



# Analysis of the Inconsistency of The Constitutional Court's Decision on Resolution of Regional Election Result Disputes

I Putu Gede Adhi Dananjaya<sup>1\*</sup>, Sulaksono<sup>2</sup>

<sup>1</sup> Faculty of Law, State University of Surabaya, Indonesia

<sup>2</sup> Faculty of Law, State University of Surabaya, Indonesia

\* [i.20162@mhs.unesa.ac.id](mailto:i.20162@mhs.unesa.ac.id)

Article	Abstract
<b>Keywords:</b> Constitutional Court, Election, Regional Head Election, the Special Judicial Body	<i>The difference between election (Pemilu) and regional head election (Pilkada) systems stems from Constitutional Court decision No. 97/PUU-XI/2013. This decision states that the Constitutional Court does not have the authority to handle disputes over election results, unless a Specialized Judicial Body has not been established. However, the question is whether the Constitutional Court is still authorized to handle disputes over election results after Constitutional Court Decision Number 85/PUU-XX/2022, and whether there needs to be an adjustment regarding this authority in the 1945 Constitution. In this context, the understanding of the meaning of elections also needs to be studied after Constitutional Court Decision No. 85/PUU-XX/2022. Through a normative approach and by using primary and secondary legal sources, this study concludes that after Constitutional Court Decision No. 85/PUU-XX/2022, the distinction between the two regimes has disappeared, so that the Constitutional Court has the authority to permanently handle disputes over election results.</i>

## INTRODUCTION

### 1. Background

The implementation of the state through the implementation of elections requires state instruments, namely state institutions. The 1945 Constitution of the Republic of Indonesia (UUD 1945) as the highest source of law in Indonesia has regulated the organization and established the structure of the Indonesian state administration which provides legitimacy to the existence of state institutions. The election of Governors and Deputy Governors, Regents and Deputy Regents, and Mayors and Deputy Mayors, hereinafter referred to as Elections, is the implementation of people's sovereignty in the regions in the provinces and regencies/cities to elect regional heads directly and democratically (Munir 2005).

The implementation of the state sovereignty system within the framework of a state based on law is manifested in Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) which states that "Sovereignty is in the hands of the people and is implemented according to the Constitution". The implementation of people's sovereignty is directly carried out through elections and regional elections. Through elections, the people can choose their representatives who will sit in parliament as legislative members or executive leaders, while the election of Governors, Regents and Mayors can be carried out through regional elections (Hudia, Udu, and Manan 2022) .

Elections and regional elections are regulated by different laws. Election regulations are contained in Law No. 7 of 2017, while regional election regulations are contained in Law No. 10 of 2016 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2020 concerning the Third Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors to Become Law Become Law. This refers to the basis for holding elections and regional elections which are also regulated differently in the 1945 Constitution of the Republic of Indonesia. Elections refer to Article 22 E paragraph 2 Chapter VII B concerning General Elections, while regional elections refer to Article 18 paragraph 4 of the 1945 Constitution of the Republic of Indonesia. So in this case, it gives rise to implications regarding several differences between the processes in elections and regional elections, especially the resolution of disputes in the process (Lestari and Widodo 2023) .

The provisions regarding the Constitutional Court's authority are stipulated in the 1945 Constitution, or more precisely, in Article 24C paragraphs (1) and (2). However, along with the development of Indonesian constitutional law, the Constitutional Court's authority has expanded following Constitutional Court Decision Number 85/PUU-XX/2022. This issue is interesting to examine because the 1945 Constitution does not contain a single provision that confirms the Constitutional Court's authority to decide on disputes over regional election results (Huda 2014) .

Thus, following the issuance of Constitutional Court Decision Number 85/PUU-XX/2022, which expressly states that the Constitutional Court's authority to examine and adjudicate election disputes is no longer limited to "until the establishment of a special judicial body," but will be permanent because the Special Judicial Body will no longer be established. Considering this, the Constitutional Court appears to have "lost its teeth" because it has overturned its own decision and the arguments of the previous judges. Thus, this implies that the Constitutional Court is not unconstitutional in the norms it has created itself and whether or not it will harm legal certainty (Baharuddin Riqiey 2023) .

## **2. Formulation of the problem**

1. How are disputes regarding regional election results resolved in accordance with the regulations in force in Indonesia?
2. What are the legal consequences of a Constitutional Court decision that is outside its authority?

