



Authority of General Election Commission for the Electoral Constitutional Rights

Nasruddin; Galang Asmara; Cahyowati

Master of Law, Mataram University, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v6i6.1197>

Abstract

Indonesia is a country that adopts a democratic system that puts sovereignty in the hands of the people. As a manifestation of people's sovereignty, there is a direct election process, in which the people can determine their choices in electing the House of Representatives, the Regional Representative Council, the Regional People's Representative Council, the President and Vice President, the Governor and Deputy Governor, the Regent and Deputy Regent, as well as the Mayor and Deputy Mayor. The purpose of the study was to analyze the discretionary authority of the National Election Commission as a state institution. Research methods, this type of research is normative research, using a statutory approach, and conceptual. Sources of legal materials use primary, secondary and tertiary legal materials. After the legal materials are collected and identified, the analysis of legal materials is carried out using analytical prescriptive methods, namely studying the purpose of the law, the values of justice, the validity of the rule of law, legal concepts, and legal norms. In conclusion, the General Election Commission is a supporting state institution or an auxiliary institution or an independent institution that is of a national, permanent and independent nature which holds elections in Indonesia. The General Election Commission in safeguarding the constitutional rights of voters has the authority to make discretionary decisions on issues if the laws and regulations do not regulate, are incomplete or unclear so that it causes stagnation at some stages, especially in the preparation and determination of the Voter List in the Data Upgrading Stages.

Keywords: Discretionary Authority; General Election Commission; Voter Constitutional Rights

Introduction

Indonesia is a country that adopts a democratic system that puts sovereignty in the hands of the people. As a manifestation of people's sovereignty, there is a direct election process, in which the people can make their choices in electing the House of Representatives, the Regional Representative Council, the Regional People's Representative Council, the President and Vice President, the Governor and Deputy Governor, the Regent and the Deputy Regent, as well as the Mayor and Deputy Mayor. Robert Dahl argues that, in a democratic country, elections (abbreviated as elections) are one of the most vital

elements, because one of the parameters to measure whether a nation is democratic is how the elections are carried out by that country.¹

Elections have the aim to guarantee the achievement of national ideals and goals. In the spirit of the Indonesian nation, those national goals and objectives are enshrined in the opening of the 1945 Constitution of the Republic of Indonesia (hereinafter abbreviated as the 1945 Constitution) which states that the country's goals or national aspirations and objectives, namely the Government of the State of Indonesia which protects the whole of the Indonesian people and all of Indonesia's blood and blood and promote public welfare, educate the nation's life, and participate in carrying out world order based on independence, eternal peace and social justice.²

So that the ideals and goals of the Indonesian state can be maintained and sustained (sustainability), it is necessary to hold an Election and Regional Head General Election (abbreviated as the elections),. Election aims to elect regional heads. Elections and local elections are also a means of manifesting people's sovereignty that results in people's representatives and democratic state government, based on Pancasila and the 1945 Constitution.³

One of the important principles of the rule of law is the guarantee of holding an independent election, that is, free from the influence of other powers to hold elections. The election is held by a commission which is the General Election Commission (hereinafter abbreviated as KPU).

Election implementation is inseparable from problems regarding the determination of "Permanent Voter Lists" (abbreviated DPT). The DPT issue shows that in practice it shows various very important impacts in the implementation of elections when Indonesian citizens who have fulfilled the requirements to exercise their right to vote as regulated in Article 198 Paragraph (1) of Law no. 7 of 2017 concerning Simultaneous General Elections, but faced with problems not registered in the DPT because they do not have an Electronic Identity Card (KTP-E), are forced to lose their voting rights and are not allowed to use their voting rights because the conditions for voting have been determined by Article 199 of the Law No. 7 of 2017.⁴

The issue of losing the right to vote will not be large if the number of citizens who lose their right to vote is only in a small number range, but it becomes a big problem when the number of citizens who lose their right to vote is a large enough number of around 7,089,902 threatened voters cannot use their vote. This DPT problem shows how important it is for the state to protect the function of the right to elect its citizens because it is related to the implementation of the General Election which is a "people's party" to form / realize popular sovereignty. The formulation of the problem in this study concerns, the discretionary authority by the KPU as a state institution.

