

The Role of the Constitutional Court in Adjudicating Regional Election Disputes

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Abstract

The background to forming the Constitutional Court to carry out judicial reviews. The role of the Constitutional Court in ending election disputes is a form of democracy and legal reform in Indonesia. This research aims to investigate the role of the Constitutional Court in handling disputes that arise in the context of regional elections. This research uses a normative approach. All research results come from previous researchers. Therefore, the study of this scientific work is guided by existing secondary data from books, journals, and articles as reference material for the journal's description. The research results show that the role of the Constitutional Court, in this case, is a form of democracy and legal reform in Indonesia. Also, the constitutional court has a role in the democratization of Indonesia as a guardian of democracy, especially in constitutional review. So, the authority of the Constitutional Court in deciding disputes over election results is an authority contained in the third amendment to the 1945 Constitution. However, as the authority of the Constitutional Court develops, the authority of the Supreme Court is attached to the Constitution of the Supreme Court.

Keywords

Constitutional Court; Establishment; Guarding Democracy



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INTRODUCTION

Indonesia is a country of law where all state decisions are based on the law. Elections are a manifestation of democratic principles. We are talking about elections as a means of people's sovereignty to elect the President and vice president, member of the People's Representative Council, Regional Representative Council, and regional heads, which are carried out directly, publicly, freely, secretly, honestly, and fairly within the Unitary State of the Republic of Indonesia (Indravati, 2021; Supriant, 2014). Establishing the Constitutional Court is a development of the thinking of the modern constitutional institutional legal system that emerged in the 20th century. This thinking develops from the principles of democracy, where the political rights of the people and basic human

rights are embodied in new thinking in the country's institutional system (Isnaeni, 2018; Yuvens, 2018).

The third amendment to the 1945 Constitution resulted in a new branch of the judicial court accompanied by the supreme court, namely the presence of the Constitutional Court as one of the new actors of judicial power in the Indonesian constitutional system (Sodikin, 2014; Wahyuni et al., 2021). The establishment of the Constitutional Court is regulated in the Indonesian constitution contained in Article 24 paragraph (2), which reads: judicial power is exercised by a Supreme Court and judicial bodies under it in the general judicial environment, religious judicial environment, military judicial environment, state administrative, judicial environment and by a Constitutional Court (Constitutional Court of the Republic of Indonesia, 2010). Background of the establishment of the Constitutional Court to carry out judicial review. Meanwhile, judicial review emerged because of legal and political developments to realize the checks and balances between branches of state power.

The presence of the Constitutional Court in Indonesia is part of an effort to organize the joints of constitutional life. The arrangement is carried out based on the principles of separation and division of power as embraced by the trials politika system and check and balance system that there is mutual testing and supervision among state institutions through constitutional mechanisms and processes (I. Rahayu et al., 2024; S. Rahayu & Febrina, 2021; Subiyanto, 2020). Therefore, the arrangement was made using the amendment mechanism to the 1945 Constitution. The changes took place systematically and fundamentally, resulting in changes in the constitutional system.

The basic foundation for the birth of the Constitutional Court is to carry out judicial review. Judicial review emerged based on the development of modern constitutional law and politics (Ni'amah et al., 2023; Rizqy et al., 2023). The Constitutional Court is one of the actors of judicial power besides the Supreme Court, as referred to in Article 24, paragraph (1) and paragraph (2) of the 1945 Constitution. It means that the Constitutional Court is related to the general principle of the implementation of independent judicial power, free from the influence of any intervention from other institutions in the enforcement of law and justice (Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, 2014; Yuvens, 2018).

Based on the 1945 Constitution, the Constitutional Court has several powers in the judiciary. This authority is regulated in Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which reads: "The Constitutional Court has the authority to adjudicate at the first and last level whose decision is final to test the

law against the Constitution, decide disputes over the authority of state institutions whose authority is granted by the Constitution, decide the dissolution of political parties and decide disputes about the results of general elections (Lehtimäki et al., 2021; Nugraha et al., 2022)." In addition to the authority of the Constitutional Court mentioned above, the Constitutional Court also has a constitutional obligation regulated in Article 24C paragraph (1) of the Constitution of the Republic of Indonesia in 1945 which reads: the Court. The Constitution is obliged to give a ruling on the opinion of the House of Representatives regarding alleged violations by the President and Vice President according to the Constitution (Isnaeni, 2018; MD, 2012).

The role of the Constitutional Court in adjudicating election disputes is a form of democracy and legal reform in Indonesia. The Constitutional Court has a role in the democratization of Indonesia as a guardian of democracy, especially in constitutional review. If we delve further into the authority of the Constitutional Court in the settlement of elections and the dissolution of political parties, this means that the position of the Constitutional Court plays a very important role in guarding and realizing democracy; apart from that, the position of the Constitutional Court in the state institutional system is a judicial institution of authority in guarding democracy (Deswalantri et al., 2023; Dewantara et al., 2020; Huda, 2017). The Constitutional Court to guard democracy has several roles in deciding disputes over general elections. This clause is contained in article 24c paragraph (1) number (1), which states that disputes about the results of general elections should be decided.

