

Political Rights Protection in Regional Head Election: Evaluation Perspective of Regional Expansion in Indonesia

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The Constitutional Court of The Republic of Indonesia

Abstract

The reforms that took place in Indonesia brought the spirit of decentralization which was reflected in various formation, expansion, abolition and merger of regions. The high development of regional expansion is aimed at providing community welfare. In line with the formation of several newly created regions, various problems have emerged, especially in relation to the implementation of protecting the political rights of citizens in regions experiencing regional expansion. This research will discuss about how to protect the political rights of citizens in the evaluation of regional expansion in Indonesia. The research method used is normative juridical with a case approach in judicial review in the Constitutional Court. The results showed that in the expansion of regions, proportional considerations are needed in relation to public participation. The neglect of democratic principles in the implementation of public participation causes the violation of the political rights of citizens in regional expansion. Therefore, in regional expansion, public participation is needed as a form of democracy in protecting citizens' political rights.

Keywords: evaluation; Indonesia; protection of political rights, regional expansion.

Abstrak

Reformasi yang terjadi di Indonesia membawa semangat desentralisasi yang tercermin dalam berbagai pembentukan, pemekaran, penghapusan dan penggabungan daerah. Tingginya perkembangan pemekaran daerah ditujukan untuk dapat memberikan kesejahteraan masyarakat. Sejalan dengan telah terbentuknya beberapa daerah pemekaran baru, muncul berbagai masalah terutama kaitannya dengan implementasi perlindungan hak-hak politik warga negara di daerah yang mengalami pemekaran daerah. Dalam penelitian ini akan membahas mengenai bagaimana perlindungan hak-hak politik warga negara dalam evaluasi pemekaran daerah di Indonesia. Metode penelitian yang digunakan adalah yuridis normatif dengan pendekatan kasus dalam pengujian undang-undang di Mahkamah Konstitusi. Hasil penelitian didapatkan bahwa dalam pemekaran daerah diperlukan pertimbangan proporsional terkait dengan adanya partisipasi publik. Pengabaian prinsip-prinsip demokrasi dalam pelaksanaan partisipasi publik menyebabkan terlanggarnya hak-hak politik warga negara dalam pemekaran daerah. Oleh karena itu, dalam pemekaran daerah diperlukan partisipasi publik sebagai wujud pelaksanaan demokrasi dalam perlindungan hak politik warga negara.

Kata Kunci: evaluasi, Indonesia, pemekaran daerah, perlindungan hak politik.

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Introduction

Along with the opening of the regional autonomy faucet, each region has great authority to determine steps that can be taken to promote regional welfare. Regional expansion has become a practical choice in some areas to get closer to the community to their local government. The existence of regional expansion is intended as an effort to in-

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crease regional development that is more effective and efficient in responding to the needs that exist in society. The pattern of regional expansion that is carried out can be in the form of the formation of new regions or the merging of regions to other existing regions.

Based on an evaluation study on the impact of regional expansion from 2001 to 2007 conducted by the National Development Planning Agency (Bappenas), it was stated that in 2004, the provincial government had increased from 26 to 33 (26.9%), while the district/city government increased. 45.2%, from 303 to 440. The existence of regional expansion also has implications for the political sector, apart from the economic and social sectors. With the existence of new regions which are the result of regional expansion, new powers emerge which lead to the presence of new positions and political powers in the regions resulting from the expansion.

Problems in filling new powers in the post of regional head in regions resulting from expansion can be seen in the exercise of the authority of the Constitutional Court in resolving disputes over regional head elections. The Constitutional Court, which has entrusted authority in resolving disputes over Regional Head Elections, in 2018 received and examined dispute cases in PHP for the Governor and Deputy Governor of North Maluku with case number 36/PHP.GUB-XVI/2018 which is the result of expansion. The existence of regional and regional government conflicts led to disputes in the election for the Governor and Deputy Governor in North Maluku in 2018. The petition submitted by the Petitioner stems from the argument that there is an unclear use of voting rights in the election of Governor and Deputy Governor in North Maluku in 2018 which is owned by the community due to unclear regional administration resulting from regional expansion. The Petitioner stated that there were 3855 residents living in six villages in North Halmahera Regency. The six villages are Bobaneigo, Paser Putih, Tatewang, Akelamo Kao, Gamsugi, and Dumdum.