## METHOD

This paper employs the use of normative juridical research methods. This will involve a literature review and research on the materials used in the study, relevant to the proposed title and problem formulation. Normative juridical research is research based on the norms and rules contained in statutory regulations. The approach used in writing this journal article is the legal regulatory approach (*statute approach*). and conceptual approach. The types of legal materials used in writing this journal are primary legal materials in the form of statutory regulations and secondary legal materials.

This research uses legal material analysis techniques in the form of a prescriptive method, where legal facts will be identified while eliminating materials that are not related to the research, seeking answers to the problem formulation through the legal materials that have been collected, then making conclusions from the answers to the problem formulation appropriately. The purpose of this research is to find facts, variables, phenomena, and conditions that occur during the research by describing what actually happened. This research describes and interprets data related to the current situation, attitudes and points of view that exist in a society, conflicts between two or more conditions, the relationship between emerging variables, differences between existing facts and influences in a country.

## RESULTS AND DISCUSSION

### 1. How are disputes regarding regional election results resolved in accordance with the regulations in force in Indonesia ?

Initially, the authority to adjudicate disputes over regional election results was the authority of the Supreme Court based on the provisions of Article 106 paragraph (1) of Law Number 32 of 2004 concerning Regional Government. With the ratification and enactment of Law Number 12 of 2008 concerning the Second Amendment to Law Number 32 of 2004 concerning Regional Government on April 28, 2008 and then the signing of the minutes of the transfer of authority to adjudicate from the Chief Justice of the Supreme Court to the Chief Justice of the Constitutional Court on October 29, 2008, the Constitutional Court officially has broader authority in resolving PHPU, both PHPU of DPR members, DPD members, DPRD members, president and vice president as well as additional PHPU of Regional Heads. The hope of a legal decision that is binding and can be respected by all parties in dispute seems difficult to achieve (Sudira 2023).

The Supreme Court's decision ordering a rerun or recount of the regional elections has been challenged again. This will undoubtedly worsen the situation. It

is understandable that many people are challenging the Supreme Court's decision. This has led to a relatively low level of public trust in the Supreme Court, and many parties want the resolution of regional election disputes to be transferred to the Constitutional Court. Following the enactment of Law No. 22 of 2007 concerning the Implementation of General Elections, the Constitutional Court has been empowered to adjudicate disputes over regional election results. This is due to the change in the regional election regime to an election regime. The question is what are the legal consequences of changing the regional election regime to an election regime. If regional head elections are included in the election regime, then the handling of disputes over regional head election results falls under the authority of the Constitutional Court in accordance with Article 24C paragraph (1) of the Amendment to the 1945 Constitution. The problem is that Law No. 32 of 2004 still regulates disputes over regional election results as the authority of the Supreme Court, so further regulations are needed to clarify the provisions regarding disputes over regional head election results.

The Constitutional Court's authority to resolve disputes over election results was initially limited to the presidential election, the House of Representatives (DPR), the Regional People's Representative Council (DPRD), and the Regional Representative Council (DPD). However, over time, this authority has expanded to include resolving disputes over regional election results. The term "regional election" was changed to "regional election" based on Law Number 22 of 2007 concerning Election Implementation. The Constitutional Court's rulings on disputes over regional election results (PHPU.D) have been controversial. The Constitutional Court, with its rulings, appears to have expanded its authority, from initially only dealing with disputes over " *mathematical count* " results to also examining the processes during the election process. The Constitutional Court argues that "the Constitutional Court must uphold justice and democracy in the regional election process, so that if violations occur in the process that have harmed democratic values that have influenced the results, the Constitutional Court can examine the case." In reality, considering the volume of existing cases, the Constitutional Court tends to eventually become an Election Court *because* the number of election dispute cases handled is greater than the volume of judicial review, which is the main authority of a Constitutional Court (Rajab et al. 2023).

The intent and purpose of establishing Article 18 paragraph 4 of the 1945 Constitution which stipulates that Governors, Regents, and Mayors are elected democratically is not necessarily the same and can also be equated with the election of the President and Vice President. Therefore, the meaning of being elected democratically can be interpreted as being the same as the election procedure for the President and Vice President as stated in Chapter VIIB Article 22E of the 1945 Constitution concerning General Elections. Although the 1945 Constitution only

mentions that regional head elections are elected democratically, the legislators finally aligned the procedures for filling regional heads with the election of the president and vice president. Therefore, the meaning of "democratically elected" was narrowed down to being elected directly. Several important considerations for holding direct regional elections are as follows; First, direct regional elections are a response to the demands of the people's aspirations because the President and Vice President, the DPR, the DPD, and even Village Heads have been held directly. The demands of the people are an important part that must be accommodated to elect themselves according to their aspirations, a regional head who is truly suitable and able to lead their region. Second, direct regional elections are the embodiment of the 1945 Constitution. As mandated by Article 18 paragraph (4) of the 1945 Constitution, Governors, Regents, and Mayors, respectively as heads of provincial, district, and city regional governments, are elected democratically. Third, direct regional elections are seen as a means of learning democracy (politics) for the people (*civics education*). Fourth, direct regional elections are seen as a means to strengthen regional autonomy. The success of regional autonomy is determined, among other things, by local leaders (Zoelva 2016).

