Provincial People's Representative Council, Regency/City Regional People's Representative Council.

Regulation of the Honorary Council of General Election Organizers of the Republic of Indonesia Number 2 of 2017 concerning the Code of Ethics and Code of Conduct for General Election Organizers.

Decision of the General Elections Supervisory Body of the Republic of Indonesia, Dispute Resolution of the General Election Process Register Number: 001/PS/Bawaslu-Prov.AC/VII/2018.

b. Secondary Legal Material

Secondary legal materials are all publications on law that are not official documents.¹⁴ The publications in question are publications on law including texts, legal dictionaries, legal journals, and comments on court decisions.¹⁵ Secondary legal materials used in this writing are various legal libraries, namely legal books or journals containing basic principles (legal principles), views of legal experts (doctrine) in the form of all publications on law.

c. Non-Legal Material

Non-legal materials are supporting materials other than primary and secondary legal materials as complementary materials not the main ones and provide additional instructions for the legal materials the author uses.¹⁶ Such as the Big Indonesian Dictionary (KBBI).

3. Research Approach

In legal research there are several approaches. With this approach, researchers will get information from various aspects regarding the issue that is being tried to answer.¹⁷ In legal research, it is known that there are 5 (five) kinds of legal research approaches, namely the statutory approach, historical approach and historical approach. Approach), a comparative approach (comparative approach), a case approach (case approach), and a conceptual approach (conceptual approach).

In this study, the legal approach (statue approach) in the normative legal method will be used. The legal approach (statue approach) is an approach taken by examining all laws and regulations related to the legal issue being studied, namely the laws and regulations relating to the resolution of election verification disputes through the Bawaslu Adjudication session.

4. Nature of Research

In this study, the research specifications used are descriptive specifications. In this descriptive research will provide arguments for the results obtained through research sources.

The research sources are the result of the development of the mind based on a normative approach to positive law that applies to the case being studied. The argument is in the form of an assessment of true or wrong, or what should be according to the law against the facts or legal events from the results of the research.

5. Data Analysis Techniques

Data analysis technique is an activity in research in the form of conducting a study or review of the results of data processing assisted by theories that have been obtained previously. In simple terms, this data analysis is referred to as the activity of providing a study, which can mean opposing, criticizing, supporting, adding or commenting and then making a conclusion on the results of the research with the help of the theory that has been mastered. The analysis technique that will be carried out in this study is a qualitative data analysis technique, namely qualitative research which emphasizes the depth of the data obtained by the researcher. In addition, process and meaning (subject perspective) are emphasized in qualitative research. The theoretical basis is used as a guide so that the research focus is in accordance with the facts on the ground. In addition, the theoretical basis

is also useful for providing an overview of the research background and as a material for discussing research results.

Results and Discussions

1. The power of Bawaslu's decision

The author conducts this research by raising the issue of how the force of law binds the adjudication decision of the election supervisory body in the 2019 election process dispute, with a case study on the actions of the Aceh Independent Election Commission (KIP) which delayed the Bawaslu Adjudication decision related to the dispute resolution of Abdullah Puteh who did not pass as a DPD RI balloon as a result of the issuance of General Election Commission (PKPU) Regulation No. 20 year 2018.

The Republic of Indonesia is a country based on democracy, the 1945 Constitution of the Republic of Indonesia has regulated that sovereignty is in the hands of the people and implemented according to the 1945 Constitution of the Republic of Indonesia. Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia is the legal basis for the implementation of a democratic system in Indonesia where the highest power is in the hands of the people. The basic principle of a democratic state is to give every citizen the right to be active in the political process. To be able to realize the mandate of the 1945 Constitution of the Republic of Indonesia concerning the exercise of supreme power in the hands of the people and within the framework of democracy, it is by holding regular general elections with the principles of being direct, general, free, honest, confidential, and fair. Elections are a mandate from the constitution that must be carried out by the government, in terms of ensuring and protecting the implementation of people's sovereignty in channeling their political rights. One of the basic principles of a democratic legal state is the existence of a fair guarantee for the people in making choices about state leaders and representatives who will fight for their interests.

The 1945 Constitution of the Republic of Indonesia does not clearly regulate the rules regarding the implementation of the General Election. Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia contains abstract rules regarding granting supreme power to the people. The mandate of Article 1 paragraph (2) was then concreted by holding general elections which are held every 5 years. Throughout the history of the founding of the Indonesian state, elections in Indonesia have been held 11 times, starting in 1955, 1971, 1977, 1982, 1987, 1992, 1997, 1999, 2004, 2009, and 2014.

