

## AUTHORITY OF THE ELECTION SUPERVISORY BOARD FOR DISPUTE RESOLUTION ON THE HEAD OF REGION ELECTION BASED JUSTICE VALUES (STUDY ON THE HEAD OF REGION ELECTION IN NORTH SUMATRA)

Erniyanti  
Anis Mashdurohaturun  
Erman Suparman  
I Gusti Ayu Ketut Rachmi Handayani

### ABSTRACT

*The purpose of this study was to examine and to analyze the authority of the Election Supervisory Board for the Dispute Resolution on Election of the Head of Regional Head in North Sumatra and its weaknesses and the construction in the future. The Result of the Research found that the authority of Bawaslu (Election Supervisory Board) in the dispute resolution of Election in Binjai City and in Langkat Regency was based on the Regulation of the Supervisory Agency of General Election Number 8 Year 2015 on the Procedure of Settlement of Dispute on the Election of Governor and Vice Governor, Regent And Deputy Regent And Mayor And Deputy Mayor which starts from Article 7, Article 10 and Article 17. The weaknesses were in Substance, Structure and Legal Culture. Future Construction will done by reformulating Article 15 of the Regulation of the Election Supervisory Board Number 8 of 2015 on the Procedure for Settlement of Election of Governor and Deputy Governor, Regent and Deputy Regent and Mayor and Deputy Mayor and Article 134 Paragraph (1) of the Law of the Republic of Indonesia Number 8 of 2015 on Amendment to Law Number 1 of 2015 on Stipulation of Government Regulation in Lieu of Law No. 1 of 2014 on the Election of Governors, Regents, and Mayors.*

**Keywords: Reconstruction, Bawaslu Authority, Election Dispute, Justice.**

### A. Introduction

General Election in a democratic country like Indonesia is a peaceful change of power process that is carried out periodically in accordance with the principles outlined in the constitution. Principles in elections conforming to the constitution include the principle of a citizen life of sovereignty (democracy) is marked that every citizen is entitled to participate actively in any state decision-making process, from the principles of election, it can be understood that the election is a political activity which is very important in the process of organizing power in a country. It adheres to the principles of democracy as set forth in Articles 18 and 22 of the 1945 Constitution of the Republic of Indonesia<sup>1</sup>. The principles in elections that are in accordance with the constitution include the principle of democratic citizenship of state administration (democracy) that every citizen is entitled to participate actively in every state decision making process.<sup>2</sup>

Contemporary Indonesian political history records that every time an election is held, there are always protests that doubt in the implementation process and the election results<sup>3</sup>. This not only happened in the election during the New Order era<sup>4</sup>, but also the

<sup>1</sup>NKRI, as stated in Article 1, Paragraph 1 of the 1945 Constitution in conjunction with Article 37, Paragraph 5 of the 1945 Constitution and as a pluralistic country, consisting of various tribes, religion, race, and class of each region. I Gusti Ayu Ketut Rachmi Handayani, Lintje Anna Marpaung, Guntur Hamzah, Yuliantri & Anis Mashdurohaturun, Empowerment Community Leaders As To Strengthen The Implementation Of Regional Autonomy, Journal Of Politics And Law; Vol. 10, No. 5; 2017 ISSN 1913-9047 E-ISSN 1913-9055 Published By Canadian Center Of Science And Education. page.29.

<sup>2</sup>Dahlan Thaib Ketatanegaraan Indonesia. Prepektif Konstitusi. Total Media. Yokyakarta 2009 hal 98

<sup>3</sup>Dissatisfied protests over electoral processes and results in the latter by the many unresolved violations, and the feeling of being unfairly treated by the organizers, indicate a problem of law enforcement in every election. If not immediately addressed, on the one hand, it will continue to cause protests from parties who feel violated their constitutional rights, rigged, or treated unfairly; on the other hand, the protests that emerged could eventually delegitimize the election results.

<sup>4</sup>During the New Order, elections were designed to win the government party so that violations of the rules were very rampant. Since the elections in 1982 the electoral committee was formed, but the real function is to quell dissatisfaction with the violation, not to solve the violation itself. see William Liddle, *Pemilu-Pemilu Orde Baru: Pasang Surut Kekuasaan Politik*, LP3ES, Jakarta, 1992, hal 36. Lihat juga Alexander Irwan dan Edriana, *Pemilu: Pelanggaran Asas Luber*, Pustaka Sinar Harapan, Jakarta, 1995, hal 25. dan Syamsuddin Haris, *Menggugat Pemilihan Umum Orde Baru*, Yayasan Obor, Jakarta, 1998, page 62.

1999<sup>5</sup> election, the 2004<sup>6</sup> legislative elections and the 2004<sup>7</sup> presidential elections. Even the 1955 election known as the cleanest election was doubt by the protests<sup>8</sup>. It continues in implementation of direct election of regional heads<sup>9</sup> throughout 2005 until now, as well as legislative elections in 2009 and 2014. Likewise the 2009 and 2014 presidential elections further add to the long list of protests of dissatisfaction with the election<sup>10</sup>. The emergence of protests of dissatisfaction with the process and election results on the one hand, due to the many violations of electoral regulations that are not resolved thoroughly. On the other hand, it is due to feelings of unfair treatment by election organizers.

Regional election in Indonesia has experienced many obstacles such as money politics, data manipulation, deliberately eliminating other people's voting rights, deliberately giving false information about self or others about something necessary for filling in the voter list, determining the number of ballot papers printed in excess of the amount prescribed by law, and so on which led to election disputes. The number of problems that occur during the election indicate that we need to strengthen institutions that handle election disputes.

