Abstract: Local Leader Election is the manifestation of people sovereignty to provide local government head in both Province and Regency/City. One of stages where dispute often occurs is nomination stage. The objective of research was to describe and to analyze the settlement of nomination dispute in Governor, Regent, and Mayor Elections to realize the electoral justice system. The approach methods employed were doctrinal and empirical confirmatory ones, based on data and information related to the organization of Governor, Regent, and Mayor Elections, that were then analyzed descriptively and qualitatively. The result of research showed that the candidate pair feeling harmed and objected with either Provincial or Regency and City General Election Commission's decision about the assignment of candidate pair s becoming the participant of election is given an opportunity of filing law suit against the decision of assignment. The overlapping authorities between dispute settlement institution, in this case the Supervisor of Provincial and Regency/City election with State Administration Court resulting in multi-interpretation, inconsistency, and disharmony thereby impacting on the impaired election stages, even leading to the loss in candidate pair and election organizer. Through normative law approach, the arrangement and the improvement of provisions governing the settlement of Nomination dispute in Governor, Regent, and Mayor Elections to realize the electoral justice system.

Index Terms: Dispute, Nomination, Just Governor, Regent, and Mayor Elections.

1. INTRODUCTION

The amendment to the 1945 Constitution has brought big change and paradigm into state structure system. One of the changes is related to filling position of local leader, in Article 18 clause (4) of 1945 Constitution, stating that Governor, Regent, and Mayor as the heads of Provincial, Regency, and City governments respectively, are selected democratically. Through the amendment, basically the election of Governor, regent and mayor or local head is directly the continuation of institutional arrangement toward democracy, particularly to the improvement of democracy in regional level. Thimothy D. Sisk illustrates the importance of local democracy to realize an effective government as follows: “…the need for local democracy can be justified on the grounds that is only local institutions that have the capacity, interest, and detailed knowledge to oversee service and make decisions in tune with local conditions. In shorts, local democracy helps deliver effective accountability.” People sovereignty concept implies that the supreme power in a State is people and it is people that also determine the feature and the way of organizing the government. General election is a media for the people to state their sovereignty. Through Governor, Regent, and mayor elections, people sovereignty can be enforced and is a set of rules or methods for citizens to determine the future legitimate government. The implementation of Governor, Regent, and mayor elections building on direct, public, free, confidential, honest, and just principles initiated since 2005 and the enactment of Governor, Regent, and mayor election organization simultaneously during 2015-2018 in reality has not reflected yet the spirit of 1945 Constitution because many violations and disputes occurring in its implementation.

The important problem often arising and potentially disrupting the election stage and even harming the candidate pair of election participants and the election organization is the settlement of nomination dispute. The violations in election organization always generate dissatisfaction among the candidate pair s and campaign teams of election participants, election monitoring team, and even public, as manifested into many disputes filed to the Supervisor of General Election and State Administration Court to be settled.

In the practice of organizing Governor, regent, and mayor election, Provincial and Regency/City General Election Commissioner’s one of duties and authorities as mentioned in the provision of Article 9 clause (3) letter g and Article 10 clause (3) letter i of Law Number 15 of 2011 about the Organizer of General Election is to assign the qualified candidate pairs. However, in reality, instead Provincial and Regency/City General Election Commissions do not assign the normatively qualified candidate pair or otherwise assign the unqualified candidate pair. Many dispute applications filed by the candidate pair s of election participants to Constitution Court and Supreme Court are due to poor understanding on basic accusation to be filed. Violation and dispute of nomination administration that should be settled by Election Supervisor are instead filed to judicative institution. Similarly, the organizer of election, in this case General Election Commission in region has not been able to settle the dispute of nomination completely yet.

2 OBJECTIVE

This research focuses on studying the settlement of dispute in the nomination of Governor, regent and mayor elections and on identifying in-depth the problems contained in the Law governing Governor, regent and mayor elections as well as its implementing regulation and legislations governing State Administration Justice and other technical regulations.

