



The Concept of Regional General Election Dispute Resolution During the Reformation Era

Nofi Sri Utami¹; Abid Zamzami¹; Bahroin Budiya²

¹ Fakultas Hukum Universitas Islam Malang, Indonesia

² Fakultas Agama Islam Universitas Islam Malang, Indonesia

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Abstract

A form of democracy's manifestation is the organization of the general election, namely a ritual carried out to choose a leader. Indonesia's general election is aimed to achieve people's sovereignty and simultaneously apply the democratic principles and values, to increase the people's political awareness to actively participate in the general election to achieve the Indonesian people's democratic ideals. The first organization of the Head of the Region elections was during the Reformation Era, specifically in 2005, through direct election. The implementation of this direct regional general election surely resulted to some disputes. The direct organization of head of the regions certainly resulted to disputes, including the dispute between the General Election Commission and the general election participants regarding the national general election vote obtainment results which may influence the election participants' seat acquisition. Another dispute regards the head of the region general election results. Formerly, the resolution of this type of dispute was carried out at the constitutional court.

Keywords: *Election; Reformation; Disputes; Regional*

Introduction

The democracy in Indonesia is different from that in the Western world, as the latter is a liberal democracy. In Indonesia, the democracy is built from Pancasila (The Five Principles) as the fundamental norm described at the norms of the constitutional regulation. The democracy embraced by Indonesia is sourced from the Republic of Indonesia's 1945 Constitution. Its Preamble stipulated the state's ideals, namely, "In order to advance general prosperity, to develop the nation's intellectual life, and to contribute to the implementation of a world order based on freedom, lasting peace, and social justice." It is hoped that these ideals may be reached through democracy.

A form of democracy's manifestation is the organization of the general election, namely a ritual carried out to choose a leader. Indonesia's general election is aimed to achieve people's sovereignty and simultaneously apply the democratic principles and values, to increase the people's political awareness to actively participate in the general election to achieve the Indonesian people's democratic ideals. This

means that a democratic organization of a general election emphasizes regular election. The election is also aimed to choose and to select those who are capable of representing the people; to choose those who will bring the state to a better direction. The general election is deemed as the main and the first benchmark of democracy, as it deemed as capable to result to a representation of the people aspirations, which is certainly closely related with the governmental legitimization.

In the context of Indonesia, the democracy at the local-level (or regional-level) is a consequence of political decentralization.¹ One of the political decentralizations process' manifestations is the implementation of the Head of the Region Election to elect Governors/Vice Governors, Regents/Vice Regents, and Mayors/Vice Mayors as a compliance to the mandate of the Law No. 32 of 2004 on the Regional Government.² Each of the Governor/Vice Governor, Regent/Vice Regent, and Mayor/Vice Mayor elections as heads of the provincial, regency, and city governments are carried out democratically, as stipulated in the Republic of Indonesia's 1945 Constitution Article 18 clause (4). The sentence "elected democratically" leads to many interpretations. Some interpret this phrase to mean that the head of the region election is implemented through representation from the legislative house, but there are also those who interprets it as direct election. But, the lawmaker, namely the Republic of Indonesia's People's Representative Assembly and the President agrees to define the phrase "elected democratically" as parable to direct election. According to Ibnu Tri Cahyo, based on the systematic and historic interpretations, "democratic" means direct election.³

A direct election was carried out on June 1st, 2005. At that time, the people truly had the sovereignty to determine the head of the region, and this authority was not represented by the Regional People's Representative Assembly, but it was implemented themselves according to the constitutional mandate.⁴ This is strengthened with Article 56 clause (1) of the Law No. 32 of 2004 on the Regional Government which implements a direct election of the Head and the Vice Head of the Regions. Thus, the Regional General Election Commissions of the provinces, the regencies, and the cities are given the authority as the organize of the direct regional general election, which is responsible to the Regional People's Representative Assembly. The regional general election dispute resolution is based on Article 106 of the Law No. 32 of 2004 on the Regional Government, which stipulates that the Supreme Court gives a verdict on the vote count result disputes at most 14 days since the High Court/District Court/Supreme Court accepts the objection request.

