
RESOLUTION OF DISPUTES OVER THE REGIONAL HEAD ELECTIONS POST THE CONSTITUTIONAL COURT DECISION NUMBER 85/PUUXX/2022 REGARDING THE IMPLEMENTATION OF SIMULTANEOUS REGIONAL ELECTIONS IN INDONESIA

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ABSTRACT

In Article 22 E of the 1945 Constitution it is expressly stated that general elections are held to elect members of the People's Representative Council, Regional Representative Council, President and Vice President and People's Representative Council and the authority of the Constitutional Court, one of which is to break obstacles to the results of general elections. Constitutional Court Decision Number 97/PUU-XI/2013 which in its consideration states that the Constitutional Court cannot add authority that is not contained in the 1945 Constitution, so that the Constitutional Court Decision Number 85/PUU-XX/2022 remains conditional Constitutional authority considering The Lawmakers also did not draft a special law as intended in the Constitutional Court Decision Number 97/PUU-XI/2013. The problems are (1) What are the implications of the Constitutional Court Decision No. 97/PUU-IX/2013 after the enactment of Law no. 10 of 2016 concerning the Election of Regional Heads on the Implementation of Regional Elections in Indonesia?; (2) What is the impact of resolving regional election disputes after the Constitutional Court Decision No. 85/PUU-XX/2022?; (3) What is the ideal institutional model for resolving setbacks in regional head election results? To answer this problem, a comprehensive study is needed, namely examining the 1945 Constitution, Law NO.10 of 2016, Constitutional Court Decision Number 7273/PUU-II/2004, Constitutional Court Decision Number 97/PUU-XI/ 2013, Constitutional Court Decision Number 85/PUU-XX/2022. Research Results: (1) The authority to examine and decide on the voting results of regional head elections is carried out as long as there is no special court, in order to provide legal certainty in resolving disputes over the results of simultaneous regional heads in 2024. (2) Look at the stages of regional head elections that have been advanced and have not yet been brought forward. It can also be seen that the legislators took concrete steps to form a special court for the Constitutional Court based on

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its Decision number 85/PUU-XX/2022 stating that it has the authority to examine and decide on the protection of results, which authority is unconstitutional because it is not given in the 1945 Constitution. (3) Model The ideal institution for resolving disputes over regional head election results must be a special ad hoc judicial body.

KEYWORDS Authority of the Constitutional Court, Election and Regional Election Regime, Special Judicial Body



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INTRODUCTION

The Constitution of the Republic of Indonesia 1945 (UUD 1945) as the highest legal source in Indonesia has regulated the organization and established the state structure of Indonesia, which provides legitimacy to the existence of state institutions. The election of Governors and Vice Governors, Regents and Deputy Regents, as well as Mayors and Deputy Mayors, is the implementation of people's sovereignty in regions within provinces and Regencies/Cities to directly and democratically elect regional heads.

The simultaneous Regional Head elections in Indonesia will be held on November 27, 2024, and its stages will commence at the end of 2023. Commencing the election stages at the end of 2023 cannot be executed immediately, but its planning must be done from now on, especially since the 2024 election will coincide with the national elections for the President and Vice President, the People's Representative Council, the Regional Representative Council, and the Regional People's Representative Council on February 14, 2024 (Fauzan, 2009). The multitude of interests in the regional head election process is often marked by actions and/or decisions that contradict the principles and legal framework of fair and honest elections, thus requiring a legal enforcement system for regional head elections that can provide protection, enforcement, and correction regarding the high dynamics of regional head elections and the numerous interests involved (Setiawan, 2011).

The legal enforcement system itself is one of the fundamental instruments of a regional head election implementation, to align with the principles of direct, general, free, secret, fair, and honest regional head elections (Manullang, 2017). Constitutional Court Decision No. 072-073/PUU-II/2004 regarding the Testing of Law No. 32 of 2004 concerning Regional Governance (Press, 2012). This election system's design has undergone a "meaning" change due to the interpretation that regional head elections can be categorized as part of general elections, which, of course, implies which institution has the authority to resolve election disputes. Constitutional Court Decision No. 072-073/PUU-II/2004 provides legal options for lawmakers to include regional head elections as part of the Election regime, thus lawmakers then include regional head election disputes as part of the Election dispute settled by the Constitutional Court (Rato, 2010).

Based on the Constitutional Court decision, the establishment of the Law on Election Organizers, in Article 1 number 4 it is stated that "Regional Head and Deputy Regional Head Elections are elections to directly elect regional heads and

deputy regional heads in the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution." From the formulation of this article, it is clear that lawmakers have included regional head elections in the election regime.

