

# THE SETTLEMENT OF DISPUTES ON THE RESULTS OF REGIONAL HEAD ELECTIONS

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**Abstract:** The Dispute on the Result of Election of District Head is disputes between provincial General Elections Commission (GEC) and/or Regional General Elections Commission (RGEC) and the participants of election regarding the determination of the vote acquisition results from the election. The disputes over the determination of the vote acquisition results from the election are disputes over the determination of the vote acquisition which are significant and may affect the determination of the candidate to advance to the next round or the determination of the elected candidate. The complexity of the General Election dispute is also had further complicated cases because of the Constitutional Court Decision Number 97/PUU-XI/2013 which distinguishes the regional head election regime from the general election regime. That decision also mandates the establishment of a special judicial body. Based on Law Number 1 of 2015 on Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 on the Election of Governors, Regents, and Mayors becomes the Laws and it has changed several times, most recently Law is Number 6 of 2020 on Mandating the Establishment of the Special Courts also be used as the right momentum to trigger the unification of judicial institutions specifically that handle the General Election cases holistically. The special judicial institution has not been established by the Supreme Court until now. In fact, a similar model of adjudication institution has been successfully applied in several countries such as Uruguay, Brazil, Germany, Costa Rica, Nigeria, Mexico and England. The establishment of the special judicial body for General Elections, like other special courts, also requires the construction of its own procedural law. Therefore, it is necessary thoroughly to reconstruct the procedural law of the regional head elections as a recommendation for the substance of the *Ius Constituendum* on the dispute of settlement system for the results of the General Election in the future.

**Keywords:** Settlement, The Result Disputes, District Head Elections.

## 1. Introduction

On the Article 157 Section (1) of Law 8/2015 on District Head Elections states that the disputes over of election results are examined and tried by a special judicial body. However, in Article 157 Section (3) of Law 8/2015 on District Head Elections states that as long as the special judicial body has not yet been formed, the disputes over the results of the elections are examined and tried by the Constitutional Court during the transition period.<sup>1</sup>

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<sup>1</sup> Undang-Undang Nomor 8 Tahun 2015 Tentang Perubahan atas Undang- Undang Nomor 1 Tahun 2015 Tentang Penetapan Peraturan Pemerintah Pengganti Undang- Undang Nomor 1 Tahun 2015 Tentang Pemilihan Gubernur, Bupati dan Walikota menjadi Undang-Undang, Lembaran Negara Republik Indonesia (LNRI) Tahun 2015 Nomor 57 dan Tambahan Lembaran Negara Republik Indonesia Nomor 5678, Pasal 157 ayat (1) dan ayat (3).

In the midst of the omnibus law discourse, the election activists seem to take the advantages of the opportunity to simultaneously enliven the idea of forming an omnibus law for elections. Simply, all of the Laws that governing elections will be codified in a Laws. If this idea is realized, it will be rather difficult to imagine how many Article provisions will be contained in the omnibus law of elections. Meanwhile, provisions regarding special judicial bodies will only contain one or two articles with several sections that contained. Juridically, there was an accidental obscurity of Norma.<sup>2</sup>

Ontologically, ideally the existence of the Special Elections Judiciary Agency as an institution that is expected to be the starting and the ending place for resolving disputes over the results of District Head Elections in Indonesia should be part of an independent state organ to carry out special judicial processes related to regional election disputes for law enforcement and justice based on Pancasila, for the realization of the Indonesian Rule of Law. As we know, the General Election Results Dispute (PHPU) is a dispute between general election participants and the General Election Commission (GEC) as the organizer of the general election regarding the determination of the national election results by the GEC.<sup>3</sup> All problems or disputes in general elections or regional head elections are not can be categorized as PHPU. In Indonesia, it is also known there are election crimes which are resolved in general courts, the administrative violations which are resolved by Election Supervisory Agency (*Bawaslu*) and the violations of the ethics of general election organizers which are resolved by the DKPP (Honorary Election Organizers Council). The meaning of the dispute over general election results includes the determination of the results on recapitulation of votes determined by the GEC after the voting is held.<sup>4</sup>

Epistemologically, the discussion of the Judicial Body for District Head Elections Disputes cannot be separated from the broad scope of judicial power, that is the institutional aspect from the types of judicial institutions entrusted with judicial power and the functional aspect in the form of various functions delegated by law to the judicial power, including the authority adjudicate electoral disputes.

