

Constitutional Court Authority and the Implementation of Democratic Legal Countries in Dispute Settlement General Selection Results

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ABSTRACT--*Democracy contains the sacred meaning adopted by most countries in the world. Democracy has become a universal principle that places people's sovereignty in an honorable position on the stage of state power. The formulation of the problem in this paper is (1.) What is the authority of the Constitutional Court in the resolution of disputes over general election results (PHPU) to realize a democratic rule of law (2.) What is the mechanism for resolving disputes over general election results (PHPU) to realize a democratic rule of law? (3.) What is the concept faced by the Constitutional Court regarding the Judge's Decision in the resolution of disputes over the results of general elections (PHPU)? The research method used is a juridical-normative approach, research specifications are descriptive-analytical and data collection. Results in the Constitutional Court are as follows: The authority of the Constitutional Court in realizing the settlement of disputes over the results of a democratic general election (PHPU). The Constitutional Court is single and does not have a judiciary under it and is not subordinate to other institutions. Dispute Resolution of General Election Results (PHPU) there are 3 (three) different General Elections in the submission of General Election Results Disputes (PHPU). The concepts encountered are non-judicial factors. and juridical factors. The existence of a free judicial power is one of the prerequisites for the rule of law in addition to the other conditions. The Constitutional Court has the authority to adjudicate at the first and last level where the decision is final. The Constitutional Court Judges in the case of proceedings do not only refer to the Constitutional Court Regulations but rather consider violations that are Substantive, Systemic and Massive.*

Keywords: *democratic, rule of law*

I. INTRODUCTION

Democracy contains the sacred meaning adopted by most countries in the world. Democracy has become a universal principle that places people's sovereignty in an honorable position on the stage of state power.

People's sovereignty is illustrated parallel to the voice of God (Vox Populi Vox Dei). Democracy makes the organizer of power from, by and for the people. In short, the organizer of power is positioned as a servant of the people who then must carry out the ideals expected by the people.

According to Subdistrict Democracy substantial upholds the principle of popular sovereignty, the principle of freedom (liberty), equality (egalitarianism), the principle of mutual balance, mutual control, and the principle of

justice which all constitute a collection of public virtues. All of that is ideal, meaningful and substantive. This was revealed by Pabotinnggi.

Abdul Mukthie Fadjar agreed, a strong constitution that supports security that is supported by a constitution bound by boundaries and the authority of the legislative, executive and judiciary institutions that are complete and interrelated, provides assistance to each country and human rights (HAM)). Constitutional construction is also built on the basis of legitimacy, the process of making it approved and accepted by all components of society, stream or ideology.

Amendments to the 1945 Constitution carried out in the reform era have raised positive implications for the political climate in Indonesia. In political succession, the people were able to actualize their political rights freely in the 2004 General Election. The political event at that time was a new historical moment in the political life of the Indonesian people. The people can vote three times, namely the DPR and DPRD Elections, the first and second round of the Presidential and Vice Presidential Elections, and the Direct Election of Members of the Regional Representative Council (DPD). However, the Legislative Election at that time was not really straightforward because the provisions of the Election Law stated that the election of a legislative candidate was determined based on figures that were rarely reached. Legislative candidates who do not reach the BPP number will be chosen based on the serial number on the nomination and not on the number of votes obtained (while the sequence number is determined by each participant in the election), obviously reducing the level of continuity of the election by the people. Whereas every Indonesian citizen is guaranteed the right by the constitution to participate politically.

Faced with these problems, the existence of the Constitutional Court is very important to ensure the actualization of the rights of all citizens in the implementation of elections. The Constitutional Court does not merely guard the constitution, but also oversees democracy in the implementation of elections and ensures justice substantive in deciding cases of dispute over election results, both Legislative Elections, Presidential Elections, and Regional Head Elections. The Constitutional Court must be able to become a judiciary that can resolve disputes over election results in a fair, wise and prudent manner so as

not to bring about the resolution of political and social conflicts through street justice.