The North Maluku General Election Commission places all residents in six villages, namely, Bobaneigo, Paser Putih, Tatewang, Akelamo Kao, Gamsugi, and Dumdum Villages in Kao Teluk District, North Halmahera. However, residents who live in these six villages feel that they are in the administrative area of Jailolo Timur District, West Halmahera Regency according to the identity cards owned by the community members. Therefore, based on the statement of the Chairperson of the North Halmahera Regency KPU at the Constitutional Court trial, of the 5,043 voters in the DPT in the 6 villages referred to only 3,240 voters who accepted the C6-KWK invitation, and only 2,203 voters exercised their voting rights. While the rest are residents who did not exercise their voting rights in the 2018 North Maluku Governor and Deputy Governor Election because they objected to being included in the final voter list (Daftar Pemilih Tetap/DPT) of North Halmahera (The Constitutional Decision Number 36/PHP.GUB-XVI/2018).

Regional and administrative conflicts in the six villages have occurred since the division of West Halmahera and North Halmahera in 2003. People living in six villages namely, Bobaneigo, Paser Putih, Tatewang, Akelamo Kao, Gamsugi, and Dumdum Villages collectively refuse to become part from North Halmahera, because of their historical

experience where since independence they have joined West Halmahera. Because of the resistance made by residents in six villages to the expansion that occurred, it led to dualism of government. Dualism in governance occurs because some residents are registered administratively in North Halmahera and the rest are registered in West Halmahera.

Due to unclear territorial administration and population problems in six villages, namely, Bobaneigo, Paser Putih, Tatewang, Akelamo Kao, Gamsugi, and Dumdum villages, it has implications for election administration problems and voting rights owned by residents in the election for Governor and Deputy Governor of North Maluku which ended on disputes in the Constitutional Court. This research will discuss about how the protection of citizens' political rights in the Regional Head Election in North Maluku from the perspective of evaluating regional expansion in Indonesia. With this research, it is hoped that it can be a lesson and solution in resolving political rights in the regions resulting from regional expansion.

Research Problems

How is the protection of citizens' political rights in regional head elections viewed from the perspective of evaluating regional expansion in Indonesia?

Research Methods

This study uses a normative juridical method with a conceptual and case approach. The normative juridical research method is library law research which is carried out by examining library materials or secondary data (Soekanto, 2003). In this study, the scope of this research will be research by drawing on legal principles, which are carried out on written and unwritten positive laws (Soekanto, 1996). Juridical provisions to see how the legal rules regarding regional expansion in Indonesia. Then the concept approach as the basis for identifying and analyzing the opinions of experts related to regional expansion in Indonesia. The case approach is to see the reality that occurs in the expansion of regions, as well as their application to the political rights of the state. The data that became the object of research were obtained from cases in the Constitutional Court. From the conceptual study that has been formulated and the data obtained are then analyzed based on the perspective of citizens' political rights. Through the decision of the Constitutional Court as the object of research, find out how the Constitutional Court resolves problems in order to provide protection for the political rights of citizens.

Discussion

The Right to Vote in Regional Head Elections

Indonesia as a constitutional democracy upholds the political rights of every citizen in the implementation of elections and regional head elections. Guarantee of citizens' political rights is reflected in the constitution as the highest law in Indonesia by providing

wide opportunities for every citizen to fight for their rights collectively and to achieve the ideals of the nation's struggle, to create a just and prosperous society. The embodiment of citizens' political rights in election contestation and regional head elections can be seen in the right to vote and the right to be elected as stated in the Universal Declaration of Human Rights Article 21 paragraph (1) (Sinapoy, 2009).

The right to vote and be elected is a form of citizen participation in elections and Regional Head Elections which are a reflection of the principle of people's sovereignty which mandates the highest power in the hands of the people and the implementation of the human rights of citizens in participating in government. Elections and Regional Head Elections are *conditio sine qua non* for a modern democratic state, meaning that the people elect someone to represent them in the context of people's participation in the administration of state governance, as a process of temporarily handing over their political rights. This right is a sovereign right to participate in running the state (Budiardjo, 1990).

Guarantee of political rights is important in a constitutional state characterized by the upholding of human rights in a sovereign government. As mandated by Article 25 of the International Covenant on Civil and Political Rights. This right is closely related to the right to vote or vote (right to vote) which is the basic right of every individual which must be guaranteed to be fulfilled by the state. Vierdag categorizes civil and political rights as negative rights, because to realize them, the state must be silent, not take action (passive), so that the formulation uses freedom from (Sinapoy, 2019).

