

# RECONSTRUCTION OF REGULATION OF THE AUTHORITY TO ADDRESS DETERMINATION OF VILLAGE HEAD ELECTION RESULTS AS THE OBJECT OF STATE ADMINISTRATIVE OBJECT OF STATE ADMINISTRATIVE DISPUTES BASED ON JUSTICE VALUE

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## ABSTRACT

The State of Indonesia is a State of Law". As a constitutional state, Indonesia places the foundations of law above all else. The purpose of this study is to analyze and find regulations adjudicating the determination of village head election results as objects of dispute. State administration is not based on the value of justice. The results of the Election of the Village Head as the object of a state administrative dispute based on the value of justice. The paradigm in this study is Constructivism. The legal research used in this dissertation is qualitative legal research, i.e. non-doctrinal legal research using a socio legal research approach, and the nature of this dissertation research is descriptive. The theory used is Pancasila justice theory, dignified justice theory (Grand Theory), legal system theory (Middle Theory), as well as progressive legal theory and authority theory (Applied Theory). The results of the study found that the Reconstruction of regulations on the authority to adjudicate the Determination of Village Head Election Results as Objects of State Administrative Disputes based on the value of justice, Reconstruction of regulations on objects of state administrative disputes on Bodies or Officials and State Administrative Decisions as follows: contents of Law No. 51 of 2009 concerning the Second Amendment to Law No. 6 of 1986 concerning State Administrative Courts Paragraph (1) Number 8 concerning the meaning of State Administrative Agencies or Officials Paragraph (1) Number 9 concerning State Administrative Decisions Prior to reconstruction in the event of disputes over the determination of the Village head election committee regarding the results of the village head election not being resolved by the Regent can be directly challenged to the state administrative court.

**Keywords:** reconstruction, justice, authority, object, TUN

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## INTRODUCTION

The TUN judiciary has the authority only to adjudicate TUN disputes. According to Article 1 point 10 of Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986: "State administrative disputes are disputes arising in the field of state administration between civil persons or legal entities and state administrative bodies or officials, both at the central and regional levels, as a result of the issuance of state administration decisions, including employment disputes based on the applicable laws and regulations" (Fachruddin, 2004). Referring to the formulation of the definition of State Administrative disputes, it can be understood that the forming elements of state administration disputes are:

1. The subject of the dispute, consists of civil law persons or entities on the one hand, and TUN bodies or officials on the other.
2. The object of the dispute is in the form of a decision issued by a TUN body or official (beschikking). In addition, through Article 53 paragraph (1) of Law Number 5 of 1986 jo. Law Number 9 of 2004 can also be understood that new state administration disputes will occur if

a state administration decision issued by a state administration agency or official creates adverse legal consequences for a person or civil legal entity.

Settlement of State Administrative disputes or government administration disputes can be pursued through 2 (two) channels, namely the non-judicial and judicial routes (Ritzer, 1985). Settlement of State Administrative disputes or government administration disputes through non-judicial channels in the form of administrative efforts (Nasution, 2003). Administrative efforts are a process of "dialogue" within the government, between citizens and officials so that settlement through a judicial institution is "ultimum remedium" (Asshiddiqie, 2005).

State Administrative Agency or Official. The formulation of Article 48 of Law Number 5 of 1986 concerning State Administrative Court (UU PERATUN) regulates administrative efforts. The administrative effort is a procedure that can be taken by a person or civil legal entity if they are not satisfied with a State Administrative Decision, which is carried out within the self-government environment before being submitted to court.

The absolute competence of the Indonesian state administrative court currently adheres to a narrow view, limited to the criteria for the subject of external disputes between persons and/or civil legal entities against State Administrative Bodies/Officers, with the object of the dispute being a written determination (Santoso, 2012). This can be seen in the formulation the subject and object of the State Administrative dispute contained in the State Administrative Law (UU) (UU Number 5 of 1986 as amended by Law Number 9 of 2004 and Law Number 51 of 2009 which states:

Article 1 point 10

“State Administrative Disputes are disputed that arise in the field of state administration between civil persons or legal entities and State Administrative Agencies or Officials, both at the central and regional levels, as a result of the issuance of State Administration Decrees, including, including personnel disputes based on regulations applicable laws and regulations”

Article 1 point 8

State Administrative Agency or Officer is an agency or official who carries out government affairs based on the applicable laws and regulations (Chaerudin, 1999). The polemic over the village head election dispute, after the election, it often reached a stalemate even though attempts had been made by way of deliberations, or recounting the votes, and even rescheduling the village head elections. Several conflict issues, among others; the village head is a promising new position, the implementation mechanism has not been perfectly scheduled; the rules are not clear. The Village Head Election Committee is formed by the Regency/City Regional Head in contrast to the General Election where the committee is formed structurally and is more neutral from the influence of power (Black, 1990). At the voting stage, it is sometimes unthinkable for the Pilkades Committee to make several polling places to approach voters, so that they are not concentrated in one place, even though this is simple, it will cause reluctance for people who live in remote areas and have to walk because there is not yet adequate transportation available (Asshiddiqie, 2013).

