

Legal Politics Regional Head Election Dispute Settlement in The Constitutional Court

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Abstract. *This study aims to find out about legal politics Elections for Regional Heads and Deputy Regional Heads (PILKADA) are one of the significant political breakthroughs in realizing democratization. Pilkada is a very important instrument in the administration of regional government based on the principles of democracy in the regions based on direct, general, free, confidential, honest and fair principles. democratic, even the election is legally flawed caused by violating laws and regulations. Therefore, it is necessary to study the settlement of election disputes in the constitutional court. The purpose of this study is first, to find out and analyze the implementation of political legal case settlement of election disputes at the constitutional court, second to find out and analyze the weaknesses of the political law of election dispute settlement at the constitutional court and future solutions. This study uses a normative juridical research type with the specification of the research is descriptive analysis. The data used in this study are secondary data obtained through literature and documentary studies. Furthermore, it is analyzed using qualitative analytical methods. Based on the results of the research as follows: First, the Implementation of Political Case Settlement Legal election disputes at the Constitutional Court has not been effective. Second, Political Weaknesses in the Law of Election Dispute Resolution at the Constitutional Court and Future Solutions are Problems Concerning the Scope of Pilkada Disputes, the number of constitutional judges is only nine people, managing disputes over the results of the regional head election, where the number of cases is quite high, makes it difficult for the Constitutional Court to work effectively. The time limit for resolving disputes is quite short, namely 14 days. This means that with its*

centralized nature and limited number of judges, the Information and Technology Support Issues of the Constitutional Court cannot be used optimally to support Pilkada dispute hearings.

Keywords: *Constitutional; Court; Election; Disputes.*

1. Introduction

The existence of disputes over the results of regional head elections (Pilkada) began when Law Number 32 of 2004 concerning Regional Government (UU No. 32 of 2004) regulated Pilkada directly by the people. In the Pilkada process, there is a possibility that one of the participants will object to the determination of the results of the vote count by the organizers, which will result in the determination of the elected candidate pair. Objection then facilitated by law with allow parties who object to submit it to the court. 1 Regional Head and Deputy Regional Head Elections (PILKADA) are elections for regional heads and deputy regional heads in one pair of candidates which are carried out democratically based on the principles of direct, public, free, confidential, honest and fair. The term democracy comes from a fragment of the Greek word "demos" which means "the people" and the word "kratos" or "cratein" which means "government", so democracy means government by the people.

According to Huefner's perspective, the causes of problems arising from election results can be caused by several things. First, fraud, namely fraudulent voting results, can be caused by fraudulent candidates, where they have the desire and opportunity to commit such fraud. This can also be done by vote counters and other election officials who have the opportunity to make it easier for them to do so temporary calculation process or through a recalculation process. Third, Non-Fraudulent misconduct, namely this act is fraud in the local elections, but actions that can lead to a decline in public confidence in the election results. Fourth, Extrinsic events or acts of God, namely another cause of problems arising in the election results is the presence of natural events (acts of God) beyond the human capabilities of the election administration officials.

Based on the problems above, the number of election disputes/election disputes that led to the election is often used as an argument by applicants in disputes over election results disputes, including the practice of money politics (money politics), mobilization of civil servants and village officials, abuse of authority, voting more than once, represented voting rights by other people, covert campaigns, appointment of non-permanent employees to win post-conflict local elections, dismissal of school principals for not supporting incumbent candidates,

and so on.

2. Research Methods

Legal research is a scientific activity, which is based on certain methods, systematics and thoughts, which aims to study something or certain legal phenomena, by analyzing them. Apart from that, an in-depth examination of these legal factors is also carried out, in order to then seek a solution to the problems that arise in the phenomenon in question.

For this reason, in this study the authors used the following research methods: First, the approach method used in this study was a normative juridical approach. descriptive analytical research method, because the researcher intends to describe/describe the condition of the subject/object of research (a person, an institution, etc.) at the present time based on the facts that appear or as they are. way through literature study, including treatises on laws and regulations, books, journals, research results, as well as other sources that are relevant and related to the object of this research. The four data that have been obtained from this research will be processed and analyzed using qualitative analysis

