Philosophy of Expanding Substantive Justice in Disputes on The Results of The Election of Governors, Regents and Mayors in The Constitutional Court

Anthoni Hatane[1], SEM Nirahua[2], J. Tjiptabudy[3], H. Salmon[4]

[1]Graduate Student PhD, Study Program: Science of Law. Pattimura University, Ambon, Indonesia
[2,3,4]Faculty Of Law. Pattimura University, Ambon, Indonesia

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Abstract: Research aims 1). Examining, analyzing and finding a philosophical extension of substantive justice in disputes over the results of the election of Governors, Regents and Mayors at the Constitutional Court. This research uses normative legal research methods. This research was carried out by examining existing concepts, doctrines, theories and statutory provisions using a philosophical approach, a statutory approach and aconceptual approach. The research results show that: 1). The philosophy of extending substantive justice in disputes over the results of the election of Governors, Regents and Mayors in the Constitutional Court is a form of legal application that must be manifested in various Constitutional Court Decisions. This is because so far the Constitutional Court's decisions have not reflected the values of justice, especially substantive justice. Therefore, the Constitutional Court's decision does not fulfill the sense of justice, usefulness and legal certainty in achieving legal objectives. The Constitutional Court as a constitutional court must be enforced by prioritizing substantive justice in order to be able to prove that there are no structured, systematic and massive violations.

Keywords : Substantive Justice, Dispute, Constitutional Court

1. INTRODUCTION

Article 22E paragraph (1) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia) confirms that:
"General elections are carried out directly, generally, freely, secretly, honestly and fairly every five years."

In accordance with the provisions mentioned above, the principle of justice as a principle formulated in constitutional norms in the implementation of General Elections (Pemilu) must animate the electoral system which consists of electoral law (electoral law) and the process of holding elections (electoral process). Apart from that, the formulation of the principles of justice in constitutional norms in the implementation of elections shows that the realization of a democratic rule of law as mandated in Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, namely that "Sovereignty is in the hands of the people and is implemented according to the Constitution"

The provisions of Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia as mentioned above, contain the meaning that people's sovereignty is implemented according to the Constitution. Therefore, elections are a means of implementing people's sovereignty which is carried out directly, publicly, freely, confidentially, honestly and fairly within the Unitary State of the Republic of Indonesia as intended in the provisions of Article 22E paragraph (1) of the 1945 Constitution of the Republic of Indonesia. In that spirit, the principle of elections fair ones actually want to oversee the holding of elections as a procedure for the constitutional transfer of state power. In that context, without fair election laws, it is difficult to produce reliable elections, on the other hand, without a fair process, the results will be unacceptable. Therefore, justice is a principle as well as a mandate that must be realized in the holding of every general election.

Departing from the normative formulation as regulated in the constitution as explained above, conceptually what is actually meant by electoral justice and how it should be interpreted in formulating norms and processes for holding elections in a philosophical approach to date, electoral justice has only been understood to the extent that the electoral process runs according to the rules and regulations. availability of mechanisms for resolving election disputes and violations within the specified time. Regarding this, IDEA notesthat electoral justice is:[1]

[1]Ayman Ayoub & Andrew Ellis (Ed.), Electoral Justice: The International IDEA Handbook, International IDEA, 2006, p. 1

a. to ensure that each action, procedure and decision related to the electoral process is in line with the law (the constitution, statute law, international instruments and treaties, and all other provisions).

b. for protecting or restoring the enjoyment of electoral rights, giving people who believe their electoral rights have been violated the ability to make a complaint, get a hearing and receive an adjudication.

In this framework, electoral justice includes means and mechanisms and contains three elements, namely prevention of electoral disputes (prevention of electoral disputes), resolution of electoral disputes (resolution of electoral disputes), and alternative resolution of election disputes outside the existing mechanisms (alternative of electoral disputes). Resolution of election disputes can be divided into two things, namely correction of fraud through electoral challenges and punishment for those who commit fraud both administratively and criminally. Thus, the measure of whether an election is fair or not according to the standards formulated by IDEA depends on whether or not there is availability of election legal instruments along with mechanisms for resolving electionlegal problems that occur.

Even though the definition of electoral justice put forward by IDEA departs from the paradigm of guaranteeing citizens' voting rights.[2]However, the limitations found are clearly very procedural-formalistic. Such electoral justice is just another meaning of the truth of the election itself, where the implementation of the election has been carried out correctly as long as it is carried out in accordance with the provisions of the laws and regulations that regulate it. With such a legal concept and construction, the concept of electoral justice can only be interpreted in the legal sense as formulated in the Constitution and its implementing regulations. Therefore, the concept of justice is assessed from the aspect of compatibility of actions with positive law, especially compatibility with the law.

Elections are considered fair if they are carried out in accordance with existing rules. In that context, the meaning of the principle of justice in elections is just another word for a normative justification formulated in statutory provisions, where in the legislative legal theory approach an application of the law will be said to be unfair if a general norm is applied to one case but is not implemented. in other similar cases that arise.[3]

As a basic law, the constitution must contain basic principles that are important for the implementation of government activities by providing protection for citizens and regulating citizens' obligations both in the context of relations between citizens and relations between citizens and state organs. Legal and political experts provide various definitions, in his formulation of thought, Bryce, stated:[4]

> *"The instrument in which a constitution is embodied proceeds from a source different from that whencespring other laws, is regulated in a different way, and exerts a sovereign force. It is enacted not by the ordinary legislative authority by some higher and specially empowered body. When any of its provisions conflict with the provisions of the ordinary law, it prevails and ordinary law must give away."*

In C. F Strong's view, the constitution itself is more operational in nature, namely regulating the composition and relationship between executive power, legislative power and judicial power. The regulation of the composition and relations of the three powers is related to the issue of power considerations (check and balance). These three powers are the main pillars of state power, therefore their arrangements need to be clarified in the constitution.[5]The balance of power (check and balance) between judicial power, executive power and legislative power will provide guarantees for the implementation of democratic political and constitutional life processes. The principle of separation of powers was developed by two great thinkers from England and France, John Locke and Montesquieu.[6]

The principle of popular sovereignty is the background for the creation of state and government institutional structures and mechanisms that guarantee the upholding of the legal system and the functioning of the democratic system. From an institutional perspective, the principle of popular sovereignty is usually organized through a system of separation of power or distribution of power. John Locke did not formulate a theory of division or separation of powers, but only limited it to systematizing the functions of sovereign state organs, as he said:[7]

"...no thesis can be inferred from Locke's work to the effect that the power of state had to be placed in different hands to preserve liberty or to guarantee individual rights while allowing for the part to coincide. He did however admit that if the power were placed in different hands, a balance could be achieved"

[2]Veri Junaidi, et al., Evaluation of 2014 Election Law Enforcement, Needem, Jakarta, 2015, p. 4

[3]Hans Kelsen, Introduction to The Problems of Legal Theory, translated by Bonnie Litschewski Paulson and Stanley L. Paulson, Clarendon Press, Oxford, 1992, p. 16

[4]Jimly Asshidiqie, Indonesian Constitution and Constitutionalism, Constitutional Court of the Republic of Indonesia and Center for Constitutional Law Studies, Faculty of Law, University of Indonesia, Jakarta, 2004, p. 19 For further reading J. Bryce, Studies in History and Jurisprudence, vol 1, Clarendon Press, Oxford, 1901

[5]CF Strong, Modern Political Constitutions, an Introduction to the Comparative Study of Their History and Existing Form, revised edition, Sidgwickand Jackson Limited, London, 1952, p. 19

[6]Miriam Budiardjo, Basics of Political Science, Gramedia, Jakarta, 2002, p.150

[7]Ni'matu Huda, State Science, Rajawali Press, First Edition, Cet-7, Jakarta, 2015, p. 72-73

(There is no thesis that can be concluded from Locke's work which holds that state power must be placedin different hands in order to preserve liberty and guarantee individual rights while allowing parties to agree. However he assumes that power placed in the hands of different people, can produce a balance)

In the Indonesian context, the definition of a constitution as above is also a reflection of all constitutions that have existed and are still in force today. The understanding of the constitution as basic law and the highest source of law in a country is also adhered to in the 1945 NRI Constitution. The spirit and substance of the 1945 NRI Constitution must be an umbrella for legal products at lower levels. This means that if there is a legal product that is in conflict with the 1945 Constitution of the Republic of Indonesia, then the legal product must be canceled through a judicial review through the Supreme Court (hereinafter referred to as the Supreme Court) for legal products under the law or through the Constitutional Court (hereinafter referred to as the MK) for review. Constitution.[8]The norm of obligation to comply with the legal order is a norm that applies universally.

The concept of Constitutional Law, the concept of "Rule of Law" and the concept of "Democracy" are often juxtaposed with the concept of "Democratic Rule of Law" or Democratiche Rechstaats". In a simple sense, in a rule of law, no citizen is above the law and therefore all citizens must obey the law. [9]In line with this thought, the spirit of the State of Law is emphasized through the provisions in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, namely "The State of Indonesia is a democratic State of Law.".

The position of the Constitutional Court (MK) is one of the independent judicial power institutions that enforces law (constitution) and justice. The Constitutional Court functions as the guardian of the constitution so that the constitution is implemented responsibly in accordance with the will of the people and the ideals of democracy. The constitutional basis of the Constitutional Court then became even more concrete when Law Number 24 of 2003 concerning the Constitutional Court was passed. Later developments showed even stronger dynamics in regulating the existence of the Constitutional Court through Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court and underwent changes in 2020 with Law Number 7 of 2020 concerning the Third Amendment to the Law. -Law Number 24 of 2003 concerning the Constitutional Court.

The provisions of Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia confirm that the Constitutional Court's authority is:

1. The Constitutional Court has the authority to adjudicate at the first and final level whose decisions are final for:
    a. Testing laws against the Constitution
    b. Decide disputes over the authority of State institutions whose authority is granted by theConstitution,
    c. Deciding on the dissolution of political parties, and
    d. Resolving disputes about election results.

In the provisions as stated in Article 24C paragraph (1) letter d of the 1945 Constitution of the Republic of Indonesia relating to disputes regarding the results of disputes over election results, the Constitutional Court's authority has been expanded in context in terms of deciding disputes over regional election results. This is based on Constitutional Court Decision Number 85/PUU-XX/2022, which states that the phrase "until the establishment of a special judicial body" in Article 157 paragraph (3) of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2016 2015 concerning the Determination of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors into Law (hereinafter referred to as the Regional head elections Law) in conflict with the 1945 Constitution.The provisions of Article 157 paragraph (1) and paragraph (2) of the Regional Election Law which regulate the existence and plans for the formation of special electoral judicial bodies are a conditio sine qua non for the existence of Article 157 paragraph (3) of the Regional Election Law. Article 157 paragraph (3) of the Regional Election Law regulates institutions that are temporarily given authority as/become electoral judicial bodies during the transition period or during the period when the special electoral judicial body has not yet been formed.

The unconstitutionality of Article 157 paragraph (1) and paragraph (2) of the Regional Election Law carries the implication of the loss of the temporary provisions regulated in Article 157 paragraph (3) of the Regional Election, none other than because the temporary cause has been lost. Thus, the Constitutional Court's authority to examine and adjudicate disputes over election results will no longer be limited to "until a special judicial body is established", but will be permanent, because such a special judicial body will no longer be formed.Forclarifying the meaning of Article 157 paragraph (3) of the Regional Election Law which no longer contains a temporary nature, then according to the Court the phrase 'until the formation of a special judicial body' must be crossed out or declared to be in conflict with the 1945 Constitution. With the removal of this

[8]Hans Kelsen, General Theory of Law and State, Translated by Anders Wedberg, updated edition, Russell and Russell, New York, 1973, p. 123-124

[9]Andi Muhammad Asrun, Judicial Crisis, Supreme Court under Soeharto, Foreword by Jimly Asshidiqie, ELSAM, Jakarta, 2004, p. 42

phrase Article 157 paragraph (3) of Law 10 Number In 2016, in full, you must read 'The case regarding the dispute over determining the vote tally in the final stages of the election results was examined and tried by the Constitutional Court.

The Court also considers that it has acted as a judicial body that adjudicates disputes over the results of the regional head and deputy regional head elections since the authority was transferred from the Supreme Court to the Constitutional Court in 2008 until now. This authority was exercised amidst the legal facts of Constitutional Court Decision Number 97/PUU-XI/2013 which argued that disputes over the results of regional head and deputy regional head elections "should not" be handled by the MK. Apart from the conceptual/theoretical objections raised by the Court through Constitutional Court Decision No. 97/PUU-XI/2013. Such legal facts show that in reality the Court continues to carry out its role as a special electoral judicial body in a temporary manner. This role from an Indonesian legal perspective, since the switch from the Supreme Court to the Constitutional Court in 2008 until now has never been implemented by certain judicial institutions or bodies other than the Supreme Court and the Constitutional Court.

The regional elections have been held so far and have given rise to dissatisfaction which has resulted in complaints of objections to the regional election results to the court for various reasons. The authority to examine and decide on regional election dispute cases was initially the domain of the Supreme Court. As explained in Law no. 32 of 2004 concerning Regional Government (hereinafter referred to as the Regional Government Law), Article 106 paragraph 1 before the amendment, which reads:

"Objections to the determination of the results of the regional head and deputy regional head elections can only be submitted by candidate pairs to the Supreme Court no later than 3 (three) days after the determination of the results of the regional head and deputy regional head elections."

Apart from that, filing disputes over regional election results is further explained in Article 3 of the Regional Government Law which states that:

"Submission of objections to the Supreme Court as intended in paragraph (1) is submitted to the high court for the election of regional heads and deputy regional heads of provinces and to the district court for the election of regional heads and deputy regional heads of districts/cities."

However, in its development, the authority to resolve regional election disputes has shifted to the Constitutional Court since the publication of Law Number 12 of 2008 concerning the Second Amendment to Law Number 32 of 2004 concerning Regional Government. This is explained in Article 236C which reads:

"The Supreme Court's handling of disputes over the vote count results for regional head and deputy regional head elections by the Supreme Court shall be transferred to the Constitutional Court no later than 18 days (eighteen) months after this Law is promulgated."

The basic reasons that became the reference for why the authority for the regional election dispute was finally transferred from the Supreme Court to the Constitutional Court were:

a. Seeing that the Regional Election is basically an election regime, disputes over election results must be resolved at the Constitutional Court in accordance with the 1945 Constitution.
b. This is contained in the 1945 Constitution, Article 24 C Paragraph 1, which states that the Constitutional Court is an institution that has the authority to adjudicate at the first and last level whose decisions are final.
c. Apart from constitutional reasons, this transfer of authority was based on the prolonged conflict in the regional election dispute. The Constitutional Court is considered a more authoritative institution and better able to handle regional election disputes.
d. The workload of the Supreme Court is also a logical reason, so that this transfer of authority can reduce the workload of the Supreme Court. However, whatever the reason, the authority in regional election disputes has been entrusted to the Constitutional Court to be able to resolve them.

Apart from acting as a guardian of the constitution, the Constitutional Court is also a guardian of democracy. The authority to resolve election disputes mandated by the constitution reflects that the MK is the guardian of democracy. In carrying out its duties to resolve election disputes, the mechanism used is based on Constitutional Court Regulation Number 15 of 2008 concerning Procedure Guidelines in Disputes on Regional Head General Election Results. In exercising its authority to resolve election disputes, the Constitutional Court applies a speedy trial mechanism, as stated in Constitutional Court Regulation Number 15 of 2008 which states that:

"The adjudication of disputes over the results of the Regional Election is fast and simple, as a court of first and final level whose decision is final and binding."

