

Settlement of Regional Election Results Disputes: A Normative Analysis of the Provisions of Legislation in Indonesia

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ABSTRACT

Regional Head Elections (Pilkada) are a crucial pillar of Indonesia's democratic system, manifesting popular sovereignty at the local level. Despite being a manifestation of democracy, Pilkada often gives rise to disputes that impact political stability and public trust. This study aims to examine the legal regulations and mechanisms for resolving disputes over the results of Regional Head Elections in Indonesia and identify challenges and solutions in their implementation. The research method used is normative juridical with a statutory approach. The results indicate that the Constitutional Court has the authority to handle disputes over the results of Regional Head Elections, while the Election Supervisory Agency (Bawaslu) and the State Administrative Court (PTUN) handle disputes over the process and state administration. However, implementation in the field faces challenges due to multiple interpretations of regulations, overlapping authority, and political pressure. Regulatory improvements, institutional strengthening, and legal education are needed to maintain the integrity of the Pilkada.

Keywords: Election, Dispute, Legislation, Indonesia

Introduction

Since the reform era of 1998, Indonesia has undergone significant transformations in its political system, including in the mechanism for electing regional heads. Prior to the reforms, regional heads were directly appointed by the

central government. However, with the implementation of decentralization and regional autonomy policies, regional head elections (pilkada) began to be held directly by the people. This change aims to increase public participation in the political process, strengthen government accountability, and promote transparency in regional governance. Regional head elections are a fundamental instrument in Indonesia's democratic system. As part of the implementation of democracy, general elections are held every five years and are a key pillar in realizing democratic governance in the modern era. Elections also reflect a concrete manifestation of the principle of popular sovereignty, where citizens have the right to directly elect their representatives who will carry out government functions and represent the interests of the community in the life of the nation and state¹.

Furthermore, regional head elections (Pilkada) are one of the main mechanisms in the democratic system, serving as a means of implementing popular sovereignty and embodying the principle of deliberation and representation as stipulated in the 1945 Constitution of the Republic of Indonesia. Pilkada are a concrete manifestation of these principles, where the people directly vote to elect Governors and Deputy Governors, Regents and Deputy Regents, and Mayors and Deputy Mayors, exercising their constitutional right to determine leadership at the regional level.

Provisions regarding direct regional head elections are regulated in Article 18 paragraph (4) of the 1945 Constitution, which states:

“ Governors, Regents and Mayors as heads of provincial, district and city governments are elected democratically.”

Regional head elections include the election of governors, district heads, and mayors, who play a strategic role in determining the direction of public policy, managing regional resources, and providing public services. Regional head elections play a crucial role in influencing economic, social, and political dynamics at the local level. Regional heads elected through a democratic process are expected to effectively respond to the needs and aspirations of the community and implement development programs oriented toward sustainability and public welfare.

Although regional head elections are an integral part of the democratic system, their implementation is not without challenges and problems. Money politics, negative campaigning, and conflicts of interest are common features of the election

¹ Ja'far Shodiq, Ahmad Zainal Fanani dan Umi Nur Aini Amanaturrofi'ah, *Persinggungan Konsep Pemilu di Indonesia Dengan Pemikiran Politik Dalam Islam*. Jurnal Independent Vol. 9 No. 2 (2021), h. 42

process. Furthermore, relatively low voter participation—particularly among the younger generation—presents a challenge to achieving inclusive and democratic elections. Regional head election disputes are not merely legal issues but also have broad implications for political and social stability in the region. Disputes that are not resolved effectively and fairly have the potential to create a crisis of public confidence in the democratic process, trigger horizontal conflict within the community, and hinder the functioning of regional government. Therefore, a prompt, fair, and transparent mechanism for resolving disputes over regional head election results is crucial to guarantee the legitimacy of election results and support the creation of good local governance. In this context, this study is relevant in analyzing the legal steps required to resolve election disputes comprehensively and constitutionally.