Legislative election dispute settlement is finalized by Bawaslu and if there is an election crime, it will be forwarded to the Police, while general election dispute resolution is regulated in Law of the Republic of Indonesia Number 15 Year 2011 regarding General Election Organizer, although the report begins from the findings of Regency/City. The resolution of dispute over the election of regional head according to the Regulation of the Supervisory Board of the General Election No. 8 of 2015 concerning Procedure for Settlement of Dispute on the Election of Governor and Deputy Governor, Regent And Deputy Regent And Mayor And Deputy Mayor hereinafter referred to as Bawaslu Regulation no. 8 Year 2015. In reality in the settlement of Regional electiondisputethat occurred, Bawaslu still not able to accommodate the sense of justice from the parties to the dispute. This is due to the lack of legal arrangements concerning election disputes, among others: the authority of Bawaslu as an oversight body for elections and is authorized to resolve limited disputes only to report to law enforcement officers, not directly to or contribute to resolve disputes, in particular for the completion of simultaneous regional head elections was held in Binjai City on December 9, 2015.

The implementation of democratic parties through the election of regional heads in the legal system in Indonesia is a manifestation of democracy. Implementation of elections can never be separated from citizens, because it is the constitutional right of citizens, either to vote or to be elected. Since the election of regional heads is held on the basis of the manifestation of equality before the law principle and equal opportunity principle. Construction of election provisions in Indonesia when viewed in the electoral system as set forth in Article 22E of the 1945 Constitution of the Republic of Indonesia, shall be no provision concerning the implementation of the General Election of Regional Heads in Article 22E. On the other hand, Article 18 Paragraph (4) of the 1945 Constitution of the Republic of Indonesia only mentions the Governors, Regents and Mayors respectively as heads of provincial, district and municipal governments elected democratically. The implementation of free, secret, honest, and democratic General Election constituting the mandate of Article 22E Paragraph (1) juncto Article 18 Paragraph (4) of the 1945 Constitution of the Republic of Indonesia in fact does not reflect the spirit of the two articles, because there are still many disputes occurred in the implementation of Regional Election.

---

<sup>5</sup>The 1999 election results can hardly be ratified because most members of the General Elections Commission (KPU) who come from political parties refuse to sign the national vote countThe reason, in the implementation of elections there are so many violations that the results can not be ratified.

<sup>6</sup>A number of parties in responding to the 2004 legislative election result demanded a re-election even though the law did not regulate it. Panwas Pemilu, *Laporan Pengawasan Pemilihan Umum Anggota DPR, DPD dan DPRD*, Panwas Pemilu, Jakarta, 2004, page 75

<sup>7</sup>Throughout the 2004 Presidential Election, Abdurrahman Wahid (along with his mass supporters) continued to protest after his name was not included by the KPU in the list of presidential candidates, Panwas Pemilu, *La poran Pengawasan Pemilihan Umum Presiden dan Wakil Presiden*, Panwas Pemilu, Jakarta, 2004, page 56.

<sup>8</sup>In the 1955 Election, the Election Committee of Indonesia was accused of opposition parties deliberately stalling the formation of electoral committee in the region in order to include people who could benefit government parties. In other words, opposition parties accused the election committee in the election-formed region of the Indonesian Electoral Committee is not independent. Actually, the allegations that the election committee in the region is not independent can be used as a pretext to reject the election results. But because of the political maturity of the leadership of the parties at the time, it did not happen. see Herbert Feith, *Pemilu 1955*,Kepustakaan Populer Gramedia, Jakarta, 1999, hal 7. Lihat juga Alfian, *Pemilihan Umum dan Prospek Demokrasi di Indonesia, dalam Demokrasi dan Proses Politik*, LP3ES, Jakarta, 2004, page 25

<sup>9</sup>Regional election, including election or not, has become a serious debate so that Law Number 32 Year 2004 regarding Regional Government which places regional election not election section is sued to the Constitutional Court. The debate ended after Law Number 22 Year 2007 regarding the Election Organizer which placed regional election as part of the election was enacted, see Muchlis Hamidi, *Kajian Pemilu 1999, Pertanggungjawaban Panitia Pengawas Pemilihan Umum Tahun 1999 Tingkat Pusat*, Gramedia, Jakarta, 1999, page 78.

<sup>10</sup>Legislative Election, Presidential Election and General Election of Kada are colored by protests and even riots. In various regions, the mass supporters of losing candidate pairs launch anarchist actions because they feel cheated by other participants or by organizers.

One of the main requirements of democracy is the existence of a free and fair elections system, however, every time the election is held there is always an issue about the weakness of election law enforcement. This issue departs from the fact that many administrative offenses and electoral crimes are not dealt thoroughly. In addition, the existing legislation also has not regulated the objection to the decision of the election organizer. Indeed, the Constitutional Court (MK) has the authority to resolve disputes over election results stipulated by election organizers (KPU), but what about objections to other matters (outside the election results) also decided by the election organizer. Number of cases of election administration violation and election crime, and number of cases of objection to the decision of the election organizer; on the one hand, encouraging the emergence of violent protests, on the other hand, also reducing the legitimacy of election results.

International electoral standards for democratic elections indicate that free and fair elections can be achieved if law enforcement is available that governs all electoral processes while protecting the organizers, participants, candidates, voters, monitors and citizens in general from fear, intimidation, violence, bribery, fraud, and other fraudulent practices that will affect the outcome of the election. Therefore, the selection of honest and fair regional heads needs and needs to be regulated and protected by a strict and universal regulatory election law and is assisted by the officers in charge of enforcing the regulation of the regional head election.

In an effort to realize the fair and just regional elections and in order to avoid delegitimized election in the future, the issues of law enforcement of the election must be resolved in a conspicuous manner. The first step that needs to be done is to identify the causes that arises law enforcement problems, then look for a comprehensive solution to overcome the problem so that finally realized an electoral law enforcement system that is able to guarantee the implementation of the election of a fair and fair regional head.