In Law No. 12 of 2008 concerning Amendments to Law No. 32 of 2004 concerning Regional Governance, Article 236C states that "The handling of disputes over the results of the vote counting for the election of regional heads and deputy regional heads by the Supreme Court is transferred to the Constitutional Court no later than 18 (eighteen) months from the enactment of this law." The transfer of the resolution of disputes over the results of regional head elections to the Constitutional Court indicates that regional head elections are included in the group of elections because according to the 1945 Constitution Article 24C, the institution authorized to settle election disputes is the Constitutional Court.

If direct regional head elections are included in the election regime, the consequences are: (a) Organized by the Election Commission; (b) Participants are candidate pairs nominated by political parties or independent candidates; (c) Election supervisors are independent bodies formed by the Election Commission and/or Regional Election Supervisory Committee (Panwaslu); (d) If there is a dispute over the determination of the election results, it is resolved by the Constitutional Court; (e) Disputes over the determination of the regional head election candidate list by the Regional Election Commission are not within the competence of the Administrative Court (PTUN); (f) Impeachment against regional heads or deputy regional heads is submitted by the Regional People's Representative Council to the Constitutional Court. With the issuance of Law No. 22 of 2007 concerning Election Organizers and Law No. 12 of 2008 concerning the Second Amendment to Law No. 32 of 2004 concerning Regional Governance, it is clear that direct regional head elections have been grouped into the election regime.

This will add to the list of problems when related to the provisions of the 1945 Constitution Article 22E paragraph (2) which states that "General elections are held to elect members of the People's Consultative Assembly, Regional Representatives Council, President and Vice President, and Regional People's Representative Council," thus from the wording of these provisions, it is clear that elections are not held to elect regional heads and deputy regional heads (Hoesein, 2019).

The establishment of the Constitutional Court in its consideration of decision No. 001-002/PUU-XII/2014, dated February 13, 2014, the authority of state institutions which is definitively determined by the 1945 Constitution cannot be added or reduced by laws or Constitutional Court decisions because it will take on the role as the maker of the 1945 Constitution. Therefore, according to the Court, the expansion of the Constitutional Court's authority to adjudicate disputes over regional head election results by broadening the meaning of general elections as regulated in Article 22E of the 1945 Constitution is unconstitutional (Rahardjo, 2012).

The Constitutional Court's authority, which is based solely on Transitional provisions, is not in line with the existence of the Constitutional Court as a state institution whose power and authority are determined by the 1945 Constitution. The authority to settle disputes over the results of regional head elections by both the Supreme Court and the Constitutional Court raises issues of competence and capability. Some argue that the Supreme Court has legal competence but lacks capability,

while others argue that the Constitutional Court has capability but its competency is questioned (Hoesein & Yasin, 2015).

The Constitutional Court's authority to adjudicate disputes over the results of regional head elections is an additional authority derived from the law, outside the main authority stipulated in Article 24C paragraph (1) and paragraph (2) of the 1945 Constitution. Regarding the Constitutional Court's additional authority to adjudicate disputes over the results of regional head elections derived from the law, it can be questioned constitutionally or on legal principles in general (Widodo, 2018). This is based on Article 24C paragraph (1) and paragraph (2) of the 1945 Constitution which expressly and enumeratively regulate the authority held by the Constitutional Court, so it cannot be interpreted, let alone added to, except by regulations of equal status. Furthermore, because the authority held by the Constitutional Court is expressly and enumeratively regulated in the 1945 Constitution, this authority is constitutional. Therefore, according to Jimly Asshiddiqie, viewed from the doctrine of interpretation or constitutional doctrine, the addition of authority held by the Constitutional Court must be regulated in the 1945 Constitution, not by law (Asshiddiqie, 2016).

The implications of Constitutional Court Decision No. 072-073/PUU-II/2004 have been in effect for 9 years, and in its implementation, there have been frequent problems where the losing candidate pairs express dissatisfaction with Constitutional Court decisions that are considered to ignore a factual event on the ground and the distance that can hinder the realization of justice within a timeframe of 3 days from the determination by the Provincial/District/City Election Commission to file an Application with the Constitutional Court, thus the regional head election design is again questioned (Jimly Asshiddiqie, 2021). Constitutional Court Decision No. 97/PUU-XI/2013, which states that the Constitutional Court no longer has the authority to settle Regional Head Election disputes, means that Regional Head Elections are no longer categorized as part of general elections according to Article 22E of the 1945 Constitution.

