



Principles of Justice and Legal Certainty by election organizers Regarding Conditions for Nominating Regional Heads

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Abstract - This study aimed to understand the considerations of the judges of the Honorary Council for Election Organizers (DKPP) in handling cases of violations of law and ethics by regional head election organizers, as reflected in the 161-PKE-DKPP/XI/2020 decision. This study used normative legal research, analyzing primary, secondary, and tertiary legal sources. Analysis was conducted through a theoretical descriptive approach to the problem faced. The results showed that the DKPP judges criticized the South Halmahera KPU for its lack of professionalism in examining the nomination requirements, stating that the KPU should not only understand the nomination PKPU and Juknis textually, but also substantively. The DKPP judge's decision showed high professionalism, prudence, and wisdom, with deep consideration based on existing norms. However, in terms of rejecting the fulfillment of the nomination requirements, the South Halmahera KPU also had applied the principle of legal certainty which is considered the appropriate legal norm in the context of the South Halmahera district head election.

Keywords: Legal Certainty, Norms, DKPP, KPU

I. INTRODUCTION

Indonesia holds general elections and regional head elections every five years. However, the resulting quality of democracy is still far from ideal, given the repeated crimes of democracy, reflecting that democracy has not functioned properly (Sahasad, 2016). The organization of elections must be independent, honest, and fair to ensure legal justice and efficiency in the use of a large budget (Wilar Fenny, 2019). The budget should also involve the public directly in the electoral process to ensure the selection of qualified leaders. Finding democratic leaders through elections often feels impossible, especially when elections often produce non-ideal leaders, which in turn reflects on the quality of the elections themselves. Factors such as political dowry, whose effects are felt but difficult to prove, often influence the outcome of elections (Wilkinson, 2006). In electoral systems, the people are considered as a collection of individuals united in a diverse society. Detecting electoral violations, such as in the presentation of visions and missions or on polling day, is often a challenge for the authorities.

The authorized institutions in the case of election organizers consisting of KPU, Bawaslu and DKPP have their respective roles in the EMB process so that it can run smoothly and fairly (Muhammad Ja'far, 2019; Pangestu, 2022). This research focuses on addressing the gap in ensuring justice and legal certainty in the nomination process for regional heads by examining the effectiveness of institutions like KPU, Bawaslu, and DKPP in mitigating challenges and ensuring fair elections. Electoral justice is an important concept in democracy to ensure fair and honest elections (Kolang, Pondaag, & Londa, 2022). Although relatively new in electoral terminology, the concept globally supports the selection of democratic leaders by citizens and

election organizers. Electoral effectiveness and the application of justice require honesty in procedures and decision-making to prevent norm clashes and legal issues that can arise (Norris, Pippa, & Nai, 2017). It is important to establish procedures for the prevention, evaluation of problems and punishment of electoral offenses to avoid further problems (Widodo, 2018).

DKPP is an institution authorized to take action against violations that occur during elections. DKPP is tasked with receiving complaints and/or reports of alleged violations of the code of ethics committed by election organizers and conducting investigations and verifications, as well as examinations of complaints and/or reports of alleged violations of the code of ethics committed by election organizers (Nasef, 2014). In 2020, Indonesia held simultaneous local elections in 270 regions, a first in the country's political history that was faced with numerous challenges. Amidst national instability due to the global COVID-19 pandemic, elections were held. One of the regions where elections took place was North Maluku, where eight districts and two cities went to the polls simultaneously. However, in South Halmahera district there was an incident between election organizers and regent candidates during the registration phase.

In 2020, three couples registered as candidates for regional head and deputy regional head of South Halmahera Regency: Usman Sidik and Hasan Ali Basam (collectively Usman Basam), Helami Umar Muchsin and La Ode Arfan, and Bahrain Kasuba and Muchlis Sangaji, who were incumbent candidates. During the verification of candidacy by the South Halmahera Regency KPU, there were several shortcomings in Bahrain Muchlis' registration. First, Bahrain Kasuba was not present at the time of registration. Second, the chairman and secretary of the two supporting parties, PKPI and Berkarya of South Halmahera Regency, were also not present on September 6, 2020 (Fatah & Sariwating, 2020). The candidate pair for Regent and Vice Regent of South Halmahera Regency, namely Bahrain Kasuba and Muchlis Sangaji, could not register completely due to the two reasons mentioned. Therefore, the South Halmahera Regency KPU did not issue a Minutes of Rejection (BAP). However, Bahrain and Muchlis filed a complaint to DKPP regarding the decision. The complaint was decided on December 8, 2020.

