



Legal Arguments in Transferring Authority to Settle Disputes on Regional Election Results in Indonesia

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Abstract- This research analyzed the factors causing changes in the legal reasons for Regional Election as an election regime in determining the authority to resolve disputes over Regional Election results. This research method is normative legal research or doctrinal legal research with two approaches: the statutory and conceptual approaches. Factors that cause changes in the legal reasons for the regional election regime as the First Election: The regional election regime factor has a very strategic legal position in determining the authority to resolve disputes over regional election results because it is related to Article 22E paragraph 2 of the 1945 Constitution concerning the scope of elections and Article 24C paragraph 1 of the 1945 Constitution concerning the authority of the Constitutional Court. Second: Judicial behavior factors related to the professionalism and integrity of judges. In exercising their authority, there are abuses where judges are considered unprofessional in making decisions, and there are judges who commit judicial corruption. Efforts to change the Regional Election into a general election are carried out by interpreting the constitution by the Constitutional Court, namely the interpretation of Article 22E paragraph 2 of the 1945 Constitution and Article 24C paragraph 1 of the 1945 Constitution. In this case, no regulations give the Constitutional Court authority for this matter. In practice, constitutional interpretation is permitted but should not be carried out on articles whose interpretation leads to political interpretation. This condition should be the authority of parliament to change it by amending the constitution. The Regional Election and General Election regime should be changed through constitutional changes.

Keywords: *Legal reasons, regional elections and general election, disputes over regional election results*

I. INTRODUCTION

The authority to resolve disputes over regional election results has been changed several times through statutory regulations and Constitutional Court decisions. Whenever there is a change in authority, the Pilkada regime is always questioned. While the Supreme Court can resolve disputes over regional election results, regional elections are a regional government regime. After the authority was transferred to the Constitutional Court, the Pilkada became an election regime. Then, when this authority was given to the Special Judicial Body but was handled temporarily by the Constitutional Court, the regional elections returned to the regional government regime. Furthermore, when the Constitutional Court was given permanent authority to resolve disputes over regional election results, the regional elections returned to being an election regime.

Changes to the Pilkada regime carried out through changes in laws and judge's decisions certainly have specific patterns and motives; what's more, the Pilkada regime is always used as a legal reason for both in-laws and MK decisions. Previously, legal facts showed that general and regional head elections were different and regulated in a limited manner with different laws. The constitutional route taken is for the Constitutional Court to interpret the Constitution to equate Pilkada with general elections, especially Article 22E paragraph 2 regarding the scope of elections and Article 24C paragraph 1 of the 1945 Constitution regarding the authority of the Constitutional Court. However, the problem is that the results of the Constitutional Court's interpretation through its decisions change every time its authority changes. Thus, the author needs to conduct a study, especially regarding why the legal reasons for the regional election regime can change in the Constitutional Court's decision

II. METHODS

The methodology employed to compose this study was library research. An examination of the identified and described matter is conducted in light of the current regulations in the field and in conjunction with pertinent legal theories Utilizing a variety of primary and secondary legal sources, this library research is able to provide an answer to a question

III. RESULT AND DISCUSSION

A. *Theory of Constitutional Interpretation*

Interpreting the Constitution means giving the meaning or significance of a term or group of terms in formulating an article or paragraph. Usually, this is done by explaining or explaining the meaning of something unclear. Interpreting the Constitution or law means providing information or explanations so that the intent or meaning can be understood.[1] The interpretation of the Constitution needs to be regulated in the Constitution. Ni'matul Huda questioned whether the Constitutional Court is a constitutional interpreting institution and the extent of the Constitutional Court's authority in interpreting the Constitution. This provision is not explicit so firm and clear signs are needed.[2]

The provisions in the Constitution do not contain the authority of the Constitutional Court to interpret the Constitution. However, it can be interpreted that it is impossible to assess conflicting law norms if it does not use constitutional interpretation; in this case, the Constitutional Court is the legal interpreter of the fundamental law or the Constitution.[3] The authority to review laws gives rise to an authority that exists *mutatis mutandis* (by itself), namely the authority to interpret the Constitution. If the Constitution does not contain explicit provisions regarding the authority to interpret the Constitution for state institutions that are given constitutional review authority, then it must be understood that the authority to interpret the Constitution accompanies the constitutional review authority [3]

Keith E. Whittington reminded that there are two ways to understand the Constitution, namely: first, through constitutional interpretation, aiming to find the meaning of the constitutional text, and second, constitutional construction has an essence that leads to political interpretation and when the interpretation of the constitutional text cannot confirm a guide to activities or deed.[4] This condition means that understanding the Constitution, apart from interpreting it, can also be done by constructing it, especially interpretations that lead to political issues that are only part of Parliament's authority to change. According to C.F. Strong, constitutional changes can be carried out in four ways: 1) by the holder of legislative power, with certain limitations; 2) by referendum; 3) By a number of states, this applies within the union; 4) With constitutional conventions.[5] This condition means that only the legislative institution can change the Constitution.

