

The Future of Indonesian Democracy: How the Constitutional Court Settled the 2014 Presidential Election Dispute?

Dr. Andi Muhammad Asrun

Head of Graduates Legal Study of University of Pakuan,
Bogor, Indonesia
dutalaw@gmail.com; kajipublik@yahoo.co.id

Abstract- The 2014 general election resulted Joko Widodo, or popularly known as Jokowi, elected as the country's seventh president and Muhammad Jusuf Kalla, or shortly called as JK, as the vice president was claimed by Prabowo Subianto and Hatta Rajasa "full of fraud, intimidation, and money politics." In fact some experts worry that Indonesia's endemic corruption could affect that decision. This paper based on literatures and other qualitative secondary data and information aims at discussing how the Constitutional Court settled the 2014 Presidential Election dispute. It found that the Constitutional Court made a decision by the nine judges unanimously rejected the lawsuit camp Subianto-Hatta at a hearing on August 21, 2014. The Constitutional Court argues Subianto-Rajasa cannot prove its claim in the trial. The judges of the Constitutional Court concluded there was no evidence to suggest the existence of a systematic and structured efforts that affect the results of presidential elections and representative to favor one candidate. Although the Constitutional Court recognizes the existence of evidence that indicates irregularities such issues voters list. There are at least four main reasons the Constitutional Court rejected the lawsuit Prabowo-Hatta. The first is that the results of Vote Count Recapitulation which according to the Petitioner should mate Prabowo-Hatta obtain superior sound of Jokowi-JK according to the Court is not proven. Secondly, the Constitutional Court recognizes that the Voters List Supplement was not contained in Act 42 of 2008 concerning the Presidential Election, but the Voters List Supplement was already a Commission Regulation in force since 2009 up until now has not been revoked by the Commission and has not been canceled by the Constitutional Court, so that the use of the Voters List Supplement can be said to be contrary to law or laws that exist. Thirdly, the Court also believed and recognized that the Permanent List of Voters until today is still a shortage of the Population Administration associated with several institutions outside the Commission. Finally, related cheating categorized structured, systematic and massive associated with *noken* systems used in some areas of Papua, the Constitutional Court found *noken* system *Noken* can deemed constitutional because it is the Rights of Traditional and Cultural locals which is also within a few laws that do exist principle that the State respect cultural specificities in certain areas on the grounds when it made changes to it can cause turmoil in society in the area question. Therefore, the constitutional court to settle the dispute in the 2014 Presidential election can be justified viewed from the above perspectives.

Index Terms— The 2014 Presidential election, Constitutional Court, dispute, political parties, the National Election Committee.

I. INTRODUCTION

Following the amendment of the 1945 Constitution,¹ Indonesian people chose directly President and Vice President.² Direct presidential elections are the fruit of political reforms after the fall of former dictator President Suharto in May 1998. The amendments of the 1945 Constitution has paved the way people can directly choose the president. Political reforms that generate four times the 1945 constitution changes have brought new nuances in the state system of Indonesia.³ Another important outcome of political reform post-Suharto government is barring the post of president and vice president only for two periods, the establishment of the Constitutional Court, the expiration of the participation of the military in practical politics, strengthening regional autonomy, the establishment of the Regional Representatives Council (a kind Senate in the federal states), the strengthening of human rights guarantees in the constitution, the strengthening of judicial independence and the separation of the police from the army. The amendment of the 1945 Constitution is a prerequisite for establishing a more democratic political system.⁴ The amendment of the 1945 Constitution, made by the People's Consultative Assembly from 1999 to 2002, has brought a fundamental change in the constitutional system in Indonesia

¹Shortly after the fall of Presiden Suharto in May 1998, the People Consultative Assembly (MPR) has been amended the 1945 Constitution changing the presidential election system from the closed door appointment by the MPR to the direct election by the people. The presidential – and vice president -- election is carried out every five year.

²Article 6a part (1) of the 1945 Consitution says, "President and Vice President can be elected as a pair directly by the people."

³ Maruarar Siahaan, *The 1945 Constitution, The Living Constitution* (Jakarta: The Consitutionl Court of Republic of Indonesia, 2008), page 49.

⁴ Forward of Prof. Amien Rais (Chairman of The People's Consultative Assembly, 1999-2004) in Valina Singka Subekti, *Formulating Transtitional Constitution, Conflicting Interest and Idea in The Process of Amandment of 1945 Constitution*(Jakarta: Rajawali Pers, 2008), page xiii.

today.⁵ The constitution amendment was carried out aiming to develop a democratic government with an equal checks and balances between the executive branch with the judicial power and legislative power, realizing the supremacy of law and justice, and to guarantee and protect human rights.⁶ The establishment of the Constitutional Court is one of the results of the amendment of 1945 Constitution.