Civil and political rights are rights that fall into the first generation, especially those contained in the International Covenant on Civil and Political Rights, such as freedom of expression and the right to vote. The right to vote as regulated in the 1945 Constitution of the Republic of Indonesia is stated in Article 27 paragraph (1) and (2); Article 28, Article 28D paragraph (3) and Article 28E paragraph (3). Then, the right to be elected is in Article 1 paragraph (2); Article 2 paragraph (1); Article 6A paragraph (1); Article 19 paragraph (1) and Article 22C paragraph (1) of the 1945 Constitution; and Article 28D paragraph (3). Political rights within the framework of human rights in Indonesia are not only regulated in the constitution but are also contained in Article 23 paragraph (1) of Law Number 39 of 1999 concerning Human Rights. The right to free choice based on political beliefs is the right to personal freedom. Furthermore, the political rights of a citizen are emphasized in Article 43 paragraph (1), paragraph (2) and paragraph (3) of Law Number 39 Year 1999 concerning Human Rights.

The exercise of people's sovereignty (Budiardjo, 1990) in the implementation of elections and regional head elections itself places public participation (Sinapoy, 2019) as important for the implementation of constitutional democracy which requires every citizen to have the right to actively participate in the political process (Kusnardi, 1983). The participation of citizens through their voting rights in determining who will represent their interests in government. The right to vote is one of the fundamental prerequisites for a country that adheres to a modern constitutional democracy. Dieter Nohlen argues that (Sinapoy, 2019): "The right to vote, along with freedom of expression, assembly, associati-

on, and press, is one of the fundamental requirements of modern constitutional democracy". Therefore, the right to vote is one of the political rights that must be maintained.

The right to vote is one of the most valuable assets a citizen has (Baidya, 2020). The legal right to vote in elections is widely recognized as a necessary condition for democracy (Beckman, 2017). The right to vote is a right to a right because it provides an instrument for resolving disputes (Beckman, 2017). The right to vote provides a formal mechanism that links people's preferences and public decisions (Beckman, 2017). Through voting, there is a transfer of power through the right to vote which was initially held by each citizen as the sovereign of the people given to members of the legislature in legislative elections or the regional head as executive in regional head elections. In the results of elections and regional head elections, it will be seen that the people's sovereignty determines the composition of the legislative and executive bodies which determines the substance of policies and legislation (Beckman, 2017).

The right to vote according to Jeremy Waldron is a guarantee of a person's civil or political freedom which requires further commitment to the living conditions of that person which allows him to enjoy and exercise that freedom (Waldron, 1993). As stated by John Locke & Rousseau in Mardenis, political rights including the right to vote and be elected in public office are included in the right to participate in government which is a human right that must be protected. The same thing was said by Bagir Manan, that civil rights recognize and protect the most fundamental rights of a human being in relation to his dignity as a private being, while political rights are related to public life. Then, in the International Covenant on Civil and Political Rights (ICCPR 1966) regarding the political rights of citizens, it states in Article 25 that "Every citizen must have the same rights and opportunities without any distinction and without unreasonable restrictions to participate in carry out all public affairs either directly or through freely chosen representatives. This provision is intended to emphasize that political rights, to vote and be elected are human rights. Limitation, deviation, negation and abolition of these rights are forms of violations of the rights of citizens (Sinapoy, 2019).

Dispute Resolution for the Head Election of the North Maluku Region at the Constitutional Court

The existence of a dispute in the Election of Regional Heads in the Constitutional Court at the Election of Governor and Deputy Governor in North Maluku is not the first time a dispute. With a population of only around 1,038 million people, North Maluku is an area that is not too influential in obtaining votes in general elections nationally. However, North Maluku is a region that can be said to be unique, because it is the result of regional expansion (Qodir, 2012).

In general, the 2018 simultaneous Regional Head Elections were held in 31 provinces covering 171 electoral districts, consisting of 17 provinces (9.94%) of the Election for Governors and Deputy Governors, 115 Regents and Deputy Regents (67.25%), and the election of mayors and deputy mayors as many as 39 cities (22.81%). The Constitutional

Court received requests from regional head candidates in 7 Provinces, 45 Regencies, 14 Cities and registered 72 Regional Head Election cases throughout 2018. As for the case, 2 cases were granted; 6 cases were rejected; 1 application is withdrawn; 61 cases were not accepted; and 2 cases were declared null and void. Based on the reasons for the decision not to be accepted, there were 61 cases, 5 cases were declared not within the authority of the Constitutional Court, 17 cases passed the deadline, and 39 cases were declared not having legal standing. Of the 72 cases, there were 2 cases of dispute over the results of regional head elections that were granted by the Constitutional Court, namely PHP Regent and Deputy Regent of Deiyai Regency with case number 35/PHP.BUP-XVI/2018 and PHP for the Governor and Deputy Governor of North Maluku with case number 36 /PHP.GUB-XVI/2018.