3. Results and Discussion

3.1. Implementation of Legal Political Election Dispute Resolution at the Constitutional Court

As for resolving disputes, a person can take the court route or use alternative dispute resolution. Taking the court route, someone suing the defendant (the term for someone who is sued civilly in the District Court) in the area where the defendant lives is Article 118 (1) HIR). Apart from the court Alternative dispute resolution is another option if someone wants resolving civil disputes while the type used in practice is mediation and arbitration as follows:

a) Mediation

Mediation is an intervention in a dispute by an acceptable, impartial and neutral third party (mediator) and helps the disputing parties reach a voluntary agreement on the issues in dispute. According to Rachmadi Usman, mediation is a way of resolving disputes outside the court through negotiations involving a third party (mediator) who is neutral and does not take sides with the parties to the dispute and whose presence is accepted by the parties to the dispute.

b) Arbitration

The word arbitration comes from the words arbitrate (Latin), arbitrage (Dutch), arbitration (English), arbitrage (French) and schiedpruch (Germany), which means the power to resolve something according to the discretion or peace of the arbitrator.

Arbitration is a procedure for resolving a dispute other than through examination by a court and occurs when one or more people are appointed to hear the arguments put forward by the disputing parties and to give a decision on the dispute. Arbitration generally arises because of an agreement between the parties to resolve a dispute through arbitration, either on an agreement reached before or after the dispute arose. This settlement is generally preferred because it is cheaper, faster, informal and does not involve publicity so that the company's image is maintained because it is private and closed to the public.

However, in using mediation or arbitration, both parties must agree disputing agreed. Basically, dispute resolution can be done in two ways, namely dispute resolution through litigation agencies (through court) and dispute resolution through non-litigation (outside court).

Table 1.

Recapitulation of Disputes on Regional Head and Deputy Regional Head Election Results / Cases of Disputes on Governor, Regent and Mayor Election Results

Year	In Past Process	Registered	Amount	Verdict Rule	Number of Decisions	In Process This Year
2008	0	27	27	Kabul3 Reject12 NoAccepted3 Take back:0 Fall:0 Not Authorized : 0	18	9
2009	9	3	12	Kabul1 Reject10 NoAccepted1 Take back:0 Fall:0 Not Authorized : 0	12	0
2010	0	230	230	Kabul25 Reject149 NoAccepted45 Pull Back4 Fall:0 Not Authorized : 0	223	7

2011	7	132	139	Kabul11 Reject89 NoAccepted29 Pull Back2 Fall:0 Not Authorized : 0	131	8
2012	8	105	113	Kabul4 Reject57 NoAccepted26 Pull Back9 fall1 Not Authorized : 0	97	16
2013	16	192	208	Kabul7 Reject134 NoAccepted46 Pull Back6 fall2 Not Authorized : 0	195	13
2014	13	9	22	Kabul4 Reject13 NoAccepted5 Take back:0 Fall:0 Not Authorized : 0	22	0
2015	0	0	0	Kabul:0 Reject:0 Not Accepted : 0 Withdraw: 0 Fall:0 Not Authorized : 0	0	0
2016	0	152	152	Kabul3 Reject5 Not Accepted : 138 Take back 6 Fall:0 Not Authorized : 0	152	0
2017	0	60	60	Kabul3 Reject6 NoAccepted51 Take back:0 Fall:0 Not Authorized : 0	60	0

2018	0	72	72	Kabul2 Reject6 NoAccepted61 Withdraw1 fall2 Not Authorized : 0	72	0
2019	0	0	0	Kabul:0 Reject:0	0	0
				Not Accepted : 0 Withdrawal : 0 Dropped : 0 Not Authorized : 0		
2020	0	0	0	Kabul:0 Reject:0 Not Accepted : 0 Withdraw:0 0 Fall:0 Not Authorized : 0		0
2021	0	153	153	Kabul20 Reject14 Not Accepted : 151 104Withdraw7 fall2 Not Authorized : 4		2
2022	2	1	3	Kabul:0 Reject:0 Not Accepted : 0 Withdraw:3 0 Fall:0 Not Authorized : 3		0
2023	0	0	0	Kabul:0 Reject:0 Not Accepted : 0 Withdraw:0 0 Fall:0 Not Authorized : 0		0
Amount	-	1136	-	Kabul : 83 Reject : 495 Not Accepted : 509 Withdrawal : 35 Fall : 7 Not Authorized : 7	1136	

Source: Decision of the Constitutional Court of the Republic of Indonesia 2023

Based on the discussion above, from the table from 2008-2022 it can be seen that this data shows that the Constitutional Court on certain days was crowded

with post-conflict local election dispute trials. This data does not include trials for testing laws and other disputes. In other words, if the post-conflict local election schedule is not properly regulated and integrated, the MK will receive the impact of piling up post-conflict local elections in certain years and months because data also shows that 85% of post-conflict local elections end in disputes at the MK. Through the decisions of the Constitutional Court above, shows that the Constitutional Court plays a very important role in the legal political development of regional government.

