

## The Ideal Concept of Dispute Resolution of Regional Head Election Results in the Constitutional Court

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#### ABSTRACT

Direct Regional Head Elections can be understood more closely to the meaning of democracy. Pilkada underwent a change in term to Pemilukada, when Pilkada was categorized as part of the election, because it was followed by the transfer of authority to adjudicate disputes over election results from the Supreme Court (MA) to the Constitutional Court (MK). The purpose of this study is to find the ideal concept of dispute resolution of regional head election results. Elections are general elections to elect regional heads and deputy regional heads. In its development, the problem of the implementation of elections often occurs disputes, especially the results of the implementation of the election itself. In the Regional Head General Election Dispute is very complicated, many factors influence it both in terms of legal material violations and formal violations. Based on the results of the research found, there is a Comparison of the Periodization of Judicial Disputes of Pemilukada. With the above problems, it shows that problems in law enforcement are related to solving problems that are fair and have legal certainty in resolving election disputes. The conclusion in this study is the ideal concept of dispute resolution of future election results related to the scope of authority, legal position of the parties, object of dispute, grace period, content of application, case examination, evidence and decision.

**Keywords:** Constitutional Court; Dispute Resolution; General Election; Regional Head

## **INTRODUCTION**

In Indonesia, changes to the 1945 Constitution gave a new color to the constitutional system. One of the fundamental changes in the 1945 Constitution is the amendment of Article 1 paragraph (2) which reads "Sovereignty is in the hands of the people and is exercised according to the Basic Law" (Wijaya, 2023). This provision carries the implication that people's sovereignty is no longer exercised entirely by the People's Consultative Assembly but is exercised according to the provisions of the Basic Law. In addition, changes to the 1945 Constitution have given birth to a state institution, namely the Constitutional Court (Thaib, 2016).

Direct elections for the first time are regulated in Law No. 32 of 2004 concerning Regional Government. Direct elections can be understood more closely to the meaning of democracy (Haryadi, 2012). Pilkada underwent a change in term of Pemilukada, when Pilkada was categorized as part of the election, because it was followed by the transfer of authority to adjudicate disputes over election results from the Supreme Court (MA) to the Constitutional Court (MK). The definition of Pemilukada is a general election to elect regional heads and deputy regional heads.

The implementation of the election caused disputes, especially the results of the election itself. Therefore, Law number 1 of 2015 was born to regulate dispute resolution through the High Court and Supreme Court of the Supreme Court. Furthermore, it was changed again with the Pilkada dispute resolution mechanism at the Special Judicial Body in accordance with article 157 of Law number 8 of 2015. In the Regional Head General Election Dispute is very complicated, many factors influence it both in terms of legal material violations and formal violations.

Many other factors arise in the Regional Head General Election Dispute, such as politics, economics, power at the stage of holding elections and determining the results of regional head elections, including the first determination of valid and invalid votes that are not transparent and consistent, money politics (Azmulian, 2003). Furthermore, the second is the politicization of bureaucracy with the model of *Onrechtmatige Overheads daad*, intimidation in the form of abuse of authority and office crimes, administrative violations and criminal violations (Junaidi, 2013).

In the settlement of Pilkada disputes to the Constitutional Court, these factors are precisely the basis for submitting applications. These factors were not taken into consideration by the judge because they focused on the formal aspects of election violations and not the material consideration.

The paradigm of regulating the dispute resolution mechanism for election results has changed, which is handled by a special judicial body. The Special Judiciary was established before the conduct of national simultaneous elections, but it was not affirmed as a stand-alone judicial body, nor as a special court under the general court or state administrative court. Pending the establishment of a special judicial body, transitional authority to resolve disputes over election results is simultaneously granted to the Constitutional Court. Apart from the development of the election mechanism regulation and its implementation as a legislative policy that has changed according to national political conditions, legal issues regarding dispute resolution of election results in the Constitutional Court.

With the above problems, it shows that problems in law enforcement are related to solving problems that are fair and have legal certainty in resolving election disputes. Potential problems in Regional Head Elections can be classified into three groups, namely: problems of administrative violations, criminal offenses, and disputes over the results of vote counting (Santoso, 2006). In practice, all legal issues from the initial stage to the stage of obtaining votes are requested to be resolved to the Constitutional Court as part of the dispute over the election results. Based on the description above, it is necessary to resolve disputes over the results of regional elections in the constitutional court.

## **LITERATURE REVIEW**

Disputes according to Pruitt and Rubin (1986) are defined as perceptions of perceived divergence of interest, or a belief that aspirations of disputing parties are not achieved simultaneously due to differences in interests (Salim & Nurbani, 2013). Abel (1973) interprets dispute or dispute as a public statement regarding an inconsistent claim against something that is different because of the aspect of the parties' suitability about something of value (Friedman, 2009). Legal disputes or disputes according to Hans Kelsen occur because one party files a claim against the other party.

General elections in Haris's view are a form of political education for the people, which is direct, open, mass, and is expected to educate political understanding and increase public awareness about democracy (Haris, 2014). Elections are a tangible manifestation of procedural democracy, although democracy is not the same as general elections, elections are one of the most important aspects of democracy that must also be held democratically (Antari, 2018).