This research focuses attention on the important role of the Constitutional Court in handling disputes related to the Regional Elections. This study tries to dig deeper into how the Constitutional Court decides dispute cases in the context of regional head elections. This research has the potential to provide a deeper understanding of the decision-making process at the highest level regarding the constitutionality of these disputes (Baker & Galanti, 2017). The novelty of this article lies in the special emphasis on the role of the Constitutional Court in the context of election disputes. While many studies have explored legal issues related to general elections (AS, 2021; Dewi, 2021; Kurnia, 2021; Santoso, 2019; Tihana, 2021), this study focuses specifically on the role of institutions that are often the last pillar of law enforcement in the context of regional head elections in Indonesia.

The purpose of this study is to investigate the role of the Constitutional Court in handling disputes that arise in the context of the Regional Elections. This study aims to identify the factors that affect the Constitutional Court's decision in resolving the dispute and analyze the impact of these decisions on political stability and justice in the

context of regional head elections. Through this research, a deeper understanding of the role of the Constitutional Court in the Indonesian legal system can be obtained, especially in overcoming conflicts that arise at the local level related to the process of electing regional heads. The benefits that can be obtained from this article include increasing the understanding of the public and related parties about the importance of the Constitutional Court in ensuring justice and political stability in the context of the Regional Elections. Thus, it is expected to provide a deeper insight into the legal process and the role of the Constitutional Court in maintaining stability and justice in the local political context.

METHOD

This research uses a normative approach. All research results are sourced from previous researchers. Therefore, the study of this scientific work is guided by existing secondary data from books, journals, and articles as reference materials for the form of the journal description. In a normative approach, this study aims to evaluate the role of the Constitutional Court in resolving disputes over the Regional Elections by referring to constitutional norms and applicable legal principles (Hake, 1998). The main objective is to measure the extent to which the Constitutional Court adheres to the principles of justice, the rule of law, and the protection of constitutional rights in deciding such dispute cases. By taking a normative approach, this study also provides a clearer view of the legal standards that should be guidelines for the Constitutional Court in its functions in the context of the Regional Elections.

In terms of benefits, this research can contribute to developing normative constitutional law theories. The results of this study can be the basis for the formulation of guidelines for the Constitutional Court in handling disputes over future Regional Elections so as to ensure that the decisions taken remain by applicable legal principles. In addition, this research can also guide lawyers, academics, and other related parties in understanding and interpreting the Constitutional Court's role in constitutional law and local politics in Indonesia.

FINDINGS AND DISCUSSION

Findings

3.1 The Authority of the Constitutional Court as a Guardian of Democracy

The role of the Constitutional Court as the guardian of democracy is an indicator through decisions in exercising its authority. Several authorities possessed by the Constitutional Court as the focus of attention for its decisions related to the judicial review of the Law on the 1945 Constitution and settling disputes over election results.

His decision regarding the judicial review is an authority of the Constitutional Court. As is known, the Constitutional Court is a state institution that existed after the amendment of the 1945 Constitution. In the institutional context of the state, the Constitutional Court is structured as the guardian of the Constitution, whose function is to uphold constitutional justice in people's lives. Second, the Constitutional Court is tasked with encouraging and ensuring that the Constitution is respected and implemented by all state components consistently and responsibly. Third, amid the weaknesses of the existing constitutional system, the Constitutional Court plays the role of an interpreter so that the spirit of the Constitution is always alive and colors the sustainability of the state and society.

The Constitutional Court, according to Jimly Assidique, was constructed as a constitutional guardian whose function is to uphold constitutional justice in people's lives. The Constitutional Court is tasked with encouraging and ensuring that the Constitution is respected and implemented by all state components consistently and responsibly. Amid the weaknesses of the existing constitutional system, the Constitutional Court plays a role as an interpreter of the verse of the spirit of the constitution that is always alive and colors the sustainability of the state and society.

In the practice of elections, the Constitutional Court has made various decisions on judicial review related to the law and general election issues. This practice is based on the authority of the Constitutional Court regulated in the 1945 Constitution; the first is to test the Constitution, the second is to decide disputes over the authority of state institutions whose authority is granted by the Constitution, the third is to decide the dissolution of political parties, and to decide disputes about the results of voting in elections. This authority is a post-reform reflection on the amendment of the 1945 Constitution in the expansion of Indonesia's judicial justice system (Endah, 2020; Nurisman, 2022). In addition to the position and authority of the Constitutional Court, the Constitutional Court also must give a ruling on the opinion of the House of Representatives regarding alleged violations committed by the President or the head of state/or vice president in accordance with article 7A of the 1945 Constitution, including the president committing violations of the law in the form of betrayal of the state, committing corruption, bribery, other criminal acts, reprehensible acts, and no longer qualified as president and vice president (Asfahani et al., 2024; Hexagraha & Setyorini, 2019; Sumirat, 2019).

