

Development of Dispute Resolution Procedures for Regional Head Elections in the Republic of Indonesia According to Positive Legislation



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ABSTRACT: The dispute resolution of the results of Regional Head Elections in Indonesia is currently being examined and tried by the Constitutional Court of the Republic of Indonesia, which according to Law Number 10 of 2016 should be investigated by Special Judicial Body to examine and adjudicate disputes on the results of Regional Head Elections. This journal aims to describe the development of dispute resolution procedures for Regional Head Elections in the Republic of Indonesia according to the regulations of the invitation applies to the moment, due to the non-implementation of the principle of *lex posteriori derogate lex priori* in the handling of disputes on the results of Regional Head Elections and the urgency of establishing a Special Judicial Body to handle disputes of the Regional Head Elections. This research was used normative juridical, through statutory approach and case approach with the case of Constitutional Court Verdict No. 97/PUU-XI/2013. Conclusion is based on the principle of *Lex Posteriori Derogate Lex Priori* of Law Number 10 of 2016 that provides a thorough description about dispute resolution for Regional Head Elections in the Republic of Indonesia.

KEYWORDS: Disputes, Regional Head Elections, State Institutions

I. INTRODUCTION

Based on the provisions of Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, the Republic of Indonesia is a country whose Sovereignty is in the hands of the people and is implemented according to this Constitution, hence implied indirectly that Indonesia adheres to the Democratic system in decision-making.¹ Democracy is a form of government in which all its citizens have equal rights in decision-making.²

Furthermore, based on Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia it is stated that The State of Indonesia shall be a state based on the rule of law.³ Where the state whose exercise of power over its government is based on the law so that for that reason every Indonesian citizen must comply with the prevailing laws and regulations. Therefore, the provisions in the Legislation are the basic foundation of every implementation of the Pancasila's mandate and the 1945 Constitution of the Republic of Indonesia.

The mandate of the 1945 Constitution of the Republic of Indonesia can be seen from the implementation of all community activities related to the law, for example, the interaction of the trading relationship to the regulation of authority between state institutions and vertical or horizontal officials.

Regarding to the state institutions, the 1945 Constitution of the Republic of Indonesia at least mentions eight state institutions, each of which has its duties and authorities. This is regulated in Article 3, Article 4, Article 20, Article 22 letter D, Article 23 letter E, Article 24 letter A, Article 24 letter B, Article 24 letter C. One of these institutions is the Constitutional Court which is mentioned in Article 24 letter C of the 1945 Constitution of the Republic of Indonesia. The Constitutional Court is a state institution that carries out the duties of an independent judiciary to administer justice to uphold law and justice.

According to Article 24 letter C of the 1945 Constitution of the Republic of Indonesia, the Constitutional Court has the following duties and powers as below:⁴

¹ Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Pasal 1 ayat (2).

² Gunawan Sumodiningrat & Ary Ginanjar Agustian, "Mencintai Bangsa dan Negara Pegangan dalam Hidup Berbangsa dan Bernegara di Indonesia", (Bogor: PT. Sarana Komunikasi Utama, 2008), hal. 44.

³ Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Pasal 1 ayat (3).

⁴ Pasal 24C Undang-Undang Dasar Negara Republik Indonesia Tahun 1945

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- (1) To adjudicate at the first and final levels whose decisions are final in order to examine laws against the Constitution, to decide on disputes on the authority of state institutions whose powers are granted by the Constitution, to decide on the dissolution of political parties, and to decide on disputes concerning the results of the General Election.
- (2) The Constitutional Court is obliged to give a decision on the opinion of the House of Representatives regarding alleged violations by the President and/or Vice President according to the Constitution.
- (3) The Constitutional Court has nine members of constitutional judges appointed by the President, who are nominated by three people each by the Supreme Court, three by the House of Representatives, and three by the President.
- (4) The chairman and deputy chairman of the Constitutional Court are elected from and by the Constitutional Judges.
- (5) Constitutional judges must have integrity and personality that is not reprehensible, fair, statesman who controls the constitution and state administration, and does not double as a state official.
- (6) The appointment and dismissal of constitutional judges, procedural law and other provisions concerning the Constitutional Court are regulated by law.

