

Analysis of Sampang Regent Decree Number: 188.45/272/Kep/434.013/2021 Concerning Implementation of Convenient Village Head Elections in Sampang District



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ABSTRACT: State officials with all the tools they have can at any time take arbitrary actions, which can harm the community. Therefore, the State Administrative Court was established to control all decisions and/or actions of state officials. State officials should act in the public interest, not in private. Decisions and/or actions of state officials will have a major impact on society, therefore it is necessary to evaluate by analyzing the decisions of state officials, with the aim of knowing the relevance of a decision and/or action of state officials. Sampang Regent Decree Number: 188.45/272/Kep/434.013/2021 is very controversial because it delays the implementation of the Village Head election until 2025, this decision is not only a defect of authority but also procedural and substance defects. As well as fulfilling the elements of void and invalid decision. Therefore, the people of Sampang can apply for revocation or annulment to the State Administrative Court (PTUN). This paper will review and analyze the Sampang Regent Decree Number: 188.45/272/Kep/434.013/2021 Regarding the Implementation of Simultaneous Village Head Elections in Sampang Regency. This paper uses a normative approach by analyzing laws and regulations such as the Law on Government Administration, the Law on the Formation of Laws and Regulations, Government Regulations, and regulations issued by the Minister of Home Affairs, juxtaposed with legal theory as an analytical tool.

KEYWORDS: State Official, Decision, Village Head

I. INTRODUCTION

Village, traditional village, or other names that refer to the same meaning are elements of government that play a vital role in distributing central government work programs to the community. In addition, the village as a group of legal communities with their respective working areas is given the authority to manage and fulfill the interests of the local community. Historically, before the Unitary State of the Republic of Indonesia was formed, villages or traditional groups already existed, even the previous kingdoms recognized them. Groups in society are formed naturally, and choose a chairman and staff to be judges for the group, the formation of this group is motivated by the shared values. Gradually the village group became a kind of special government located in local districts, with a shared value system, as well as elected officials, this was passed down from generation to generation. Currently, the village or other names that have the same meaning have become a formal part of the Indonesian government.¹

The definition of a village in the Village Law² and Regional Government³ is interpreted the same, a village between regions has different designations, but in the Village Law it is emphasized that as long as it meets the description as in the Village Law, it is considered the same as a village in the Village Law. The village is a community unit that has a clear territory and boundaries, is given authority over it to regulate and manage village administration, in order to accommodate the needs and interests of the community within the scope of its territory, both based on community initiatives, origin rights, and traditional rights that are recognized and respected in the national government system. With the existence of special arrangements regarding villages regulated in the Village Law, it is hoped that the position and status of the village will become clear and certain, and aims to provide legal protection in preserving and advancing the culture, traditions and customs of the village community, accelerating development and improving the community's economy villages by utilizing village potential to the fullest and in order to strengthen the unity and territorial integrity of Indonesia. From the above understanding of the village, it describes the village as an independent entity, which can take care of itself. So, the author agrees with the views of Prof. Drs. HAW. Widjaja, argues that village autonomy is an

¹ R. Zainul Mushthofa, dkk. (2023). "Analisis Peraturan Bupati No 27 Tahun 2021 tentang Pedoman Pencalonan, Pemilihan, Pengangkatan, Pelantikan, dan Pemberhentian Kepala Desa di Kabupaten Sampang". *Journal of Sharia*. Volume 02 Nomor 01 Januari, p. 61.

² Law of the Republic of Indonesia Number 6 of 2014 concerning Villages.

³ Law of the Republic of Indonesia Number 23 of 2014 concerning Regional Government.

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autonomous village that is original, intact, and perfect, meaning that village autonomy is not something given by the government or the state. In fact, it is the government's obligation to respect village autonomy.⁴

The village is led by the Village Head or what is referred to by another name, together with other village officials, this unit is referred to as the Village Government. The village head is elected every 6 years, the village head election can be participated by all Indonesian citizens and this is protected by the constitution, as stated in Article 28D paragraph (3) of the 1945 Constitution. It is also emphasized in Article 25 of Law 12/2005 concerning Ratification of the ICCPR. In addition, the decision of the Constitutional Court No. 011-017/PUU-I/2003 has stipulated that citizens have the right to elect and vote, this right is guaranteed by the constitution, laws and conventions, so restrictions, deviations, abolition and abolition of this right are a form of violation of citizens' human rights country.