Based on Constitutional Court Decision No. 97/PUU-XI/2013, the Constitutional Court ruled that Article 236 C of Law No. 12 of 2008 is unconstitutional because Regional Elections are not part of the Election regime and the Constitutional Court removes the additional authority to adjudicate disputes over regional head election results beyond the authority stipulated in Article 24C paragraph (1) and paragraph (2) of the 1945 Constitution (Ni'matul Huda, 2014). To follow up on this decision, the lawmakers issued Government Regulation in Lieu of Law No. 1 of 2014, which was enacted into Law through Law No. 1 of 2015. This provision has also undergone two amendments, through Law No. 8 of 2015, and Law No. 10 of 2016. Since the legal framework changes in organizing regional head elections, simultaneous elections for governors, regents, and mayors have been conducted four times (Iriyanto, 2008). First in 2015, simultaneous regional head elections were held in 270 regions. Second, in 2017, simultaneous regional head elections were held in 101 regions. Third, in 2018, simultaneous regional head elections were held in 171 regions. And fourth, in 2021, simultaneous regional head elections were held in 270 regions. In the four waves of simultaneous regional head elections, the Constitutional Court is the institution that resolved all election disputes; in the

implementation of simultaneous regional head elections in 2015, there were 147 dispute resolution petitions, in the 2017 regional head elections, there were 49 petitions, in the 2018 regional head elections, there were also 60 petitions, and in 2021 there were 153 petitions for election results dispute resolution. The data on election dispute resolution petitions from the first simultaneous regional head election to the 2021 simultaneous regional head election confirms that the implementation of regional head elections is filled with efforts to resolve election result disputes, with very few regions where the candidate pairs accept defeat without resorting to legal action (Lutfi, 2010).

The regional head elections to be held on November 27, 2024, are expected to be filled with disputes and legal efforts to resolve election result disputes in 37 provinces (excluding the Special Region of Yogyakarta), and the election of regents/mayors in 514 regencies/cities throughout the country. Effective mechanisms for resolving election result disputes are a prerequisite for honest and fair elections. The legal framework must regulate effective mechanisms and legal resolutions for enforcing voting rights because the right to vote is a human right. Therefore, legal resolution of violations of voting rights is also a human right. In the construction of the provisions of Article 157 of Law No. 10 of 2016 concerning General Elections, it explicitly mentions that special election judicial bodies have the authority to examine and adjudicate disputes over election results. The political decision to hold simultaneous regional head elections will pose problems, such as what if there are disputes in the implementation of simultaneous regional head elections, it is impossible for one institution to examine and decide on hundreds of election dispute cases simultaneously (Muhjad & Nuswardani, 2012). The process of resolving regional head election disputes also has a predetermined time limit.

The Constitutional Court again issued a decision on the settlement of disputes over the results of Regional Head and Deputy Regional Head Elections with Decision No. 85/PUU-XX/2022. Because the lawmakers have not yet established special courts as mandated by Constitutional Court Decision No. 97/PUU-XI/2013. The Constitutional Court's exercise of judicial power does not comply with the 1945 Constitution, as originally stipulated in Article 24 C paragraph (1) of the 1945 Constitution, it does not have the authority to settle disputes over Regional Head Elections, but only has the authority to settle general election disputes (Huda, 2011). Whereas the election regime and regional elections are different regimes, as stated in Constitutional Court Decision No. 97/PUU-XI/2013, In this Decision, general elections are only interpreted limitatively in accordance with the original intent according to Article 22E of the 1945 Constitution, namely General elections held to elect members of the People's Consultative Assembly, Regional Representatives Council, President and Vice President, and Regional People's Representative Council every 5 (five) years. Therefore, according to the Constitutional Court, the expansion of the meaning of general elections to include Regional Head Elections is unconstitutional (Zoelva & Ana, 2005).

The burden of handling regional head election dispute cases in the Constitutional Court is too heavy, as in previous regional head election dispute resolutions, based on Constitutional Court data for 2020, there were 153 regional head election dispute cases consisting of 9 gubernatorial election disputes, 130 regental head

election disputes, and 14 mayoral election disputes. The number of cases has caused the Constitutional Court to hold special hearings within a limited time. Furthermore, Constitutional Court decisions are final at the first and final levels, and no legal recourse can be taken to challenge these decisions.

Establishing special courts for resolving regional head election results within the general court system placed in the High Court to resolve election result disputes in provincial regions will better reflect the principles of swift, simple, and low-cost justice. Swift means no case backlog, as it only focuses on resolving election result disputes in the provincial region, then simple means that case examination and resolution are carried out efficiently and effectively because the special court is located in the provincial region, which is close to the location of the elections compared to having it in the Constitutional Court located in Jakarta, thus it is expected to be easier to fulfill legal procedures related to election result disputes. Finally, low cost means that the litigation costs can be affordable to the public, considering that the special court is located in the provincial region, which is close to the election location.