During the New Order era, disputes over election results (PHPU) were carried out in the General Court. Since the amendments to the 1945 Constitution and the Constitutional Court (MK) existed, the PHPU dispute was transferred to the MK. In the 2004 elections, the Court accepted 479 PHPU lawsuits. After being selected, there could be 247 trials while in the 2019 election received 261 PHPU lawsuits consisting of legislative 250, presidential election 1 and DPD 10 cases and were completed within 30 days.

In accordance with applicable regulations, each PHPU case that enters the Court must be resolved for 30 days after the case is reported. The results of the PHPU trial in the Constitutional Court were that 408 cases (63.45 percent) were rejected, 65 cases (10.11 percent) were granted, 11 cases (1.71 percent) were interrupted, 18 cases (2.80 percent) were decisions regarding article 205 Law (Law) number 10 of 2008. Furthermore 3 cases (0.47 percent) regarding re-voting, 4 cases (0.62 percent) regarding re-counting, 17 cases (2.64 percent) were withdrawn and 117 cases (18.20 percent) were not accepted by the Constitutional Court. From these data it can be seen that the completion of cases in the Constitutional Court continues to grow and show an increase, both in terms of quantity and quality.

The research and writing on the authority of the Constitutional Court is not new and has ever existed, but the analysis made is focused on the authority of the Constitutional Court:

1. The authority to adjudicate at the first and last levels whose decisions are final to examine the Law against the Basic Law, decide upon disputes over the authority of state institutions whose authority is granted by the 1945 Constitution, decide upon the dissolution of Political Parties, and decide on disputes over the results of the General Election

2. Obligated to give a decision on the opinion of the House of Representatives regarding alleged violations by the President and / or Vice President according to the 1945 Constitution.

Thus, this study aims to determine the authority of the Constitutional Court in the resolution of disputes over general elections (PHPU) to realize a democratic rule of law, the mechanism for dispute resolution of general election results (PHPU) to realize a democratic rule of law, and the Constitutional Court's Decision in the settlement of disputes over results general election (PHPU) that violates the 1945 Constitution.

II. RESEARCH METHODS

The data collection techniques used in this study are qualitative juridical commonly used in the field of constitutional law. Said to be qualitative because the

material used is primary legal material, secondary legal material, and tertiary legal material classified as qualitative data, and therefore analyzed qualitatively (legal interpretation and instruction), not using quantitative analysis (statistics).

While the specification of this research is descriptive-analytical, which describes the facts in the form of data and primary legal materials (legislation), and secondary legal materials (doctrine or opinion of leading legal experts), and tertiary (legal dictionaries, encyclopedias, or public opinion expressed in various publications).

III. DISCUSSION

The authority of the Constitutional Court in realizing the disputes over democratic election results (PHPU). The idea of establishing a Constitutional Court is one of the developments in modern legal and state thinking that emerged in the 20th century.

In terms of time, our country is listed as the 78th country to form the Constitutional Court and is the first country in the world in the 21st century to form this institution.

Article 24C of the 1945 Constitution stipulates that the Constitutional Court is a state institution that has an equal position with other state institutions, such as the People's Consultative Assembly (MPR), the House of Representatives (DPR), the House of Representatives Regional (DPD), President, Supreme Court (MA), and the last formed is the Judicial Commission (KY).

The Constitutional Court (MK) is one of the judicial institutions in addition to the Supreme Court which exercises an independent judicial authority to administer justice to uphold law and justice. Article 24C paragraphs (1) and (2) of the 1945 Constitution of the Republic of Indonesia outlining the authority of the Constitutional Court are as follows:

- 1) The Constitutional Court has the authority to adjudicate at the first and last level, the decision of which is final to examine the law against the Basic Law, decide upon disputes over the authority of State institutions whose authority is granted by the Basic Law, decide upon the dissolution of Political Parties, and decide on disputes concerning election results.