Presidential Election 2014 is the most important election in the Indonesian history, as the presidential election carried out a peaceful transition of power from President Susilo Bambang Yudhoyono to Joko Widodo after the Constitutional Court rejected claims of the president candidate Prabowo Subianto. Before the Constitutional Court rejected claims Prabowo camp, people were pessimistic if the Constitutional Court could provide a fair verdict due to the Chairman of the Constitutional Court chaired by former politicians from the political parties supporting Subianto. Moreover, the Constitutional Court is still not fully achieved public confidence as a result of the arrest of the Chairman of the Constitutional Court at the time of receiving bribes billions of rupiah (approximately millions of US Dollar) and later sentenced to life imprisonment.

The 2014 general election resulted Joko Widodo, or popularly known as Jokowi, was elected as the country's seventh president and Muhammad Jusuf Kalla, or shortly called as JK, as the new vice president. Shortly after the National Election Committee (KPU) announced the result of the July 9 presidential election, Prabowo Subianto filed the lawsuit before the nine judges Constitutional Court calling for head-to-head the presidential election was "full of fraud, intimidation, and money politics." Widodo won the election by slight margin of victory over the president and vice president candidate Subianto-Rajasa. The National Election Committee announced Widodo won 53% of the July 9 election, while Subianto, a onetime son-in-law to the late Indonesian dictator Suharto, got 47%.⁷

This paper using the data and information advanced in the literatures aims at discussing how the constitutional court settled the 2014 Presidential Election dispute. However, before discussing this issue, the second section discusses the constitutional court as the background of analysis. This is followed by a brief information on the general election in section 3. Section 4 highlights dispute of the 2014 Presidential election. Section 5 then addressed the constitutional court decision. Finally, concluding remarks are drawn in section 6.

II. THE CONSTITUTIONAL COURT

The establishment of the Constitutional Court is the fruit of political reforms after the fall of the dictator Suharto into power as the second President of the Republic of Indonesia

⁵ The Constitutional Court of Republic of Indonesia, *Blue Print of Building the Constitutional Court as a Trust and Modern Tribunal Court* (Jakarta: The Secretariat General of Constitutional Court of Republic of Indonesia, 2004), page 3.

⁶ *Ibid.*

⁷ The announcement of the 2014 Presidential Election can be read at the National Election Committee: <http://www.kpu.go.id>.

ruling the country since 1966. The establishment of the Constitutional Court was mandated by the Amended 1945 Constitution. The existence of the Constitutional Court was ruled under Article 24C of the 1945 amendments, which was promulgated on November 9, 2001. The original idea behind the establishment of the Constitutional Court due to the fact that there was a necessity to have a state organ reviewing the constitutionality of the laws. Such organ of state will be given power to examine if any laws against the constitution as the supreme law of the land, or popularly known as judicial review.⁸ Indeed, such idea appeared during the discussion of preparation for the country's independence in 1945.⁹ The country's founding fathers considered the necessary to include power examine laws not contrary to the constitution within the Supreme Court. The power given to the Constitutional Court then was to also include the dissolution of political parties, the examination authority dispute between state institutions, the examination results of the election dispute, and the dismissal of the president or vice president.

The establishment of the Constitutional Court finally reached a stage that is operational on July 31, 2003 after the Parliament and the Government collectively approved Law No. 24 Year 2003 concerning the Constitutional Court. On August 13, 2003, President Megawati Sukarnoputri ratified the Constitutional Court Law. Two days later, on August 15, 2003, the President through Presidential Decree No. 147 /M/Year 2003 endorsed the nine judges of the constitution for the first time, followed by the oath-taking of the constitutional judges at the State Palace on August 16, 2003. On October 15, 2003, the Supreme Court submitted all constitutional cases to the Constitutional Court, on October 15, 2003 which marks the operation activities of the Court as one of the branches of the judicial authorities.

Based on the article 24 of the amended 1945 Constitution, the judicial power is carried out by the Supreme Court and its lower tribunal bodies together with the Constitutional Court. The authority of Constitutional Court is described more detail by Article 24C of the part (2) of the 1945 Constitution that: "The judicial power shall be implemented by Supreme Court and judicial bodies underneath it in the form of public courts, religious affairs courts, military Tribunals, and state administrative courts, and by a Constitutional Courts."¹⁰

The establishment of the Constitutional Court can be seen as efforts to protect the constitution and the rights of citizens. The existence of the Constitutional Court in the constitutional

⁸ The Marshall v. Marbury case before the United State Supreme Court is considered as the first judicial review. See Christopher Wolfe, *The Rise of Modern Judicial Review, from Constitutional Interpretation to Judge-Made Law* (New York: Basic Books, Inc., Publishers, 1986).

⁹ Ahmad Syahrial, *The Constitutional Court, a Study of Constitutional Adjudication as Mechanism to Settle Conflicting Norms*, (Jakarta: Pradnya Paramita, 2006), page 259.