Every general election that has been held has a different legal basis. The difference in the legal basis is caused by the development of science and changes in social and political conditions in the midst of society. Prior to the reform in 1999, the holding of general elections was considered full of game intrigues believed to be carried out by the authorities, and the elections held were considered far from democratic values, in every election the same party always won and the votes won by the Election participants always provide a significant distance.

Post-reform, the rules regarding the holding of general elections continue to change following dynamic social and political conditions. The elections held in 1999, 2004, 2009, 2014, and 2019 had different legal grounds. In the 2014 election, there were 4 laws related to elections, such as Law Number 42 of 2008 concerning the Election of President and Vice President, Law Number 2 of 2011 concerning Political Parties, Law Number 15 of 2011 concerning Election Organizers, and Law Number 8 of 2012 concerning Elections for members of DPR, DPD, and DPRD.

2. The nature of the decision binding adjudication

In the implementation of the post-reform elections that have taken place from 1999 to 2019, there have always been election problems related to administrative disputes, electoral process disputes, and disputes over election results. Disputes that occur in every general election are unavoidable, so to ensure an election that runs according to its principles, it is deemed necessary to have an institution that has the authority to resolve disputes that occur in the general election. In the 2014 election, the authority for dispute resolution rests with the Administrative Court and the Constitutional Court (MK).

The Administrative Court is given the authority to resolve disputes related to administrative disputes and the election process, while the Constitutional Court has the authority to resolve disputes related to election results. In the 2019 Election and based on Article 95 letter d of the Election Law, it regulates the authority of the Election Supervisory Body (Bawaslu) as the election organizer whose task is to oversee the election process as well as one of the institutions authorized to receive reports, examine, conduct mediation and adjudication and decide on the resolution of election disputes. . So if it is tied to the theory of authority, the authority of Bawaslu which can take action on the resolution of election disputes is obtained through attribution which is because that authority is given through law.

Disputes that are within the authority of Bawaslu to be resolved are election administrative disputes and election process disputes. Election administrative disputes are election disputes related to procedures, procedures, or mechanisms related to the administration of the election (which are not related to criminal acts).

Whereas election process disputes are disputes that occur between election participants and disputes that occur between participants and election organizers, election process disputes can occur due to the issuance of KPU decisions which are felt to be inconsistent with existing regulations and are detrimental to one party. In the settlement of disputes over the election process, the candidate participants/election participants report to Bawaslu by submitting an application containing the name and address of the applicant, the respondent (election participant/election organizer), and the KPU's decision which is the cause of the dispute.

Bawaslu examines and decides on disputes over the election process no later than 12 days after the application is received. Bawaslu in carrying out dispute resolution of the election process through stages; Receive and review applications for dispute resolution in the election process, and; Bringing the disputing parties together and conducting mediation or consensus deliberation to reach an agreement.

If no agreement is found in mediation, Bawaslu will process the settlement of election disputes through an Adjudication session. Article 469 of the Election Law explains that Bawaslu Adjudication decisions regarding the resolution of electoral process disputes are final and binding decisions, except decisions on election process disputes relating to:

1. Verification of the political parties participating in the General Election;
2. Determination of the permanent list of candidates for members, DPR, DPD, Provincial DPRD, and Regency/Municipal DPRD; and;
3. Determination of candidate pairs.

Furthermore, if the decision issued by Bawaslu is not accepted by the parties, then the parties can submit legal remedies to the Administrative Court. Decisions issued by Bawaslu must be followed up by the KPU no later than 3 (three) working days from the date the decision was read out. The KPU is obliged to follow up on the Bawaslu decision by issuing a KPU decision with the content of accepting or rejecting it and taking legal action to the Administrative Court. If the KPU or election contestants do not follow up on the Bawaslu decision, then Bawaslu can complain to the relevant parties to the Election Organizers Honorary Council (DKPP).

In practice, the force of law to bind the Bawaslu Adjudication decisions in the dispute resolution of the election process becomes a big question mark. As happened in the case that the author adopted in this study. After the enactment of the General Election Commission Regulation (PKPU) Number 20 of 2018 which contains a prohibition for former convicted criminals from running for office in the 2019 General Election, this has caused problems. As a result of the implementation of PKPU by the KPU, Abdullah Puteh, a candidate for the Regional Representative Council (DPD) of the Republic of Indonesia, did not meet the requirements (TMS) and was not included in the provisional list of candidates (DCS) and resulted in him being unable to participate in the 2019 General Election as a candidate for the DPR. Regional Representative.