B. *Changes in the Legal Reasons for the Regional Election and Election Regime and the Factors Causing Them*

It is known that there have been three changes in legal reasons regarding the Pilkada regime in changing the authority to resolve disputes over Pilada results. First: Change from a regional government regime to an election regime when authority is transferred from the Supreme Court to the MK. The changes were made through Law No. 22 of 2007 concerning the Implementation of Elections [6] and Law No. 12 of 2008.[1] The regime change aims to adapt the new authority of the Constitutional Court to the limited authority of the Constitutional Court, which is set out in Article 24C paragraph 1 of the 1945 Constitution, which is only to resolve disputes over election results—at the same time, equating Pilkada with General Elections to legitimize the MK's authority in resolving disputes over Pilkada results based on Article 22E of the 1945 Constitution. By changing the Pilkada regime to an Election regime through this law, the MK's authority to resolve disputes over Pilkada results becomes constitutional.

Second: Change from Pilkada as an Election regime to Pilkada as a Regional Government regime when there was a change in authority from the Constitutional Court to the Special Judicial Agency, which was carried out through Decision Number 97/PUU-XI/2013. The Constitutional Court argued that it must return to the original meaning (original intent) of Article 22E paragraph 2 of the 1945 Constitution, where elections do not include regional elections, so the Constitutional Court rejected the authority in question and left it to the legislators to regulate further. To fill the legal vacuum, the Constitutional Court stated that it still has the authority to adjudicate disputes over regional head general election results for the time being as long as no law regulates this matter.[7] he authority to resolve disputes over regional election results is then handed over to the Special Judicial Body,[8] which will be formed before the simultaneous national regional elections.[8] As long as a particular judicial body has not been formed, disputes over the results of the regional elections will continue to be examined by the Constitutional Court for the time being.[8]

Third, The change from Pilkada as a regional government regime to an Election regime occurred when there was a change in authority from the Special Judicial Body to the Constitutional Court through MK Decision Number 85/PUU-XX/2022. The change aims to emphasize and hand over the authority to resolve disputes over regional election results from temporary to permanent to the Constitutional Court. The MK's reason for making Pilkada an election regime is that there is a new legal situation in legal practice, which shows that Pilkada is an election. Thus, the [9] because Pilkada is an election. [9] So the norms relating to cases of dispute over general election results that the Constitutional Court tries consist of general elections to elect the President and Vice President, elect members of the House of Representatives, elected members of the Regional Representative Council, elect members of the Regional People's Representative Council, both provincial, district and city; as well as electing regional heads of provinces, districts, and cities.[9]

From the three changes in authority, it can be seen that the same pattern of change occurs where every time there is a change, the Constitutional Court always interprets the constitution, namely the interpretation of Article 22E paragraph 2 of the 1945 Constitution and Article 24C paragraph 1 of the 1945 Constitution. The Pilkada regime, both in the law and in the Constitutional Court's decision, namely, The election regime, has a strategic legal position. Every time there is a change in the authority to resolve disputes over regional election results, the first issue that must be resolved is regarding the election regime because the election regime has a very strategic legal position and is influential in the system for resolving disputes over regional election results. The regional election and election regime is the meaning contained in the constitutional articles, namely Article 22E paragraph 2 of the 1945 Constitution concerning Elections and Article 24C paragraph 1 of the 1945 Constitution regarding the authority of the Constitutional Court, which only resolves disputes over regional election results. Based on the two rules that give meaning to regional elections that are not an electoral regime, if we want to change regional elections that are not an electoral regime into an electoral regime, we must at least reinterpret these two rules and then carry out norms.

Second: Judicial behavior factors related to the professionalism and integrity of judges. The case of resolving disputes over the results of the Depok West Java Regional Election is one of the cases at the Supreme Court that changed the Regional Election into an Election regime. The Judicial Commission found that the West Java High Court made a mistake in examining and adjudicating the Depok Regional Election dispute. The Judicial Commission concluded that the Panel of Judges had carried out unprofessional actions and formally and materially exceeded their authority. The Panel Team chaired by Prof Paulus Efendi Lotulung found that the Panel of Judges at the West Java High Court deciding the Depok Regional Election dispute had done unprofessional conduct. Cases of resolving disputes over regional election results at the Supreme Court were the initial cause of changes in the status of the regional election regime. The bribery case of MK Chief Akhil Mochtar, who was found guilty and sentenced to life imprisonment, also caused the MK to issue Decision Number 97/PUU-XI/2013 because the Pilkada was not an election regime and the MK refused to resolve the dispute over the Pilkada results.

