

Mapping the Indigenous Conflict of Indonesia: 1945-2017

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The regional chief election was potential to bring a dispute on its every execution. The existence of an institution for resolving the regional chief election dispute is indispensable to settle the dispute. The institution was established since the citizenry have to directly elect the regional chief, it was on 2004. On this context the purpose of this writings are to know the dynamics of the institutions for regional chief election dispute settlement in Indonesia and to evaluate judicial institution for regional chief election dispute ever, so it can be a basic consideration for establishment of a special election court in the future. This study uses a juridical normative approach (*doctrinal*) the study will be carried out by inventorying and reviewing some legal documents and other papers. The result of this study shows that there is a change in the dynamics of the institution for regional chief election dispute settlement, the change is on the authority of regional chief election dispute that have been occurred in the Supreme Court is turning to the Constitutional Court. Such provisions have been amended several times, while this time the authority has been restored to the Constitutional Court until the special election court established as mandated by the law.

Keywords: *Dynamics, Justice Institute, Election Dispute*

1. INTRODUCTION

Democratic countries have become mainstream for modern countries.¹ Democracy stands on the principle of equality, every nation has the same rights and position in government, in this case the people are given the power to participate in power by the rulers derived from the legitimacy of the people.² One means to channel it is. In general, the election is a media and a tool of the realization of the sovereignty of the people either directly (direct democracy) or indirectly (indirect democracy) to participate in governance.

The development of the state administration has brought several phases in the development of elections existing in Indonesia, it is then realized not only to elect the president and vice president but also to elect the regional head either directly or indirectly. The 1945 Constitution of the State of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) Article 18 paragraph (4) has stipulated that "Governors, Regents and Mayors respectively as provincial, district and municipal government heads are elected democratically", the provision has encouraged the spirit of democracy at the regional level³ (Provincial, District, City) so that the regional head can be elected directly by the people or indirectly through the Regional House of Representatives, but still sovereignty is in the hands of the people.

The implementation of election head in its journey does not always go as expected, in every implementation there is always a dispute or election disputes.⁴ The change of the post-

¹ Janedri M Gaffar, *Demokrasi Dan Pemilu Di Indonesia*, Jakarta: Konstitusi Press, 2013, hlm. 1

² *Ibid*, hlm. 14.

³ Hamdan Zoelva, *Problematika Penyelesaian Sengketa Hasil Pemilukada oleh Mahkamah Konstitusi dalam Jurnal Konstitusi Volume 10 Nomor 3*, Jakarta: Mahkamah Konstitusi Republik Indonesia, 2013, hlm. 378.

⁴ The data recorded that the dispute on Dispute over Election Result of General Election Result (PHPU) from 2008 to 2013 is 524 cases, in 2008 there were 27 cases, in 2009 as many as 3 cases plus 12 cases that have not been resolved in the previous year, in 2010 as many as 230 cases, in 2011 as 132 cases, in 2012 as many as 105 cases plus 7 cases that have not been resolved in the previous year, in 2013 as many as 27 cases in 8 cases that have not been resolved in the previous year. (The Constitutional Court of the Republic of Indonesia "Recapitulation of Dispute over Election Result of Regional Head and Deputy Regional Head" is downloaded

amendment system of the 1945 Constitution of the Republic of Indonesia is the granting of authority of the Judicial Authority⁵ executive to settle disputes over election results, both legislative and executive elections. The authority for the settlement of Disputes on the Results of General Elections for The House of Representatives, the Regional Representative Council and the House of Representatives members, and the President and Vice President shall be granted to the Constitutional Court, while the dispute resolution authority of the regional head is granted to the Supreme Court and the jurisdiction of the High Court for the election of the Regent⁶

However, in this development there has been a change in the authority of election dispute settlement institutions from both the regulation and the institution. This can be seen from the start of the formation of Law Number 22 Year 1999 on Regional Government up to the latest Law Number 10 Year 2016 About The Second Amendment to Law Number 1 Year 2015 About Stipulation of Government Regulation in Lieu of Law Number 1 Year 2014 On the Election of Governors, Regents, and Mayors Become Law. This research study has proved that in Indonesia there has been the dynamics of election dispute settlement institutions.