Based on the regulations above, voting and being elected in the Village Head election is the absolute right of every citizen, fulfilling this right is the responsibility of the state, especially the government. The purpose of electing a Village Head in general is, first, so that the transfer of government occurs in a safe and orderly manner. Second, as a form of popular sovereignty. Third, the fulfillment of human and citizen rights. Village head elections are common in democratic countries, the motto of the people, by the people, and for the people can be guaranteed by holding village head elections.

However, since Indonesia was exposed to Covid-19, in 2020, the government has made strategic efforts to minimize its spread, many sectors have been affected, one of which is the village head election. The government, in this case the Minister of Home Affairs (Mendagri) issued SE No. 141/4251/SJ, the contents of which stipulate that elections for villages are simultaneously postponed for 2 months from the issuance of the SE, meaning until 09 October 2021. However, the Regent of Sampang took the same but different stance, the same that the Regent of Sampang through SK No. 188.45/272/KEP/434.013/2021 postponed the Election of the Head of Serange Village in Sampang Regency, it is different that in the Decree issued on June 30 2021, the postponement of the *Pilkades* is not 2 months as SE Mendagri, but stipulates that the implementation of Simultaneous *Pilkades* in Sampang Regency will be held on in 2025 which was attended by 180 Villages. In his considerations, point b states that in the implementation of *Pilkades* it is necessary to enforce health protocols to prevent activities that cause the spread/transmission of Covid-19, which endanger public health. Previously, the Regent of Sampang had issued Perbup 27/2021. Article 2 paragraph (3) states that the simultaneous election of village heads is determined by a district head's decision, and Article 70 paragraph (3) states that in the event of a delay in holding village head elections, the village head whose term of office expires will be dismissed and replaced by civil servants from the neighborhood local government.

II. FORMULATION OF THE PROBLEM

Based on the description above, the authors formulate the problem as follows: The impact and relevance of the enactment of the Decree of the Regent of Sampang Number: 188.45/272/Kep/434.013/2021 Concerning the Implementation of Simultaneous Village Head Elections in Sampang Regency.

III. RESEARCH METHODS

Normative legal research is the type of research used in this research. That is, this study uses statutory regulations and legal materials such as books, journals and articles. Apart from that, other materials needed to support problem solving in this study were also used by researchers.⁵

As for the research approach, the statute approach is used, namely by tracing all laws and regulations related to the problems in this study, besides that the views of legal figures and doctrines in legal science are also taken into consideration. The order and standard guidelines for journal writing are important parts to understand. The legal methodology is a research procedure that uses statutory regulations and guidelines. Furthermore, methodological techniques can use subsequent cases as complementary material, for research development.⁶

IV. DISCUSSION

A. Decision of the Regent in the Hierarchy of Legislation

In order for the development of Indonesian law to be orderly, it is necessary to affirm and enforce the hierarchical provisions of laws and regulations that have been regulated through the Law on Formation of Legislation. With the aim of minimizing the possibility of overlap between one regulation and another. The meaning of the hierarchy of laws and regulations is that a rule has a vertical level, starting from the top to the bottom, this level shows the power of law. A statutory regulation has other norms designated to clarify the technicality of its application, and has a lower position. So, the rules governing the actions of other rules have a superior

⁴ Haw Widjaja. (2010). *Otonomi Desa*. Depok: Rajawali Pers, p. 165.

⁵ Bambang Waluyo. (2008). *Penelitian Hukum Dalam Praktek*. Jakarta: Sinar Grafika, p. 17.

⁶ Peter Mahmud Marzuki. (2011). *Penelitian Hukum*. Jakarta: Kencana Prenada Media Group, p. 96-97.

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position, while the rules that carry out actions have an inferior position. So in this case the superior norm is the basis for unifying the legal order into a unified whole.⁷ The hierarchy of legal regulations in Indonesia has undergone many changes, and finally it has been regulated in Article 7 of Law No. 12/2011.

