

## The General Election Process Dispute Settlement Procedure By Election Supervisory Agency

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### Abstract

*The purpose of this research is to know and analyze the procedures and technicalities for dispute resolution of the election process by Bawaslu, the impact of dispute resolution on the election process by the Bawaslu of Pati Regency, obstacles to the resolution of electoral process disputes by Bawaslu of Pati Regency in the 2019 simultaneous elections and their solutions. The research approach method uses sociological juridical methods, with qualitative research specifications. Data sources consist of primary and secondary sources. Data analysis methods include: data reduction, data presentation, and drawing conclusions/verification. Research results: pThe procedure for resolving electoral process disputes by the Pati Regency Bawaslu in the 2019 simultaneous elections was carried out in accordance with Act No. 7 of 2017 concerning General Elections and Perbawaslu Number 18 of 2017 concerning Procedures for Dispute Resolution of the Election Process. The impact: electoral justice can be enforced, realizing the implementation of an honest and fair election stage and guaranteeing the rights of election participants. The obstacles include: the existence of different interpretations of the prevailing laws and regulations between the Adjudication Assembly and the Respondent and the absence of an explanation of the electoral dispute resolution process in detail by the Election Law. The solution is the need for a Standard Operating Procedure (SOP) in handling dispute resolution, Keywords: Election; Disputes; Simultaneous; Justice.*

### 1. Introduction

Indonesia is a country that applies the principle of popular sovereignty and a democratic system. The characteristics of a state based on democracy and full sovereignty in the hands of the people is through general elections (Pemilu). Elections are one of the principles of democracy by involving the people directly. In a journal written by Yuliati and Widayati, it is stated that "Indonesia implements one of the principles of democracy by involving the people directly to elect leaders from the regional level to the national level through elections".<sup>1</sup>

The implementation of a democratic party in the State of Indonesia, known as the General Election is an effort to realize a democratic state whose implementation is carried out professionally and credible that can be accounted for in accordance with

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<sup>1</sup>Evi Yuliati and Widayati, *Public Services in Election of Regional Chairman Law Development*", Journal, Volume 3 Issue 1, March 2021 (19-29), url: <http://jurnal.unissula.ac.id/index.php/ldj/article/view/14233/5408>

applicable legal provisions.<sup>2</sup> For a number of countries that implement or claim to be democratic countries (people's sovereignty), the implementation of elections is considered as a symbol as well as the main and first benchmark of democracy.<sup>3</sup> Other than that, Elections are an absolute requirement for a democratic country to exercise people's sovereignty.<sup>4</sup> Jimly Assiddiqie explained that the purpose of the general election is of four kinds, namely: to enable the transition of government leadership in an orderly and peaceful manner, to allow the replacement of positions that will represent the interests of the people in representative institutions, to implement the principle of people's sovereignty, and to implement the principle of human rights/citizen.<sup>5</sup>

Simultaneous general elections in 2019 are the first time in the history of the Indonesian nation. The implementation of these elections cannot be separated from the disputes that arise both in the process and results. According to Article 466 of Act No. 7 of 2017 concerning Elections, it is stated that electoral process disputes include: disputes that occur between election participants and disputes between election participants and election organizers as a result of the issuance of KPU Decrees, Provincial KPU Decisions, and Regency/Municipal KPU Decisions.<sup>6</sup> Ramlan Surbakti, et al., explained that disputes or disputes in elections can be divided into two types, namely: (1) disputes in the election process. These disputes, especially those that occur between election participants or those between candidates that have been handled by the Election Supervisory Body; and (2) disputes or disputes over election results. The authority to settle disputes over election results rests with the Constitutional Court. This is in accordance with the mandate contained in the provisions of the 1945 Constitution of the Republic of Indonesia, the Election Law, and the Constitutional Court Law.<sup>7</sup>

The occurrence of a number of disputes over the electoral process is found in every general election held in every region, including in Pati Regency, if it cannot be resolved properly it will reduce the quality of the election administration and ultimately damage the democratic process itself. Regency/Municipal Election Supervisory Body, hereinafter referred to as Regency/Municipal *Bawaslu*, is an agency to oversee the implementation of General Elections in a regency/city territory.<sup>8</sup> Among other things, the authority possessed by Regency/Municipal *Bawaslu* is to decide or adjudicate disputes over the election process.

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<sup>2</sup>Lukman Surya Saputra, 2017, *Pendidikan Kewarganegaraan Menumbuhkan Nasionalisme dan Patriotisme*, Setia Purna Inves, Bandung, p. 29.