However, to this day, regional elections are still considered "the problems of local democracy." This is influenced by various factors, including:

1. The system used in regional elections, known as the two-round system, does not guarantee fair competition and zero interference. On the other hand, this system gives rise to the phenomenon of "high-cost democracy."
2. Political parties that are actors in regional elections emphasize pragmatism of interests and do not yet have clear political preferences, so that political parties are held hostage by the interests of capital owners and even parties are only used as "riding horses" by the candidates.
3. The KPUD, as the regional election organizer, faces numerous limitations. These limitations relate to three essential issues:
  - a. understanding of regulations;
  - b. Pilkada organizing institutions;
  - c. regional election governance.
4. The Election Supervisory Committee (Panwaslu) is one of the pillars contributing to the undemocratic nature of regional elections. Frequent cases of fraud in regional elections not only smack in the face of local democracy but also call into question the very existence of Panwaslu, the guarantor of elections that operate in accordance with democratic principles.
5. The regional elections are also presenting the phenomenon of declining voter participation and an increase in the number of white voters (golput).

Several weaknesses at the regional election organizer level also led to a buildup of problems, ultimately bringing them all to the Constitutional Court. Consequently, the Constitutional Court ended up examining not only disputes over vote count results, but also delving deeper into the election process itself. Consequently, the Constitutional Court also examined administrative disputes and criminal violations, resulting in lengthy and draining court hearings (Ahmad 2018).

## 2. Legal Consequences of Decision No. 112/PUU-XX/2022 KPK

If we look at the 1945 Constitution, there is no provision stating that the Constitutional Court has the authority to decide disputes regarding the results of regional elections, however, what is in the 1945 Constitution is that the Constitutional Court has the authority to decide disputes regarding election results. So in 2013 the Constitutional Court through its decision (Decision Number 97/PUU-XI/2013) said that the two things are two different things, so the Constitutional Court said it does not have the authority to decide disputes regarding the results of regional elections (Zoelva 2014).

However, if we look at it historically, the Constitutional Court placed the Regional Head Elections in one unit with the General Elections as stated in Decision No. 72-73/PUU-II/2004. In the consideration of the decision, the Constitutional Court said "The Court is of the opinion that constitutionally, the legislators can ensure that direct Regional Head Elections are an extension of the definition of General Elections as referred to in Article 22E of the 1945 Constitution so that because of that, disputes regarding the results become 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 are included in the General Election regime so that all requests for disputes regarding the results of the Regional Head Elections become the authority of the Constitutional Court to be examined, tried, and decided.

In 2013 the Constitutional Court issued a decision (Decision Number 97/PUU-XI/2013) which essentially stated:

1. Regional elections are not general elections as referred to in Article 22E of the 1945 Constitution;
2. If the regional elections are part of the general elections so that the Constitutional Court has the authority to resolve disputes over the results, then this is not in accordance with the original intention of the general elections and means that elections are no longer held once every five years but repeatedly;
3. 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;
4. Even though the Constitutional Court does not have the authority to hear and decide disputes regarding the results of the regional elections, this does not mean that all decisions of the Constitutional Court since 2008 are null and void and have no binding legal force;
5. To avoid doubt, uncertainty and a vacuum in the institution authorized to resolve disputes regarding the results of the regional elections due to the



absence of a law regulating this, this authority remains the authority of the Constitutional Court.

Due to the Constitutional Court's lack of authority to resolve disputes over regional election results, the Constitutional Court ordered the formation of a special institution to resolve disputes over regional election results. This is to avoid a legal vacuum . However, as long as there is no law regulating this provision, the Constitutional Court remains authorized to examine, adjudicate, and resolve disputes over regional election results ( Mahrus Ali 2016 ).