Article 1 of Law number 23 of 2014 concerning regional government whose formulation, "Regional government is the head of the region as an element of local government administration who leads the implementation of government affairs that are the authority of the autonomous region". It can be concluded, that the regional head is a government in the region related to the authority possessed in managing and managing his household in accordance with regional autonomy related to the division of power in the administration of government in the region which includes the regional head is the governor (provincial regional head), regent (district regional head), or mayor (city regional head).

Based on Law number 8 of 2015 concerning Amendments to Law number 1 of 2014 concerning the stipulation of government regulations in Lieu of Law number 1 of 2014 concerning the election of governors, regents and mayors in article 1 paragraph 1 explains what is meant by the election of the next governor and deputy governor, regent and deputy regent, as well as mayor and deputy mayor. The so-called election is the exercise of people's sovereignty in the province, and regency/city to elect the governor and vice governor, regent and vice regent as well as the mayor and vice mayor directly and democratically.

## **RESEARCH METHODS**

This research uses a normative legal research approach that focuses on examining legal texts and norms as written in laws and regulations or becoming benchmarks in the laws and regulations of the functioning of a nation and state (Gainau et al., 2023). This research is a legal research. This research is a legal study of the paradigm of dispute resolution by the Constitutional Court. This research uses a legal approach or also called a normative legal approach (Harvelian et al., 2023), then supported by a case study

approach in reviewing and analyzing legal events that occur in the settlement of election disputes in the Constitutional Court. Dispute resolution through the judiciary in addition to being based on formal legal provisions, also based on applicable mathematical legal provisions, both in the form of written positive legal norms, which include the Constitution, Law, government regulations and so on, as well as legal norms born by judicial institutions (judge made law) in the form of regulations and jurisprudence. In accordance with the form and nature of the study, the data obtained are qualitative. So the analysis used in this study is qualitative juridical analysis. This is done with the consideration that in qualitative analysis, quality data decomposition is carried out in the form of regular, consecutive, logical, non-overlapping, and effective sentences, thus facilitating data interpretation and understanding of analysis results (Abdulkadir, 2004).

## RESULTS

### Dispute Resolution of Regional Head Election Results in the Constitutional Court

Dispute resolution of regional head general election results is inseparable from the problem of counting votes in elections as the oldest activity in a nation among various other problems, solutions have been sought through various means, such as through settlements in the legislature, election organizing bodies, ad hoc bodies and judicial or judicial bodies. The implementation of the dispute resolution system for election results through the judiciary is manifested in various forms of institutions: the general court, the Constitutional Court, the state administrative court or the special election court.

The authority of the Constitutional Court was originally only to resolve disputes over election results, while disputes over the results of regional elections in which the election mechanism was carried out directly called regional elections, the authority to resolve them was given to the Supreme Court. There are four periodizations of authority to adjudicate disputes over the results of elections: first, in MA from 2005 to 2008; second, in MK from 2008 to 2013; third, in the High Court and can be submitted for Cassation to the Supreme Court; and fourth, the transitional period at the hands of the 2015 Constitutional Court until a special judicial body is established. In these four periodizations apply procedural laws of settlement that differ in theory and practice. The following comparison of the periodization can be seen in table 1.

**Table 1. Comparison of Judicial Periodization of Election Disputes**

| No. | Comparison Description                                  | MA  | MK  | PT and Cassation in   | Traditional MK   |
|-----|---|---|---|---|--|
| 1.  | Legal Basis   | Article 106(1) of Law 32/2004 jo Article 94 (1) IPP 6/2005                    | Article 236C Law 12/2008  | Article 157 Law 1/2015  | Article 157(3) of Law 8/2015 jo UUno. 10/2016  |
| 2.  | Procedural Law  | PERMA No. 1/2005 & No. 2/2005 and Civil Procedure Law                         | PMK No. 15/2008 and the Procedural Law of the Constitutional Court  | No PERMA yet  | PMK No. 1, 2, 3, 4/2016 and PMK No. 1, 2, 3, 4/2017, and the Procedural Law of the Constitutional Court                      |
| 3.  | Application Deadline                                    | 3 working days after the determination of                                     | 3 working days after ELECTION COMMISSION/KIP determination          | 3 × 24 hours since the determination of ELECTION COMMISSION/KIP                                 | 3 working days from the determination of   |
| 4.  | Registration  | Via PN through PT   | Registrar MK / Online MK website                                    | No PERMA yet  | Registrar of MK, Online MK website   |
| 5.  | Case Costs  | MA IDR 300 thousand, PT IDR 200   | nil   | No PERMA yet  | Nil  |
| 6.  | Legal Standing / Legal Position of the Litigating Party | Applicant: spouse of candidate; Respondent: ELECTION COMMISSION/KIP; No Party | Applicant: prospective spouse, prospective spouse of the candidate. | Applicant: election participant with maximum % limit of ELECTION COMMISSION/KIP vote difference | Applicant: candidate pair with maximum % difference of votes. Respondent: ELECTION COMMISSION/KIP. Related Parties: pairs of |