Axiologically, it is understood that until now, when a regional election dispute occurs, whether in the form of administrative issues, criminal acts, or disputes over the results of the vote, the settlement is scattered in many institutions so that it is contrary to the principle of holding elections that are effective and efficient. It is because there has not been a special judicial body for the election of regional heads in the judicial power system in Indonesia.

Based on several philosophical, juridical and theoretical problems as mentioned above and several decisions regarding the dispute over the results of the Regional Head Election, the author is interested in studying and analyzing the Dispute Settlement of the Results of the Regional Head Election.

## 2. Research Methodology

The type of the research used in this dissertation is normative legal research (juridical normative), which is an approach that uses a positivist conception of legislature. This concept views law as identical with written norms made and promulgated by authorized institutions and officials. This carried out through an approach to legislation (statute approach), and the case approach method by looking at the ratio decidendi or reasoning as a reference for the preparation of arguments in solving legal issues. As stated in Law Number 1 of 2015 on Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 on the Election of Governors, Regents, and Mayors into Laws as has changed several times, most recently in Law Number 6 of 2020 with approaches case and conceptual approach<sup>5</sup>. These approaches are used to answer the research focus.

## 3. Results and Discussion

### The Rule of Law Theory

How did the conception of the rule of law actually develop?<sup>6</sup> According to Prof. Widodo, the rule of law was born as a reaction to arbitrary (absolute) the state power. The state of law, both in the sense of *rechtsstaat* and the rule of law, was born as an idea or an effort and a struggle for human rights. Human rights are the basic rights that are natural and inherent in humans, therefore the state must respect and protect them. Human rights are powers that remain inherent in the individual citizens of that country, even though theoretically according to John Locke these individuals have handed over their power to the state to be carried out by the state (*pactum subjectionis*). However, when people surrender their power to the state, there is a purpose and objective, namely that the state in carrying out its power is carried out solely to provide protection and provide justice and welfare to its people. So, the *pactum subjectiones* agreement was realized with such a goal. The state may not use the power given by its people, outside the aims and objectives of providing protection and justice and the welfare of its people.

Relying on the conception of an Indonesian legal state based on the ideology of Pancasila, the concept of developing a national legal system should ideally cover at least three important components of law. First, is the development of the legal structure; second is the development of the content or legal substance; and third is the development of the legal culture or culture.<sup>7</sup>

<sup>2</sup> <https://bisariyadi.wordpress.com/2020/05/02/mau-dibawa-ke-mana-sengketa-hasil-pemilukada/>

<sup>3</sup> Ramlan Surbakti, Didik Supriyanto dan Topo Santoso, “*Penanganan Sengketa Pemilu, Buku 16*”, (Jakarta: Kemitraan Bagi Pembaruan Tata Pemerintahan, 2011), pp..6.

<sup>4</sup> Jurnal Hukum & Pembangunan “*Gagasan Pengadilan Khusus Sengketa Pemilu Kepala Daerah*” 48 No. 1 (2018): pp. 199-221

<sup>5</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2005), pp. 93.

<sup>6</sup> Widodo Ekatjahjana, dalam Negara Hukum, ..., *ibid*, pp 62

<sup>7</sup> *Ibid* pp, 72-75

According to Doctor Bayu in his book *The Development of the Formation of Laws in Indonesia*, the importance of the right content in the formation of laws can be seen in the opinion of Matti Niemivuo, who said that laws are not always the right means to solve problems that arise in society:<sup>8</sup>

*“Although the basic idea of building society by law is still appropriate for a modern democratic constitutional state (rechtsstaat), law, and indeed regulation through in general, may not always be a most apposite means of solving various problem in society, environmental issues, traffic problem, gender issues, alcohol and drug abuse or AIDS serve of examples. Therefore, other methods to reach set goals and results must always be considered. Even tough, regulation represents one way of directing social development, it is nevertheless, useful, and often necessary for reaching the goals of social policy, in all organized society, certain basic structure and rules and needed. The state strives of influence society and in turn the behavior of individuals through other direct and indirect means”<sup>9</sup>.*