The speedy trial mechanism, which is also mandated in this law, requires the Constitutional Court to resolve disputes within 14 working days. The decision to resolve this dispute is made through a trial mechanism or process. In this very short trial process, constitutional judges are required to assess all the evidence presented in the trial. Examining this evidence is very crucial, because it is from this evidence that the Constitutional

Court can make a decision. The Constitutional Court also divided three types of violations in the implementation of the Regional Election, namely:

1. Violation of the requirements for participation in the Regional Election which are principled and can be measured (this can be in the form of the requirement of never being sentenced to a criminal sentence and the legality of support for independent candidates).
2. Violations in the process of implementing the Regional Head Election that do not have a direct effect on the vote results include, for example, making billboards, using symbols on simulated paper and props that are not in accordance with Regional Head Election legislation.
3. Regional election violations such as the trends in regional election dispute cases described above (money politics, involvement of civil servants, criminal allegations and so on). This violation can invalidate the regional election vote results as long as the violation has a significant influence on the regional election vote acquisition and occurs in a systematic, structured and massive manner (STM).

The dimensions of all forms of violations have been explained and determined in various Constitutional Court decisions. The development of the Constitutional Court's authority in deciding election dispute cases has experienced very rapid development. This decision is a major contribution to the process of developing democracy in Indonesia. The corrections made by the Constitutional Court are not limited to the results of the regional elections carried out at the provincial or district/city level. In other words, this shows that the Constitutional Court is trying to ensure that the votes determined by the KPUD are in accordance with the votes desired by the people. This people's mandate must be fully carried out by the Constitutional Court without any manipulation, intimidation or even persuasion from a number of individuals who could harm the democratic process.

If we look at the 2004 period, dispute decisions previously held by the Supreme Court mostly used a procedural justice approach. However, in 2009, if you look closely, every decision issued by the Constitutional Court was more basic and used a substantive justice approach which focused on electoral process issues. The Constitutional Court firmly confirmed that it has authority over judicial process issues to ensure that the elections that have been held so far are not just about quantity but also about quality by stating that there have been regional election violations that have affected the vote tally.

This step by the Constitutional Court shows that there is a legal breakthrough that has been made to advance democracy and strive to break away from the practice of systematic, structured and massive violations (STM). The Constitutional Court does not just recount the vote tally, it also does something more crucial, namely seeking justice by exploring and adjudicating the results of its disputes. In this way, every decision issued by the Constitutional Court varies from a partial or total recount of votes to the disqualification of one of the candidate pairs.

As a rule of law, the state constitution is enforced at the highest position in the hierarchy of laws and regulations. In the context of hierarchy, the legal system is described as a pyramid with the constitution as the highest law, and the regulations below it are an elaboration of the constitution itself. The hierarchy of legal systems is depicted as an inverted pyramid, with the constitution as the highest law at the base of the pyramid.

Legal products that are under the constitution must not conflict with the constitution. In an effort to ensure that legal products are under the constitution, there are rules that function to ensure that the legal products created have coherence, consistency and correspondence and do not conflict with the constitution both from a formal and material perspective. The entire legal product must be a harmonious unit (because it is synchronous or consistent vertically and horizontally) both from the material aspect which includes legal principles (because it fulfills the principles of forming good legislative regulations, and the principles of content material), as well as in accordance with the legal principles established is the background/reason/ratio legis from the formation of the law, the meaning (both express and implied meaning), to the use of terminology as well as from the formal aspect where the method of preparation must be in accordance with applicable provisions.

As a system, law has many ties to various aspects and even other systems in society. Often the laws and regulations that are formed fail to provide legal certainty for society, which ultimately fails to create legal order in society. According to Lon L. Fuller, there are eight requirements that must be met so that the law that is formed can work well so that certainty and order in society can be realized.[10]

The eight requirements are:[11]

a) *Generality*(generality of law);
b) *Promulgation*(the law must be published);
c) *Prospectivity*(the law does not apply retroactively);
d) *Clarity*(the formulation of the law must be clear);
e) *Consistency or avoiding contradiction*(consistency in legal conception);

[10]Lon L. Fuller, The Morality of Law, revised edition, Yale University Press, London, 1969, p. 39
[11]Ibid, p. 40

f) *Possibility of obedience*(laws made must be enforceable);
g) *Constant through time or avoidance of frequent changes*(laws should not be changed too often);
h) *Concurrence between official action and declared rules*(conformity between law andimplementation);

If one or more of these eight requirements are not fulfilled in the process of making laws/legislation, it can have an impact on the effectiveness of its implementation, which ultimately gives rise to legal uncertainty. Certainty is a matter (state) that is certain. Laws must essentially be certain and fair. Legal certainty is a questionthat can only be answered normatively, not sociologically. Normative legal certainty is when a regulation is created and promulgated with certainty because it regulates it in a certain and logical manner.

Legal certainty itself is an inseparable characteristic of law, especially written legal norms. Laws without the value of certainty will lose meaning because they can no longer be used as guidelines for behavior for everyone. Certainty itself is said to be one of the goals of law.

In forming legal rules, the main principle is established to create clarity regarding legal regulations, this principle is legal certainty. The idea of the principle of legal certainty was originally introduced by Gustav Radbruch in his book entitled einführung in die rechtswissenschaften, Radbruch wrote that in law there are 3 (three) basic values, namely:[12]

1. Justice (Gerechtigkeit);
2. Expediency (Zweckmassigkeit); And
3. Legal Certainty (Rechtssicherheit).

Gustav Radbruch put forward 4 (four) basic things related to the meaning of legal certainty, namely:[13]

First, that law is positive, meaning that positive law is legislation. Second, that law is based on facts, meaning it is based on reality. Third, that facts must be formulated in a clear way so as to avoid errors in meaning, as well as being easy to implement. Fourth, positive law must not be easilychanged.

Gustav Radbruch's opinion is based on his view that legal certainty is certainty about the law itself. Legal certainty is a product of law or more specifically legislation. Based on this opinion, according to Gustav Radbruch, positive law which regulates human interests in society must always be obeyed even though positive law is unfair. The opinion regarding legal certainty was also expressed by Jan M. Otto as quoted by Sidharta, namely that legal certainty in certain situations requires the following:

1. Legal rules are available that are clear, consistent and easy to obtain (*accessible), which isissued by state power;*
2. That the ruling agencies (government) apply these legal rules consistently and also submit andobey them;
3. That the majority of citizens agree in principle with the content and therefore adapt theirbehavior to those rules;
4. That independent and impartial judges (judiciary) apply these legal rules consistently when theyresolve legal disputes; And
5. That judicial decisions are concretely implemented.

Referring to the aspect of legal certainty as mentioned above in relation to the conception of electoral justice, namely the aspect of resolving electoral disputes (resolution of electoral disputes). The results dispute stage is the stage where after the determination of the results of the recapitulation of regional head election votes for regional head election participants who feel dissatisfied with the determination can submit a petition for a dispute over the election results to the Constitutional Court, where the Governor, Regent and Mayor candidate pairs can submit a dispute over the results. to MK.

In previous elections, all pairs of candidates who did not accept the results of the determination of the elected candidate could submit a dispute to the Constitutional Court. However, with the provisions of the Regional Head Election Law (Governor, Regent and Mayor), not all pairs of candidates could submit a dispute over the results to the Constitutional Court, where Constitutionally, to submit a request for a dispute over the results of the election of Governors, Regents and Mayors to the Constitutional Court, it is mandatory to obtain constitutional guarantees in the 1945 Constitution of the Republic of Indonesia as a result of the third amendment, especially in Article 24C paragraph (1) which states that the Constitutional Court has the authority to adjudicate at the first and final level. whose decisions are final to review laws against the Constitution, decide

[12]Mirza Satria Buana, The Attractive Relationship Between the Principle of Legal Certainty and the Principle of Justice (Substantial Justice) in the Decisions of the Constitutional Court, Yogyakarta: Master's Thesis at the Islamic University of Indonesia, 2010, p. 34
[13]Sudikno Mertokusumo, Chapters on Legal Discovery, Citra Aditya Bakti, Bandung, 1993, p. 2

disputes over the authority of state institutions whose authority is granted by the Constitution, decide on the dissolution of political parties, and decide disputes regarding the results of general elections.

It is hoped that the Constitutional Court's authority to decide disputes over regional election results will function as a control mechanism for the performance of the General Election Commission as the election organizer, and also to guarantee the principle of fairness in elections. Therefore, the Constitutional Court in organizing elections has a very strategic position because it has the authority to adjudicate at the first and last level and its final decision will have a big influence on the final results of the post-conflict regional elections, where the Constitutional Court initially according to the 1945 Constitution of the Republic of Indonesia had the authority to carry out reviewing laws against the Constitution, providing legal assessments or evaluating DPR accusations that the president has committed certain violations and can be dismissed from office, handling authority disputes between State institutions whose authority is granted by the Constitution, deciding on the dissolution of political parties, and handle disputes over general election results, but since the issuance of Law Number 12 of 2008 concerning the second amendment to Law Number 32 of 2004 concerning Regional Government, the settlement mechanism for cases involving disputes over election results has been transferred to the Constitutional Court.[14]

The resolution of disputes over the results of the Regional Election (Election of Governors, Regents and Mayors) has become a polemic due to the provision of threshold requirements for the difference in vote acquisition to be able to submit a petition to dispute the results of the elections for Governors, Regents and Mayors to the Constitutional Court. Regulations regarding the vote threshold provisions can be seen in Article 158 of Law Number 8 of 2015 as amended by Law Number 10 of 2016 concerning the second amendment to Law Number 1 of 2015 concerning Determination of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors into Law (hereinafter referred to as the Regional head elections Law), it is stated that:

a. Provinces with a population of up to 2,000,000 (two million) people, submit a vote dispute if there is a difference of a maximum of 2% (two percent) of the total valid votes resulting from the final stage of vote counting determined by the Provincial KPU;
b. Provinces with a population of more than 2,000,000 (two million) up to 6,000,000 (six million), filing a vote dispute is made if there is a difference of a maximum of 1.5% (one point five percent) of the total valid votes counted. final stage votes determined by the Provincial KPU;
c. For provinces with a population of more than 6,000,000 (six million) up to 12,000,000 (twelve million) people, a dispute over vote acquisition is submitted if there is a difference of a maximum of 1% (one percent) of the total valid votes resulting from the vote counting stage. the end determined by the Provincial KPU; And
d. Provinces with a population of more than 12,000,000 (twelve million) people, submit a vote dispute if there is a difference of at most 0.5% (zero point five percent) of the total valid votes resulting from the final stage of vote counting determined by the KPU Province;

Participants in the elections for Regent and Deputy Regent as well as Mayor and Deputy Mayor can submita request to cancel the determination of the results of the vote tally with the following provisions:

a. Regency/City with a population of up to 250,000 (two hundred and fifty thousand) people, submit a vote dispute if there is a difference of a maximum of 2% (two percent) of the total valid votes resulting from the final stage of vote counting determined by the Regency/City KPU City
b. Regency/City with a population of up to 250,000 (two hundred and fifty thousand) people up to 500,000 (five hundred thousand) people, filing a dispute over vote acquisition is carried out if there is a difference of at most 1.5% (one point five percent) of the total valid votes resulting from the final stage of vote counting determined by the Regency/City KPU;
c. Regency/City with a population of up to 500,000 (five hundred thousand) people up to 1,000,000 (one million) people, a dispute over vote acquisition is submitted if there is a difference of at most 1% (one percent) from the determination of the vote tally results by Regency/City KPU; And
d. Regency/City with a population of more than 1,000,000 (one million) people, submit a vote dispute if there is a difference of at most 0.5% (zero point five percent) of the total valid votes resulting from the final stage of vote counting as determined by Regency/City KPU.

The enactment of Article 158 of the Regional Election Law, which contains provisions regarding vote difference threshold provisions which regulate the requirements for a certain percentage difference in vote acquisition, is a new provision in the procedural law for regional head elections to determine the legal standing of applicants so that they can take disputes to the Constitutional Court. These threshold provisions are not only

[14]Bayu Dwi Anggono, Restrictions on Filing Dispute Cases on Regional Head Election Results at the Constitutional Court and the Implications for National Security Guarantees, Rechts Vinding Journal, National Legal Media, Volume 5, Number 1, April 2016

contained in the regional head election law, the Constitutional Court also includes these threshold provisions in the Constitutional Court's procedural law through Constitutional Court Regulation Number 5 of 2017 which was amended by Constitutional Court Regulation Number 6 of 2020 concerning Procedural Procedures in Cases of Election Results Disputes Governor, Regent and Mayor (hereinafter referred to as PMK Number 6 of 2020).

These threshold provisions provide requirements for the percentage of voting results that can be submitted in a dispute over the cancellation of the determination of the vote count results contained in Article 158 of Law Number 10 of 2016 where the provisions of Article 158 state that there is a percentage of vote acquisition with adifference of 0.5-2% (depending on the number residents of the province or district/city) as a condition for beingable to submit a results dispute to the Constitutional Court (formal requirement). The threshold provisions for dispute results raise many problems which can have an impact on increasingly structured, systematic and massive regional election violations, threatening democracy and substantive justice in regional elections. The application of the threshold for submitting requests for disputes over regional election results at the Constitutional Court has shifted gradually since the first to the third simultaneous regional elections (2015 to 2018).

The Constitutional Court initially applied the threshold provisions without exception. However, gradually, the Constitutional Court began to enforce the threshold application casuistically. Up to 2018, there have been 6 (six) cases related to regional election results disputes which in examining them did not directly take into account the threshold provisions, namely cases of regional election results disputes in Intan Jaya Regency, Tolikara Regency, Puncak Jaya Regency, Yapen Islands Regency, Mimika Regency, and Paniai Regency. In examining this case, the Constitutional Court granted an exception to the threshold by setting aside or postponing the application of the threshold in order to achieve a sense of justice for the parties.[15]The Constitutional Court's practice in adjudicating and deciding on Kada PHPU cases which was carried out from 2008 until the case was registered in 2010 which was decided in 2010 and finally in 2011, according to the author, the cases granted by the Constitutional Court can be classified based on the pattern and nature of violations, legal considerations and rulings. The decisions handed down by the Constitutional Court are based on 8 (eight) models as follows:[16]

1. Re-voting and re-counting of votes (final decision)
2. Re-voting and re-counting of votes (interlocutory decision)
3. Disqualify selected pairs and determine the winner
4. Disqualification of candidate pairs that do not meet the requirements, namely disqualifying candidates and ordering a revote as well as disqualifying candidates and determining that candidate pairs have the right to take part in the second round of the post-conflict regional elections
5. The re-election of candidates was not passed by the KPU
6. Voting of voters entitled to vote
7. Determine the selected pair and
8. Determine the correct vote tally

Regarding the essence of determining the threshold for submitting a dispute over the results of the Regional Election as intended in the provisions of Article 58 of the Regional Election Law,The Constitutional Court remains consistent in applying Article 158 of Law Number 10 of 2016 concerning Regional Elections in examining and adjudicating the formal requirements for submitting disputes over regional election results to the Constitutional Court. This article limits lawsuits regarding disputes over the results of regional head elections to only be filed if the difference between the plaintiff's vote and the winner of the regional head election is a maximum of 2%. In fact, the Constitutional Court also implemented PMK Number 5 of 2017 regarding the calculation of differences in votes in regional election disputes.