Research Method

This research uses a normative legal research method. Normative legal research is a process of discovering legal rules, legal principles, and legal doctrines to address the legal issues faced². This research uses a statute approach. This statute approach is necessary to examine the legal basis. The statutory method is applied to all laws and regulations related to the legal issue³. This method is necessary to examine and analyze the current legal basis, apply laws and regulations related to the legal rules, and understand the legislation itself.

The primary legal materials used in this research include; 1) The 1945 Constitution, 2) Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law, 3) Constitutional Court Regulation Number 3 of 2024 concerning Procedures in Disputes over the Results of the Election of Governors, Regents, and Mayors, 4) KPU Regulation Number 18 of 2024 concerning the Recapitulation of Vote Count Results and Determination of the Results of the Election of Governors and Deputy Governors, Regents and Deputy Regents, and Mayors and Deputy Mayors, 5) Regulation of the General Elections Supervisory Agency of the Republic of Indonesia Number 2 of 2020 concerning Procedures for Settling Disputes in the Election of Governors and Deputy Governors, Regents and Deputy Regents, and Mayors and Deputy Mayors, 6) Decree of the General Elections Commission Number 1871 of 2024 concerning Technical Guidelines for Settlement Dispute over the Election Results of Governor and Deputy Governor, Regent and Deputy Regent, and Mayor and Deputy Mayor, 7) Constitutional Court Decision Number 85/PUU-XX/2022 concerning the Testing of Article 157 paragraph (1), Article 157 paragraph (2), and Article 157 paragraph (3) of Law Number 10 of 2016 concerning

² Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana Prenada Group, Jakarta, 2007, h. 35

³ *Ibid.* h. 133

the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law against the 1945 Constitution of the Republic of Indonesia

Research Results and Discussion

1. Legal Regulations for Regional Head Elections

The legal regulations regarding regional head elections constitute the normative foundation that comprehensively governs the election process for Governors, Regents, and Mayors in Indonesia. These regulations aim to ensure that elections are held honestly, justly, transparently, and democratically, in line with the principle of popular sovereignty as mandated by the constitution. Within the context of the Indonesian constitutional system, regional head elections are regulated through laws and regulations that cover various aspects, including the nomination mechanism, election implementation, oversight, and resolution of election result disputes. Furthermore, these regulations also govern the rights and obligations of regional head candidates, including administrative requirements, terms of office, and provisions regarding prohibitions and ethics that must be adhered to during the election process.

The legislation also regulates the mechanism for organizing regional head elections, which are carried out by the General Elections Commission (KPU) and the Election Supervisory Agency (Bawaslu) at the central and regional levels. These two institutions have a constitutional mandate to ensure that all stages of the election are conducted in accordance with applicable law, including campaign oversight, enforcement of the code of ethics, and handling of violations and disputes arising during the election process. Furthermore, the regulation also establishes the procedures for filing lawsuits regarding election results disputes with the Constitutional Court, the institution authorized to judicially resolve regional head election disputes.

In 2013, through Constitutional Court Decision Number 97/PUU-XI/2013, the Constitutional Court affirmed the fundamental differences between the general election (Pemilu) regime and the regional head election (Pilkada) regime. This affirmation was based on a systematic interpretation of Article 22E of the 1945 Constitution of the Republic of Indonesia, which does not explicitly include Pilkada as part of the general election. In contrast, regulations regarding Pilkada are expressly regulated in Article 18 paragraph (4) of the 1945 Constitution, which states that Governors, Regents, and Mayors are elected democratically. Based on these considerations, the Court stated that

the integration of Pilkada into the general election regime as regulated in Article 22E of the 1945 Constitution does not comply with the principle of constitutionality. In the ruling, the Court also ordered the establishment of a special judicial institution to resolve disputes over Pilkada results. However, several years after the ruling was read, the special institution in question had not yet been established by the legislators. Due to the fact that the establishment of this institution has not yet been realized, the provisions of Article 157 paragraph (3) of Law Number 10 of 2016 were again submitted for a constitutional review. In the decision on this review, the Constitutional Court determined that the authority to handle disputes over regional election results remains permanently within the jurisdiction of the Constitutional Court. Thus, the Court confirmed that its institution still has the authority to examine, try, and decide on disputes over regional election results, and eliminated the previously adopted separation between the election regime and the regional election regime⁴.

