

Professionalism of the Regional General Elections Commission (Komisi Pemilihan Umum Daerah or KPUD) and the Regional Elections Monitoring Agency (Badan Pengawas Pemilihan Umum Daerah or Bawaslu Daerah) in Realizing Quality District Head's Elections

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Abstract

District head's elections as implementation realization of sovereignty of the people undertaken in democratic system, for sure, shall subject to principles and concept of district head's elections. KPUD and Regional Bawaslu as the district head's elections organizers are obliged to execute professional and quality district head's elections based on the 4 (four) conceptual elements of district head's elections as follows: (1) as a means of sovereignty of the people, (2) it is conducted in a direct, general, free and secret as well as honest and fair manner, (3) it is conducted in Unitary State of the Republic of Indonesia, and (4) it is based on Pancasila and the 1945 Constitution of the Republic of Indonesia. Implementation of district head's elections, in reality, is full of various violations, especially for the number of votes obtained by foul manner such as vote distension. This condition is obviously seen by the people showing that KPUD and Regional Bawaslu are not capable in performing their duties as the agency of district head's elections. Definitely, it affects quality of district head's elections or legitimation of the elected district head. In fact, lots of factors affect professionalism of KPUD and Regional Bawaslu such as capability of human resources, low alimony rate compared to their responsibility load, and also integrity of KPUD and Regional Bawaslu. Other factor which has escaped attention is morality of the members of KPUD and Regional Bawaslu.

Keywords: Regional elections, public policy, constitution

1. Introduction

General elections in direct manner conducted by the people become an actualization means of sovereignty of the people in purpose to deliver democratic nation based on the Pancasila and the 1945 Constitution of the Republic of Indonesia. The 1945 Constitution of the Republic of Indonesia Article 1 paragraph (2) states that "Sovereignty is in the hands of the people and is implemented according to this Constitution". General elections which shall be conducted in a direct, general, free, secret, honest, and fair manner may be realized if it is organized by a general election organizer characterizing in integrity, professionalism, and accountability.

Accountability means every engaged party in organizing general elections must be addressed to the implementation of duty and authority to the public politically and judicially. Political accountability means every engaged member in general elections implementation has a duty to explain function and reason behind the taken action to the people. Judicial accountability means that every party which presumably was committed law infringement to the democratic general election principles subjects to law enforcement process (ADAB, 2003: 8-9). Either political or judicial accountability may be well carried out if general elections implementation has a sturdy commitment to integrity and professionalism in carrying out the duty.

Therefore, one of the important prerequisites in general elections implementation in democratic nation is that general elections implementation is organized by independent institution of the government (Ahmad Nadir, 2005: 156). It is embodied in the 1945 Constitution of the Republic of Indonesia Article 22 paragraph (5) outlining that "the general elections shall be organized by a general election commission of a national, permanent, and independent character".

The constitutional mandate in purpose to comply with demand of political life development, society dynamics, and democracy development demands general elections implementation in professional and liable credibility which in the such way may become benchmark of democracy implementation as stated by Rannay (in Muhammad Asfar, 2006: 7) "*No free election, no democracy*"

Specifically for general elections implementation in regional level known as district head's elections (Pemilukada) since reform era to the present, it emerges some problems. One of the emerging problems in district head's elections is involvement of its organizer who stands up to one of the candidate. Indeed, it raises critic from several parties; also, some decision of honorary board of election organizers (DKPP) states that involvement of district head's organizer arises ouster decision of organizer either KPUD or regional oversight committee (Panitia Pengawas or Panwas). It is avowedly admitted by KPU through commissioner of KPU Ferry Kurnia Rizkiyansyah asserting that till recently, independence of KPU commissioner in regional level still indicates partiality to several candidates before the three upcoming district head's elections. Around 90% of commissioners have not behaved as operational institution who works without critic or focus of various parties (Ambon Ekspres Daily, Wednesday, July 31st 2013).

