

## **DISPUTE OF VILLAGE HEAD ELECTION PROCESS (STUDY IN INO JAYA VILLAGE, EAST HALMAHERA DISTRICT)**

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### ***Abstract***

*Legal problems in the village head election in the Ino Jaya Village arise when the village head candidate who gets the most votes is not sworn in as the elected candidate. On the contrary, the village head candidate who gets the second most votes is determined and sworn in as the elected village head candidate. In contrast, the norm in Law Number 6 of 2014 concerning Villages, article 37 paragraph (1), explicitly states that the candidate for the elected village head is the one who gets the most votes. This study analyzed the arrangement of the dispute resolution authority in the village head election process for non-fulfillment of the nomination requirements after the election of the village head candidate. This study is normative legal research using statute, concept, and case approaches. The results showed that the election committee at the regency level was not authorized to resolve disputes after the village head candidate was elected. The dispute resolution that led to the disqualification of the village head candidate who got the most votes by the regency-level election committee produced legal uncertainty and harmed the sense of justice. As the ius constituendum, the dispute resolution process for fulfilling the nomination requirements after the election of a village head candidate needs to be regulated explicitly in the legislation by the judiciary to implement a village head election with fair legal certainty.*

**Keyword:** *Dispute, Election, Village Head*

## INTRODUCTION

Almost all political regimes around the world that claim to be democracies must hold general elections<sup>1</sup>. There are two models of democracy based on the way government is run by the people, namely direct democracy and representative democracy<sup>2</sup>.

Indonesia adheres to a democratic system by placing sovereignty in the hands of the people which is manifested through direct general elections every five years to elect a president and vice president, regional heads and members of the people's representative council both central and provincial and district/city level representatives as well as councils. regional representative. The four models of leadership change through general elections are carried out simultaneously in the same year by involving the community as voters. Apart from that, direct elections were also carried out to elect leaders at the village level, namely the village head, a routine for organizing Pilkades which has been implemented in Indonesia for quite a long time.

Voting and being elected in a democracy is a fundamental right of every citizen guaranteed in the constitution, but at the implementation level the use of the right to vote is limited by conditions according to laws and regulations. On the other hand elections without participation can degrade the democratic process. Community participation in elections is one of the important pillars of democratic principles<sup>3</sup>, even Aristotle stated that the general characteristic of democracy is the election of officials by all for all<sup>4</sup>. Simply put, democracy is government of the people, by the people and for the people.

Ideally, democratic parties are carried out by upholding the principles of fair and just administration, but in practice fraud and maladministration still occur, such as abuse of authority, neglect of legal obligations and procedural deviations involving election administrators and authorities to win one of the candidates. These actions can undermine the democratic election process and give rise to public distrust of the election results and have the potential to create public apathy to participate in every election momentum. In fact, the spirit of the birth of law number 6 of 2014 concerning Villages gave birth to local leaders in a democratic manner who are rooted and gain community legitimacy.

The Pilkades that took place in Ino Village was a manifestation of the implementation of democracy which involved community voters on November 25, 2022. The Pilkades were attended by three candidates, the election results were won by Yosefnat Maudul, candidate number 01 with the acquisition of 213 valid votes, then Syarif Hanafi, candidate serial number 02 by obtaining a total of 143 valid votes, while candidate number 03 Robert Barani received 50 valid votes. After the Pilkades, the candidate for Village Head Sarif Hanafi reported Yosefnat Maudul as the candidate with the most votes in connection with alleged violations at the nomination stage. Yosefnat Maudul was considered ineligible as a candidate for village head because at the time of registration he did not show the original diploma and could not be proven by a certificate substitute from the school of origin at the time of registration for the candidate for Village Head.