With regard to the four authorities and one obligation, in practice there is one authority which is also exercised by the Constitutional Court namely, adjudicating cases of disputes on the results of Regional Head Elections. This authority has created a debate regarding whether Regional Head Elections is included in the General Election regime as stated in Article 22 letter E of the 1945 Constitution of the Republic of Indonesia which reads:

1. General Election is held directly, publicly, freely, confidentially, honestly, and fairly once every five years.***)
2. General Election is held to elect members of the House of Representatives, Regional Representative Board, President and Vice President and Regional House of Representatives.***)
3. Participants in the General Election to elect members of the Regional Representative Board and members of the Regional House of Representatives are political parties.***)
4. Participants in the General Election to elect members of the Regional Representative Board are individuals.***)
5. General Election is held by General Election Commission that is national, permanent and independent.***)
6. Further provisions on elections are regulated by law.***)"

Regarding to the article above, caused pros and cons in the community regarding whether or not the Constitutional Court has the authority to resolve disputes on the results of Regional Head Elections. Historically, the Supreme Court has the authority to adjudicate Regional Head Elections disputes since 2005 based on Law Number 32 of 2004 concerning Regional Government. Since the emergence of cases of disputes on the results of the Depok city governor election, Supreme Court panel team leader considered West Java High Court decision unprofessional. It caused sense of public distrust to the Supreme Court and the Court below that resolved the case of Regional Head Elections due to the Supreme Court could not act fairly and appropriately.

With the enactment of Law Number 22 of 2007 concerning General Election Organizers, Regional Head Elections has been included in the General Election regime and were held for the first time in the 2007 Regional Head Elections of the Special Capital Region of Jakarta. Since 2008, the Constitutional Court has handled the case of the Regional Head Elections, the Constitutional Court has received high trust from the public and by legislation the authority of the Constitutional Court to resolve disputes on Regional Head Elections replacing the Supreme Court is stated in Article 236 letter C of Law Number 12 of 2008 concerning The Second Amendment to the Law Number 32 of 2004 concerning Regional Government.

In the course of time, the authority of the Constitutional Court raises problems due to the 1945 Constitution of the Republic of Indonesia did not state that Regional Head Elections was included in the General Election regime, therefore, Law Number 12 of 2008 was subject to judicial review by the Constitutional Court. The dispute caused the Constitutional Court to issue the Constitutional Court Decision Number 97/PUU-XI/2013 stated in Article 236 letter C of Law Number 12 of 2008 concerning The Second Amendment to the Law Number 32 of 2004 concerning Regional Government which stated that:

"The handling of disputes on the results of the vote count for Regional Head Elections by the Supreme Court is transferred to the Constitutional Court no later than 18 (eighteen) months from the promulgation of this Law".

Until now, the issue of dispute resolution results of Regional Head Elections continues to be debated due to the 1945 Constitution of the Republic of Indonesia along with the Constitutional Court Decision No. 097 / PUU-XI / 2013 did not mention Regional Head Elections included in the General Election regime, while Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors to become Laws stated that the revocation of the results of the determination of the results of the Regional Head Elections is resolved by the Constitutional Court until the establishment of special judicial body.

II. FORMULATION OF THE PROBLEM

- A. What is the dispute resolution mechanism for the results of Regional Head Elections according to the current legislation?
- B. How is the development of the dispute resolution procedure based on the results of Regional Head Elections in practice at this time?

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III. RESEARCH METHODS

The author in this article will use normative juridical, statute approach, and conceptual approach. This research is supported by literature (secondary data) with several legislative sources (primary law sources), namely The 1945 Constitution of the Republic of Indonesia, Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors to become Laws, The Constitutional Court of the Republic of Indonesia Verdict Number 97/PUU-XI/2013, and other legal sources.

Other data are also obtained from legal publication materials in the form of unofficial documents, such as journals, theses, as well as other sources outside of primary and secondary sources which are then collected through literacy and processed with qualitative data analysis techniques, which were conveyed through descriptive analysis to carry out research solutions.

IV. DISCUSSION

A. Dispute Resolution Mechanism of the Regional Head Elections Results According to Applicable Laws and Regulations

Based on Law Number 32 of 2004 concerning Regional Government, it is stated that objections to the determination of the results of the Regional Head and deputy Regional Head Elections are submitted by the candidates to the Supreme Court. Meanwhile, on the other hand, the decision of the dispute over the results of regional head elections by the Supreme Court in several regions have been controversial.