One of the names that was declared by TMS and failed to become a legislative candidate in the 2019 election was Abdullah Puteh, who is also running as a candidate for the DPD RI. In 2004, Abdullah Puteh was sentenced to 10 years in prison as a result of the corruption he committed while serving as the Governor of Aceh for the 2000-2005 period. As a result of cases that have been experienced Abdullah Puteh caused himself to be declared TMS and not included in the exclusion from DCS. Before PKPU No. 20 of 2018 was enforced, the ban on former corrupt convicts did not become a barrier for someone to become a legislative candidate in the 2019 Election. As a result of the enactment of PKPU No. 20 of 2018 there were disputes in several areas, and one of them was in Aceh. Abdullah Puteh felt aggrieved as a result of PKPU No. 20 of 2018, so Abdullah Puteh filed a lawsuit against the Aceh Panwaslih due to the Aceh KIP decision which declared himself TMS and could not be a candidate for the 2019 DPD RI Election.

Abdullah Puteh submitted a request for dispute resolution of the election process to the Aceh Panwaslih with the object of the request for a decision letter from the Aceh KIP which declared itself TMS and was not included in the DCS. In accordance with Article 468 paragraph (3) of the Election Law, the Aceh Panwaslih received and reviewed Abdullah Puteh's request and then brought it together with the Aceh KIP to reach an agreement at the mediation stage. In the mediation stage carried out by the Aceh Panwaslih by bringing together Abdullah Puteh and the Aceh KIP, they did not find a common ground so that there was no agreement that the Aceh Panwaslih could decide. In accordance with Article 468 paragraph (4), the settlement of the dispute must be decided through an Adjudication session. Through the Adjudication session, the Aceh Panwaslih decided to accept Abdullah Puteh's application and stated that he had fulfilled the requirements so that he could be included in the DCS and was entitled to become a DPD RI candidate in the 2019 Election. This is not the authority of the Aceh KIP, so if it is related to the decision theory, the Aceh KIP is *Onbevoegdheid ratione materiae* or a decision that is null and void. In its decision, the Aceh Panwaslih ordered KIP Aceh to implement the decision.

Referring to the provisions in Article 469 of the Election Law, Bawaslu's decision relating to the determination of DCS for members of the DPR, DPD, Provincial DPRD, and Regency/Municipal DPRD if the Bawaslu decision is not accepted by the parties, the parties can submit legal remedies to the Administrative Court. Furthermore, Article 462 of the Election Law expressly stipulates that KPU, Regency/Municipal KPUD must follow up on the Bawaslu decision no later than 3 (three) days from the date the decision is read out. So based on the provisions contained in the Election Law, the actions that can be taken by the Aceh KIP are only to accept the decision of the Aceh Panwaslih by implementing its decision or rejecting it and submitting legal remedies to the Administrative Court. However, instead of accepting or rejecting the Aceh Panwaslih's decision, the RI KPU ordered the Aceh KIP to postpone following up on the Aceh Panwaslih's decision through the RI KPU circular letter Number 991 of 2018, until there was a Supreme Court decision regarding the judicial review of PKPU Number 20 of 2018.

The KPU's obligation to follow up on the Bawaslu decision is to issue a new KPU decision, which contains whether to accept or reject it and if it refuses, it must take legal action to the Administrative Court. The action of the Indonesian KPU in ordering Aceh's KIP to delay following up on the decision of the Aceh Panwaslih has

violated the norms contained in the Election Law. In the Election Law, there are no rules that give authority to voters

KPU to postpone. Actions that can be taken by the KPU in following up on the Bawaslu decision are only to issue a KPU decision that accepts the Bawaslu decision or rejects the Bawaslu decision and takes legal action to the Administrative Court. The actions of the KPU which dared to delay following up on the Bawaslu decision had violated the rules in the Election Law. Based on Article 464 of the Election Law, if the KPU does not follow up on the Bawaslu decision, Bawaslu can complain to DKPP for examination. In addition, the KPU's actions have also violated the provisions of Article 518 of the Election Law which expressly stipulates that any KPU member who does not follow up on Bawaslu findings relating to the implementation of verification of administrative completeness of candidates for members of DPR, DPD, Provincial DPRD, and Regency/Municipal DPRD. shall be sentenced to a maximum imprisonment of 3 (three) years and a maximum fine of Rp. 36,000,000 (thirty six million rupiah).