With the existence of the Constitutional Court Regulation, the position of the threshold for filing a dispute becomes stronger. This means that it is certain that applications for disputes over results to the Constitutional Court will be very limited.[17] This difference is not only in terms of terms, but includes differences in conception which give rise to differences in legal consequences. Especially for the court in deciding the results of regional election disputes. When regional elections are an election regime, the Court has the freedom to exercise its

[15]Pan Muhammad Faiz, Criteria for Exclusion Thresholds for Regional Election Result Disputes at the Constitutional Court, Center for Constitutional Studies, Jakarta, 2018

[16]Mftakhul Huda, Patterns of Regional Election Violations and Expansion of Substantive Justice, Constitutional Journal, Volume 8, Number 2, 2010

[17] In general, applicants who submit disputes to the Constitutional Court are of the view that the Constitutional Court should not be constrained by Article 158 of the Regional Election Law in order to uphold substantive justice. The reason is, several applicants believe that many reports have not been followed up by the KPU, Panwas/Bawaslu in all their ranks, as well as reports of criminal acts that have not been resolved, so that the Constitutional Court has become the hope of the applicants.On the other hand, the Respondent and the Concerned argue, among other things, that Article 158 of the Regional Election Law is a law that is still in force and is binding on all Indonesian people, including the Constitutional Court, so that in carrying out its duties, functions and authority it must be guided by the 1945 Constitution and laws that are still in force.

constitutional authority, namely subject to the provisions of the 1945 Constitution and applicable laws and regulations. This freedom has given rise to court decisions which are seen as containing the dimensions of a legal breakthrough.

On this basis, the Court's decisions in the past in cases of disputes over regional head general election results did not only cover disputes over results, but also included violations in the election process to achieve results known as structured, systematic and massive violations, Apart from not being an election regime, the Regional Election Law limits the MK's authority to only examining and adjudicating disputes over the determination of vote results. Apart from that, there are cumulative requirements that must be fulfilled by candidate pairs, such as the deadline for submission, the parties submitting the nomination, as well as provisionsregarding the percentage difference in vote acquisition.

There is no other choice but for the Court to comply with the provisions expressis verbis outlined in the Regional Election Law. Moreover, Constitutional Court Decision No. 51 /PUU-XIII/2015 dated July 9, states Article 158 as an open legal policy forming laws. The Court's authority is a non-permanent and transitional authority until a special court is established. Once a special judicial body is officially formed, the Court's authority will immediately have to be removed. Apart from that, the Court's authority to examine and adjudicate cases regarding regional election results disputes is only an additional authority.

In other words, if the Constitutional Court violates Article 158 of Law Number 10 of 2016 and Article 6 of PMK 1 and PMK 6 of 2015, it means violating the law which is contrary to the principles of the Indonesian Rule of Law, giving rise to uncertainty and injustice and leading constitutional judges to commit acts of violating their oath of office and code of ethics for constitutional judges. By implementing Article 158 of Law Number 10 of 2016 and its derivative regulations consistently, the Court is taking part in efforts to encourage institutions involved in the regional election process to play and function optimally in accordance with the proportion of authority at each level.

When viewed from another perspective, the regulations in Article 158 paragraphs (1) and (2) have basically limited parties seeking justice at the Constitutional Court. However, when viewed from a positive perspective, the purpose of these restrictions is in the interests of the wider community. Because the longer it takes to appoint an elected regional head, it will have an impact on the time to realize the programs of the elected regional head which will also hinder the acceleration of regional development. Therefore, according to the author, the existence of Article 158 paragraphs (1) and (2) actually aims to speed up the regional government transition process, so that elected regional heads can immediately realize their campaign promises to the community.

However, the provisions regarding regional election thresholds are no longer relevant if a special regional election court has been formed. The special regional election court is a special court formed to adjudicate regional election disputes so that the provisions regarding thresholds are no longer suitable to be applied, but this is different, currently regional election disputes are still handled by the Constitutional Court. On the basis ofthe background as described above, it can be a reference for the author to examine more deeply through this thesis research with the title: "Expansion of Substantive Justice in Disputes for the Election of Governors, Regents and Mayors at the Constitutional Court"

2. METHOD

This research is Normative Juridical in nature. Where library materials are the basis (knowledge) of research which is classified as a secondary source of material. The secondary material sources intended for the research used are books, official documents, literature, scientific works and statutory regulations to complete this research.[18]This research also examines positive legal provisions and legal principles.[19]

3. RESULTS AND DISCUSSION

Philosophical Expansion of Substantive Justice in Election Disputes for Governors, Regents and Mayors at the Constitutional Court

1. Principles of Democratic Elections

Elections are an instrument or means for implementing democracy, even in many democratic countries, elections themselves are considered a symbol and benchmark of democracy.[20]Ramlan Surbakti emphasized that elections are one of the 11 pillars of a democratic political system.[21]In this way, elections are at the same time

[18]Ibid, p. 24
[19]Philipus M. Hadjon, Legal Studies, Papers, Training on Normative Legal Research Methods, Airlangga University, Surabaya, 1997, p. 20
[20]Miriam budiardjo, Basics of Political Science, Op..Cit, p. 461
[21]Ramlan Surbakti, Didik Supriyanti and Hasyim Asy'ari, Designing a Democratic Political System, Towards an Effective Presidential Government, Partnership as Governance Reform, Jakarta, 2011, p. 5

an indicator of life and use in a country. This is because in elections citizens have the right to participate and vote on election issues.[22]By participating and voting from the people, elections become a mechanism for resolving and delegating people's sovereignty to trusted people or political parties.[23]As a means of delegating people's sovereignty as well as a measure of a democratic political system, elections must be carried out democratically where the people's votes are counted fairly.[24]According to Robert Dahl, free, fair and regular elections are needed to implement democracy.[25]Free elections are defined as conditions where citizens can go to the polls without fear of retaliation.[26]A fair election is based on conditions where all voters must be assessed andpositioned equally.[27]Meanwhile, periodic elections are held within a certain period of time to provide citizens with the opportunity to defend or evaluate the government's decision agenda.[28]

Universally, the principles of free, fair and periodic are also known as the principles of holding democratic elections. This is because a democratic political system requires that the process of transferring power be carriedout periodically, freely, fairly and guaranteeing universal suffrage. Even for democratic countries, the principle of democratic elections is one of the fundamental substances in the basic law of a country. The development of regulations in basic law is also regulated in the Indonesian Constitution, especially in the 1945 Constitution of the Republic of Indonesia.

The 1949 RIS Constitution, 1950 UUDS, Law Number 7 of 1953 concerning the Election of Constituent Members and Members of the People's Representative Council regulate the principles of the election itself. The election principles regulated in the 1950 UUDS and Law no. 7 of 1953 was used in holding the 1955 elections. Based on and using these principles, even though Indonesia was still in the early period of independence, the 1955 elections were held successfully and in a democratic process. Some constitutional law experts even considered the 1955 election to be the most democratic election in Indonesian electoral history.[29]

After that, through a presidential decree of 5 July 1959, the 1950 Constitution was declared no longer validand replaced with the 1945 Constitution. As is known, the 1945 Constitution does not regulate elections at all. Therefore, the first election was held in 1971. The election was carried out based on Law Number 15 of 1969 concerning the General Election of Members of the People's Consultative Body/Representative Body. The law regulates a number of principles for holding elections, namely direct, general, free and secret.[30]

The principle of freedom and secrecy is realized in the form that every voter must be able to vote freely and secretly.[31]Further information in the Explanation of Law no. 15 of 1969, each of these principles is explained as follows:

a. Generally speaking, basically all citizens who meet the minimum age requirements, namely being 17 years old or married, have the right to vote in elections and who are 21 years old have the right to be elected. Soa general election means an election that applies comprehensively to every/all citizens, according to certain basic requirements, as mentioned above. Other requirements, whether technical or political, are not related to elections, but are solely related to the practice of implementing them and the objectives of the elections and the function of the bodies/institutions being prepared.
b. Direct means that voters have the right to cast their votes directly, according to their conscience without intermediaries and without levels
c. Freedom means that every citizen who has the right to vote is guaranteed to exercise his or her right to be safe to vote according to his or her conscience without any influence, pressure or coercion from anyone/anything.
d. The secret is that the owners are guaranteed by regulations, will not be known by anyone and in any way, whoever they choose. Voters cast their votes on a ballot paper without being able to be known by other people to whom they cast their votes (secret ballot).

Normatively, elections during the New Order period (elections from 1971 to elections in 1997) were carried out based on the principles explained above. Even though it was based on this principle, the election was held during the New Order authoritarianism era which was supported by the military, where the succession process was not synonymous with democratization.[32]During the New Order, elections were marked by various kinds of fraud, where the military, bureaucracy and Golkar conspired together to perpetuate Seoharto's

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[22]Robert Dahl, Regarding Democracy, Briefly Exploring the Theory and Practice of Democracy, Translated by A. Rahman Zainudin, Obor Foundation, Jakarta, 2001, p. 68
[23]Ramlan Surbakti, Understanding Political Science, Gransindo, Jakarta, 1982, p. 181
[24]Robert Dahl, Regarding Democracy , Op..Cit, p. 68
[25]Ibid, p. 68
[26]Ibid, p. 69 [27]Ibid, p.69
[28]*Ibid*, matter. 70
[29]Adnan Buyung Nasution, Thoughts and Ideas on Constitutional Democracy, Kompas Media Nusantara, Jakarta, 2010, p. 96
[30]Republic of Indonesia, Law Number 15 of 1969 concerning General Election of Members of the People's Consultative/Representative Body, Article 1 paragraph (1)
[31]Ibid, Article 21 paragraph (4)
[32]R. Willian Liddle, New Order Elections, The Ebb and Flow of Political Power, LP3ES, Jakarta, 1992, p. 106

power.[33]Therefore, even though the principles of elections refer to democratic principles that apply universally, in reality the implementation is far from being a democratic election.

Further developments, when reforms began in 1998, demands for changes to the constitution could not be stopped. When constitutional changes take place, elections become one of the basic substances or materials regulated in the constitution. After the changes, the 1945 NRI Constitution contained a number of principles thatwould animate or become the spirit of holding democratic elections. The principles in question are regulated in Article 22E paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that general elections are held directly, but free, secret, honest and fair once every five years.

Substantively, the norm of Article 22E paragraph (1) of the 1945 Constitution of the Republic of Indonesia contains seven election principles, namely; direct, general, free, confidential, honest, fair and periodic. These principles can be called election principles according to the 1945 Constitution of the Republic of Indonesia.[34]Further explanation of this principle is:

a. Directly, the people as voters have the right to cast their votes directly according to the wishes of their conscience, without intermediaries
b. General, basically all citizens who meet the requirements in accordance with this law are entitled to take part in elections. General elections contain the meaning of guaranteeing comprehensive opportunities for all citizens, without discrimination based on ethnicity, religion, race, class, gender, region, occupation and social status.
c. Free, every citizen who has the right to vote is free to make his choice without pressure or coercion from anyone. In exercising their rights, every citizen is guaranteed security, so that they can choose according to the wishes of their conscience and interests.
d. Secret, when casting their vote, voters are guaranteed that their choice will not be known by any party or in any way. The voter casts his or her vote on a beacon letter and cannot be known by anyone else to whom the vote is given.
e. Honestly, in holding elections, every election, government officials, election participants, election supervisors, election observers, voters and all related parties must behave and act honestly in accordance with statutory regulations.
f. Fairness, in holding elections, every voter and election participant receives the same treatment, and is free from fraud by any party

The next regulatory development is that each principle is not defined in the election law, but only in the norms related to the stages of election implementation. These principles are to ensure democratic principles in holding elections.

Apart from the principles contained in Article 22E paragraph (1) of the 1945 Constitution of the Republic of Indonesia, the principle of universal suffrage is also contained and regulated in the amended constitution, especially Article 27 paragraph (1) and Article 22E paragraph (4), paragraph (3), and paragraph (5) of the 1945 Constitution of the Republic of Indonesia. Regarding the right to vote, in the Constitutional Court Decision Number 011-017/PUU-I/2003, it is emphasized that Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia is the constitutional basis for citizens' right to vote in elections. . Meanwhile, Article 22E paragraphs (3) and (4) are the constitutional basis for citizens' right to vote for elections for members of the DPR, DPD and DPRD. These constitutional norms strictly regulate and guarantee citizens' voting rights in elections.

The principles of elections can be understood to mean that the constitution requires elections to be carried out democratically. Elections must be carried out in accordance with the democratic principles intended by the 1945 Constitution of the Republic of Indonesia. These democratic principles include essential principles and procedural principles. The essential principles include guaranteeing the right to vote as part of human rights, freedom to vote and equality or equality of voting rights between citizens.[35]

The procedural principles include the principle of majority voting in elections and the principle of accountability of officials elected in elections to their constituents.[36]In accordance with the principles of democracy according to the 1945 Constitution of the Republic of Indonesia, the principles of democratic elections required by the constitution are at least the principles of freedom and confidentiality of choice, equality of voting rights, majority vote, certainty and honesty as well as openness and accountability.

Elections must be held freely, fairly and periodically so that the people can determine their choices. At the same time, in elections all voters must be treated equally and their choices must be kept confidential, so that every voter can vote in a free, open and transparent contest. In this case, the principles of freedom, equality,

[33]Adnan Buyung Nasution, Thoughts and Ideas of Constitutional Democracy, Op.Cit, p. 97
[34]Didik Supriyanto and Ramlan Surbakti (Ed), 2014 Election Integrity, Study of Violations, Violence and Misuse of Money in the 2014 Election, Partnership Partnership, Jakarta, 2014, p. 36
[35]Khairul Fahmi, General Elections and People's Sovereignty, Op..Cit,, p. 140-142
[36]Ibid, p. 143-147

respect for voting rights, non-discrimination and an honest and fair process for all must be reflected in the implementation of elections. Without all of this, elections cannot be called democratic elections.

The principles of holding fair elections are:[37]

a. The Integrity Principle, namely this principle, is an important element which is based on the spirit of honesty and accountability which is the spirit of the entire election process
b. The Participation Principle is a principle that emphasizes that the people's voice must be heard, respected and well represented. In a representative democratic system, citizen participation is the key to the success of democratic representation
c. The Principle of Law Enforcement, namely the principle that law enforcement must be firm in order to strengthen the legitimacy of the representative democratic process
d. The principle of impartiality is that every voter and candidate for representative of the people is guaranteed justice in the eyes of the law
e. The Principle of Professionalism, namely the principle of organizing elections, requires adequate technical knowledge of election administration and having the competence to explain the process
f. The principle of independence means that all organizing parties or parties who have authority in organizing elections must be independent. This independence must be guaranteed and respected in theeyes of the law
g. The principle of transparency is a principle which is the main element that functions to disclose all relevant information about the election process.
h. The Timeslines principle is the importance of consistency in planning the implementation of elections
i. The principle of non-violence is that all election processes must be free from elements of violence,intimidation, coercive action, corruption and all actions that violate the rules of a fair election.
j. The principle of regularity is that elections must be held periodically
k. The Acceptance Principle is that election results must be widely accepted (electoral integrity group)

Apart from the views of these organizations, Robert Dahl tried to simplify democratic election standardsinto five standards, namely:[38]

1) Effective participation
2) Equality in voting
3) Gain clear understanding
4) Carry out final oversight of the agenda
5) Adult coverage

Of the five standards, equality in voting is the standard that is directly related to elections. Meanwhile, what is meant by equality in voting is that every member of society must have the same and effective opportunity to vote and all votes must be counted equally.[39]In this context, equality between citizens in voting isa principle that must be applied. Equality is meant not only for the voting process, but also in assessing votes. Every sound is the same with the same value. This became known as the principle of one person, one vote, one value.