¹⁰ Benny K. Harman, *Considering The Constitutional Court, the History of Ideas of Constitutional Review*, (Jakarta: Penerbit Gramedia, 2013), page 1-2.

context of Indonesia is considered as the "guardian of the constitution functioning of constitutional justice in public life. The Constitutional Court's duty to encourage and ensure that the constitution is respected and implemented by state officials and the public. The Constitutional Court acts as the sole interpreter of the constitution to the spirit of the constitution is always alive and coloring sustainability of the state and society". Judge of the Constitutional Court consists of nine judges, in which three judges come from the Government, three judges of the Supreme Court and three men came from the selection in the Parliament.¹¹

In line with the implementation of judicial powers, the Constitutional Court possess authority to try a case at the first and final level and shall have the final power of decision in reviewing laws against the Constitution, determining disputes over the authorities of state institutions whose power given by this Constitution, deciding over dissolution of a political party, and deciding disputes over the result of general elections.¹²

The Constitutional Court has also duties to "issue decision over an opinion of the House of Representatives concerning alleged violations by the President and/or Vice-President of this Constitution."¹³ The Constitutional Court so far has yet settled the process of impeachment of president or vice president.

Since the establishment, the Constitutional Court has examined and decided cases of judicial review, authority dispute between state organs, disputed the results of elections of regional heads and the results of the presidential elections. The function of impeachment of the President or Vice President has not been implemented by the Constitutional Court. The Constitutional Court works on the basis of procedural law as stipulated in Law Number 24 Year 2003 regarding the Constitutional Court, as the majority rules amended by Law No. 8 of 2011. The Constitutional Court also made the Constitutional Court Regulation as technical guidelines in the proceedings, corresponding to the job of testing the constitutionality of laws, dispute settlement authority between state organs, dispute resolution results of the elections for the legislative elections and the presidential elections and the election of regional heads.

In the examination of judicial review if law is against the constitution,¹⁴ the Constitutional Court will give a decision whether to reject or accept the application for judicial review of the verdict states norm in the law is contrary to the constitution and has no binding legal force. In the examination authority

¹¹<http://www.mahkamahkonstitusi.go.id/index.php?page=web.ProfilMK&id=1>, *The History of Constitutional Court of Republic of Indonesia*.

¹² Article 24C part (1) of the 1945 Constitution.

¹³ Article 24C part (2) of the 1945 Constitution.

¹⁴ Jimly Asshiddiqie, *Models of Constitutional Review in Various Countries*, third edition (Jakarta: The Constitutional Court of Republic of Indonesia, 2006), page 2-3.

Also see I Dewa Gede Palguna, *The Constitutional Court, Judicial Review, and Welfare State* (Jakarta: The Constitutional Court of Republic of Indonesia, 2008), page 49-51.

dispute between state organs,¹⁵ the Constitutional Court will determine whether the authority of institutions hindered or taken over by other state agencies. In examining dispute of legislative elections,¹⁶ when the Constitutional Court could cancel the whole votes because of cheating systematic, massive and structured and the court decided the winner of the election is the plaintiff. The Constitutional Court could also partially canceled the acquisition of votes and ordered voting again due to fraud at a certain electoral area or at some electorate areas. So far the Constitutional Court has never granted a dispute over presidential election results. For the case of dissolution of political parties, the Constitutional Court has never dissolved any political party so far.

In the early days of the establishment of the Constitutional Court, the nine justices have drawn up a generally applicable Code of Conduct adopting the Bangalore Principles.¹⁷ The Constitutional Court's Code of Judicial Ethics and Conduct adopted six values set out in the Bangalore Principles:¹⁸ (i) independence, (ii) impartiality, (iii) integrity, (iv) propriety, (v) equality, and (vi) competence and diligence. The code of ethics is very important to the public officials that much depend on public trust, including judges.¹⁹ Of the the ethics drafted, the values of independence and impartiality are the two most important values in the discharge of judicial office based on law and justice.²⁰ Until the arrest of Chief of Justice of Constitutional Court Akil Mochtar for bribery in October 2012, the Constitutional Court was highly respected and labelled as a trusted and modern tribunal.

III. THE GENERAL ELECTION

Indonesian electoral system is somewhat different compared to other countries, and also different from one period to period to other political politics. Since independence in 1945 until 2014, Indonesia has organized eleven parliament elections, which was not simultaneous with the presidential election. In the period of politics from 1945 to 1999, the election of the President is done through an election in the People's Consultative Assembly or the once country's highest parliament.

¹⁵ Jimly Asshiddiqie, *Disputes over Authority among State Organs* (Jakarta: Konstitusi Press, 2006), Page 14-15.

¹⁶ Janedjri M. Gaffar, *The Law of Election in the Constitutional Court Decision* (Jakarta: Constitution Press, 2015), page 140-141.

¹⁷ Maruarar Siahaan, *The Court Procedures of Constitutional Court of Republic of Indonesia*, *Loc.Cit.*, page 342-343.

¹⁸ *Ibid.*

¹⁹ Jimly Asshiddiqie, *The Court of Ethics and The Constitutional Ethics, the New Perspective on "Rule of Law and Rule of Ethics and Constitutional Law and Constitutional Ethics"*, second edition (Jakarta: Sinar Grafika, 2015), page xv.

²⁰ Maruarar Siahaan, *The Procedures Court of Constitutional Court of Republic of Indonesia*, *Loc.Cit.*, page 343.