Based on the background outlined above, the author is interested in studying and examining more focused and in-depth in a research entitled: "Settlement of Disputes over Regional Head Election Results Post-Constitutional Court Decision No. 85/PUU-XX/2022 on the Implementation of Simultaneous Regional Head Elections in Indonesia".

RESEARCH METHOD

This research takes a comprehensive approach by analyzing various legal documents, including the 1945 Constitution, Law Number 10 of 2016, as well as several Constitutional Court Decisions, such as Decision Number 7273/PUU-II/2004, Decision Number 97/PUU-XI/2013, and Decision Number 85/PUU-XX/2022. This study focuses on three main objectives: identifying the implications of Constitutional Court Decision Number 97/PUU-IX/2013 following the enactment of Law Number 10 of 2016 concerning Regional Head Elections, analyzing the impact of resolving disputes over regional head elections after Constitutional Court Decision Number 85/PUU-XX/2022, and formulating an ideal institutional model to address constraints in the results of regional head elections (Soekanto, 2006). The research method involves data collection from various legal sources, document analysis, and interpretation of research findings to reach comprehensive conclusions. Data analysis is a step related to the processing of legal materials that have been collected to answer legal issues that have been formulated in the problem formulation. Of course, it also concerns scientific reasoning activities on the analyzed legal materials, both using induction, deduction, and abduction reasoning.

RESULT AND DISCUSSION

Analysis of the Resolution of Disputes Following the Constitutional Court Decision No. 85/Puu-XX/2022 1. Implications of Constitutional Court Decision No. 97/PUU-IX/2013 after the enactment of Law No. 10 of 2016 concerning Regional Head Elections on the Implementation of Regional Elections in Indonesia

The concept of policy change refers to the replacement of one or more policies with one or more other policies. According to the author, policy change is a common occurrence in a country. The existence of policy changes in the resolution of regional head election disputes indicates that the matter of resolving election disputes is dynamic. Policy changes in resolving regional head election disputes are important. Several things are needed to influence a country to make policy changes.

In the resolution of regional head election disputes, the Constitutional Court (MK) has the obligation to ensure that the implementation of regional elections does not violate the principles of elections, including direct, general, free, secret, and honest and fair (Luber and Jurdil). Therefore, in the trial practice, the Constitutional Court not only examines the differences in the vote count results of regional head elections but also examines and considers violations that occur during the conduct of the elections. When violations undermine the principles of direct and honest and fair elections, the Constitutional Court has a constitutional obligation to examine, adjudicate, and decide regional head election disputes concurrently with the examination of disputes over vote count results in regional head elections.

In general, there are two crucial things that need to be anticipated in the implementation of simultaneous regional head elections, namely, first, the potential for violent, anarchic, intimidating, and other actions. Second, preventing disputes at every stage of the elections. At least three things need to be wary of. First, in the pre-implementation stage of simultaneous regional head elections, the vulnerable point is when campaigning before voting, where potential conflicts can occur between supporters of candidates. Second, during the implementation of simultaneous regional head elections, there is a vulnerable point during voting and vote counting. Conflict can be triggered, among other things, by intimidation of election organizers. Third, post-implementation. "Where the vulnerable point is at the time and after the announcement of the results due to the dissatisfaction of one party." He continued the challenges of implementing simultaneous regional head elections from the aspect of national security, including the high political tension at the local level, which is dynamic. Then unhealthy competition between candidates and their campaign teams which become public consumption and public emotions are prone to collectively erupt in conflict. As a result, social tensions occur, leading to conflicts that disrupt security (Kumolo, 2015).

Elections are essentially a democratic arena that must be conducted safely and peacefully. Therefore, optimal policies and operationalization are needed to ensure national and regional stability (Fahmi, 2016). For this reason, he proposes five recommendations to anticipate the emergence of security disturbances or conflicts in the elections. First, intensifying public education in responding to the electoral

process and results. Second, creating early anticipation procedures for potential disturbances in each stage of the elections. Third, building a rapid response system to address security disturbances during the elections. Fourth, building the commitment of all pairs of regional head candidates to create safe, peaceful, and educative elections. Fifth, making policies involving the military in supporting the realization of security during the elections in accordance with the provisions of the legislation.

One of the causes of conflict in the implementation of elections is the unprofessional actions of election organizers (Amalia, 2016). In the implementation of elections, the most potential for conflict arises when handling violations unprofessionally. Disputes occur due to violations of the elections and the incidents accompanying the elections. Disputes will arise in elections, namely the Dispute Settlement Process for Elections and the Dispute Settlement Results of Elections. There are several factors that trigger election conflicts. First, election organizers are sometimes not neutral. There are many cases that show the bias of election organizers towards certain candidates. Second, the Permanent Voter List (DPT) is problematic. Third, the elites fighting in the elections still see politics only as a means to personal power. However, politics is very identical to public interests. Fourth, the costs of democratic politics, including elections, are very expensive. Fifth, election conflicts in various regions are also closely related to economic, political, and socio-cultural injustices in the respective regions. Sixth, the strong sentiment of primordialism and ethnocentrism also fuels the fire that can explode when election conflicts occur (Ghufran, 2013).