3 MATERIAL AND METHOD

This study was a descriptive explanatory research, describing the authority of institutions in settling the dispute of nomination in Governor, regent and mayor elections and explaining in-depth
the relationship between legislations governing the Governor, regent and mayor election and State Administration Court. Meanwhile, the approach used to obtain comprehensive output was the combination of statute approach, conceptual approach, case approach, Comparative approach.

4 DISCUSSION AND ANALYSIS

4.1 Dispute in Governor, Regent, and Mayor Election

Law Number 8 of 2015 about the Amendment to Law Number 1 of 2015 about the assignment of government regulation substituting the Law Number 1 of 2014 about Governor, regent and mayor election to be the Law states that legal issues or violations in election can be classified into six categories: Firstly, the violation of election organizer’s ethical code is settled by Honorary council of General Election Organizer is the violation of General Election organizer’s ethic refers to oath and/or promise before undertaking task as the organizer of General Election. Secondly, the violation of Election administration is forwarded to the General Election Commission; the violation of Election administration involves that of procedure related to the administration of Election in every stage of Election. Thirdly, the dispute of Election consisting of dispute between election participants and election organizer as the consequence of the release of Provincial and Regency/City General Election Commission’s Decree is settled by Election Oversight Committee. Fourthly, Election crime constituting the violation or the criminality against the provision of Election is followed up by Republic of Indonesia’s Police Officer. Fifthly, the dispute of State Administration or the dispute of state administration concerning Election, that is the one arising in the state administration of Election between candidate Governor, candidate Regent and candidate Mayor, and Provincial and Regency/City General Election Commission as the result of the release of Provincial and Regency/City General Election Commissions’ decree is settled by State Administration Provincial Court and Supreme Court, conducted after all administrative efforts have been taken in Provincial and/or Regency/City Oversight Committees. Sixthly, the dispute of Election result is the dispute between Provincial and Regency/City General Election Commissions and Election participants concerning the assignment of election vote gain. The provision of Article 7 of Law Number 8 of 2015 mentions that in the nomination process of Governor, regent and mayor election, the following requirements should be met: Firstly, the requirement of candidate to be met by individual that will be the candidate of local leader; secondly, the requirement of nomination that should be met by political party that will carry on or propose individual prospective candidate of local leader. These two requirements should be cumulative in nature and all requirements should be met. Or otherwise, the prospective candidate pair of election participants will be stated as unqualified. Meanwhile, the object important to be considered in the dispute between election participants and organizer on nomination stage is the assignment of prospective election participants. The prospective candidate with objection will be given opportunity of filing lawsuit against the decree of Provincial and Regency/City General Election Commission in the case of the assignment of election participant candidate pair based on the result of document verification and clarification of nomination requirement. In the history of governor, regent and mayor election organization directly, some regions encounter some problems and events of nomination dispute accused in State Administration Court, including:

1. Dualism support for candidate pair by Political party or political party association. This problem becomes the most dominant one when dispute occurs between Provincial and Regency/City General Election Commission and the plaintiff. This event occurs in Siraj, North Toraja, Sorong, Jaya Wijaya, and etc. The motive of support dualism is, among others, the presence of leadership dualism at regional or central level.

2. The candidate pairs disqualified by Provincial and Regency/City General Election Commission because they have occupied the same position for two tenure periods. The interpretation on clause “occupied the local leader position for two periods” becomes the material of suit in the State Administration Court.

3. Different recommendations given by the central administrator of political party and the support option of local political party’s administrator. This case has ever occurred in Governor Election in East Borneo (East Borneo) in 2013. Interestingly, in this case the one filing lawsuit to State Administration Court is the central administrator of Political party rather than the candidate pair.

4. In fulfilling the requirements in the term of health, the plaintiffs state that their interest has been harmed because Provincial and Regency/City General Election Commissions have disqualified the candidate pair. This event occurred in 2010 in local leader election in Mojokerto Regency while in Lombok Tengah, the similar case was filed to State Administration Court following the implementation of Election.