This condition sets a big question on why recruitment to become commissioner of KPUD or

Regional Bawaslu with high qualifying standard is under expectation to have professional KPU and Regional Bawaslu organizers in implementing the duty; unfortunately, almost 90% of district head's elections implementation in Indonesia are in question, either KPUD or Regional Bawaslu, unexpectedly, are unqualified during the district head's elections causing low quality level of the elections.

2. Methods

To answer formulated questions in this study, it applies normative law analysis through 2 kinds of approaches, i.e. legal approach and conceptual approach.

Legal material gathering in the study is conducted by document inventory through library research. Library research is a way to search legal materials or data by analyzing law documents, such as law books, law journals, and legal provision, statues, and also other related statues as follows: (a) primary legal material, (b) secondary legal material, and (c) tertiary legal material.

Applied method for the analysis is qualitative method. By applying qualitative method, analysis or contempt of analysis is conducted to the content of legal provision which related to professionalism of KPU and Regional Bawaslu in realizing quality district head's elections.

3. Findings and Discussion

a. District Head's Elections in Democratic System of Reform Era

District head's election is a new system in politic travel stories of Indonesia along with regime changes from the New Order to the Reform Era. In the Reform Era, all districts heads either the Governors or regents/mayors are voted by direct elections or known as direct democracy. Direct election practice is persuaded will bring the more democratic government into reality and increase acceleration of people's welfare. Direct election gives space for the people to determine their candidate, then accountability of the elected candidates are more liable. Besides, direct district head's election guarantees occurrence of local elite circulation where in such way potential conflict of inter-elite and abuse of power may be minimized.

Smith (in Gregorius Sahdan, 2008: 51) asserts that direct elections for district head and the Regional People's Representative Council (Dewan Perwakilan Rakyat Daerah or DPRD) is prominent requirement to the realization of accountable and responsive local government and resurgence of political equality in local level. Despite of the reality that it is not all of district heads who were elected in direct manner are more accountable and responsive to the people's problems compared to those who were elected by DPRD, however, direct district head's elections which were organized procedurally will be better than indirect elections.

In this context, it emerges an implication when the direct district head's election is just seen as a form of regulatory compliance and demand where democratic procedures is considered more important than the substance of democracy itself, possibility of inter-elite and interest bargaining in this election will be widely opened. In the such way, informal politic powers will play an important role not only in the candidate setting of internal politic party but also in the process of voting.

On-going democracy process is still seen as rule order and mechanism only, but it has not completely realized a truly aspiring government and widely opened people's participation space. Therefore, democracy in success realization is broadly known as just mechanical democracy where it has not reached substantive democracy (Janedjri M. Gaffar, 2012: 43). Furthermore, according to Gaffar (2012: 35), if democracy is just seen as a method, democracy will be seen nothing other than just a mechanism. It is apart of the basic values and principles constituting birth and development of democratic concept and practice. As the consequence, remaining democracy practice will be just a sort of mechanism to gain power legitimation which is conducted where the end justifies the means, including deed conflicting values and principles of democracy.

Dahl mentions that mechanical democracy is polyarchal democracy. Or in the other words, democracy is determined by existence of the processes. However, quality of the process was not named by Dahl. Meanwhile, that quality dimension might be used as determinant and comparator if a state turns to be more democratic than other nations (Yudi Latif, 2011: 456).

Thus, democracy needs something more than just institutional process; it is what was named by Alexis de Tocquaville as 'conditional equivalent' of democracy which actually needs politic, social, and economic condition to be viable. Alexis de Tocquaville asserts that democracy is a multidimensional subject consisting aspects of politic, moral, sociological, economic, anthropological and psychological (Yudi Latif, 2011: 456).