Based on the provisions of the article above, the Regent's Decree is not stated explicitly or clearly in the hierarchy of statutory regulations, but we can find it implicitly in the provisions of Article 8 of the same Law, which basically explains that statutory regulations are still recognized and have binding legal force if it is based on an order of a higher Legislation or based on its authority.⁸ Therefore, as stipulated in Article 65 paragraph (2) point c of the Regional Government Law, that in carrying out their duties the regional head has the authority to stipulate regulations and decisions of the regional head.⁹ And also Permendagri 80/2015, Article 54 states that one of the regional legal products is the Decree of the Regional Head.¹⁰ Regional heads are governors and regents/mayors, so regional head decisions in the provisions above can mean governor and regent/mayor decisions. So, the Regent's Decree is part of the legislation which is recognized for its existence and has binding legal force, this is also explained in Permendagri Number 80 of 2015 Article 1 point 19, one of the regional legal products is the Decree of the Regional Head or in this case the Decree of the Regent .

The Regent's decision as a regional legal product is in the form of a stipulation that has a concrete, individual and final or executorial nature. Regent Decrees in Laws and Regulations as legal products that are stipulations in the context of carrying out orders from District/City Regional Regulations or Perbup, have a hierarchy of one level below the Governor's Decree and two levels below the Presidential Decree, and one level above the Village Head Decree. The above conclusions are based on the provisions stipulated in Article 7 of the Law on Formation of Legislation using the *argumentum per analogiam* method. In addition, the District Head's Decree as an implementing norm or rule governing actions has a lower legal status than a Regional Regulation as a rule governing the actions of the SK itself.

B. Legal Basis for Delaying Village Head Elections in Sampang District Head Decree Number: 188.45/272/Kep/434.013/2021

The village is a community group unit that has an important role for the progress and improvement of the economy of the village community. Therefore, the government issued Law 6/2014 concerning Villages, in order to provide legal certainty and accommodate various village needs. General arrangements and technical instructions in the context of advancing village development are the authority of the Minister of Home Affairs, including in the context of promoting democracy in villages, namely the election of village heads. In Article 57 PP No. 47 of 2015 states that paragraph (1) if there is a postponement of the village head election, the village head whose term of office ends is dismissed and replaced by the village head official by the local government. And paragraph (2) stipulates that the postponement of the pilkades is then regulated and determined by the Minister of Home Affairs (Mendagri). From the description above, it can be concluded that the authority to postpone village head elections can only be exercised by the field of Domestic Administration, namely the Ministry of Home Affairs of the Republic of Indonesia.

On 25 November 2020 the Minister of Home Affairs issued Permendagri No. 72 of 2020, Article 44F stipulates that the Minister of Home Affairs gives authority to Regents or Mayors to be able to postpone the holding of Village Head elections, with one consideration, if the government is unable to control Corona Virus Disease 2019, and must be based on recommendations from the election committee. This Permendagri does not explicitly stipulate how long the deadline for postponing the village head election will be, and how the postponement will be carried out.

Based on Permendagri Number 72 of 2020, the Regent of Sampang issued Perbup Sampang Number 27 of 2021, Article 2 paragraph 3 of this Perbup stipulates that simultaneous Pilkades will be determined through a Regent's Decree, and Article 70 paragraph 3 regulates the status of village heads whose term of office has expired and replacements for the village head or village head officials, who will be appointed by the Regent are civil servants from the local government environment. The essence of the two articles above is, first, the simultaneous election of the Village Head is stipulated by a District Head Decree. Second, only through a Ministerial decree, in this case the Minister of Home Affairs, can the postponement of the Village Head election be carried out. However, contrary to the provisions above, the Regent of Sampang issued the Decree of the Regent of Sampang No. 188.45/272/Kep/434.013/2021 concerning the Implementation of Elections for the Head of Serentah Village in Sampang Regency, the contents of which stated in the decision to postpone the implementation of the *Pilkades* in Sampang Regency, and the postponement is until 2025 , which will be simultaneously 180 Villages. The Decree of the Regent and the Perbup are the implementing regulations of the Perda, this is based on the contents of the two policies, this also shows that the Perbup is a delegation

⁷ Zaka Firma Aditya. "Rekonstruksi Hierarki Peraturan PerUndang-Undangan di Indonesia". *Jurnal Negara Hukum*. Vol. 9 Nomor 1 Juni 2018, p. 80.

⁸ Article 8 paragraph (2) of Law no. 12 of 2011 concerning Formation of Legislation.

⁹ Article 65 Paragraph (2) Point c Law Number 23 of 2014 concerning Regional Government.

¹⁰ Article 54 Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 80 of 2015 concerning the Formation of Regional Legal Products.

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regulation. However, previously the Guidelines for the Nomination, Election, Appointment, Inauguration and Dismissal of Village Heads in Sampang Regency were regulated through Perda not Perbup, for example the Perda Kab. Sampang Number 4 of 2019.