The direct regional general election's organization is the affair of the regional governments; thus, it is part of the regional governments' legal regime. The organization of this direct election is no different from the presidential and legislative general elections. The Law No. 11 of 2015 which substituted the Law No. 22 of 2007 on Organization of the General Election states that direct regional general election is part of the General Election legal regime. The term, "Head of the Region Election" (*Pilkada*) is changed into "Head of the Region General Election" (*Pemilukada*). Thus, there are additional kinds of the general election, namely the legislative general election, presidential general election, as well as the head of the region general election. The Head of the Region Election (*Pilkada*) which was initially categorized as the regional governments' regime has shifted to become the regime of the general election (*Pemilukada*). The consequences are as follows: (1) the organization of the Head of the Region General Election as of other regional elections, are under one general election organizer regime, namely the General Election Commission and also hierarchically the Provincial General Election Commission and the City/Regency General Election Commission. (2) The Law No. 12 of 2008 Article 236C shifts the authority to adjudicate

¹ Fauzi. *Perselisihan pemilukadademokrasi lokal-evaluasi pemilukada di Indonesia*. Konstitusi press/ konpress. Jakarta. Juli 2012. Hlm 31

² Undang Undang Nomor 32 Tahun 2004 tentang Pemerintahan Daerah, Lembaran Negara RI Tahun 2004 Nomor 125, Tambahan Lembaran Negara Republik Indonesia Nomor 4437.

³Ibnu Tri Cahyo. *Menata Managemen Pemilihan Kepala Daerah*". (Malang:Makalah, pada lokakarya MPR, 2012).hlm. 2

⁴ Undang Undang Nomor 32 Tahun 2004 tentang "Pemerintahan Daerah" diundangkan pada tanggal 15 oktober 2004 melalui lembaran Negara Republik Indonesia Tahun 2004 Nomor 125, sebagai pengganti Undang Undang Nomor 22 Tahun 1999 tentang "Pemerintahan Daerah" yang telah dicabut dan dinyatakan tidak berlaku lagi.

regional general election result dispute resolution from the Supreme Court to the Constitutional Court. This is based on the Constitutional Court's decree MK 072-072/PUU-11/2004 issued on March 22nd, 2005. Thus, the regional general election result dispute resolution is the authority of the Constitutional Court. According to the introduction the research problem is how is the regional general election result dispute resolution concept in the Reformation Era?

Methods

This study uses the juridical empiric methods. In this research, the author will analyze justice-based regional general election dispute resolution. This study uses the juridical-sociologic approach. The judicial approach of this study aims to analyze the Law No. 10 of 2016 on the Regional General Election. Then, the sociological approach will see the implementation of that law among the society as part of the participants of the Head of the Region Election.

Discussion

The Regional General Election Result Dispute Resolution Concept in the Reformation Era

One of the 1998 Reformation's agenda that implements the presidential governmental system⁵ is to reform the constitution, by amending the 1998 Constitution from 1999 to 2002 which resulted to the Republic of Indonesia's 1945 Constitution. This amendment gives a strong constitutional guarantee for the organization of the general election in Indonesia, including the democratic general election of Governors, Regents, and Mayors as the heads of the provincial, regency, and city regional governments (Article 18 clause (4) of the Republic of Indonesia's 1945 Constitution). These general elections are carried out directly by the people, instead of indirect election through the Regional People's Representative Assembly.

Based on this constitutional guarantee, after the amendment of the 1945 Constitution, there are three types of general elections: (1) legislative general election, (2) presidential general election, and (3) head of the region general election. The democratic head of the region general election has indirectly been implemented by the Regional People's Representative Assembly based on the Law No. 22 of 1999 (from 2001 to 2004) and the people's direct general election is based on the Law No. 32 of 2004 (from 2005 to present). The Law No. 32 of 2004 introduced the direct election system of heads of the regions. This change of system was encouraged as the previous system, namely the head of the region election by the Regional People's Representative Assembly, was proven to not give a great legitimization to the heads of the regions. In the head of the region election process, the Regional People's Representative Assembly tend to pay more attention to the political parties' opinions than those of the people, as the true sovereignty holder in the head of the region election.⁶

The direct organization of head of the regions certainly resulted to disputes, including the dispute between the General Election Commission and the general election participants regarding the national general election vote obtainment results which may influence the election participants' seat acquisition.⁷ Another dispute regards the head of the region general election results. Formerly, the resolution of this