|     |                               |   |  |  |  |
|-----|-------------------------------|---|--|--|--|
|     |                               |   | Respondent:<br>ELECTION<br>COMMISSION/KIP<br>. Related Party:<br>spouse of selected<br>candidates/passed<br>the second round   |  | candidates for the most<br>votes   |
| 7.  | Object of<br>Application      | Determination of<br>the ELECTION<br>COMMISSION on<br>the results of the<br>vote count that<br>affects electability  | Minutes /<br>ELECTION<br>COMMISSION<br>decision on the<br>recapitulation of<br>votes   | Determination of the<br>results of the<br>counting of votes by<br>the Provincial<br>ELECTION<br>COMMISSION &<br>ELECTION<br>COMMISSION<br>regency / city | Minutes or ELECTION<br>COMMISSION Decision<br>on the recapitulation of<br>votes  |
| 8.  | Fill out the<br>Application   | The error in the<br>counting of votes<br>announced by the<br>Respondent and<br>the correct result of<br>the vote count<br>according to the<br>Applicant   | Error in counting<br>votes by the<br>Respondent and<br>the correct result<br>of the vote count<br>according to the<br>Applicant  | Not yet issued<br>PERMA  | The error in the counting<br>of votes announced by<br>the Respondent and the<br>correct result of the vote<br>count according to the<br>Applicant      |
| 9.  | Petition                      | The request<br>cancels the result<br>of the<br>Respondent's<br>calculation and<br>establishes the<br>correct calculation<br>according to the<br>Applicant | The request<br>invalidates the<br>results of the<br>Respondent's<br>count and<br>establishes the<br>correct counting of<br>votes according to<br>the Applicant                           | Not yet issued<br>PERMA  | The request cancels the<br>result of the<br>Respondent's<br>calculation and<br>establishes the correct<br>calculation according to<br>the Applicant    |
| 10. | Panel of<br>Judges            | Five judges   | Examination:<br>Panel of Judges.<br>Pronunciation of<br>the verdict:<br>Plenary of Judges  | Ad hoc judges in 4<br>High Courts only   | Examination: Panel of<br>Judges. Pronunciation of<br>the verdict: Plenary of<br>Judges   |
| 11. | Inspection<br>Grace<br>Period | 14 working days<br>from receipt of<br>objection   | 14 working days<br>from registration   | 14 working days<br>from registration   | 45 working days from<br>registration   |
| 12. | Evidence                      | Letters, witnesses,<br>allegations,<br>confessions, and<br>oaths  | Statements of the<br>parties,<br>letters/writings,<br>witnesses, experts,<br>instructions, and<br>other evidence<br>(information/electr<br>onic<br>communications)                       | Not yet issued<br>PERMA  | Letters/writings,<br>statements of the<br>parties, witnesses,<br>experts, other evidence<br>(information/electronic<br>communication)/instructi<br>ons |
| 13. | Verdict                       | Unacceptable,<br>Denied, Granted: •<br>Correct sound pan<br>settler • HSU • PSU   | Unacceptable,<br>Denied, Granted: •<br>Correct voice<br>assignment • HSU<br>• PSU • Re-verify<br>candidacy • Re-<br>election •<br>Disqualification •<br>Selection of<br>selected spouses | Not yet issued<br>PERMA  | Unacceptable, Denied,<br>Granted: • Correct<br>sound assignment •<br>HSU • PSU   |
| 14. | Types of<br>Verdicts          | Final Verdict   | Injunctive relief<br>and final judgment  | Not yet issued<br>PERMA  | Injunctive relief and final<br>judgment  |
| 15. | Nature of the<br>Verdict      | Final and binding   | Final and binding  | Legal remedies can<br>be filed   | Final and binding  |
| 16. | Legal<br>Remedies             | Judicial review   | —  | Objection to the<br>Supreme Court, 3<br>days from the<br>decision of PT,<br>disconnected 14<br>working days  | —  |

## **DISCUSSION**

### **The Ideal Concept of Dispute Resolution of Regional Head Election Results in the Constitutional Court**

Indonesia is a country of diverse ethnicities, races, religions, and cultures. Indonesia is a Muslim-majority country (Jian et al., 2021). With differences in ethnicity, race, religion, and culture are very influential in regional elections. Regional elections often occur disputes, therefore dispute resolution is needed.

Dispute resolution of regional head election results has experienced significant developments in practice. The variety of positive law applications through procedural procedures in the Constitutional Court raises new things as best practices that inspire renewal for the ideal concept of dispute resolution of regional head general election results in the future. Therefore, the government must establish a complete set of laws and regulations (Sasongko et al., 2022).

Several things that can be proposed for future procedural law reform, namely relating to the scope of authority, legal position of the parties in the dispute, object of dispute, grace period, content of the application, case examination, evidence and decision. The points of future procedural law reform are:

adjudicate cases of disputes over election results. In its current existence, as affirmed in article 157 paragraph (1) of Law number 8 of 2015, the scope of authority of the judicial body to dispute the results is only with regard to disputes over the results of the vote count that affect the election of candidate pairs. The settlement of cases other than disputes over the results of the vote count has become the authority of other institutions.

From the applicable law enforcement mechanism, there is a question of limited reach for legal events that occur within the grace period before voting day until the recapitulation of the vote count. These legal events can be in the form of money political practices (paying voters/buying votes), physical and non-physical intimidation, bureaucratic politicization (mobilization of bureaucratic officials and civil servants), partiality and negligence of organizers, vote inflating or vote manipulation, which in terms of "time of incident", the legal event occurs during a quiet day, before voting until the day of determination of the recapitulation of vote gains.

