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The ideal concept of formal term application in the dispute settlement on local government election results in Indonesian constitutional court

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Abstract--This study aims to describe the ideal concept of application of formal terms in the settlement of disputes on the results of the election of the head area in the Indonesian Constitutional Court. This study focuses on the idea that the Constitutional Court as a guardian of the constitution and democracy must be subject to the constitution as the highest law in the Unitary State of the Republic of Indonesia. From 2008 to 2021, the Constitutional Court has exercised this authority in (2) two periods, namely when the settlement of disputes over the results of the regional head elections in the general election regime in 2008 to 2013 and the regional government regime from 2015 to 2021. Methods in the study This research uses the type of doctrinal research method, which in terms of its nature, this research is a descriptive research, which is a research that describes something in terms of certain space and time. The results obtained from this study are the ideal design of the application of the provisions of formal requirements in handling disputes regarding the results of regional head elections in the Constitutional Court in the future is that the Constitutional Court can apply the provisions of formal requirements in resolving disputes regarding the results of regional head elections by providing legal considerations. in the Constitutional Court Decision. In resolving disputes over the results of regional head elections in the regional government regime, the Constitutional Court provides different legal considerations related to the application of the

provisions of the formal requirements in its decision. The purpose of this study is to obtain a design for implementing the provisions of the formal requirements for handling disputes over the results of regional head elections at the Constitutional Court as a guardian of the constitution and democracy that is good and effective in the future.

Keywords--formal requirements, dispute resolution, election, constitutional court, Indonesia.

Introduction

Throughout the eighteen years of the establishment of the Indonesian Constitutional Court, three types of constitutional authority have been recorded, namely, judicial review, disputes over general election results, and disputes between state institutions whose authority is granted by the Constitution. Of the three powers, judicial review of the constitution and disputes over general election results are the most frequently exercised by the Constitutional Court compared to other authorities (Ulum, 2019). At the level of judicial review, the Constitutional Court has decided on several cases that are considered to greatly affect the concept of a democratic rule of law in Indonesia. Some examples that can be put forward include the fields of political rights, democracy, social affairs, religion, economics and other fields. In the legal considerations of the Constitutional Court in these various decisions, it appears that the Constitutional Court often prioritizes deciding cases based on the values contained in the constitution, namely ensuring the protection of citizens' rights and human rights guaranteed by the constitution (Budhiati, 2020; Sibuea et al., 2020).

In line with that, the legislators changed the regulation regarding the mechanism for the election of regional heads, which were originally directly elected to be elected through the DPRD. The amendment does not stipulate a mechanism for dispute resolution of election results through the DPRD. The election regulation through DPRD is effective and revoked on the same day as the issuance of Government Regulation in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors and Government Regulation in Lieu of Law Number 2 of 2014 concerning Amendments to Law Number 23 of 2014 concerning Regional Government. In essence, the contents of Perpu No. 1 of 2014 which was ratified as Law No. 1 of 2015 concerning Stipulation of Perpu No. 1 of 2014 concerning the Election of Governors, Regents and Mayors became Laws to restore the mechanism for direct regional head elections. In Perpu Number 1 of 2014, the authority to settle disputes over election results is determined through the High Court and an appeal can be submitted to the Supreme Court (Pujiyanto et al., 2018).

It has not been implemented yet, the regulation of the dispute resolution mechanism for election results has been changed to be handled by a special judicial body. A special judicial body was formed prior to the implementation of the national simultaneous elections, but its arrangement was not confirmed as an independent judicial body, or as a special court under the general court or state administrative court. While waiting for the formation of a special judicial body,

the transitional authority to settle disputes over simultaneous election results is given to the Constitutional Court (Budi, 2022). Until now, the Constitutional Court's authority to settle disputes over the results of regional head elections is based on 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 Elections for Governors, Regents and Mayor Becomes Law (Election Law). This study aims to describe the ideal concept of application of formal terms in the settlement of disputes on the results of the election of the head area in the Indonesian Constitutional Court. This study focuses on the idea that the Constitutional Court as the guardian of the constitution and democracy must be subject to the constitution as the highest law in the Unitary State of the Republic of Indonesia.