⁵ Sistem pemerintahan merupakan gabungan dari dua istilah yaitu sistem dan pemerintahan. Menurut Sri Soemantri sistem pemerintahan berkenaan dengan sistem hubungan antara eksekutif dan legislatif. Ciri ciri sistem presidensi yaitu: eksekutif yang dijalankan oleh satu orang, bukan gabungan, eksekutif yang dipilih langsung oleh rakyat, masa jabatan tertentu yang tidak bisa dicabut atau dihapuskan oleh oemungutan suara di parlemen. Lihat Titik Tri wulan Tutik. *Pokok pokok Hukum Tata Negara Indonesia Pasca Amandemen UUD 1945*. Jakarta. 2008 Cerdas Pustaka. Hlm. 198. Lihat juga Mukhtie Fadjar. *Pemilu perselisihan hasil pemilu dan demokrasi*. Setara Press. Malang. Hlm .2.

⁶ Sudono Syueb. *Dinamika hukum pemerintahan daerah; sejak kemerdekaan sampai era reformasi*. Laksbang Mediatama. Yogyakarta. Hlm.129

⁷ Pasal 258 Undang Undang No. 10 Tahun 2008 tentang pemilu anggota DPR, DPD, dan DPRD.

type of dispute was carried out at the Supreme Court (based on Article 106 of the Law No. 32 of 2004 on the Regional Government). This Supreme Court power is restated in Article 94 of the Governmental Decree No. 6 of 2005 on the Election, Endorsement, Appointment, and Dismissal of the Regional Heads. Apart from that, at that time, the Constitutional Court's verdict for the case No. 072-73/PUU-II/2004⁸ has not yet categorized the regional general election as a regime of the general election, thus any result disputes are resolved in the Supreme Court. But, after the issuing of the Law No. 22 of 2007 on the General Election Organizer, Article 1 number 4, it is stipulated that the head and the vice head of the region general elections are general elections to directly elect heads and vice heads of the regions in the Unitary State of the Republic of Indonesia's territory based on Pancasila and the Republic of Indonesia's 1945 Constitution. This law also strictly inserted the head of the region elections in the general election's regime. Thus, disputes of head of the region election results are not resolved at the Supreme Court anymore, as it is now brought to the Constitutional Court.⁹

The Law No. 12 of 2008 on the Second Amendment of the Law No. 32 of 2004 on the Regional Government Article 236C states, "The dispute resolution of heads of the region general election results which was formerly carried out by the Supreme Court is now diverted to the Constitutional Court, at most 18 months since the issuing of this law." Thus, on October 29th, 2008, the Chief Justice of the Supreme Court and the Chairperson of the Constitutional Court has mutually signed the minutes on the authority transfer to adjudicate. Not long since the dispute resolution diversion of the heads of the region general election results, the Constitutional Court state that the resolution of such disputes is no longer part of its authority, strengthened with the issuing of the Constitutional Court Decree No. 97/PUU-XI/2013, which cancels two articles: Article 236 letter C of the Law No. 10 of 2008 on the Regional Government and Article 29 clause (1) letter e of the Law No. 48 of 2009 on the Judicial Authority. These two articles are the bases of the Constitutional Court's authority in adjudicating regional election disputes.

This shift of authority in adjudicating head of the region election result disputes shows that there is no institution which is competent in resolving regional general election result disputes, even though it has been regulated in the Law No. 10 of 2016 on the Head of the Region Election. This is related to the first problem, namely, "Why is it urgent to form a Special Judicial Agency to resolve Head of the Region General Election results?" It is analyzed using the electoral integrity theory¹⁰ and the Pancasila legal state theory, where in the Indonesian legal system, there are directions/regulations, and produces guiding principles of the national law politics.¹¹ Thus, no law can violate the divine values and civilized religion, nor can it violate the humanity and human right values. No law can threaten or potentially destroy the Indonesian state and nation's ideological and territorial integrity, neither can it violate the principles of people sovereignty. Lastly, no law can violate justice values.