More broadly compared to Robert Dahl, Butler put forward seven criteria for democratic elections, namelyas follows:[40]

1) All adults have hka sounds
2) Elections regularly within specified time limits
3) All legislative seats in the subject are elected and contested
4) No substantive group was denied the opportunity to form a party and nominatecandidates
5) Election administrators must act fairly; no legal exceptions, no violence, no intimidationof candidates to introduce their views or introduce their views or voters to discuss them.
6) Elections are carried out freely, confidentially, calculated and reported honestly andconverted into legislative seats as determined by regulations
7) The election results are kept in the office and the remainder is kept until the electionresults are obtained

According to Ramlan Surbakti who put forward the parameters of the degree of electoral democracy. According to this Indonesian election expert, there are at least four parameters that can be used to measure the process of holding an election that can be said to be democratic, namely:[41]

[37]Didik Supriyanto and Ramlan Surbakti (Ed), 2014 Election Integrity , Op. Cit, p. 35-36
[38]Robert Dahl, Regarding Democracy, Op..Cit, p. 52
[39]Ibid, p. 53
[40]Ibid, p. 54
[41]Ramlan Surbakti, et al, Election System Engineering for the Development of a Democratic Political Order, Partnership forGovernance Reform in Indonesia, Jakarta, 2008, p. 26

1) The regulation of each stage of election implementation contains legal certainty(predictable procedures)
2) The arrangements for each stage are based on the principles of democratic elections,namely direct, general, free, secret, honest and fair
3) Election monitoring system arrangements are carried out in accordance with provisions
4) Arrangement of dispute resolution mechanisms for all types and forms of electiondisputes

Democracy is a principle in general elections, whether for heads of state, regional heads, village heads or people's representatives. Furthermore, democracy must stand on justice which is the basis of general elections. General elections must prioritize democracy in the general election system in the election of good leaders. From several regulations issued by the government of the Republic of Indonesia, democracy is the basic foundation in a general election.

General elections must be carried out democratically in order to create an effective and efficient general election. Apart from that, democracy also gives people the right to freely choose, without any pressure being exerted by candidates to choose a candidate.[42]In Indonesia, democratic principles have been implemented well, such as giving the people the rights to choose candidates without placing emphasis on the right to vote, and the public can know the results of elections conducted by the General Election Commission (KPU) transparently.

However, this cannot be said to be successful in the actual democratic process because there are still problems that occur in the electoral process or general elections being held. with the concept of democracy which has the characteristics of a normative approach and an empirical approach as a reference for the success of the democratic process in general elections.

Efforts to instill democracy in the election process must be made to provide freedom to exercise the rightto vote as emphasized in Law Number 15 of 2011 concerning the Implementation of General Elections. The democratic process in elections must be carried out correctly, as a form of state that prioritizes the rights of the people's choices. Apart from that, the election process is expected to strive for democracy as the basis for the election process that will be carried out, with openness in the election process being very important.

In any country that implements a general election system, the goal of general elections is democratic. In Indonesia, voting is one of the electoral processes that must adhere to Indonesian democratic values.[43]Elections in Indonesia are expected to follow democratic standards, but there are still many complaints in Indonesia. In the implementation of the upcoming election, complaints regarding problems in the election process need to be anticipated. This complaint, based on the findings of the report to DKPP, was submitted to a number of general election institutions from central to regional.

In the process of strengthening democratic elections, Indonesia has taken various steps to improve democracy. Efforts to encourage democracy in elections are not simple, as shown by election organizers in Indonesia, because each organizer still faces many challenges. This means that there are still many problems in the election process which is not based on the principles of freedom or democratic principles.

Thus, democratic principles in holding elections are part of the realization of what the constitution desires. It is said that the holding of elections must truly be carried out freely, fairly and honestly, so that democratic elections can be realized effectively and efficiently which are free, open and transparent in the desire for a democratic rule of law state.

2. Post-Reform Regional Head Election

a. Post-Reform Regional Election Regulations

The wave of post-reform democratization did not only occur at the national level. However, this also occurs in regions where the direct regional election system is adopted. According to Kacung Marijan, the direct regional election system is actually also influenced by the adoption of the principle of decentralization. In fact, decentralization has opened up opportunities for rapid growth and development of democratization in the regions.[44]

Conceptually, decentralization and democracy are related to each other. The view linking decentralization and democratization is becoming stronger along with the spread of decentralization policy descriptions for developing countries to overcome the various problems they face and the wave of democratization in various corners of the world. In a context like this, decentralization and democratization basically reinforce each other. Decentralization, for example, goes hand in hand with the process of change in the election of regional officials.

[42]Saputra, A. Analysis of the Failure of the NasDem Party's Political Marketing in the 2019 Legislative Election in Aceh. Faculty of Social & Political Sciences Student Scientific Journal, 2021, p. 2

[43]Kosasih, A. Measuring Regional Head General Elections Democratically. Al Imarah: Journal of Islamic Government and Politics, 2018, p. 1

[44]Kacung Marijan, Democratization in the Regions: Lessons from Direct Regional Elections, Burek Library and Center for Democracy and Human Rights Studies, Surabaya, 2006, p. 23

Previously, regional officials were appointed by the center. After the decentralization policy, regional officials were based on elections.[45]

The view that decentralization has a strong relationship with democratization is based on the assumption that decentralization can open up greater space for the community to be involved in the process of making political decisions in the region. This is related to the reality that after decentralization, the institutions that have authority in the process of making and implementing public policy are closer to the people's process.

This closeness also allows the people to exercise control over local government. Thus, regional governments are expected to have greater accountability. Without accountability, people in the regions can withdraw the mandate that has been given through elections.[46]

For the first time in the history of the Indonesian constitution, regulations regarding the recruitment ofpolitical leaders in the regions are regulated in the 1945 NRI Constitution. Before the amendments to the 1945Constitution were made, there was not a single article that regulated the election of regional heads. Afterchanges to the 1945 Constitution were made, regional head elections were regulated in Article 18 paragraph (4). Article 18 paragraph (4) was born at the same time as Article 18A and Article 18B, namely in the second amendment to the 1945 Constitution of the Republic of Indonesia, at the time of the 2000 Annual Session of theRepublic of Indonesia MPR and was included in the Chapter on Regional Government. In recent constitutionaldiscourse, including in a number of Constitutional Court decisions, the phrase "democratically elected" inArticle 18 paragraph (4) of the 1945 Constitution does not have a single interpretation. This phrase does nothave to mean being elected directly by the people, but can also mean being elected indirectly, as long as theprocess is democratic. The policy for determining how to elect regional heads is left to lawmakers to determine, so it is often referred to as opened legal policy.[47]

If you look closely at the election arrangements in the 1945 Constitution of the Republic of Indonesia, youwill see a variety of arrangements;

1). Election of DPR and DPD Members (Article 2 paragraph (1): "The MPR consists of DPR and DPDMembers who are elected through elections and are further regulated by law."

2). Election of the President and Vice President (Article 6A): "The President and Vice President are elected as apair directly by the people".

3).Election of DPRD Members (Article 18 paragraph (3): "Provincial, Regency and City Regional Governmentshave DPRD whose members are elected through elections."

4).Election of Governors, Regent and Mayor (Article 18 paragraph (4): "Governor, Regent and Mayorrespectively as heads of provincial, regency and city regional governments are elected democratically".

5).Election of DPR Members (Article 19 paragraph (1): "Members of the DPR are elected through elections".

The election arrangements in the 1945 Constitution are various, namely:

a) To elect members of the DPR, DPD, President and Vice President and DPRD are directly elected. But for the election of Governors, Regents and Mayors are elected democratically

b) The election of members of the DPR, DPD, President and Vice President and DPRD is regulated in Article 22E. Meanwhile, the election of Governors, Regents and Mayors is regulated separatelyin Article 18 paragraph (4)

Election regulations in several laws after the provisions of Article 18 paragraph (4) also do not include regional head elections in them. For example: 1). Article 3 Law no. 12 of 2003 concerning the Election of Members of the DPR, DPD and Provincial DPRD and Regency/City DPRD." 2). Article 1 point 1 of Law no. 23 of 2003 concerning Presidential and Vice Presidential Elections:"

"General elections, hereinafter referred to as Elections, are a means of implementing the sovereignty of the people in the Republic of Indonesia based on Pancasila and the 1945 Constitution to elect members of the DPR, DPD, President and Vice President, Members of Provincial DPRD and Members of Regency/City DPRD." From this presentation it can be seen that Law no. 12 of 2003 and Law no. 23 of 2003 only regulates the election of members of the DPR, DPR, President and Vice President, Provincial DPRD and Regency/City DPRD. The election of Regional Heads and Deputy Regional Heads has not yet been regulated. This lack of regulatory issues is accommodated in Law no. 32 of 2004 concerning Regional Government. Article 24 Law no. 32 of 2004 concerning Regional Government states that:

"The Regional Head and Deputy Regional Head as intended in paragraph (2) and paragraph (3) are elected in one pair directly by the people of the region concerned."

Then in Article 56 of the Regional Government Law it is emphasized that: "Regional Heads and Deputy Regional Heads are elected in one candidate pair which is carried out democratically based on the principles of direct, general, free, confidential, honest and fair."

[45]Ibid, p. 27

[46]Ibid, p. 28

[47]Constitutional Court Decision Number 072-073/PUU-II/2004, which authorizes legislators to consider the appropriate method for electing regional heads or in Constitutional Court Decision Number 97/PUU/XI/2013

In the dictum of the Regional Government Law, there is also no reference to Article 22E of the 1945 Constitution of the Republic of Indonesia. This means that the regulation of the election of regional heads and deputy regional heads in the Law is not within the qualifications of Article 22E (Elections), but refers to Article 18 paragraph (4), which translates "democratically elected" in the form of direct election.[48]

The direct election of Regional Heads and Deputy Regional Heads by the people by legislators is not categorized as a general election. The reason is that the election of regional heads and deputy regional heads is included in the realm of regional government (Article 18 of the 1945 Constitution of the Republic of Indonesia), so it does not refer to the provisions of Article 22E paragraph (2) of the 1945 Constitution. According to Ramlan Surbakti, in substance and stages of implementation, the election of heads regional and deputy regional heads are elections.[49]

The regulations regarding the election of regional heads and deputy regional heads in the Regional Government Law are prepared based on the provisions of Article 22E paragraph (1) concerning election principles (Luber and Jurdil) and are almost entirely the same as the regulations for the election of president and vice president in Law no. 23 of 2003.

The provisions of Article 18 paragraph (4) of the 1945 Constitution concerning filling the positions of Governor, Regent and Mayor are translated into the Regional Government Law through indirect elections, namely being elected by the DPRD. However, when the Regional Government Law came into effect, regional elections were no longer elected by the DPRD but were elected directly by the people.

In general, regional election regulations after the amendment to the 1945 Constitution often change. There are inconsistencies among legislators in determining how to fill regional head positions (Governor, Regent and Mayor). Initially, filling the position of regional head was determined by direct election as regulated in the Regional Government Law and then determined by direct election as part of the election regime as regulated in Law no. 22 of 2007 concerning the Implementation of Elections and Law no. 15 of 2011 concerning the Implementation of Elections. Subsequently, it was changed back to indirect elections as regulated in Law no. 22 of 2014 became the election of Governors, Regents and Mayors and then changed again to direct elections again through Law No. 1 of 2015 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors into Law as amended by Law Number 8 of 2015 and has been amended again to become Law Number 10 of 2016.

This change is due to the fact that legislators have the freedom to determine how to fill the positions of regional head and deputy regional head. This is because the provisions for recognizing this matter are not explicitly regulated in the constitution. Article 18 paragraph 4 of the 1945 Constitution only states that "Governor, Regent and Mayor respectively as heads of provincial, regency and city regional governments are elected democratically.

Determining how to fill positions for regions and deputy regional heads, of course the legislators have certain reasons (legal reasoning). In its development, the method for filling the positions of regional head and deputy regional head directly was changed indirectly or through the DPRD with the enactment of Law no. 22 of 2014 concerning the Election of Governors, Regents and Mayors.

The reason the legislators changed the election method was partly due to empirical facts which show that the costs that must be incurred by the state and by candidate pairs to organize and take part in direct elections for Governor/Deputy Governor, Regent/Deputy Regent and Mayor/Deputy Mayor are very large. Apart from that, direct regional elections have also resulted in increased conflict escalation and decreased voter participation.

However, Law no. 22 of 2014 immediately received resistance from some members of the public. This is because it is considered undemocratic and distorts people's sovereignty. Based on public pressure, the Government issued Perppu no. 1 of 2014 concerning the Election of Governors, Regents and Mayors (Perppu Regional head elections). Even though there were constitutional problems in the issuance of the Perppu Regional head elections as explained above, in the end the DPR still approved the Perppu Regional head elections to become a Law which was ratified as Law Number 1 of 21015 which was then amended by Law Number 8 of 2015 concerning amendments to the Law Number 1 of 2015 concerning Stipulation of Government Regulations in Replacement of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors and amended to Law Number 10 of 2016.

b. Regional Elections as an Election Regime

One of the interesting issues related to regional elections is the debate regarding whether regional elections are included in the election regime or not. The dynamics of the issue regarding whether regional elections are included in the election regime or not, already emerged when Law no. 23 of 2003 was promulgated. One of the causes is direct regional elections regulated in Law no. 23 of 2003 does not refer to the provisions of Article 22E of the 1945 Constitution, but only refers to Article 18 paragraph (4) of the 1945 Constitution as can be seen in

[48]Ni'matul Huda, Regional Autonomy, Philosophy, Historical Development and Probematics, Student Library, Yogjakarta, 2005, p. 212

[49]Ramlan Surbakti, "Regional head elections is Election", Kompas, 4 February 2005, p. 4

the consideration considering it. Therefore, direct regional elections by the people by legislators are not categorized as elections. The reason is very clear, because the legislators emphasized that regional elections fall within the realm of regional government.

However, this gave rise to other perceptions, especially in the regulation of regional election organizers, which had implications for disharmony in the laws and regulations governing elections at that time. Article 22E paragraph 5 of the 1945 Constitution confirms that:

"Elections are held by a national, permanent and independent general election commission."

Article 1 point 3 of Law No. 12 of 2003 states that:
"The general election commission, hereinafter referred to as the KPU, is a national, permanent and independent institution for holding elections."

Furthermore, Article 1 point 4 of Law No. 12 of 2003 states: "

The Provincial General Election Commission and the Regency/City General Election Commission, hereinafter referred to as the Provincial KPU and Regency/City KPU, are the implementers of elections in Provinces and Regency/City which are part of the KPU.
Article 15 of Law No. 12 of 2003 confirms that:
"(a) elections are held by the KPU which is national, permanent and independent. (b) The KPU is responsible for organizing elections. (c) in carrying out its duties, the KPU submits reports during the election implementation stage to the President and the DPR."

Furthermore, Article 17 of Law No. 12 of 2003 regulates that:
"(a) The organizational structure of election organizers consists of the KPU, Provincial KPU and Regency/City KPU. (b) Provincial KPU and Regency/City KPU are the implementers of elections in Provinces and Regency/City which are part of the KPU."

Meanwhile, Article 1 point 21 of Law No. 32 of 2004 states that:
"The Regional General Election Commission, hereinafter referred to as KPUD, is KPUD as intended in LawNo. 12 of 2003 which is given special authority by this Law to hold elections for regions and deputy regional heads in each Province and/or Regency/City."

Furthermore, Article of Law no. 32 of 2004 confirms that:
"(a). The election of regional heads and deputy regional heads is held by the KPUD which is responsible to the DPRD. (b). "In carrying out its duties, the KPUD submits a report on the implementation of the regional head and deputy regional head elections to the DPRD."

Based on the description above, it is known that the KPU which is given special authority by law to hold elections for regional heads and deputy regional heads in each province and/or Regency/City is the KPUD as intended in the Regional Election Law in each Province and/or Regency/City which is the same as organizer of national, permanent, independent elections for members of the DPR, DPD, DPRD, President and Vice President. Therefore, structurally the KPUD is related to the KPU.

Such an arrangement certainly creates confusion, because on the one hand, regional elections are not categorized as elections, so they are not held by the KPU, but on the other hand, the implementation of regional elections is handed over to the KPUD which is a subordinate or subordinate apparatus of the KPU. By not involving the KPU in organizing regional elections and by handing it over to the KPUH but without any relationship with the KPU, Law no. 32 of 2004 clearly contradicts the national character inherent in the KPU. According to Law No. 12 of 2003, only the KPU can assign other duties and authorities to be implemented by the Provincial KPU, and only the KPU and Provincial KPU can assign other duties and authorities to be implemented by the Regency/City KPU.