Unfortunately, district head's elections in most developing nations (including Indonesia) are not an accurate parameter to evaluate whether politic system is democratic or not. It means the presence or absence of district head's elections in a nation do not automatically depict the presence or absence of politic democracy therein. In this context, existence of district head's elections as democracy parameter does not lie on the presence or absence of it, but it lies on the implementation grade of the district head's elections. That is to say, if district head's elections are implemented in compliance with democratic principles through free and fair manner, this nation is considered as more democratic.

There are some reasons on why free and fair district head's elections are so important for democratic life of a nation, especially for Indonesia. First, by means of free and fair district head's elections, it allows an existence of power transfer in peace. Second, by means of free and fair district head's elections, it is found the way how conflict occurs, especially for which relating to maintain and fight for the power.

In this context, question to be answered is what parameter to be used to evaluate free and fair district head's elections or a competitive one. In principle, there is no standard criterion which is universally valid to evaluate or identify if the district head's election is closely free and fair. In general, however, there are some minimum conditions which shall be fulfilled in purpose to determine if the district head's elections have gone on in free and fair manner. According to Ozbudun, there are three main criteria to assess if district head's election has run in free, fair, and competitive manner. These three criteria are:

First, the presence of universal adult suffrage. Meaning, every adult citizen has equal suffrage

with no difference on gender, religion, group, ethnic, view, descent, wealth, and the like, except for those whose the suffrage is revoked based on the law, this universal suffrage, in general may be functioned for two elections: (1) election for executive officials, either in central or regional office; and (2) election of representative for People's Representative Council or legislative (Sigit Putranto, 1981).

Second, the presence of fairness voting. In order to evaluate whether district head's election is conducted in fair manner or not, it may be observed through some following instruments: (1) the presence of confidentiality guarantee during the process of election or voting (secret ballot) which shall be manifested in law of district head's election; (2) the presence of guarantee that the counting of ballots is obviously conducted (open counting), where the access is given to all citizens and they deserve to witness it; (3) the absence of deceit in election or its process either during registration, campaign, voting until process of the counting of ballots (absence of electoral fraud); (4) the absence of violence, either political violence committed by officials/law enforcement officials, district head's candidates, or voters (absence of violence); and (5) the absence of intimidation, especially in the process election or voting (absence of intimidations).

Third, the presence of privilege for political party to organize and propose candidates, so voters have lots of choices among different candidates based on either party or their programs. Free and fair implementation of district head's election does not guarantee political legitimation and credibility of the government who had been elected through this election, but it may grow the people's sense of politic which will finally affect confidence level of the people to the on-going political system.

b. Professionalism of KPUD and Regional Bawaslu in Organizing Regional Elections

According to Gregorius Sahdan (2008: 14-15), in order to evaluate capacity of KPUD and Regional KPUD as the organizers, the following three main quadrants may be applied: (1) regulative capacity; (2) implementative capacity, and (3) administrative capacity.

Regulative capacity is seen from the capability of the members of KPUD and Regional Bawaslu in translating and understanding law and other regulation relating to district head's elections. Mistakes and errors in translating and understanding regulation emerge fatal impact not only for KPUD and Regional Bawaslu, but also for entire components of district head's elections such as political parties, district head's candidates, and voters/the people.

Implementative capacity is assessed by observing at how capable of KPUD in implementing district head's election and of Regional Bawaslu in conducting monitoring from the voter's preparation and fixing to inaugural ceremony of elected candidate. Also, what belongs to implementative capacity is on how KPUD distribute logistic of the district head's elections fast, accurately, and based on the time required.

Administrative capacity is evaluated based on the capacity of KPUD in updating voter's data, checking data accuracy of district head's candidates, and in counting numbers of ballots for every candidate in the election. On the other side, administrative capacity of Regional

Bawaslu is evaluated based on its capability in monitoring voter's data updates, monitoring candidates' data accuracy, and monitoring voting process up to fixing result of the counting of ballots for every district head's candidates.