Based on the practice experience of the election of regional head, the emergence of election law enforcement problem is caused by several factors: First, the unclear boundary (indicator) about the violation that happened, causing multi interpretation which lead to controversy; Second: mechanisms and procedures for handling violations are not clear, so the handling is not easy or becomes a polemic; Thirdly, local election law enforcement officers are either unprepared or unprofessional so the dispute resolution becomes incomplete or in some cases create new problems; Fourthly, the legal sanction against perpetrators of violation of the provisions or requirements in the implementation of Regional Election is very light, so as not to give deterrent effect against the perpetrators of violation of Regional Election.

Start from the fact that occurred in the field coupled with the issuance or enactment of Law no. 8 of 2015 on the Election of Governors, Regents, Mayors and their Representatives, disputes of simultaneous regional election whose settlement of disputes is resolved by Banwaslu pursuant to Law no. 1 of 2015 on the Stipulation of Government Regulation in Lieu of Law No. 1 of 2014 on the Election of Governors, Regents, and Mayors into Law as amended Law no. 8 of 2015 and Bawaslu Regulation no. 8 Year 2015. In view of the above explanation, it is interesting to examine in depth the authority of the Election Supervisory Board for the Election of the Head of Regional Head Elections in North Sumatra and its weaknesses and the future Construction.

## B. Research Methods

This research used the sociological juridical approach to see firsthand the facts in the field, how the implementation of the authority of the Supervisory Board (Bawaslu) in the dispute resolution elections in Binjai City, and what are the weaknesses, and to determine the Reconstruction of Authority Election Supervisory Board in Dispute Resolution of Head of Base-based Regional Justice.

## C. Results and Discussion

### 1. Implementation of Authority of Bawaslu in Settlement of Regional Election and its weakness in Binjai City of North Sumatra

The meaning of the State over the law is that power is subject to the rule of law and all people are equal in the law<sup>11</sup>. In the context of a state of law, elections are also necessary to ensure that laws are made democratically, ie by institutions elected by the people through democratic means of elections<sup>12</sup>. According to TopoSantoso, the requirements for building the law enforcement system are: The existence of effective mechanisms and legal settlement; The existence of rules concerning penalties for election offenses; Provision of detailed and adequate provisions to protect voting rights; The right of voters, candidates and political parties to complain to the election organizers or the judiciary; There is a decision to prevent the loss of suffrage from election organizers or courts; The right to appeal; A decision as soon as possible; The existence of rules regarding the time required to decide the lawsuit; There is clarity about the implications for violations of electoral rules on election results.

- (1) The existence of processes, procedures and prosecutions that respect human rights.<sup>13</sup>

Elections in Indonesia have not yet demonstrated a justice and democratic and prosperous, it is necessary to build on the principles and practice of good governance sustainable, effective and accountable in the welfare of the people in accordance with

<sup>11</sup>Mochtar Kusumaatmadja, *Konsep-Konsep Hukum Dalam Pembangunan*, Alumni, Bandung, 2002, page. 12

<sup>12</sup>Jimly Asshiddiqie, *Kontitusi Ekonomi*, Kompas, Jakarta, 2010, page. 362.

<sup>13</sup>Topo Santoso, dkk, *Kajian Kebijakan: Sistem Penegakan Hukum Pemilu(2009-2014)*, Perludem, Jakarta, 2006, page.102.

the mandate of the 1945 Constitution of the Republic of Indonesia. So it is necessary to create various programs and activities, such as fixing the electoral system, electoral management and law enforcement election.<sup>14</sup>

In the city of Binjai in 2005, there had been confusion/dispute; in which three mayors together with their supporters rejected the election took place on Monday, 27-06-2005. Meanwhile, other mayoral candidates to support the election still held or held on Monday, 27-06-2005.

The cause of the dispute/chaotic Regional election Mayor of Binjai is due to the emergence of two different letters from the Regional General Election Commission (KPUD) Binjai City. First letter; informed the postponement of the election, while the second letter informed that the implementation of the election remained on schedule, Monday, 27 June 2005. The emergence of two opposite letters caused a reaction from both supporters of Mayor Candidates.

According to political observers in the city of Binjai, the dispute occurred on Sunday 26-06-2005 around 19.00 WIB, the first action was carried out by about 1000 supporters of the three candidates who approved the election regional election postponed. They gathered in front of Binjai Mayor's Office, on Jendral Sudirman Street Binjai, 30 km from Medan City.

The three candidates who rejected the Mayor were Hemanan Manan, Indra Bungsu and Abdul Gani Sitepu. While the mayor who supported the election held on Monday, 27-06-2005 was Ali Umri, who was formerly the Mayor of Binjai (incumbent). In conveying the action, there have been stone throws between the supporters and the period that rejected the election was held on Monday, 27-06-2005. At that time, the regional election supporters gathered together at Lapangan Merdeka Kota Binjai.

Some of them carried sharp weapons and wood. This case originated from the alleged discovery of about 15 thousand voters who are not registered in KPUD Binjai. It was also found suspected overlap or multiple voters. To this problem, the supporters of three mayoral candidates who asked for the election were postponed by going to the Binjai KPUD office.

This rejection action occurred on Sunday Date 26-06-2005, and had caused damage to the Binjai KPUD office. But the commotion could be disrupted by police officers. Following the demonstration accompanied by such vandalism, Binjai Election Commission under the pressure of a group of supporters of one candidate on Monday at around 02.00 am, on Monday 26-06-2005, issued a Decision Letter no. 287-1102/KPUD/B/06/2005, which essentially delayed the election to be on July 4, 2005.

The letter was signed by the Chairman of KPUD Binjai (Achyar Ahmad Ridwan). When the two Binjai Election Letters have not been disseminated, on Monday morning, 27-06-2005 at around 04.00 pm KPUD Binjai issued another letter No. 287-1104/KPUD/B.1/ 6/2005, essentially declaring the election of Mayor of Binjai stay on date 27-06-2005 this is the trigger and controversy.

