The Role of Administrative Court in Settlement Administrative Dispute of General Election

by Aju Putrijanti

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Abstract. The Administrative Court has competence to settlement the administrative disputes. In the regulations of general election stated that election offence administrative disputes, election dispute process, adminsistrative disputes of election should be proceeded in Administrative Court, High Court of Administrative Court and Supreme Court. The existing regulations of Administrative Court do not regulates the procedural process to proceed general election administrative disputes, and the competence of Adminisitrative Court are limited. This becomes a legal gap in law enforcement and legal certainty. The issue is how the competence of administrative court to setllement the administrative dispute of general election based on the regulations.The method is juridical normative by statute approach, conceptual approach. Statute approach and conceptual approach by compared the relevant regulations.The result shows that the Administrative Court has competence to settlement the administrative dispute of general election. To give law certainty and law enforcement, the Supreme Court had legitimized some regulations to proceed the disputes settlement. The novelty is there should be a new regulation of Administrative Court consider the development and modernization.

1 Introduction

In State Law, the implementation of governance should be based on written law and regulations. The government has an obligations necessity to protect the human rights, to promote prosperity of the civilization that comes the welfare state. In the frame of welfare state and state law, the relations between the government and the people should be balanced and there is a court to settle disputes arises.

The Supreme Court is the highest court in Indonesia and there are four judiciary bodies under the supervision of The Supreme Court, i.e general court, religion court, military court and administrative court and each has an absolute competence. The Administrative Court has the competence to settle administrative disputes between the natural person or legal entity and the government and the object is the administrative decision by the government. The general election is important element in democracy and state law, as the people gives their vote to

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choose the leader and or legislative member in municipal, province and State. The implementation could trigger the administrative dispute of general election and if arise a dispute, it should be settle in a judiciary body for legal certainty and law enforcement. The Law No 7 Year 2017 of General Election, Law No 10 Year 2016 of Second Amendment of Stipulation Perpu No 1Year 2014 of Election of Governor, Mayor, Regent, gives an authority to Administrative Court, High Court of Administrative Court and Supreme Court to settlement the administrative disputes, since there is no authority to General Court to settlement the disputes.

2. Objectivity of The Study

To answer the curiosity of how is the competence of administrative court to settlement the administrative dispute of general election? This issue become attractive since there are some regulations to implement.

3. Method

The method use is juridical normative using statute approach the relevant regulations, and conceptual approach to know the concept of the regulations. Normative approach is using by analyzed the primarily material such as regulations, judge's decree, and secondary material are journals, books as references.[1] Comparative approach is necessary to know how the role, paradigm and law in some countries refer to administrative court.

4. Discussion

4.1 The Administrative Court

This law is needed as regulations, guidance to government's body of how to implement their duties based on the procedural standards, authority and regulations, without neglect the rights of the people. This law gives a type of sanctions if the government's officer did not obey the regulations and the judge's verdict. The changes of politic, society needs a legal certainty and law enforcement of the government's act, since the services is not good, and triggers the high demand from the society as they asks for better services in public service. The uncertainty of an administrative decree can make a loss for the natural people or legal entity. The Administrative Court based on Law No 5 Year 1986 of Administrative Court and had been amended by Law No 9 Year 2004 and Law No 51 of 2009. The aims of the Administrative Court (hereinafter is the Court) are to brings justice, law enforcement in administrative law, to keep balance the relations between the government and the people. If there is administrative disputes, they can make lawsuit against the government's, and goes to The Court. The Court has 2 functions, are as judicial body and as an external supervisor for government's body or officer, this functions can be seen in the aims of the Court. As stated by Prajudi Admosudirdjo, the existence of the Court is to develop the administrative law properly or functionally.[2] Based on the Article 47 Law No 5 Year 1986 of Administrative Court is to receive, investigate, decide and settlement the administrative disputes. The Law No 30 Year 2014 of Governance Administration is the first regulation in administrative law also as material law to the Court, and gives more competence to the Court, the first is the application to decide whether there is any abuse of power made by the government's body or government's officer, the second is the application to grant the positive fictitious, and the broadened meaning of administrative decree as regulate in Article 2 Law No 9 Year 2014 of The Amendment of Law No 5 Year 1986 of Administrative Court. The Supreme Court issued

2 (two) regulations to support the broaden competence of the Court, since there is no regulations in all the Administrative Court's procedure refer to the subject.

4.2. The Administrative Court in general election dispute resolution

The rule of law as a basic principle of governance, all the authority related with the society should be regulated by law and considering the fundamental principles, also in regulations has to refer to the rule of law, and law as a product by the authority to govern the society.[3]. Basically, Indonesia has been follow the civil law system which put law as basic regulations to govern.

In democratic state, every one should respect to the rule of law administrative decisions and other administrative acts, and should be reviewed by the court.[4]. Everyone has political rights under the Constitution to vote in the general election. It is usual when there is dispute arise from the general election. The dispute is different from any other disputes, because the specify the party of disputes, the procedural law of disputes settlement, the court to disputes completion. In a concrete way, the general election cause electoral administrative disputes which shall be finalized in the court, considering some spesification of disputes.

The general election is consist of general election to vote the President and Vice President, house of representatives, local house of representatives and local general election to vote the Governor and Vice, the Regent and Vice, the Mayor and Vice, and different general election based on different regulations too.