Before filing a complaint to DKPP, Bahrain Muchlis first filed a dispute with the Election Supervisory Agency (Bawaslu) of South Halmahera Regency, but no object of dispute was found so the dispute process was not continued. The case then proceeded to the Ambon State Administrative Court, case number 2/P/FP/2020/PTUN.ABN. The decision of the Ambon State Administrative Court rejected the applicant's petition and justified the actions of the South Halmahera Regency KPU as in accordance with election norms. The South Halmahera KPU considers that their actions are correct based on PKPU 1/2020 concerning the registration of candidates and technical guidelines 394. The registration time was opened for three days, from September 4-6, 2020. Registration on the first day and second day starts at Pkl. 08.00-16.00, the third day starts at Pkl. 08.00- 24.00 local time. For the sake of smooth registration, the HalSel KPU has conducted registration socialization since August 10, 2020, registration procedures (simulation) conducted by legal officers (hereinafter abbreviated as LO), and on 1 September 2020 the time and registration requirements for candidates for Regent and Deputy Regent of South Halmahera Regency have been announced.

Two of the three candidates who will register have come to the KPU to register themselves along with the leaders of the supporting parties. However, one of the candidate pairs was not present during registration, Bahrain Kasuba, and was only attended by Muchlis Sangaji and the leadership of the proposing political party, the Indonesia Raya Movement party. The absence of one of them is considered not to fulfill the technical guidelines 394 where the substance of the technical guidelines is that each candidate pair that registers must be equipped with a letter (document) and candidate participants, political party support or a coalition of political parties. In contrast to the decision issued by DKPP, which considers that the five commissioners of the South Halmahera KPU have violated the code of ethics for not issuing reasons for rejection based on decision 161-PKE-DKPP/XI/2020. The legal considerations made by the South Halmahera KPU are based on technical guidelines issued

through KPU RI decision number 394/PL.02.2-Kpt/06/KPU/VIII/2020 concerning Technical Guidelines for Registration, Research and Improvement of Requirements Documents, as well as Registration of Candidate Pair Number Drawings in the Election of Governors and Deputy Governors, Regents and Deputy Regents, and/or Mayors and Deputy Mayors.

This research is crucial as it aims to enhance the quality of democracy in Indonesia by addressing the identified gap in ensuring justice and legal certainty in the nomination process for regional heads. By examining the effectiveness of institutions like KPU, Bawaslu, and DKPP, this study seeks to mitigate election irregularities and shortcomings, such as fraudulent nominations or violations of election regulations. Addressing these issues can foster greater trust in the electoral process, uphold the rule of law, and ultimately strengthen democratic governance in Indonesia. The researcher considers that the decision taken by DKPP on the actions taken by the South Halmahera KPU is not correct because they carry out in accordance with the rules set by the KPU RI. On this basis, the researcher raised the title of "Application of the Principles of Justice and Legal Certainty by the General Election Organizer regarding the Fulfillment of Regional Head Candidacy Requirements".

II. METHOD

Quality scientific research is characterized by the use of rigorous and systematic methodology to produce scientific truth (Tranfield, Denyer, & Smart, 2003). In the context of legal science, this research adopts the normative legal research method. Normative legal research methodology is appropriate because it involves analyzing legal principles, norms, and regulations to evaluate the adherence of election organizers to principles of justice and legal certainty. This methodology allows for a comprehensive examination of legal frameworks governing the nomination process for regional heads in Indonesia, including relevant laws, regulations, and jurisprudence. By scrutinizing these legal sources, the study can assess the extent to which election organizers comply with established legal standards and principles.

which focuses on legal norms as the main object of study, rather than on human attitudes or behavior. This approach is supported by Kelsen's theory, which emphasizes the importance of all normative functions of norms that give legal science its unique characteristics as a normative and sui generis science (Diantha, 2016). This research seeks to uncover and analyze legal principles and doctrines through an in-depth literature review and focuses on the Doctrinal Legal Research approach, which is a branch of normative legal research.

This study uses primary and secondary legal materials as the main sources to analyze and understand the relevant legal principles. This research was conducted for the specific reason of examining more deeply the efforts to protect endangered animals in Indonesia, a topic that is very important given the current situation where many species are threatened with extinction. Thus, this research not only contributes to the development of legal science but also to conservation and environmental protection efforts. Through this research, it is hoped that legal recommendations can be made to support more effective endangered species protection policies and practices in Indonesia.