Based on the mandate of the Village Law and its Implementing Regulations, the Minister of Home Affairs is authorized to delay the election of the Village Head. Therefore, through the Circular Letter of the Minister of Home Affairs No. 141/4251/SJ, in the Circular asked the Regent or Mayor to postpone the election of the Village Head simultaneously or between times. Postponement of village head elections for 2 (two) months after the Circular Letter was signed. The Circular Letter was signed on 09 August 2021, so that the vulnerable period of 2 (two) months since it was signed is 09 October 2021.

So, it is explicitly seen that there is a norm conflict between the Decree of the Regent of Sampang Number 188.45/272/Kep/434.013/2021 and the Circular of the Minister of Home Affairs No.141/4251/SJ, in terms of the vulnerability to delays in the election of the Village Head. The existence of the two norms above are recognized and have legal force, as are statutory regulations. The Decree of the Regent is issued by the Regent at the District level, while the SE of the Minister of Home Affairs is issued by the Minister of Home Affairs at the national level. The principle in the formation of laws and regulations is *lex superior derogate legi inferiori*, meaning that higher regulations can override lower regulations. The rules governing the making of other rules are superior, while the rules made for that are inferior. The Minister of Home Affairs has the authority to postpone the election of the Village Head, based on the Village Law and its Implementing Regulations, while the Regent or Mayor gets this authority based on the Regulation of the Minister of Home Affairs. Thus, the authority of the Minister of Home Affairs to postpone the Village Head election, including determining the timeframe for the postponement can be done at any time or at any time, otherwise the authority of the Regent or Mayor can be canceled or not valid.

A description of the timing of the issuance of policies regarding the postponement of village head elections is as follows: Permendagri 72/2020 was issued on 25 November 2020, Perbup Sampang 27/2021 was issued on 07 June 2021, and Sampang Regent Decree No. 188.45/272/Kep/434.013/2021 was issued on 30 June 2021, the last being SE of the Minister of Home Affairs No. 141/4251/SJ was issued on August 9, 2021. It can be concluded that the Sampang Regent's policy to postpone the village head election until 2025 was decided earlier than the policy issued by the Minister of Home Affairs through a Circular Letter. However, since the issuance of this Circular Letter, the Sampang Regency Government has not revoked or canceled its Decree, as the *contrarius actus* principle reads, which means the State Administrative Agency or Official who adopts a policy to issue State Administrative Decrees (KTUN), then he has the authority to cancel or unplug it. Revocation or cancellation of decisions due to defects, both defects in authority, procedure, and/or substance.¹¹

C. Requirements For the Validity of the Decision

Decisions of State Administrative Officials can apply and have binding legal force if the requirements for the validity of a decision are met. These requirements have been regulated in Article 52 paragraphs (1) and (2) of Law 30/2014 Concerning Government Administration, the Van Der Pot theory, and E. Utrecht's theory.

The provisions in Article 52 paragraphs (1) and (2) of Law 30/2014 Concerning Government Administration require the validity of decisions on three components, namely the authority of the decision maker, the appropriateness of the decision-making procedure, and the substance of the decision. If the decision does not meet one or more of the legal requirements above, the legal consequences of the decision will be invalid, null and/or cancelable. Every decision is required based on the provisions of laws and regulations and the AUPB, what is meant in the first point is the legal regulations which are the basis of authority and the basis for making decisions. While the second point is legal certainty, expediency, impartiality, accuracy, not abusing authority, openness, public interest, and good service.

Furthermore, based on Van Der Pot's theory,¹² based on this theory, Van Der Pot divides the legal requirements for decisions into two (2), first, material requirements relating to the authority of the maker, the will of the maker, the reasons for making them, and the decision not contradicting its legal basis. Second, formal requirements relating to the procedure for making, the form of a decision, and the time limit for making a decision.

While the legal requirements for a decision according to E. Utrecht,¹³ which can be summed up into 4 conditions, the four (4) conditions can be summarized as follows: the authority of the maker, the will must not contain juridical deficiencies, the form of the decision, the procedure for making a decision, and the suitability of the content and purpose decisions on the basis of law made decisions.

¹¹ Article 64 of the Law of the Republic of Indonesia Number 30 of 2014 concerning Government Administration.