In constitutional theory, the judiciary has the authority to test the constitutionality of laws made by members of the House of Representatives and the President, who are directly appointed (Popular Votes), which is known as "the

counter-majority role." With this authority to test constitutionality, the establishment of a court that oversees constitutional and democratic values is necessary (Iskandar, 2015; Retnaningsih et al., 2021). Therefore, one of the strategic roles of the Constitutional Court is often also positioned as a guardian of democracy (the guardian of democracy). This important role is also closely related to the function of maintaining the principles of regular, free, and fair General Elections (regular, free, and fair elections) as the main way for all citizens to exercise sovereignty and power by voting for the leader candidate who they think will represent their best interests (Fahmi, 2011; Hanudin et al., 2021).

The Constitutional Court has the authority to examine laws and regulations in doctrine or jurisprudence; in legal practice, it is distinguished by the right to formal examination (Formal right of review), which is the authority to evaluate, such as laws, for example, embodied through means (Procedure). As stipulated/regulated in the applicable laws and regulations or not, the right to test materials (Material right of review) is an authority to investigate and then assess whether law and regulation are by or contrary to a higher level of regulation and whether a certain power (Regulatory power) has the right to issue a certain regulation (Bramantyo, 2022; Permatasari, 2021).

3.2 The Role of the Constitutional Court in Deciding Election Cases

The Constitutional Court is the guardian of democracy and has the authority to decide general election cases. It is stated in the 1945 Constitution that the authority of the Constitutional Court is to test the law against the Constitution, decide disputes over the constitutional authority of state institutions, decide the dissolution of political parties, and decide disputes over the results of general elections (Isra, 2019; Sargih, 1988). In practice, disputes over the results of the general election have been decided since the formation of the Constitutional Court in the third amendment to the 1945 Constitution.

The authority of the Constitutional Court in deciding disputes over election results contained in 24 of the 1945 Constitution; apart from that, the role of the Constitutional Court in deciding disputes over the results of general elections was then further implemented in Article 236 C of Law Number 22 of 2007 concerning General Election Organizers that the authority to adjudicate disputes over the results of general elections of regional heads that was originally in the Supreme Court was transferred to the Constitutional Court (Hastuti, 2020; Kuntadi, 2022).

The authority of the Constitutional Court is regulated in Article 24C paragraphs (1) and (2). However, along with the development of Indonesia's constitution, the authority of the Constitutional Court increased after the Constitutional Court Decision

No. 85/PUU/XXX/2022. Initially, the Supreme Court decided the dispute over the results of the election dispute, which was then transferred to the Constitutional Court as stated in the Constitutional Court Decision Number 072-073/PUU-II/2004 (Iskandar, 2015; Li, 2014).

Disputes over election results are the authority of the Constitutional Court to resolve the general election of members of the House of Representatives, Regional Representative Council, President and Vice President, and members of the Regional House of Representatives. However, since the promulgation of Law Number 12 of 2008 concerning the Second Amendment to Law Number 32 of 2004 concerning Regional Government, the Constitutional Court has also been given the authority to decide disputes over the results of the general election of regional heads (*pemilukada*). Then, the authority of the Constitutional Court to resolve disputes only lasted about five years. Because, through Case Decision Number 97/PUU-XI/2013, 4, the Constitutional Court stated that it was no longer authorized to resolve disputes over the results of the regional head election. One of the reasons stated in the decision is that the regional elections are not an electoral regime as stipulated in Article 22E paragraph (2) of the 1945 Constitution (Aminah et al., 2021; Herlina & Suryana, 2020).

The authority of the Constitutional Court in deciding disputes over the results of the general elections is not regulated in the 1945 Constitution, but what is regulated in the 1945 Constitution is that the Constitutional Court has the authority to decide disputes about election results. Then, in 2013, the Constitutional Court, through decision No. 97/PUU-XI/2013, said that the two things were two different things, so the Constitutional Court, in this case, said that it did not have the authority to decide the dispute over the results of the regional elections (Madaninabawi & Hafidz, 2021; Wolfe & Lawson, 2020).

When looking at the history of the Constitutional Court's placement of the regional elections in a single unit with the election as stated in decision No. 72-73/PUU/2004, in consideration of the decision, the Constitutional Court said, "The Court thinks that constitutionally, the lawmakers can ensure that the direct regional elections are an expansion of the meaning of elections as referred to in Article 22E of the 1945 Constitution so that, therefore, disputes regarding the results are the authority of the Constitutional Court with the provisions of Article 24C paragraph (1) of the 1945 Constitution...". Therefore, on the basis of this decision, the Regional Elections are included in the electoral regime so that applications for disputes over the results of the Regional Elections become the authority of the Constitutional Court to be examined, adjudicated, and decided.