Literature Review

Amendments to the 1945 Constitution (1999-2002) have brought a new spirit in the Indonesian state administration system, both in the legislative, executive and judicial power institutions (judicial power). In the judicial power system besides the Supreme Court (MA) and the judicial bodies under it in the general judiciary, religious courts, military courts, and state administrative courts, a new institution has emerged, namely the Constitutional Court (MK). One of the important substances of the amendment to the 1945 Constitution is the existence of the Constitutional Court as a new state institution that stands alone in exercising judicial power as regulated in Article 24C of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) and Law Number 24 of 2003. concerning the Constitutional Court, as a constitutional court based on the assumption that the supremacy of the constitution is the highest law that underlies or underlies state activities and as a parameter to prevent the state from acting unconstitutionally. Therefore, the establishment of the Constitutional Court as one of the actors of judicial power has an important role in efforts to uphold the constitution and the principles of the rule of law in accordance with its duties and authorities as stipulated in Article 24C of the 1945 Constitution of the Republic of Indonesia, namely to examine the law against the Constitution; decide on disputes over the authority of state institutions whose authority is granted by the Constitution; decide on the dissolution of a political party; decide disputes about the results of the general election. Finally, the Constitutional Court is obliged to give a decision on the opinion of the House of Representatives regarding alleged violations by the President and/or Vice President according to the Constitution.

Since the Constitutional Court was given the authority to settle disputes over the results of the Regional Head General Election, the Constitutional Court has been able to resolve this authority by basing it on the 1945 Constitution of the Republic of Indonesia and the Constitutional Court Law. As the results of the research on 16 (sixteen) Constitutional Court decisions regarding disputes regarding the results of the General Elections as briefly described above, it can be concluded as follows:

- The Constitutional Court settles disputes regarding the results of the Regional Head General Election using the same pattern in resolving

disputes regarding the results of the Presidential and Vice-Presidential Elections as well as the elections for members of the DPR, People's Representative Council, and Regional People's Representative Council;

- The Constitutional Court not only examines and decides on disputes regarding the results of the Regional Head General Election but also examines the process of the Regional Head General Election;
- Considering the provisions of the formal requirements, namely, the authority of the Constitutional Court, the legal position of the Petitioner, and the grace period for submitting the application, before giving consideration to the subject matter of the application.

In relation to the application of the provisions of the formal requirements which include the authority of the Constitutional Court, the legal position of the Petitioner, and the grace period for submitting an application in a dispute concerning the results of the Regional Head General Election in the 16 (sixteen) decisions mentioned above, it can be grouped into 2 (two) parts, namely: The first is the strict/rigid application of the Formal Terms and Conditions. The Constitutional Court considers both all and one of the provisions of the formal requirements in submitting a request for dispute regarding the results of the General Election, namely regarding the authority of the Constitutional Court, the applicant's legal position, and the grace period for submitting the applicant's application as specified in the Constitutional Court Law by not continuing the subject of the application to be considered in the Constitutional Court's decision. The second is the loose application of the Formal Terms and Conditions. The Constitutional Court considers the provisions of the formal requirements in submitting a request for dispute regarding the results of the General Election, namely regarding the authority of the Constitutional Court, the applicant's legal position, and the grace period for submitting the applicant's application as stipulated in the Constitutional Court Law based on the substance of the Regional Head Election problem argued by the applicant.

The basis for the current election is based on the idea of forming a Special Judicial Body as an institution that will resolve disputes over the results of the regional head elections, but before a special judicial body is formed, the resolution of disputes over election results is resolved by the Constitutional Court (transitional authority). This transitional authority is contained in Article 157 paragraph (1) to paragraph (4) of the Election Law which states:

- Disputes over election results are examined and tried by a special judicial body;
- The special judicial body as referred to in paragraph (1) is established prior to the implementation of the national simultaneous elections;
- Disputes over the determination of the final stage of the election results are examined and tried by the Constitutional Court until a special judicial body is formed;
- Election contestants may apply for the cancellation of the determination of the vote count results by the Provincial KPU or Regency/Municipal KPU to the Constitutional Court.

The article explains that before a special court is formed to adjudicate disputes over the results of regional head elections, the Constitutional Court has the authority to adjudicate disputes over election results. However, in the settlement of disputes over election results, the Constitutional Court is given formal limitations or requirements for disputes over election results that can be submitted to the Constitutional Court as stated in Article 158 of the Election Law. However, it is not only the provisions regarding the threshold (Article 158) which are categorized in the provisions of the formal requirements for the settlement of disputes over the results of the Regional Head Election, but there is also the authority of the court, the legal standing of the Petitioner and the grace period for submitting the application. The provisions of the formal requirements that have been determined by the laws and regulations determine whether the application cannot be accepted (*niet ontvankelijk verklaard/NO*) or at least not proceed to the proof stage by stopping the trial process for the case of the Dispute over the Election Results (Tiopan et al., 2020).