The practice of money politics (paying voters/buying votes) which normatively has been regulated in Article 73 of Law number 10 of 2016 with the toughest sanction of disqualification to candidate spouses who are proven to have committed TSM, has reach only for actions that occur and are reported until the deadline from the determination of the candidate spouse until 60 (sixty) days before voting day. 763 with respect to money political events on the 59th (fifty-ninth) day before voting until the day of voting, even until the end of the election stage, enforcement can only be processed through Gakkumdu, for which there is no longer any sanction of disqualification to the spouse of the prospective perpetrator.

Such construction of law enforcement norms on money politics creates legal loopholes that have the potential to be distorted by election participants and their successful teams. In order to avoid the classification of TSM violations, money politics is carried out waiting after passing the reporting limit of 60 (sixty) days before voting.

Similarly, with the electoral criminal process, there is a loophole in its enforcement, in connection with the enactment of the provisions of Article 150 of Law number 1 of 2015, which states: "Court decisions on election crime cases that according to this Law may affect the voting process of election participants must be completed no later than 5 (five) days before the provincial election commission and/or district/city election commission



determines the results of the election”.

The regulation in this article opens a legal loophole in the form of non-actionability of cases with criminal elements of elections as long as they cannot be decided or cannot be resolved no later than 5 (five) days before the provincial election commission and/or district/city election commission determine the results of the election.

This legal loophole can be found a solution by including legal events that are not reachable with law enforcement in the electoral criminal system and not reachable by law enforcement in the election dispute stage, as an integral part of the election result dispute. Thus, the scope of the dispute over election results includes also legal events in the quiet period, the night of the D-day of voting as the last moment to influence voters, then in the range of the D-day of the election until the determination of the recapitulation, which has the potential to become a case, both in the form of administrative and criminal violations. However, the authority of the election results dispute body is limited only to assessing the violations that occur whether they affect the configuration of votes and the choice of candidate pairs.

Second, regarding the legal standing of the parties, the subjects who are parties to the dispute are the spouses of candidates participating in the election who are given legal standing to be the applicant, the spouses of the candidates who get the most votes become related parties and the organizer as the respondent. Prospective spouses of candidates who do not qualify to become participants in the context of legal issues of the right to be candidate such as in the case of disputes over the results of the 2010 Jayapura city and 2013 Gorontalo city elections, as well as measurable violations in the form of the passing of participants who do not qualify as candidates for incasu such as in disputes over the results of the elections of Tebing Tinggi city and South Bengkulu, based on the prevailing positive law, tired of being given law enforcement space at the Panwaslih level (formerly Panwaslukada) to TN's lawsuit in the TUN High Court and objections in the Supreme Court.

On this basis, the space for prospective spouses to obtain legal position as parties has been closed. Moreover, the principle of *daluwarsa* objection that began to be applied in the concurrent election law does not provide room for legal subjects to ask the court to dispute the results of canceling the organizer's decision on the determination of candidate pairs, given the grace period for filing objections to administrative disputes, they can only be submitted no later than 7 (seven) days after the decision is issued or after the event in dispute is known.

Similarly, in the event that there are attitudes and actions of organizers who deliberately ignore the decisions of other judicial institutions, incasu State Administrative High Court and/or Supreme Court Decisions, Criminal Decisions from District Court/High Court, or Administrative Decisions from the Provincial Election Supervisory Board/Panwaslukada, law enforcement space has been given for imposing sanctions for violations of the code of ethics to perpetrators through the process at High court and Supreme Court.

Third, regarding the object of the dispute in disputes, election results need to be explicitly determined in the form of an organizer's decision on the determination of the results of candidate pairs at the regency/city level for the regent/mayor election and at the provincial level for the governor election. The practice of resolving disputes over election results in the Constitutional Court during the period 2008-2014 shows the existence of several legal products from the district/city election commission for the election of regents/mayors or provinces for governor elections, which are issued after the recapitulation of the vote count. There is an election commission product in the form of "Minutes of Recapitulation of Vote Count", "Decree of Recapitulation of Vote Count", as well as "Minutes of Determination of Spouse of Selected Candidates", but some are in the form of "Decree of Spouse of Selected Candidates".

Learning from the dispute cases resulting from the 2010 North Buton Regency and 2008 South Bengkulu regency, both used the same object of dispute: "Decree for the Determination of Selected Candidate Spouses", however, the Constitutional Court's attitude towards the two cases was different. In the dispute over the results of the 2010 North Buton regency election, the court stated that the petitioner's application could not be accepted because of the wrong object, while in the dispute over the results of the 2008 South Bengkulu regency election, the exception regarding the wrong object of dispute was set aside and the court granted the subject of the application.