In the dispute over the Election of the Head of Governor and Deputy Governor in North Maluku with case number 36/PHP.GUB-XVI/2018, it occurred because of the dualism of government and population administration issues. Where residents of six villages refused to use their voting rights in the 2014 election contest, the 2015 West Halmahera Regent Election, to the 2018 Governor and Deputy Governor Election. Citizens with ID cards domiciled in West Halmahera, are included in the Voters List in North Halmahera. The Ministry of Home Affairs, which placed the six villages in North Halmahera, stated the reason was that East Jailolo District was not in the area code.

Because of these problems, the Constitutional Court finally decided that the North Maluku Regional General Election Commission (KPUD) to carry out a Re-Voting (PSU for the 2018 North Maluku Provincial Governor and Deputy Governor Election) in voting in six villages.

In the problems above, it appears that there is inaccuracy and neglect of the political rights of citizens which results in the violation of the political rights of citizens. Administrative inaccuracies have caused the political rights of citizens to vote to be lost because they cannot cast their votes according to their domicile or origin of the area occupied. This administrative inaccuracy is caused by the existence of regional divisions that are not participatory. Even though it has a direct impact, if left unchecked it will cause protracted problems so that citizens cannot channel their voting rights. Therefore, the Constitutional Court in its decision asked the North Maluku Regional KPU to conduct a re-vote. The voting celebrates so that residents in six villages who were initially unable to exercise their political rights, can fulfill their right to vote according to their actual ID card domicile.

The choice of the Constitutional Court to give a decision through re-voting, is considered by some to have been able to restore the political rights of citizens that were previously violated. As revealed at the trial, that the results of the recapitulation of vote counts in the election of the Governor and Deputy Governor in North Maluku there were inaccuracies in the preparation of the final voter lists in six villages and two sub-districts. The six villages are Bobaneigo, Pasir Putih, Tetewang, Gamsugi, Dum-dum, Akelamo Kao,

and in the Districts of Sanana and West Taliabu. Thus, what has been decided by the North Maluku KPUD regarding the voting results in North Maluku is declared invalid.

The Mechanism of Regional Expansion in Indonesia

In relation to regional expansion, philosophically, the objectives of regional expansion have two interests, namely an approach to public service delivery to the community, and to improve the welfare of local communities, and to shorten the span of government control. Regional expansion began since the enactment of Law Number 22 Year 1999 concerning Regional Government which provides broad, real and accountable authority to the regions proportionally. The implementing regulations of Law Number 22 Year 1999 concerning regional expansion are regulated in Government Regulation (PP) Number 129 Year 2000 concerning Requirements, Establishment and Criteria for Expansion, Abolition and Merger of Regions. Amendments to the 1945 Constitution, making Law Number 22 of 1999 concerning Regional Government replaced with Law Number 32 of 2004, because it is deemed incompatible with developments in circumstances, state administration, and demands for regional autonomy.

Regional expansion is a process of dividing an existing administrative region (autonomous region) into two or more new autonomous regions based on Law. The main objective of the expansion and establishment of autonomous regions is to further improve public services, the lives and welfare of the local community. It should be noted that the ability of the regions to exercise their authority after the division is not the same because each has different conditions and characteristics. So that in fact the subsequent development of many regions resulting from the division has not been or is less beneficial to the community and even has the potential to cause new problems such as territorial boundary disputes, seizure of the location of the capital, and other conflicts. Especially in the field of economic growth that has not yet produced results, as can be seen from poverty and unemployment that have not been resolved. It is necessary to consider the problems caused by regional expansion such as whether the population is in accordance with the area, population development which can cause various problems, especially the land occupied will be narrow, or vice versa.

Some of the substantial changes to Law Number 32 of 2004, relating to the formation of regions include: the physical requirements previously for the formation of a district/city of at least 3 (three) districts, changed to a minimum of 5 (five) sub-districts for the formation of districts and 4 (four) districts for the formation of cities, while for the formation of provinces previously at least 3 (three) districts/cities are changed to a minimum of 5 (five) districts/cities. In its development, Law Number 32 of 2004 concerning Regional Government is deemed no longer in accordance with developments in conditions, state administration, and demands for regional government administration so it is replaced by Law Number 23 of 2014 concerning Regional Government.

Regional expansion is part of regional formation in the framework of regional planning. Article 33 of Law Number 23 of 2014 stipulates that regional expansion is in the

form of splitting provinces or districts/cities to become 2 (two) or more new regions or merging regional parts of regions that are side by side in 1 (one) province into one area. Regional expansion is carried out through the stages of preparation for the province or district/city preparation areas by having to meet basic requirements and administrative requirements. There are two basic requirements in regional expansion, namely, a) basic regional requirements covering minimum area, minimum population, area boundaries, area coverage, and minimum age limits for provincial regions, regency/city regions, and sub-districts; and b) the basic requirement for regional capacity is the ability of the region to develop in realizing public welfare.