<sup>3</sup>Titik Triwulan, 2012, *Konstruksi Hukum Tata Negara Indonesia Pasca Amendemen UUD 1945*, Kencana, Jakarta, p. 329.

<sup>4</sup>Moh. Kusnardi and Harmaily Ibrahim, 2012, *Pengantar Hukum Tata Negara Indonesia*, Pusat Studi Ilmu Hukum UI, Jakarta, p. 329.

<sup>5</sup>Jimly Assiddiqie, 2016, *Pengantar Ilmu Hukum Tata Negara*, Rajawali Press, Jakarta, p. 418.

<sup>6</sup> Article 466 of the Election Act No. 7 of 2017.

<sup>7</sup>Ramlan Surbakti, dkk., 2011, *Penanganan Sengketa Pemilu*, Kemitraan Bagi Pembaruan Tata Pemerintahan, Jakarta, p. 3.

<sup>8</sup>Act No. 7 of 2017 concerning Elections General Provisions Article 1 paragraph 19, h. 5

Based on the considerations above, the objectives of this research are formulated as follows: to know and analyze the procedures and technicalities for dispute resolution of the election process by *Bawaslu*, the impact of dispute resolution on the election process by the *Bawaslu* of Pati Regency, obstacles to the resolution of electoral process disputes by *Bawaslu* of Pati Regency in the 2019 simultaneous elections and their solutions.

## 2. Research Methods

The research approach method used in this research is the sociological juridical method.<sup>9</sup> While the specifications of this research include the type of qualitative research. Primary data sources include: Pati Regency *Bawaslu* Commissioner, Pati Regency KPUD Commissioner and Plaintiffs and Defendants using interview and observation techniques. Secondary data sources include: primary legal materials, secondary legal materials and tertiary legal materials with library/document study techniques. Data analysis methods include: data reduction, data presentation, and drawing conclusions/verification.

## 3. Results and Discussion

### 3.1. Election Process Dispute Resolution Procedures and Techniques

The dispute over the election process in Pati Regency in the 2019 Simultaneous Elections was due to the issuance of KPU's decision Number: 108/kpts/KPU. Kab-012.3293311/VIII/2018 which was set on 11 August 2018 regarding the determination of the Provisional Candidate List for members of the Pati Regency DPRD. In the attachment to the decision of the Pati Regency KPU, the names of the temporary list of candidates for the Regency DPRD from the Prosperous Justice Party in the Electoral District (Dapil) Pati I, Pati II Dapil, Pati III Dapil, and Pati IV Dapil are all listed in the decision attachment, but for the Temporary Candidate List The Regency DPRD in the Pati V electoral district is not included in the attachment to the Pati Regency KPU decision.

The issuance of the minutes of the Pati Regency General Election Commission Number: 318/BA/KPU-Kab-Pati/X/2018 regarding the reporting of campaign funds for the 2019 election participants on October 1, 2018 which stated the regional management board of the Pati Regency National Mandate Party as a party that did not submit a report campaign funds to the election management body in the case of the Pati Regency General Election Commission due to the submission of the campaign finance report being late from the specified time.

The two decisions of the Pati Regency General Election Commission were used as objects of dispute in the election process, the Pati Regency *Bawaslu* determined the steps for resolving the election process dispute with the following stages:

#### 3.1.1. *Receiving applications for electoral process disputes*

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<sup>9</sup>Soerjono Soekanto, 2015, *Pengantar Penelitian Hukum*, Universitas Indonesia Press, Jakarta, p. 51

The Pati Regency Election Supervisory Body in holding the 2019 Election received a written request for the resolution of election disputes from: First, the Prosperous Justice Party on August 14 2018 submitted a PSPP 01 model form regarding an application for election dispute resolution to the Pati Regency *Bawaslu* with Number 001/PPSPP/ADV-MAP /VIII/2018. The main point of the petition is that the Pati Regency Prosperous Justice Party has registered candidates for the Pati Regency DPRD for the Pati I, Pati II, Pati III, Pati IV, and Pati V DPRD candidates in the Nomination Information System (SILON) and at the Regency General Election Commission Office. Pati as regulated by Act No. 7 of 2017 concerning Elections. The Prosperous Justice Party objected to the issuance of Pati Regency KPU Decision Number; 108/kpts/KPU.Kab-012.

The application for dispute resolution in the election process is recorded in the PSPP model 2 form, receipt file Number: 01/PS.PNM.PWSL.KAB.PATI.14.23/VIII/2018 and receipt Number: 02/PS.PNM/PWSL.KAB.PATI. 14.23./VIII/2018 August 15, 2018.