Based on the description above, it can be concluded that the legal framework for the implementation of regional head elections in Indonesia includes several interrelated legal instruments. First, the 1945 Constitution of the Republic of Indonesia, which is the highest source of law, explicitly states in Article 18 paragraph (4) that Governors, Regents, and Mayors, each as heads of regional governments, are elected democratically. This reflects the principle of popular sovereignty as the main foundation in the implementation of regional head elections. Second, Law Number 10 of 2016 concerning the Election of Governors, Regents, and Mayors, which is the operational legal basis for the implementation of regional head elections. This law regulates in detail the procedures for direct regional head elections, including provisions regarding candidate requirements, campaign mechanisms, stages of voting and vote counting, and dispute resolution. Third, the General Elections Commission Regulation (PKPU), namely technical regulations stipulated by the KPU to regulate the implementation of regional elections in more detail. PKPU contains provisions related to stages, schedules, campaign procedures, election logistics, and campaign fund reporting mechanisms and the implementation of voting.

The regulation of regional elections in Indonesia continues to change.

⁴ Satrio Alif Febriyanto dan Muhammad Firman, *Napak Tilas Pemilihan Kepala Daerah Indonesia: Korelasi Negara Hukum Yang Demokratis dan Amandemen UUD 1945*, Jurnal Aphtn Han, Vol. 2 No. 1 (2023), h. 138

After the reformation, regional head elections in Indonesia were based on Article 18 paragraph 4 of the 1945 Constitution of the Republic of Indonesia. This regulation continues to change, after Law Number 5 of 1974 was issued Law Number 22 of 1999 concerning regional government which mandated that regional head elections be held indirectly, then based on Law Number 32 of 2004, general elections were held directly and candidate pairs were supported by political parties. In 2008, with the enactment of Law Number 12 of 2008 concerning Regional Government, candidates were allowed to run as individuals. In 2014, Law Number 22 of 2014 concerning the Election of Governors, Regents, and Mayors again regulated indirect general elections. However, only a few days later it was abolished by the 2014 Election Perppu, which was later known as the 2015 Election Law and has been amended several times until Law Number 10 of 2016⁵.

2. Settlement of Disputes Regarding Regional Head Election Results

Regional head elections are an implementation of democracy that must be held based on legal rules that guarantee justice in line with the principles of a democratic state based on law. The hope of holding regional elections is to produce regional heads with integrity and adequate capacity for the success of regional government implementation, not just to legitimize the leadership of a regional head. The large number of regional head election cases submitted to the Constitutional Court at each stage indicates an increasing legal awareness among the public to resolve election disputes through legal channels. However, this awareness has not been fully accompanied by a mature attitude from election participants and their supporters in accepting court decisions that are perceived as unfavorable to them.

Public participation in the implementation of regional head elections is one of the main benchmarks for the success of the Pilkada implementation, as well as reflecting the level of political legitimacy of the elected regional head candidates. Therefore, the level of public involvement can be used as an important indicator in assessing the quality of the Pilkada. On the other hand, the Constitutional Court as one of the high state institutions has a strategic role in exercising judicial power independently to administer justice and uphold the law, in accordance with the mandate of the 1945 Constitution of the Republic

⁵ Aufia Widodo, *Sistem Pemilihan Kepala Daerah yang Ideal Menurut UUD 1945*, *Jurnal Pemilu dan Demokrasi*, Vol. 2, No. 1, (2022), h. 31

of Indonesia. Article 10 paragraph (1) letters a to d of Law Number 24 of 2003 gives the Constitutional Court the authority to adjudicate cases at the first and final level that have final legal consequences.

"The Constitutional Court has the authority to adjudicate at first and final instance, with its decisions being final:

- a. To review laws against the 1945 Constitution of the Republic of Indonesia;
- b. To decide on disputes regarding the authority of state institutions whose authority is granted by the 1945 Constitution of the Republic of Indonesia;
- c. To decide on the dissolution of political parties; and
- d. To decide on disputes regarding general election results."