III. RESULT AND DISCUSSION

1. Consideration of DKPP Decision 161-PKE-DKPP/XI/2020

a. DKPP Analysis of the Understanding of South Halmahera KPU

The General Election Commission (KPU) is the body responsible for organizing and overseeing the electoral process at the national and local levels. The KPU must carry out its duties independently and impartially in order to maintain a democratic election process. They refer to regulations set by the KPU itself, such as KPU Regulation No. 5/2020, which regulates the stages of the general election. For example, the candidate registration process is carried out within a certain time frame, from September 4 to 6, 2020. In addition, the stages in regional head elections can be carried out by technical institutions based on technical guidelines set by the KPU, as regulated in KPU RI Decree Number 394/PL.02.2-Kpt/06/KPU/VIII/2020. For example, the candidate registration period lasts for two days, starting from 08.00 to 16.00 local time, with additional registration on the third day starting from 08.00 to 24.00 local time.

On September 5, 2020, the South Halmahera Regency KPU issued an official notification (number 01/Tim-Kampaign/BK-MS/HS/IX/2020) to the candidate pair for Regent and Deputy Regent, Bahrain Kasuba and Muchlis Sangaji, to register on September 6, 2020 at 20.00 local time. However, the candidate pair did not attend according to the specified schedule. Muchlis Sangaji arrived at 23:32, but Bahrain Kasuba was not present. The registration process took place with the presence of Muchlis Sangaji and entourage from the proposing party, while Bahrain Kasuba was absent. After being welcomed with a traditional dance by the KPU organizers, Muchlis Sangaji and Gerindra political party leaders were directed to the registration table. However, after confirmation of attendance, it turned out that Bahrain Kasuba was not present. The KPU gave the candidate pairs time to complete attendance. However, until 24.23 local time, Bahrain Kasuba was still not present. After confirming, the KPU found that Bahrain Kasuba was out of the area. The KPU then confirmed attendance by considering the political party's decision letter that regulates the management at the district level. The leaders of Gerindra, Rosmina Syarif and Faruk A. Din, SH, were present, but no one from PKPI and Berkarya were present. The KPU tried to provide an explanation to Muchlis Sangaji and Gerindra party leaders on the obligation to attend candidate pairs and political party leaders based on Law Number 1 of 2015 concerning the elections of Governors, Regents and Mayors.

Referring to the applicable norms of electoral law, it has been previously described regarding the process of registering prospective candidates for regent and deputy regent of South Halmahera Regency. In this process, the presence of the secretary and chairman of a joint political party or political party at the regency level is required. In addition, registration must be attended by the candidate or candidate pair for regent and deputy regent. The election organizer asked the reason for the absence of one of the candidate pairs or the chairman and secretary of the party, and requested an official certificate from the relevant agency. This lack of clarity about attendance caused irregularities in the registration process carried out by the South Halmahera Regency KPU, which must ensure that no violations or discrimination occurred. Information from Asrul Mole, the Liaison Officer (LO), stated that one of the regent candidates was ill, but was not accompanied by evidence from an authorized agency. Similarly, the chairperson and secretary of the political party did not provide clear and precise reasons for their absence. Although the registration time had been set and the opportunity had been given, absences continued to occur without adequate reasons. The South Halmahera Regency KPU waited until the end of the specified time, which was 24:00 on October 6, 2020, but for various uncertain reasons, finally stated that the registration of candidates for regent and deputy regent could not continue and was declared closed.

The registration of prospective pairs of regent and deputy regent candidates in South Halmahera Regency by the KPU cannot proceed in accordance with applicable legal norms. Based on article 39 paragraph (7) PKPU 1/2020 and numbers 3 and 15 of Technical Guidelines 394/2020, the absence of the chairman and secretary of the PKPI and Berkarya parties prevented the registration process. The reason for this absence was not supported by an official certificate from the authorized agency explaining the valid reason for their absence. As a result, until the closing date of registration on October 6, 2020 at 24.00 local time, the required documents from the prospective candidate pairs were incomplete, so registration could not be carried out. The South Halmahera Regency KPU finally officially closed registration at the appointed time. Until the closing time, there was no presence of the prospective candidate pairs or their party representatives who could fulfill the predetermined requirements. Therefore, the registration of prospective pairs of regent and deputy regent candidates for the 2020 election period was declared not to have taken place. This demonstrates how important compliance with the provisions of electoral law and the existence of accurate documentation are to ensure the democratic process runs smoothly and fairly.