5. The case ever occurring in the Election in Tebing Tinggi City in 2010 in which the elected candidate pair was considered as illegitimate since their early nomination because they did not meet the requirement related to the convicted status. Meanwhile in the simultaneously organization of Election in 2015, a number of disputes related to nomination occurred in some regions in Indonesia.

Table 1

<table>
<thead>
<tr>
<th>Local Leader Election</th>
<th>Number of Constituencies</th>
<th>Region with dispute</th>
<th>Region without dispute</th>
</tr>
</thead>
<tbody>
<tr>
<td>Province</td>
<td>9</td>
<td>6</td>
<td>3</td>
</tr>
<tr>
<td>City</td>
<td>33</td>
<td>12</td>
<td>22</td>
</tr>
<tr>
<td>Regency</td>
<td>227</td>
<td>66</td>
<td>161</td>
</tr>
<tr>
<td>Total</td>
<td>269</td>
<td>84</td>
<td>285</td>
</tr>
</tbody>
</table>

Source: Rambe Kamarul Zaman

Table 1 shows that in Governor, Regent, and Mayor Election held simultaneously through Indonesian areas, several regions encounter nomination-related dispute: out of 9 provinces holding Election, 6 encountered nomination-related dispute. Then, out of 33 municipals holding election simultaneously, 12 encountered nomination-related dispute. Meanwhile at regency level, out of 227 regencies holding simultaneous election, 66 encounter nomination-related dispute. In the first-stage simultaneous organization of Governor, regent and mayor election in 2015, five regions should postpone the election. They are: Kalimantan Tengah (Central Borneo) Province, Fakfak Regency, Manado City, Simalungun Regency, and Pematangsiantar City. Five regions postpone the election implementation due to the legal problem of nomination-related dispute. Meanwhile, in
second-stage Governor, regent, and mayor election conducted simultaneously in 2017, 7 (seven) provinces hold Governor and Deputy of Governor election, 76 (seventy six) regencies hold Regent and Deputy of Regent election, and 18 (eighteen) cities hold Mayor and Deputy of Mayor election. As a result of the follow-up of Application for Dispute Settlement filed by 36 regions holding election, 2 out of 7 provinces file the application for Dispute Settlement in Governor and Deputy of Governor Election: Gorontalo and DKI Jakarta provinces. Meanwhile, 28 out of 76 regencies filed the application for Dispute Settlement in Regent and Deputy of Regent election. Six out of 18 municipals files Application for Dispute Settlement in Mayor and Deputy of Mayor election, so that overall there are 66 (sixty six) applications for Dispute Settlement as presented in the table below.

| Application for Dispute Settlement in Governor, Regent, and Mayor Election in 2017 |
|---|---|---|---|
| Information | Province | Regency | City |
| Number of constituencies | 7 Provinces | 76 Regencies | 18 Cities |
| Number of Regions | 2 Regions: DKI Jakarta and Gorontalo | 28 Regions | 6 Regions |
| Applying for Dispute Settlement Applications | 4 | 51 | 11 |
| Total | 101 Regions | 36 Regions | 66 Applications |

Source: Data Processed from RI's Election Oversight Committee in 2018

Meanwhile, in the third-stage simultaneous Governor and Deputy of Governor, Regent and Deputy of Regent, Mayor and Deputy of Mayor election in 2018, Election Oversight Committee dealt with and settled election dispute in 171 regions holding election, in which 3 provinces filed Application for Dispute Settlement in Governor and Deputy of Governor election. Meanwhile, for regency, 28 applications were filed for dispute settlement in Regent and Deputy of Regent election, and for city, 6 applications were filed for Dispute Settlement in Mayor and Deputy of Mayor election. Therefore, a total of 63 applications were filed for Dispute Settlement as presented below.

| Application for Dispute Settlement in Governor, Regent, and Mayor Election in 2018 |
|---|---|---|---|
| Information | Province | Regency | City |
| Number of constituencies | 17 Provinces | 115 Regencies | 39 Cities |
| Number of Regions | 1 Region in North Sumatera Province, 1 region in Maluku Province and 2 regions in North Maluku Province | 28 Regions | 6 Regions |
| Applying for Dispute Settlement Applications | 5 | 44 | 14 |
| Total | 171 Regions | 36 Regions | 63 Applications |