In an effort to maintain the stability of the democratic system, the Constitutional Court plays a strategic role in ensuring justice against various forms of violations that occur in the democratic process, including regional head elections. Regional head elections cannot be viewed merely as a routine five-yearly event of a ceremonial nature or an administrative formality. Furthermore, regional elections are an integral part of a substantial democratization process that demands respect for democratic principles, the rule of law, and the protection of human rights⁶.

Regional head election results disputes are disputes that occur between election participants, in this case the candidate pairs for governor and deputy governor, regent and deputy regent, or mayor and deputy mayor, and the provincial or district/city General Elections Commission (KPU) regarding the vote count that has been officially announced by the KPU. According to Wilma Silalahi, there are several main factors that cause failure in the implementation of elections, especially in the context of regional head election results. First, the existence of a morally pragmatic attitude shown by various parties, including election organizers, prospective participants, state officials, and the general public, which has the potential to damage the integrity of the election process. Second, the politicization of the bureaucracy, where State Civil Apparatus (ASN) are involved or exploited by election participants for practical political interests. Third, the emergence of a mentality that is not ready to accept defeat, thus encouraging the losing party to seek non-procedural means to maintain power. Fourth, abuse of authority by incumbents, such as practices of intimidation against supporters of political opponents and the transfer of ASN

⁶ Achmad Sodiki, *Sengketa Pemilukada dan Putusan-Putusan Mahkamah Konstitusi, dalam Demokrasi Lokal, Evaluasi Pemilukada di Indonesia*, Konpress, Malang, 2012, h. 39

who are deemed not politically supportive⁷.

The optimal implementation of regional head elections depends heavily on a legal framework that is clear, consistent, and responsive to the dynamics of democracy. The numerous problems that arise in the implementation of regional head elections cannot be separated from the quality of the legal products that govern them. Often, the regulations created reflect transactional political compromises aimed at protecting the interests of certain groups rather than ensuring the principles of justice and legal certainty. Given the complexity of the issues surrounding regional head elections, the Constitutional Court, as the institution authorized to handle disputes over regional head election results, plays a crucial role in ensuring the upholding of constitutional justice. Therefore, the Court is required to diligently provide legal protection and justice to parties with constitutional rights, in order to maintain the integrity of the elections and public trust in the democratic process at the local level.

Constitutional Court Decision Number 85/PUU-XX/2022 expressly states that:

” In order to clarify the meaning of Article 157 paragraph (3) of Law 10/2016 which no longer contains a temporary nature, according to the Court the phrase "until the formation of a special judicial body" must be deleted or declared to be in conflict with the 1945 Constitution. With the removal of this phrase, Article 157 paragraph (3) of Law 10/2016 in full must read "Cases of disputes regarding the determination of the final stage of vote acquisition results of the Election shall be examined and tried by the Constitutional Court”.

The above article illustrates that the Constitutional Court has the constitutional authority to examine, adjudicate, and decide on disputes over regional head election results. This authority is part of the Constitutional Court's duty to safeguard the constitutionality of the democratic process in Indonesia. The scope of this authority includes resolving disputes over the election results of the President and Vice President, members of the House of Representatives (DPR), the Regional Representative Council (DPD), and the Regional People's Representative Council (DPRD) at the provincial, district, and city levels. It also includes the authority to resolve disputes over regional head election results at all levels of government, including the provincial, district, and city levels.⁸

⁷ Wilma Silalahi, *Demokrasi, Pilkada, dan Penyelesaian Hasil Pilkada di Mahkamah Konstitusi*, PT Raja Grafindo Persada, Depok, 2020, h. 112

⁸ Munif Rochmwanto, Enik Isnaini, and Candra Tirta Hadinata, *The Position of The People's Representative Council in the Indonesian Constitutional System*, *Jurnal Independent* 13, no. 1 (2025), h. 15.