Membership of the People's Consultative Assembly (MPR) is composed of the House of Representatives (DPR) members elected directly by the people in a general election along with representatives of provincial government and professional groups and military representatives as well. Such MPR composition was practiced since the era of "Guided Democracy" following the enforcement of the Decree of President Sukarno after July 5, 1959, and then during the Suharto regime. Especially in the Suharto era, the composition of MPR as much as two third appointed by President Suharto and the remaining one third are from members of Parliament elected by the people in a general election. One third DPR members also come from members who are appointed by Suharto, the 100 came from the military and another 100 coming from group representatives and regional representatives. Envoy is a group of groups in society such as professional organizations, community organizations, and religious organizations. Regional delegates are representatives of the provincial government, which generally are governors. Mostly government at the Suharto's era are high-ranked military personnel.

The Indonesian election first occurred in 1955 with two elections,²¹ which first was to elect members of the House of Representatives on September 29, 1955 and the second was to elect members of the Constituent Assembly on December 15, 1955. The new government then draft the new constitution. Failure to agree on the basis of the state, where the proposed Islamic political Islam as the state and the nationalists are calling the old ideology of Pancasila maintained, spawned the protracted political crisis. The political crisis marked by rapid change of parliamentary government, local rebellion in several regions, and a worsening economy.²² The political crisis has prompted President Sukarno on July 5, 1959 announced the decree, or known as the Decree of July 5, 1959. By Decree of July 5, 1959, Sukarno dissolved the Constituent Assembly, canceled the entry into force of the Provisional Constitution of 1950 and declared valid back the 1945 Constitution and formed the Provisional People's Consultative Assembly (MPRS) and the Supreme Advisory Council While (DPAs).²³ This presidential decree was considered unconstitutional.

Since July 5, 1959 decree Soekarno became authoritarian ruler with the support of the military and political parties loyal

²¹ Adnan Buyung Nasution, *The Aspiration of Constitutional Government in Indonesia: A Socio-Legal Study of the Indonesian Konstituante 1956-1959*, translated into Indonesian by Sylvi Tiwon, second edition (Jakarta: 2001), page 30.

²² Hans Tholen, *Indonesia and the Rule of Law, Twenty Years of 'New Order' Government* (London: Frances Printer Publishers, 1987), page 6.

²³ Adnan Buyung Nasution, *The Aspiration of Constitutional Government in Indonesia: A Socio-Legal Study of the Indonesian Konstituante 1956-1959*, Loc.Cit., page 45-47.

supporters, especially the Communist Party of Indonesia (PKI) and the Indonesian Nationalist Party (PNI).²⁴

Post-enactment of Decree of July 5 Sukarno run a foreign policy oriented to China, with the slogan foreign policy axis "Jakarta-Beijing-Pyongyang ". Sukarno become anti-Western, by shouting "Go to hell America". Sukarno together Egyptian President Gamal Abdul Nasser, President Joseph Broz Tito of Yugoslavia and the Indian Prime Minister Nehru Jawahal formed the Non-Alignment Movement (NAM) with the political line of impartiality of the Soviet bloc and the American bloc.

The murder of six army generals on September 30, 1965, otherwise known as the coup September 30, 1965 to encourage the downfall of President Sukarno. The Communist Party (PKI) accused of attempted coup against governmental power at the time.²⁵ The discovery of the bodies of army generals brought Suharto de facto ruler since October 1, 1965. Sukarno then gave Suharto instruction to maintain orders and political situation after the coup PKI, known as Command March 11, 1966, which experts refer to as the history and politics "disguised coup".²⁶ Indonesia's political situation was very chaotic, marked by the killing of hundreds of thousands of PKI members and sympathizers as well as the imprisonment of members of other PKI then exiled to Buru Island in the eastern part of Indonesian province of Maluku. Indonesian military helped hunt PKI members and sympathizers. Suharto then on out in 1967 was sworn in as President of Indonesia both by the Provisional People's Consultative Assembly (MPRS).

Since the transition of power Suharto strive to concentrate state power into his hands, with the military and the bureaucracy as the backbone of his power.²⁷ Parliament is only a rubber stamp for the implementation of government policy. Justice under the strict control of the executive power, by placing the promotion and recruitment of judges under the executive power. Political parties can live with the condition that they must be faithful to the Suharto regime and not be led by political leaders of anti-Suharto.

Suharto tried to build an image that the government is run democratically by regularly every five years to hold elections to choose members of the House of Representatives (DPR), but restricted political party and organized by the Institute of General Elections appointed by the Government. A total of 100 people from a total of 500 members of the House be appointed Suharto. Political parties should only be campaigning in urban areas, with a campaign agenda and strict censorship. Recruitment of members of political parties is also limited to only at the city level, there should be opened a branch office at the village level. Suharto implement floating mass political system, where people should not be involved in politics in rural areas and small towns the district level, so that the masses can be directed to support Golkar in the elections. Instead, the Golkar political party formed by Suharto and backed by the

²⁴ *Ibid* 325. Also see Hans Tholen, *Indonesia and the Rule of Law, Twenty Years of 'New Order' Government*, Loc.Cit., page 6-7.

²⁵ *Ibid* 7.