Through the KPU RI circular letter number 991 of 2018, the Indonesian KPU ordered all Aceh KPUD/KIP disputes at the Aceh Bawaslu/Panwaslih to delay following up on the Aceh Bawaslu/Panwaslih decisions. Through the circular letter, the act of delaying the implementation of the Bawaslu decision is not an individual action. With the issuance of the circular letter, it is clear that the legal force of the Bawaslu decision has not been able to bind the parties because the sanctions related to not following up on the Bawaslu decision are still not firm.

Article 464 of the Election Law explains that the KPU can be reported by Bawaslu to DKPP if it does not follow up on the Bawaslu decision. In this article, it only stipulates that Bawaslu will become the reporter if the decision is not followed up, even though in practice the parties who will be harmed by not following up on the Bawaslu decision are the disputing parties, not Bawaslu, so the authority to report is more appropriate to the aggrieved parties. In addition, the reporting that is complained to DKPP is only related to the code of ethics. DKPP cannot order KPU to follow up or give effect to the substance of the problem. DKPP only examines and decides on sanctions related to the code of ethics for election organizers. The sanctions that can be given by the DKPP also seem less firm, in the DKPP RI Regulation Number 2 of 2017 concerning the code of ethics and behavioral guidelines for general election organizers, the sanctions imposed by the DKPP must go through convoluted stages. The provision of sanctions must go through a plenary meeting with DKPP members in deliberation. If in the deliberation there is no common ground, the sanction cannot be imposed.

Furthermore, Article 518 of the Election Law provides for criminal sanctions for KPU members who do not follow up on the Bawaslu decision. However, the article only regulates individual actions. In addition, to be able to examine KPU members who violate the provisions of Article 518 of the Election Law, the police cannot take action without reporting. If there are KPU members who do not follow up on Bawaslu's findings, but no party reports the KPU members because they do not follow up on the Bawaslu decision, the members who have taken these actions cannot be processed and punished with the provisions contained in Article 518.

From the 2 (two) articles discussed above, it is clear that the actions of the KPU which dared to violate the regulations contained in the Election Law were the result of the indecision of the rules governing the binding power of the Bawaslu Adjudication decisions. Sanctions for not following up on decisions and rules contained in the Election Law still do not confirm the position of the power of Bawaslu's decisions. The lack of clarity on the binding powers and the lack of firmness of the rules regarding the strength of the Bawaslu decisions have left a gap for the KPU to not respect the Bawaslu decisions. Because, from the date the Bawaslu decision was stipulated until the implementation of the Bawaslu decision was postponed, which was waiting for the Supreme Court's decision in connection with the PKPU no. 20 in 2018 reached 21 days. Within the period of 21 days there was no action from any party to give sanctions to the KPU, even though it is very clear that the KPU has violated the provisions of the Election Law which requires to follow up on the Bawaslu decision within 3 (three) days.

In addition to rules that do not explicitly regulate sanctions for not following up on Bawaslu decisions, there are also articles in the Election Law that do not give clear powers to Bawaslu decisions. In paragraph (1) Article 469 of the Election Law there is a phrase that explains that the decision of Bawaslu regarding dispute resolution in the election process is final and binding. However, in the next phrase the final and binding force is countered by the word "except" the decision on election process disputes relating to:

1. Verification of the Political Parties participating in the Election;
2. Determination of the permanent list of candidates for members of DPR, DPD, Provincial DPRD, and Regency/Municipal DPRD; and,
3. Determination of candidate pairs.

In the initial phrase it was clear that the power of Bawaslu's decision was final and binding, but in subsequent phrases it seemed as if that power had been abolished. The word except in the article provides ambiguity regarding the binding power of the Bawaslu decision.