*Second*, The application for dispute resolution of the election process from the DPD of the Pati Regency National Mandate Party from the Pati Regency Regional Leadership Council Number: 027/PAN/KS/X/2018 dated October 3, 2018 was submitted by Muh. Nasihin as Chairman of the DPD PAN Pati Regency. The main application of the Regional Leadership Council of the Pati Regency National Mandate Party objected to the Pati Regency General Election Commission for the publication of the official report Number: 318/BA/KPU-Kab.Pati/X/2018 regarding the receipt of the campaign fund reports for the 2019 General Election participants on October 1, 2018 .

### *3.1.2. Verification of the application for dispute resolution of the election process*

Following up on the request for dispute resolution in the election process, the Pati Regency *Bawaslu* from the Prosperous Justice Party and the Pati Regency PAN DPD conducted a review of the application file to be verified in order to assess whether the application file meets the requirements to be followed up at the mediation stage.

### *3.1.3. Implementation of mediation for dispute resolution in the 2019 General Election process*

The Pati Regency Election Supervisory Body formed a mediation team to act as a mediator. The results of the mediation meeting, the parties, both the Prosperous Justice Party applicant and the Pati Regency KPU, did not reach an agreement in resolving the 2019 election process dispute. This disagreement was recorded by the Pati Regency Election Supervisory Agency in the PPSP 14 model form and signed by the applicant and the respondent knowing the chairman *Bawaslu* of Pati Regency. Meanwhile, the mediation between the DPD PAN of Pati Regency and the KPU of Pati Regency reached an agreement. Among the contents of the agreement is that the applicant is ready to submit the Initial Campaign Funds Report (LADK) to the respondent with a limit of no later than one (1) day after the mediation decision is read out. The agreement has been implemented by the applicant and the respondent on Friday,

Mediation that resulted in an agreement was the right step because there were differences in legal provisions between PKPU Number 24 of 2018 concerning Campaign Funds and Act No. 7 of 2017 concerning General Elections. In PKPU article 38 paragraph (2) states "The bookkeeping of the LADK as referred to in paragraph (1) starts from the opening of the RKDK and closes 1 (one) day before the campaign period".<sup>10</sup>

The Pati Regency Election Supervisory Body in resolving disputes over the election process is in accordance with the legislation. This can be seen in the formation of the Mediation Team which has been stipulated in the Decree and the composition of the mediation team consisting of: a mediator with a secretary and mediation minutes.

This is in accordance with the provisions regarding the composition of the Mediation Team, which can be seen in *Perbawaslu* Number 18 of 2017 article 22 paragraph (2) which reads:

The mediation team as referred to in paragraph (1) is assisted by 2 (two) employees at *Bawaslu*, Provincial *Bawaslu*, or Regency/City *Bawaslu* consisting of: a. 1 (one) secretary; and b. 1 (one) note taker.<sup>11</sup>

#### 3.1.4. Adjudication Session

The stages carried out by the Pati Regency *Bawaslu* after the mediation did not reach consensus continued to the adjudication session. For this purpose, the Regency *Bawaslu* issued a PSPP model form.<sup>15</sup> the schedule for mediation and adjudication, register number: 01/PS/14.23/VIII/2018 and also the composition of the Adjudication Team contained in the Pati Regency *Bawaslu* decision number: 02-KEP.KS Year 2018.

The results of the adjudication trial which was carried out with the agenda as scheduled by the Pati Regency Election Supervisory Board decided the resolution of the 2019 Election dispute between the General Election Commission and the Pati Regency Prosperous Justice Party as follows:

- Accepting the Petitioner's Application in part
- Ordered the Pati Regency KPU to receive the corrections file in the form of a statement letter from the Pati District Court which was submitted by the applicant to the Respondent for candidate members of the Pati Regency DPRD, the Prosperous Justice Party for the Pati 5 Electoral District, who had not been declared eligible;
- Ordered the Pati Regency KPU to re-verify the improvement of administrative requirements for candidates for members of the Pati Regency DPRD, the Prosperous Justice Party for the Pati 5 Electoral District, who were declared to have not met the requirements according to the applicable laws and regulations;
- Ordering the Pati Regency KPU to make a re-decision on the determination of the temporary list of candidates for the Pati Regency DPRD after verifying the

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<sup>10</sup>General Election Commission Regulation Number 24 of 2018, "About Campaign Funds", Article 38 Paragraph (2).