- 2) The Constitutional Court must render a decision on the opinion of the House of Representatives regarding alleged violations of the President and / or Vice President according to the Basic Law.

Specifically, the authority of the Constitutional Court is regulated again in Article 10 of Law No. 24 of 2003 concerning the Constitutional Court with the following details:

- a) Test the law against the 1945 Constitution of the Republic of Indonesia;

- b) Decide on the dispute over the authority of a state institution, the authority of which is granted by the 1945 Constitution of the State of the Republic of Indonesia;
- c) Decide upon the dissolution of political parties; and
- d) Deciding upon disputes concerning the results of general elections;
- e) The Constitutional Court is obliged to give a decision on the opinion of the House of Representatives that the President and / or Vice President are alleged to have violated the law in the form of treason against the state, corruption, bribery, other serious crimes, or despicable acts, and / or the Vice President as referred to in the Basic Law Republic of Indonesia in 1945.

In litigating at the Constitutional Court, who actually can ask (legal standing)? It turns out that not everyone can file a petition in the Constitutional Court and become an applicant.

Mechanism for Dispute Resolution of General Election Results (PHPU) to realize a democratic rule of law. Election Results Dispute Resolution (PHPU) there are 3 (three) different General Elections in the submission of General Election Results Dispute (PHPU):

- a) Disputes on the Results of General Elections of Members of the People's Legislative Assembly, the Regional Representative Council, and the Regional People's Representative Council are regulated in the Law and Regulation:
 - i. The 1945 Constitution of the Republic of Indonesia Article 22E paragraph (2), (3) and Article 24C paragraph (1);
 - ii. Law Number 24 of 2003 concerning the Constitutional Court (abbreviated as UUMK 24/2003) Article 10 paragraph (1) in conjunction with Articles 74 to 79;
 - iii. Law Number 4 of 2004 concerning Judicial Power (abbreviated as Law 4/2004);
 - iv. Law Number 11 of 2006 concerning Aceh Government (abbreviated as UUPA 11/2006);
 - v. Law Number 22 Year 2007 Regarding Election Organizer (abbreviated as Law 22/2007);
 - vi. Law Number 10 of 2008 concerning General Elections of Members of the People's Legislative Assembly, the Regional Representative Council, and the Regional People's Representative Council (abbreviated as Law 10/2008);
 - vii. Constitutional Court Regulation Number 14 of 2008 Concerning Guidelines for Procedure in Disputes on the Results of General Elections of Members of the People's Legislative Assembly, Regional Representatives Council, and Regional People's Representative Council (abbreviated PMK14 / 2008).
- b) Disputes on the Results of Election of President and Vice President

PMK RI NUMBER: 05 / PMK / 2003 Concerning Procedure for Filing Objection on the Determination of the Election Results of President and Vice President.

In this Regulation what is meant by:

- 1) President is the President of the Republic of Indonesia.
- 2) Vice President is the Vice President of the Republic of Indonesia.
- 3) MPR is the People's Consultative Assembly of the Republic of Indonesia.
- 4) The Court is the Constitutional Court of the Republic of Indonesia.
- 5) Election is the Election of President and Vice President.
- 6) KPU is the General Election Commission as the organizer of the Presidential and Vice Presidential Elections.
- 7) Candidate Pair is a Candidate Pair of President and Vice President Participants in the Election of President and Vice President as stipulated in KPU Decree No. 36 of 2004 dated May 22, 2004 concerning the Determination of the Candidate Pair of President and Vice President Becoming Participants in the 2004 Presidential and Vice Presidential Election.

Disputes on the Results of General Elections of Regional Heads and Deputy Regional Heads. The authority to decide upon disputes over the results of the post-conflict local election should be under the authority of the Constitutional Court in accordance with the provisions of Article 24C paragraph (1) of the 1945 Constitution.