The regulation regarding the KPUD as the regional election organizer who is responsible to the DPRD has clearly created disharmony in statutory regulations. Based on Law no. 12 of 2003, the KPUD is responsible to the KPU, this is because the KPUD is part of the KPU. Meanwhile, the Regional Government Law emphasizes that the KPUD is responsible to the DPRD. This clearly shows that there is a conflict between Law no. 32 of 2004 with Law no. 12 of 2003.
Furthermore, Article 57 paragraph 7 of Law No. 32 of 2004 confirms that:
"The supervisory committee for the election of regional heads and deputy regional heads was formed by and is responsible to the DPRD and is obliged to submit its report."

Meanwhile, in Law No. 12 of 2003, the Panwaslu was formed by the KPU and is responsible to the KPU.It seems that such an arrangement is also inappropriate, because there is a conflict of interest between the DPRDwhich has the authority to nominate candidates for regional head and deputy regional head and the election organizers and supervisors.

In relation to the provisions of Article 65 paragraph (4) of Law No. 32 of 2004 which regulates "the procedures for carrying out the preparation period and implementation stages are regulated by the KPUD, guided by government regulations. This provision raises at least three legal issues, namely;

1) Provisions like this are contrary to the principle of independence which is inherent not only to the KPU, but also to the KPUD as its regional apparatus because it places the KPUD under the direction of the government. An independent KPU/KPUD means that it is not subordinate to a group, political party or government, but rather carries out elections completely according to the law.
2) These provisions do not comply with Law No. 12 of 2003 and Law No. 23 of 2003 which do not give the government the authority to make election implementing regulations for the reason of avoiding making election regulations by election participants.
3) The granting of technical regulatory authority for the preparatory and implementation stages of regional head and deputy regional head elections to the KPUD is contrary to the principles of externality and efficiency adhered to by Article 11 paragraph (1) of Law No. 32 of 2004 itself. This is because the technical arrangements for these stages are an elaboration of the principles of democratic elections.[50]

Constitutional Court Decision Number 072-073/PUU-II/2004, in general, has determined that:[51]

1) The principles of regional elections are the same as the principles of elections, but regional electionsare not elections
2) Article 57 paragraph (1) states that the KPUD is not responsible to the DPRD directly to the people.Apart from that, the KPUD only reports on the implementation of the regional elections to the DPRD
3) Elucidation of Article 59 paragraph (1), political parties/combinations of political parties that do nothave seats in the DPRD can nominate pairs of candidates for regional head and deputy regional head
4) Article 66 paragraph (3) letter e, the KPUD is not responsible to the DPRD
5) Article 67 paragraph (1) letter e, the KPUD does not need to be accountable for budget use to theDPRD
6) Article 82 paragraph (2) cannot impose sanctions for canceling candidates

The decision of the Constitutional Court above, for some is indeed confusing, admits that the principles of regional elections are the same as the principles of elections. However, the regional elections are considered not to be elections.[52]The Constitutional Court rejected the material review of Article 1 paragraph (21) which basically regulates the KPUD as the implementer of regional elections, but approved Article 57 paragraph (1) and Article 67 paragraph (1) letter e.

The Constitutional Court did not attempt to reconnect the hierarchical relationship between the KPU and KPUD, considering that the KPUD was formed and ratified by the KPU as regulated in Law no. 12 of 2003. The Constitutional Court actually created a new norm in its decision, where the KPUD is not responsible to the DPRD but directly to the people. On the one hand, the Constitutional Court has broken the shackles of the local parliament on the KPUD as the organizer of the regional elections, but on the other hand, the Constitutional Court has not explained who is meant by "the people" and what the accountability mechanism is.

The Constitutional Court gave instructions that in carrying out its duties the KPUD refers to Government Regulation Number 6 of 2005 concerning the Election, Ratification, Appointment and Dismissal of Regional Heads and Deputy Regional Heads. Some circles consider the decision of the Constitutional Court to be a "responsible ball" for safeguarding democracy.[53]

Consideration of the Constitutional Court's decision suggests that in the future, the KPU will be designated as the organizer of direct regional elections. The Constitutional Court's opinion in full is as follows:[54]

"The Constitutional Court states that legislators can and indeed will in the future determine the KPU as intended in Article 22E of the 1945 Constitution as the organizer of direct regional elections considering that the KPU, apart from being an institution that was deliberately created by the 1945 Constitution as an election organizer, the KPU has also to prove their ability and independence in organizing the elections for members of the DPR, DPD, DPRD and President/Vice President in 2004, as well as to consider the efficiency of holding elections and creating a strong institution and system in holding elections in Indonesia."

The recommendations of the Constitutional Court were finally heard by the Government and the DPR in the formation of Law no. 22 of 2007 concerning Election Organizers, through this law regional elections are included in the election regime, so that the nomenclature changes to post-conflict regional elections. Article 1 number 4 Law no. 22 of 2007 states that:

[50]Ramlan Surbakti, Regional head elections , Loc Cit
[51]Constitutional Court Decision Number 072-073/PUU-II/2004 concerning Review of Law Number 32 of 2004 concerning RegionalGovernment Against the 1945 Constitution, p. 109
[52]Ibid, p. 110
[53]Refly Harun, "The Constitutional Court Failed to Guard Democracy", in Kompas Daily, March 30 2005
[54]Ibid, p. 110

"The general election of regional heads and deputy regional heads is a general election to elect regional heads and deputy regional heads directly in the Unitary State of the Republic of Indonesia based on Pancasila in the 1945 Constitution of the Republic of Indonesia."

Therefore, the regional elections are included in the electoral regime, so that they become post-conflict regional elections, so their implementation is handed over to the KPU and its staff, namely the Provincial KPU and Regency/City KPU whose relationship pattern is hierarchical. As a consequence of including regional elections in the election regime, the resolution of disputes over results shifted from the Supreme Court to the Constitutional Court. Through Law no. 12 of 2008 concerning the Second Amendment to Law no. 32 of 2004 concerning Regional Government.

Article 236C of the Regional Government Law emphasizes that:

"Settlement of disputes over regional head election results by the Supreme Court shall be transferred to the Constitutional Court no later than 18 (eighteen) months after this law is promulgated."

With the transfer of authority to resolve disputes over the results of regional head elections from the Supreme Court to the Constitutional Court, all regulations regarding the resolution of disputes over regional election results become the authority of the Constitutional Court. For this purpose, the Constitutional Court issued Constitutional Court Regulation Number 15 of 2008 concerning Guidelines for Proceduring Disputes on Regional Head Election Results.

The journey from regional elections to an electoral regime continues to experience ups and downs. Seven years after the regional elections finally entered into an electoral regime, this matter is being questioned again. The Constitutional Court issued Constitutional Court Decision Number 97/PUU-XI/2013 concerning the review of Article 236C of Law no. 12 of 2008 concerning Amendments to Law no. 32 of 2004 concerning Regional Government and Article 29 paragraph (1) letter e of Law no. 48 of 2009 concerning Judicial Power regarding the 1945 Constitution. These two articles basically regulate the authority of the Constitutional Court to decide disputes over post-conflict regional election results.

The decision issued by the Constitutional Court granted the petitioners' approval and declared Article 236C of the Regional Government Law and Article 29 paragraph (1) letter e of the Judicial Power Law which gives the Constitutional Court the authority to examine, adjudicate and decide disputes over regional election results unconstitutional. One of the reasons the Constitutional Court granted the petitioners' petition was because the regional elections were deemed not to be included in the electoral regime, because Article 22E of the 1945 Constitution had limitedly determined that only the elections included members of the DPR, DPD, DPRD, President and Vice President. In its legal considerations, the Constitutional Court stated that:

" General elections according to Article 22E of the 1945 Constitution must be interpreted in a limitative way, namely general elections held to elect members of the DPR, DPD, DPRD, President and Vice President and held once every five years. This meaning is firmly upheld in the Constitutional Court Decision Number 14/PUU- XI/2013 dated 23 January 2014, among other things, considering, if examined further, the original meaning desired by the formulators of the amendments to the 1945 Constitution, it can be concluded that the holding of the Presidential Election is carried out simultaneously. with the Election of Members of Representative Institutions. This was firmly stated by Slamet Effendy Jusuf as one of the members of the Ad Hoc Committee I of the MPR RI working body which prepared the draft amendment to the 1945 Constitution, who stated that the members of the MPR who were tasked with discussing amendments to the 1945 Constitution when discussing this issue had reached an agreement that what is meant by elections are elections for the DPR, elections for the DPD, elections for the DPRD and elections for the President and Vice President. So it is placed in one electoral regime.

The Constitutional Court also believes that the non-inclusion of regional elections in the election regime is in accordance with the original intent of Article 22E of the 1945 Constitution. In full, the Constitutional Court stated that:[55]

"Based on this decision, what is meant by general election once every five years in Article 22E of the 1945 Constitution is the general election of members of the DPR, DPD, DPRD as well as the President and Vice President simultaneously every five years or the election of five voting cities. Thus, if regional head elections are included as part of the general election, so that it becomes the authority of the Constitutional Court to resolve disputes over the results, not only will it not be in accordance with the meaning of the original intent of the general election as explained above, but it will also become an election not only every five years. "Once, but many times, because many regional head elections are held every five years at different times."

Another reason is that the Constitutional Court considers that the authority of state institutions which has been limitedly determined by the 1945 Constitution cannot be increased or reduced either by law or by decisions of the Constitutional Court. In full, the Constitutional Court stated that:[56]

[55]Ibid, p. 110
[56]Ibid, p. 111

"In addition, as has been the Court's stance in considering its decision number 1-2/PUU-XII/2014, dated 13 February 2014 as quoted above, the authority of state institutions which is limitatively determined by the 1945 Constitution cannot be increased or reduced by law. "The law and the Court's decision because it will take on the role of forming the 1945 Constitution. Thus, according to the court, the addition of the Constitutional Court's authority to adjudicate cases regarding disputes over the results of regional head elections by expanding the meaning of general elections as regulated in Article 22E of the 1945 Constitution is unconstitutional."

However, there are 3 constitutional judges who have different opinions (dissenting opinions) in this case. The three judges are of the opinion that regional elections have the same elements as elections as regulated in Article 22E of the 1945 Constitution. This can be seen from at least four things as follows:

1) In terms of implementation principles, it is the same as general elections, regional elections are carried out on the basis of direct, free, secret, honest and fair
2) In terms of objectives, just like the general elections, regional elections are substantively aimed at electing government leaders. A regional head is a government leader on the scale and scope of a certain area called a region, whether a provincial area, district/city area.[57]
3) In terms of participants, it is the same as in elections, contestants in regional elections are pairs of candidates who are also designated by political parties or coalitions as pillars of a democratic state.
4) In terms of organizers, just like elections, regional elections are also held by the KPU which is national, permanent and independent. From a structural perspective, the KPU is the election organizer as mandated by Article 22E paragraph (5) of the 1945 Constitution. The regional election organizer is the KPUD which is hierarchically institutionally subordinate to the KPU.[58]

Based on these four things, direct regional elections from a broader perspective, namely from a paradigm perspective, the system and mechanism for filling positions can be constructed as an election. As a system and mechanism for remuneration for filling the position of regional head, it contains several subjects and parts that are linked to each other in the election process which is the same as elections with the aim of, among other things, electing a government leader. Therefore, the system and mechanism for regional elections are elections as intended in Article 22E of the 1945 Constitution.[59]

UU no. 22 of 2014 concerning the Election of Governors, Regents and Mayors has changed the mechanismfor selecting regional heads from direct elections to indirect elections through the DPRD. This law caused great controversy among the public, some of whom supported it. However, there are no fewer people who are resistant to it and reject it. Seeing such dynamics, the President finally issued a Government Regulation in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors which essentially returned the mechanism for selecting regional heads through the DPRD to direct election by the people.

The Regional Election Perppu was passed into Law Number 1 of 2015 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors into law. Not long after the law was passed, the President and the DPR revised the law again with the issuance of Law Number 8 of 2015 concerning Amendments to Law Number 1 of 2015 concerning the Determination of Government Regulations in Lieu of Law Number 1 of 2014 concerning Elections. Governor, Regent and Mayor become law. After that, in 2016, the DPR ratified it againLaw Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Establishment of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors into Law.

Based on the dynamics of changes to the law governing regional elections. One interesting thing to examine is the question of whether these laws and regulations include regional elections in the election regime or not. This is important because previously there was Constitutional Court Decision Number 97/PUU-XI/2013 which considered that regional elections were not part of the electoral regime because Article 22E of the 1945 Constitution did not include regional elections in it. As an a contrario it can be understood that whether regional elections are included in the electoral regime, then this is not in accordance with the 1945 Constitution.

When referring to Law no. 22 of 2014 which basically regulates the mechanism for selecting regional heads through the DPRD, this law is in line with the decision of the Constitutional Court. This law does not include regional elections as an electoral regime, so regional head elections according to this law are carried out indirectly by the DPRD.

However, if you look at Law no. 1 of 2015 as amended into Law no. 8 of 2015 and also changed to Law no. 10 of 2016, then there is a constitutional problem there. On the one hand, this law does not include regional elections in the election regime. Article 1 point 1 of the attachment to the Law states that:

" ElectionGovernor and Deputy Governor, Regent and Deputy Regent, as well as Mayor and Deputy Mayor, hereinafter referred to as Election, is the exercise of popular sovereignty in provincial and district/city

[57]Ibid, p. 111
[58]Ibid, p. 112
[59]Ibid, p. 112

areas to elect the Governor and Deputy Governor, Regent and Deputy Regent, and Mayor and Deputy Mayor directly and democratic."

However, on the other hand, this law stipulates that the organizer of the elections for Governor and Deputy Governor, Regent and Deputy Regent and Mayor and Deputy Mayor is the KPU. This is where the problem lies, considering that regional elections according to this law are not part of the electoral regime. The reason is, referring to the provisions of the 1945 Constitution, the KPU is only given the authority to hold elections whose scope is regulated in Article 22E of the 1945 Constitution, where regional elections are not included.

c. Regional head elections is not an election regime

Constitutional Court Decision No. 55/PUU-XVII/2019, especially the legal considerations of the Constitutional Court, where the MK outlined 6 (six) alternative models for simultaneous General Elections. Alternative model where elements of regional elections are combined into simultaneous elections.