Fourth regarding grace period there are two kinds of grace periods here, namely the grace period for submitting an application and the grace period for examining objections. First, point one is the deadline for applying. In disputes over the results of local elections in the Supreme Court and after being transferred to the Constitutional Court, the deadline for submitting an application is imposed norms with a limitation of "3 (three) work limits after the determination of the recapitulation of the results of the vote count". The deadline for filling an application in a dispute over the results of elections in the Constitutional Court has transitionally changed. Initially, the deadline for submitting an application was set at 3 (three) x 24 hours after determining the Election Commission/KIP Acch. The grace period rule applies to disputes over the results of simultaneous elections for the December 2015 period, whose case hearings began in early January 2016. With Law number 10 of 2016 concerning the second amendment of Law number 1 of 2015, the grace period for submitting applications is changed to "3 (three) working days from the determination of the recapitulation of the results of the vote count". As a result of this arrangement, it may extend the deadline for submitting applications if the recapitulation of the results of the vote count is carried out on Thursday or Friday, because there are Saturday and Sunday holidays that are not counted as working days. The use of the word "since" in the phrase "3 (three) working days from the determination of recapitulation" has the potential to cause multiple interpretations to determine the count of one day, whether the first day is calculated at the same time as the date of determination or on the next day. Based on PMK number 1 Year 2016, the Constitutional Court interprets the word since by counting the first day at the same time as the day of determination.

Consequently, point one; In real terms, there are only 2 (two) effective working days left for prospective couples to rush to compile and register applications. Second; working hours at the MK registrar are different from government agencies in Jakarta in general, which is only until 4 p.m.. The difference in working hours with other agencies creates legal uncertainty and has the potential to cause prospective applicants' spouses from the regions to experience delays in registering applications.

The author proposes, if you continue to use the phrase "3 (three) days" as a measure of the registration grace period, then in order to provide legal certainty, the arrangement is set at 3 (three) working days "after" the determination of the final results of the votes, not "since" the determination of the final results of the votes.

The positive side of the "working day" limitation is that in the event that the alls on Thursday, then the count of three working days is Thursday, Friday, Monday, because there is a break in holidays: Saturday and Sunday. Similarly, in the event that the determination falls on Friday, then the deadline of three working days falls on Tuesday. Taking into account the principle of fairness and equal opportunities for citizens, on the basis of differences in geographical location in Indonesia and differences in transportation facilities and internet networks between the midwestern and eastern regions, it is proposed: first; to apply unequal grace period limits, for the western region, the norm applies to 3 (three) working days, the central region is 4 (four) working days and the eastern region is 5 (five) working days. second; using the limitation of the word



“after”, so that the day of determination of the election commission recapitulation is not counted as a grace period of one working day, none other than because usually the determination process runs long and has the potential to exceed working hours.

The second point is the deadline for the examination. As for the grace period for examination for 14 (four) working days after the case is registered, which applies in the examination of cases in the Constitutional Court period 2008-2014, it needs to be adjusted to the model of implementing *pcmilukada* which is currently carried out simultaneously. At the time of dispute resolution of the results of simultaneous transitional elections in the Constitutional Court, the deadline used is 45 (forty five) office hour after registration.

The dispute resolution of the results of simultaneous elections in the Constitutional Court is in fact a gradual simultaneous election, divided into seven waves. The first batch of simultaneous regional elections was held in December 2015 for regional heads whose terms ended in 2015 and in the first half of 2016. The second batch of simultaneous regional elections was held in February 2017 for regional heads whose terms ended in the second semester of 2016 and regional heads whose terms ended in 2017. The third batch of simultaneous regional elections will be held in June 2018 for regional heads whose terms end in 2018 and 2019. The fourth batch of simultaneous regional elections will be held in 2020 for regional heads resulting from the December 2015 elections. The fifth batch of simultaneous regional elections will be held in 2022 for regional heads from the February 2017 elections. The sixth batch of simultaneous regional elections will be held in 2023 for regional heads of the 2018 elections. Then, simultaneous regional elections will be held nationwide in 2027. So starting in 2027, regional elections will be held simultaneously in all provinces, regencies, and cities in Indonesia, and will be held again every five years.

It is uncertain whether for simultaneous elections in 34 (thirty-four) provinces, 416 (four hundred sixteen) districts and 98 (ninety-eight) cities throughout Indonesia in 2027, will be tried by a special judicial body formed with a centralistic model such as the Constitutional Court, that is, there is only one special judicial body in Jakarta, or there are several special judicial bodies in the province such as the model of the existence of the TUN high court which only exists in 4 provinces, or even in each province.

In the event that a special judicial body is formed with a centralistic model such as the Constitutional Court, the grace period of 45 (forty-five) days for hearing cases should be changed to 60 (sixty) working days. However, in the event that a special judicial body is located in a particular province such as the model of the existence of the TUN high court which only exists in four provinces, then the examination of the case is sufficient within a grace period of 45 (forty-five) working days. As for the case of special judicial bodies located in each province, the examination of cases is sufficient within a grace period of 21 (twenty-one) working days, in accordance with the principle of speedy trial in the trial of disputes resulting from the election.