The principle of the right content material in the formation of laws is also important as a means of differentiation to find out what material must be regulated by law and what material must be delegated to arrangements under the law. As stated by The Legislative Commissioners Office Connecticut:

*“Regulations should not repeat what is already in the bill, not only is paraphrasing or repeating the statutes unnecessary, it is also undesirable because a statute may be amended, thereby necessitating an amendment to the regulation. Instead, regulation should embellish upon what is set forth in a statutory scheme”<sup>10</sup>.*

In Law No. 1 of 2015 Chapter XX which discusses Regional Head Disputes, that sorting types of violations, disputes, criminal acts, and disputes over results, can be classified as: a) “Violation of the Election Organizer's Code of Ethics, b) “Election Administration Violations; c) Election Dispute, d) "Election Crime"; e) "State Administrative Disputes for Election f. “Election Disputes”.

According to Topo Santoso, there are at least five models of law enforcement for the resolution of electoral disputes. First, examination by the Election Administration Body (EAB) with the possibility of submitting an appeal to a higher institution. Second, special election courts or judges to handle election complaints. Third, the general court that handles objections may be appealed to a higher institution. Fourth, the settlement of election problems is submitted to the constitutional court and/or the constitutional court. Fifth, the settlement of election problems by the high court.<sup>11</sup>

Each country has a different mechanism in implementation of the General Election (Pilkada) and procedures for resolving disputes. In general, the election has the same stages with one another, namely: (1) Pre-election Period; (2) Election Period; and (3) Post Electoral Period. From initial observations, it is also known that certain countries have a model for resolving electoral disputes, namely those using the Constitutional Court, ordinary courts and special courts, the Electoral Commission, and other forms.

## THE INSTITUTIONAL DESIGN AND SPECIAL JURISDICTION AUTHORITY FOR DISPUTE RESULTS ON REGIONAL HEAD ELECTIONS

In this regard, the existence of an election dispute resolution institution as part of the principle of electoral justice is very urgent. Furthermore, in order to obtain an adequate understanding regarding the establishment of a special judicial body for the election of regional heads which is projected to be under the jurisdiction of the judiciary, it is very important to explore and observe the legislative ratio which is the reason behind the birth of legal regulations. It is a reflection of the general concept of a statutory regulation.

**Table 4.1**  
**The Shifting of the Arrangement on Pilkada Implementation and**  
**The Election Dispute Settlement Agency**

No	Laws	Explanation
1	Laws Number 22 of 2014	1. Election by Regional House of Representative (DPRD). 2. The settlement of disputes through the general court.
2	Government Regulation in Lieu of Law Number. 1 of 2014	1. Direct Election. 2. Disputes on the results of the election of Governors as well as disputes over the results of the election of Regents and Mayors at the PT level and can be submitted an objection request to the Supreme Court Article 159:

<sup>8</sup> Bayu Dwi Anggono, *Perkembangan Pembentukan Undang-undang Konstitusi Press Khasanah Peradapan Hukum dan Konstitusi* Jakarta 2014 pp, 59

<sup>9</sup> Matti Niemivuo, “Legislative Drafting Process, Main Issues and Some Example”. Unidem Campus Trieste Seminar “The Quality of Law”, Trieste, Italy 14-17 June 2010, p.2.

<sup>10</sup> The Legislative Commissioners’ Office Connecticut, *Manual for Drafting Regulation (Connection the Legislative Commissioners’ Office, 2009)*. p.6