The resolution of disputes over regional head election results is regulated in detail in Constitutional Court Regulation Number 3 of 2024 concerning Procedures in Disputes over the Election Results of Governors, Regents, and Mayors (hereinafter referred to as PMK 3/2024). This regulation provides comprehensive legal guidelines for parties dissatisfied with the determination of election results by the Regional General Elections Commission (KPUD). PMK 3/2024 regulates the mechanism for submitting applications, the case examination process, and the stages of decision-making by the Constitutional Court. The entire dispute resolution process is carried out through systematic, open procedures, and based on the principle of justice, to ensure the protection of the constitutional rights of every election participant. The stages in this resolution process will be explained in the following section; First, Submission of the application. The process begins when the regional head candidate pair submits an application regarding the general election results to the Constitutional Court, either offline or online. This application must be submitted no later than 3 x 24 hours after the announcement of the vote count results by the KPUD. The application is made in writing and must meet formal and material requirements, including the vote margin limit determined by the type and population of the area. Next, the applicant or their proxy must submit the original application documents no later than 3 (three) working days before the deadline for submitting revised applications. Working days are 08.00 WIB to 24.00 WIB. If the application is submitted by an election observer, the application must be signed by the general chairman or another title as stated in the articles of association and bylaws (AD/ART) of the relevant organization. The application is submitted together with a copy and list of evidence in the form of a digital document (softcopy), either in Word or PDF format, which is stored on a storage medium such as a flash drive. Whether submitted offline or online, the court clerk will record the application in the Electronic Petitioner Application Submission Book (e-BP3) and then issue a Petitioner Application Submission Deed (AP3). The applicant is given the opportunity to amend or complete the application within three working days of receipt of the AP3 by the applicant or their attorney. This amendment can only be made once within the specified time limit. The clerk will then verify the completeness of the application and issue the Results of the Examination of Completeness and Correction of the Applicant's Application (HPKP3). The clerk will then record the application in the Electronic Constitutional Case Registration Book (e-

BRPK) and issue a Constitutional Case Registration Deed (ARPK) to be delivered to the applicant or their attorney. Notification of the first hearing schedule will be provided by the clerk no later than one day after the application is registered in the BRPK.

Second, Preliminary Examination. After the application is submitted and officially recorded, the Court will proceed with the initial examination stage, known as the panel hearing. This stage is carried out within a maximum of seven working days from the time the application is registered in the Electronic Constitutional Case Registration Book (e-BRPK). The Clerk is obliged to notify the Applicant, Respondent, and Bawaslu of the first hearing schedule no later than two working days after the application is recorded in the e-BRPK. Then, no later than 3 (three) working days before the hearing day, the panel will notify the relevant parties about the first hearing schedule. The preliminary examination is carried out to check the completeness of the application documents and their materials and also to validate the applicant's evidence. This hearing is carried out openly and publicly by a panel of judges attended by at least three Constitutional Justices or the Plenary Judges. During the preliminary examination stage, the panel of judges will assess the completeness and clarity of the submitted application documents, and is responsible for providing direction or suggestions to the applicant regarding improvements or corrections to the application if deficiencies are found.

Third, hearing examination. If the application is declared to meet the requirements, the Court will proceed to the hearing stage. The hearing examination is the hearing stage which aims to receive written documents, hear statements from the parties involved in the dispute, review and validate written evidence including additional evidence, and hear statements from witnesses and experts presented. Basically, the hearing examination process is carried out in the following stages; (a) Examine the applicant's application, (b) Examine the respondent's response and statements from related parties, and/or Bawaslu's statement, (c) Validate the evidence, (d) Examine written evidence, (e) Listen to witness statements, (f) Listen to expert statements, (g) Examine other evidence, (h) Examine the series of data, statements, actions, circumstances and/or events that are in accordance with other evidence that can be used as clues.

Fourth, verification and examination of evidence. At this stage, the Constitutional Court must carefully assess all evidence, including documents,

recordings, and witness or expert testimony. Each piece of evidence presented must be valid and accountable. If it does not meet these criteria, it cannot be considered legally valid. The Court will conduct its assessment by matching and comparing one piece of evidence with another to ensure its consistency. The evidence referred to is as follows: (a) Letters or writings, (b) Statements of the parties, (c) Witness statements, (d) Expert statements, (e) Other evidence, and/or, (f) Instructions.