**Fifth on Case Examination** In case examination, it is proposed that judicial institutions that have the competence to examine and adjudicate disputes over election results be given the authority to conduct preliminary examinations as applied in examinations in the Constitutional Court or in the State Administration courts. Some of the advantages of holding a preliminary examination as follows. First; with speedy trial examination, a preliminary examination in which the applicant is authorized to advise, can make it easier to systematize the application along with guidelines for improving the preparation of evidence. Second; with the improvement of applications that are discretized or systematically compiled along with the preparation of evidence, in addition to making it easier for judges and clerks to understand the subject matter, it also facilitates the administration of cases. This convenience is also obtained by the opposing party to prepare rebuttals and evidence of the opponent. Third; in the event that there is or there

is a condition where the applicant is subject to obtaining the object of dispute, for example because it was deliberately obstructed by the organizer or because he did not attend the plenary meeting to determine the results of the vote, so that he did not get a copy of the decision that became the object, or due to other factors beyond the control of the applicant, the judge of the preliminary examination forum may request the object of dispute to the respondent.

Sixth regarding evidence, matters of evidence in the examination of evidence that can be submitted include letters or writings, statements of the parties, witness statements, expert statements, other evidence (information and / or electronic communication), and / afmi instructions In implementation, evidence of disputes over the results of elections in the Constitutional Court throughout the period 2008-2014 there is no limit on the number of witnesses submitted by the parties.

However, during the transitional period in the Constitutional Court, the number of witnesses was limited to five witnesses for disputes over the results of district/city elections and seven witnesses for disputes over provincial election results. In future procedural law reforms, there is no need to limit the number of witnesses, nor will there be a limit on the number of evidence presented to the court.

Seventh regarding judgment, the judgment handed down is in the form of interlocutory and/or final judgment. Injunctive relief shall be imposed in the event that there is sufficient evidence of non-fulfillment of the formal requirements of the application and/or sufficient evidence of a violation resulting in the resumption of the counting of votes, voting or elections. The content of the judgment may be of three kinds: inadmissible, rejected or granted. In the event that the verdict is granted, the content may be: correct determination of votes, recount of votes or re-voting. In its development, there is an interlocutory decision of the Constitutional Court with two models, namely:

First model: SCLA judgments handed down because of evidence of violations, so as to restore the situation or to punish the organizer for the violations, the Constitutional Court orders a recount of votes, re-voting, verification of nomination files or re-election. This model verdict is handed down after going through the evidentiary stage and the examination of the subject matter is declared complete. In the event that the Constitutional Court imposes an interlocutory decision, it can be ascertained that the application in the dispute over the election concerned is proven to have a violation and is granted by the Constitutional Court. This first model was adopted by the Constitutional Court during adjudicating disputes over election results in the period 2008-2014.

Second model; Interim judgment imposed at the beginning of the case examination and after the case examination because it is proven that there is a violation. This model of interlocutory decision has been adopted by the Constitutional Court since exercising the authority to adjudicate transitionally over disputes over the results of simultaneous elections. At the beginning of the examination of cases better known as "PHP Cases", both for the election of regents, mayors and governors, the Constitutional Court can impose interlocutory judgments which are also commonly called dismissal judgments. Dismissal judgments are in principle handed down on cases that do not meet the formal requirements, either because they do not meet the threshold requirements or because they are overdue, wrong objects or not parties (prospective spouses of candidates). The content of the interlocutory judgment is a "refusal" of the examination of the subject matter with an inadmissible application. However, there are interlocutory judgments handed down by ordering a recount or re-vote, even though the examination of the case is only at the preliminary stage, not yet the examination of the subject matter and evidence. In practice, this interlocutory decision model was judged in the series of simultaneous elections in South Halmahera regency in 2015, Tolikara regency in 2017, Intan Jaya regency in 2017 and Puncak Jaya in 2017.

In addition, interlocutory judgment is also handed down at the end of the post-evidentiary examination of the case, which can be ascertained that the application in the election dispute that has been proven to have a violation and is granted by the Constitutional Court. This model of interlocutory judgment in practice occurred in the election disputes OF Teluk Bintuni regency in 2015, Bombana regency in 2017, Gayo Luwes regency in 2017. According to the author, the interlocutory judgment handed down before proof, is limited only to disputes that do not meet the formal requirements of the PHP result dispute application. The argument is that both parties have the opportunity to prove in advance by presenting *tegen bewijsde* about the presence or absence of violations that can be used as a basis for repeated counting of votes or voting.

Recommendations for institutional reform since the first regional elections were held, there have been four periodizations of authority to adjudicate disputes over results: first, in the Supreme Court from 2005 to 2008; second, in MK from 2008 to 2014; third, in the High Court and can be submitted for Cassation to the Supreme Court from 2014 to 2015; and fourth, the transitional period in the 2015 Constitutional Court until a special judicial body was established. The establishment of a special judicial body is not further affirmed in Law No. 8 of 2015 as amended by UU No. 10 Year 2016. Some alternative institutional manifestations of the specialized judicial body in question may refer to three things: practices that have taken place in the past, practices that are currently underway and recommendations in the future.