2. MATERIALS AND METHOD

This paper will use normative legal research, or often known as the normative juridical approach.⁷ Legal research is research conducted by reviewing and researching library materials in the form of primary legal materials and secondary legal materials. In this case the data obtained will be comparative in order to see the dynamics of the development of existing election dispute settlement institutions, either from the side of the regulation or the form of

from the website <http://www.mahkamahkonstitusi.go.id/index.php?page=web.RekapPHPUD> is accessed on 2 December 2015 at 14:07 WIB)

⁵ Judicial power which is an independent power to organize the judiciary to enforce the law and justice for more details see the provisions of 24 paragraph (1) of the 1945 Constitution of the State of the Republic of Indonesia and Law Number 48 Year 2009 on Judicial Power.

⁶*Op. Cit*, hlm. 379

⁷ Furthermore, normative legal notions can be read at Suratman dan H. Philips Dillah dalam *Metode Penelitian Hukum*, Bandung: Alfabeta, 2013, hlm. 54.

institutions that regulate it. At the end of this paper will be able to show that Indonesia has experienced the dynamics of election dispute settlement institutions evidenced by the changes in regulation and transfer of authority between the Supreme Court institutions with the Constitutional Court.

3. RESULTS/DISCUSSION

Implementation of elections in the history of Indonesian state administration starting from Law Number 22 Year 1999 on Regional Government. At the beginning of the implementation process tela led to the emergence of electoral dynamics. This can be seen in the regulatory changes that set about the election dispute resolution institutions from 1999 to the establishment of Law Number 10 Year 2016 About the Second Amendment to Law Number 1 Year 2015 On Stipulation of Government Regulation in Lieu of Law Number 1 Year 2014 On the Election of Governors, Regents, and Mayors Become Law.

Tabel. 1. Dynamics of Dispute Settlement Institution Based on Law Number 22 Year 1999 up to Law Number 10 Year 2016

Terms of Legislation	Explanation
1. Law Number 22 Year 1999 regarding Regional Government	The election is conducted indirectly through the Regional People's Representative Council, there is no election dispute in this case election is formulated as legal regime of local government. The provisions of this law have not recognized the existence of election dispute settlement institutions.
2. Law Number 32 Year 2004 regarding Regional Government	The election was conducted directly by the people, the type of election violation consisted of violation of the determination of election result in this case election was formulated as legal regime of local government. The provisions of this law stipulates that the competent authority to handle electoral dispute is the Supreme Court and may delegate its authority to the higher courts of the provisions stipulated in Article 106.
3. Law Number 12 Year 2008 regarding the Second Amendment to Law Number 32 Year 2004 regarding Regional Government	The election is conducted directly, the type of election dispute is the election result disputes (PHPU) in this case the election is formulated as part of the election law regime such provisions are contained in Article 1 paragraph (4) of Law Number 15 Year 2011 on the Implementation of General Elections. The provisions of this law stipulates that the Constitutional Court is the agency authorized to deal with election disputes, the provisions mentioned in article 236C and Article 29 paragraph (1) letter e of Law Number 48 Year 2009 regarding Judicial Power.