The cause of disputes or conflicts in Regional Head Elections occurs both before, during, and after the announcement of the election results. First, conflicts stemming from political mobilization in the name of ethnicity, religion, region, and blood. Second, conflicts arising from negative campaigns between pairs of regional head candidates. Third, conflicts stemming from political thuggery and coercion. Fourth, conflicts arising from manipulation and fraud in vote counting results. Fifth, conflicts arising from differences in interpretation of the rules of organizing elections. Constraints in the process of resolving election disputes in resolving election disputes are time constraints. Because, the Law has mandated a certain time for the Constitutional Court to resolve disputes.

In order to manage the potential conflict of elections, therefore, first, all parties in the region need to build local agreements or consensus in order to anticipate the emergence of conflict and turmoil. This local consensus involves not only the Election Commission, regional governments, Regional Representative Councils, parties, candidates, Election Supervisory Committees, the Police, the Military, and the Prosecutor's Office, but also local figures of NGOs, mass organizations, the press, and local academics. Through this local consensus, it is hoped that, for example, a code of ethics for conducting elections, campaign ethics, a commitment to be ready to lose, and so on can be produced. Second, regional governments and Regional Representative Councils need to limit themselves as facilitators only—including facilitating local agreements—so that excessive intervention in the

conduct of elections can be avoided. The key is to build cooperation and partnerships among stakeholders without discrimination.

Efforts to resolve conflicts have been made after conflicts occur, because the conditions are still heated, voters still reject the election results. Furthermore, so that conflicts do not arise again, the steps to be taken are conflict management, through a local wisdom approach, this conflict can be managed gradually so that it leads to productive conflicts. Conflict management by prioritizing democratic principles, seeking a common consensus to place justice for both parties. The role of community groups wishing for this conflict to be resolved also provides support for the process of accelerating conflict resolution.

The provisions regarding the authority of the Constitutional Court can be seen in Article 24 C paragraphs (1) and (2) of the 1945 Constitution of the Republic of Indonesia, which states that the Constitutional Court has four authorities and one obligation, namely,

1. Testing Laws against the 1945 Constitution;
2. Deciding disputes between state institutions whose authority is regulated in the 1945 Constitution;
3. Deciding the dissolution of political parties; and
4. Deciding disputes over election results.

Impact of Resolving Regional Election Disputes Following Constitutional Court Decision No. 85/PUU-XX/2022

The existence of Constitutional Court Decision No. 85/PUU-XX/2022 then confirms that specialized courts are no longer relevant to be formed for disputes over the results of regional head elections. Because, this authority is affirmed to be within the jurisdiction of the Constitutional Court. Thus, the Constitutional Court's authority to resolve disputes over the results of regional head elections has become permanent for disputes over the results of regional head elections in 2024. The Constitutional Court changed its view because the lawmakers had not implemented the mandate of Constitutional Court Decision No. 97/PUU-XI/2013.

The Constitutional Court ordered the establishment of a special institution to handle disputes regarding the results of Regional Elections, and finally, this provision was included in the Election Law, more precisely regulated in Article 157 paragraph (3) of the Election Law. However, until now, in 2022, the Special Judicial Body has not been further discussed, so it has not been formed up to now. Seeing the absence of the Special Judicial Body, which functions as the body responsible for handling disputes over the results of Regional Elections, Perludem tested the constitutionality of Article 157 paragraph (3) at the Constitutional Court. After years of orders to establish a Special institution to function as a body to resolve disputes about election results, which has not yet been formed, the request for testing Article 157 paragraph (3) of Law No. 10/2016 was submitted to the Constitutional Court. This request was then decided by the Constitutional Court, which essentially stated: the Constitutional Court has the authority to examine, adjudicate,

and decide disputes over the results of Regional Elections permanently, and there is no longer any distinction between the Election and Regional Election regimes.

The Constitutional Court has the authority to decide disputes over the election results. The granting of authority to decide disputes over election results to the Constitutional Court is because elections are related to constitutional issues. During the process of amending the 1945 Constitution of the Republic of Indonesia, the formulators also proposed one of the Constitutional Court's authorities, namely to decide disputes over election results. However, in this case, the Constitutional Court is not only as the Election Court and also not only as the Court of Appeal against election violation decisions issued by the Election Supervisory Board, but in this case, the Constitutional Court is a judicial institution at the first and last level regarding disputes over election results. Elections themselves include the election of members of the People's Representative Council, Regional Representative Council, President and Vice President, and Regional Representative Councils, as stated in Article 22E paragraph (2) of the 1945 Constitution of the Republic of Indonesia.