3. Mechanism of adjudication settlement for 2019 General Election

In the settlement of election disputes as regulated in the Election Law, there are 2 categories of disputes that can be resolved through Bawaslu, namely:

1. Election Administrative Dispute, resulting from a violation of the procedures, procedures, or mechanisms related to the administration of the election. In the settlement of election administrative disputes. Bawaslu

receives reports by examining and reviewing and making recommendations on the results of its studies regarding election administrative violations. In the process of resolving election administrative disputes, there are no Mediation and Adjudication stages. Bawaslu works after the report/finding is given a period of 14 days ago to decide, and decide on a decision in the form of:

- 1 Improvement of the administration of procedures, procedures, or mechanisms in accordance with the laws and regulations;
- 2 written warning;
- 3 Not carried out at certain stages in the Implementation of Elections; and
- 4 Other administrative sanctions in accordance with the provisions of Law no. 7 years 2017.

2. Election Process Dispute, this dispute occurs between Election Contestants and other Election contestants or disputes that occur between Election contestants and the Election Organizer (KPU), Election process disputes result from the issuance of KPU decisions which are deemed detrimental to certain parties and have violated the provisions contained in the in the Election Law. In this election process dispute resolution, Bawaslu is given the authority to examine, review, and decide on electoral process disputes through the Mediation and Adjudication stages if no agreement is reached in mediation.

From the 2 (two) categories of disputes that can be resolved by Bawaslu above, it can be seen that only disputes over the election process require mediation and adjudication stages. Decisions issued through the Bawaslu Adjudication stage are dispute decisions related to the election process, so the sentence in Article 469 which states that the Bawaslu Decision is final and binding is a sentence that gives position or power to the Bawaslu Adjudication decision is final. However, this power is immediately removed in the next phrase which gives exceptions to certain matters. Basically, the dispute resolution of the election process must be related to the verification of the political parties participating in the general election, the determination of the DCT of members of the DPR, DPD, Provincial DPRD, and Regency/Municipal DPRD or the determination of pairs of candidates, so the decision on the Adjudication of Bawaslu will never be final and binding because the adjudication decision made Bawaslu issued must be related to things that are excluded in the Election Law.

Conclusions

Based on the results of the discussion in the previous chapter, it can be concluded as follows:

The power of Bawaslu's decision

1. The legal force to bind the Bawaslu decision as regulated in Law No. 7 of 2017 concerning General Elections (Election Law) is still not very firm. This can be seen from the actions of the KPU which dared to delay following up on the Bawaslu decision for more than 3 (three) days. In addition, the final and binding power of Bawaslu's decision on disputes over the election process is still unclear, because disputes that are in the general election process must be related to the verification of political parties participating in the election, the determination of the permanent list of candidates for members of the DPR, DPD, Provincial DPRD, and DPRD. Regency/City, and determination of candidate pairs.
2. The nature of the decision binding adjudication The parties who do not accept the Bawaslu's decision may file a legal action to the Administrative Court. So the power of the Bawaslu decision will never be binding because the Bawaslu decision must be related to these things. The above matters are also exacerbated by the sanctions regulated in the Election Law,
3. Election adjudication settlement mechanism In general, the dispute resolution mechanism and process is regulated in articles 466 to 469 of Law 7 of 2017 and in more detail is regulated by Perbawaslu 5 of 2019 regarding procedures for resolving disputes in the General Election process. Furthermore, the criminal acts that are regulated are only individual actions, while in reality the Aceh YaKIP will not act individually, but there is an agreement from the institution which then regulates all KPU levels at the center and in the regions.

Suggestion

Bawaslu must increasingly prepare infrastructure to maintain the effectiveness of dispute resolution and strengthen the capacity of Bawaslu at the provincial, district/city levels as a mediator and adjudicator function. Considering that the election process dispute resolution carried out by Bawaslu is in an effort to resolve horizontal conflicts, which are prone to be accompanied by violence. It is a challenge for Bawaslu to prove that Bawaslu is able to carry out its role as a mediator and adjudicator as the authority mandated by the election law for the sake of legitimacy in resolving legal conflicts.

Bawaslu must be able to answer concerns that the judiciary institution by Bawaslu lacks the capacity and credibility in resolving disputes in the electoral process or stages. Answering and proving this challenge is certainly not easy. And one of the requirements to be able to answer this challenge is that the Bawaslu, Provincial Bawaslu and Regency/City Bawaslu must be filled by people who have a scientific background in the field of elections and election law. Until there are no more decisions on dispute resolution in the election process which actually creates new problems in the election stage.

Provincial Bawaslu and Regency/City Bawaslu which are also mandated in dispute resolution need to optimize the learning process to improve their ability to resolve dispute processes in their respective regions so that

Bawaslu as an Election Court can one day become actual. And Bawaslu can play a decisive role in the success of the Indonesian election

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