¹² E. Utrecht. (1960) *Pengantar Hukum Administrasi Negara Indonesia*. Bandung: Fakultas Hukum dan Pengetahuan Masyarakat Universitas Negeri Pajajaran, p. 83.

¹³ *ibid.*

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The conditions above can be used as guidelines and analytical tools in reviewing a decision made by the Government or TUN bodies/officials. In this context, the author will review the Decree of the Regent of Sampang No. 188.45/272/Kep/434.013/2021, here is the description:

First, the Regent of Sampang postponed the village head election in Kab. Sampang until 2025 is not based on its authority, because according to the provisions of the Village Law and its implementing regulations, the Minister of Home Affairs has the authority to postpone the implementation of the Village Head election. Although based on Permendagri 72/2020 the District Head is given the authority to postpone the holding of the Village Head election, it is not explicitly stated that the postponement of the election will be until 2025. On the contrary, based on SE Minister of Home Affairs No. 141/4251/SJ stated explicitly and clearly that the postponement of the implementation of the Village Head elections until October 9, 2021. Therefore, Sampang Regent Decree No. 188.45/272/Kep/434.013/2021 does not meet the requirements for a valid decision.

Second, the Decree of the Regent of Sampang Number: 188.45/272/Kep/434.013/2021 was issued based on consideration of certain circumstances, namely the uncontrollable spread of Corona Virus Disease 2019. Thus, the reason for the issuance of the decision to postpone the implementation of the village head election in Sampang Regency was the uncontrollable spread of Corona Virus Disease 2019. Based on the Government Administration Act and the Van Der Pot theory, this decision has fulfilled the legal requirements for a decision, that a decision was issued due to certain circumstances or conditions. The opposite consequence also applies, if the reason (certain circumstances or conditions) for the issuance of this decision has been lost or has been invalidated, then this decision must be revoked or cancelled. Furthermore, based on Permendagri No. 53 of 2022 which under consideration states that the pandemic situation has ended and its spread can be controlled, with adequate health equipment and facilities, the level of public immunity has increased, the Indonesian economy has led to rapid growth, and as directed by the President of Indonesia to stop the enactment Cessation of Community Activities in various regions in Indonesia. Therefore, Domestic Instruction Number 53 of 2022 has eliminated the causes or circumstances that led to the issuance of Sampang Regent Decree No. 188.45/272/Kep/434.013/2021, then automatically the decision does not meet the requirements for a valid decision.

D. Elements of Cancellation or Invalidity of Decision

A decision can be revoked or canceled if there is a defect in the decision, in Articles 64 and 66 of Law 30/2014 concerning Government Administration it states that revocation and annulment can be made if the decision contains one or more defects as follows, first, defects in authority, This means that the TUN official who makes decisions does not have authority, exceeds authority, mixes authority, or acts arbitrarily. Second, procedural defects, which mean that a series of procedures in the decisionmaking process are not carried out in part or in whole. Third, defects in substance, meaning the decision fulfills one or more of the provisions in the elucidation of Article 64 paragraph (3) of Law 30/2014.¹⁴

Decisions that are flawed authority, will be declared invalid. Meanwhile, decisions that are flawed in procedure or substance are declared null and void. Cancellation or revocation of a decision can be tested against existing regulations, AUPB, court decisions that have permanent legal force, and whether or not there is a juridical defect. A decision that is declared invalid has the consequence that the decision is not binding when it is made and whatever legal consequences it causes are considered never to be valid. As for the declared cancellation of the decision, that decision is not binding when it is cancelled, in other words, it is still considered valid until the cancellation occurs and ends if there is cancellation.¹⁵

In State Administrative Law, there is the principle of *presumptio iustae causa* or the principle of presumption *rehtmatig*, meaning that all decisions of state administration officials must be considered valid and correct until a court decision states that they are not. This principle is also useful for achieving legal objectives, namely legal certainty. In addition, this principle has been accommodated in the Government Administration Law, Article 19 paragraph (1) and (2). The elucidation of Article 19 paragraph (2) states that the meaning of the diction "can be canceled" is a mechanism for canceling state administrative decisions and/or actions of state officials through the judicial route, namely requesting a review of this matter to the competent court. From the provisions above, we can find two mechanisms for declaring invalid or canceling a decision, namely administratively and legally. Furthermore, the elements of invalidity or cancellation of the decision we describe as follows:

Elements of illegal decisions are regulated in the Government Administration Law, which can be summarized in the following articles:¹⁵