Elections are different from Regional Elections, Regional Elections themselves include the election of Governors, Regents, and Mayors, as stated in Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia. The difference between Elections and Regional Elections was also stated by the Constitutional Court in Decision No. 97/PUU-XI/2013, the Constitutional Court viewed that Regional Elections are not included in the Election regime so that expanding the Constitutional Court's authority to decide disputes over Regional Election results by broadening the meaning of Article 22E of the 1945 Constitution of the Republic of Indonesia is unconstitutional. This is the problem, whether it is necessary to specifically regulate the authority of the Constitutional Court in adjudicating disputes over Regional Election results in the 1945 Constitution of the Republic of Indonesia. Because after Decision No. 97/PUU-XI/2013, the Constitutional Court still has the authority to decide disputes over Regional Election results until the formation of the so-called Special Judicial Body, and this authority is only based on the Law, while the authority of the Constitutional Court must be regulated in the 1945 Constitution of the Republic of Indonesia. Thus, it can be said that the addition or reduction of state institution authority must be clearly determined in the 1945 Constitution of the Republic of Indonesia through the amendment process.

However, in the latest Constitutional Court Decision No. 85/PUU-XX/2022, the Constitutional Court changed its view and no longer distinguishes between the Election regime and the Regional Election regime, so in its decision, the Constitutional Court has the authority to decide disputes over Regional Election results permanently. However, to anticipate future possibilities of whether the Constitutional Court has jurisdiction to decide disputes over Regional Election results, it must be regulated separately in the 1945 Constitution of the Republic of Indonesia by adding Constitutional Court authority through the amendment process to the 1945 Constitution of the Republic of Indonesia, with the note that as long as the Constitutional Court Judges consider that the two regimes between Elections and Regional

Elections are different. Recorded to date, requests regarding disputes over election results amount to 676 with a percentage of 20%, while disputes over Regional Election results amount to 1136 with a percentage of 33%.

The Constitutional Court Decision since it was pronounced in an open plenary session to the public, juridically has binding, evidentiary, and enforcement power. These three powers of the decision have long been recognized in Civil Procedure Law in general. However, these powers of the decision are also applied in Constitutional Court Procedure Law to test requested laws. These three powers of the decision:

a. Binding Force;

Article 10 paragraph (1) letter a of Law Number 24 of 2003 states, "The Constitutional Court has the authority to adjudicate at the first and last levels, and its decision is final to review laws against the 1945 Constitution of the Republic of Indonesia." This Constitutional Court decision is also stated in Article 47, which mentions that "The Constitutional Court's decision obtains permanent legal force from the moment it is pronounced in an open plenary session for the public."

Based on the provisions of the Constitutional Court Law, this means that there is no legal recourse that can be taken or utilized by the petitioners to respond to the Constitutional Court's decision if the decision does not align with their petition. From a juridical-technical standpoint, the petitioners or parties involved in the case of law examination are bound by the Constitutional Court's decision.

A court decision as an act of state officials causes the parties in the case to be bound by the decision, which has determined what becomes law, either by changing the existing legal situation or by creating a new legal situation. Being bound by the decision means that the parties will comply with the changes in the legal situation created through the decision and implement them (Siahaan, 2022).

The binding force of Constitutional Court decisions theoretically differs from regular court decisions. Regular court decisions only bind the parties involved in the case according to the petition filed. In contrast, Constitutional Court decisions, besides binding the petitioners, the government, and the People's Representative Council, also bind all individuals, state institutions, and legal entities within the legal jurisdiction of Indonesia.

b. Evidentiary Force;

Article 60 of Law Number 24 of 2003 concerning the Constitutional Court states, "The subject matter, clause, article, and/or part of the law that has been examined cannot be subjected to re-examination." This means that the Constitutional Court's decision on laws that have been previously examined cannot be re-examined, and it can be used as evidence because, according to this article, the Constitutional Court is legally prohibited from deciding cases that have been previously decided.