<p>4. Decision of the Constitutional Court Number 97 / PUU-XI / 2013</p>	<p>The filing of judicial review against Article 236C of Law Number 12 Year 2008 and Article 29 paragraph (1) letter e with the provision of the cancellation of the provisions of the article and stating that the election is not part of the election law regime. after the issuance of this ruling, the Constitutional Court is an institution authorized to adjudicate disputes over the results of general elections of regional heads as long as there is no law regulating the matter, such provisions are listed in the verdict of number 2.</p>
<p>5. Law Number 22 Year 2014 on the Election of Governors, Regents and Mayors</p>	<p>The election is conducted indirectly through the Regional House of Representatives , the provision is reinforced by the provisions of Article 101 letter d and Article 154 letter d of Law Number 23 Year 2014 on Regional Government. This provision has governed the existence of a simultaneous election head mechanism. The provisions of this law stipulate that in case of violation of the election, the settlement shall be followed up by law enforcement officials in accordance with laws and regulations such as the Corruption Eradication Commission, the Attorney General Office and the Police, the provisions mentioned in Article 33 paragraph (9) .</p>
<p>6. Law Number 1 Year 2015 on Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 on the Election of Governors, Regents, and Mayors Becoming Laws</p>	<p>The election is conducted directly by the people. The provisions are regulated in Government Regulation in Lieu of Law Number 2 of 2014 on Amendment of Law Number 23 Year 2014 on Regional Government, in this case the form of violation of regional election is divided into several types, namely:</p> <ol style="list-style-type: none"> 1) Violation of the code of conduct of the organizer. The election shall be settled in the General Elections Administrator's Council of the provisions mentioned in Article 137 paragraph (1); 2) Administrative violations Elections shall be settled in General Election Commissions based on Recommendation Electoral Supervisory Bodies this provision is contained in Article 139 paragraph (3); 3) Inter-Voter Dispute Disputes and Disputes Among Voter Members With Voter Organizer settled in Electoral Supervisory Bodies such provisions are contained in Article 143 paragraph (1); 4) Election crime shall be submitted by the National Police Investigator of the Republic of Indonesia to the Public Prosecutor and resolved in the District Court which in this case has the authority to examine, hear and decide cases of election crimes using the Criminal Procedure Code (Article 147) by forming the Assembly Special Criminal Act (Article 151) in this case law enforcement officers also form an Integrated Law Enforcement Sentra; 5) State Administration Dispute The election shall be settled at the State Administrative High Court after all administrative efforts in Provincial Electoral Supervisory Bodies and / or District / Municipal The Supervisory Committee have been conducted (Article 154) by Establishing the State Administration's Special Assembly (Art. 155); 6) Dispute over election results resolved in the Court of Appeal with the composition of an ad hoc judge established by the Supreme Court (Art. 157) <p>The provisions on the Government Regulation In Lieu Of Law are then stipulated by Law Number 1 Year 2015 on Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 on the Election of Governors, Regents and Mayors Becoming Laws. The provisions of this Government Regulation In Lieu Of Law have regulated the existence of</p>

	simultaneous election head mechanism.
7. Law Number 8 of 2015 on Amendment to Law Number 1 Year 2015 on Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 on the Election of Governors, Regents, and Mayors Becoming Laws	The election is done directly, in this law there is a provision to form a new institutional court that is the election special court as one of the efforts to meet the implementation of the election head simultaneously which will begin in 2020. With regard to the Case of dispute determination of vote acquisition result of election examined and tried by the Constitutional Court until the establishment of a special judicial body of this provision is contained in Article 157 paragraph (3).
8. Law Number 10 Year 2016 Concerning the Second Amendment to Law Number 1 Year 2015 Concerning Stipulation of Government Regulation in Lieu of Law Number 1 Year 2014 on the Election of Governors, Regents, and Mayors Becoming Laws	Completion of election disputes Election disputes cases are examined and tried by a special judicial body in which the Special Court is established prior to the implementation of the national Selection. With regard to the case of dispute over the final stages of vote election result shall be examined and tried by the Constitutional Court until the establishment of a special judicial body. The provisions have been regulated in Article 157 paragraph (1), (2), and (3)

A. Dynamics of Election Head Dispute Resolution Institution in Indonesia

The implementation of elections in the history of Indonesian state administration starting from Law Number 22 Year 1999 on Regional Government has led to the dynamics. This happens because in the implementation there is a dispute election, the dynamics of the implementation of this election is marked by the continuous changes to the dispute resolution dispute institutions. The change of the regional election institution is influenced by the electoral mechanism of local head election directly by the people and the local head election indirectly through the Regional People's Representative Council (DPRD).