The authority of the State Administrative Court is a state administrative dispute, namely a dispute between a State Administrative Agency or Official and a civil law person or entity as a result of the issuance of a State Administrative Decree (Guba & Lincoln, 2009). In the event of a village head election the dispute that occurred could not necessarily be categorized as a State Administrative dispute, because: The Pilkades Committee is not a State Administrative

Agency/Officer, so it does not produce concrete, individual and final decisions (Koentjoro, 2004). The Pilkades Committee does not decide on the results of the election, but only reports the results of the Pilkades in the election minutes along with attachments as proof of the explanation, not determining who is elected as the village head, because whether the village head is elected or not depends on residents who are not the committee (Putra, 2020). Meanwhile, it is the Regent who determines whether or not the elected candidate to become the village head is the Regent with a Decree stipulating the elected village head as the (definitive) village head (Atmadja, 2018).

## **METHOD**

What is quite important in legal research as a scientific activity is the process of analysis which includes research methods to study certain legal phenomena, then seek solutions to the problems that arise. So we need an appropriate research method (Diantha & Sh, 2016).

The type of research used in this research is analytical descriptive (John, 2013). Descriptive research is a form of research aimed at describing existing phenomena, both natural phenomena and man-made phenomena (Irwansyah, 2020). Analytical descriptive according to Sugiono is a method that functions to describe or give an overview of the object under study through data or samples that have been collected as they are without conducting analysis and making general conclusions (Iskandar & Pd, 2009).

## **RESULTS AND DISCUSSION**

### **1. Reconstruction**

Before interpreting what reconstruction is, we must first know what construction is. Construction is the arrangement (model, layout) of a building (bridge, house, etc.): the arrangement and relationship of words in sentences or groups of words (Ibrahim, 2008). Yusuf Qardhawi explained that the reconstruction included three important points, namely first: maintaining the core of the original building while maintaining its character and characteristics (Mukti Fajar & Achmad, 2010). Second: repairing things that have collapsed and strengthening joints that have been weak. The third includes several updates without changing its original character and characteristics (Indrati, 2007).

So reconstruction is rearranging in order to correct things that are wrong about something that already exists with the aim of improvement.

### **2. Regulation**

In KBBI (Big Indonesian Dictionary) regulation is defined as a rule, regulation is a way to control humans or society with certain rules or restrictions (Lotulung, 1986). The application of regulations is usually carried out in various forms, namely legal restrictions imposed by the government, regulations by a company, and so on (Suriasumantri, 1993).

### **3. State Administration**

Is the State Administration that carries out the function of administering government affairs both at the central and regional levels.

4. State Administrative Agency or Official is an Agency or Official that carries out government affairs based on the applicable laws and regulations.

### **5. National Administrative Decision**

Is a written stipulation issued by the National Administration Agency or Office that contains the legal actions of the National Administration that are based on legal regulations and legal consequences for a person or civil law entity.

6. State Administrative Disputes are disputed that arise in the field of State Administration between civil persons or legal entities and State Administrative Agencies or Officials, both at the central and regional levels, as a result of the issuance of a State Administration Decree, including employment disputes based on statutory regulations. -applicable invitations (Ali, 2009).

#### 7. Authority to adjudicate

The authority to adjudicate or the jurisdictional competence of the court is to determine which court has the authority to examine and decide on a case, so that the submission of the case can be accepted and not rejected on the grounds that the court does not have the authority to try it (Lopa & Hamzah, 1993). Competence can also be called jurisdiction, which within the jurisdiction of the judiciary means the authority of a court to adjudicate or a court authorized to adjudicate certain disputes in accordance with the provisions outlined in the laws and regulations. In this case, it is divided into 2 (two) court authorities, namely absolute competence or absolute authority and relative competence. Absolute competence or absolute authority is the authority of a court body in examining certain types of cases which absolutely cannot be examined by other court bodies. Relative competence relates to the court's authority to adjudicate a case in accordance with its jurisdiction.

#### 8. Determination of Village Head Election Results

Determination of the results of the village head election is the implementation of voting and counting the votes that get the most votes.

#### 9. Objects of State Administration

A State Administrative Decree is a written determination issued by a state administrative agency or official based on applicable laws and regulations, which is concrete, individual and final, which creates legal consequences for a person or civil legal entity.

10. Justice is the application/granting of equal rights before the law, in the sense that all people have the same standing in public, without any differences between one another. In the concept of justice, the provision of justice is based on proportionate, that is, not the provision of equal justice, but on a proportional basis, each person is different, depending on the application related to justice.