The District-level Pilkades Dispute Settlement Committee finally received and processed the reporting report and came to a decision that Yosefnat Maudul (candidate number 01), whose principal was the candidate who received the most votes, was declared ineligible as a candidate and his candidacy was declared invalid and null and void. Even though in the process stages there were no reports or findings previously submitted to the Pilkades organizers, the report was only made after it was known who had won the most votes from the results of the Pilkades in Ino Jaya village. The legal question that is the focus of this research is how to regulate the authority to resolve disputes over the Pilkades process for non-fulfillment of the nomination requirements after the election of a village head candidate. This research is a normative legal research with a statutory approach (statute

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<sup>1</sup> Muhammad Najib and Dkk, *Pegawasan Pemilu Problem Dan Tantangan Bawaslu Provinsi DIY* (yogyakarta, 2014).

<sup>2</sup> Janedjri. M. Gaffar, *Demokrasi Dan Pemilu Di Indonesia* (Jakarta: Konstitusi Press, 2013).

<sup>3</sup> Nurul Huda, *Hukum Partai Politik Dan Pemilu Di Indonesia* (Bandung: Fokus Media, 2018).

<sup>4</sup> Harjono, *Tranformasi Demokrasi* (Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, 2009).

<sup>5</sup> Sutoro Eko, *Regulasi Baru Semangat Baru, Ide, Misi, Dan Semangan UU Desa* (Jakarta: Kementerian PDPTT, 2014).

approach), concept approach (concept approach) and case approach (case approach) in the form of a live case study. Data were analyzed by descriptive qualitative.

## **RESEARCH METHODS**

The type of research methods used in this study is empirical normative legal research or what is called legal research which uses primary data sources, namely data obtained directly from the community as the first source through field research, which is carried out either through (observation), interviews. Legal research is conducted to find solutions to legal issues that arise. Therefore, legal research is a research within the framework of know-how. Within the law. The result achieved is to provide a description of what should be the issue raised.

## **RESULT AND DISCUSSION**

### ***Requirements for Candidates in the Perspective of Legislation***

The provisions of the existing laws and regulations governing the requirements for candidates for Village Heads and requirements for candidacy, are broadly regulated in 4 (four) forms of regulations. First, namely in the form of Law Number 6 of 2014 concerning Villages (UU concerning Villages). Second, Government Regulation Number 47 of 2015 concerning Amendments to Government Regulation Number 43 of 2014 concerning Regulations for Implementing Law Number 6 of 2014 concerning Villages (PP 47/2015). Third, in the form of Minister of Home Affairs Regulation Number 112 of 2014<sup>6</sup> as amended by Permendagri Number 72 of 2020 concerning the Second Amendment to Minister of Home Affairs Regulation Number 112 of 2014 concerning Pilkades (Permendagri concerning Pilkades). And the fourth, East Halmahera Regent Regulation Number 14 of 2021 Concerning Guidelines for Simultaneous Pilkades Implementation (Regent Regulation 14/2021).

The regulation regarding the requirements for candidates for Village Heads in the Law on Villages is contained in Article 33 letter d. Candidates for Village Heads must meet the requirements in point 4: "Education at least has completed junior high school or equivalent". Regulations at the law level do not provide detailed guidelines regarding the types and administrative documents for registering prospective Village Head candidates. The Law on Villages only lists the requirements for a candidate for village head, one of whom must have at least a junior high school education. On another aspect, if you want to add other conditions, they must be regulated in a Regional Regulation. It is different when referring to PP 47/2015 as the executor of the Law on Villages which explicitly regulates the type of completeness of the requirements for a Village Head candidate.

Completeness of the candidate requirements according to PP 47/2015 Article 41 paragraph (3) the stages referred to in paragraph (1) letter b consist of activities: letter b. "checking the completeness of administrative requirements, clarification, and determining and announcing the names of candidates within 20 (twenty) days". Further explanation of paragraph (3) letter b states that what is meant by "complete administrative requirements" are documents regarding the administrative requirements of prospective candidates, including, among other things, consisting of "formal education certificates from elementary level to the last diploma legalized by an authorized official or letter statement from the competent authority". With regard to the

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<sup>6</sup> Pemerintah Republik Indonesia, *Peraturan Menteri Dalam Negeri Nomor 112 Tahun 2014 Sebagaimana Telah Dubah Dengan Peraturan Menteri Dalam Negeri Nomor 72 Tahun 2020 Tentang Perubahan Kedua Atas Peraturan Menteri Dalam Negeri Nomor 112 Tahun 2014 Tentang Pemilihan Kepala Desa* (Indonesia: Lembaran Negara Republik Indonesia, 2014).