1) UU no. 5 of 1974 concerning the Principles of Government in the Regions was later replaced by Law no. 22 of 1999 concerning Regional Government. In this law, the filling of regional heads and deputy regional heads is carried out through elections by the DPRD. Elections are carried out by an Election Committee whose composition is filled by the DPRD's internal staff. These two regulations still apply regional elections which are not directly elected by the people.
2) Regional elections with a direct election model began with Law no. 32 of 2004 concerning Regional Government, Law Number 12 of 2003 concerning General Elections of Members of the People's Representative Council, Regional Representative Council and Regional People's Representative Council, it is believed that the legislators have included elements of election organizers in the Regional Elections. However, this does not mean that the regional elections are included in the election regime, this is confirmed in Constitutional Court Decision No. 072-073/PUUII/2004. Therefore, during this period the term Regional head elections changed and people tended to use the term Pemilukada as if theRegional head elections was within the election regime.
3) The election of regional heads and deputy regional heads is not an election regime, this started with the publication of Constitutional Court Decision No. 97/PUU-XI/2013. In this decision, general elections are only interpreted as limited in accordance with the original intent according to Article 22E of the 1945 Constitution of the Republic of Indonesia, namely elections held to elect members of the DPR, DPD, President and Vice President and DPRD every 5 (five) years. Therefore, according to the MK, expanding the meaning of elections to include Regional head elections is unconstitutional according to the MK. With the issuance of Constitutional Court Decision No. 97/PUU-XI/2013, the special law regarding Regional Elections that was formed was Law no. 22 of 2014 concerning the Election of Governors, Regents and Mayors (UU No. 22 of 2014).
4) Before Law no. 22 of 2014 was revoked by Perpu no. 1 of 2014 which was then approved by the DPR and became Law no. 1 of 2015 and amended again into Law no. 8 of 2015 which regulates general election organizers who are given the task of organizing the election of Governor and Deputy Governorbased on the provisions regulated in this Law. Another thing that is new is in Article 158 of Law no. 8 of 2015 stipulates a requirement of 0.5-2% as a limit for submitting disputes over regional election results. Indeed, this article functions so that the Constitutional Court does not overreact to regional election cases, but what is interesting is that there are actually many tests on Article 158 of Law no. 8 of 2015 (which still has articles to this day).
5) Since the regulation of the Regional Election Law is still in effect, where the Constitutional Court is the final resolution and the KPU is the organizer, the existence of Constitutional Court Decision No. 97/PUU-XI/2013 is increasingly clear that it has only been acknowledged, but its essence is no longer available. However, what has not been answered is the argument for separation of regimes, because the Constitutional Court used its argument to look at the constitution as a whole and it is clear from a chapter perspective that both regional elections and general elections are in different chapters.
6) Since MK Decision no. 14/PUU-XI/2013 it is also known that elections must be held simultaneously, this is also the same simultaneity that (even though there is no basis for the Constitutional Court's decision) has been applied to regional elections since Law no. 1 of 2015. We always strengthen election organizers from one law to another, even though the strengthening appears in laws with different regimes. When MK Decision No. 48/PUU-XVII/2019 in which the Constitutional Court adopted Law no. 7 of 2017 into the Regional Election Law. Likewise, MK Decision no. 55/PUU- XVII/2019, with this Regional head elections has not yet entered the Election regime. This can be seen from Constitutional Court Decision no. 48/PUUXVII/2019 and Constitutional Court Decision No. 55/PUUXVII/2019, where the MK did not respond to the theory of regime separation initiated by the MK in MK Decision No. 97/PUUXI/2013. MK in MK Decision No. 55/PUU-XVII/2019 does not wantto be trapped by the line of thinking about separating the regime again and instead offers new thinking,

namely the simultaneity of elections, namely National Elections and Local Elections (which include Regional Elections).

The election of regional heads is not an election, so the holding of regional head elections must be separated from the elections for members of the DPR, DPD and DPRD as well as the elections for president and vice president. Therefore, the regulations for regional head elections in Law no. 10 of 2016 cannot be integrated with other election laws. In fact, the separation of regional head elections from general elections has caused major problems such as wasting the state budget, wasting the nation's energy in managing elections that occur every year, and creating ineffective regional governments due to horizontally divided government and disconnected government. vertically.

One of the reasons why regional head election laws are made separately from election laws is because regional head elections are not considered elections. Through Constitutional Court Decision No. 72-73/PUU-II 2004 dated March 22 2005, the Constitutional Court has actually determined that regional head elections are elections. Therefore, the Constitutional Court then used the term regional head general election or regional head election, which was then accommodated in Law No. 12 of 2008. Historical and systematic interpretation of the text of the 1945 Constitution ensures that regional elections are elections. The Second Amendment to the 1945 Constitution, Article 18 paragraph (4) states, "Governor, Regent and Mayor respectively as heads of provincial, district and city regional governments are elected democratically."

The formulation of the phrase "democratically elected" was carried out with the consideration that regional heads are elected through elections or not, depending on how the president is chosen. Regional head elections are a regional autonomy regime because they are regulated under Chapter VI Regional Government, which is different from the election regime regulated in Chapter VIIB General Elections, so that regional head elections are not elections. The debate over an autonomy regime versus an electoral regime based on the location of the regulations in the constitution is actually irrelevant, because the DPRD, which is a regional autonomy instrument, is not only regulated in Chapter VI of Regional Government, but also in Chapter VIIB of General Elections. Therefore, the interpretation of the original intent that regional head elections are not elections is difficult to justify.

d. Law on Regional Head Elections in the Election Regime

The policy of codifying the General Election Law is a legislative political choice that aims to unite various laws and regulations governing elections in one book. This idea is based on the fact that the legal regime governing elections currently spread across various laws and regulations is actually not in harmony with each other.

Currently the law regarding elections is divided into at least 4 (four) regimes, namely the legislative election regime, presidential election, regional head election and election organizers. Legislative elections are now regulated by Law Number 8 of 2012 concerning General Elections of Members of the People's Representative Council, Regional Representative Council and Regional People's Representative Council. The Presidential Election is regulated by Law Number 42 of 2008 concerning the General Election of the President and Vice President.

Regional head elections are regulated in Law no. 8 of 2015 concerning Amendments to Law no. 1 of 2015 concerning the Determination of Perpu Number 1 of 2014 concerning the Election of Governors, Regents and Mayors into Law. Apart from that, following Constitutional Court Decision No. 14/PUU-XI/2013 on 23 January 2014 which stated that the separation of legislative and presidential elections was unconstitutional, the holding of legislative and presidential elections in 2019 must be held simultaneously. So logically, because the two electoral regimes are implemented simultaneously, the laws governing them must be one unit.[60]

However, the idea of codification will face the current legislative politics where the electoral legal regime is spread across various laws and regulations and the work to unify the laws. Meanwhile, after the Constitutional Court's decision No. 14/PUU-XI/2013, it is no longer possible to persist in the current policy of diversifying election legislation.

Therefore, the biggest challenge to the idea of codifying the Election Law is the politics of legislation.[61]The codification idea with the greatest challenge is holding regional head elections. From 2005 to 2014 the implementation of regional head elections was based on the regime of Law no. 32 of 2004 and Law no. 12 of 2008 concerning Regional Government which essentially regulates regional head elections.[62]The politics of legalization by separating regional head election arrangements outside the legal election regime and including them in the regional government regime actually brings its own complications to the implementation of general elections.

On the one hand, regional head elections are carried out by election organizers who are subject to the election regime, but aspects of dispute resolution and budgeting are different from the presidential and

[60]Bagir Manan, Basics of Legislation, Ind-Hill.Co, Jakarta, 1992, p. 10
[61]Jimly Asshidiqie, Introduction to Constitutional Law, Op..Cit, p. 159
[62]Bagir Manan, Constitutional Theory and Politics, FH UII Press, Yogyakarta, 2004, p. 221

legislative election regimes. The presidential and legislative election regime for resolving election disputes was resolved by the Constitutional Court, while the regional head election regime following the Constitutional Court's decision which annulled the MK's authority to resolve the Constitutional Court is still up in the air as to whether it will be definitively resolved by the constitutional court or through the supreme court.[63]

Regarding regional head elections, there was complicated legislative politics when the DPR and the President in Law Number 22 of 2014 concerning Regional Head Elections amputated the sovereignty of the people to elect their leaders. Regional head elections are no longer carried out by the people but are handed overto the DPRD. Public rejection of Law No. 22 of 2014 is massive in various regions. Finally, former president SBY issued Perpu Number 1 of 2014 to replace Law no. 22 of 2014. In 2015 President Jokowi stipulated it as Law no. 1 in 2015.

The enactment of Law Number 1 of 2015 further strengthens the existence of the regional head election regime as a separate legal regime that is separate from legislative and presidential elections. This separation actually has implications for budgeting and dispute resolution. Meanwhile, the spirit contained in Law no. 1 of 2015 is a simultaneous regional head election in stages starting from 2015, 2017, 2019, 2021 and the final year 2024.

The point is that after 2023 regional head elections will no longer be held simultaneously in stages, but simultaneously throughout Indonesia. The election of regional heads is an electoral legal regime which has implications for unifying the implementation of legislative, presidential and regional head elections at one election time in the future.

The legislative politics governing the implementation of general elections which is currently being pursuedby separating the legal regimes of legislative and presidential elections from regional head elections has actually shown its own complexity for the practical needs of holding regional head elections, so new ideas are needed to standardize the election administration regime in one law. laws that regulate elections with an electoral system approach as the basis for the regulations.[64]

The implementation of general elections using a separate approach to both legal and implementation times has resulted in a complexity of conceptual and practical problems. A new concept of thinking is needed to unite regional head election regulations in one separate law. Because it is one unit, every stage of the election starting from planning, implementation and post-implementation is carried out by the same election organizer. So that this condition can minimize the occurrence of failures in holding elections.

e. Constitutional Court as an Election Court Institution

The authority of the Constitutional Court as a court that adjudicates disputes over general election results (PHPU) is explicitly stated in the provisions of Article 24C of the 1945 Constitution, this shows a concrete legal policy that the Constitutional Court has absolute competence as an enforcer of the electoral justice system. The Constitutional Court has recorded a good history by resolving the PHPU dispute by exploring substantive democratic values and the political rights of the people in voting in elections. However, it cannot be denied that there are constitutional dynamics in the form of tug-of-war over granting authority to the Constitutional Court to adjudicate disputes over regional head general election results (PHPKADA).[65]

One of them is the mandate of Article 157 of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Determination of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors into Law (UU Regional head elections) . Article 157 of the Regional Election Law explicitly limits the Constitutional Court's authority to adjudicate PHPKADA disputes until the formation of a special election court which must be formed before the implementation of the National Simultaneous Election, which in this case is the 2024 election.[66]The presence of this article mutatis mutandis eliminates the Constitutional Court's authority to adjudicate and decide PHPKADA disputes in 2024.

The loss of the Constitutional Court's authority to adjudicate and decide PHPKADA disputes in 2024 has the potential to cause a blur of legal certainty for regional head election participants who wish to submit PHPKADA disputes. This is also reinforced by the existing political and legal reality that there is no Electoral Justice Bill on the list of priority National Legislation Programs for 2021. This means that there is no strong desire yet to be seen from the legislators to formulate and discuss the establishment of this electoral court. Therefore, it is necessary to take concrete steps by revising the provisions of Article 157 of the Regional Election Law and returning the Constitutional Court's authority to adjudicate and decide PHPKADA disputes in

[63]I Gede Pantja Astawa and Suprin Na'a, Legal Dynamics and Legislative Science, PT. Alumni, Bandung, 2008, p. 72

[64]Yuliandri, Principles of Forming Good Legislation: Ideas for forming Sustainable Laws, PT. Rajawali Press, Jakarta, 2009, p. 5 [65]Ari Wirya Dinata, in the Focus Group Discussion "Effectiveness of PHPU Settlement in the 2019 Election and 2020 Regional Election", held by the Center for Constitutional Studies Tuesday, 9 November 2021

[66]See Article 157 paragraph 1-3 of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Determination of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors into Law.

2024. Moreover, the Constitutional Court is still considered very capable and competent to remain an election court that provides substantive justice for seeker of electoral justice.

Apart from that, until now, the implementation of electoral justice to adjudicate PHPU and PHPKADA disputes is still based on the provisions in the Constitutional Court Regulations. This of course brings its own problems, especially related to the certainty of the PHPU procedural law at the Constitutional Court. Referring to the PHPUKADA procedural law, inconsistencies occur from year to year when regional elections are held in Indonesia. Not to mention, if you look at the speedy trial nature of PHPU/PHPKADA disputes, which requires the Constitutional Court to quickly decide all PHPU/PHPKADA disputes it receives.

Thus, the Regional Head Election in its development has experienced many changes starting from before pre-independence until now there are still regulations in the long debate regarding the Regional Head Election in this election regime. This can of course be seen from post-reform regional head elections, where many regulations regarding regional head elections are part of the electoral regime, but these determinations give rise to many legal interpretations with the emergence of various legal regulations made by law makers. Such prospects call for democratic regional head elections characterized by a rule of law that adheres to the values of justice, especially substantive justice in the Constitutional Court's decision regarding disputes over regional headelections for governors, regents and mayors.

3. Constitutional Court in deciding disputes over the election of governors, regents and mayors

Regulations regarding the authority of the Constitutional Court are regulated in the 1945 Constitution or more precisely in Article 24C paragraphs (1) and (2). However, along with the development of the Indonesian constitution, the authority of the Constitutional Court has now increased following Constitutional Court Decision Number 85/PUU/XX/2022. Basically, in the 1945 Constitution there is not a single provision that confirms that the Constitutional Court has the authority to decide disputes over regional election disputes. Initially, the authority to decide disputes over regional election results was the Supreme Court, which was then transferred to the Constitutional Court as stated in Constitutional Court Decision Number 072-073/PUU-II/2004.

Furthermore, in 2013 the Constitutional Court said that it had no authority to decide disputes over regional election disputes. This is as stated in the Constitutional Court Decision Number 97/PUU-XI/2013. This is because the Constitutional Court considers that the general election regime and regional head elections are two different things. The general election regime includes; election of members of the DPR, DPD, President and Vice President, and DPRD, while the regional head election regime includes; election of Governor, Regent and Mayor. Thus, inserting the regional head election regime into general elections by expanding the meaning of general elections in Article 22E of the 1945 Constitution is unconstitutional.

However, to avoid doubt, uncertainty, and to avoid a legal vacuum, the Constitutional Court ordered the legislators to form what is called a Special Judicial Body. As long as the Special Judicial Body has not been formed, the Constitutional Court still has the authority to adjudicate disputes over the results of the Regional Election. However, in its development until now the Constitutional Court's decision has not at all been discussed further regarding the formation of a Special Judicial Body.[67]

Until finally the authority to adjudicate disputes over the results of the regional elections was returned to the Constitutional Court permanently and stated the phrase "until a special judicial body is established" in Article 157 paragraph (3) of Law no. 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Determination of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors. This law has no binding legal force (vide Constitutional Court Decision Number 85 /PUU-XX/2022).

The Constitution as stated in the 1945 Constitution of the Republic of Indonesia does not regulate provisions stating that the Constitutional Court has the authority to decide disputes regarding the results of the regional elections. However, in the 1945 Constitution, the Constitutional Court has the authority to decide disputes regarding election results, so that in 2013 the Constitutional Court through decision Number 97/PUU- XI/2013 said that these two things were two different things. Therefore, the Constitutional Court said it had no authority to decide disputes over regional election results. Historically, the Constitutional Court places Regional Elections in one unit with General Elections as stated in Decision no. 72-73/PUU-II/2004.

The Constitutional Court is of the opinion that constitutionally, legislators 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 disputes regarding the results fall under the authority of the Constitutional Court with the provisions of Article 24C paragraph (1) of the 1945 Constitution. ". On this basis, the Regional head elections is included in
the Election regime so that all requests for disputes regarding the Regional head elections results fall under the

[67]Ni`matul Huda, Development of Constitutional Law Debates & Ideas for Improvement, FH UII Press, Yogyakarta, 2014, p. 32

authority of the Constitutional Court to be examined, tried and decided.[68]Decision Number 97/PUU-XI/2013 which confirms in essence:

a. Regional elections are not elections as intended in Article 22E of the 1945 Constitution
b. If the Regional head elections is part of the General Election, so that the Constitutional Court has the authority to resolve disputes over its results, then that is not in accordance with the original Election Intentari and makes the General Election no longer once every five years but repeatedly;
c. The addition of the Constitutional Court's authority to adjudicate disputes regarding regional election results by expanding the meaning of Article 22E of the 1945 Constitution is unconstitutional
d. Even though the Constitutional Court does not have the authority to adjudicate and decide disputes regarding the results of the regional elections, this does not mean that all MK decisions since 2008 are null and void and do not have binding legal force;
e. To avoid doubt, uncertainty and a vacuum in the institutions authorized to resolve disputes regarding regional election results due to the absence of a regulating law, this authority remains the authority of the Constitutional Court.