Regional coverage as a basic requirement for territoriality in regional expansion includes:

- a. at least 5 (five) regencies/cities for the formation of provincial regions;
- b. at least 5 (five) Districts for the formation of regencies; and
- c. at least 4 (four) Districts for the establishment of a city area.

Meanwhile, the minimum age limit for the province, regency/city, and sub-district as the basic requirements for territorial expansion in regional expansion includes:

- a. the minimum age limit for a provincial region is 10 (ten) years and a regency/city region is 7 (seven) years from the time of formation; and
- b. The minimum age limit for a District which becomes the District/City Regional Coverage is 5 (five) years from the time of its formation.

The administrative requirements in the formation of a preparatory area for regional expansion are arranged in the following order:

- a. for the province includes:
 - 1) joint approval of district/city Regional People's Representative Assembly (Dewan Perwakilan Rakyat Daerah/DPRD) and regents/mayors that will become the Provincial Preparatory Area Coverage; and
 - 2) joint approval of the main provincial DPRD and the regional governor of the main province.
- b. for regency / city areas include:
 - 1) decisions of Village deliberations that will become the Regional Coverage of districts/cities;
 - 2) joint approval of the main district/city DPRD with the regent/mayor of the parent Region; and
 - 3) joint approval of the provincial DPRD and the governor of the provincial region covering the regency/city Preparatory Area to be formed.

Article 36 paragraph (5) of Law Number 23 Year 2014 contains socio-political, customary and traditional parameters as basic requirements for regional capacity in regional expansion, including:

- a. public participation in general elections;
- b. social cohesiveness; and
- c. community organization.

Based on the above provisions, it can be seen that in regional division there are basic requirements for regional capacity that must take into account public participation in general elections and social cohesiveness. This parameter is important in order to see the ability of the region to create community welfare. When these parameters are not considered in regional expansion, there is a concern that there will be social conflict in the area resulting from the division which hinders the goals of the expansion of the region itself.

With autonomy, a mechanism will be created, in which the regions can realize a number of political functions towards the national government, power relations will become more equitable so that, thus, the regions will have trust and will eventually be integrated into the national government. With autonomy, the democratic process can be carried out which will also support the realization of democracy in government, and in the end regional development will be accelerated (Syaukani, 2002).

Regional expansion which was originally philosophically aimed at approaching government public services and for improving the welfare of the community, has actually brought a number of implications. Some of these implications are not only positive but there are also negative implications. Some of the implications of the expansion of the area, among others (Pratikno, 2008):

a. Socio-Political Implications

From a political point of view, regional expansion can create a feeling of homogeneity in the new expansion areas which will actually strengthen feelings of egocentrism. If this is not managed properly, it will lead to horizontal and vertical conflicts. In addition, the emergence of many Regencies/Cities has resulted in inefficiency in local government management. The difficulties of the central government and provincial governments also have socio-political implications for regional expansion.

b. Socio-Economic Implications

Regional expansion has increased the financial burden to be borne by the Central Government. If this phenomenon is true, the spirit of regional expansion has eroded the spirit of regional autonomy because what is happening is the dependence of the regions resulting from the expansion on the central government.

c. Socio-Cultural Implications

Through regional expansion, local communities have actually had an impact on social, political and cultural recognition of society. On the one hand, this implication will create cohesiveness at the community level, however, seen from the external side, it can be seen as regional egocentrism.

d. Implications for Public Services

From the dimension of public services, regional expansion will shorten the geographical distance between the population and service centers, namely the capital of the Regency / City.

e. Implications for Economic Development

The existence of regional expansion will provide opportunities for poor regions to get more subsidies from the central government (DAU and DAK) and this will encourage an increase in per capita income in these areas.

f. Implications on defense, security and national integration

Regional expansion can actually be seen as a trigger for the division of the Unitary state, and can even be seen as a threat to form a federal state in Indonesia.

Therefore, the division of territory is basically a consequence of the changes in the state power system after the 1998 reform, especially the implementation of Law no. 22 of 1999 concerning Regional Government (revised by Law No. 32 of 2004) provides opportunities for broad regional autonomy. The definition of regional autonomy according to Law no. 32 of 2004 as an amendment to Law no. 22 of 1999 is the right, authority and obligation of autonomous regions to regulate and manage their own government affairs and the interests of local communities in accordance with statutory regulations. Regional expansion in regional autonomy seems to have its own charm, so it is not surprising if it continues to be a conversation in various circles. The strength of the discourse has also strengthened the controversy and debate between elites, community groups and even policy makers. Not to mention the diverse public responses that more or less enliven the controversy. Many have questioned the urgency of the maneuver idea for various basic reasons such as political, sociological, religious and even historical reasons (Rizal, 2011).