requirements for candidates for Village Heads, important matters related to the subject matter of East Hamahera Regency Dispute Resolution emphasize that the documents required for candidates for Village Heads are in the form of "formal education certificates from elementary level to the last certificate legalized by the authorized official or a statement letter from an official who authority" due to the fact that Yosefnat Maudul (candidate serial number 01) did not use a diploma when registering to become a candidate for village head but instead used a certificate in lieu of a diploma.

The third legal instrument is Permendagri 72/2020, the requirements for a Village Head candidate are listed in article 21 "Village head candidates meet the requirements: "have at least a junior high school education or equivalent". The norms of Article 21 letter d of Permendagri 72/2020 are the same/in line with the norms in Article 33 of Law 6/2014<sup>7</sup> concerning Villages which require candidates for village heads to have at least a junior high school education or equivalent. If we further examine the Permendagri regarding Pilkades, it turns out that there are no detailed arrangements regarding the types and administrative documents at the time of registration of prospective Village Head candidates. Although there is no mention of the type of candidacy administration document, Article 22 instructs the election committee to conduct an examination of the candidate's requirements regarding the completeness and validity of candidacy administration documents. This is understandable because related to the types of administrative document requirements for prospective candidates have been explicitly regulated in Article 41 Paragraph (1), Paragraph (3) PP 47/2015<sup>8</sup> amendments to PP 43/2014 as described above. In the hierarchy of laws and regulations, the norms that have been regulated in higher regulations (PP) become a reference for the regulations below them, so there is no need to regulate them again in lower regulatory norms (Permendagri) in terms of the same content material.

The fourth legal instrument related to the requirements for Candidates for Village Heads is East Halmahera Regent Regulation 14/2021 concerning Guidelines for Simultaneous Pilkades Implementation. Candidates for Village Heads Must Meet Requirements Have a minimum education of junior high school or equivalent<sup>9</sup>. Furthermore, the Prospective Village Head submits a letter of registration in writing to the PPTD accompanied by the following requirements: a photocopy of the last education diploma, at least a junior high school education or equivalent which is legalized by the authorized official, as well as addressing the original. Whereas in the event that the prospective candidate cannot show the original due to proper reasons, it can be proven by a Police Certificate and a Certificate of Substitute Diploma from the School of Origin<sup>10</sup>.

The norms of Article 28 Paragraph (1) letter d of the Regent Regulation 14/2021 are in line with Article 33 letter d of the Village Law and Article 21 letter d of Permendagri 72/2020 which regulates the requirements for candidates. While the norms governing candidacy requirements are attached "a photocopy of the last educational certificate with at least a junior high school education or equivalent legalized by the authorized official, and showing the original". In fact, this norm partially adopts from the Elucidation of Article 41 Paragraph (3) letter b of PP 47/2015 amendments to PP 43/2014 which states "formal education certificates from elementary level to

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<sup>7</sup> Pemerintah Republik Indonesia, *Undang-Undang Nomor 6 Tahun 2014 Tentang Desa* (Indonesia: Lembaran Negara Republik Indonesia, 2014).

<sup>8</sup> Pemerintah Republik Indonesia, *Peraturan Pemerintah Nomor 47 Tahun 2015 Tentang Perubahan Atas Peraturan Pemerintah Nomor 43 Tahun 2014 Tentang Peraturan Pelaksanaan Undang-Undang Nomor 6 Tahun 2014 Tentang Desa* (Lembaran Negara Republik Indonesia, 2015).

<sup>9</sup> Pasal 41 Ayat (1), Ayat (3) Pemerintah Daerah Halmahera Timur, *Peraturan Bupati Halmahera Timur Nomor 14 Tahun 2021 Tentang Pedoman Pelaksanaan Pilkades Secara Serentak* (Indonesia: Lembaran Negara Republik Indonesia, 2021).