First, in practice that took place in the past, there were two institutions that were given the authority to resolve disputes over the results of elections in turn, namely the Supreme Court and then transferred to the Constitutional Court. Against the existence of the Constitutional Court, in accordance with the provisions of Article 24C paragraphs (1) and (2) of the 1945 Constitution, the authority of the Constitutional Court is regulated in an *expresses verbis*, enumerative (limitative). All provisions regulated by *expresses verbis*, enumerative (limitative) cannot be interpreted, let alone supplemented, except by regulations of equal degree. In addition, because the authority of the Constitutional Court is regulated *expressis verbis*, enumerative (limitative) in the constitution, these various authorities are positional and constitutional. Judging from the teachings of interpretation and constitutional teachings, the addition of the authority of the Constitutional Court should be channeled in the constitution, not by the law (Manan, 2007). Similarly, based on the Constitutional Court Decision No. 97 / PUU-XI / 2013 expressly stated Article 236C of Law No. 12 of 2008 and Article 29 paragraph (1) letter e of Law No. 48 of 2009 which regulates the development of other powers of the Constitutional Court with the Law contrary to the 1945 Constitution. Thus, the granting of authority to resolve disputes over the results of future elections can no longer be to the Constitutional Court, unless the authority is granted by the (fifth) amendment of the 1945 Constitution.

Secondly, in the current practice, with elections held simultaneously, the law provides for the authority to resolve disputes over election results given to special judicial bodies. Article 157 of the UU No. 10 Year 2016, stipulates as follows. First, cases disputing election results shall be examined and tried by a special judicial body. Second, a special judicial body as referred to in paragraph (1) shall be established prior to the conduct of national simultaneous elections. 2) Cases of disputes over the determination of the final stage of the election results shall be examined and tried by the Constitutional Court until a special judicial body is established.

Since the first phase of simultaneous elections in 2015, the authority to adjudicate disputes over election results transitionally has been exercised by the Constitutional Court. The authority of the Constitutional Court is exercised until a special judicial body is formed, with a time limit before the implementation of national simultaneous elections in 2027. The law does not further regulate matters relating to the establishment of a special judicial body. There are several possibilities for the establishment of a special

judicial body. From its position can be classified into two, namely being in a judicial environment under the Supreme Court or independent outside the Supreme Court. The special judiciary is within the judicial environment under the Supreme Court, the constitutional basis of which is Article 24 paragraph (2) of the 1945 Constitution: Judicial power is exercised by a Supreme Court and subordinate judicial bodies within the general court, religious courts, military courts, administrative courts, and by a Constitutional Court.

In such cases, the institution is referred to as a “special court” which can only be established in one of the judicial environments under the Supreme Court. The judicial environment under the Supreme Court consists of general courts, religious courts, military courts, or TUN courts. Special electoral courts may be subordinate to the general court or the TUN court.

As for the special judicial body outside the Supreme Court, the constitutional basis is Article 24 paragraph (3) of the 1945 Constitution: “Other bodies whose functions are related to judicial power are regulated in law”. These bodies are outside the Supreme Court, but have functions related to judicial power. In fact, there is no normative regulation in Indonesia that prohibits the Constitutional Court from carrying out its role as a positive legislature (Fanisya Berliananda Putri Prameswari, Fifiana Wisnaeni, 2023). Thus, the third; Future recommendations include several possibilities for institutional reform of dispute resolution resulting from the election. First; establish a special judicial institution under the general court or the TUN court. This special court resembles a special court under the general court or a tax court under the state administrative court. Consequently, the decision of the special judicial institution can still be appealed to the High Court and lead to the Supreme Court in the form of Cassation or Judicial Review. However, the case mechanism is made a law enforcement model for criminal violations of elections which only have appeals to High Court. The weakness is that it requires financing for the construction of the system, human resources, both judges and legal and clerks, as well as physical infrastructure. Another weakness is the continuity of handling election cases which only exist periodically, once every five years. If the institution is made permanent, then there will be a gap in cases for four years without holding a democratic party.

Second; Establish a quasi-judicial institution by reconstruct Election Supervisory Board as a body authorized to resolve outcome disputes, which was originally only authorized to examine administrative violations and disputes between participants and participants as well as disputes between participants and organizers; or increase the authority of the Honorary Board of Election Organizers, which was originally only limited to prosecuting violations of the election organizer’s code of ethics.

The strength or positive side of these two possibilities lies in the election dispute resolution system owned by Election Supervisory Board and the system of resolving violations of the code of ethics owned by the Election Organizing Honor Board which has been running so far. Election Supervisory Board and the Honorary Board of Election Organizers each have procedural laws for resolving election disputes and violations of the code of ethics. Both also have commissioners who gain experience in resolving election disputes and resolving violations of the code of ethics. As for the weakness, the decisions of the two institutions are not final and binding, but can still be tested in court under the Supreme Court. Against the Decision of the Honorary Board of Election Organizers, based on Constitutional Court Decision No. 31/PUU-XI/2013, objections can still be submitted to the PTUN. Similarly, with respect to Election Supervisory Board’s decision as a non-judicial judicial resolving body under the Supreme Court, its decision cannot be constructed as final and binding. As well as the decision of the Business Competition Supervisory Commission as a quasi-judicial institution that can be objected to the District Court and can be submitted cassation to the Supreme Court. The next



weakness is, in the event that Election Supervisory Board and the honorary council of election organizers are to be reconstructed into a special judicial body, then their position must be separated from the election organizer as stipulated in law no. 15 of 2011. of course, there is a vacancy in the election supervisory body if Election Supervisory Board is removed from his current position. As for other weaknesses in terms of the honorary board of election organizers being authorized, its centralized position, there is only one honorary board of election organizers in the national capital, of course unable to handle disputes over simultaneous elections in 34 (thirty-four) provinces, 416 (four hundred sixteen) districts and 98 (ninety-eight) cities throughout Indonesia in 2017.