The idea of regional expansion and the formation of a New Autonomous Region has a fairly strong legal basis. The juridical basis that contains the issue of regional formation is contained in Article 18 of the 1945 Constitution which essentially states that dividing Indonesia into large regions (provinces) and provincial regions will be divided into smaller regions. Furthermore, in Law no. 32 of 2004 concerning Regional Government which provides opportunities for the formation of regions within the Unitary State of the Republic of Indonesia, namely regions formed based on considerations of economic capacity, regional potential, socio-cultural, socio-political, population size, area and other considerations that allow the implementation of regional autonomy (Muzawwir, 2000).

If it is pulled further, the division of territory as part of the regulation on regional government is mentioned in Article 18B paragraph (1) of the 1945 Constitution which states that: "The Unitary State of the Republic of Indonesia is divided into provincial areas and the province is divided into districts and cities, which each province, district and city has a regional government which is regulated by law. Furthermore, in paragraph (2) of the same article, the following sentence is stated: The state recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with community development and the principles of the Unitary State of the Republic of Indonesia as regulated in law. Then in Article 18 paragraph (4) of the 1945 Constitution: "The Governor is the Head of the Provincial Government". According to this provision, the Governor is elected democratically.

Although philosophically and legally, regional expansion has good intentions, but there are problems that are actually caused by regional expansion. This is revealed from

research conducted by the National Development Planning Agency regarding the evaluation of the division of districts that has been taking place in Indonesia since 2000. Using the control treatment method, this study has compared the performance of the development of new autonomous regions, parent regions, and control regions. The four main aspects that receive attention in this study are: (a) regional economy, (b) regional finance, (c) public services and (d) local government apparatus. Based on this research, it can be concluded that there is a difference in perception between the central government and local governments regarding this regional expansion. The central government, when formulating PP 129/2000, wanted to find a new autonomous region that could indeed stand alone and be independent. For this reason, a set of indicators has been developed which essentially seeks to identify the capabilities of the candidates for new autonomous regions. On the other hand, the local government has a different opinion. Local governments see regional expansion as an effort to quickly get out of a slump.

Protection of Citizens' Political Rights in the Implementation of Regional Head Elections viewed from the Perspective of Evaluating Regional Expansion in Indonesia

Good intentions in regional autonomy by providing opportunities for regions to carry out regional expansion in order to improve services to the community and accelerate the implementation of regional economic development, has also caused various new problems. Problems regarding regional expansion have also been stated by the Supreme Audit Agency (Badan Pemeriksa Keuangan/BPK) by providing the results of the BPK's examination and findings, namely:

- a. The government does not yet have a grand design regarding regional expansion.
- b. The observation to assess the feasibility of the proposed regional expansion is not carried out by a competent and independent party.
- c. The assessment of the feasibility of the proposed expansion of the regions is not supported by clear technical guidelines.
- d. The process of regional division is not adequately documented.
- e. The Ministry of Home Affairs has not conducted monitoring and evaluation of the success (effectiveness) of the regions resulting from the division.

Meanwhile, the problems that occurred in the division of North Halmahera and West Halmahera Regencies in North Maluku Province should not negate the citizens' right to vote. The right to vote is a political right that must be protected and guaranteed by the constitution under any circumstances. Regional expansion that occurs should not prevent citizens from exercising their right to vote in regional head elections. In the pemekaran process that occurred in West Halmahera and North Halmahera, the government did not pay attention to the sociological factors characteristic of the local community, where there were kinship and ethnic ties that might differ from [areas] that were forced to merge. The conflicts that occurred in the six villages were not solely a matter of population administration, but were related to the identity, dignity and loyalty of local residents.

North Halmahera and West Halmahera were split from North Maluku Regency in 2003 following the formation of North Maluku Province which was separated from Maluku Province. However, the division of the two districts left administrative dualism in the six villages. The six villages are Bobaneigo, Paser Putih, Tatewang, Akelamo Kao, Gamsugi, and Dumdum. In the 2018 North Maluku Governor and Deputy Governor Election, as many as 3,855 residents refused to use their voting rights because of their domicile of identity cards (KTP) in West Halmahera, but are listed in the final voter list (DPT) in North Halmahera. The North Maluku KPU has placed all residents of six villages into the DPT Kao Teluk District, North Halmahera, according to the database of the Ministry of Home Affairs. In fact, local residents are in the administrative area of East Jailolo District, West Halmahera, according to their KTP. The incompatibility of DPT domicile with KTP is increasingly complicated because of the dualism of village and sub-district government.