The competence of the Supreme Court as an election dispute resolution institution arises when the electoral mechanism is implemented directly by the people. This provision is then regulated in Law Number 32 Year 2004 regarding Regional Government Article 106 paragraph (1) stating that "the objection to the determination of the result of the regional head election And the deputy regional head can only be submitted by the candidate pairs to the Supreme Court within no later than 3 (three) days after the determination of the election result of the regional head and deputy head of region ", in which case the election head is categorized as the local government legal regime.⁸

The dynamics of election head institutions continue to roll since the creation of Law Number 12 Year 2008 regarding the Second Amendment to Law Number 32 Year 2004 regarding Regional Government which in this case has happened the transfer of authority of election dispute settlement that is from the Supreme Court to the Constitutional Court the regulation is regulated in Article 236C stating that "the handling of disputes over the vote count results of the election of regional heads and deputy heads of regions by the Supreme Court shall be transferred to the Constitutional Court at the latest 18 (eighteen) months since the law is enacted", in this case election head is categorized as a legal regime elections⁹ as stipulated in Law Number 15 Year 2011 concerning the Implementation of the 1 st election article (4) which states that "The election of Governors, Regents and Mayors is the Elections

⁸ The Supreme Court adjudicates the dispute over vote count results as of 14 (fourteen) days after the receipt of the objection petition by the final and binding Supreme Court / Supreme Court / Court, in which case the Supreme Court in exercising its authority may delegate to the High Court to decide dispute over vote count result of regional head election and deputy head of regency and municipality with the provision of decision is final. The authority to settle the dispute is given to the Supreme Court, because the election by the legislators is categorized as the legal regime of regional government as regulated in Article 18 of the 1945 Constitution and not as an election law regime as regulated in Article 22E of the 1945 Constitution, legislative elections, in Maria Farida, *Sengketa Pemilukada, Putusan Mahkamah Konstitusi dan Pelaksanaan Putusan Mahkamah Konstitusi*, Jakarta: Konstitusi Press, 2013, hlm. 51-52.

⁹ In the provisions of the 1945 Constitution Article 24C Paragraph (1) it is stated that the Constitutional Court has the authority to hear at the first and final level the decision is final, to examine the law against the Constitution, to decide the dispute over the authority of the state institution whose authority provided by the Constitution, decide upon the dissolution of political parties and decide upon disputes concerning election results, in Jimly Asshiddiqie, *Menuju Negara Hukum yang Demokratis*, Jakarta: PT Bhuna Ilmu Poluler kelompok Gramedia, 2009, hlm. 306

to elect democratically governors, regents and mayors within the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution of the State of the Republic of Indonesia".

The regulation on the competence of the Constitutional Court as an election dispute resolution institution is also affirmed in Article 29 paragraph (1) sub-paragraph e of Law Number 48 Year 2009 regarding Judicial Power which explains that the Constitutional Court has other authority granted by law including in handling dispute election. Along with the development of the constitutional system, judicial review has been conducted on the articles regulating the competence of the Constitutional Court in handling the election dispute namely Article 236C of Law Number 12 of 2008 and Article 29 paragraph (1) letter e. The provisions on the test are then set forth in the decision of the Constitutional Court Number 97 / PUU-XI / 2013 with the provisions of the ruling declaring that article contradictory to the 1945 Constitution, but in the subsequent verdict the Constitutional Court also states that the Constitutional Court remains authorized to adjudicate disputes the results of general elections of regional heads as long as there is no law regulating the matter.