If we observe the indicators, it is seen that capacity and professionalism of KPUD and Regional Bawaslu in implementing their duties are quite professional if it relates to the implementation of Legislative General Elections and Presidential Elections. However, when the schedule of district head's elections come, KPUD and Regional Bawaslu seem like newbie on this matter, also their professionalism sinks to the lowest grade.

Implementation and execution of district head's elections where in practice is full of various violations either criminal actions, administrative infraction, or calculation errors of ballots with crime motive of vote distension or ballot calculation errors indicates that KPUD or Regional Bawaslu are unprofessional in executing the elections. It results in doubtful legitimation of the elected district head.

The findings depict that problems in district head's elections execution are caused by some things as follows:

First, in district head's elections, either status of Provincial KPU, Regency/municipal KPU or Regional Bawaslu are organizers while KPU is just supervisor. Hence, the duty of either Provincial KPU, Regency/municipal KPU or Regional Bawaslu is completely heavy. Then, in district head's elections for regent/mayor of municipality, KPU in regency/municipality level has full authority to make rule of the game on the law implementation of district head's elections, while supervision function is put on Provincial KPU. For gubernatorial elections, provincial KPU is organizer supervised by Central KPU. Provision of Provincial KPU and Regency/municipal KPU as district head's elections organizers is arranged in Law No. 32 of 2004 Article 57 paragraph (1) stating that "district head's and vice district head's elections are organized by KPUD...". Problems herein do not relate to capacity, but it has belonged to integrity matters since, as we all know that, most of district head's candidates are incumbents or influential officials whose absolutely have a great influence to neutrality of Regional KPU or Regional Bawaslu; moreover if they are in good relation before being district head's candidates.

Second, performance standard of KPU consists of recruitment to evaluation. In this case, emerging problem is recruitment system where up till now, it considers personal capacity only without reckoning track record, especially relating to moral attitude of KPU commissioner or Regional Bawaslu candidates, for example if the individual concerned is honest in performing his previous job, if his motivation of life is just wealth-oriented, etc. Weakness on moral integrity has a great effect to the destruction of our democratic system. Let's have a look at how our honorable councils, where the district head's election process takes place or being house and kitchen of this process, at some places those members vanish embarrassingly because of being fired after committing code of ethics infraction by DKPP.

Gubernatorial elections cases of 2013-2018 in Maluku recorded that 5 (five) Regency KPU members and 3 (three) Regency Panwaslu members are fired and 2 (two) Provincial KPU

members got severe warning from DKPP. On the other side, Constitutional Court (Mahkamah Konstitusi or MK) through Decision No. 92/PHPU.D - VII/2013 states that MK grants most of proposed appeals submitted by duo Herman Koedoebun – Daud Sangadji:

Main Decree of MK:

Re-voting across existing polling station (Tempat Pemungutan Suara or TPS) in Western Seram Regency;

Official report cancellation on the counting of ballots recapitulation embodied in KPU Decision of Maluku Province No 23/Kpts/KPU-Prov-028/VII/2013 on Decision of the Counting of Ballots Recapitulation of July 4th, 2013;

Cancellation is aimed to the KPU Decision No 24 Kpts/KPU-Prov-028/VII/2013 on the decision of the first and second place Governor's and Vice Governor's general elections in Maluku Province of July 4th, 2013.

MK also has a notion that as general elections organizer, KPU of Western Seram (Seram bagian Timur or SBT) is urged to work in professional manner, acting carefully, honestly, and neutrally in organizing general elections.

Based on the revealed facts in the court, MK is convinced that lots of infractions are allowed and unfinished in the implementation of voting and voting recapitulation in SBT. Even at recapitulation level by the Petitioner (KPU of Maluku Province), the problems are obviously seen in special case memorandum embodied in Official Report Recapitulation in Provincial Level (Model DC-KWK.KPU) and Minutes of Meeting along with opinion of the Regional People's Representative Council (Dewan Perwakilan Rakyat Daerah or DPRD) Maluku Province, KPU of Maluku Province, Bawaslu of Maluku, and police of Regional Maluku Province by July 12th, 2013.