Quoting Zartman's opinion regarding the role of government in carrying out conflict management, he stated that (William, 1997):

Governance is conflict management. Governing the state not only prevents violent conflict from destroying the country; It is an ongoing effort to deal with the ordinary conflicts between groups and their demands that arise when society plays its part in normal political conduct.

By looking at the problems in West Halmahera and North Halmahera that have occurred repeatedly in the elections and regional head elections, it is the government's duty to solve the problems in North Maluku which are the result of regional expansion. In regional expansion, the formal juridical aspects that have been determined in statutory regulations are important to avoid conflicts and neglect of community rights. Another important thing that cannot be ignored in encouraging regional expansion is the aspirations of the community. Community aspirations are a must for the government to consider to avoid protests and/or resistance to community rejection after regional expansion (Hasyim, 2010).

Community participation is defined as the participation of a group of community members in self-development, life and the environment. This meaning is in line with Isbandi's opinion that community participation is community participation in the process of identifying problems and potentials in the community, selecting and making decisions about alternative solutions to dealing with problems, implementing efforts to overcome problems, and community involvement in the process of evaluating changes that occur (Hanif, 2016). Participation according to Sutrisno, there are two definitions of participation, namely, first, participation is community support for the planned development project and its goals are determined by the planner. Both community participation in development is a close collaboration between planning and the people in planning, implementing, preserving and developing the development results that have been achieved (Nasution, 2009).

The rejection of the residents of the six villages for the idea of expansion and merger of areas was more due to the aspirations of the people of six villages who from the

beginning refused to become part of the Malifut District area being forced by the government to remain part of the Malifut District which was formed through Government Regulation Number 42 of 1999. This rejection also based on various reasons, including emotional closeness, historical and regional identity. Where the area of six villages, before the issuance of PP Number 42 of 1999 was part of the administrative area of Jailolo District, so that from the emotional and historical side, the people in the six villages considered that the six villages were raised by jailolo so that they must remain part of Jailolo Subdistrict which in turn is part of the West Halmahera Regency area (Hasyim, 2010).

The administrative rejection of regional expansion has implications for not using the voting rights of residents in the six villages. Quoting Franklin's opinion which stated that first-time election participation should ideally take place in a more socially supportive environment (Beckman, 2018). So the implementation of regional expansion planning should not be separated from the participation of the community to help. Community participation is the basis for implementing democracy in accordance with the ideals of a democratic country that prioritizes the welfare of the people (Fuady, 2009). The principles of democracy and community participation are important parts that should not be neglected so that democracy that is built is a grassroots democracy (bottom up), whatever decisions are taken, when it comes to public affairs, public participation in the form of community participation must be part of every decision. policy decisions (Dahl, 2001). The philosophy contained in regional autonomy is community participation. Participation is a community empowerment process, so that they are able to solve the problems they face themselves, through partnerships, transparency, equality, and responsibility (Kustiawan, 2017).

The Regional Government Law, substantively places public participation as a very important instrument in the regional government system and is useful for accelerating the realization of social welfare, creating a sense of government ownership, ensuring openness, accountability and public interest, obtaining public aspirations, and as a vehicle for the aggregation of interests and interests. fund mobilization. Community participation as the subject of development is an effort to achieve the goals of national development. This means that the community is given the opportunity to play an active role from planning, implementation to evaluation of each programmed development stage. Especially if we are going to approach a builder with the spirit of locality (Kustiawan, 2017).

Cohen and Uphoff shared other views on the forms of citizen participation (Solekhan, 2012) which says that the forms of citizen participation are divided into four forms of participation, which consist of (Kustiawan, 2017):

- a. Participation in decision making (participation in decision making).
- b. Participation in implementation (participation in implementation).
- c. Participation in receiving benefits (participation in benefits).
- d. Participation in evaluation (participation in evaluation).

As explained by Eko, participation is a bridge between the State and society in order to achieve prosperity. Substantially, participation involves three things, namely (Kustiawan, 2017):

- a. Voice, which means that every community has the right and space to convey a voice in the government process, on the other hand, the government accommodates every voice that develops in society which is then used as the basis for decision making.
- b. Access, namely that every member of the community has the opportunity to access or influence policy making, including asks for public services and access to the flow of information.
- c. Control, namely that every member of society has the opportunity and right to supervise the running of government.