Method

The type of research used in this research is doctrinal research. In terms of its nature, this research is a descriptive research, which is a research that describes something in terms of a certain space and time. From the point of view of form, this legal research is of the type of prescriptive research, namely research that aims to provide an overview or formulation of the problem in accordance with the existing circumstances/facts (Tiopan et al., 2020).

Result

The Constitutional Court's attitude in considering the legal decisions mentioned above is actually a form of protection of the voting rights of citizens, both individually and guarantees for justice and the establishment of democracy in local governance. Although the Constitutional Court's stance in handling regional election disputes in 2015, 2017 and 2018 rigidly applied the terms and conditions for the deadline, it did not apply to the resolution of regional election disputes in 2020. This shows a paradigm shift in the Constitutional Court's paradigm in handling election disputes, which is seen as more reflective of substantive justice for voters. parties because the Constitutional Court is trying to break away from the formal requirements for submitting an application in order to touch the subject matter which is the basis for filing a dispute over the results of the election. This is reinforced by Putri & Pasaribu (2021) in their writings who found the rationality and legality of deviations from the grace period which had been strictly enforced by the Constitutional Court to ensure the principle of legal certainty and the principle of public interest regulated in several laws (Pratiwi et.al., 2016). In exercising its authority regarding the settlement of disputes over the results of regional head elections from 2008 to 2021, the Constitutional Court has examined, tried and decided on 1,127 cases with a recapitulation of cases each year as follows:

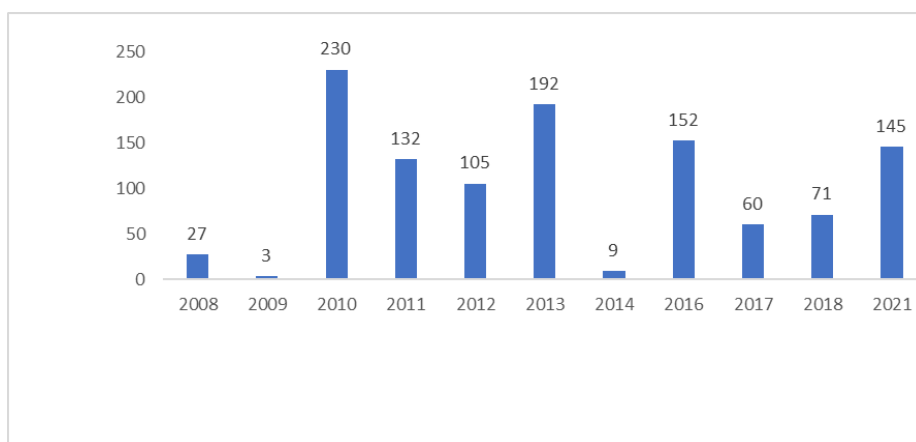


Diagram 1. Recapitulation of Settlement of Disputes over the Results of Regional Head Elections at the 2008-2021 Constitutional Court
Data Source: Constitutional Court Page (mkri.id)

Of the 1,127 cases that have been registered and decided by the Constitutional Court, 38 cases (3.37%) were decided with a decision to be granted and 47 cases (4.17%) were decided to be partially granted, while 494 cases (43.83%) were decided with the order rejected, and 504 cases (44.72%) were decided not to be accepted. Meanwhile, for the remaining 35 cases (3.11%) were withdrawn, 7 cases (0.62%) were declared invalid and 2 cases (0.18%) were declared invalid. As described above, in carrying out the authority to settle disputes over the results of the regional head elections, the Constitutional Court has developed both in terms of the legal basis for the settlement, the regime and the handling mechanism (Wisnaeni, 2020; Basuki, 2020).