¹ Robert Dahl in Muhammad Abdillah, Elections That Reflect the Concept of Democracy, <https://www.kompasiana.com>, April, 2014, p. 6.`

² Opening of the 1945 Constitution Paragraph IV

³ Compare this with the Consideration section Considering the letter 'a' of the Election Law, which is the next acronym of Law of the Republic of Indonesia Number 7 of 2017.

⁴ Article 198 Paragraph (1) of Law Number 7 of 2017 Concerning Concurrent Elections.

Methods

This type of research is normative research, using a statutory, conceptual approach. Sources and types of legal materials and sources of legal materials use primary, secondary and tertiary legal materials. After the legal materials are collected and identified, the analysis of legal materials is carried out using analytical prescriptive methods, namely studying the purpose of the law, the values of justice, the validity of the rule of law, legal concepts, and legal norms.

Result and Discussion

a. Discretion Concept

In the perspective of the law of state administration, in principle every agency and / or Government Official or other State Operator that carries out government affairs or government functions that have attributive authority or delegation. Discretionary authority is a complement to the principle of legality. For countries that adhere to the teachings of Welfare State, the principle of legality alone is not enough to be able to play a maximum role in serving the interests of a rapidly developing society in line with the development of science and technology. Therefore, this discretion arises as an alternative to fill the weaknesses and weaknesses in the application of the principle of legality (*wetmatigheid van bestuur*). The essence of discretion is making a decision that is fast, precise, and useful to something that is not yet regulated by law, or the rules are unclear (*vagenormen blurring norms*) discretionary decisions must be framed by law.⁵

The discretionary conditions, namely: 1) In accordance with the purpose of Discretion; 2) Does not conflict with statutory provisions; 3) In accordance with the AUPB; 4) Based on objective reasons; 5) Does not cause a conflict of interest; 6) Done in good faith.

Problems that are resolved through discretion are used mainly because: first, an emergency that makes it impossible to apply written provisions; second, there are no or no regulations governing it; third, there are rules but the editorial is vague or multi-estimated.

b. KPU as a State Institution having Discretionary Authority

KPU is one of the institutions whose existence is not explicitly named in the 1945 Constitution of the Republic of Indonesia. The existence of the Commission as a general election institution is explained in Article 22E paragraph (5) of the 1945 Constitution of the Republic of Indonesia, that Elections are held by the National, permanent, and National Election Commission independent. The meaning of "held" has contained the authority that the KPU is an institution that has the constitutional authority to hold elections. The national nature reflects that the working area and responsibility of the KPU as the organizer of the General Election covers the entire territory of the Unitary State of the Republic of Indonesia. The nature of it still shows the KPU as an institution that carries out its tasks on an ongoing basis even though it is limited by certain terms of office. The independent nature emphasizes the KPU in holding elections, free from the influence of any party. Furthermore, the provisions concerning Elections are explained in

⁵ Ridwan, "Discretion (*Freis Ermessen*) by Government Officials of Legal Signs, Validity Measuring Instruments, and Accuracy in Their Use". *Journal of Legal Media* Volume 16 No.3 December 2009

Article 22E paragraph (6)⁶, that the details of the provisions regarding the name of the institution and its authority are regulated further in a separate law, namely Law No. 10 of 2016 concerning the Election of Governors, Regents and Mayors and Law No. 7 of 2017 concerning General Elections.