3.2. Political Weaknesses in Regional Election Dispute Resolution in the Constitutional Court and Future Solutions

The general election for Regional Heads and Deputy Regional Heads (Pilkada) is a very important instrument in the administration of Regional Government based on democratic principles in the regions, because this is where the people as the holders of sovereignty determine state policy. It implies that the supreme power to regulate the government of the State lies with the people. Through Pilkada, the people can choose who is the leader and representative in the process of channeling aspirations, which in turn determines the future direction of a country¹⁰.

From the results of his research, Iwan Satriawan also concluded several obstacles faced by the Constitutional Court in connection with the settlement of regional election results disputes, namely:

First, the centralized nature of the Constitutional Court raises two problems, namely the accumulation of cases of disputes over the results of regional elections at a certain time, and makes justice seekers from remote areas of Indonesia, such as areas outside Java, especially the western and eastern ends of Indonesia have limited access to the Constitutional Court (access to court) and therefore creates difficulties for citizens to get justice (access to justice).

Second, with only nine constitutional judges, managing disputes over election results which can reach more than 200 cases in one year makes it difficult for the Constitutional Court to work effectively.

Third, the grace period for dispute resolution is quite short, namely 14 days. This means that with a centralized nature and a limited number of judges, while the number of potential disputes over election results in Indonesia amounts to 527 disputes over election results for governors and regents/mayors, this grace period is unrealistic for case management at the Constitutional Court.

Fourth, the expansion of the scope of the Constitutional Court's authority

through the Constitutional Court's own decisions, in certain matters becomes a serious obstacle for the Constitutional Court in resolving disputes over the regional election results.

Fifth, Pilkada is not properly scheduled and the Pilkada schedule is not integrated

with another system.

Sixth, the Constitutional Court's supporting instruments are not maximal in resolving regional election result disputes such as the use of video conferencing technology in resolving disputes over results, and the availability of substitute clerks in regional election result disputes.

Weaknesses in the implementation of election dispute resolution by the Constitutional Court:

1. Several constitutional law experts are still questioning the constitutionality of the authority possessed by the Constitutional Court in settling regional election disputes.
2. The centralized nature of the Constitutional Court creates its own obstacles for the public to access justice institutions (access to court) in order. Even though the judicial process at the Constitutional Court is free of charge, it still has the potential to result in high costs for the litigants. This is more due to the vast area of our country, and the islands. This will be greatly felt by parties who are geographically located far from Jakarta, whether they like it or not they will be burdened by the costs that arise as a consequence of the Pilkada case they are currently facing.
3. As the quantity of Pilkada cases increases, this has implications for the reduced concentration of the Constitutional Court in carrying out its main function, namely as the guardian of the constitution. Based on the results of its work (2008 to mid-2013), the Constitutional Court's energy was more drained on handling Pilkada cases than handling testing laws. If this thing continues, it is possible that its main function as guardian of the constitution will be "marginalized", and it will appear as if there has been a shift in the function of the Constitutional Court, namely from a constitutional court to a local election court.
4. The limited number of judges of only 9 people is not proportional to the number of Pilkada cases submitted to the Constitutional Court. This has the potential for a buildup of Pilkada cases at the Constitutional Court. Apart from

that, it also creates a situation where constitutional judges are required to work extra hard and have to compete with the deadline for completing Pilkada cases which is also limited to only 14 days.

5. There are no other legal remedies that can be taken for the parties who are dissatisfied with the decision of the Constitutional Court, because the Constitu (*final and bindina*).

Pilkada according to Government Regulation Number 6 of 2005 concerning Election, Ratification of Appointment and Dismissal of Regional Heads and Deputy Regional Heads is a means of implementing people's sovereignty in the Province and Regency/City areas based on Pancasila and the 1945 Constitution to elect Regional Heads and Deputy Regional Heads. Law Number 32 of 2004 Article 56 paragraph (1) states that regional heads and deputy regional heads are elected in one candidate pair which is carried out democratically based on the principles of direct, public, free, confidential, honest and fair. Pairs of candidates for regional heads and deputy regional heads, hereinafter referred to as pairs of candidates, are election participants proposed by a political party or coalition of political parties that have met the requirements.