²⁶ Michael R.J. Vatikiotis, *Indonesian Politics under Suharto, Development and Pressure for change, Revised Edition* (London: 1994), page 2.

²⁷ *Ibid*, page 25.

military and the bureaucracy, given the freedom to campaign and intimidation so that the people elect the party in the general election. Golkar majority victory in every election and composition of the 600 members of the Assembly of 1000 members of the Assembly appointed Suharto make way for Suharto to always be elected president. In the Suharto era were not known disputing the presidential election results, because there was no legal mechanism to examine the dispute of presidential election, and certainly will no body brave to sue Suharto as the elected presidential.

Suharto's first Parliamentary Election held in 1971, followed by 10 political parties and won by Golkar support of the Suharto regime. The 1971 election is the second election held Indonesia. The 1971 elections conducted by the Suharto regime, or popularly known as New Order, exactly 5 years after the Suharto government in power.²⁸ Election held on July 5, 1971 was held to elect Members of Parliament. 1971 elections system adopts proportional representation (proportional) system stelsel list. Suharto was elected as the president through the closed-door election by the People's Consultative Assembly (MPR). The 1971 election did not meet the standards of a general election that is honest, fair, transparent, and accountable.

The second elections under the New Order was held on May 2, 1977. Similar to the 1971 Election, the 1977 Election also used a system of proportional representation with stelsel list. The 1977 election was followed by the three political parties, the United Development Party (PPP) based on Islam, the Indonesian Democratic Party (PDI) as a fusion-based political parties and Christian nationalist and the ruling party Golkar. Golkar again won the election. Suharto was the only presidential candidate and was re-elected by the MPR for the second consecutive office term. Suharto himself picked up his vice president and no doubt endorsed by the MPR.

The 1982 Election was the third general elections held in the New Order government. This election was held on May 4, 1982. The system used in the 1982 Election was not different from the system used in the 1971 election and the 1977 election. Suharto remained as the president. As predicted by the political analysts, Golkar easily grapped seats of the parliament that far behind two other political parties. The PPP failed to add their parliamentary seats, although they managed to maintain popular support, especially in the areas of election-based Islamic basis. PDI's votes was the third in the election. The MPR again picked-up Suharto as the president.

The fourth election in the New Order government held on April 23, 1987, with the same electoral system and participants. PPP finally got additional small number of parliamentary seats. But Golkar was still the majority in the military-backed parliament. The MPR still granted Suharto five year presidency period.

The fifth election in the New Order government was held on June 9, 1992. There was no much change in the election. Golkar easily gained majority seats. Suharto was re-elected by the MPR. The 1997 election, however, was the last festive of democracy under Suharto's administration. Golkar was still the winner of the election held on May 29, 1997. But anti-Suharto sentiment grew stronger and his opponents asked Suharto not run for another five-year term due his ages. However, the former army general turned down the critics. Suharto's

supporters at the MPR crowned him another five-year presidential term.

The transition of power from Suharto to B.J. Habibie on May 21, 1998 occurred amid anti-Chinese riots and mass looting and the economic crisis as well that hit Indonesia since mid-1997. The long-month anti-government demonstrations also triggered the fall of Suharto. Political speculation came amid efforts to reduce Suharto's 32-year-stage power, because suddenly the question arose who was in control the military: the Armed Forces Commander Gen. Wiranto or Lt. Gen. Prabowo as the Commander of the elite-Army Reserve? The military power of the control questions arose due to the concentration of troops at Headquarters Subianto few days before and after Suharto resigned as president.

The term of office B.J. Habibie took only one year after the House of Representatives rejected the speech of accountability after Indonesia lost East Timor and become an indendent country following the UN-backed referendum on August 30, 1999. Immediately after the rejection of the speech, Habibie prepared for a parliamentary election to elect members of the House of Representatives (DPR) in 1999.

One year of the end of the Soeharto government on May 21, 1998 and was replaced by BJ Habibie as the third president, the new government organized the parliamentary elections on June 7, 1999. The 1999 election was followed by 48 political parties. The 1991 Election signaled the start of a new era of the Indonesian political system. Under the new political system, people can directly elect the president and vice president in the general election. The direct election is the fruit of political reform after the end of the New Order authoritarian rezime. The Amendments of the 1945 Consitution paved the way for the implementation of people's sovereignty in the form of direct election of the president and vice president as stipulated in Article 6A paragraph (1) of the amended 1945 Constitution.

The 1999 election was the first election under the so-called reform period.²⁹ The voting was held simultaneously in all parts of Indonesia. The 1999 Election system was still proportional representation with stelsel list similiar to the 1997 elections. Although the Parliamentary elections in 1999 were grabbed by the Indonesian Democratic Party of Struggle (PDIP), but the MPR did not elect the party's chairwoman as the country's fourth president due to the political move made by Islamic political parties blocking Megawati Sukarnoputri to be the new president. The Islamic political parties urged that women should not be leaders of this country. Later the same political parties nominated Megawati as the fifth president following the impeachment of Abdurrahman Wahid. Wahid, a moderate Islamist politicians defeated Megawati in the closed-door presidential election conducted by the MPR. To ease political tension following the failure of Megawati's presidential race, Wahid proposed Megawati to be his vice president and the 1000-member assembly approved her nomination. Wahid was sacked as president for alleged corruption and Megawati replaced Wahid. Wahid only hold the presidential post for only half of the five-year presidential term.