The result of the interview to the community, the public protest over the conduct of regional head election conducted by the KPU, because of dissatisfaction some community groups went to the KPU on the grounds that they did not get voting cards which some of them were unable to exercise their voting rights and the case was resolved by the KPU by suggesting that they exercise their suffrage by using a KTP (ID Card) and/or family card.

A few hours later, a group of people who felt that they did not get voting cards and told them similar things were suggested by the KPU to exercise their voting rights using ID cards and family cards, but at that time there was a commotion by the community, should be postponed but not timed. In response, the KPU's decision to appoint election is still carried out and there are people who follow the election process, and there are also people who do not know the implementation of the election held on Monday 27 June 2005. This is clearly unfair to people who cannot participate in elections.

Based on the above two KPU decisions, the candidates of the Mayor of Binjai, Hemanan Manan, Indra Bungsu and Abdul Gani Sitepu objected to the KPU's decision and because of the two KPU's decisions, resulted in the community as voters, especially the supporters of the candidates of Mayor of Binjai, Hemanan Manan, Indra Bungsu and Abdul Gani Sitepu were unable to exercise their voting rights because many did not know the implementation of the Regional Head Election took place on Monday 27 June 2005.

Justice and injustice are always done on volunteerism. Volunteering includes attitudes and actions. When people undertake an involuntary action, it cannot be categorized as unfair or just, except in some special way. Taking action that can be fairly categorized must have room to choose as a place of consideration. In the case of the implementation of the elections in Binjai City above, the action of Binjai Election Commission which made 2 (two) decisions regarding the date of the election is obviously unfair because it is not done voluntarily but the Binjai Election Commission is under pressure from a group of supporters of one candidate/there is room to choose as a place of consideration.

The dispute resulted from the two Binjai Election KPUDs which opposed the back, causing the candidates of Mayor of Binjai, Hemanan Manan, Indra Bungsu and Abdul Gani Sitepu to object and dispute the election to the Binjai City Panwaslu (the election supervisory committee). However, upon submission of the request for dispute resolution, the Binjai City Panwaslu (the election

---

<sup>14</sup>Ramlan Surbakti, Didik Supriyanto, Topo Santoso, *Penanganan Sengketa Pemilu*, Seri Demokrasi Elektoral, Buku 16, Kemitraan, Jakarta, 2011, page. iv

supervisory committee) rejected the application due to the expiration of the application period in accordance with the applicable regulations. Finally, the election of the regional head was won by one of the candidates, namely Candidate Number 1.

The reason for the Panwaslu of Binjai City is based on the provisions of the Act which limit the reporting time for 3 days, so this is what makes injustice to the candidate pair and the supporting community who cannot vote. This time limit needs to be revised in order to be fair.

At the end of vote counting KPU Binjai City decided the vote acquired by Candidate Number 1, based on the decision KPU Binjai No. 57/KPTS/KPU City 002434908/2015, establish Mayor and Vice Mayor 2015 Serial number 1 brother HS Idham and TimbasTaringan brothers with votes of 47,606 votes or 38.25% of the votes cast. On the other hand, the two candidate pairs of Mayor Number 2 and candidate of Mayor Number 3 will not sign the result of vote, because they are not satisfied with the decision because there are many violations during the election. It is based on the theory of justice.

The KPU approves a legal effort to proceed to the Constitutional Court. Nevertheless, a few days later the Constitutional Court decided victory over the No. 1 candidate who was from Incumbent. The Constitutional Court determines the number 1 party to win the democratic battle that is on December 16, 2015.

According to the Chairman of KPU Binjai City, as the implementation of the election of the Regional Head, it has performed its duties in accordance with the stages of the Election of Regional Head which has been regulated in Law no. However, not to dismiss the number of violations that occurred before, during and after the implementation of Binjai election simultaneously took place, then the chairman of Panwaslu (the election supervisory committee) of Binjai city also said that the violations are indeed frequent and cannot be proven because it involves personnel or concerning personality moral person who always on behalf of principle and class.

Thus, it needs to improve the legal culture in the form of changes in mindset or learning and understanding of science, especially in the field of politics. The need for people to learn social science lessons and politics for the future more have an intellectual personality that is moral and dignified and in accordance with the ideals of the nation that leads to a just and prosperous society.

Based on the problems faced in the above mentioned in Binjai City elections, the reconstruction of Bawaslu (election supervisory body) authority in receiving the dispute report is limited to 3 days after the violation report is declared a dispute. These 3 days' time limit is not in accordance with the Indonesian philosophy of the 5<sup>th</sup> principle of social justice for all Indonesians, because so many election participants in several districts/cities and so many cases of violations while the distance or so many problems so that the complainant ran out of time. Since 3 days the Panwaslu could not receive reports or complaints due to the provisions of the law. This time limit provision needs to be reconstructed, so that any violation of law in election disputes can be resolved by Bawaslu whose principle is the settlement by deliberation and consensus.

Likewise election organizers direct the dispute to the Constitutional Court in order to avoid misunderstanding both on the part of the organizers and participants of the election. However, in the Court there is no continuation of the participants who objected so that According to the Chairman of KPU Binjai City as the organizer of the election of the Regional Head has performed its duties in accordance with the stages of Election of Regional Head which has been regulated in Law no. 8 of 2015 and the election of Regional Head held in Binjai City on December 9, 2015 declared run successfully in accordance with the provisions that apply.

In addition to the above cases, the case occurred in North Sumatra that is former Governor Rudolf after his tenure runs out following the mayor of Medan with his partner Afd. It turns out the results of administrative selection of his files rejected by the Medan KPU because of the diploma it he canceled following the election of the election, ironically when he nominated the legislature for the DPR RI for the Region of North Sumatra with the same file he escaped the administration to become a member of the House of Representatives.