<sup>10</sup> Pasal 36, Pemerintah Daerah Halmahera Timur.

the last diploma legalized by the competent authority..." Norms Article 36 letter d Regent Regulation 14/2021 in addition to requiring proof of diploma legalized by the authorized official adds the phrase "and shows the original". Whereas the norms of Article 41 Paragraph (3) letter b PP 47/2015 provide an alternative with the phrase "or". The first alternative when registering a candidate for Village Head includes a document "formal education certificate from elementary level to the last diploma which is legalized by the competent authority". While the second alternative can be in the form of a "statement letter from an authorized official". The authorized official in the context of the statement "graduated junior high school or equivalent" is the Education Office, the Education Unit under the Ministry of Education Environment. A statement from an authorized official can at least ensure that the person concerned has actually graduated from school based on evidence and known by the authorized official.

It is further explained in the Regent Regulation 14/2021 that if a Prospective Candidate cannot show the original due to proper reasons, then this can be proven by a Police Certificate and a Certificate of Substitute Diploma from the School of Origin." This provision provides a way out (emergency exit) when there is a condition where the Prospective Village Head is unable to show the original diploma, namely with the first 2 (two) proofs of Police Certificate and the second Certificate of Substitute Certificate from Original School.

Legally, there is an addition to the norms for registration requirements stipulated in the Regent Regulation 14/2021, namely the addition of the phrase "Certificate of Substitute Diploma from School of Origin", which was previously not mentioned in the Village Law. Related to the addition of norms at the level of regulation under the law, it can be analyzed with the theoretical approach of Hans Kelsen's legendary Stufenbautheorie, where legal norms are tiered and layered in a hierarchy or arrangement, in the sense that a lower norm applies<sup>11</sup>, sourced and based on higher norms, and so on up to the point where the norms that form the basis are hypothetical and fictitious, namely basic norms. Indirectly that a legal norm has a validity period, where the validity period depends on the legal norms above it. If the above legal norms are revoked or abolished, the norms below will become "expired" or revoked and deleted as well. So theoretically it can be explained that a legal norm is upward and downward because it originates from and is based on a higher norm, but it is also downward because it becomes the basis and becomes a source for the legal norms below it. The Regent's Regulation 14/2021 Concerning Guidelines for Simultaneous Pilkades Implementation is more accurately described as an implementing regulation (*autonom satzung*), because hierarchically it is a statutory regulation under the Village Law which has explicitly given attribution authority to the regions to further regulate the requirements for prospective Heads Village Regional Regulation (Perda). Based on the attribution authority of the Law (*formaile gazet*), ideally further arrangements related to additional requirements for Village Head candidates are regulated through Regional Regulations not by District Head Regulations. Nonetheless, Regent Regulation No.14 of 2021 concerning Guidelines for Simultaneous Pilkades Implementation remains valid.

### ***Pilkades Process Dispute Resolution***

Arrangements related to the mechanism for reporting and handling violations in the Pilkades of East Halmahera Regency have been regulated in Regent Regulation No. 14 of 2021 concerning Guidelines for Simultaneous Pilkades, Article 68 stipulates that in the event of a dispute over Pilkades results, the Regent is required to resolve the dispute within 30 (thirty) days from the appointment of the Elected Village Head. Whereas in the event of violations occurring at each stage of the Pilkades, the local village community or Candidates report it to the District-Level

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<sup>11</sup> Jimly Asshiddiqie and Ali Safa'at, *General Theory of Law and State* (Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, 2006).

Pilkades Dispute Resolution Team through the Camat. Reports are submitted in writing containing formal requirements in the form of the identity of the reporter and the reported as well as witnesses, and material requirements in the form of time and place of incident and a description of the incident. Each report is submitted no later than 7 (seven) days after the occurrence of the violation.