The 2004 election was the first election that allows people voting for their representatives to sit in the House of Representaive (DPR), member of regional council (DPD) and the provincial and regencies/municipal of local parliament

²⁸ *Ibid*, page 26

²⁹ The period of government administration after Suharto is called as "Reform Period".

(DPRD) and directly electing the president and vice president. The 2004 elections held simultaneously on April 5, 2004 to elect 550 members of the DPR, DPD 128 members, and member of local parliament at the level of province and regencies and municipal as well. All members of parliament worked for a five-year term or in the 2004-2009 period. The president election for the period 2004-2009 was held on July 5, 2004 for first round and the second round took place on September 20, 2004. Five candidates were registered for the first round of the presidential election. Susilo Bambang Yudhoyono and Muhammad Yusuf Kalla won the presidential election. Yudhoyono became the sixth Indonesian President and Kalla became Vice President for the period 2004-2009 after defeating the pair of president candidate of Megawati Sukarnoputri and vice president candidate of Hasyim Muzadi. Kalla then challenged Yudhoyono in the 2009 elections.

The 2009 Election was the third parliamentary election after the fall of Suharto's New Order regime. The election was held simultaneously on April 9, 2009 to pick up 560 members of the DPR, DPD 132 members, and member of local parliament (DPRD) Provincial and Regencies/Municipal for the 2009-2014 office term. The president election was held for only one round race on July 8, 2009. The 2009 election still implemented proportional representation system with open candidate list. Seats won by each political party reflects the proportion of the total vote obtained every political party. The mechanism of this system gives a major role to voters to determine their own representative who will sit in the legislature. Elected candidates are those with the most votes. To select the DPD conducted with many systems have as a deputy district. Here is a provincial district, where each province has four representatives. The election member of DPR, DPD and DPRD 2009 were followed by 44 parties, which 38 parties were national party and 6 local parties in Aceh.

The Presidential election 2009 were followed by three pairs of candidates, namely the pair candidate of Megawati Sukarnoputri and Prabowo Subianto, the pair candidate of Susilo Bambang Yudhoyono and Boediono, the third candidate was Muhammad Jusuf Kalla and Wiranto. Yudhoyono was successfully elected for his second terms of presidency and was accompanied by Boediono as vice president.

IV. DISPUTE OF THE 2014 PRESIDENTIAL ELECTION

The Presidential Election 2014 was the presidential election of the most tense and full of intrigue-violent provocation, but taking place generally safe because no major violence. This election with two pairs held tight presidential candidate in the vote, with each other in pursuit of the vote counting process conducted by the General Election Commission (KPU) between Joko Widodo, or popularly known as Jokowi, and Presidential Candidate Prabowo Subianto. KPU finally set Candidate Pairs of President Jokowi victory with 53% of votes compared to the vote Subianto as much as 47%. Based on the collected KPU vote counting in 33 provinces and abroad, Joko Widodo-Jusuf Kalla gain as many votes as 70,997,833 votes or 53.15 percent. Meanwhile, Prabowo Subianto - Hatta Rajasa acquired 62576.444 votes or

46.85 percent. Margin both are 8,421,389 votes, of the total valid votes total 133 574 277 votes.³⁰

There are two interesting things in the 2014 Presidential Election. *Firstly*, the presidential election was followed only by two candidates: presidential candidate of Joko Widodo and Vice President candidate of Muhammad Yusuf Kalla, and president candidate of Prabowo Subianto and Vice-President Candidate of Hatta Rajasa. With only two pairs of candidates, so that the Indonesian nation split into two choices. The effect of the two pairs of candidates resulted in each pair of candidates will work hard to gain support from voters through campaign activities across the archipelago country. According to Perludem,³¹ an NGO field of election, elections Indonesia is the most complex electoral activity in the world, with four million workers in 550,000 polling stations scattered in various parts of a country consisting of 17,000 islands.

The effect of the two pairs of candidates is proven by the black campaign neither to Jokowi nor to Subianto. For the people of Indonesia's religious background is the main reason in choosing a leader. Jokowi initially was rumored as a non-Muslim, which is caused by the tabloids and distributed to Islamic boarding schools especially distributed in East Java. Jokowi countered the rumours saying Jokowi's mother is a Muslim pilgrimage. Jokowi also is a Muslim and a pilgrim. Haj given to an Indonesian identity as a more observant Muslim.

Presidential candidate Subianto leveraged past mainly related to the abduction and disappearance of activists of pro-democracy towards the end of President Suharto late 1990s. Subianto was commander of the Army Special Forces (Kopassus). He was at the time also a son-in-law of the late President Suharto. Subianto was examined in a military court on charges of involvement in the kidnapping and enforced disappearances of pro-democracy activists. Military tribunal found Subianto of guilty and convicted in the abduction and disappearance of activists of pro-democracy. Subianto discharged from the military. Background as a suspect anti-democratic and anti-human rights into a soft material for the consumption of black campaign.