Law No 7 Year 2017 of General Election in Article 471 verse 1 stated the First Degree Administrative Court has competence to receive, investigate, decide and settlement the election dispute process. To proceed into the Court, Supreme Court stipulated Supreme Court Regulation No 5 Year 2017 of Procedural to Disputes of Election Process Settlement in Administrative Court. If there is a dispute process, it should be first proceed administrative effort in *Bawaslu* before put the suit to the Court. The object is decree issued by General Election Commission or General Election Commission in Province or Municipal about the political party as contestant, pairs of presidential candidate, definite contestant of legislative, legislative in province and municip[5].

Law No 10 Year 2016 of Second Amendment of Law No 1 Year 2015 of Stipulation of *Perpu* No 1 Year 2014 of Election for Governor, Mayor and Regent, which gives competence to High Court of Administrative Court and Supreme Court based on Article No 153 jo 154 and to Supreme Court based on Article No 135A. To implement this, Supreme Court stipulated the Supreme Court Regulation No 11 Year 2016 of Procedural Settlement Disputes of Administrative Election and Disputes of Administrative Election Infringement. The competence of High Court of Administrative Court is settlement the disputes of administrative election between candidates against the General Election Commission Province (KPU) or Independent Commission of Aceh Province (KIP Aceh), General Election Commission Municipal or Regent caused by the decree defining the pair of candidate. The lawsuit put to the High Court of Administrative Court after proceed the administrative effort in *Bawaslu* or *Panwas* Province or Municipal. The party can make cassation to Supreme Court within 5 (five) days after receive the verdict. The Supreme Court verdict in 20 (twenty) days and it is finally binding, it is not allow to judicial review.

The Supreme Court has competence to settlement the disputes of administrative election infringement based on application from the candidates against the decree of cancellation as candidates issued by General Election Commission Province (KPU) or Independent Commission of Aceh Province (KIP Aceh), General Election Commission Municipal or Regent. The Supreme Court's verdict is final and legally binding, and cannot get judicial review.

Besides the above regulations, based on Law No 7 Year 2017 of General Election Article 463 verse 5 gives competence to Supreme Court to receive, investigate, decide and settlement of dispute election infringements.

Earlier time, government emphasized the competence of the Court will be gradually expand, follows the plan and strategy development for 2020. Eventhough the law related had been amendments two times, but it had not discussed about the absolute competence of the Court.[5] The two amendments about the substance requirements to submit the suit, the execution of judge's verdict, about the organization of the Court, the court administration and there is no discussion about competence absolute.

There are three stages about the absolute competence of the Court in local general election dispute resolution. Each stage had different legal framework similarly the type of dispute resolution. In the first stage between 2005 - 2010, the Court had no competence to settlement the lawsuit related with Commission of General Election (KPU) based on Article 2 Law No 9 Year 2004 of The Amendment of Law No 5 Year 1986 of Administrative Court. The second stage between 2010-2014, based on The Supreme Court Circular Letter No 7 Year 2010 gave competence to the Court to settlement the administrative decree, which totally different from the previous Supreme Court Circular Letter No 8 Year 2005.

This changes made a frisk of case in some Courts related to adminsitrative decree issued by the Commission of General Election. The third stage in 2014-2016, the competence of Administrative Court in first instance had been cancelled, and moved to Higher Administrative Court.[6] It shows the dynamic of judicature system due to general election. As stated by Tri Cahya Indra Permana, that before the Law No 1 Year 2015, Law No 8 Year 2015 and Law No 10 Year 2010 had been stipulated, the Court had vary of attitude towards the local general election, but after the Law No 1 Year 2015, Law No 8 Year 2015 and Law No 10 Year 2010 had been stipulated, the Court absolutely defined that there is no competence to investigate, and settlement the local general election. [7]

As qouted from Topo Santoso, it needs important factors to build the law enforcement systems in general election[8], and according to this issues, it is important to make a new regulations about the general election.

Based on the summary by Office for Democratic Institutions and Human Rights (ODIHR) about The Resolving Election Disputes in the OSCE Area : Towards A Standard Election Dispute Monitoring System, that election dispute resolution are vary and differ in consolidated countries (UK, Germany, French, Italy), developing countries, Central America, Eastern Europe, and some countries in South America. In most developing countries, election dispute resolution is share between ordinary courts and permanent or temporary special election commissions. There are no international standards or rule about election dispute resolution,[9] so it depends on each country to regulate but it has to regard the international parameter.

For comparative study, in some countries i.e. Philippines, South Africa, Mexico, Malaysia, Singapore were used the dispute election resolution in one roof it means that they do not separate between the election implementer institution and election supervisor institutions, furthermore the process of election violation committed by the election implementer in early stage and will proceed to the court for final stage.[10]

The Court needs new regulations based on the existing condition, and consider the development might happen in future. The development of administrative law is dynamic in a few years, the global administrative law is become phenomena.

5. Conclusion

The role of the Court become more broaden than it was formed. Government has to make a new regulations refer to the role and competence of the Court. The Court has an important role to guardian the general election, to keep the democracy and legal certainty, fullfill the political rights. The new regulations is urgent, because the fast development in politic, society, national issues.

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