Normatively, based on democratic measures, direct post-conflict local elections offers a number of benefits as well as hopes for the growth, deepening and expansion of local democracy, namely¹³:

1. A direct democratic system through direct post-conflict local elections will open up space wider participation for citizens in the democratic process and determining political leadership at the local level compared to a representative democracy system which places more power to determine political recruitment in the hands of a few people in the DPRD (oligarchic).

2. The political competence of direct post-conflict local elections allows for wider preferences for competent candidates to emerge in a more open space than the closedness that often occurs in representative democracy. Pilkada an directly provide a number of hopes for efforts to reverse the "syndrome" in representative democracy which is characterized by an unfair competency model, such as; practice of money politics (money politics).

3. The direct election system will provide opportunities for citizens to better actualize their political rights without having to be reduced by the interests of the political elite as can be seen in a representative democracy system. At least, through the concept of direct democracy, residents in the local area will get the opportunity to obtain some kind of political education, political leadership training and at the same time have an equal position to be involved in political decision making.

4. The direct regional election raises hopes of getting an aspirational, competent and legitimizing leader figure. Because, through direct post-conflict local elections, the elected Regional Head will be more citizen-oriented than a handful of elites in the DPRD. Thus, Pilkada has a number of benefits, related to improving the quality of local government responsibility to its citizens which will ultimately bring the Regional Head closer to the community.

5. Regional Heads who are elected through direct post-conflict local elections will have strong political legitimacy so that a balance of power (check and balance) will be established in the region between the Regional Head and the DPRD. This balance of power will minimize the abuse of power as it appears in a monolithic political format.

Etymologically election disputes can be seen from the term dispute, the dispute is an implication of the emergence of problems that arise in the election, both disputes that arise during the implementation process, as well as disputes over the election results (valid votes set KPUD). The research results of the Institute for Democracy and Electoral Assistance (IDEA) (2010: 199) define electoral disputes as "any complaint, challenge, claim or contest relating to any stage of the electoral process". From the above understanding, the scope of electoral disputes is basically broad and includes all stages of the regional elections which significantly affect the quality of the implementation of the regional elections. The issues that are disputed in the local elections in Indonesia include:

(1) pilkada criminal and administrative violations; and (2) disputes over the results of the vote acquisition. According to Topo Santoso, what is called a dispute in the implementation of regional elections is actually a case of administrative violation or a case of dissatisfaction with the organizer's decision (Topo Santoso, 2011). Pilkada success is not only measured by the implementation of voting, but also determined by how the disputes that accompany it are resolved. The problem is that there are too many institutions involved in resolving regional election disputes which of course have an adverse impact on the process of resolving regional election disputes (Anom Wahyu Asmorojati, 2015: 279). Besides that, institutions for resolving disputes over election results often experience replacements that follow the political flow of election law.

The aim is to ensure that the right to a fair vote conversion process is not violated by rampant fraud and manipulative actions by election participants. Far more important, how can the Pilkada legal mechanism be able to return the people's votes that have been converted to those who are entitled in accordance with the real will of the people. The acquisition of votes and the election of certain candidates can be annulled by the Pilkada legal mechanism, if it is proven that the votes were obtained in a way that is not justified by law.

4. Conclusion

First, Legal Politics The settlement of regional election disputes still contains the authority and procedures possessed by the Constitutional Court, has not provided substantial justice in the decisions of election disputes at the Constitutional Court. The MK is able to resolve post-conflict local election disputes, but the settlement of the post-conflict local election disputes has not been fair both from the perspective of the institutional management of the MK and from the side of the parties litigating at the MK. *Second*, Weaknesses in the settlement of post-conflict local election results disputes by the MK are caused by two main factors, namely first, the institutional structure aspect of the MK which is centralized (in Jakarta), limited number of judges (only nine people), short time for resolving post-conflict local election disputes, then the solution the grace period for resolving post-conflict local election disputes also needs to be extended. If the choice remains centralized, then the grace period is longer, such as 180 days and if the choice is decentralized election dispute resolution, then the grace period can be 90 days. *Second*, in terms of the large number of cases of dispute over post-conflict local election results and the geographical extent of Indonesia's territory with the characteristics of a large, elongated and island territory, the solution is to make the settlement of election disputes effective by the election supervisory body.

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