- 1) Article 70 Paragraph (1) Letter b jo. Article 19 Paragraph (1) jis. Article 17 paragraph (2) letter a and Article 18 paragraph (1).
- 2) Article 70 Paragraph (1) Letter c jo. Article 19 Paragraph (1) jis. Article 17 paragraph (2) letter a and Article 18 paragraph (1).
- 3) Article 70 Paragraph (1) Letter c jo. Article 19 Paragraph (1) jis. Article 17 paragraph (2) letter c and Article 18 paragraph

¹⁴ Explanation of Article 64 paragraph (3) of the Law of the Republic of Indonesia Number 30 of 2014 concerning Government Administration.

¹⁵ Hidayat Pratama Putra. "Penilaian Terhadap Batal atau Tidak Sahnya Suatu Keputusan dan/atau Tindakan Administrasi Pemerintahan". *Jurnal Hukum Peratun*. Vol. 3 Nomor 1 Februari 2020, p. 48.

¹⁵ Law Number 30 of 2014 concerning Government Administration.

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(3).

4) Article 70 Paragraph (1) Letter a jo. Article 56 jo. Article 52 paragraph (1).

The element of cancellation or cancellation of a decision is regulated in the Government Administration Law, which can be summarized in the following articles:¹⁶

1) Article 19 Paragraph (2) jis. Article 17 paragraph (2) letter b and Article 18 paragraph (2)

2) Article 45 Paragraph (2) Conflict of interest is also included in the category of substance abuse as explained in the Explanation of Article 71 Paragraph (1) Letter a

3) Article 71 Paragraph (1) Letter a jo. Article 56 Paragraph (2) jo. Article 52 Paragraph (1) letter b

4) Article 71 Paragraph (1) Letter b jo. Article 56 Paragraph (2) jo. Article 52 Paragraph (1) letter c

According to Philipus M. Hadjon the question "what" can reveal whether there was an arbitrary action or decision (*willekeur*) by a state/government official and the question "for what" can reveal whether there was an action or decision to abuse authority by a state/government official (*detournement de pouvoir*).¹⁸ And according to Ridwan HR, the category of action or decision that exceeds authority (beyond authority) is actually not authorized (*onbevoegheid*).¹⁷ Considering the illegal elements and cancellation of the decision above, the Decree of the Regent of Sampang No. 188.45/272/Kep/434.013/2021 has been complied with, and administrative or legal measures can be taken. Administrative measures for decisions of state/government officials deemed to have violated legal provisions and/or AUPB, basically aim to guarantee the legal protection of every citizen who has been harmed, as well as guarantee the legal protection of every state or government official who has in fact carried out his duties and functions as they should, according to the rules in force.¹⁸

D. The Impact of The Enactment of The Decree of The Regent of Sampang Number: 188.45/272/Kep/434.013/2021

Decree of the Regent of Sampang No. 188.45/272/Kep/434.013/2021 which decided to postpone the Pilkades implementation until 2025 has a significant impact both in the context of law, democracy and human rights. In the legal context, the decision was issued by an official who is not authorized, does not meet the requirements for the validity of the decision, there are defects in the decision, and violates the principle of forming statutory regulations. Therefore, this decision will set a bad precedent for law in Indonesia and can hinder the development of national law, violations of legal principles result in loss of certainty, justice and the benefits of law.

Whereas in the context of democracy, that Village Head Election is an effort to realize democracy, democracy can simply be understood through the jargon of the people, by the people, and for the people. Therefore, the Election Law emphasizes that elections are carried out based on the principles of direct, public, free, confidential and fair.¹⁹ Based on the explanation above, the Sampang Regent's decision is contradictory, because with the holding of the Village Head election in 2025, the Village Head whose term of office has ended will be replaced by an Official Village Head appointed by the Sampang Regent, and come from civil servants from the Sampang Government environment, which means that the village head is not the people's choice directly, and at the same time closes space for people who want to be involved as someone who is elected in the pilkades contest. Therefore, the democratic principle in this decision is not fulfilled.

Finally in the context of human rights. It is a constitutional mandate that regional governments are responsible for the protection, promotion, enforcement and fulfillment of human rights.²⁰ Not quite the opposite, depriving the Sampang people of human rights, the Sampang Regent's Decree is contrary to constitutional orders, contained in Article 28D paragraph (3), Article 43 of Law 39/1999 concerning Human Rights, and Article 25 of Law 12/2005 concerning Ratification of the ICCPR, which basically guarantees public participation in general election contestation, and constitutes the people's right to participate and take a role in government, as well as the fulfillment of their political rights.