Discretion can be applied by Provincial KPU and Regency/City KPU to the problems that arise in the data updating stage with the provisions of the purpose analysis first. The objectives include:

First, to launch the stage of updating the data by safeguarding the constitutional rights of Indonesian citizens to the right to vote in the general election or election that takes place;

Second, to fill the legal vacuum, in this case before the issuance of the discretion the competent official needs to analyze the presence or absence of legal provisions governing voter issues that are hampered by the mandatory provisions of electronic identity cards (abbreviated as e-KTP). In this case the provisions need an understanding of the requirements of Indonesian citizens registered as a voter;

Third, providing legal certainty, for the absence of law or applicable law, inadequate legal certainty is needed if DPT issues are found in the Regional Head Election (abbreviated as Pilkada) simultaneously in 2020. Legal Certainty can be in the form of a decree or circular letter originating from the Provincial KPU and Regency / City KPU as the organizer of the election for the Governor, Regent and Mayor;

Fourth, overcome the stagnation of government in certain circumstances for the benefit and public interest. With the existence of legal certainty, it is certainly expected that the DPT problem does not interfere with the updating of the data, citizens who have the right to vote can enter the DPT and can determine their voting rights in the simultaneous local elections in 2020.

Discretionary authority by KPU officials must consider professionalism and integrity. Professionalism in this case means working thoroughly and accurately, integrity which means solving problems must be based on enthusiasm, behavior, and actions in accordance with moral principles by benchmarking the General Principles of Good Governance (abbreviated as AUPB). AUPB is a principle used as a reference for the use of authority for KPU officials in issuing decisions or actions in organizing the stages of general elections. The values in AUPB are cumulative which means that all actions, decisions and policies issued by KPU officials may not deviate from the AUPB values.

The existence of KPU in the constitutional system in Indonesia is as a supporting institution or an auxiliary institution or as an independent institution. KPU as the organizer of the General Election must not be in and or under the influence of a person, group, class, political party and government. The position of the KPU is not in the realm of executive, legislative or judicial branches of power. The KPU also cannot be treated as a private organization or non-governmental organization. Its existence is public, the source of funding comes from the public, and aims for the public interest. KPU as an auxiliary state institution is intended to answer the demands of the community for the creation of democratic principles in every election that is accountable, independent and trustworthy.

KPU guarantees in protecting and protecting the constitutional rights of citizens of every citizen will again be ensured at the simultaneous local elections in 2020. The aspect of protecting basic human

⁶ Article 22E paragraph (6) of the 1945 Constitution of the Republic of Indonesia "Further provisions concerning general elections are regulated by law

rights is the right of Indonesian citizens to be able to determine their choices through elections. KPU can issue discretion if conditions are found where the electoral stage is problematic and its resolution is hampered by the opacity of legal certainty, as is common in the determination of the DPT. The problem solving policy through the KPU's authority is based on the principle of openness which requires the KPU's active role to provide information to the public regarding the decisions taken. This authority takes place through discretion that complements the shortcomings and weaknesses of the principle of legality. The party who took this authority was a public official at an independent KPU institution.

Discretion issued by the Regional Election Commission (abbreviated as KPUD) Langkat North Sumatra in the holding of the 2009 elections, was motivated by the inaction of policy makers, in formulating macro policies, delays in allocating and budget and resource constraints, time limitations, imperfections of policy substance, lack of policy experience maker, as well as demands for accountability, respectability, and professionalism that have an impact on the delay in the implementation of the elections.⁷

In the 2017 Regional Election for DKI Jakarta, a discretion was issued, due to none of the pairs of candidates for governor and deputy governor of DKI Jakarta who achieved a vote percentage exceeding 50%, so that if referring to the Election Act the Governor of DKI must take two rounds. Based on Decree No. 49 / Kpts / KPU-Prov-010/2017 concerning Guidelines for the Implementation of the Election of the Governor and Deputy Governor of DKI Jakarta in the second round by the Jakarta KPU. This decision is a further implementation of Law Number 1 Year 2015, which was last amended with Law Number 10 Year 2016, and also KPU Regulation Number 3 Year 2016,⁸ and KPU regulation number 6 of 2016⁹ to set the second round. The rules explained that the campaign was carried out by sharpening the vision and mission of the candidate pair. By the Jakarta Election Commission through Decree Number 49, the form of vision and mission sharpening is carried out by means of face-to-face campaigns and public debates.¹⁰