b. Basis for Rejection of South Halmahera Regency KPU

The South Halmahera Regency KPU rejected the registration of prospective regional head candidate pairs, Bahrain Kasuba and Muchlis Sangadji, based on the policies and procedures stipulated in PKPU number 1 of 2020 and Technical Guidelines 394 of 2020. This rejection occurred due to the absence of one of the candidate pairs as well as the chairman and secretary of the proposing party or joint party at the time of registration. Article 39 paragraph 7 of the PKPU stipulates that registration cannot be carried out if the presence of candidates or party leaders is incomplete, unless there is a valid justification from the authorized agency. Since there is no such attendance and no official document explaining their obstruction, the registration is considered to be legally ineligible. The registration procedure followed by the KPU includes steps such as ensuring the presence of prospective candidate pairs and party leaders, verifying documents and the validity of requirements, and entering data into the nomination information system. If all these requirements are met, only then can the KPU issue the minutes of registration and other related documents. In the case of Bahrain Kasuba and Muchlis Sangadji, since the process could not proceed in accordance with the attendance requirements, no registration took place nor was there any issuance of any documents of an administrative nature. This is an application of a legal norm that aims to ensure a fair registration process that complies with established regulations.

South Halmahera Regency has a strong and clear legal basis in rejecting the registration of regional head candidate pairs Bahrain Kasuba and Muchlis Sangadji due to incomplete attendance at registration. The election law norms contained in PKPU No. 1 of 2020 and Juknis 394 of 2020 specifically regulate the documents that must be issued by the KPU during the registration process. Article 104 paragraph (3) of the PKPU states that the forms of minutes, receipts, and return marks are stipulated in the KPU decision and must be followed.

In this case, the absence of a valid registration due to the absence of the proposed candidates or party officials results in no obligation for the KPU to issue the minutes of rejection. This norm explains that without a registration that fulfills the attendance requirements stipulated in the regulation, no document can or should be issued by the KPU. Therefore, the action of the South Halmahera Regency KPU in rejecting registration and not issuing a rejection document based on the reason for the absence is in accordance with legal procedures and applicable election regulations, and has strong legal legitimacy.

c. Analysis of the Judge's consideration

The registration process of prospective regional head candidates in South Halmahera Regency has been analyzed based on norms that provide legitimacy for the local KPU, including considering the DKPP decision in case 161-PKE-DKPP/XI/2020. DKPP considers that the complainant has proven that Complainants I-V refused registration due to the absence of a candidate for Regent who was sick. In fact, on September 6, 2020, Complainants I-V received confirmation of the absence of the prospective Regent and only received a sick certificate from a practicing doctor, while evidence from Siloam Hospital was only provided during the dispute at Bawaslu Kab. South Halmahera. The KPU is considered unprofessional because it does not consider the practicing doctor's certificate as valid evidence and does not issue a Minutes of Registration Rejection which is considered by DKPP as an action that is contrary to the principles of justice and legal certainty, as should be provided by general election organizers in accordance with applicable ethics and regulations.

The DKPP Panel considered the negligence of the South Halmahera KPU in not issuing the Minutes of Rejection of Registration as a violation of the principle of justice, considering that the KPU only adhered to the normative provisions of PKPU Pencalonan and Juknis 394. This is considered a sign of damage to legal norms, according to Jacques P Thiroux's ethical theory that distinguishes between ethics and morals, should not be seen subjectively. The KPU is considered to not only take refuge behind the norms but also violate the principle of legal certainty as outlined by Immanuel Kant in the principle of deontology, which views actions as universal law and treats humans ethically as an obligation.

d. Implementation of the Principle of Legal Certainty by the KPU of South Halmahera

The leader of the regional head is expected by the people, can be implemented if the election stage is truly subject to and obedient to the election law, as stated in the election law, the principle of *luber and jurdil*, is the basic philosophy towards fair elections. Justice has three different meanings, namely; (1) attributively means a quality that is fair or just (synonym *justness*), (2) as an action means the act of carrying out the law or the act of determining rights and rewards or law (synonym *judicature*), and (3) a person, namely a public official who has the right to determine the requirements before a case is brought to court (synonym *judge, jurist, magistrate*). These three meanings of justice. The principle of justice carried out by election organizers refers to impartiality in carrying out the stages of regional head elections, the South Halmahera General Election Commission, carrying out the stages of regional head elections does not show partiality to any prospective candidate pair, the stages of regional head elections that took place in 2020, from three (3) prospective candidate pairs who registered there was no attitude of partiality among prospective candidate pairs. The South Halmahera KPU carries out its duties, functions and authorities in accordance with the norms.