With the Constitutional Court not having the authority to decide disputes over the results of the Regional head elections, the Constitutional Court ordered the formation of a special institution to decide disputes over the results of the Regional head elections. This is to avoid a legal vacuum (recht vacuum), however, as long as there is no law that regulates it, the Constitutional Court still has the authority to examine, adjudicate and decide disputes over the results of the Regional head elections. After the Constitutional Court ordered special institutions to be regulated to handle disputes regarding regional election results, these provisions were finally included in the Election Law, more specifically regulated in Article 157 paragraph (3) of the Election Law.

However, until now the Special Judicial Body has not been formed. Seeing that a Special Judicial Bodyhas not yet been established to function as a body to handle disputes regarding the results of the Regional Elections. With no further distinction between the election and Regional head elections regimes, the Constitutional Court through Decision No.85/PUU-XX/2022 stated that the Constitutional Court has the authority to examine and adjudicate cases of disputes regarding the results of the Regional head elections on a permanent basis. And the general elections adjudicated by the Constitutional Court consist of general electionsto elect the President and Vice President, DPR, DPD, DPRD both Provinces, Regency/City as well as electing regional heads of Provinces, Regency/City.

Elections are different from Regional head elections, Regional head elections itself includes the election of Governors, Regents and Mayors as stated in Article 18 paragraph (4) of the 1945 Constitution. The MK also stated the difference between elections and regional elections in MK Decision No. 97/PUU-XI/2013, the MK considers that regional elections are not included in the election regime, so that the addition of the MK's authority to decide disputes about regional election results by expanding the meaning of Article 22E of the 1945 Constitution is unconstitutional. This is the problem, regarding whether it is necessary to specifically regulate the authority of the Constitutional Court in adjudicating disputes over regional election results in the 1945 Constitution. Therefore, after Decision No. 97/PUU-XI/2013, the Constitutional Court still has the authority to decide disputes regarding the results of the Regional Election until the formation of a Special Judicial Body and this authority is only based on law, while the authority of the Constitutional Court must be regulated in the 1945 Constitution. So it can be said that additions or reductions The authority of state institutions must be clearly determined in the 1945 Constitution through amendments.[69]

However, in the latest Constitutional Court Decision Number 85/PUU-XX/2022, the Constitutional Court changed its view and no longer differentiates between the election regime and the regional election regime, so that in its decision the Constitutional Court has the authority to permanently decide disputes over regional election results. However, to anticipate the future, if possible, there will be a request regarding whether or notthe Constitutional Court has the authority to decide disputes over regional election results. The constitution should also regulate the authority of the Constitutional Court to regulate regional election disputes.

The decentralized system has provided the widest possible democratic space for regions. Regional Heads play a significant role in managing life in their respective regions. The election of Governors, Regents and Mayors is carried out as a real manifestation of local democracy and is a sociological implementation of the decentralized system. The election of Governors, Regents and Mayors is a process of selecting the best people in each particular region to be elected by the community and appointed as regional leaders according to their level.

The election of Governors, Regents and Mayors as a form of democracy is carried out, so from this perspective, from a philosophical perspective, a regional head election has the following objectives:[70]

a. Regional head elections are a means of selecting regional leaders who have legitimacy

[68]Supriyadi and Aminuddin Kasim, "Design of the Special Election Judicial Body After the Constitutional Court Decision Number 97/PUU-XI/2013," Journal of the Constitution 17, No. 3 (2020), https://doi.org/10.31078/jk17310

[69]Ni`matul Huda, "Review of Perppu by the Constitutional Court," Constitutional Journal Vol 7 No. 5(nd): 73–91

[70]Indra Syahrial and Dadan Herdiana, Simultaneous National Regional head elections Problems and Solutions (Regional head elections Law No. 10 of 2016), Deepublish, Yogajakarta, 2020, p. 20

b. Regional head elections are a deepening of democracy at the local level
c. The election of regional heads is a real manifestation of people's sovereignty

According to Joko H. Prihatmoko, regional leaders must have legitimacy, where a person's position as a political official requires legitimacy. This means that legitimacy does not mean recognition as interpreted by many people, but more than that regional leaders must have a legal basis, so they have the authority and power to govern.[71]The regional election process must have three legitimacy, namely:

a. Juridical legitimacy, that all regional election processes must have a legal basis and the legal basis is carried out with a full sense of responsibility, so that the regional election process has validity from a legal perspective.
b. Sociological legitimacy, that the regional election process must be carried out with mechanisms and rules that reflect democratic values and social norms. Sociological legitimacy is realized through community participation in the regional election process, community control over political promises, and community support for regional heads
c. Ethical legitimacy, that the power and authority of regional heads must be in accordance with social norms. Therefore, if the public assesses that the regional head's policies no longer carry out his political promises or does not heed moral values in carrying out his duties, then the regional head actually does not have legitimacy from the community.

Before regional elections were held directly, regional elections were carried out through a representative system or were appointed by central officials. In such a system, the community as the owner of sovereignty only acts as a spectator, so that there is a lot of sharp criticism of this representative system and in the future regional elections are carried out directly by the community. Direct regional elections have provided the widest possible space for the public to exercise their political rights by registering as regional head candidates freely according to their individual conscience. Regional head elections as a form of popular sovereignty can be reflected in the implementation of the following things:[72]

1) The community can exercise their political rights directly and completely. That the state is obliged to protect the political rights of its people, both the right to be elected and the right to vote. The direct regional election process is a concrete manifestation of the government's protection of the people's political rights
2) Implementation of the principles of responsibility and accountability. That regional heads are obliged to be accountable for their leadership to the entire community. Regional heads who cannot account for their leadership to the community in a complete and transparent manner will receive punishment from the community in the next regional election process
3) There is synergy between the government and society. In a democratic system, regional heads actually carry out their duties in accordance with the will of the people. This will be realized if there is synergy between the government and the community

Indonesia is a legal state as well as a democratic country, where the election of governors, regents and mayors are elected directly by the people through a process regulated by law. This is because not all countries that claim to be legal countries can then be said to be democratic countries. Apart from that, Indonesia is still in the process of democratic transition, while from the perspective of democratic values and processes it is said that democratic rights should not be limited by anything, including access to elect leaders. These various restrictions on democratic access are a betrayal of democratic values. A good and healthy political process is a process that captures the political dynamics that occur in society wisely and judiciously.

Regional head elections is a means of control for the community to be able to participate in democratic government because by holding Regional Head Elections, the people through their representatives can see and monitor how the wheels of government are running and if the wheels of government are not running well as expected, then of course then It is the people who determine the metamorphosis of their government by electing or replacing them with other people's representatives who are considered more competent.

Talking about the issue of regional head elections, such as the election of governors, regents and mayors in Indonesia, is a dilemmatic position, so that regional elections are between the election regime and the regional government regime. Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Determination of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors into Law is one of the processes that sees the election of heads Regions are regulated in a separate law and are not part of the election.

Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia states that the election of Governors, Regents and Mayors is democratically elected. According to the interpretation of the Constitutional Court, democratic elections can be carried out directly as long as they prioritize democratic principles, namely

[71]Joko H. Priatmoko, Direct Regional Head Election, Student Library, Yogjakarta, 2015, p. 100
[72]Indra Syahrial and Dadan Herdiana, Simultaneous National Election Problems and Solutions (Regional head elections Law No. 10 of 2016, Op….Cit,, p. 21

direct, public, free and secret.The process of electing Governors, Regents and Mayors is an implementation of the values of democracy and nomocracy which are the paradigm for changes to the 1945 Constitution.

Settlement of disputes over the results of the elections for Governors, Regents and Mayors will be able to run smoothly in accordance with the time allocation determined by law, so that everything is carried out in accordance with constitutional principles. For this reason, joint cooperation is needed in the successful implementation of this national activity, starting from holding elections for Governors, Regents and Mayors to resolving disputes.

The Constitutional Court always prepares itself to carry out its mandate to resolve disputes over calculation results in regional head elections, so it is necessary for all parties to understand this, so that they remind each other that in implementing democracy, especially the regional head election which will be held in 2024, it is a shared responsibility as children of the nation. The democratic process in future regional elections must be held in accordance with existing laws and regulations. Thus, the Constitutional Court in deciding disputes over the election of governors, regents and mayors has the authority granted by law.

Thus, in deciding disputes over the election of regional heads of governors, regents and mayors, the Constitutional Court should indeed be given the authority regulated in our Constitution, because Article 24C of the 1945 Constitution of the Republic of Indonesia does not regulate authority in deciding disputes over the election of regional heads of governors, regents and mayors, only regulates disputes over general election results. For this reason, in deciding disputes, authority is given to the Constitutional Court until a special judicial body is formed. Therefore, the Constitutional Court in finalizing the results of the regional head elections for Governors, Regents and Mayors must uphold the value of substantive justice in seeking a rule of law state which is a shared aspiration to guarantee democratic legal certainty.

4. Substantive Justice in Democratic Election Disputes for Governors, Regents and Mayors

In realizing substantive justice in the judiciary with a discourse on the concept of justice, various definitions of justice are found, including justice is putting something in its place (proportional) justice is a balance between rights, obligations and so on. Justice according to Aristotle is giving everyone what is their right.

Freeing the concept of law from the idea of justice is quite difficult because it is continuously mixed politically with ideological tendencies to make law appear as justice. If law and justice are identical, if only fair rules are called law, then a social order called law is just, which means it has moral justification. The tendency to identify law and justice is a tendency to justify social rules. This is a political tendency and way of working, not a scientific tendency.[73]

The theory of justice as put forward by Aristotle is equal treatment for those who are equal before the law. It remains a matter for the political order to determine who should be treated equally or vice versa. Classical thinking laid the foundation for justice itself. Justice, as emphasized by Plato, is that justice is beyond the capabilities of ordinary humans, where justice can only exist in laws and regulations made by experts who specifically think about this.[74]In the previous chapter, Aristotle explained that justice gives everyone what is their right, so that justice is divided into three groups, namely;

a. Distributive justice is justice that demands that everyone gets what is their right, so it is proportional. Here what is considered fair is if everyone gets what is their right proportionally. So distributive justice is concerned with determining rights and fair distribution of rights in the relationship between society and the state, in the sense of what the state should provide to its citizens.
b. Commutative Justice is justice that regulates fair relationships between one person and another or between one citizen and another citizen. Commutative justice concerns horizontal relationships between one citizen and another. In business, commutative justice is also called or applies as exchange justice. In other words, commutative justice concerns fair exchanges between the parties involved.[75]
c. Substantive justice is defined as justice provided in accordance with substantive legal rules, without looking at procedural errors that do not affect the plaintiff's substantive rights. This means that what is formally procedurally correct can be materially blamed and its substance violates justice. Likewise, what is formally wrong can be justified if materially and substantially it is fair enough (judges can tolerate procedural violations as long as they do not violate the substance of justice). In other words, substantive justice does not mean that judges must always ignore the sound of the law. Rather, substantive justice

[73]Hans Kelsen, General Theory of Law and State, p. 3 Also Hans Kelsen, Pure Theory of Law, p. 30-31, as quoted by Jimly Asshiddiqie and

M. Ali Safa"at in their book entitled Hans Kelsen's Theory of Law, Press Constitution, Jakarta, 2012, p. 16

[74]Lilik Mulyadi, Compilation of Criminal Law in Theoretical Perspective and Judicial Practice, Mandar Maju Publisher,

Bandung, 2010, p. 152

[75]Sudikno Mertokusumo, Legal Theory, Cahaya Atma Pustaka, Jakarta, 2012, p. 105-106

means that judges can ignore laws that do not provide a sense of justice, but are still guided by formal- procedural laws that provide a sense of justice while guaranteeing legal certainty.[76]

Justice here focuses more on substantive justice. Where the author's basic reference is to look more at the Theory of Justice which prioritizes substantive justice rather than procedural justice. It is clear from the Constitutional Court's decision that the constitutional judges have not used substantive justice as a basis for handing down decisions on disputes over the election of governors, regents and mayors. Constitutional judges only look more at thresholds as basic provisions that are realized, so that only procedural justice is used as a reference in resolving regional head election disputes based on the Election Law and Constitutional Court Regulations.

In principle, looking at every judge's decision which always contains the phrase "for the sake of justice based on belief in the Almighty God" is a sentence that contains a very deep meaning, because the phrase "for the sake of justice" means an action that is only aimed at achieving justice. Meanwhile, the phrase "Based on Belief in One Almighty God" conveys the meaning that the goal of achieving justice must be based on divine values. Judges in carrying out their functions and duties must be based on the mechanisms outlined by law. This is the philosophical meaning of the true duties and functions of judges, so that judges do not drift into a wrong paradigm by positioning themselves as slaves to the law, although there is no need to be justified in determining attitudes arbitrarily without any legal basis.

Talking about the relationship between justice and law will place the two in different meanings. The law is an instrument to achieve the goals of justice, but the law cannot be used as the only instrument to achieve substantive justice, critical logic in understanding the problems faced in a trial can be an alternative to achievingjustice or at least can approach justice other than just adhering to the value of legal certainty as the soul of the law.

It can be seen that legal products in the form of laws born from a political process are not always able to provide justice in a practical setting. Justice is in the most abstract area in the application of law, because justice always resides in the feelings of each person autonomously. However, the sense of justice itself is not impermeable to existing situations, views of justice are very diverse and each person has their own meaning of justice, so that justice becomes increasingly difficult to find its limits.

When freedom of expression has reached such an extent, the essence of justice continues to becomeincreasingly abstract and difficult to find, so that in the end it will reach a saturation point where justice is seenby society as a condition that is considered to support the desires of the mainstream in society, even though itdoes not It can be denied that sometimes this desire is not born purely, but can also arise out of a certain interest.It must be admitted that the wrong paradigm was deeply embedded in the souls of the judges at that time, especially constitutional judges. Whether judges in Indonesia are aware of this or not, like constitutional judges,they have been trapped in a habit that is contrary to applicable legal principles. In general, constitutional judgesin giving decisions regarding the resolution of disputes over the results of regional head elections, rarely showthe slightest impression of a burden on them and many of them even ignore the attitude of caution by giving appropriate and inappropriate considerations or having different interpretations. .

This means that constitutional judges, in giving decisions on disputes over the results of regional head elections for Governors, Regents and Mayors, make exceptions in terms of considerations that can provide a sense of justice for the applicant and also do not provide a sense of justice for the applicant in terms of threshold disputes in accordance with the provisions of Article 158 UU no. 10 of 2016.

A breakthrough in the procedural law of the Constitutional Court as above with this institution prioritizing material truth. This was strengthened by the interim decision in the decision on the Dispute on Regional Head Election Results for Governor, Regent or Mayor and the opening of a follow-up trial open to the public following the Constitutional Court's interim decision. Meanwhile, in terms of substance itself, this is the first time that the Constitutional Court has interpreted the scope of its examination and the scope of its powers to adjudicate, as well as the sanctions given in one decision. Systematic, structured and massive violations that affect the final results are declared to be able to invalidate regional election results.

Before this case was recognized by the Constitutional Court, no significant violations were found and they were only personal. Since then, the Constitutional Court has emphasized that its paradigm is in adjudicating disputes over the results of elections for Governor, Regent or Mayor. By prioritizing substantive justice, dealing with procedural justice which on the other hand moves away from the objectives of the law itself.

The theory of justice emphasizes that what can be said to be a form of injustice is systematic, structured and massive violations in a regional election which at the same time violates the law and also injures democratic principles. The legal principle confirms that:

"No one should benefit from deviations and violations committed by himself and no one should be harmed by deviations and violations committed by others" (nullus/nemo commondum capere potest de injuria sua

[76]Jimly Asshidqie, Constitution and Constitutionalism. , Op..Cit,,, p. 3

propria)." This principle is also called nemo suo ex delicto meliorem conditionem suam potest facere or no one can derive an advantage from his own wrong.