The black campaign have hardened the 2014 presidential election campaign smear campaign managed to create uncertainty acquisition support for the popular vote to each candidate for president and vice president by the end of the election campaign and approaching the end of the 2014 Presidential Election.

Secondly, Prabowo personally has been fighting for ten years in the Constitutional Court to seek legal solution against charges of fraud detrimental to him as a presidential candidate and Hatta Rajasa as a presidential candidate. Subianto as candidate of vice president – and together with Megawati Sukarnoputri as the president candidate -- also filed lawsuit to challenged result of the 2014 Presidential Election.

As a last attempt to win the presidential election, Subianto's lawyers team tried to pack a suit with arguments that are structured offense, systemic and massive. The main

³⁰ See <http://www.voaindonesia.com/content/kpu-tetapkan-jokowi-jk-pemenang-/1962850.html>

³¹

See <http://www.rumahpemilu.org/in/read/3351/Gambar-Singkat-Pemilihan-Umum-2014-di-Indonesia>.

accusation is no additional Subianto camp illegally voice to the president candidate of Widodo. Subianto's lawyers claimed that there were additional voters outside voters list made the National Election Commission (KPU). Such voters have contributed in the Widodo's victory. Other serious allegations filed by Subianto's lawyers was that in some areas of Papua Province and the North Sumatra's Nias Island there were no voting activities. Other allegations Subianto camps was partiality of officials of KPU in almost all polling stations profitable Widodo's camp. Subianto legal team said it had complained throughout the rigging the presidential election to election supervisors, but they do not get an adequate response from the Election Supervise Agency. Therefore, they filed a lawsuit to the Constitutional Court.

During the court sessions, Subianto's team mobilized thousands of supporters staging noisy-protests the Constitutional Court's compound, which is regarded as an attempt to pressure the judge to favor Subianto. Instead, the legal team also submitted a rebuttal toward Widodo charges Subianto legal team to submit written evidence and witnesses and legal experts to confront allegations made by Subianto's camp. However, time constraints have limited the rational trial efforts to prove the claim by Subianto, very sporadic and scattered in some parts of Indonesia.

As organizers of the presidential election, the National Election Commission has denied the allegations of camp Subianto. The Election Commission chairman Husni Kamil Manik claimed that the agency had worked independently and impartially.

V. CONSTITUTIONAL COURT DECISION

The Constitutional Court commenced an audit disputed election results filed by Subianto's lawyers team on August 6, 2014, with the working time for 14 days. During proceedings, the parties litigant also does not eliminate the opportunity to influence the judges' opinion. The parties litigant submitted evidences and witnesses before the trial by asking witnesses to convince the judge that true irregularities by one of the parties. However, the conviction of nine judges sometimes doubt the truth of the substance of the testimony, since witnesses to be heard indirect and convoluted and sometimes convey information that is not relevant.

Other efforts taken legal team both presidential candidates are asking legal experts who have often appeared in the trial and is expected to easily influence the thoughts and beliefs of nine constitutional judges. Subianto legal team filed Professor Yusril Mahendra, the constitutional law professor of the University of Indonesia and former law minister and colleague of the party with the Chairman of the Constitutional Court Hamdan Zulva. Jokowi legal team filed Professor Harjono, expert in constitutional law Airlangga University and a former judge of the Constitutional Court.

Outside the arena exhaled hearing rumour that each camp to lobby the judges of the Constitutional Court. Rumour is certainly a matter of an interesting story, because it is associated with the background of the judges of the Constitutional Court. When you see the background of political parties led to speculation the direction in which the judge's decision will benefit litigants. Background of political parties Patrinalis Akbar is PAN, with Hatta Rajasa as Chairman. Hatta Rajasa was Vice President of Prospective Candidates for

President Subianto. Whilst Arief Hidayat was deputy chairman of the Constitutional Court, with a political background linked to Indonesian Democratic Party in Struggle (PDI). Jokowi was proposed to be Presidential Candidate by PDIP.

People really want to know which way the mind of the three judges of the Constitutional Court sided with the presidential candidate. People want to know whether they made the decision because of the influence of political background, or still make a decision based on the principle of "fair, just and impartiality". When the Constitutional Court decision was made to influence political background, it will diminish the spirit of democracy in Indonesia and off the public's expectations of justice.

It is not easy to prove the lawsuit presented presidential candidates in the 2014 election- Prabowo-Hatta to scope out an area from the country's western town of Sabang to the country's eastern town of Merauke. Even if there are violations that can be proven in one area, whether it will affect the overall results of the presidential election? From experience so far, almost every lawsuit election results in the Constitutional Court no escape.

The lawsuit has always rejected the Constitutional Court judges after mature deliberation and wise laws. From the calculation of the General Election Commission (KPU), the difference between the winner of the presidential election ballot- Joko Widodo- Jusuf Kalla (Jokowi-JK) with Prabowo-Hatta reached 8.4 million votes. With the difference in the sound of it, at least Prabowo-Hatta and the team should be able to get around 4.2 million votes to be able to reverse the election results.