The above description is in line with and correlated with the principle of "Ius curia novit" contained in article 10 of the Law on Judicial Power, which explains that: (1) The court is prohibited from refusing to examine, adjudicate, and decide a case that is recommended on the premise that the law does not exist or is not clear but is obliged to examine and adjudicate it. (2) as intended in paragraph (1), the provisions do not close efforts to settle civil cases peacefully.

This is in line with the principle that a judge is obliged to explore existing laws and develop them in society. Previously, the authority to examine and decide the dispute over the Regional Elections was initially the Supreme Court; this was regulated in Law No. 32 of 2004 concerning Regional Government Article 106 paragraph 1 before the amendment, which reads: The determination of the results of the election of regional heads and deputy regional heads 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 election of regional heads and deputy regional heads (Ariawan, 2022; Triyani, 2022). However, with the development, the authority to resolve disputes in the Regional Elections has shifted to the Constitutional Court since the issuance of Law No. 12 of 2008 concerning the Second Amendment to Law No. 32 of 2004 concerning Regional Government. This is explained in article 236C, which reads: "The handling of disputes over the results of the vote count for the election of regional heads and deputy regional heads by the Supreme Court shall be transferred to the Constitutional Court no later than 18 days (eighteen) months after the promulgation of this Law."

Discussion

The Supreme Court's authority transfer to the Constitutional Court regarding the election dispute is based on the following: First, seeing that the election is basically included as an electoral regime, disputes over election results must be resolved at the Constitutional Court in accordance with the 1945 Constitution. Second, this is in line with the 1945 Constitution article 24 C Paragraph 1, which states that the Constitutional Court as an institution has the authority to adjudicate at the first and last level whose decision is final. Third, outside of constitutional reasons, this transfer of authority is based on prolonged conflicts in the Regional Election dispute. Therefore, the Constitutional Court is considered a more authoritative institution capable of handling *Pemilukada* disputes. Fourth, the workload owned by the Supreme Court is also a logical reason, so this authority transfer can reduce the workload of the Constitutional Court (Jamiat et al., 2021; Simanullang & Iftitah, 2017).

As for the reasons described above, however, the authority in the Regional Election dispute has been mandated to the Constitutional Court to be able to resolve it; this is by article 24C paragraph (1) of the 1945 Constitution, which was then affirmed in article 10 paragraph (1) letters a to d of Law No. This was then emphasized in Article 24 of 2003 concerning the Constitutional Court to test the Law against the 1945 Constitution and decide disputes about the general election results.

From the results of this study, the role of the Constitutional Court in deciding disputes over the Regional Elections significantly impacts political stability and justice at the local level. The results of previous studies examining the factors that influence the Constitutional Court's decision in resolving the dispute show that factors such as constitutionality considerations, procedural justice, and political implications also affect the Constitutional Court's decision (Zulyadi, 2020). By juxtaposing the results of this study with theoretical studies, the Constitutional Court must carefully consider legal and political aspects in deciding the Regional Election disputes in order to maintain a balance between justice, law, and political stability.

In addition, the theoretical study of this article also provides a broader view of the importance of the Constitutional Court as the highest law enforcement institution in the context of constitutional law in Indonesia. This shows that the Constitutional Court not only plays a role in resolving disputes in the Regional Elections but also as a guardian of political stability and justice in the democratization process at the local level. The analysis of the results of this study illustrates that the Constitutional Court has a great responsibility to maintain the integrity of the Constitution and ensure that the political process in Indonesia takes place fairly and in accordance with applicable legal principles.

CONCLUSION

The role of the Constitutional Court in this case is to act as a form of democracy and legal reform in Indonesia. Also, the Constitutional Court has a role in Indonesia's democratization as a guardian of democracy, especially in constitutional review. The authority of the Constitutional Court in deciding disputes over election results is an authority contained in the third amendment to the 1945 Constitution. The authority of the Constitutional Court in deciding disputes over the results of the general elections is actually not regulated in the 1945 Constitution, but what is regulated in the 1945 Constitution is that the Constitutional Court has the authority to decide disputes about election results. Then in 2013, the Constitutional Court, through decision No. 97/PUU-XI/2013, said that the two things are two different things, so the Constitutional Court, in this case, said that it did not have the authority to decide the dispute over the results

of the elections. Then, in deciding the election case, initially it was called the authority of the Supreme Court, but with the development of the authority of the Constitutional Court, the authority of the Supreme Court was finally transferred to the Constitutional Court.

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