Other evidence is evidence in the form of letters or writings, namely written evidence that is directly related to the object of the disputed results case requested to the Court. This evidence consists of: (a) The respondent's decision regarding the results of the vote count recapitulation, (b) The respondent's decision regarding the determination of the candidate pairs participating in the election and its attachments, (c) The respondent's decision regarding the determination of the ballot numbers of the candidate pairs participating in the election and its attachments, (d) Minutes and/or copies of the vote count recapitulation signed by the election organizers up to the appropriate level, namely: (1) Voting Organizer Group (KPPS) (2) District Election Committee (PPK), (3) Regency/City KPU/KIP; and/or, (4) Provincial KPU/KIP.

Fifth, the Court's Decision. The final stage is the Court's decision. The Constitutional Court is obligated to resolve disputes over regional election results within a maximum of 45 days from the date the petition is registered in the Constitutional Case Registration Book (BRPK). The resulting decision is the decision of the panel of constitutional judges on the case that has been submitted and registered in the BRPK, which is then examined and discussed in the Judges' Deliberative Meeting (RPH) forum. The RPH itself is a closed meeting attended by nine constitutional judges, or at least seven judges, to discuss and make a decision on disputes over the results of regional head elections such as governors, regents, and mayors. In issuing a decision, the Court is guided by the provisions of the Constitution, taking into account the evidence and the judges' beliefs. The decision must also include the facts revealed during the trial and the legal basis for the decision.

Decisions on disputes over regional head election results have several forms, including: (a) The petition cannot be accepted, if the petitioner and/or their petition do not meet the formal requirements of the petition; (b) The petition is rejected, if the petition has met the formal requirements and the principal petition is legally groundless; or and the main point of the application

is not legally justified, (c) The application is granted in part or in whole, if the application has fulfilled the formal requirements and the main point of the application is legally justified in part or in whole.

The verdict is read out in a plenary session open to the public. A copy of the verdict is delivered to the Applicant, Respondent, Related Parties, Bawaslu, and the House of Representatives no later than 3 (three) days after the verdict is read out by the court clerk. A translated copy of the verdict can be sent electronically through the court website. Then, for the parties present at the agreement, a copy of the agreement is given directly after it is announced in a public agreement and the signing of the minutes of the agreement. The Constitutional Court's decision is signed by the judge who examined, tried, and decided, and the substitute clerk. The Constitutional Court's decision is a decision that has permanent legal force since it was pronounced in a plenary session open to the public and cannot be pursued by other legal remedies. The Constitutional Court's decision is a decision of the first and final instance court that is final and binding.

Conclusion

Regional head elections (Pilkada) are a concrete manifestation of popular sovereignty within Indonesia's democratic system, as stipulated in Article 18 paragraph (4) of the 1945 Constitution. Pilkada serve not only as a means to elect regional leaders but also as an indicator of the quality of local democracy. The legal provisions governing regional elections, from the 1945 Constitution, Law No. 10 of 2016, to technical regulations such as the Election Commission Regulation (PKPU) and the Constitutional Court Regulation, have provided a fairly clear legal framework for the implementation and resolution of election disputes. The Constitutional Court plays a crucial role as the institution authorized to resolve election disputes in a final and binding manner, as affirmed in Constitutional Court Decision No. 85/PUU-XX/2022.

However, the implementation of legal provisions for election dispute resolution in practice still faces various challenges. Multiple interpretations of regulations, overlapping authority between institutions, and political pressure on dispute resolution institutions hinder the achievement of swift, fair, and transparent dispute resolution. Furthermore, an immature political culture and the ongoing practice of money politics exacerbate the situation. The mechanism for resolving regional election disputes in the Constitutional Court has been systematically

formulated through Constitutional Court Regulation Number 3 of 2024. This process begins with the submission of an application, a preliminary examination, a trial examination, the presentation of evidence, and the pronouncement of a verdict. The Constitutional Court's final and binding decision is expected to be the final arbiter, ensuring justice for all disputing parties.

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