<sup>11</sup>Regulation of the General Elections Supervisory Agency Number 18 of 2017, "Concerning Procedures for Settlement of General Election Disputes", Article 22 Paragraph (2).

administrative files for the Pati Regency DPRD candidate for the Prosperous Justice Party, especially in the Pati 5 constituency as long as it meets the requirements according to the applicable laws and regulations;

- Order the Pati Regency KPU to implement this decision no later than 3 (three) working days after the decision is read out.

That based on the decision number 4 which instructs the Pati Regency KPU to make a re-decision regarding the Determination of the Provisional Candidate List for the Pati Regency DPRD after verifying the administrative files of the candidates for the Regency DPRD for the Prosperous Justice Party for the Pati Electoral District 5 as long as they meet the requirements according to the laws and regulations. The applicable regulations have been implemented by the respondent on September 5 2018, with the issuance of the Pati Regency KPU decision Number: 115/Kpts/KPU.Kab-012.329311/IX/2018 regarding the amendment to the Pati Regency KPU decision Number: 108/Kpts/KPU.Kab-012.329331/VIII/2018 regarding the Determination of the Temporary Candidate List for Members of the Pati Regency Regional People's Representative Council in the 2019 General Election.

Through its duties and authorities, *Bawaslu* is required to prevent various irregularities in the electoral process, provide a mechanism for public complaints, and provide a fair and transparent settlement mechanism for public complaints. Even within certain limits provide appropriate penalties for violators who cause disruption of the election process. This is in line with Article 22 E paragraph (1) which states that "General elections are held, directly, publicly, freely and secretly".<sup>12</sup>

This is also relevant to the main principles in the rule of law theory which emphasizes the creation of the rule of law, an independent and impartial judiciary and is democratic in nature.<sup>13</sup> The enforcement of the rule of law is very dependent on the sharpness and accuracy of the performance of legal arrangements and legislation for government institutions, representative institutions and judicial institutions, as well as guarantees of legal protection of individuals (citizens) against power behavior and social behavior that violates legal norms.<sup>14</sup>

### 3.2. Impact of Dispute Resolution of the General Election Process

The dispute resolution of the general election process that has been carried out by the Pati Regency Election Supervisory Agency in the 2019 simultaneous general election between the Pati Regency Prosperous Justice Party and the General Election Commission and the National Mandate Party DPD with the Pati Regency KPU certainly has several impacts. Here are the effects:

- Electoral justice can be served

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<sup>12</sup> Article 22 E of the Election Act No. 7 of 2017.

<sup>13</sup> Jimly Asshiddiqie, "Cita Negara Hukum Indonesia Kontemporer", Papper. Disampaikan dalam Wisuda Sarjana Hukum Fakultas Hukum Univ ersitas Sriwijaya Palembang g, 23 Maret 2004 dalam Simbur Cahaya No. 25/IX May 2004 ISSN No. 14110-0614.

<sup>14</sup> Bambang Sugiono and Ahmad Husni M.D, "Supremasi Hukum dan Demokrasi", Jurnal Hukum, Nomor 14, Vol. 7, August 2000, p. 82.



According to Ahmadi as the head of the Pati Regency *Bawaslu*, that mediation and/or adjudication is one of the alternative election dispute resolution mechanisms based on voluntary principles where decisions will only be binding if the conflicting parties voluntarily participate in the mediation, conciliation, or arbitration process. In the mediation and conciliation process, the *Bawaslu* party is an impartial third party involved in dispute resolution. The aim is none other than to bring together the conflicting parties to negotiate, while the third party performs passive facilitation. Conciliators are parties who are actively involved in negotiations by providing proposed solutions that can be accepted by all parties to the dispute so that electoral justice can be upheld.<sup>15</sup>

- Realizing the implementation of the stages of elections that are honest and fair  
Supervision activities by the Election Supervisory Body have several objectives, including ensuring the implementation of Direct, General, Free, Confidential, Honest and Fair Elections and in accordance with laws and regulations, realizing democratic elections and upholding integrity, credibility of the organizers, transparency and accountability. election results. Related to this, Ahmadi explained that every electoral justice system needs to establish ways or actions to prevent or avoid election disputes and create mechanisms to correct irregularities and/or punish perpetrators of violations.<sup>16</sup>
- Ensuring the rights of election participants and the community  
Suffrage is a form of political right that is included in the category of human rights. The right to vote is regulated in the fundamental legal provisions of a country (usually in the constitution and in related laws) and in various international legal instruments on human rights. This has relevance to the theory of popular sovereignty, which is a sovereignty that describes a system of power in a country that requires the highest power to be held by the people. The Indonesian democratic system makes the implementation of representative government as the holder of the highest sovereignty rests with the people. Thus, members of the council are seen as political representatives of political parties who give mandates to their representatives in parliament (legislature).<sup>17</sup>