The candidate pair for regional head of South Halmahera Regency, of the three (3) candidate pairs, among them one (1) candidate pair has administrative problems, as the requirements must be completed during the registration of candidate pairs that take place at the General Election Commission Office of South Halmahera Regency, the incident started from the registration. The stages of registration of prospective pairs of candidates have been regulated in the election law, regional heads, general election commission regulations, and technical considerations, the incompleteness of one of the prospective pairs of candidates who registered, it is suspected that the organizers of the South Halmahera General Election Commission have sided with other prospective pairs of candidates. The action of the general election commission is suspected to have taken action not based on the provisions of the applicable legal norms of regional head elections, there is no basis for the South Halmahera general election commission to take actions that are not based on the provisions of applicable legal norms.

The concept of legal certainty of elections refers to the organizers, what is meant by this certainty is that the organizers of regional head elections in implementing regional head elections based on the provisions of applicable regulations, and voter participants, carry out regional head elections in accordance with the stages, to achieve democratic ideals. Legal certainty is not interpreted as limited to the context of registration of prospective pairs of candidates for regional heads, of the prospective pairs of candidates in the stages and verification there are incomplete both administratively and prospective pairs of candidates a legal certainty does not favor the prospective pairs of candidates, the norms stated should be subject to and obey. The application of the principle of legal certainty in regional head elections has a broad meaning, so it is not just interpreted in one context. Regional head elections are carried out based on the provisions of the applicable law, a regional head election institution and / or general elections carry out the democratic process without being based on applicable norms, the occurrence of damage to the heart of democracy and the collapse of the rule of law. The importance of the clarity of a norm governing regional head elections can determine the future of the country and region in the future, the form of democracy is seen from the construction of election results. If from the results of the election a bad thing is born, it has the effect of giving birth to explosions from the ideals of democracy expected by a country.

Indonesia in 2020 will hold simultaneous regional head elections, departing from the experience of these elections, one of which is the regional head election in South Halmahera Regency, there has been a dilemma by the general election commission of South Halmahera Regency. The South Halmahera General Election Commission, in carrying out the stages of the regional head elections in 2020, has occurred legal events of regional head elections. The election organizers carry out the stages of regional head elections always based on the provisions of the applicable election legal norms, each stage refers to the general election law, regional head election law, regulations of the general election commission of the Republic of Indonesia, technical considerations, clarity of norms as described in the previous discussion. All actions taken by the organizers of the South Halmahera Regency General Election are

always attached to the provisions of the applicable legal norms, based on the provisions of legal norms governing the duties and authorities of the General Election Commission as an election organizing body, which is tasked as a technical institution to carry out general elections and regional head elections, in stages using norms that regulate the inherent functions and authorities. In order to avoid imbalances between institutions, the theory of legal certainty is to emphasize that an institution does not have doubts in carrying out the norms.

The general election commission in carrying out its duties as an election organizer alone has the freedom to act based on the ethics of organizing regional elections, law and freedom are essentially not concepts that contradict or love each other. That law and freedom have a close relationship, one of which has no relationship, freedom without law loses the meaning of freedom. then the duties and authority of the general election commission are supervised by election institutions, namely the election supervisory body, the two institutions are supervised by the honorary board of election organizers, of the three institutions formed under the law, of course in carrying out the stages of general elections and regional head elections comply with the provisions of applicable norms. Every organizer of regional head elections and prospective regent candidate pairs and party administrators are forced to know the rules, as the principle of *ignorantia iuris neminem excusat*, one's ignorance of the law does not excuse, everyone is forced to know the law.

IV. CONCLUSION

The panel of judges from the Election Organizer Honorary Council (DKPP) provided a critical assessment of the performance of the KPU (General Elections Commission) in South Halmahera regarding their scrutiny of candidacy requirements. This evaluation revealed that the KPU must understand not only the textual content of the Election Commission Regulations (PKPU) and the Technical Guidelines (Juknis) but also interpret them substantively. This means that the KPU should be capable of applying legal principles more broadly and deeply in every action and decision it makes. The decision by the DKPP was established with a highly professional, careful, and wise approach. The judges aimed to prioritize robust considerations based on existing legal norms, demonstrating a commitment to the aspects of justice and legal certainty in the electoral process. This is vital to ensure that all parties, including gubernatorial candidates and their constituents, can have full confidence in the integrity and fairness of the electoral process.

In practice, the KPU of South Halmahera has understood the principle of legal certainty as a guideline to execute legal norms correctly, particularly in rejecting the fulfillment of candidacy requirements. This approach aligns with the primary purpose of legal certainty, which is to maintain consistency and predictability in the application and interpretation of the law by all involved parties. This entire process reflects an ongoing effort to uphold legal and ethical standards in the administration of local head elections in South Halmahera District, ensuring that each decision is based on solid and responsible legal judgment.

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