The creation of Law Number 22 Year 2014 has projected the indirect mechanism of elections through the Regional People's Representative Assembly which was then affirmed in Law Number 23 of 2014 on Regional Government Article 101 letter d stating that one of the tasks of Regional People's Representative Assembly is "to elect the governor" and Article 154 letter d which states that one of the duties of Regency and Municipal Regional People's Representative Assembly is "to elect the regent / mayor", this has resulted in constitutional fluctuation, the culmination is the creation of 2 (two) Government Regulation in Lieu of Law (Government Regulation In Lieu Of Law) namely Government Regulation In Lieu Of Law Number 1 Tahun 2014 on the Election of Governors, Regents, and Mayors and Government Regulation In Lieu Of Law Number 2 of 2014 on Amendment to Law Number 23 of 2014 on Regional Government. Based on the provisions of this Government Regulation In Lieu Of Law, the electoral mechanism is returned to the election directly through the people affirmed in Government Regulation In Lieu Of Law Number 2 of 2014, while Government Regulation

In Lieu Of Law Number 1 of 2014 has provided new arrangements on the form of violations of regional election and its settlement agencies.

The form of violation of regional head election and its settlement as regulated in Government Regulation In Lieu Of Law Number 1 Year 2014 as regulated in the provisions of Article 137 to Article 157 is a violation of the code of conduct of elections completed by the General Elections Administrator Board, Electoral Administration Offenses resolved in General Election Commissions based on Recommendation Electoral Supervisory Bodies , Inter-Voter Dispute Dispute and Inter-Voter Dispute With Voter Organizer settled in Electoral Supervisory Bodies, Crime of election submitted by National Police Investigator to the Public Prosecutor and resolved in District Court by forming Special Assembly of Crime and forming Integrated Law Enforcement Sentral, Tata Dispute The efforts of the State of election shall be settled at the State Administrative High Court after all administrative efforts in the Provincial Electoral Supervisory Bodies and / or the Regency / Municipal The Supervisory Committee have been made by establishing the Special Administrative Assembly of the State, and the Dispute h The final election is settled in the High Court with the composition of an ad hoc judge set by the Supreme Court.

Government Regulation In Lieu Of Law Number 1 Year 2014 is then established through Law Number 1 Year 2015 on Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 on the Election of Governors, Regents, and Mayors Become Act. Whereas there has been a change in the form of election head court after the formation of the latest Law on Election Number 8 of 2015 on the Amendment of Law Number 1 Year 2015 on Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 on the Election of Governors, Regents and Mayor Becomes a Law whereby in this new provision the dispute resolution mechanism is conducted by a special judicial institution as set forth in Article 157 paragraph (1) stating "Case of Dispute over Election Result is examined and tried by a special judicial body".

However, in this case, before the special court is formed for a while the dispute resolution process shall be returned to the Constitutional Court as stated in Article 157

paragraph (3) stating that "Case of dispute over vote acquisition result of Elections shall be examined and tried by the Constitutional Court until the establishment of a special judicial body ". The provisions stipulated in Article 157 paragraph (3) may also be assumed that the dispute resolution authority given to the Constitutional Court has not been completely perfect because it has been due to the form of granting this authority only temporarily until the establishment of a special election court.

In additional, the efforts made by the government to follow up the special election courts have been set forth in the formulation of Law Number 10 Year 2016 About the Second Amendment to Law Number 1 Year 2015 Concerning Determination of Government Regulation in Lieu of Law Number 1 of 2014 The election of Governor, Regent, and Mayor Become Article 157 paragraph (1) to paragraph (9) which in the provisions of this amendment has been mentioned that the Case of Dispute over the Elections results is examined and tried by a special judicial body. The special justice body was formed prior to the implementation of the national Selection. With regard to the case of dispute over the final stages of vote election result shall be examined and tried by the Constitutional Court until the establishment of a special judicial body.