Violations of the principle of free and fair elections for governors, regents or mayors are not only detrimental to candidate pairs who act cleanly and honestly. However, it is also detrimental to all Indonesian people, especially marginalized, poor and marginalized groups who do not have leaders who will fight for their interests. Their access to politics, economics, education and employment will be closed and they will no longer be able to compete with groups with much better access in society. Moreover, if the winner relies solely on economic capital and dependence on capital forces, then campaign promises to improve the welfare of the people will be difficult to realize.

The development of MK at points such as scientific activities departs from a perspective and framework of thinking based on which facts and phenomena are interpreted and understood. With the Constitutional Court's decision, it confirms its paradigm, not just assessing violations that injure justice. However, the Constitutional Court as a judicial authority can examine the stages of the Regional Head Election and provide sanctions in its decisions that do not merely determine the correct vote results.

The problem at hand is a violation that should be resolved fairly before being submitted to the Constitutional Court. This violation is still being disputed in this institution. This means that there are many stages that have not been completed related to providing access to justice. This is because if the KPU's vote results are assessed as limited, while violations are also committed by organizers (KPU, Panwaslu and others) and bureaucratic officials, then all local democratic processes must be assessed in accordance with the principlesof free and fair.

The courage of the Constitutional Court is important, if it is related to the differences between John Rawls' three types of procedural justice. This was emphasized by Rawls that procedural perfection has independent criteria, so it produces justice as expected. Meanwhile, procedural justice is not perfect, independent criteria do not guarantee that justice will be produced as expected. For pure justice, independent criteria are not preceded, so that justice is born in the procedure itself when it is carried out.

Pure justice is achieved by building and managing a just institutional system.[77]In relation to the Constitutional Court's decision regarding disputes over regional head election results, if the judge has complied with the procedural requirements, then it is not because justice is expected to be upheld and the judge is guilty of being punished. However, whether the procedures followed by the judge are in accordance with the provisions. The distribution that is felt to be unfair is closely related to the distribution procedure, so the Constitutional Court in this case was also very correct in assessing that the procedure itself did not provide justice.

Upholding the paradigm of substantive justice in accordance with responsive law as emphasized by Nonet-Selznick. Looking at the breakthrough of the Constitutional Court in accordance with the ideals of progressive law/courts in accordance with Satjitto Rahardjo's opinion which has given many other colors to the world of lawand such as the humanitarian struggle put forward by Roeslan Saleh who emphasized that:[78]

"If the judge does things that are unusual and ordinary for his deep desire and desire to touch justice, there will be uncertainty and unease, but in fact it will do more good than harm. Therefore that unease and uncertainty can cause him to break with false certainty and hypocritical calm."

Substantive justice does create legal uncertainty, but it creates calm for judges to provide justice for the cases they handle. Apart from that, the judge's decision will encourage various changes in the drafting of laws and regulations that do not provide justice. If judges (including constitutional judges) only apply the meaning of the law in the cases they handle.

Quoting Robert M. Unger who argued that:
Is formal when it makes the uniform application of general rules the keystone of justice of when it establishesthe principle whose validity is apparently independent of choices among conflicting values. It is procedural when it imposes conditions on the legitimacy of the processes by which social advantages are exchanged and distributed. It is substantive when it governs the actual outcome of distributive decisions or bargains.(Ideal justice is formal when general rules are uniformly practiced as a basis for justice or injustice establishing principles whose validity is expected to be free from choice between opposing values. It is procedural when it establishes the conditions for the legitimacy of the process by which social benefits interchangeable or distributed. It is substantive when it determines the actual outcome of a distributive decision or bargain).[79]

The Constitutional Court developed with the paradigm of expanding substantive justice itself, namely the protection of the rights of anyone running as a candidate for Governor and Deputy Governor, Regent and Deputy Regent or Mayor and Deputy Mayor and universal suffrage for adults (universal adult suffrage) who do

[77]John Rawls, Theory of Justice, Basics of Political Philosophy for Realizing Social Welfare in the State, Translation A. Theory of Justice, Uzair Fauzan and Heru Prasetyo, 2nd Cet, Student Library, Yogjakarta, 2011, p. 23
[78]Roeslan Saleh, Judgment as a Humanitarian Struggle, Aksara Baru, Jakarta, 1983, p. 43
[79]Roberto Unger, Law in Modern Society, The Free Press, New York, 1976, p. 194

not can be limited. A paradigm that provides a way to develop the goals of democracy itself, with the complex realities and democratic processes being carried out.

The path opened by the Constitutional Court can only realize substantive democracy if it is followed by all parties. It is indeed seen that the justice of the Constitutional Court is meaningless without awareness from other institutions. The Constitutional Court's decision is easily accepted by the parties, because this institution is supported by a transparent process that is impartial and accountable.

Substantive justice in disputes over the election of Governors, Regents and Mayors has a philosophical meaning that is guided by the values of justice itself. UU no. 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors. This law is the basis for regulating the election of regional heads. Governors, Regents and Mayors are elected democratically, so that in the process if there is injustice in the election, a dispute will occur which will result in the process at the Constitutional Court itself.

Article 158 Law no. 10 of 2016 is the essence of making an application to the Constitutional Court which must have the conditions as regulated in that article, where this threshold becomes a provision. The reality is that Article 158 very clearly regulates the population according to the election of regional heads, governors, regents and mayors themselves.

The reality seen in the dispute over the election of Regional Heads for Governors, Regents and Mayors has not provided the expected justice. This is because the Constitutional Court's decision has not rationally stated the provisions of Article 158 of the Regional Election Law properly, effectively and efficiently in providing a sense of justice in the regional head election. This is because substantive justice needs to be realized by a constitutional judge, where this judge not only looks at decisions based on the law alone, but the judge must follow his conscience. If the application of the rules is not appropriate, then the judge must decide based on the judge's conscience. So that substantive justice can be fulfilled efficiently. Constitutional Judges still think that the terms and conditions have not been fulfilled, so that the application of Article 158 cannot provide justice in order to achieve a just Constitutional Court decision. It is very clear that judges are only guided by the rules, but the makers of legal rules do not see the aspects properly which basically mean that justice is something that is high in society.

Basically, the Constitutional Court's decision regarding Article 158 does not yet have justice. According to the author, the Constitutional Court's decision overrules Article 158 and there is also a decision that enforces Article 158. The value of the application of law by constitutional judges does not provide logical benefits in providing justice that is desired to be achieved properly. Thus, the philosophical view of substantive justice in the dispute over the election of governors, regents and mayors has not yet fully conveyed the values of justice in order to achieve democratic regional head elections. The philosophical aspect of expanding substantive justice must be realized properly so that in the future every Constitutional Court decision in the dispute over regional head elections for Governors, Regents and Mayors becomes a legal breakthrough that should be properly enforced. If the Constitutional Court's decision overrides Article 158 of the Regional Election Law, it is clear, because it is not in accordance with the values of justice, especially substantive justice, not procedural justice.

5. CONCLUSION

The philosophy of extending substantive justice in disputes over the results of the election of Governors, Regents and Mayors in the Constitutional Court is a form of legal application that must be manifested in various Constitutional Court Decisions. This is because so far the Constitutional Court's decisions regarding disputes over the results of the elections for governors, regents and mayors have not reflected the values of justice, especially substantive justice. Therefore, constitutional judges are only guided by the law as a formal requirement in Article 158 of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning The election of governors, regents and mayors has become law, but the substantive aspects are not implemented properly, so that the dispute over the results of the election of governors, regents and mayors has not met substantive justice for the applicants litigating at the Constitutional Court.

REFERENCES

Adnan Buyung Nasution,2010. Thoughts and Ideas on Constitutional Democracy, Kompas Media Nusantara,Jakarta, p. 96

Andi Muhammad Asrun 2004, Judicial Crisis, Supreme Court under Soeharto, Foreword by Jimly Asshidiqie,ELSAM, Jakarta,, p. 42

Ari Wirya Dinata, 2021. in the Focus Group Discussion "Effectiveness of PHPU Settlement in the 2019 Election and 2020 Regional Election", held by the Center for Constitutional Studies Tuesday, 9 November 2021

Ayman Ayoub & Andrew Ellis (Ed.), Electoral Justice: The International IDEA Handbook, International IDEA, 2006, p. 1

Bagir Manan, 1992. Basics of Legislation, Ind-Hill.Co, Jakarta, p. 10

Bagir Manan,2004. Constitutional Theory and Politics, FH UII Press, Yogyakarta, p. 221

Bayu Dwi Anggono,2016. Restrictions on Filing Dispute Cases on Regional Head Election Results at the Constitutional Court and the Implications for National Security Guarantees, Rechts Vinding Journal, National Legal Media, Volume 5, Number 1, April 2016

CF Strong, 1952. Modern Political Constitutions, an Introduction to the Comparative Study of Their History and Existing Form, revised edition, Sidgwickand Jackson Limited, London, 1952, p. 19

Constitutional Court Decision Number 072-073/PUU-II/2004 concerning Review of Law Number 32 of 2004 Constitutional Court Decision Number 072-073/PUU-II/2004, which authorizes legislators to consider theappropriate method for electing regional heads or in Constitutional Court Decision Number97/PUU/XI/2013

Didik Supriyanto and Ramlan Surbakti (Ed), 2014. Election Integrity, Study of Violations, Violence and Misuseof Money in the 2014 Election, Partnership Partnership, Jakarta, p. 36

Jimly Asshiddiqie and M. Ali 2012. Safa"at in their book entitled Hans Kelsen's Theory of Law, PressConstitution, Jakarta, 2012, p. 16

Hans Kelsen, General Theory of Law and State, Translated by Anders Wedberg, updated edition, Russell and Russell, New York, 1973, p. 123-124

Hans Kelsen, Introduction to The Problems of Legal Theory, translated by Bonnie Litschewski Paulson andStanley L. Paulson, Clarendon Press, Oxford, 1992, p. 16

I Gede Pantja Astawa and Suprin Na'a, 2008. Legal Dynamics and Legislative Science, PT. Alumni, Bandung,, p. 72

Indra Syahrial and Dadan Herdiana, 2020. Simultaneous National Regional head elections Problems andSolutions (Regional head elections Law No. 10 of 2016), Deepublish, Yogajakarta, 2020, p. 20

Jimly Asshidiqie,2004. Indonesian Constitution and Constitutionalism, Constitutional Court of the Republic of Indonesia and Center for Constitutional Law Studies, Faculty of Law, University of Indonesia, Jakarta, 2004, p. 19 For further reading J. Bryce, Studies in History and Jurisprudence, vol 1, Clarendon Press, Oxford, 1901

John Rawls, 2011. Theory of Justice, Basics of Political Philosophy for Realizing Social Welfare in the State, Translation A. Theory of Justice, Uzair Fauzan and Heru Prasetyo, 2nd Cet, Student Library, Yogjakarta, 2011, p. 23

Joko H. Priatmoko,2015. Direct Regional Head Election, Student Library, Yogjakarta, 2015, p. 100

Kacung Marijan, 2006. Democratization in the Regions: Lessons from Direct Regional Elections, Burek Libraryand Center for Democracy and Human Rights Studies, Surabaya, p. 23

Khairul Fahmi, General Elections and People's Sovereignty, Op..Cit,, p. 140-142

Kosasih, A.2018. Measuring Regional Head General Elections Democratically. Al Imarah: Journal of IslamicGovernment and Politics, p. 1

Lilik Mulyadi,2010. Compilation of Criminal Law in Theoretical Perspective and Judicial Practice, Mandar Maju Publisher, Bandung, 2010, p. 152

Lon L. 1969. Fuller, The Morality of Law, revised edition, Yale University Press, London, 1969, p. 39

Mftakhul Huda, 2010. Patterns of Regional Election Violations and Expansion of Substantive Justice, Constitutional Journal, Volume 8, Number 2, 2010

Miriam Budiardjo, Basics of Political Science, Gramedia, Jakarta, 2002, p.150

Mirza Satria Buana, 2010. The Attractive Relationship Between the Principle of Legal Certainty and the Principle of Justice (Substantial Justice) in the Decisions of the Constitutional Court, Yogyakarta: Master's Thesis at the Islamic University of Indonesia, p. 34

Ni`matul Huda,2014. Development of Constitutional Law Debates & Ideas for Improvement, FH UII Press,Yogyakarta, p. 32

Ni'matu Huda, State Science, Rajawali Press, First Edition, Cet-7, Jakarta, 2015, p. 72-73

Ni'matul Huda, 2005. Regional Autonomy, Philosophy, Historical Development and Probematics, Student Library, Yogjakarta, p. 212

Pan Muhammad Faiz, 2018. Criteria for Exclusion Thresholds for Regional Election Result Disputes at theConstitutional Court, Center for Constitutional Studies, Jakarta, 2018

Philipus M. Hadjon 1997, Legal Studies, Papers, Training on Normative Legal Research Methods, AirlanggaUniversity, Surabaya, p. 20

R. Willian Liddle, 1992. New Order Elections, The Ebb and Flow of Political Power, LP3ES, Jakarta, p. 106Ramlan

Surbakti, 2005. "Regional head elections is Election", Kompas, 4 February 2005, p. 4

Ramlan Surbakti, 1982. Understanding Political Science, Gransindo, Jakarta, 1982, p. 181

Ramlan Surbakti, et al, 2008. Election System Engineering for the Development of a Democratic PoliticalOrder, Partnership for Governance Reform in Indonesia, Jakarta, p. 26

Ramlan Surbakti,2011. Didik Supriyanti and Hasyim Asy'ari, Designing a Democratic Political System,Towards an Effective Presidential Government, Partnership as Governance Reform, Jakarta, 2011, p. 5

Refly Harun, 2005. "The Constitutional Court Failed to Guard Democracy", in Kompas Daily, March 30 2005 Republic of

Indonesia, Law Number 15 of 1969 concerning General Election of Members of the People's Consultative/Representative Body, Article 1 paragraph (1)

Robert Dahl,2001. Regarding Democracy, Briefly Exploring the Theory and Practice of Democracy, Translatedby A. Rahman Zainudin,1982. Obor Foundation, Jakarta, p. 68

Roberto Unger, 1976. Law in Modern Society, The Free Press, New York, 1976, p. 194 Roeslan Saleh,

1983. Judgment as a Humanitarian Struggle, Aksara Baru, Jakarta, 1983, p. 43 Saputra, A.2019. Analysis of

the Failure of the NasDem Party's Political Marketing in the 2019Sudikno Mertokusumo, 1993. Chapters on

Legal Discovery, Citra Aditya Bakti, Bandung, p. 2 Sudikno Mertokusumo, 2012. Legal Theory, Cahaya

Atma Pustaka, Jakarta, 2012, p. 105-106

Supriyadi and Aminuddin Kasim,2013. "Design of the Special Election Judicial Body After the Constitutional Court Decision Number 97/PUU-XI/2013," Journal of the Constitution 17, No. 3 (2020), https://doi.org/10.31078/jk17310

Veri Junaidi, et al., 2015. Evaluation of 2014 Election Law Enforcement, Needem, Jakarta, 2015, p. 4 Yuliandri, 2009.

Principles of Forming Good Legislation: Ideas for forming Sustainable Laws, PT. Rajawali Press, Jakarta, 2009, p. 5

AUTHOR

First author : Anthoni Hatane, Graduate Student PhD, Study Program : Science Of Law. Pattimura University, Ambon, Indonesia : Email : anthonihatane973@gmail.comThe second author : SEM Nirahua:: Faculty of Law. Pattimura University, Ambon, Indonesia
The third author : J. Tjiptabudy: Faculty of Law. Pattimura University, Ambon, IndonesiaThe fourth author : H Salmon : Faculty Of Law. Pattimura University, Ambon, Indonesia