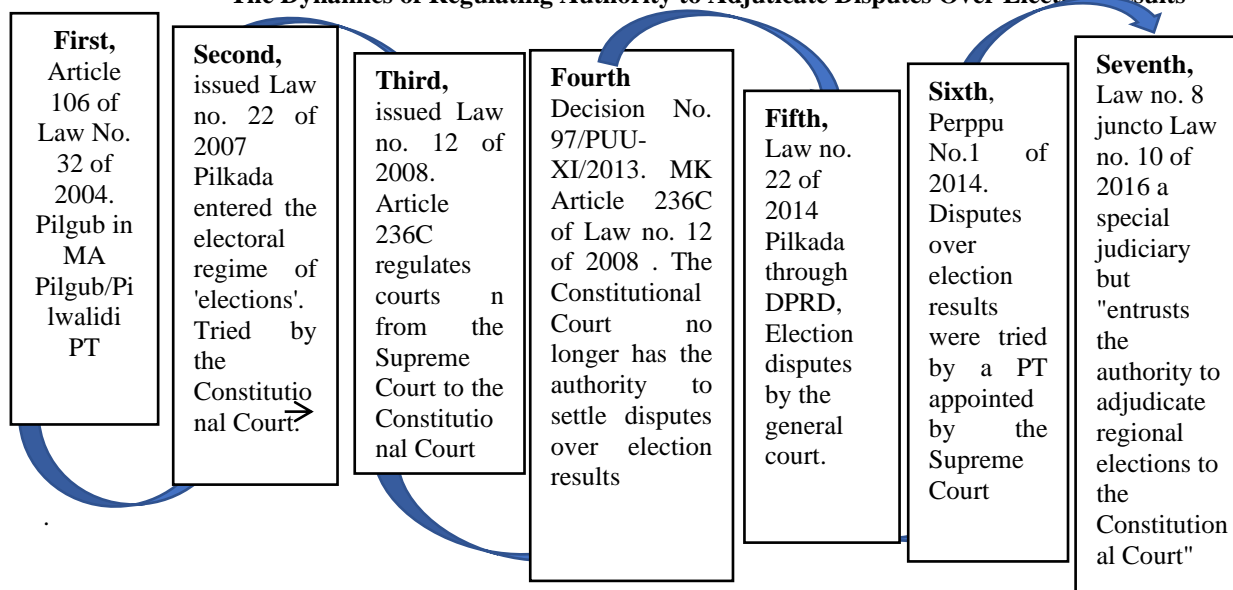
<sup>11</sup> Topo Santoso, et.al, *Penegakan Hukum Pemilu. Praktik pemilu 2004, kajian pemilu 209-2014*, perludem, Jakarta, 2006, p. 28.

		<ol style="list-style-type: none"> <li>a. The dispute settlement of election results is handled by ad hoc judges in PT determined by Supreme Court.</li> <li>b. The Supreme Court has determined four PT to handle the election results disputes that are spread throughout Indonesia.</li> </ol>
3	Law Number 1 of 2015	<ol style="list-style-type: none"> <li>1. Direct Election</li> <li>2. Disputes on the results of the election of governors as well as disputes over the results of the election of regents and mayors at the PT level and can submit an objection request to the Supreme Court whose decision is final, and binding and no other legal remedies can be taken.</li> </ol>
4	Law Number 8 of 2015	<ol style="list-style-type: none"> <li>1. Direct Election</li> <li>2. Appears setting "Special Election Judiciary Agency"</li> <li>3. A special judicial body is formed before the implementation of the national simultaneous elections</li> <li>4. Disputes over election results are examined and tried by the Constitutional Court until a special judicial body is formed</li> <li>5. National simultaneous voting will be held on the same day and month in 2027</li> </ol>
5	Law Number 10 of 2016 changed by Law Number 6 of 2020	<ol style="list-style-type: none"> <li>1. Direct Election</li> <li>2. Appears setting "Special Election Judiciary Agency"</li> <li>3. The projection of the simultaneous national elections is brought forward to the date and month of November 2024</li> </ol>

In chart form, this can be described as follows:

**Picture 4.1**

**The Dynamics of Regulating Authority to Adjudicate Disputes Over Election Results<sup>12</sup>**



Furthermore, the course of institutional authority for dispute resolution resulting from direct regional elections has changed, namely from the Supreme Court to the authority of the Constitutional Court. However, through the Constitutional Court's decision Number:

<sup>12</sup> Sources: Researcher, *processed from various sources*.

97/PUU-XI/2013 it was stated that the Constitutional Court was no longer authorized to settle disputes over the direct election results. In response to this, forming a law through article 157 of Law Number 1 of 2015 handed over this authority to the high court and then changed it through article 157 of Law Number 1 of 2015 in conjunction with Law number 10 of 2016 became the authority of the special judiciary.