This was further confirmed in Article 236C of Law Number 12 of 2008 concerning the Second Amendment to Law Number 32 of 2004 concerning Regional Government. The provisions of this article mandate the transfer of authority to decide upon disputes over the results of the General Election of the Supreme Court and the Constitutional Court within the time limit no later than 18 months after the promulgation of Law Number 12 of 2008 concerning Second Amendment to Law Number 32 of 2004 concerning Regional Government. The transfer was made through the signing of the minutes by the Chief Justice of the Supreme Court and the Chair of the Constitutional Court on November 29, 2008. Since then, the official decision on the post-conflict local election results has become part of the authority of the Constitutional Court.

Nature of the General Election Judiciary of Regional Heads and Deputy Regional Heads Judicial disputes over the results of the General Election of Regional Heads are fast and simple, as the first and final court level, the decisions of which are final and binding. (Article 2 (PMK No. 15 / PMK / 2008)

Object of Dispute over Election of Regional Head and Deputy Regional Head The object of the post-conflict local election dispute is the result of vote counting determined by the Respondent which affects:

- a) Determination of Candidate Pairs Who Can Join the Second Round of Election; or
- b) The Election of Candidate Pairs as Regional Heads and Deputy Regional Heads. Submission of Disputes Requests for General Elections of Regional Heads and Deputy Regional Heads.

Concepts faced by the Constitutional Court Concerning Judges' Decisions in resolving disputes over the results of general elections (PHPU). The concept faced by the Constitutional Court regarding the Judge's Decision in the resolution of disputes over the results of the general election (PHPU) mostly occurs in non-judicial factors, namely the Constitutional Justice in giving a decision too short in giving a decision because the case entered is too dense so that the time becomes limited becomes the Judge's constraint in taking Judicial decisions and constraints in which the Judges are not only guided by the Procedural Guidelines referring to the Constitutional Court Regulation No. 14/2008 but also consider Substantive justice or the existence of Substantive, Systemic and Massive violations such as the settlement of cases in Dispute Results of General Elections (PHPU) of Regional Heads and Deputy Regional Heads.

Decision of Judges in Election Results Dispute (PHPU) of the Regional Head and Deputy Regional Head. In General Elections of Regional Heads and Deputy Regional Heads, there are many cases or problems that are not related to vote counting or the results of the Election of Regional Heads and Deputy Regional Heads, but if it involves a sense of justice that results in the process and results of General Elections of Regional Heads and Deputy Regional Heads. So, if the violation is not handled by the authorities, the Constitutional Court will uphold the Luber & Jurdil Election Principle (article 22e paragraph 1), especially if the violation of the Election of Regional Head and Deputy Regional Head is Systematic, Structured, and Massive.

IV. CONCLUSION

- 1) The authority of the Constitutional Court in realizing the disputes over democratic election results (PHPU). The Constitutional Court is single and does not have a judiciary under it and is not subordinate to other institutions. This is different from the Supreme Court which has lower courts and is the peak of the lower courts. With its singularity it can be said that the Constitutional Court is a special forum to exercise its authority.
- 2) Settlement of General Election Results Dispute (PHPU) there are 3 (three) different General Elections in the submission of General Election Results Dispute (PHPU):
 - a) Disputes on the results of general elections for members of the People's Legislative Assembly, the Regional Representative Council, and the

- Regional People's Representative Council are regulated in laws and regulations;
- b) Disputes on the Results of General Elections of President and Vice President;
- c) Disputes on the Results of General Elections of Regional Heads and Deputy Regional Heads.

- 3) Concepts faced are non-judicial factors and judicial factors. The existence of a free judicial power is one of the prerequisites for the rule of law in addition to the other conditions. The Constitutional Court has the authority to adjudicate at the first and last level where the decision is final. Constitutional Court Judges in the case of proceedings do not only refer to the Constitutional Court Regulations but rather consider violations that are Substantive, Systemic and Massive.

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