The amount is equivalent permanent voters list (DPT) in a province with a population large enough level in Indonesia. Currently, the easiest thing to do by the team of Prabowo-Hatta is quantitatively proven of fraud. If fraud can be proved only qualitatively, would be very difficult to get permission lawsuit in the Constitutional Court.

Former Chairman of the Constitutional Court Mahfud MD some time ago admitted to prove there was a vote to 100,000 voters only in the court was very difficult, especially with 4.2 million votes.³² It was based on his experience to handle the disputed number of votes in The 2009 presidential elections. In the 2009 election, election participants consists of three pairs of candidates, the Megawati-Prabowo, Jusuf Kalla-Wiranto and Yudhoyono-Boediono. According to Mahfud, the number of contestants disputed presidential election led to a situation lawsuit in the Court did not last heat. However, this time participation only by the two presidential candidates resulting lawsuit was more attracted the attention of many parties. The percentage difference of only 6 percent considered small, even when it is transferred to the sound acquisition reached 8.4 million votes. Mahfud also explained, the percentage difference between the winner of the election with the other contestants far enough.

According to Mahfud who was also Chairman of the Success Prabowo-Hatta, in every election it is very difficult to

³²Sinar Harapan newspaper, Subianto's claim gloomy, 04-08-2014, <http://sinarharapan.co/news/read/140804054/sinar-suram-gugatan-prabowo>.

carry out the elections without cheating today. Cheating is not just the elite, but also by the lower classes. He emphasized the key in all the trial lawsuit in the Constitutional Court is the significance of the offense, of which the difference between the number of votes between all the elections are not far, evidence of fraud and violations significant or not. As for proof, whether cheating systemic, structured, and massive. Is that cheating can be proven applicant?

Responding to rumours over a possibility of impartiality of the Court,³³ the Chairman of the Constitutional Court Hamdan Zoelva ensure that all Constitutional Court judges will work with any integrity risk in handling disputes the election results. Reflecting the handling disputes Legislative elections April 2014, it believes will serve equally well this time. He ensures all Constitutional Court judges work neutrally, impartially, and without the intervention of other parties in handling disputes election results. Hamdan guarantee, independency is a fixed price that must be maintained all the judges of the Constitutional Court and the entire staff of the court. Independency it is the people's right to justice.

VI. CONCLUDING REMARKS

The Constitutional Court finally made a decision by the nine judges unanimously rejected the lawsuit camp Subianto at a hearing on August 21, 2014. The Constitutional Court argues Subianto-Rajasa cannot prove its claim in the trial. In his view, the judges of the Constitutional Court concluded there was no evidence to suggest the existence of a systematic and structured efforts that affect the results of presidential elections and representative to favor one candidate. Although the Constitutional Court recognizes the existence of evidence that indicates irregularities such issues voters list. Here are three main reasons the Constitutional Court rejected the lawsuit Prabowo.

Firstly, with regard to the results of Vote Count Recapitulation which according to the Petitioner should mate Prabowo-Hatta obtain superior sound of Jokowi-JK according to the Court is not proven. The applicant stated in the lawsuit that has occurred Inflation Vote for Jokowi-JK of 1.5 million voice and sound Prabowo-Hatta reduction of 1.2 million votes could not be proved at all by the applicants. The applicant does not complete it because of calculations that can be accounted for. Instead of the KPU has been shown to account for the National Vote Results Summary of the 2014 presidential election with all the evidence that supports that are included in his defense. The Constitutional Court set a recapitulation of sound calculation that applies is that has been done by the Election Commission.

Secondly, the Constitutional Court recognizes that the Voters List Supplement was not contained in Act 42 of 2008 concerning the Presidential Election, but the Voters List Supplement was already a Commission Regulation in force since 2009 up until now has not been revoked by the Commission and has not been canceled by the Constitutional Court, so that the use of the Voters List Supplement can be said to be contrary to law or laws that exist. The Court also believed and recognized that the Permanent List of Voters until today is still a shortage of the Population Administration associated with several institutions outside the Commission. With these

conditions, the existence of the Voters List Supplement actually a solution to guarantee the fundamental rights of citizens in extending constitutional rights. This is what makes the existence of the Voters List Supplement required and the authority of the Commission to regulate it.

Thirdly, related cheating categorized structured, systematic and massive associated systems Noken used in some areas of Papua, the Constitutional Court to weigh on some election-the election that has been done before and Elections Legislative earlier in some places, the Court found System Noken can deemed constitutional because it is the Rights of Traditional and Cultural locals which is also within a few laws that do exist principle that the State respect cultural specificities in certain areas on the grounds when it made changes to it can cause turmoil in society in the area question. For the 2014 presidential election this Court has considered that it is indeed the case in some districts Voice 100 percent for Candidate Pair No. 2, but there is also the opposite of votes 100% for Candidate Pair No. 1, and took place during the elections in the regions previously mentioned. Therefore it is the system Noken carried out in the 2014 presidential election is the Constitutional Court ruled it was considered constitutional and is not included in structured cheating, systematic and massive.

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