The three impacts above have scope and significance in their respective fields, and are decisions that are full of question marks, and have caused many parties to speculate. The author is no exception, as we know that the Pilkada will be held simultaneously in 2024, and it is not necessary that the SK Regent of Sampang above has been postponed until 2025, and those who replace the Village Head are Village Head officials who are authoritatively appointed by the Regent. In this process, it is not impossible for things to happen that violate the current legal regulations and/or AUPB, for example buying and selling of Village Head positions, politics of reciprocation, conflicts of interest, and can be used by the Regent to gain votes. Of course the above allegations have not been proven, and are only limited to prejudices against the occurrence of violations of the law and AUPB as the author described above. The Regent of Sampang should have been able to pay attention to Sudikno Mertokusumo's statement, if everyone is personally mobilized for their own interests, then the actions and decisions taken by the government should be based on the public interest or

¹⁶ *ibid.* 18 Sadjijono. (2008), *Memahami Beberapa Bab Pokok Hukum Administrasi*. Yogyakarta: Laksbang Pressindo, p. 102.

¹⁷ Ridwan HR. (2013). *Hukum Administrasi Negara*. Jakarta: Rajawali Press, p. 384.

¹⁸ Jamil. "Evaluasi Penyelesaian Sengketa Proses Pemilihan Umum Dalam Perspektif Konstruksi Hukumnya". *Jurnal Perspektif*. Vol 25 Nomor 1 Januari 2020, p. 15.

¹⁹ Article 2 of Law Number 7 of 2017 concerning General Elections.

²⁰ Article 28 I of the 1945 Constitution of the Republic of Indonesia.

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the needs of the people.²¹ In fact, the government has a decree, namely to act in the context of carrying out its duties so that it is allowed to take the necessary actions or decisions, therefore, the necessary action is meant that the government gets freedom in its actions, but in fact, there are often deviations by the government so that it violates individual interests, therefore, the decision owned by the government should not go far beyond what it should be.²²

CLOSING

Conclusions

The impact of the issuance of the Decree of the Regent of Sampang Number: 188.45/272/Kep/434.013/2021 can be classified into three aspects, namely legal aspects, democracy aspects, and human rights aspects. The impact above was caused because the decision above violated the principles in the formation of laws and regulations, the principles of democracy, the purpose of law, the provisions of laws and regulations, and the general principles of good governance.

Meanwhile, the relevance of the Decree of the Regent of Sampang Number: 188.45/272/Kep/434.013/2021 can be concluded unequivocally, because as explained in the explanation regarding the legal requirements for a decision and the elements of annulled and invalid decisions, the decision does not meet the requirements for a valid decision, and instead fulfills the elements of null and void. invalidity of a decision. Therefore, the Decree of the Regent of Sampang Number: 188.45/272/Kep/434.013/2021 is no longer relevant to be enforced. However, the mechanism for declaring invalid or canceling the Decree of the Regent of Sampang Number: 188.45/272/Kep/434.013/2021 can only be carried out if it has been held at trial and the Court has decided with a decision that has permanent legal force or has been tested by the superior of the official who issued the decision. This is in line with the principle of *presumption rehtmatig*, which means that all decisions of state administration officials must be considered valid and correct until a court decision states that they are not.

Recommendation

Based on the results of the analysis above, the author provides a recommendation to the Regent of Sampang to cancel or revoke the Decree of the Regent of Sampang Number 188.45/272/Kep/434.013/2021 because the decision contains defects, both defects in authority, procedure and/or substance. This recommendation is in accordance with the principle of *contrarius actus* which means that a State Administrative Agency or Official who issues a State Administrative Decree (KTUN) also has the authority to cancel or revoke it.

The author also recommends that the people of Sampang submit a lawsuit to the State Administrative Court (PTUN) because they have been harmed by a decision issued by the State Administrative Officer, in this case the Regent of Sampang. The State Administrative Court itself was formed with the aim of being a juridical control over government actions or decisions that commit maladministration or abuse of power.

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²¹ Sudikno Mertokusumo. (2019). *Perbuatan Melawan Hukum oleh Pemerintah*. Yogyakarta: Maha Karya Pustaka, p. 64.

²² *ibid.*

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