Table 1
Settlement of Disputes over the Results of Regional Head Elections

Legal basis	Law Number 32 of 2004 concerning Regional Government and included again in Article 94 of Government Regulation Number 6 of 2005 concerning Elections	Law Number 12 of 2008 concerning the Second Amendment to Law Number 32 of 2004 concerning Regional Government	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 Election of Governors, Regents and Mayors to become Laws
Authorized Institution	Court	Constitutional Court	Constitutional Court
Regime	Great	Election	Local government
Handling Terms	Local government	Pilkada	Regional Head Election

Source: Processed by the Author

Based on the development of the mechanism for resolving disputes over the results of the regional head elections in the Constitutional Court during the election regime and regional government regimes, there has been a change in the handling, namely regarding the provisions of attractive formal requirements to be the object of research. The Constitutional Court classifies violations that are systematic in nature, for example in relation to bureaucratic mobilization, if the violation is carried out with deliberate planning, namely there is an effort and planned from the beginning of the bureaucratic apparatus to jointly win one candidate pair. Meanwhile, structured violations are considered proven if they are carried out by bureaucratic apparatus in a hierarchical manner with orders from superiors to subordinates and so on to voters (Kodiyat et al., 2020; Agustina, 2022).

The Constitutional Court not only decides the losses for the election candidate pairs but also for the voters, this can be seen in the post-conflict local election of West Bangka Regency. In this case, the Court decided to re-vote for voters who were entitled to vote at several polling stations because they did not receive a notification letter. The Court believes that the right to vote is fully guaranteed by the constitution, technical matters that hinder or hinder the implementation of people's rights, should be overcome by the Regency General Election Commission so that people can exercise their rights (Handayani, 2013). For those who are registered in the permanent voter list or are not registered but have the right to vote because the invitation to vote does not arrive, they must be given the opportunity to vote using an identity card or passport.

Discussion

From the description above, it appears that in many decisions, the Constitutional Court tries to get out of a narrow interpretation of the law. The concept of this decision is known as a decision that puts forward the concept of substantive justice. In other words, the Court cannot allow the rules of procedural justice to stifle and override substantive justice, because the existing legal facts constitute a violation of the constitution, in particular Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia which requires regional head elections to be conducted democratically, and violation of direct, general, free, confidential, honest and fair principles as stipulated in Article 22E paragraph (1) of the 1945 Constitution of the Republic of Indonesia (Butt, 2018).

Regarding the provisions of the formal requirements, the Constitutional Court in completing the Regional Head Election in 2016, 2017, 2018 and 2021, there was a shift in the Constitutional Court's legal considerations in resolving disputes over the Regional Head Election. For example, in 2016, in completing PHP the Regional Head of the Constitutional Court was very rigid with respect to the formal requirements stipulated by the Election Law (Voßkuhle, 2019). This is evident from the 152 cases decided by the Constitutional Court, there is not a single formal requirement that has been ruled out by the Court. The case is different in 2017, the year 18 and 2021 which can be seen in the following table:

Table 2
The Constitutional Court's Decision on the Application of Formal Terms and
Conditions in the Settlement of Regional Head Election Disputes

Formal Terms	2017	2018	2021
Court Authority			Boven Digoel District; Sabu Raijua District; Nias Selatan District;
Application Submission Deadline			Pesisir Barat District; Bandung District; Samosir District; Nabire District; Sabu Raijua District;
Legal Position (Legal Standing) of the Applicant	Tolikara District; Puncak Jaya District; Intan Jaya District; Kepulauan Yapen District;	Mimika District; Paniai District;	Banjarmasin City; Nabire District; Yalimo District; Boven Digoel District; Sabu Raijua District;

Source: Processed by the Author

The ideal design for the application of the provisions of formal requirements in resolving disputes regarding the results of the general election for regional heads and deputy regional heads or elections to regions and deputy regional heads, the ideal future design that can be used by the Constitutional Court can be seen in the table below (Basri, 2017).

Table 3
Design of Application of Formal Terms and Conditions in Settlement of Disputes
over the Results of Regional Head Elections

NO.	LEGAL CONSIDERATIONS	LEGAL BASIS	DESCRIPTION
1.	ELECTION		
	<ul style="list-style-type: none"> ▪ The Court's Authority ▪ Applicant's Legal Position ▪ Application Submission Deadline 	1945 Constitution, Constitutional Court Law, Regional Government Law, and PMK	1. The Constitutional Court considers the application of the provisions of the formal requirements in accordance with the systematic application of the applicant. 2. The legal considerations of the Constitutional Court are based on the 1945 Constitution, the Constitutional Court Law, the Regional Government Law, and PMK.
2.	ELECTION		
	<ul style="list-style-type: none"> ▪ Court's Authority ▪ Applicant's Legal Position 	Constitutional Court Law,	1. The Constitutional Court considers that the application of the