According to Juliantara, the substance of participation is the operation of a government system in which no policy is taken without the consent of the people, while the basic direction to be developed is the empowerment process, it is further said that the purpose of developing participation is:

- a. First, that participation will allow the people to independently (autonomously) organize themselves, and thereby make it easier for people to face difficult situations and be able to resist various adverse trends.
- b. Second, participation is not only a concrete reflection of opportunities for the expression of aspirations and a way to fight for them, but more importantly that participation is a kind of guarantee for not neglecting the interests of society.
- c. Third, that problems in the dynamics of development will be resolved by the presence of community participation.

Therefore, in order to protect the political rights of citizens in the implementation of regional head elections in North Maluku as a result of division, the Constitutional Court stated in its decision that there had been inaccuracies in the preparation of the DPT in voting in 6 (six) villages, namely Bobaneigo Village, Pasir Putih, Tetewang Village, Gamsungi Village, Dum-dum Village, and Akelamo Kao Village in the 2018 North Maluku Governor and Deputy Governor Election. In addition, the Constitutional Court also ordered the General Election Commission to re-vote in 6 (six) villages, namely Bobaneigo Village, Pasir Putih Village, Tetewang Village, Gamsungi Village, Dum-dum Village, and Akelamo Kao Village by first compiling a De facto Permanent Voters List, in accordance with the valid KTP or KK of each voter who has suffrage, preceded by direct matching and research.

With this decision, it is hoped that residents who have voting rights in 6 (six) villages who initially did not fully exercise their voting rights in the 2018 North Maluku Governor and Deputy Governor Elections will use their voting rights because the Constitutional Court has adjusted the identity cards owned by residents. The Constitutional Court's decision is a reflection of the protection of political rights which, according to the Constitutional Court, should not ignore the rights of citizens because of the ongoing

conflict of dualism in governance. The Constitutional Court has restored the political rights of citizens through its decision by carrying out re-voting in the six villages.

In accordance with the function of the Constitutional Court, namely as a protector of the rights of citizens or the protector of the constitutional rights of citizens (Asshiddiqie, 2008). This function is presented to ensure that the human rights contained in the constitution are not violated by any party and under any circumstances. Because human rights are rights that are inherent in humans given by God. Human rights in Indonesia are also contained in the constitution, namely the 1945 Constitution. Therefore, human rights which are explicitly regulated by the 1945 Constitution are referred to as constitutional rights. This expression is because human rights are the heart of the constitution that must be protected by the constitutional court. This is in line with the following opinion (United Nation, 2018):

Human rights are at the heart of the constitutional order of a modern State, not only determining relationships between the individual, groups and the State, but also permeating State structures, and decision-making and oversight processes. As a consequence, a bill of rights constitutes an integral part of a modern constitution. At the same time, gaps in the implementation of human rights at the domestic level, whether individual or where appropriate collective rights, often originate from shortcomings in the area of constitutional law.

Therefore, no rights should be violated based on the constitution. This includes political rights in regional head elections.

This is certainly in line with the purpose of the establishment of the Constitutional Court, namely to maintain the supremacy of the 1945 Constitution. The Indonesian Constitutional Court was established as one of the judicial institutions that administers justice to uphold law and justice. The Indonesian Constitutional Court is a high state institution whose existence and authority are explicitly mandated by the 1945 Constitution. The Indonesian Constitutional Court has four powers and one obligation as mandated by Article 24C paragraphs (1) and (2) of the 1945 Constitution. first and last. The decision of the Court is final to examine the law against the Constitution; decide on disputes over the authority of state institutions whose powers are granted by the Constitution; decide on the dissolution of political parties, and resolve disputes over general election results. Meanwhile, the Constitutional Court also has the obligation to issue a constitutionally based decision on the opinion of the DPR regarding alleged violations by the President and Vice President.

Conclusion

The Constitutional Court in the process of disputing the Regional Head election in North Maluku 2018 has made a decision by requesting a re-vote in 6 (six) villages, namely Bobaneigo Village, Pasir Putih Village, Tetewang Village, Gamsungi Village, Dum-dum Village, and Akelamo Kao Village. first compile the de facto Permanent Voters List, in accordance with the valid KTP or KK of each voter who has the right to vote. This decision

was taken after the Constitutional Court saw that there were differences in opinion and desires of the people living in the 6 villages with the government. The Constitutional Court took a middle path by looking at the resident ID card as a juridical reference and the desire of the people who wanted to continue to exercise their right to vote in West Halmahera in accordance with their KTP.

Suggestion

Learning from the problems discussed in this research is expected to provide input to the government, that in the formation of an area, it must pay attention to the aspirations of the community and historical conditions in the area. Thus, the regional establishment which is carried out will not violate the constitutional rights of citizens in this case the right to vote.

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