Based on the examination of the Regent Regulation 14/2021 above, it can be seen that there are at least two entry points for reporters to submit reports/lawsuits to the Pilkades Dispute Resolution Team. The first is a complaint of alleged violations related to the stages of the Pilkades process (violating the stages), and the second is reporting related to the results of the Pilkades (dispute over results). The two forms of reporting are strictly separated by a time limit for completion, in the case of reports relating to violations that occurred at each stage of the election other than regarding disputes over results, the time for settlement of dispute resolution is no later than 3 (three) days from the date the parties concerned are met<sup>12</sup>. Meanwhile, the settlement of disputes related to Pilkades results is given a deadline of 30 (thirty) days from the appointment of the Elected Village Head. Whether reports related to violations of stages or reports relating to disputes over Pilkades results, the institution authorized to resolve them is the District-Level Pilkades Dispute Resolution Team.

Theoretically, the basic authority of government comes from attribution, delegation and mandate. The authority of the District-Level Pilkades Dispute Resolution Team is based on statutory regulations, in this case the implementing regulations (autonom satzung), namely Regulations. The authority obtained by the District-Level Pilkades Dispute Resolution Team is a form of authority obtained by delegation. In government administration law, the authority obtained by government agencies and/or officials is limited by the period or grace period of authority.<sup>13</sup> If the exercise of authority is carried out beyond the allotted time, it can be qualified as an act of exceeding authority.

One of the principles of organizing Pilkades is that it is carried out in an orderly manner and with legal certainty, so any reports to the District-Level Pilkades Dispute Resolution Team regarding alleged violations in the outcome dispute need to pay attention to the deadline for reporting. Reports submitted after the deadline for filing, namely no later than 7 (seven) days after the violation occurred, should the Regency-Level Pilkades Dispute Resolution Team no longer have to process the report because it has expired, in addition to ensuring the principle of organizing Pilkades in an orderly manner.

As a way out, if there are parties who feel aggrieved due to violations of the Pilkades stages that have passed the deadline, then the institution that can resolve it is by filing a lawsuit to the Court. Settlement through the courts is in line with and in line with the spirit of resolving disputes in East Hamahera Regent Regulation No.14/2021. In theory, the judiciary cannot reject a case submitted to the Court in accordance with the principle of *Ius Curia Novit/Curia Novit Jus*, the judge is deemed to know and understand all laws<sup>14</sup>. On the other hand, the settlement of Pilkades disputes through the judiciary is expected to issue objective decisions<sup>15</sup>. In addition, the settlement of post-election process disputes for Pilkades candidates through the courts can provide legal certainty for the contesting parties and eliminate the ruler's bias towards certain candidates.

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<sup>12</sup> Pasal 70 ayat 6 Pemerintah Daerah Halmahera Timur.

<sup>13</sup> Darda Syahrizal, *Hukum Administrasi Negara & Peradilan Tata Usaha Negara* (Jakarta: Media Pressindo, 2018).

<sup>14</sup> Yahya Harahap, *Hukum Acara Perdata Tentang Gugatan, Persidangan, Penyitaan, Pembuktian Dan Putusan Pengadilan* (Jakarta: Sinar Grafika, 2017).

<sup>15</sup> Fitri Atur Arum and Surur Roiqoh, 'Penyelesaian Perselisihan Pemilihan Kepala Desa Paska Lahirnya Peraturan Tentang Desa', *Jurnal Humani (Hukum Dan Masyarakat Madani)*, 11.2 (2021).

## CONCLUSION

Normatively, arrangements regarding the requirements for candidates and candidacy in the Pilkades contestation have been regulated in detail in laws and regulations. However, at the level of legal interpretation, there are different interpretations that are related to interests. In the concrete case that occurred in the Pilkades in Ino Jaya Village, East Halmahera Regency, the District-level Pilkades Dispute Resolution Team still received and processed disputes that occurred at the nomination stage even though normatively it had passed the reporting submission period. The settlement of process disputes by the election committee at the district level which resulted in the disqualification of the elected village head candidate has created legal uncertainty and injured the community's sense of justice as voters. As an *ius constituendum* dispute resolution process for fulfilling the nomination requirements after the election of a village head candidate needs to be regulated explicitly in laws and regulations through the judiciary so that the Pilkades can be implemented with fair legal certainty.

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