	Position	Election Law, and PMK	provisions of the formal requirements is not in accordance with the systematic application of the applicant. 2. The Constitutional Court's legal considerations are inconsistent in basing it on the Constitutional Court Law, Pilkada Law, and PMK.
	<ul style="list-style-type: none"> • Regional head election participants • Application Submission Threshold 		
	Submission Deadline Application		
3.	IDEAL DESIGN APPLICATION OF FORMAL TERMS		
	Court's Authority	1945 Constitution, Constitutional Court Law, Regional Election Law, and PMK	1. The Constitutional Court considers the application of the provisions of the formal requirements in accordance with the systematic application of the applicant. 2. The legal considerations of the Constitutional Court are based on the 1945 Constitution, the Constitutional Court Law, the Regional Head Election Law, and the PMK.
	Applicant's Legal Position		
	<ul style="list-style-type: none"> • Regional head election participants • Application Submission Threshold 		
	Submission Deadline Application		

Source: author's data processing, 2021

The formation of an ideal design for the application of the provisions of formal requirements in the legal considerations of the Constitutional Court as an effort to answer the consistency of the Constitutional Court in responding to disputes regarding the results of the election of regional heads and deputy regional heads which were examined and tried by the Constitutional Court. Because the conclusions regarding the Constitutional Court's legal considerations are inconsistent in resolving disputes regarding the results of the election of regional heads and deputy regional heads, it can be found in several legal considerations of the Constitutional Court's Decision regarding the Regional Head Election and Regional Head Election, among others related to legal considerations of Article 157 paragraph (3) of Law 10/2016. . In the legal considerations, the Constitutional Court emphasized that in essence there is no legal basis for the Court to expand its own authority so that it exceeds the authority given to it by Article 157 paragraph (3) of Law 10/2016, namely the authority to adjudicate disputes over the results of the election of governors, regents, and mayors.

Conclusion

Based on the results of this study, the researcher concludes that the Constitutional Court's legal considerations on the provisions of the formal requirements are the entry point for considering the main application. In addition, there is 1 (one) decision of the Constitutional Court which overrides one of the provisions of the formal requirements, namely the Constitutional Court's decision number 134/PHPU.D-VII/2009 regarding the Dispute over the results of the

Nabire Regency General Elections which in essence the Court emphasized that it is not fixated on the problem of the formal requirements of the application, but the Constitutional Court also examine the principal of the petition in the form of multiple nominations by political parties in nominating the names of pairs of candidates.

In handling the settlement of disputes over the results of the Regional head election, there are 4 (four) formal requirements, namely regarding the authority of the court, the legal standing of the applicant, consisting of the applicant's participation in the Regional head election and the threshold for submitting the application, as well as the grace period for submitting the application. There are 17 (seventeen) decisions related to the application of the provisions of formal requirements in the Regional head election regime under study, namely 3 (three) Constitutional Court decisions which override the provisions of formal requirements related to the authority of the court, 11 (eleven) Constitutional Court decisions which override the provisions of formal requirements regarding the legal standing of the applicant. regarding the threshold for submitting an application, and 6 (six) Constitutional Court decisions that set aside the provisions of the formal requirements related to the grace period for submitting the application.

The ideal design for implementing the provisions of formal requirements in handling disputes regarding the results of regional head elections in the Constitutional Court in the future is that the Constitutional Court can apply the provisions of formal requirements in resolving disputes regarding the results of the regional head elections by providing legal considerations in the Constitutional Court Decision taking into account the following: -the following: a). The function of the Constitutional Court is as a guardian of the "constitution" and "democracy", namely the Constitutional Court acts as a state institution guarding the constitution that guarantees human rights and the constitutional rights of citizens and the Constitutional Court also acts as a guardian of democracy which ensures the democratic process, in this case the Regional head election, runs in accordance with principles in the Constitution. b). The basis for legal considerations The Constitutional Court's decision in deciding disputes regarding the results of the regional head elections uses statutory regulations, including the 1945 Constitution of the Republic of Indonesia, the Constitutional Court Law, the Regional head election Law and the Constitutional Court Regulations, although the authority to decide disputes regarding the results of the Regional Head Elections is a temporary authority granted by the Regional head election Law.

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