In addition to regional election cases such as Ngogesa case in Langkat district, Ali Umri in Binjai City, and Rudolf in Medan City and also there are cases of dispute in PematangSiantar namely JR Saragih case and many more cases happened in Indonesia as well as Regent elections Kendal Regency, Central Java.

Settlement of dispute based on Law no. 1 of 2015 on Stipulation of Government Regulation in Lieu of Law No. 1 of 2014 on the Election of Governors, Regents, and Mayors Became Law as amended by Law no. 8 of 2015 and Bawaslu Regulation no. 8 Year 2015, this will potentially lead to new problems and even more problems arising in the Regional election simultaneously, one of which is due to the limited time available to resolve the dispute over the results of the election. Since, within 3 days, it is not enough for participants, candidates and successful teams to collect evidence in making reports to Panwaslu. Assuming, the authority of Bawaslu in the process of resolving electoral disputes is often not run well and independently, this happens because it is handled by unscrupulous elements and do not have high integrity to handle disputes elections simultaneously with professional and independent.

With the existence of several cases that occurred above, then to overcome the problems of law enforcement of the election, the material of election law legislation of the Regional Head, must be completed, clarified, and confirmed by looking at the situation and justice in society. Then no less important is strengthening election law enforcement agencies to be able to work professionally, independently and effectively.

In relation to the holding of elections, the importance of Bawaslu authority is reinforced and strengthened in carrying out its functions as a sanctioning violator including the structure and management organization of Bawaslu to handle the case of regional election Dispute. In the case of the handling of electoral disputes, it also needs to involve the role and function of academics, as well as community leaders who understand and follow the political developments in the region, so that the procedures for handling disputes election can be easily implemented.

Therefore, it is necessary and very important to be reconstructed Substance, Structure and Culture in election organization to resolve election disputes especially Regional election in order to produce Regional election (Election of Governor, Regent and Mayor) with justice. During the implementation of the General Election held simultaneously by the Election Organizer, namely Panwaslu, electoral disputes often accumulate because they are settled through institutions divided into different institutions. So that the discussion for each case that takes a long time plus the lack of understanding of general justice about the election resulted in hampering law enforcement process in the implementation of election and the election results is doubtful integrity. So that election law enforcement system is very special for all, so that electoral system creates Regional election fair. Due to the various problems that often occur in the implementation of Regional election in Indonesia, this shows that there is still no effective law enforcement tool and meet the sense of justice.

In the event of election disputes between election participants and election organizers or election participants with the KPU on the issuance of KPU decisions, those who feel disadvantaged can solve the problem through two channels through court or non-court. If the court is to sue the KPU's decision at the first State Administrative court, but if through non-court means through Bawaslu, in which case the decision of Bawaslu is equivalent to the decision of the first state administrative court.

The decision of Bawaslu in the Adjudication Session and others may be appealed to the State Administrative High Court after the election dispute resolution process is completed and there are still parties who still object to the KPU's decision. Law no. 8 of 2012 on general elections on the decision of Bawaslu in resolving election disputes are described as follows:

The decision of Bawaslu on the resolution of election disputes is final and binding, except for the decision on election disputes related to the verification of Election Contesting Political Parties and the list of permanent candidates for members of DPR, DPD, Provincial DPRD and Regency/Municipal DPRD.

So it is very clear that indeed the decision of the election supervisory institution as the settlement of the dispute can still be brought to PTTUN by dissatisfying parties over the decision of the election supervisory body. However, the decision that can still be submitted to PTTUN is limited to a dispute caused by the KPU's decision regarding the determination of political participation of election participants and KPU, Provincial KPU and Regency/Municipal KPU's decision on the list of candidates for permanent members of the legislature. That is, outside the case of the dispute caused by the two decisions of the election organizer, the decision of Bawaslu and his staff in resolving the dispute is final and binding.

Whereas the result of the decision of Bawaslu in resolving the dispute is final and binding, but only for two non-binding matters concerning the determination of political party as the election participant and the determination of permanent list of Mayor and Vice Mayor, both of which have been fully authorized by the KPU as the organizing body of the election so that the KPU cannot execute the result of the Bawaslu decision on the party which received the petition, namely PKPI. Both of these parties have been clearly explained in Law no. 8 of 2012 on General Election. The KPU does have an appropriate basis when rejecting the decision of the Bawaslu, but when the injured party appeals to the State Administrative High Court and after various considerations so that the appealed petition is received by the State Administrative High Court. The KPU must run and execute the decision of the Administrative High Court of the State. This does not mean that the KPU's decision on PKPI regarding the verification of political parties as election participants is null and void by the decision of the State Administrative High Court to grant the PKPI request but only canceled the KPU's decision. Such a decision may be appealed to the Supreme Court if the parties concerned still feel aggrieved.

The provisions relating to the decisions of government organs such as the defendant's KPU can only be canceled and not void by law. This is explained in article 53 paragraph 1 of Law no. 51 of 2009 concerning the State Administrative Court, namely a person or civil legal entity who feels his or her interest is impaired by a State administrative decision may submit a written claim to the competent court containing the demand that the disputed State Administration Decree be declared null and void, with or without a claim for compensation and/or rehabilitation.

The decision of Bawaslu does not mean that it does not have the authority of executors but only on the determination of political parties as election participants and the determination of permanent list of DPR, DPD and DPRD members who have no executive authority, so only the decision of the State Administrative Court which has the authority to execute on the matter. The legal power of the decision of the State Administrative Court is not clearly regulated in the law, but according to the Procedural Law of State Administration, it is known that there are several legal forces from the judges' ruling in the State Administrative court namely:

1. The strength of proof is the legal force given to a judge's decision that with the verdict obtained evidence of legal certainty.
2. The binding force of the judge's decision is the force of law granted to a judge's verdict that the ruling binds the interested party to obey or exercise it.
3. The Exhaustive Power of the judge's verdict is the legal force granted to a judge's verdict that the judge's ruling may be exercised. As a condition of a judge's decision to acquire the executive power is the inclusion of the revelation "For the sake of Justice under the Almighty God" on the decision.