There are four indicators of an integrated general election, namely: (1) the general election organization cannot only be based on the law and the legal certainty. But the general election legal substance is not less important. It must be democratic as a contrast to an authoritarian general election. The legal framework in the general election is not only to prevent violence, to guarantee a free and a just competition, and to guarantee a democratic general election; but it is also to guarantee that every stakeholder uses and understands the same predictable procedures; (2) the equal representation principle,

⁸ Putusan Mahkamah Konstitusi Nomor 072-73/PUU-II/2004 tentang pengujian UU.32 tahun 2004 tentang Pemerintah Daerah Terhadap UUD NRI Tahun 1945, selasa 22 Maret 2005

⁹ Ni'matul Huda. *Dinamika Ketatanegaraan Indonesia dalam putusan Mahkamah Konstitusi*. FH UII Press. Yogyakarta. 2011. Hlm. 192

¹⁰ Teori Integritas Pemilu ini lahir dari kelompok integritas pemilu yang beranggotakan 15 orang yang terdiri atas pensiunan Hakim Agung dan mantan pimpinan badan penyelenggara Pemilu dari 13 negara. Kelima belas negara tersebut adalah Afrika Selatan, Australia, Canada, Costa Rica, Ghana, India, Indonesia, Inggris, Kenya, Mauritius, Meksiko, Palestina, Selandia Baru, Sierra Leone, dan Uganda. Prof. Ramlan Surbakti, Wakil Ketua KPU periode 2001-2007 dan Guru Besar Perbandingan Politik Universitas Airlangga Surabaya merupakan salah seorang anggota Kelompok tersebut.

¹¹ Franz Magnis-Suseno. *Etika Politik: Prinsip Prinsip Moral Dasar kenegaraan Modern, cet-5*. PT. Gramedia Pustaka Utama. Jakarta. Hlm 38

the equal vote of every voter, and the equality of regions (people of the regions); (3) law enforcement system; and (4) a just and a punctual resolution of general election disputes and also the system to respond to complaints.¹² Jimly Ashshidiqie states that the formation of a new stately institution is actually a reflection of the need to deconcentrate the power from the governmental bureaucracy or conventional organs, the place of power before the deconcentrating era. This happens as a result of the ever complex and complicated demands of the state authority management development, meanwhile bureaucratic, centralized, and concentrated authority organizations cannot be depended on.¹³

The result dispute resolution is a dispute between the Provincial and/or the City/Regency General Election Commissions and the election participants on the determination of the election vote obtainment results.¹⁴ As mentioned in clause (1), the dispute on the determination of the election vote obtainment results is the dispute on the determination of a significant vote obtainment which may influence the determination of the elected candidate.¹⁵ The dispute resolution of the regional general election results is carried out in the Constitutional Court, whose authority is manifested in the stipulation of Article 24C clause (1) of the Republic of Indonesia's 1945 Constitution. In this stipulation, it is stated that the Constitutional Court has the authority to adjudicate at the first and the last levels. Its verdict is final for:

- a. The testing of the law towards the 1945 Constitution;
- b. Giving a verdict on the state institution authority dispute, whose authority is granted by the constitution;
- c. Giving a verdict on the dissolution of political parties, and
- d. Giving a verdict on general election result disputes.¹⁶

The Constitutional Court's authority in resolving the regional general election result disputes is regulated in some constitutional regulations, namely: The Law No. 24 of 2003 *jo* the Law No. 8 of 2011, the Law No. 12 of 2008, the Law No. 8 of 2015, the Law No. 10 of 2016, the Constitutional Court Decree No. 15 of 2008 on the Procedural Guide in the regional general election result disputes which have been revoked and stated as invalid and the Constitutional Court Decree No. 1 of 2015 on the Procedural Guide on the Cases of Governor, Regent, and Mayor Election Result Disputes.

As a legal state as stipulated in the 1945 Constitution, Indonesia must create justice in establishing courtly institutions. The stipulations related to the courts in Indonesia since the proclamation may be found in the 1945 Constitution, Chapter IX on the Judicial Power, which only contains 2 articles, namely Articles 24 and 25. According to Article 24 clause 1, the judicial power is implemented by the Supreme Court and the judicial bodies according to the law. Then, according to clause (2) the structure and the authorities of that judicial body is regulated in the law. To emphasize and to describe the Judicial Power in the 1945 Constitution Article 24, Article 1 of the Law No. 14 of 1970 on the Judicial Power Basic Provisions have been changed with the Law No. 48 of 2009, which stipulates that, "The judicial power is a power of a free state to organize a court to enforce the law and justice based on Pancasila and the Republic of Indonesia's 1945 Constitution, to establish the Republic of Indonesia as a legal state." This shows that the Judicial Power has the same degree as other state high institutions as stipulated in the constitution.