Source: Data Processed from RI's Election Oversight Committee

The nomination-related dispute in Governor, Regent, and Mayor election will test the credibility and professionalism of either provincial and regency/municipal Election Commission in undertaking its duty and function as the organizer of election, corresponding to the provision of legislation enacted and to be accountable for the public. Considering the provision of article 142 of Law Number 8 of 2015, nomination dispute is one of election disputes, the one between election participants and organizer as the result of the issuance of provincial and regency/municipal Election Commission’ decree. Meanwhile, the provision of Article 143 of Law Number 1 of 2015 mentions that Provincial and Regency/Municipal Election Oversight Committees examine and decide the dispute of election in the following stages:

a. Receiving and studying report or finding; and
b. Confronting those in dispute to achieve agreement through discussion and consensus.

If the dispute settlement process in Provincial and Regency/Municipal Election Oversight Committees do not achieve agreement or one party feels dissatisfied with Provincial and Regency/Municipal Election Oversight Committees’ decree, considering the provision of Article 154 of Law Number 1 of 2015 the parties can file lawsuit to State Administration Court and apply for the appeal against the State Administration Court’s verdict to Supreme Court.

4.2 The settlement of Nomination-related dispute in Governor, Regent, and Mayor Election to realize the Electoral Justice System

The process of settling the nomination-related dispute in Governor, Regent, and Mayor Election is one of requirements to realize an electoral justice system. In an election, a mechanism should be provided to every citizen to fight for its constitutional right to be elected through free and fair process. Meanwhile, the process of settling the nomination-related dispute becomes
important to Election Commission as it will test its authority and integrity as the organizer of election. Election Commission should be accountable for any action and decision constituting the legal product as an inseparable part of legal action on behalf of State. Meanwhile, Election Oversight Body and Election Oversight Committee as the part of election organization have an authority of settling the election dispute through the process of confronting the parties, in order to get consensus through discussion. There are three ways of dealing with and/or mechanisms of settling the election dispute: Firstly, formal or corrective mechanism includes filing and processing the election lawsuit. This mechanism yields decision to cancel, to change, or to recognize the deviation in election process. Secondly, it includes punitive mechanism such as criminal case. This mechanism results in sanction to corporate or individual responsible for such deviation, including criminal responsibility or election administration. Thirdly, informal or alternative mechanism is the mechanism that can be chosen by the parties in dispute. Considering the provision of Article 53 clause (1) of Law Number 10 of 2016, State Administration Dispute of Election is the one occurring in State Administration of Election between Governor, Regent, and Mayor Election and Provincial and/or Regency/City Election Commission as the result of the release of Provincial and/or Regency/City Election Commission’s decree. Then, Article 153 clause (2) of Law Number 10 of 2016 states that the State Administration Court uses the State Administration Law in receiving, examining, trialing, and deciding the State Administration dispute of election. Therefore, the nomination-related dispute is categorized into State Administration dispute, because the nomination-related dispute will be settled through State Administration Court after having passed through the settlement process by election supervisor. Although the election supervisor’s decision on election dispute settlement is the final decision and binding, based on the provision of Article 144 clause (1) of Law Number 1 of 2015, but the presence of Supreme Court’s fatwa (Instruction) Number 115/Tuaka.TUN/V/2015 stating that the election supervisor’s decision is final and binding in nature is effective if only the one won in the election dispute is the candidate pair as the participants of election. Otherwise, if the one won is the organizer of election, the decision of election supervisor is not final and binding in nature. Consequently, Provincial and Regency/City Election Commission cannot file the appeal over the decision released by election supervisor. Meanwhile, if the election supervisor’s decision harms the candidate pair of election participants, the candidate pair can take legal attempt over the election supervisor’s decision to State Administration Court. Closely observed, the provisions contained in the legislations governing the Governor, Regent, and Mayor election with Administration Justice System, contain disharmony and does not support each other in a national legal system. Meanwhile, theoretically each arrangement of policy concerning legal system regulation should be harmonious, synchronous, consistent, and coherent between one regulation and another either vertically between 1945 Constitution and Law, or horizontally between one Law and another equivalent governing the same legal issue. It is mentioned firmly at legislation order level, as suggested by Hans Kalsen about “Stufenbau des Rechts” or “The Hierarchy of Law” emphasizing that legal norm is a multilevel structure and any lower norm originates from the higher legal norm. It can also be confirmed by Gustav Radbruch stating that to apply the law appropriately to achieve the objective of law itself: justice, usefulness, and law certainty. Gustav Radbruch elaborates that law is a justice bearer, while justice itself has normative and constitutive characteristics all at once to law. It has constitutive characteristic because justice should be an absolute element to law. Without justice, a rule is not reasonable to be law. Considering the problem, it can be concluded that there is disharmony or inconsistency between Governor, Regent, and Mayor Elections and administrative justice system in settling the nomination-related dispute. Philosophically, it reflects that these two systems cannot fulfill Principle of Legality, as suggested by Lon L. Fuller: firstly, a rule may not contain regulations in contradiction with each other; and secondly, there should be compatibility of the regulation enacted to its daily implementation. Therefore, the problematic source of nomination-related dispute settlement system chaos actually lies on the regulation of dispute settlement in the unobvious and infirm legislation concerning Governor, Regent, and Mayor Elections and its poor enforcement. Thus, violation and deviation performed by election participants, in this case the prospect candidate or political parties and election organizer, as well as dispute settlement process that cannot be managed appropriately instead trigger prolonged conflict. Therefore, the electoral justice will be difficult to bring into reality. Electoral justice system is a means and mechanism firstly to ensure any action, procedure, and decision pertaining to the process or stage of Election organization corresponding to the Legislation and secondly to protect or to recover political right use in election, and to enable the people to express complaint, to give them an opportunity of being heard and getting justice (adjudication) when they feel that their right is violated. Three main sources become determinants in bringing the electoral justice system into reality. Firstly, election prevention mechanism is the mechanism of preventing violation, deviation, and irregularity. Secondly, good mechanism of settling election is implemented in the form of corrective measure through election lawsuit and in enforcing the provision pertaining to both administrative and penal (criminal) provisions of election. And thirdly, there is an alternative mechanism of election dispute settlement.