The State Administrative Court in examining, adjudicating and deciding the election state administration disputes pursuant to article 279 of Law no. 8 Year 2012 on the Election Organizer shall form a special assembly comprising a special judge, namely a career judge within the High Administrative Court of the Court and the Supreme Court, which is stipulated by the decision of the Chief Justice of the Supreme Court.

According to Lawrence M. Friedman<sup>15</sup> stated that the success or failure of law enforcement depends on: Substance Law, Legal Structure/Legal Institution and Legal Culture. The substance of the Law, this is referred to as the Substantial system that determines whether or not the law is implemented. Substance also means products produced by people in the legal system that include the decisions they make, the new rules they are compiling. Substance also includes living law, not just rules in law books. As a country that still adheres to the Continental European system (though some legislation has also adopted the Anglo Sixed system) the law is the written regulations whereas the unwritten rules are not legally stated. Political Structure/Legal is called the system. The structures determine whether or not the law is well executed, so that in carrying out its duties and responsibilities regardless of the influence of governmental power and other influences there is an adage which states "*fiat justitia et pereat mundus*" (though the world is collapsing the law must be enforced). The law cannot walk or stand if there are no law enforcement officers who are credible, competent and independent. How good a legislation if it is not supported by law enforcement officers then justice is just wishful thinking. Weak mentality of law enforcement officers result the law does not work as it should. Many factors affect the weak mentality of law enforcement officers such as weak understanding of religion, economy, recruitment process that is not transparent and so forth. So it can be asserted that law enforcement factors play an important role in legalizing the law. If the rules are good, but the quality of law enforcement is low then there will be problems. Likewise, if the rules are bad while the quality of law enforcement is good, the possibility of problems is still open. The legal culture is the attitude of man to the law and the legal system-his beliefs, values, thoughts, and expectations. A legal culture is an atmosphere of social thought and social force that determines how laws are used, avoided, or abused. The legal culture is closely related to the legal consciousness of society. The higher awareness of community law will create a good legal culture and can change the mindset of the public about the law so far. Simply stated, the level of public compliance with the law is one of the indicators of the functioning of the law. All legal substance, legal structure and legal culture are interconnected with each other and cannot be separated. In the implementation among the three must create a mutually supportive relationship in order to create a pattern of living safe, orderly, peaceful and peaceful.

Based on the Lawrence M. Friedman theory, the implementation of the Bawaslu Authority in the Regional election Settlement there are several weaknesses, among them are as follows:

- a. In terms of the legal structure: Although every election, the law always strengthens the authority and responsibilities of the Election Supervisory Body (Bawaslu), but the strengthening of the authority is not accompanied by the increasing role of Bawaslu in the success of the election, this is marked by the many problems that then arise but cannot be completed by Bawaslu. Whereas Bawaslu most know how the implementation of election in the field.
- b. In terms of legal substance: The provision on the authority of Bawaslu greatly limits the authority of Bawaslu to the extent of only receiving reports of election violations at every stage of the election, the reporting deadline is so short that it is unfair to the complainant because it is difficult to collect evidence. There are still many violations that cannot be handled by Bawaslu, only to make recommendations for criminal cases of election, without being authorized for search, arrest and investigation or investigation as well as public prosecutor. Therefore, the majority of election criminal case reports are not followed up by the Police, due to lack of evidence and witnesses. Then the decision of Bawaslu is not final so it opens the opportunity for a very long process through litigation, so there is no legal decision and legal usefulness.
- c. In terms of legal culture: Bawaslu still not able to accommodate the sense of justice from the parties to the dispute. This happens because the human resources are still not independent, still siding with one of the candidates for the election. Local election law enforcement officers are either unprepared or unprofessional so the dispute resolution becomes incomplete or in some cases create new problems.

## **2. The authority of the Bawaslu (election supervisory bodies) in the dispute resolution of the Regional election Based on Justice Values**

The court in seeking justice and truth does not seek the satisfaction of the majority of society and not to relieve some officers or stakeholders, but as far as possible to seek justice and truth that can be achieved according to the circumstances and facts alone, dissatisfied or relieved. This is in accordance with the function of the Court upholding justice and truth itself so as not to get out of the way, that is fair and civilized according to the principle of 2 (two) Pancasila, a just and civilized humanity. The 2<sup>nd</sup> and 5<sup>th</sup> Principles of Pancasila are a Basic Reconstruction of Election Crime Settlement (Local Wisdom). The resolution of election disputes should be based on the value of justice as stated in the 5th Precept of Pancasila, namely Social Justice for All Indonesians. The precepts of Social Justice are the aims of the other four precepts. Ontologically, the essence of social justice is also determined by the existence of the essence of justice as embodied in the second precepts of a just and binding humanity. According to Notonagoro, the essence of justice embodied in the second precepts is the justice embodied in the essence of the human mono-pluralism. That is a just humanity towards oneself, towards others and to God or prime cause. The incarnation of mono-pluralism human justice in the field of life together both within the scope of society, nation, state and life between nations

<sup>15</sup>Friedman, Lawrence M, Sistem Hukum ; *Perspektif Ilmu Sosial(The Legal System ; A Social Science Perspective)*, Bandung: Nusa Media, 2009.page 8.

is about the nature of human nature as individual creatures and social beings that is in the form of justice in living together or social justice. Thus the logic of social justice is based on and inspired by the second precepts of a just and civilized humanity (Notonagoro, 1975: 140, 141).

TeguhPrasetyo, that the settlement of election disputes should not be based on western justice because only material or material, it must be based on justice in Pancasila that is dignity justice because it is spiritual justice, that is humanizing human (Javanese: *ngewongkeuwong*) according to point 2 of Pancasila. Social justice is equitable justice in all fields of life, in the economic, social, and cultural fields that can be felt by the people. Sukarno said social justice as a nature of a just and prosperous society, happy for everyone, no humiliation, no oppression and no exploitation.