### **3.3. Barriers to the Dispute Resolution of the General Election Process and their Solutions**

The Pati Regency Election Supervisory Body in resolving disputes over the general election process in the 2019 simultaneous general elections certainly cannot be separated from several obstacles. Here are some of the obstacles:

- There is a difference in interpretation of the prevailing laws and regulations between the Adjudication Tribunal and the Respondent

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<sup>15</sup>Ahmadi, "Personal Interview", Head of Pati Regency Bawaslu, 08 September 2020, Pati Regency Bawaslu Office.

<sup>16</sup>Ibid.

<sup>17</sup> Ahmad Rifa'i dan Sri Kusriyah, "Peran Partai Politik Dalam Pengawasan Terhadap Kadernya Yang Duduk Di DPRD Untuk Meningkatkan Kualitas Perwakilan", Jurnal Hukum Khaira Ummah, Vol. 12. No. 4 December 2017, p. 985.

The Pati Regency *Bawaslu* in resolving disputes over the election process still found differences in interpretation of the prevailing laws and regulations between the Adjudication Assembly and the Respondent. According to Ahmadi as the Head of *Bawaslu*, this difference in interpretation is because not all of the commissioners and staff of *Bawaslu* have the same legal educational background. There are still *Bawaslu* commissioners who have non-legal educational backgrounds.<sup>18</sup> Related to these obstacles, it is necessary to increase understanding and training for *Bawaslu* commissioners and staff. *Bawaslu* that supports the acceptance and follow-up of dispute resolution for staff. Dispute Resolution Division in general, and in particular for staff with non-legal educational backgrounds.

- There is no detailed explanation of the election dispute resolution process by the Election Law.

The absence of an explanation of the electoral dispute resolution process in detail by the Election Law is one of the obstacles. This is in accordance with what was conveyed by Ahmadi as the Chair of the Pati Regency *Bawaslu*, acknowledging that the dispute resolution process still faces many obstacles. He gave an example, there is no detailed or detailed explanation of the electoral dispute process by the Election Law. He also admitted that he was still guessing how the form of handling disputes in the upcoming elections would be appropriate. Because according to him, what is meant by election disputes in Act No. 7 of 2017 concerning General Elections is that it only mentions mediation and adjudication without explaining in detail how the technical implementation is.<sup>19</sup>

The solution, among others, is the need for a Standard Operating Procedure (SOP) in handling dispute resolution so that there is uniformity in the process to output in the form of decisions between the RI *Bawaslu*, Provincial *Bawaslu* and Regency/City *Bawaslu* throughout Indonesia. In addition, it is also necessary to strengthen the capacity of Human Resources (HR) for Election Supervisors, especially the Human Resources of Regency/City *Bawaslu* Members in carrying out dispute resolution authority as attributed by Act No. 7 of 2017 concerning Elections.

#### 4. Closing

The election process dispute resolution procedure by the Pati Regency *Bawaslu* in the 2019 simultaneous elections was carried out in accordance with Act No. 7 of 2017 concerning General Elections and *Perbawaslu* Number 18 of 2017 concerning Procedures for Dispute Resolution of the Election Process. The Pati Regency *Bawaslu* in resolving disputes over the general election process uses the following procedures: accepting applications, verifying files, mediating and adjudication hearings if mediation is not reached an agreement. The impact of dispute resolution on the election process:

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<sup>18</sup>Ahmadi, "Personal Interview", Head of Pati Regency Bawaslu, 08 September 2020, Pati Regency Bawaslu Office.

<sup>19</sup>Ibid.



Election justice can be enforced, realizing an honest and fair election stage, and guaranteeing the rights of election participants. Meanwhile, the obstacles include: differences in interpretation of laws and regulations and the absence of an explanation of the electoral dispute resolution process in detail by the Election Law, so that a Standard Operating Procedure (SOP) is needed in handling dispute resolution and strengthening the capacity of Human Resources (HR) for Election Supervisors.

The author gives suggestions that it is hoped that the Election Supervisory Body Members have competent and qualified and professional Human Resources, so that it is necessary to strengthen the capacity of the Election Supervisory Human Resources (HR), especially the Human Resources of Regency/Municipal *Bawaslu* Members in carrying out dispute resolution authority as attributed by Act No. 7 of 2017 concerning Elections.

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