The change in authority due to the interpretation of the regional election regime was legitimized in Constitutional Court Decision Number 072-073/PUU-II/2004. In this decision, the Court believes that constitutionally, the legislator can ensure that direct regional elections are an expansion of the meaning of elections as intended in Article 22E of the 1945 Constitution so that, therefore, disputes regarding the results become part of the Constitutional Court's authority with the provisions of Article 24C paragraph (1) The 1945 Constitution. However, legislators can also determine that direct regional elections are not elections in the formal sense mentioned in Article 22E of the 1945 Constitution so that disputes over the results are determined in addition to the authority of the Supreme Court as is possible in Article 24A paragraph (1) of the 1945 Constitution[10].

Based on the explanation above, there is a constitutional issue behind changes in the authority to resolve disputes over regional election results, which always begins with a change in the regional election regime. According to Qurrata Ayuni, the Constitutional Court's authority, which Article 24C of the 1945 Constitution has limitedly determined, can be supplemented by resolving regional election results disputes, which is an extraordinary action, namely an extraordinary legal effort that can provide legality for the Constitutional Court to examine and decide disputes over regional election results. as part of the Regional General Election. Extraordinary legal measures are referred to regarding two things, namely, changing the Pilkada regime as a general election regime in the 1945 Constitution (amendment to the 1945 Constitution) and or reinterpreting the Simultaneous National Pilkada as part of the Election regime through the Constitutional Court Decision.[11]

There have been two Constitutional Court decisions that have reinterpreted the simultaneous national regional elections, namely the Constitutional Court Decision Number 97/PUU-XI/2013, which interpreted the simultaneous national regional elections as not an election regime, and the Constitutional Court Decision Number 85/PUU-XX/2022 which interpreted the Regional Elections to be election regime. While extraordinary efforts to amend the 1945 Constitution have yet to be carried out, the Constitutional Court has instead interpreted the Constitution by changing the original meaning of the Constitution to create justification for whether the Pilkada is an election regime or not an election regime. Slamet Suhartono stated that if the Constitutional Court is still given the authority to resolve disputes over direct regional election results, then changes should first be made to the provisions of Article 22E paragraph (2) and Article 24C paragraph (1) of the 1945 NRI Constitution. Previously, it was equated with election terminology. However, these changes should be carried out through procedures for amending the 1945 NRI Constitution, regulated in Article 37 of the 1945 NRI Constitution (formale amendment).[11] Interpretation of the Constitution can be justified even though it has not been explicitly regulated. However, as stated by Keith E. Whittington, other ways of understanding the Constitution, apart from constitutional interpretation, there are also constitutional constructions that have an essence that leads to political interpretation and when the interpretation of the constitutional text cannot ensure a guide to activities or deeds. [4] The issue of regional elections as an election regime and the addition of the Constitutional Court's authority should be carried out with constitutional construction because these two issues are more directed towards the interpretation of the essence of politics.

What is more, in the Constitutional Court Decision Number 1-2/PUU-XII/2014, it is said that the authority of state institutions, which the 1945 Constitution limitatively determines, cannot be increased or reduced by law or Court decisions because it will take on the role of forming the 1945 Constitution.[12] The Constitutional Court's additional authority to adjudicate disputes over regional election results is considered to be contrary to the principle of limitation authority of state institutions as

determined by the 1945 Constitution. Expanding the meaning of elections into the implementation of regional elections is considered unconstitutional.

The authority to interpret the Constitution as a basis for reviewing laws by constitutional judges is substantial. Hence, it opens up opportunities for arbitrariness by constitutional judges to interpret the legal issues being requested without a sense of justice. [13] According to a legal expert at the Faculty of Law, Airlangga University, M. Hadi, this is related to state institutions without control and, if left unchecked, will continue to become absolute rulers. [14] In interpreting the Constitution, the Constitutional Court is not permitted to change the Constitution to something different or become a new constitution. Changing the Constitution is the legislature's authority, namely the DPR, through formal changes. [14]

Amendments to the 1945 Constitution regarding the scope of elections and the authority of the Constitutional Court to resolve disputes over regional election results are considered essential and urgent because elections must have a solid constitutional basis, which will be a benchmark for the implementation of regulations by law as well as a touchstone for the constitutionality of election issues. Clarity of constitutional norms will provide legal certainty. It will avoid models of meaning and interpretation that lead to particular interests.

IV. CONCLUSION

Considering the importance of the issue of authority to resolve disputes over regional election results, which so far has been very dependent on the electoral regime and regional elections, it is necessary to amend the 1945 Constitution to regulate the scope of elections and increase the authority of the Constitutional Court as a state institution. This condition was immediately carried out considering that the integrity and professionalism of judges had been the cause of changes to the Pilkada regime in transferring the authority to resolve disputes over Pilkada results. So, the Constitutional Court may change its stance to return to regional elections instead of the election regime if there are problems with integrity and professionalism within the Constitutional Court because the Constitution has yet to confirm the regional election regime.

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