Constitutional Court decisions that have obtained permanent legal force can be used as evidence with a certain positive force, that what has been decided by the judges is considered correct. Conversely, contrary evidence is not allowed. That what has been decided by the judges must be considered correct (*res judicata pro veritate habetur*) is a fundamental principle in Constitutional Court decisions examining laws.

c. Enforcement Force;

A decision that only has binding legal force is not enough and means nothing if the decision cannot be realized or enforced. So, a decision that has enforcement power is a decision that clearly establishes rights and laws to be subsequently realized through execution by state authorities. This enforcement power is common in the practice of regular courts in the country. Conversely, the enforcement power of Constitutional Court decisions is considered to have been realized in the form of publication in the State Gazette within a maximum period of 30 days from the announcement of the decision in an open plenary session for the public. There is no need for a special apparatus to enforce the decision because its nature is declaratory. Referring to Article 47 and Article 57 paragraph (3) of the Constitutional Court Law, it can be emphasized that the Constitutional Court's decision obtains permanent legal force from the moment it is pronounced in an open plenary session for the public, while its enforcement power starts from its publication in the State Gazette of the Republic of Indonesia.

Constitutional Court decisions in testing laws from a juridical-technical perspective are declaratory-constitutive, meaning that Constitutional Court decisions not only state or explain something that becomes law but also simultaneously annul or create a new legal situation. Constitutional Court decisions in testing laws, although they entail certain legal consequences, Article 58 of Law Number 24 of 2003 concerning the Constitutional Court states:

"The law that is examined by the Constitutional Court remains in force before there is a decision stating that the law contradicts the 1945 Constitution."

Ideal Institutional Model for Resolving Regional Head Election Disputes

The implementation of simultaneous regional head elections undoubtedly will inevitably raise various issues in the future, both from the pre-election stage to the final determination of the election results. This becomes one of the often-cited reasons why it is important to establish a special judicial body for regional head elections. Additionally, legal efforts during the electoral process that have occurred until now have still not always, and can even be said to still not sufficiently, meet the sense of justice felt by the public. For example, there may be a court decision issued after the election process has been completed, and the multiple layers of legal efforts in the election process are often seen as counterproductive due to the limited time frame of the election process.

However, considering that there is still no clear picture or conception of what such a special regional head election judiciary would be like, and correlating it with the remaining time for the elections, it is difficult to imagine the establishment of such a body at present. Additionally, the unstable economic condition of the country post-pandemic, which has paralyzed almost all sectors of society, is one of the considerations that must be carefully analyzed. It is estimated that the formation of a special regional head election judiciary is still difficult to realize in the near future.

Disputes related to election results fall within the jurisdiction of the Constitutional Court, while violations that arise during the election process, or so-called non-result disputes, fall within the jurisdiction of the Election Supervisory Agency (Bawaslu) and the Administrative Court (PTUN). The branching process of resolving disputes in facing election disputes has led to various views that it is appropriate to establish a special judiciary for regional head elections that can accommodate various issues arising from future election implementations. Furthermore, with the upcoming simultaneous regional head elections in 2024 across all regions of Indonesia, including provinces, regencies, and cities, it becomes even more pertinent.

The mandate to establish a special judiciary body related to disputes in the election of regional heads is enshrined and has legal grounds as the basis for its establishment. Additionally, there are several reasons why discussions regarding the establishment of a special regional head election judiciary need to be further deeply studied, including:

1. There are numerous cases of election violations, both administrative and criminal in nature.
2. There is often a difference of opinion among the institutions handling election matters, including PANWAS, the Police, and the Prosecutor's Office, in resolving criminal election cases.
3. The effective implementation of mechanisms to handle various cases of election violations at the pre-phase or before entering the jurisdiction of the Constitutional Court (MK) has not yet been achieved.
4. There is an impression that the Constitutional Court seems to handle all election dispute issues, including regional head election disputes.

However, the problem so far is that there is still no clear conception of what this special judiciary body would be like. Various pros and cons, as well as different perceptions, have emerged in response to the establishment of a special regional head election judiciary, whether a new body should be established or if existing institutions should be perfected, or if the authority to handle regional head elections should be reformed to other agencies. Yet, until now, after years of the law's enactment, there is still no clear picture of how this special regional head election judiciary will be formed. The establishment of this special regional head election judiciary is not only based on the mandate of the law but also as a hope that a unified institution can soon be established to resolve various disputes related to elections, both result disputes and non-result disputes or violations in the election process.