### **IDEAL MODEL FORM AND POSITION OF REGIONAL HEAD ELECTION JURISDICTIONS IN INDONESIA**

Elections with integrity are elections based on democratic principles of universal suffrage and political equality as reflected in international treaty standards, professional, impartial, and transparent in the preparation and management of an election cycle. In fact, the local elections, in the context of law and politics in Indonesia which are carried out directly, are also subject to the provisions of elections with integrity, because the essence of the Regional Head Election process is basically to elect someone in a fair contestation, as is a common principle in an election process. The basis for the application of the principle of election with integrity in regional head elections is the similarity of aspects of the same implementation principles as international elections<sup>13</sup>.

Disputes over the direct election results must be resolved in a manner that is in accordance with the law (due process of law) including the authorized institution. This cannot be separated from developments surrounding the settlement of legal issues in direct elections / local elections to realize a fair election. Because, whether the regulation and resolution of electoral legal issues is a determining factor for the presence of a fair election.<sup>14</sup>

Stephen A. Siagel stated that the problem of counting votes in elections is the oldest activity in a nation-state among various other oldest problems in constitutional law<sup>15</sup>. For this reason, the existence of a judiciary that is free and impartial and is also not influenced by any power is sufficient to provide hope for the creation of a state of law that is more respectful of legal decisions made by the judiciary at all levels<sup>16</sup>. According to Tatawu, this provision means that power must be subject to law and the law becomes a means of controlling, supervising, and controlling power from the possibility of arbitrary abuse of power<sup>17</sup>.

Regarding electoral justice, IDEA (2010) emphasizes that election justice will be guaranteed if in its implementation, First, for ensuring that each action, procedure and decision related to the electoral process is in line with all other provision; Second, for protecting or restoring the enjoyment of electoral rights, giving people who believe their electoral right have been violated the ability to make a complaint, get a hearing and receive an adjudication. Based on this, electoral justice includes at least three elements, namely:

1. The Provision of Electoral Disputes
2. The Settlement of Electoral Disputes), and
3. Alternative of electoral disputes<sup>18</sup>

For this reason, according to Taufikurrohmah Syahuri, (adapting Henry B. Mayo) who stated that disputes over the direct election results must be resolved in accordance with the law (due process of law). This is in accordance with the provisions of Article 1 Section [3] of the 1945 Constitution of the Republic of Indonesia which stipulates that "Indonesia is a state of law". Thus, as a state of law, disputes over the results of direct elections must be resolved through institutions (courts) and/according to the procedures determined by law. In addition, disputes over the results of direct regional elections must be resolved peacefully and institutionally, so as not to reduce the democratic value and legitimacy of holding direct elections. This is in accordance with positive values and universal elements of democracy as the basis for direct regional elections, namely the peaceful and institutional settlement of disputes<sup>19</sup>.

The dispute resolution of the direct election results which is democratic, due process of law and institutionalized, will prevent the occurrence of social conflicts during the community. The settlement of disputes over the results of the direct elections can give confidence to the people, that the votes they channel through the direct elections are not rigged. In addition, dispute resolution over the direct election results is aimed at maintaining the voice of the people consistently for the sake of upholding the sovereignty of the people through direct democratic elections.<sup>20</sup>

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<sup>13</sup> SETARA institute, laporan study, *desain penyelesaian sengketa pilkada; pembelajaran dari praktik peradilan pilkada serentak 2015*, setara institute, Jakarta 15 maret 2016 p. 02.,

<sup>14</sup> see Saldi Isra dalam kata pengantar Refly Harun, pemilu *konstitusional: desain penyelesaian sengketa pemilu kini dan ke depan. Ed 1 cet.1 rajawali pers Jakarta 2016 hlm vi.*

<sup>15</sup> siegel Stephen A *the counscientious congressmen's guide to the electoral count act of 1887 florida law review*, July 2004, p.01

<sup>16</sup> iriyanto A. Baso ence. *negara hukum dan hak uji konstitusional mahkamah konstitusi telaah terhadap kewenangan mahkamah konstitusi*, alumni bandung 2008, p. 102 -102

<sup>17</sup> Guasman tatawu *hakekat hukum putusan mahkamah konstitusi terhadap sengketa pemilihan kepala daerah (pilkada), the legal essence of constitutional court's verdict towar dispute of regional head election. jurnal HOLREV facukty of law, halu oleo university, Kendari, southeast Sulawesi, indonesia . volume 1 issue 2 september 2017, p. 144-165.*

<sup>18</sup> Ayman ayoub & Andrew ellis (ed), *electoral justice. the international IDEA heandbook*, international IDEA, stockholm, 2010, p.1

<sup>19</sup> Henry B mayo dalam taufiqurrahman syahuri putusan mahkama kinstitusi tentang perselisihan hasil perhitungan suara pemilihan umum berdasarkan undang undang no 24 tahun 2003 jurnal konstitusi pkh fh universutas bengkulu vol 11 no 1 juni 2009 p 10.