For MK, *the case proves that there are infractions and disobedience on the principles of general elections in direct, general, free, secret, honest and fair manner* occurred in Governor's and Vice Governor's election in Maluku Province 2013 especially in SBT Regency.

The researcher believes that this case is an irony humanity tragedy. Why shall it be happened? Again and again, our human resources are still frail. Frail of struggle spirit and idealism. Have our national idealism, ethics, and moral decrease to the lowest grade? That is our duty to respond the problem, however, in context of the people's confidence to professionalism of Regional KPU and Regional Bawaslu in organizing district head's election is truly in the lowest level. Secretary of the Council of Representatives of the Regions (Dewan Perwakilan Daerah or DPD) of Maluku Indonesia Alliance (Aliansi Indonesia Maluku (AIM) Ridwan Sangadji said that he invites all of us to see and assess by giving an answer of 'yes' that district head's election in Maluku were injured by the organizers. Further, Sangadji issues a declaration aimed to district head's organizers as follows, "You have a religion, but you aren't pious, you have God, but you don't have faith. How could you easily sell your faith mandating to you on your shoulders by God, Nation, and the people" (Rakyat Maluku Daily,

Tuesday, July 23rd, 2013).

Third, the absence of valid and good reward and punish system. Remuneration system of Regional KPU or Regional Bawaslu members is not enough related to completely heavy responsibility. It is heavy responsibility since they are entrusted to execute district head's elections. Hence, there should be any proper reward to a member of either KPUD or Regional Bawaslu. Besides, there shall be any clear and measured punishment where the rules have to be made for those problem members of KPU and Regional Bawaslu. Before joining DKPP, the problem members have to be punished first.

4. Conclusion

Execution of district head's elections conducted together with KPUD and Regional Bawaslu is up to now considered as low-quality caused by lots of infractions which have not been settled. It occurs since general elections organizers in implementing district head's elections are unprofessional.

Low professionalism in district head's elections implementation is caused by some following factors: (1) involvement of either KPUD Commissioner or Regional Bawaslu who stands up to win one of the district head's candidates; (2) recruitment system of KPUD or Regional Bawaslu puts less reckoning on track record especially for moral character of candidates of KPU commissioner or Regional Bawaslu; (3) absence of standard and good reward and punish system.

In order to guarantee implementation of quality district head's elections, recruitment system of KPUD and Regional Bawaslu based on moral standard is a requirement to be used as main criteria for candidates of KPUD and Regional Bawaslu member. Besides, there shall be made a reward and punish standard by which employees working hard in compliance with general elections principles are rewarded as it is and conversely; for those who made mistakes shall be punished.

References

Ahamd Nadir, 2005, *Direct Regional Elections and the Future of Democracy in Indonesia*, Averroes Press, Malang.

ADAB, Buku-3, 2003, *National Workshop for Local Facilitator of East Nusa Tenggara, Maluku, and Papua in Electoral Education Program Commemorating General Elections of 2004*, Hotel Santika Bali, 4-8 Desember 2003.

Gregorius Sahdan dkk, 2008, *Nation in Regional Elections-from collapse state to weak state*, IPD Press, Yogyakarta.

Janedjri M. Gaffar, 2012, *Constitutional Democracy – Indonesia Political Practices after Alteration of the 1945 Constitution*, Konstitusi Pres, Jakarta.

-----, 2012, *Politic Law of General Elections*, Konstitusi Pres, Jakarta.

Muhammad Asfar, 2006, *Designing Management of District Head's Elections*, Pustaka

eureka – PusDeHam, Surabaya.

Yudi Latif, 2011, *Plenary Nation, Historical, Rasonality and Actualization of Pancasila*, Gramedia Pustaka Utama, Jakarta.

Sigit Putranto dan Kusumowidagdo, 1981, *Universal and Parochial General Elections System*, Prisma (9).