Regional election dispute resolution should be equitable oriented in coexistence within Indonesian society, in accordance with John Rawls's justice theory which is essentially crystallized in two equations of justice, with the principle that justice is derived from a more general concept of justice formulated as "All social values of freedom and opportunity, income and wealth, and self-esteem should be equally distributed. An unequal distribution of social values is only allowed when it is beneficial to everyone. "

The foundation of the State of Indonesia is the Pancasila which has social justice demanding the production of public policy which leads to the goal of political philosophy, in order to ethically obtain justification. A policy will lose its ethical eloquence if it does not take into account the interests of the people. In the Conhran and Malone category, a policy is interpreted as public (public policy) if the policy is related to Government Decisions and Action designed to rescue public concerns, but the most urgent here is that as long as it concerns the goal of social justice as the political philosophy of the founding of the state, it is rapidly responded to as the necessity of public life.

The handling of the election dispute resolution should override the procedures for reporting the existence of election disputes under Law No. 8 of 2012 set forth in Chapter XX. Given these rules have not been able to respond to cases of election disputes. This has resulted in many violations that cannot be handled by Bawaslu because of the ineffectiveness of Bawaslu which is limited to making the recommendation of criminal case of election, without being authorized for search, arrest and investigation or investigation as well as public prosecutor. So that, the majority of election criminal case reports are not followed up by the Police, due to lack of evidence and witnesses.

The handling of the settlement of election crimes to be fair and dignified is humanizing human beings according to the 2<sup>nd</sup> Precepts and social justice as the hope of the 5<sup>th</sup> of Pancasila, then the role of Bawaslu should be given full authority as investigator and public prosecutor. Because based on legislation regulating the election supervisory position only as an "intermediary" (receiving and forwarding) reports of election violations. Election law enforcement at: KPU/KPUD for violation of election administration and Police for criminal violation of election.

Therefore, for the enforcement of election law, Bawaslu should be the Investigator and General Prosecutor of election disputes, so as to have the authority of forced summoning, seizure of evidence and explorations, so that the handling of electoral crimes can be directly transferred to the Special Election Court in order to follow the stages of the election, with the hope of achieving a dignified justice according to Pancasila<sup>16</sup>.

Pancasila is the main basic values which is as crystallization of various values that live in society. It is the soul of the nation (*volksgeist*) in society and nation of Indonesia which is the guiding star (*leidstar*) in the life of society, nation and state of Indonesia.<sup>17</sup> Reconstruction of the authority of Bawaslu in the settlement of Regional election based on Justice Value can be formulated as follows:

---

<sup>16</sup>All Pancasila values can be found in the Qur'anic statement, including the five themes inspired by Pancasila, namely:

- (1) Believe in One God or Tawheed
- (2) the concept of humanity or a just and civilized human being through its provisions  
Al-Qur'an: al-insan al-nas, and al-Basyar.
- (3) Unity of Indonesia or unity of people (*umah*) or community integration
- (4) democracy is guided by policy wisdom in the consideration and representation of the concept of *orthofasi* caliphate and deliberation.
- (5) social justice for all Indonesians or political (*al-adl*) economic justice.

This is in accordance with the general principles of Islamic law, namely *Tauhidullah* (divinity), *insaniyah* (principle of humanity), *Tasamuh* (tolerance), *ta'awun* (*gotongroyong*), *Gathering* (*Baina al-nas*) people), *Justice*, and *Benefits*. AnisMashdurohatun, *Constructing And Developing The Social Function Principles In Utilising Copyright Products Related To The Fundamental Rights*, South East Asia Journal of Contemporary Business, Economics and Law, Vol. 7, Issue 4 (Aug.) ISSN 2289-1560.2015. page.90-91

<sup>17</sup>AnisMashdurohatun, HayyanUlHaq, Sony Zuhuda, *Social Function Reconstruction Of Intellectual Property Rights (IPR) Based On Justice Values*, International Journal of Law Reconstruction Volume I, Issue 1, September 2017, page.145.

1. Article 134 Paragraph (1) of Law of the Republic of Indonesia Number 8 Year 2015 Concerning Amendment to Law Number 1 of 2015 Concerning Stipulation of Government Regulation in Lieu of Law No. 1 of 2014 on the Election of Governors, Regents and Mayors Becoming Laws which reads: "Bawaslu, Provincial Bawaslu, Regency/Municipal Panwas, District Panwas, PPL and TPS Supervisors receive election violation reports at each stage of the election." Reconstructed to: "Bawaslu, Provincial Bawaslu, Regency/Municipal Panwas, violation at every stage of the holding of elections by deliberation independently and impartial to any party".
2. Article 15 of Regulation of the Supervisory Agency of General Election No. 8 of 2015 concerning Procedures for the Settlement of Election Dispute of Governor and Deputy Governor, Regent And Deputy Regent And Mayor And Deputy Mayor which reads:
  - (1) Dispute settlement Elections shall be conducted by deliberation, quickly and without charge.
  - (2) Provincial Bawaslu or Regency/Municipal Supervisory Committee shall examine and decide upon the election dispute as referred to in paragraph (1) within a maximum period of 12 (twelve) days from the date of receipt of the Application.

Reconstructed to:

- a. Provincial Bawaslu or Regency/Municipal Panwas, is authorized to examine and decide on violations and disputes at each stage of the election, by deliberation, independent, prompt and without charge.
- b. The decision of Provincial Bawaslu or Regency/Municipal Panwas is final.