### **Theoretical Framework**

#### Progressive Law Theory and Authority Theory (Applied Theory)

##### *Progressive Law Theory*

The definition as stated by Satjipto Rahardjo means progressive law is a series of radical actions, by changing the legal system (including changing legal regulations if necessary) so that law is more useful, especially in raising self-esteem and guaranteeing human happiness and welfare. In simpler terms he said that progressive law is a law that makes liberation, both in the way of thinking and acting in law, so that it is able to let the law just flow to complete its duty to serve humans and humanity. So there is no engineering or partisanship in enforcing the law. Because according to him, the law aims to create justice and prosperity for all people.

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*Authority Theory (Applied Theory)*

Authority has an important position in the study of constitutional law and administrative law. So important is this position of authority that F.A.M Sroink J.G Steenbeek mentions it as a core concept in the position of state administration and administrative law. According to Bagir Manan, authority in legal discussion is not the same as power (macht). Power only describes the right to do something or not do something. In law, authority simultaneously means rights and obligations (rechten en plichten).

**Reconstruction Results**

In realizing the implementation of the authority to try administrative dispute objects in a fair manner, it is necessary to carry out a reconstruction of Article (1) number 8 and Article (1) Number 9 of the Law of the Republic of Indonesia Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Court.

No	Regulation	Regulation Contents	Regulatory Weaknesses	Reconstruction of Objects of State Administrative Disputes
1	Article 1 Number 8 Law no. 51 of 2009 concerning the Second Amendment to Law No. 6 of 1986 concerning State Administrative Courts	Paragraph 1 of Figure 8 reads: National Administrative Bodies or Offices are bodies or offices that carry out government affairs based on applicable laws and regulations.	1. In Law no. 51 of 2009 Second Amendment to Law no. 5 of 1986 concerning the State Administrative Court does not explain in detail and explicitly who is included in the State Administrative Agency or Officer who carries out government affairs. The Village head Election Committee is not listed in the 1945 Law of the Republic of Indonesia, which states what is included in the General Election to elect the DPR, DPD, President & Vice President and the Regional Representatives Council.	Rekonstruksi Pasal 1 Angka 8 Undang-undang No. 51 Tahun 2009 Tentang Perubahan Kedua Atas Undang-undang No. 5 Tahun 1986 Tentang Peradilan Tata Usaha Negara yaitu: Ayat 1 Angka 8 berbunyi: Badan atau Pejabat Tata Usaha Negara adalah Badan atau Pejabat yang

			<p>The phrase Village Head does not exist in the implementation of General Elections.</p> <p>2. The Village Head Election Committee was not formed by law but by the Village Consultative Body (BPD) in contrast to the General Election Commission which was formed by law.</p>	<p>melaksanakan urusan pemerintahan seperti pemerintah Pusat, Propinsi, Kabupaten / Kota dan Desa termasuk Komisi Pemilihan Umum, Panitia Pemelihan Kepala Desa yan dibentuk dengan undang-undang.</p>
2	<p>Article 1 Number 9 Law No. 51 of 2009 concerning the Second Amendment to Law No. 6 of 1986 concerning State Administrative Courts</p>	<p>A State Administrative Decision is a written decision issued by a State Administrative Agency or Official which contains state administrative legal actions based on applicable laws, which are concrete, individual and fibal in nature, giving rise to legal consequences for a person or civil legal entity</p>	<p>It does not explicitly mention the decision of the National Administrative Agency or Office which is final so that it can still be interpreted differently</p>	<p>Article 1 Number 9 Namely State Administrative Decisions are a written or unwritten decision issued by a State Administrative Agency or Official formed by law, carrying out government affairs which contains concrete, individual and final state administrative legal actions / the</p> <p>DEFENITIVE</p>

## CONCLUSION

Based on the results of the research and discussion that have been described in the previous chapters, the authors draw conclusions, suggestions, from the research results as follows: state administration in the perspective of human rights based on the value of justice.

As for the form of reconstruction of the Agency or Official regulations and State Administration Decrees as follows: contents of Law No. 51 of 2009 concerning the Second Amendment to Law No. 6 of 1986 concerning State Administrative Courts Paragraph (1) Number 8 reads: State Administrative Agencies or Officials are Bodies or Officials who carry out government affairs based on applicable laws and regulations . Paragraph (1) Number 8 reads that a State Administrative Decision is a written decision issued by a State Administrative Agency or Official which contains state administrative legal actions based on applicable laws, which are concrete, individual and final in nature, which give rise to consequences law for a person or civil legal entity. Before being reconstructed, in the event of a dispute over the determination of the Village head election committee regarding the results of the village head election not being resolved by the Regent, it can be directly challenged to the state administrative court.

In order to achieve the aims and objectives of the state administrative court, namely to prevent the occurrence of lawsuits resulting from the election of the Village head which is increasing in number, it is necessary to have procedural rules for the problem solving system for the results of the Village head election to the Regent.

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