The expectation of a legal decision that is binding and can be respected by all parties to the dispute such as the Supreme Court decision, it is hoped that there will be no inconsistencies in the judge's decision such as the re-election or recalculation of the results of which are also sued. This causes the level of public confidence in the Supreme Court is low and many parties are eager for the settlement of regional head elections dispute to be transferred to the Constitutional Court.⁵

As stated in Article 24 letter C paragraph (1) of the 1945 Constitution of the Republic of Indonesia, one of the powers of the Constitutional Court is to decide disputes about the results of General Election and Article 22 letter E paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that General Election are held to elect members of the House of Representatives, Regional Representative Board, President and Vice President, and Regional House of Representatives. With the existence of Article 22 letter E and Article 24 letter C, it means that the Constitutional Court is not authorized to decide disputes on the results of the regional head elections due to the Regional Head Elections do not include in the General Election regime as contained in Article 22 letter E paragraph (2) of the 1945 Constitution of the Republic of Indonesia.

After the enactment of Law Number 22 of 2007 concerning General Election Organizers, Regional Head Elections was included in the General Election Regime which caused the Constitutional Court to have the authority to adjudicate disputes on the results of Regional Head Elections. Coupled with the enactment of Law Number 12 of 2008 concerning the Second Amendment to Law Number 32 of 2003 concerning Regional Government, giving the Constitutional Court additional authority to decide disputes on the results of Regional Head Elections, as well as the enactment of Law Number 48 of 2009 concerning Powers Justice. which has a correlation to the addition of the authority of the Constitutional Court in Article 29 paragraph (1) letter e which reads "other powers granted by law". The content of the three Laws gives legitimate authority to the Constitutional Court to decide disputes on the results of regional head elections. With the attribution of authority granted by those three Laws, the Constitutional Court can exercise the authority as stated in the Constitutional Court Decision Number 072-073/PUU-II/2004, the court argued that to implement the provisions concerning Regional Head Elections is the authority of the legislator to choose the way of direct elections or other democratic ways. Since the 1945 Constitution of the Republic of Indonesia has stipulated the Regional Head Elections in a democratic manner, hence, both direct elections and other means must be guided by generally applicable electoral principles. The authority of the Constitutional Court which, according to several laws have been mentioned, the Constitutional Court is authorized to judge and decide regional head elections disputes.

In 2013, former Chief Justice of the Constitutional Court Akil Mochtar committed money laundering, gratification, and was caught bribery about a dispute over the results of the Lebak Regional Head Elections. Akil Mochtar was formally named a suspect by the Corruption Eradication Commission and sentenced to life imprisonment by the court.

With the case involving Akil Mochtar as Chief Justice of the Constitutional Court at that time, the emergence of distrust in the community made a request that the Constitutional Court has no longer authorized to exercise the authority of dispute resolution results of regional head elections. The community took an action by submitting an application to the Constitutional Court on November 1, 2013 with Petition Number 558/PAN.MK/2013.

In the Petition No. 558/PAN.MK/2013, the petitioners appealed to the Constitutional Court to examine Law Number 12 of 2008 concerning the Second Amendment to Law Number 32 of 2004 concerning Regional Government and Law Number 48 of 2009 concerning Powers Justice against the 1945 Constitution of the Republic of Indonesia.

⁵ Safi', "Sistem Pembuktian Dalam Penanganan Perkara Perselisihan Hasil Pemilihan Umum Kepala Daerah Dan Wakil Kepala Daerah (Pemilukada) Di Mahkamah Konstitusi", *Jurnal Dinamika Hukum*, Vol. 11 No. 3 (September 2011), h. 493.

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Since the application was decided by the Constitutional Court in the form of Constitutional Court Decision No. 097/PUU-XI/2013, Article 236 letter C of Law Number 12 of 2008 concerning Amendments to Law Number 32 of 2004 concerning Regional Government and Article 29 paragraph (1) letter E of Law Number 48 of 2009 concerning Powers Justice is declared contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force. Likewise, the Constitutional Court argued that Regional Head Elections are not included in the General Election regime as contained in Article 22 letter E of the 1945 Constitution of the Republic of Indonesia. With this decision, the Constitutional Court is no longer authorized to adjudicate and decide disputes of Regional Head Elections due to the Constitutional Court according to Article 24 letter C paragraph (1) of the 1945 Constitution of the Republic of Indonesia in its authority to adjudicate and decide elections disputes are limited to General Election disputes as stated in Article 22 letter E paragraph (2) of the 1945 Constitution of the Republic of Indonesia, namely the election of House of Representatives members, Regional Representative Board members, Regional House of Representatives members, and the President and Vice President.