¹² Ramlan Surbakti. *Draft RUU tentang Kitab Hukum Pemilu: usulan Masyarakat Sipil*. Kemitraan . Jakarta. 2015. Hlm . 153

¹³ Jimly Ashshidiqie. *Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi*. Sekretariat Jenderal dan Kepaniteraan MK RI. Jakarta. 2005. Hlm 23

¹⁴ Pasal 156 Ayat (1) Undang UndangNo. 10 Tahun 2016 tentang perubahan kedua atas Undang UndangNo.1 Tahun 2015 tentang penetapan peraturan pengganti Undang UndangNo.1 Tahun 2014 tentang pemilihan Gubernur, Bupati, dan Walikota menjadi Undang Undang.

¹⁵ Pasal 156 Ayat (2) Undang UndangNo. 10 Tahun 2016 tentang perubahan kedua atas Undang UndangNo.1 Tahun 2015 tentang penetapan peraturan pengganti Undang UndangNo.1 Tahun 2014 tentang pemilihan Gubernur, Bupati, dan Walikota menjadi Undang Undang.

¹⁶ Pasal 24C Ayat (1) Undang Undang Dasar NRI Tahun 1945

Conclusion

The first organization of the Head of the Region elections was during the Reformation Era, specifically in 2005, through direct election. The implementation of this direct regional general election surely resulted to some disputes. Disputes on the regional election results is carried out at the Supreme Court, as a mandate of Article 106 of the Law No. 32 of 2004, which states that regional head election disputes are handled by the Supreme Court. Stipulations of this law are as follows:

1. Objection on the regional head or vice head election result determination may only be applied by the candidate pair to the Supreme Court at most three days after the determination of the regional head or vice head election results.
2. The objection described in clause (1) only regards the vote count which influences the election of candidate pairs.
3. The objection application to the Supreme Court as mentioned in clause (1) is delivered to the high court for the regional head or vice head election of the city/regency areas.
4. The Supreme Court gives a verdict on the vote count mentioned in clauses (1) and (2) at most 14 days since the district court or the high court/the Supreme Court have received the objection proposal.
5. The Supreme Court Verdict as stated in clause (4) is final and binding.
6. The Supreme Court may delegate the implementation of its authority as stated in clause (1) to the high court to give a verdict on the dispute of the city/regency region head and vice head election vote count result.
7. The High Court's verdict as stated in clause (6) is final.

The Supreme Court issued the Supreme Court Decree No. 2 of 2005 on the procedures for filing objections against the regional head and vice head election result decision from the Regional General Election Commissions of the Province and the City/Regency to ease this process on May 9th, 2005.

As the highest judicial authority, the Supreme Court has the authority to delegate the case of regional general election dispute to the court under it, namely the High Court and the District Court, whose verdicts are final. Even though the verdicts from these two courts are final, it is still possible to carry out the legal effort of judicial review. If there are disputes in the regional head elections, they will be processed in the district court. If the disputing parties are not satisfied with the verdict of the district court, they may file for an appeal to the high court. Then, that case may be re-filed to the cassation level, climaxed at the Supreme Court. Post-amendment of the 1945 Constitution, the Supreme Court is no longer a state high institution, but it is a state institution. It is not the only judicial institution in Indonesia, as there is another state institution, namely the Constitutional Court.

Regarding the issuing of the Law No. 12 of 2008 on the second amendment of the Law No. 32 of 2004 on the Regional Government, Article 236C stipulates that the Supreme Court's authority to handle the regional head and vice head election vote count result dispute is diverted to the Constitutional Court, at most 18 months since the issuing of this law. Then, the Supreme Court through its Deputy Chief Justice at the Judicial Sector of the Supreme Court letter No.34/WKMA-NY/X/2008 on October 9th, 2008 have diverted the authority to examine regional head election disputes to the Constitutional Court since November 1st, 2008.

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