

LEGAL ASPECTS OF DIRECT APPOINTMENT OF PROCUREMENT OF MATERIALS FOR THE ELECTION CAMPAIGN OF THE REGENCY OF THE REGENT AND THE DEPUTY REGENT IN MALINAU IN 2015

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Abstract

The purpose of this study is to find out and analyze the arrangements regarding the procurement of campaign materials, when tenders generally fail to be carried out and to analyze direct appointments in the procurement of campaign materials for the election of the Regent and Deputy Regent in Malinau in 2015 has met the general principles of good governance. Elections for Regional Heads and Deputy Regional Heads which are currently being held through simultaneous regional elections in 2015 have changed the face of implementing democracy at the regional level. By directly electing regional leaders, the people are given the opportunity to determine who is the policy maker in their region, at the same time every citizen is given the right to run as a policy maker. In this study, the researcher used a juridical-normative approach by analyzing legal principles in which the researcher tried to focus on legal studies and their prevailing principles in society and then described the existing phenomena and analyzed them systematically. The results of this research show that the Malinau KPU has conducted two bidding but failed, so direct appointment was made, this action has met the principles and norms of the prevailing law.

Keywords: *Law, Procurement, Campaign*

INTRODUCTION

The conception of popular sovereignty puts the highest power in the hands of the people. Every policy made by the ruler of a country must be shown for the benefit. The people have a role in every policy made by the ruler of the country. When viewed from the background, the existence of people's sovereignty can occur due to the association of individual people who submit their sovereignty to the authorities in writing (social contracts and are included in the constitution).

Thoughts on the social contract have been started by Grotius (between 1583-1645), Thomas Hobbes (between 1588-1679), John Locke (between 1632-1704), Rousseau (between 1722-1778). John Locke in the theory of social contract states that the emergence of the concept of a state and the implementation of popular sovereignty is divided into a process structure called Pactum Unionist and Pactum Subjectionis. Pactum Unionism puts forward the need for the community to live together and unite in order to realize prosperity and peace. A state that has been formed must ultimately be able to guarantee the welfare of the people and protect the lives of its citizens.

After the amendment to Law number 32 of 2004 concerning Regional Government, the legislators included provisions regarding the election of Regional Heads and Deputy Regional Heads. So that direct elections are not only to elect members of the DPR, DPD, DPRD, President, and Vice President but also to elect Regional Heads and Deputy Regional Heads. democracy at the regional level. The people in the implementation of the regional head and deputy regional head elections are sovereign in directly selecting the regional leaders they want. By directly electing regional leaders, the people are given the opportunity to determine who the policy makers are in their regions.

In the implementation of popular sovereignty at the local level, the community can demand accountability from officials who make policies. One of them is the process of requesting accountability through the election process. Through the pilkada process, the community can encourage the accountability process. By not re-electing officials who are considered to have failed in making policies that are not for the welfare of the people.

Elections for regional heads and deputy regional heads which are carried out in direct public, free, secret, honest, fair and democratic are only possible after the amendment to the 1945 Constitution in the reform era. in power because of the experience of holding elections during the New Order era which is arguably far from the impression of implementing Jurdil, Luber and Democratic elections.

In the new order, regional heads and regional representatives were not directly elected by the people but were nominated by the executive. After being nominated and elected by the DPRD, candidates for regional heads are proposed to the President through the Minister of Home Affairs for level I regional heads to be appointed as level I regional heads. level II area. The election of regional heads during the New Order era could be said to be undemocratic due to the executive intervention that was very decisive in the election of regional heads, especially the role of the Ministry of Home Affairs and the President in determining who was elected as Regional Head.

The elections for regional heads and deputy regional heads were carried out democratically through general elections starting in 2005. The elections for regional heads and deputy regional heads were held after 3 years after the amendments to the 1945 Constitution were completed. Implementation of regional head and deputy head elections Regional elections, which will hereinafter be referred to as the Regional Head General Elections through general elections, are very important so that people can directly elect the regional heads and deputy regional heads they want. In the post-conflict local election, the community is free to participate in competing in running for regional head and deputy regional head.

The implementation of elections that are direct, general, free, honest, fair and democratic need to be supported by a credible institution. For this reason, the election management body must have high integrity, impartiality to one of the election participants and understand the duties and responsibilities as election organizers and respect political rights of citizens. To support this, a competent institution is needed that is able to support the implementation of elections that can guarantee the implementation of the political rights of the people and have integrity, capability, and accountability.