In this case, the Election Contestant may submit an application for cancellation of the determination of the vote count result by the Provincial General Election Commission or Regency/City General Election Commissions to the Constitutional Court at the latest within 3 (three) working days after the announcement of the vote acquisition result by the Provincial General Election Commissions or Regency/Municipal General Election Commissions by completing the tool/proof document and the decision of the Provincial General Election Commissions or Regency/Municipal General Election Commissions regarding the result of the vote count recapitulation. If, in the event that the submitted application has been incomplete, the applicant may correct and complete the application within 3 (three) working days of receipt of the application by the Constitutional Court. In this case, the Constitutional

Court adjudicates the dispute over the result of the election result not later than 45 (forty five) working days from the receipt of the final decision and binding.

4. CONCLUSION

The implementation of elections in the history of Indonesian state administration starting from Law Number 22 Year 1999 on Regional Government has led to the dynamics. This is because in the implementation there has been a dispute over the election, the dynamics of the implementation of this election is marked by the continuous change of the dispute resolution institution, starting from the Supreme Court then the jurisdiction of the judiciary is transferred to the Constitutional Court and after the decision of the Constitutional Court and the new arrangement of authority is returned to the Supreme Court. Whereas following the latest electoral regulation on the election, the authority of the current election dispute resolution has been returned to the Constitutional Court until the establishment of a special judicial institution as mandated by Law Number 10 Year 2016 on the Second Amendment to Law Number 1 Year 2015 Determination of Government Regulation in Lieu of Law Number 1 of 2014 on the Election of Governors, Regents, and Mayors Became the Law before the national elections. The existence of such changes has shown that Indonesia is establishing an electoral dispute resolution institution which is in line with the expectation to be effective for the settlement of the local election dispute.

REFERENCES

Books and Journals

Asshiddiqie, Jimly. 2009. *Menuju Negara Hukum yang Demokratis*, Jakarta: PT Bhuana Ilmu Poluler kelompok Gramedia.

Farida, Maria. 2013. *Sengketa Pemilukada, Putusan Mahkamah Konstitusi dan Pelaksanaan Putusan Mahkamah Konstitusi*, Jakarta: Konstitusi Press.

Gaffar, Janedri M, 2013, *Demokrasi Dan Pemilu Di Indonesia*, Jakarta: Konstitusi Press.

Suratman dan H. Philips Dillah, 2013, *Metode Penelitian Hukum*, Bandung: Alfabeta.

Zoelva, Hamdan, 2013, *Problematika Penyelesaian Sengketa Hasil Pemilukada oleh Mahkamah Konstitusi* dalam Jurnal Konstitusi Volume 10 Nomor 3, Jakarta: Mahkamah Konstitusi Republik Indonesia

Regulations

Law Number 22 Year 1999 regarding Regional Government.

Law Number 15 of 2011 concerning the Implementation of General Election.

Law Number 32 Year 2004 regarding Regional Government.

Law Number 48 Year 2009 regarding Judicial Power.

Law Number 12 Year 2008 regarding the Second Amendment to Law Number 32 Year 2004 regarding Regional Government.

Law Number 22 Year 2014 on the Election of Governors, Regents and Mayors.

Law 23 of 2014 on Regional Government.

Law Number 1 Year 2015 on Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 on the Election of Governors, Regents, and Mayors Becoming Laws.

Law Number 8 of 2015 on Amendment to Law Number 1 Year 2015 on Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 on the Election of Governors, Regents, and Mayors Becoming Laws.

Law Number 10 Year 2016 Concerning the Second Amendment to Law Number 1 Year 2015 Concerning Stipulation of Government Regulation in Lieu of Law Number 1 Year 2014 on the Election of Governors, Regents, and Mayors Becoming Laws.

The Judgment of Constitutional Court

Decision of the Constitutional Court Number 97 / PUU-XI / 2013

Website:

<http://www.mahkamahkonstitusi.go.id/index.php?page=web.RekapPHPUD> is accessed on 2 December 2015 at 14:07 WIB)