Government inaction in drafting Regulations (abbreviated PP) regarding the Procedure for the Election of Local Election has a great influence on the implementation of the 2009 elections. All KPUDs are very dependent on PPs because the provisions or regulations they make are required to refer to PPs which are derived from Law No. 32 of 2004, specifically regulating the elections. With regard to time and schedule regulation issues, the Regency / City KPU is fully responsible for the entire Pilkada process, namely electoral regulation, electoral process, and electoral law enforcement.

⁷ Fitrianta Jaya Ginting. "Discretion of the General Election Commission in the Implementation of Regional Head Elections (Case Study of the Election of Regional Heads of Langkat Regency of North Sumatra", *Lex et societatis*, vol.II / No.9 / December / 2014 page: 72-73

⁸ Republic of Indonesia Election Commission Regulation No. 3 of 2016 concerning Stages, Programs, and Schedule for the Election of Governors and Deputy Governors, Regents and Deputy Regents, and / or Waikota and Deputy Mayor.

⁹ Republic of Indonesia Election Commission Regulation No. 6 of 2016 concerning Election of Governors and Deputy Governors of Aceh, Regents and Deputy Regents, and / or Waikota and Deputy Mayors in the Aceh region, Election of Governors and Deputy Governors in the Special Capital Region of Jakarta, Papua and West Papua.

¹⁰ Andri Donal Putera, "Perludem: DKI KPU Decree about the second round campaign is appropriate" accessed: "<https://www.google.com/amp/s/amp.kompas.com/megapolitan/read/2017/03/20/20170881/perludem.sk.kpu.dki.soal.kampanye.putaran.kedua.sudah.tepat>

Conclusion

KPU is a supporting state institution or an auxiliary institution or an independent institution that is national, permanent, and independent in nature that holds elections in Indonesia. KPU in maintaining the constitutional rights of voters has the authority to make discretionary decisions on issues if the laws and regulations do not regulate, are incomplete or unclear so that it causes stagnation at a stage, especially in the preparation and determination of the Voter List in the Stage of Upgrading Data.

References

- Jimly, A. 2013. *Introduction to State Administration Law*. Jakarta: Raja Grafindo Merdeka
- Ansori, L. 2015. Government discretion and responsibility in governance. *Jurnal Yuridis*. (2) 1. Pp. 134-150
- Ginting, F, J. 2014. Discretion of the General Election Commission in the Implementation of Regional Head Election (Case Study of the Election of Regional Heads of Langkat Regency of North Sumatra. *Lex et societatis*. (II) 9.
- Ridwan. 2009. Discretion (Freis Ermessen) by Government Officials of Legal Signs, Validity Measuring Instruments, and Accuracy in Their Use. *Jurnal Media Hukum*. (16) 3.
- Andri, D. P. 2017. Perludem: DKI KPU Decree on the Second Round of the Campaign Is Right. <https://www.google.com/amp/s/amp.kompas.com/megapolitan/read//03/20/2017>
- The 1945 Constitution of the Republic of Indonesia
- Law of the Republic of Indonesia Number 7 of 2017 concerning General Elections
- Republic of Indonesia Election Commission Regulation No. 3 of 2016 concerning Stages, Programs, and Schedule for the Election of Governors and Deputy Governors, Regents and Deputy Regents, and / or Waikota and Deputy Mayor
- Republic of Indonesia Election Commission Regulation No. 6 of 2016 concerning Election of Governors and Deputy Governors of Aceh, Regents and Deputy Regents, and / or Waikota and Deputy Mayors in the Aceh region, Election of Governors and Deputy Governors in the Special Capital Region of Jakarta, Papua and West Papua

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).