This is the General Elections Commission (KPU). KPU, Provincial KPU and Regency/Municipal KPU as election organizers and as stipulated in Law No. 15 of 2011 concerning Election Implementation, KPU is committed and guided by the principles of being independent, honest, fair, orderly in holding elections, open, professional, efficient and effective. considering that the KPU's task is to organize elections for members of the People's Representative Council (DPR), Members of the Regional Representative Council (DPD), Members of the Regional People's Representative Council (DPRD), as well as elections for President and Vice President which are held directly by the people. In addition to these tasks as previously discussed, the KPU,

Direct local elections must also require equipment such as ballot boxes, ballot papers, and others. So, the procurement of goods/services for the implementation of the General Election and Regional Head Election is also regulated in a statutory regulation, because the funds used by the KPU or Provincial KPU, and Regency/Municipal use state money, so that their use must also be accountable. The procurement of goods and services has been regulated in Presidential Regulation of the Republic of Indonesia Number 4 of 2015 concerning the Fourth Amendment to Presidential Regulation Number 54 of 2010 concerning Government Procurement of Goods/Services.

On the implementation of the government's procurement of goods/services must be carried out by means of a public tender/auction, so that all providers of goods/construction work/services in order to be able to compete to participate in the procurement of goods/services required by the government in this case are KPU, Provincial KPU and KPU Regency/City. In the Presidential Regulation concerning the Implementation of the Procurement of Government Goods/Services which has been amended 4 times and the last with Presidential Decree number 4 of 2015 has been determined regarding the criteria for the procurement of goods/services using a public tender/auction system. In the Presidential Regulation, it is stated in Article 17 letter h that the procurement of goods/services for the General Election with a value of less than Rp. 200,000,000 (two hundred million rupiah) can be carried out directly or by direct appointment.

In 2015, Indonesia held the Election of Regional Heads and Deputy Regional Heads in 9 Provinces and 260 Regencies/Cities which were held simultaneously, namely held simultaneously on 9 December 2015, the regions whose Regional Heads and Deputy Regional Heads whose term of office ended on In 2015 from January to June 2016, simultaneous regional elections were held on 9 December 2015, one of which was Malinau in North Kalimantan Province, which was one of the regions that participated in the last simultaneous regional elections. The cost of procurement of campaign materials in Malinau reaches a value of more than Rp. 200,000,000, - (two hundred million rupiah), so in this case the Malinau KPU must hold a tender/auction for the procurement of campaign materials.

In September 2015 KPU Malinau held two auctions but failed, because the company that won the tender/auction did not come to Malinau Regency on the grounds that due to geographical conditions, transportation costs were very expensive, so that the procurement of campaign materials would be hampered, and the implementation of the Pilkada would experience problems. Based on the problems above, the researcher will try to examine what steps will be taken by the Malinau KPU if the auction process fails.

METHODS

In this study, the researcher uses a juridical-normative approach by analyzing legal principles where the researcher tries to focus on studies of legal science and its methods that apply in society then describe the existing phenomena and analyze them systematically.

RESULT AND DISCUSSION

Legal Aspects of Direct Appointment of Procurement of Regent and Deputy Regent Election Campaign Materials in Malinau 2015.

1. Legal Rules Regarding Procurement of Campaign Materials When Auctions Generally Fail to Conduct.

The implementation of the Regional Head Election after the issuance of Law Number 8 of 2015 concerning Amendments to Law Number 1 of 2015 concerning the Stipulation of Government Regulations in lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors to become Laws, has an impact that the election of the Regional Head and his deputy will be held simultaneously in several regions. The process of procuring goods for the purposes of this election must be carried out by means of a public tender/auction, so that providers of goods/construction works/services can compete in the procurement of goods/services required by the government, in this case the Malinau KPU.

The process of procuring campaign materials is carried out by a public auction process, because the funds used for the procurement of campaign materials are the Regional Revenue and Expenditure Budget (APBD) funds and the cost of procuring campaign materials for Malinau is worth more than Rp. 200,000,000, - (two hundred million rupiahs) so, it must be used wisely and carefully. In Malinau, in the process of procuring campaign materials, it has been carried out according to the procedures regulated in the legislation, in the Minutes of the results of the auction made by the Pokja of the Malinau General Elections Commission it is stated that the providers of goods and services that have submitted bid documents are 7 (seven) companies, including:

- a. CV. Rahmat Nur with an offer price of Rp. 192,792,600,-

- b. CV. Bangkit Aksara Persada with an offer price of Rp. 565,030,600,-
- c. CV.Twin Attahallah Jaya with an offer of Rp.222,453,000,-
- d. CV.Apel Muda with an offer of Rp.682,930,710,-
- e. CV.Alphabet with an offer of Rp.443.422.980,-
- f. PT. Paragon Restu Utama with an offer of Rp. 358,594,236,-
- g. Super Star Jaya with an offer of Rp. 748.925.000,-

In this case CV. Alphabet meets or passes the evaluation, then CV. Alphabet as a provider of goods and services, must go through the final stage, namely the qualification proof stage, but CV. Alphabet does not meet this qualification proof, because it cannot attend the evaluation stage, so The Malinau Working Group for Procurement of Goods in its Minutes on September 9 2015 stated that the public tender process had failed. The statement that this public auction is also based on Presidential Regulation Number 70 of 2012 concerning the Second Amendment to Presidential Regulation Number 54 of 2010 concerning Government Procurement of Goods / Services Article 83 paragraph (2) letter k.

After the public auction process in stage, I failed to carry out, the Pokja for procurement of goods conducted a re-public auction, but until the deadline for submitting bid documents, no participant had submitted bid documents. Thus, according to Presidential Decree No. 4 of 2015 concerning the fourth amendment to Presidential Decree No. 54 of 2010 concerning the Procurement of Government Goods and Services, the auction is declared a failure again. After we discuss the stages of procurement of campaign materials above, it can be concluded that if the auction processes the procurement of campaign materials has been carried out up to two times, and it still fails, the KPU of Malinau Regency can directly appoint providers of goods and services deemed capable of carrying out the process of procuring campaign materials in Malinau, even though the procurement value is above Rp. 200.

2. Fulfillment of General Principles of Good Governance in Direct Appointment of Procurement of Campaign Materials for the Election of Regents and Deputy Regents in Malinau in 2015.

General principles or principles of good governance in terms of procurement of campaign materials carried out by the Central and Malinau KPU are reflected in KPU Decree No. 163/Kpts/KPU/2015 concerning Delegation of Authority from Budget Users Provincial General Election Commission/Independent Committee on Aceh Election and General Election Commission/Independent Committee on Regency/City Elections in the Procurement of Government Goods/Services, including the following dictums:

- a. In the third dictum, it states that: the delegation of authority in the procurement of government goods and services as intended in the first dictum and second dictum is to delegate the authority to approve direct appointments in the event that the auction/selection/direct re-election fails (the auction has failed twice) to the working group procurement service unit or government goods/services procurement official with due observance of the principles of efficiency, effectiveness, and accountability based on statutory regulations.
- b. In the fourth dictum, it states that: direct appointment is carried out by referring to the provisions of Article 84 paragraph (6) of Presidential Decree No. 70 of 2012 namely in the auction/selection/direct election failed with the following provisions:
 - 1) The results of the work cannot be delayed;
 - 2) Concerning public interest/safety; and
 - 3) Not enough time to carry out the process of tender / selection / direct selection and execution of work.

In the two dictums that are used as the basis for the Regency KPU in directing the procurement of campaign materials, it can be seen that in carrying out their duties, the KPU, both central and Malinau, carries out general principles of good governance, namely:

- a. Principle of Acting Carefully, which means:

The principle of Acting Carefully, this principle requires the government to act carefully in carrying out activities of carrying out government duties so as not to cause harm to citizens. In issuing statutes, the government must carefully and thoroughly consider all factors related to the material of the stipulation, hear and consider the reasons put forward by interested parties, and consider the legal consequences arising from the stipulation.

b. The Principle of Wisdom, which means:

The principle of wisdom, this principle requires the government in carrying out its duties and work to be given the freedom and flexibility to implement policies without having to be fixated on formal legislation.

c. Accountability Principle, which means;

The principle that determines that every activity and the final result of the activities of state administrators must be accountable to the community or the people as the holder of the highest sovereignty of the state in accordance with the provisions of the applicable laws and regulations.

CONCLUSION

The auction process for the procurement of campaign materials has been carried out up to two times, and still fails, the Malinau KPU can directly appoint a provider of goods and services deemed capable of carrying out the procurement process for campaign materials in Malinau, even though the procurement value is above Rp.200,000,000 (two hundred million rupiah).

The actions taken by the General Elections Commission both at the central level and in Malinau have fulfilled the General Principles of Good Governance, such as the principle of acting carefully, the principle of wisdom, and the principle of accountability.

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