The implementation of the regional head election system traces a long political journey marked by tug-of-war between elite interests and public will, central government interests and regional government interests, and even between national and international interests. Sarundajang argues that from the perspective of the history of regional head political recruitment, there is a kind of missing link when building arguments solely by comparing regional head elections between the representative election system (Law No. 22 of 2009) with the direct election system (Law No. 34 of 2004). Political history notes that Regional Head elections have been conducted in four systems:

1. Appointment system by the center (during the Dutch Colonial era, Japanese occupation Law No. 27 of 1902), then Law No. 22 of 1948 and Law No. 1 of 1957, during the liberal parliamentary system. At that time, both before and after the 1955 general elections, there was no single majority political party. As a result, the central government, led by a prime minister resulting from a party coalition, was in power (Labolo & Ilham, 2015).
2. Appointment system (President's Decree No. 6 of 2959 jo President's Decree No. 5 of 1960; Law No. 6 and Law No. 18 of 1956), which is better known as the President's Decree era when the Guided Democracy was applied.
3. Representative election system (Law No. 5 of 1974), in the Pancasila Democracy era. Regional heads were purely elected by the Regional Representative Council, and then the elected candidates would be appointed as regional heads by the president.
4. Direct election system (Law No. 32 of 2004), where Regional Heads are directly elected by the people.

Direct elections for Regional Heads and Deputy Regional Heads (Pilkada) are an effort to return sovereignty to the hands of the people. Based on the sovereignty possessed, the people in the regions must be given the opportunity to participate in determining the future of their respective regions, including by electing Regional Heads and Deputy Regional Heads directly. The direct election of Regional Heads by the people, introduced by Law No. 32 of 2004, is a realization of the echo of demands for the enforcement of the principles of the rule of law and popular sovereignty in contemporary political life.

The enactment of Law No. 32 of 2004, Article 56 paragraph (1) regarding Regional Elections raises the problematic issue, as some members of the community question whether Regional Elections are general elections or not. Article 22E paragraph (2) of the 1945 Constitution of the Republic of Indonesia as the basis for regional head election regulations also raises various interpretations. People wonder if regional elections are not general elections, does the principle of general elections also apply to regional elections? Some interpret that regional elections are not part of general elections but are local elections, referring to Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia, which only requires that elections be conducted democratically.

Through Law No. 22 of 2007 concerning the Organization of General Elections, Regional Elections are explicitly stated to be part of general elections, so its mention becomes Regional Head and Deputy Regional Head General Elections (Pemilukada). The change from regional elections, which were previously only part of local government, to part of general elections is based on Law No. 12 of 2008, the second amendment to Law No. 32 of 2004 (Concerning Regional Government). Article 236 C of Law No. 12 of 2008 mandates the transfer of authority to adjudicate election disputes from the Supreme Court to the Constitutional Court within 18 months from its enactment. The formal transfer of authority was carried out by the Chief Justice of the Supreme Court and the Chief Justice of the Constitutional Court on October 29, 2008. From this date onwards, the results of regional election disputes became the authority of the Constitutional Court. The types of elections where disputes over results are within the jurisdiction to adjudicate and decide include:

1. Legislative elections, including General Elections for members of the People's Representative Council, Regional Representative Council, and Regional People's Representative Council;
2. Presidential and Vice Presidential General Elections; and
3. Regional Head and Deputy Regional Head General Elections.

CONCLUSION

Based on the above description, it can be concluded that the Implications of Constitutional Court Decision No. 97/PUU-IX/2013 after the enactment of Law No. 10 of 2016 concerning Regional Head Elections on the Implementation of Regional Head Elections in Indonesia have further clarified that Regional Head Elections are not general elections. This is because the Court opines that the phrase "democratically elected" can be interpreted as elected directly by the people or selected through the Regional Representative Council or appointed by the Central Government based on legislation.

If, based on its authority, the legislators determine that regional head elections are conducted by the Regional Representative Council, then it is irrelevant for the Constitutional Court to adjudicate disputes over the results of regional head elections, thus it is not a general election as meant by Article 22E of the 1945 Constitution of the Republic of Indonesia.

Firstly, the Impact of Resolving Election Disputes Post Constitutional Court Decision No. 85/PUU-XX/2022 is that as long as a special judiciary as referred to in Article 157 of Law No. 10 of 2016 has not been established, and regional head elections still use the direct election system, for the sake of legal certainty in resolving disputes over the results of regional head elections, the Constitutional Court has the authority to resolve election disputes fairly and transparently in accordance with applicable laws and regulations. It ensures that election disputes will be resolved promptly without delay, and the decisions taken will serve as a firm and final basis for future regional head elections, including adjudicating disputes in the 2024

regional head elections, because the legislators have not yet implemented Constitutional Court Decision No. 97/PUU-IX/2013 despite the advancement of the stages of Regional Head Elections.

Secondly, the ideal Institutional Model for Resolving Disputes over the Results of Regional Head Elections must involve a special ad hoc judicial body with the authority to do so. This authority is granted based on legislation, which is an integral part of the organization of regional head elections, as mandated by Constitutional Court Decision No. 97/PUU-IX/2013. The ad hoc nature of this body is most relevant because it does not convene at all times but only during regional head elections, so there is no need for it to be permanently established and located at the provincial level.

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