With the decision of the Constitutional Court Number 097/PUU-XI / 2013, the Constitutional Court is not authorized to judge and decide the dispute of Regional Head Elections. Thus, causing a legal vacuum for institutions authorized to carry out the authority to adjudicate and decide disputes on Regional Head Elections. The President established a Government Regulation in Lieu of Law Number 1 of 2014 concerning Regional Head Elections and was enacted into Law Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law. This Law has been amended twice to become Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors to become Laws. In Law 10/2016, it is stated in Article 157 paragraphs (1), (2), and (3) that in terms of examining and adjudicating the dispute resolution of the Regional Head Elections is the authority of the Constitutional Court until the establishment of a Special Judicial Body. As mentioned in Article 157 of Law Number 10 of 2016, a Special Judicial Body has not been established until now.

B. Analysis of the Authority to Adjudicate Disputes on the Results of Regional Head Elections in Current Practice

Based on Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia "Governors, Regents and Mayors, respectively as head of regional government of the provinces, regencies and municipalities, shall be elected democratically."⁶ Regional Head Elections are carried out by referring to the provisions of Article 1 Item 1 of Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors to become Laws. Election of Governors and Deputy Governors, Regents and Deputy Regents, as well as Mayors and Deputy Mayors, hereinafter referred to as Elections are the implementation of people's sovereignty in the provinces and regencies/municipalities to elect the Governor and Deputy Governor, Regent and Deputy Regent, and Mayor and Deputy Mayor directly and democratically. which is the mandate of Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia.

Provisions regarding Regional Head Elections are the process of selecting regional heads in a certain area which in its implementation must be in accordance with the principle of popular sovereignty as mandated by Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia. The implementation of Regional Head Elections are carried out by the Provincial General Election Commission and/or Regency/Municipal General Election Commission as the technical organizer, Provincial General Elections Supervisory Agency and/or Regency/City Election Supervisory Committee as supervisors for the implementation of Regional Head Elections, The Election Organizers Honorary Council as the institution that resolves ethical issues carried out by the election organizers, and the Special Judicial Body or Constitutional Court in the resolution of disputes on the results of Regional Head Elections.

The dispute resolution mechanism for the results of Regional Head Elections are carried out based on the provisions of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors to become Laws, in conjunction Constitutional Court Regulation No. 5 and 6 of 2017 regarding concerning Guidelines for Proceeding in Disputes on the Results of the Regional Head Elections or with One Pair of Candidates. Basically, the mechanism for filing applications regarding regional head election disputes has been spelled out in Article 157-158 of Law Number 10 of 2016, but the Constitutional Court established Constitutional Court Regulation Number 5, 6, 7, and 8 of 2017 to explain in detail the procedure guidelines, application preparation guidelines, stages, and event Activities in regional head elections disputes.

The Constitutional Court until 2022 has handed down as many as 3369 decisions, which are divided according to the large percentage: (1) Law Review of 45%; (2) dispute on the results of Regional Head Elections of 34%; (3) dispute on the results of General Election of 20%; and (4) dispute on the authority of state institutions of 1%. The authority of the Constitutional Court in

⁶ Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Pasal 18 ayat (4).

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handling disputes on the results of Regional Head Elections makes the Constitutional Court as a superpower state institution, due to the large number of cases of disputes on the results of Regional Head Elections to be handled.

V. CONCLUSION

The dispute resolution mechanism for the results of Regional Head Elections is regulated in Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors to become Laws.

Initially, in 2005, the settlement of the results of Regional Head Elections is the authority of the Supreme Court. Furthermore, with the Constitutional Court Decision No. 5/PUU-V/2007 which stipulates that the election of Regional Head Elections is the General Election legal regime. Hence, the authority to resolve disputes on the results of regional elections is the authority of the Constitutional Court. The Constitutional Court's decision was followed up by the establishment of Law No. 12 of 2008 concerning the Second Amendment to Law Number 32 of 2004 concerning Regional Government, which stated that the Constitutional Court is authorized to handle disputes on the results of Regional Head Elections.

Furthermore, the Constitutional Court issued a Decision No. 097/PUU-XI/2013 which stated that the Constitutional Court is not authorized to resolve disputes on the results of Regional Head Elections, but the authority remains the Constitutional Court authority until the establishment of a Special Judicial Body. Article 157 of Law Number 10 of 2016 gives the authority to settle disputes on the results of the Regional Head Elections to a Special Judicial Body which is temporarily exercised by the Constitutional Court until the establishment of this Special Judicial Body.

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