5 CONCLUSION
Since the organization of Governor, Regent, and Mayor Elections in 2005 the use Law Number 32 of 2004 about Local Government and until today the application of Law Number 10 of 2016 about the second amendment to Law Number 1 of 2015 about the Establishment of Government Regulation Substituting Law Number 1 of 2014 about Governor, Regent, and Mayor Elections into Law, have not governed comprehensively yet and in detailed the definition of administrative dispute and administrative violation, object, and subject that can be categorized as administrative dispute and mechanism and settlement time, particularly related to nomination. Thus, it makes the settlement of nomination-related administrative dispute categorized as State Administration dispute has not been systematized clearly and firmly in an integrative Election law enforcement.

6 RECOMMENDATION
The attempts taken to settling the nomination-related dispute in Governor, Regent, and Mayor Elections to realize electoral justice system included fast settlement, accountability, and having certain law power by improving the provision governing mechanism, procedure, and time of settling Administrative
dispute or nomination-dispute of Governor, Regent, and Mayor Elections clearly and tightly in order not to harm the stage of election specified and not to harm the organization of election and other candidate pairs. A more specific legal framework design is also required to provide the separation of authorities between election organizing institution and justice institution to prevent the authority overlapping from occurring in the settlement of nomination-related dispute in Governor and Deputy of Governor, Regent and Deputy of Regent, and Mayor and Deputy of Mayor Elections.

REFERENCES

[8] Rambe Kamarul Zaman,2016, Perjalanan Panjang Pilkada Serentak, Jakarta, PT Mizan Publika,