After the Constitutional Court ordered the regulation of a special institution to handle disputes regarding regional election results, this provision was finally included in the Election Law, more precisely regulated in Article 157 paragraph (3) of the Election Law. However, until 2022, the Special Judicial Body has not been discussed further, so that until now, what is called a Special Judicial Body has not been formed. Seeing that the Special Judicial Body has not been formed as a body to handle disputes regarding regional election results, Perludem is testing the constitutionality of Article 157 paragraph (3) in the Constitutional Court.

The Constitutional Court then decided on the petition with Decision Number 85/PUU-XX/2022, which essentially stated:

1. Looking at historical developments, the resolution of disputes over regional election results in Indonesia since 2005 has been carried out by the Constitutional Court as the judicial body that adjudicates disputes over regional election results since the authority was transferred from the Supreme Court to the Constitutional Court;
2. The temporary authority mandated to the Constitutional Court must end before the month and year in question;
3. The Constitutional Court has not seen any concrete efforts from lawmakers to establish a Special Judicial Body;
4. The Constitutional Court no longer distinguishes between regime differences in elections;
5. The general elections adjudicated by the Constitutional Court include elections to elect the President and Vice President, the House of Representatives (DPR), the Regional Representative Council (DPD), and the Regional People's Representative Council (DPRD) for provincial, district, and city levels. They also include elections to elect regional heads for provinces, districts, and cities.
6. The option or alternative that is more likely to be implemented normatively, and more efficiently, is not to form a special judicial body to place it under the Constitutional Court, but rather to directly make the authority of the special judicial body the authority of the Constitutional Court;

7. The Constitutional Court's authority to examine and adjudicate disputes over regional election results is no longer limited to "until a special judicial body is formed", but will be permanent;
8. According to the Court, the phrase "until a special judicial body is formed" in Article 157 paragraph (3) of Law 10/2016 must be deleted or declared to be in conflict with the 1945 Constitution.

With no distinction between the General Election and Regional Election regimes, the Constitutional Court, through its decision (Decision No. 85/PUU-XX/2022), stated that the Constitutional Court has the authority to examine and adjudicate disputes regarding Regional Election results permanently. The general elections adjudicated by the Constitutional Court consist of general elections to elect the President and Vice President, the House of Representatives (DPR), the Regional Representative Council (DPD), and the Regional People's Representative Council (DPRD) at provincial, district, and city levels. They also elect regional heads of provinces, districts, and cities (Fadjar 2006)

## CONCLUSION

Based on the description of the research results that the author has compiled, the author has drawn several conclusions, including:

1. Settlement of regional election disputes in accordance with the regulations in force in Indonesia. In 2013 through Constitutional Court Decision No. 97/PUU-XI/2013, the Constitutional Court distinguished between the Election regime and the Pilkada regime because the provisions in Article 22E of the 1945 Constitution do not mention regional head elections, but Pilkada itself is regulated in Article 18 paragraph (4) of the 1945 Constitution. Thus, including the regional head election regime into the general election by expanding the meaning of general elections in Article 22E of the 1945 Constitution is unconstitutional. After years of orders to establish a special institution that functions as an institution to resolve disputes regarding Pilkada results has not been formed so that a request for a judicial review of Article 157 paragraph (3) of Law 10/2016 was submitted to the Constitutional Court. This application was then decided by the Constitutional Court, which in essence stated: The Constitutional Court has the authority to examine, adjudicate, and decide on disputes regarding the results of regional elections permanently, and there is no longer any distinction between the general election and regional election regimes.
2. Strengthening the position of the Constitutional Court as a supervisor of regional elections.
3. Guaranteeing legal certainty and improving the quality of election dispute resolution by expanding the authority of the Constitutional Court, where



the Constitutional Court is the only institution authorized to resolve election disputes.

4. Providing assurance that election disputes will be resolved promptly without delay, and that the decisions taken will be a firm and final basis for the next election.

## SUGGESTION

Based on the conclusions written above, the author suggests the following things:

1. The government and relevant institutions must play a role in ensuring the effective and timely implementation of Constitutional Court Decision No. 85/PUU-XX/2022. This includes concrete steps such as amending the Constitutional Court's financial provisions in the 1945 Constitution to resolve disputes over regional election results, ensuring legal certainty with a firm and permanent basis.
2. The emphasis on the importance of legal clarity and equality in treatment between general elections and regional head elections, considering that the Constitutional Court's decision eliminated the differences that previously existed.
3. Increasing public understanding regarding the legal implications of the Constitutional Court's decision, as well as their rights and obligations in the context of resolving regional election disputes.
4. The push to ensure transparency and accountability in the regional head election process, including in dispute resolution, to ensure the integrity and legitimacy of the people's democratic celebration process at the regional level.

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