#### D. Conclusion

The authority of Bawaslu in the dispute resolution of Election in Binjai City and in Langkat Regency is based on the Regulation of the Supervisory Agency of General Election Number 8 Year 2015 on the Procedure of Settlement of the Election of Governor and Deputy Governor, Regent And Deputy Regent And Mayor And Deputy Mayor starting from Article 7 (1) which reads: "Provincial Bawaslu or Regency/Municipal Supervisory Committee may present the institution as the party to the information required in the settlement of the Electoral Dispute". Subsequently in Article 10 it is further clarified: (1) In the event that the Dispute arises from a violation report, the Election Supervisor notifies to the complainant that the report constitutes a Dispute. (2) Election Supervisors advise the complainant to file a dispute request. (3) The application for dispute resolution as referred to in sub-article (2) shall be submitted within 3 (three) days at the latest since the violation report is declared as dispute. Furthermore, in Article 15 it shall be affirmed: (1) The settlement of election disputes shall be conducted by deliberation, prompt, and without cost. (2) The Provincial Bawaslu or Regency/Municipal Supervisory Committee shall examine and decide upon the election dispute as referred to in sub-article (1) within a maximum period of 12 (twelve) days from the date of receipt of the application. The authority of Bawaslu in the settlement of every dispute over the General Election of Regional Heads in both Binjai and Langkat is still very weak. The weaknesses are divided into three sub-systems of law, including in terms of structure, substance and legal culture. Bawaslu still has not been able to accommodate the sense of justice from the disputing parties. This happens because the human resources are still not independent, still siding with one of the candidates for the election. Local election law enforcement officers are either unprepared or unprofessional so the dispute resolution becomes incomplete or in some cases create new problems. Reconstruction of the authority of Bawaslu in the settlement of elections based on the value of justice can be formulated as follows: Article 134 paragraph (1) of Law of the Republic of Indonesia Number 8 Year 2015 on Amendment to Law Number 1 Year 2015 On Stipulation of Government Regulation in Lieu of Law Number 1 Year 2014 On the Election of Governor, Regent, Mayor and Article 15 of Regulation of Supervisory Agency of General Election Number 8 Year 2015 concerning Procedure of Dispute Resolution of Governor and Vice Governor Election, Regent And Deputy Regent And Mayor And Deputy Mayor.

#### REFERENCE

- Anis Mashdurohatun ,Hayyan Ul Haq , Sony Zulhuda, *Social Function Reconstruction Of Intellectual Property Rights (IPR) Based On Justice Values*, International Journal of Law Reconstruction Volume I, Issue 1, September 2017.
- Anis Mashdurohatun, *Constructing And Developing The Social Function Principles In Utilising Copyright Products Related To The Fundamental Rights*, South East Asia Journal of Contemporary Business, Economics and Law, Vol. 7, Issue 4(Aug.) ISSN 2289-1560.2015
- Alexander Irwan dan Edriana, *Pemilu: Pelanggaran Asas Luber*, Pustaka Sinar Harapan, Jakarta, 1995
- Alfian, *Pemilihan Umum dan Prospek Demokrasi di Indonesia, dalam Demokrasi dan Proses Politik*, LP3ES, Jakarta, 2004
- Dahlan Thaib Ketatanegaraan Indonesia. Prepektif Konstitusi. Total Media. Yogyakarta 2009.
- Friedman, Lawrence M, *Sistem Hukum ; Perspektif Ilmu Sosial(The Legal System ; A Social Science Perspective)*, Bandung: Nusa Media, 2009.
- Herbert Feith, *Pemilu 1955*, Kepustakaan Populer Gramedia, Jakarta, 1999
- I Gusti Ayu Ketut Rachmi Handayani, Lintje Anna Marpaung, Guntur Hamzah, Yuliandri & Anis Mashdurohatun, *Empowerment Community Leaders As To Strengthen The Implementation Of Regional Autonomy*, Journal Of Politics And Law; Vol. 10, No. 5; 2017 ISSN 1913-9047 E-ISSN 1913-9055 Published By Canadian Center Of Science And Education.2017.
- Jimly Asshiddiqie, *Konstitusi Ekonomi* , Kompas, Jakarta, 2010.
- Laporan Pengawasan Pemilihan Umum Presiden dan Wakil Presiden, Panwas Pemilu, Jakarta, 2004
- Mochtar Kusumaatmadja, *Konsep-Konsep Hukum Dalam Pembangunan*, Alumni, Bandung, 2002.

Muchlis Hamidi, *Kajian Pemilu 1999, Pertanggungjawaban Panitia Pengawas Pemilihan Umum Tahun 1999 Tingkat Pusat*, Gramedia, Jakarta, 1999.  
Panwas Pemilu, *Laporan Pengawasan Pemilihan Umum Anggota DPR, DPD dan DPRD*, Panwas Pemilu, Jakarta, 2004  
Ramlan Surbakti, Didik Supriyanto, Topo Santoso, *Penanganan Sengketa Pemilu*, Seri Demokrasi Elektoral, Buku 16, Kmitraan, Jakarta, 2011.  
Syamsuddin Haris, *Menggugat Pemilihan Umum Orde Baru*, Yayasan Obor, Jakarta, 1998  
Topo Santoso, dkk, *Kajian Kebijakan: Sistem Penegakan Hukum Pemilu (2009-2014)*, Perjudem, Jakarta, 2006.  
William Liddle, *Pemilu-Pemilu Orde Baru: Pasang Surut Kekuasaan Politik*, LP3ES, Jakarta, 1992

Erniyanti  
*Student of Doctoral Program in Law Science, UNISSULA*  
*erniideng@yahoo.com*

Anis Mashdurohatun  
*Lecturer at Faculty of Law, UNISSULA Semarang*  
*anism@unissula.ac.id*

Erman Suparman  
*Lecturer at Faculty of Law, UNPAD Bandung*  
*eman\_professor@yahoo.com*

I Gusti Ayu Ketut Rachmi Handayani  
*Universitas Sebelas Maret*  
*ayu\_igk@yahoo.com*