Third; By attaching the authority to resolve “outcome disputes” to existing “election dispute” resolution institutions. Law enforcement mechanisms for election violations and disputes, starting from the pre-registration stage, campaign stage, election stage to disputes over election results regulated in Law No. 1 of 2015 as amended by Law No. 8 of 2015 and Law No. 10 of 2016. There are three institutions authorized to resolve election disputes: Election Supervisory Board, the High Administrative Court and the (transitional) Constitutional Court. This shows that conceptually, both Election Supervisory Board and the High Administrative Court have the authority to adjudicate election disputes. However, the High Administrative Court for State Administrative disputes and Election Supervisory Board for disputes between election participants and disputes between participants and election organizers and also for violations of money politics that are Structured, Systematic, Massive, as stipulated in Article 73 of Law No. 10 of 2016.

In principle, a law enforcement system has been built in the event of a dispute between participants and participants and/or participants with organizers, with a resolution mechanism through objections in Election Supervisory Board. For gubernatorial election disputes, it is delegated to the Provincial Election Supervisory Board and for the election of regents or mayors it is delegated to the Supervisory Committee for District/City Head Elections. If the objection is accepted and granted by Election Supervisory Board, then there is no other choice for the organizer except to be obliged to implement the contents of the Election Supervisory Board Decree. Conversely, in the event that the objection is not accepted or rejected by Election Supervisory Board, participants can file an objection to the High Administrative Court by challenging the disputed Decree of the Organizer as stated in Article 154 paragraph (2) of Law No. 1 of 2015 as amended for the second time by Law No. 10 of 2016: “The filing of a lawsuit over the election administrative dispute to the High Administrative Court is carried out after all administrative efforts at the Provincial General Election Supervisory Board and/or the District/City Supervisory Committee have been carried out”.

Parties who object to the decision of the high administrative court can file a cassation to the supreme court. the decision of the supreme court shall be final and binding. the last (third) outcome dispute resolution model is recommended to be adopted in the election result dispute resolution system with the following arguments: First; from an institutional perspective, it is very efficient because there is no need for the establishment of new institutions, but it is sufficient to attach the function and authority of dispute resolution results to Election Supervisory Board and the Administrative Court institution. Second; in the context of simultaneous elections, Election Supervisory Board organs already exist in each province to districts/cities and have been equipped with experience handling election disputes. In line with that, the existence of judges who will handle disputes over election results within the High Administrative Court and the Supreme Court, has gained experience handling election disputes since the holding of simultaneous elections in the first wave in 2015 and the second wave in 2017.



Third; Created simplification and integration of law enforcement institutionally. Associated with the resolution of disputes over election results, the authority of the adjudicating institution is also no different from the authority of the institution adjudicating stage disputes, namely canceling the General Election Commission Decree, if proven, and ordering a recount, re-voting, or also discriminating the candidate's spouse. In order to create integration in election law enforcement from the stage of determining candidate pairs to determining selected candidate pairs, resolution of candidacy disputes, election disputes and election result disputes to be pursued by the same mechanism and through the same law enforcement agencies.

Some recommendations in terms of resolving disputes over election results use the same mechanisms and enforcement agencies as election disputes. First, the regulation of procedural law in the institution authorized to do so is set forth in the Law. The provision of the law is included as part of the National Codification of the Election Law, so that enforcement is integrated in the electoral justice system and the law enforcement system. Second, in the event that objections to the election results are submitted through Election Supervisory Board, it is strictly regulated the legal position of the litigant, by adopting the legal position of the litigant in the Constitutional Court. The losing spouse of the candidate who raises objections is positioned as the applicant, the organizer as the respondent and the other spouse of the candidate as the related party. Third, to parties who do not accept Election Supervisory Board's decision, given the right to file lawsuit through the High Administrative Court. In litigation at the High Administrative Court, the organizer is the defendant, and the other prospective spouse has legal standing as the Related or Intervening Party. In the practice of electoral disputes in the High Administrative Court so far, the other candidate spouse is not given legal standing as an intervention defendant. For litigants who do not accept the decision of the High Administrative Court can test the decision by filing an objection to the Supreme Court.

## **CONCLUSION**

The ideal concept of dispute resolution of the results of future elections is related to the scope of authority, legal position of the parties, object of dispute, grace period, content of application, examination of cases, evidence and decisions. Of the 3 (three) alternatives to the establishment of a dispute resolution institution: First; establish special courts under the general court or the State Administrative court; Second; establish a quasi-judicial institution by: (1) reconstructing Election Supervisory Board into a body authorized to resolve outcome disputes; or (2) increase the authority of the Honorary Board of Election Organizers which was originally limited to adjudicating violations of the election organizer's code of ethics; and third; attach the authority to resolve outcome disputes to existing election dispute resolution institutions; then the third alternative is the recommended option, because the model is appropriate to integrate law enforcement over election disputes through one door in the Election Supervisory Board institution. Administrative disputes, candidacy disputes, State Administration disputes, administrative violations, criminal violations, Structured, Systematic, Massive violations, and which in this study became the subject of discussion, disputes over election results, all of which were resolved through the Election Supervisory Board Institute.

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The authors declared no potential conflicts of interest.

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