<sup>20</sup> Slamet Suhartono, *konstitusionalitas badan peradilan khusus dan MK dalam penyelesaian sengketa hasil pilkada langsung (justice konstitutionality of sepecialized judiciary and constitutional court in coping with the disputes on direct election results), jurnal konstitusi volume 12, nomor 3, September 2015. p. 503-523.*



According to Novianto M.Hantoro, in the realm of law enforcement related to the issue of resolving disputes over election results, if it is explained, it does not lie with the institution that handles it, but rather a process that is very ineffective, protracted, prone to bribery, and has multiple interpretations in the application of the law. So that legal certainty is difficult to obtain. This legal uncertainty has contributed to the development of liberal legal practices in Indonesia. Liberal here can be interpreted as behavior that prioritizes individual freedom.<sup>21</sup>

At this point, it is necessary to underline that the establishment of a judicial institution must consider the basic provisions in the constitution, as well as the institutional design. Even though it follows the matters determined by the constitution. In addition, the establishment of a judicial institution must also respect all norms and principles regulated in the constitution. Likewise, the establishment and existence of a special court as a sub-judicial system must be in line with the system and principles outlined by the constitution.<sup>22</sup>

#### 4. Conclusion

Broadly, there are several models of dispute resolution for election, including: the special administrative court model and the model of a special institution, a kind of certain commission that is given the authority to resolve electoral disputes (electoral court). Quoting from ACE Electoral Knowledge there are 50 percent of election disputes in many countries are resolved by court institutions, 46 percent of which are resolved by the General Elections Commission (KPU). Thailand, Turkey, Australia, Bolivia, and Norway are settled by their GEC, while Indonesia and Germany are settled by the courts<sup>23</sup>. Even, various models of dispute settlement on election results in several countries not only can be grouped according to the type of body authorized to adjudicate them, but also can be observed from the scope of the election adopted by each country<sup>24</sup>. For this reason, a comparative approach is needed with several countries, by reviewing the implementation of elections/regional elections including the pattern of dispute settlement, namely:

##### 1. The Competence of Special Courts

Another thing that must be underlined is the special court only formed within one of the judicial bodies under the Supreme Court. Referring to Law Number 48 of 2009 on Judicial Power, the position of this special court must be established in one of the judicial environments under the Supreme Court, the choice is between the General Court environment, the Religious Court environment, the Administrative Court environment, and the Court environment. However, the relative competence of this special court, the researcher proposes to be in each provincial capital with the authority to handle regent/mayor election disputes and governor election disputes in the respective provinces. This special judicial body is under the PTUN environment. Meanwhile, for absolute competence in the form of the court's authority to adjudicate a case according to the object, material or subject matter of the dispute, the researcher proposes that this special court should be designed to have the authority to handle process disputes (administration), criminal acts, and outcome disputes. The consequence of this choice is the reform of the function of Election Supervisory Agency/ ESA (Bawaslu). The competence to adjudicate process disputes by ESA must be evaluated and returned to the judiciary through this Special Elections Court.

##### 2. The Composition and the Recruitment of Special Court Judges

In relation to the composition of judges in special Regional Head Elections court, personally they must have good integrity with special skills who are specially trained and certified to resolve electoral disputes. For the composition of the panel, we propose consisting of two career judges and one *ad hoc* judge from legal academics, especially legal academics who are interested in studies related to elections.<sup>25</sup> *Ad hoc* judges are appointed and dismissed by the President at the suggestion of the chairman of the Supreme Court for a term of office of five years and may be appointed again for one term. For career judges, preference is given to one person with the background of Administrative Court judge, and one person with a judge background who has electoral qualifications. This career judge is determined based on the Decree of the Chairman of the Supreme Court of the Republic of Indonesia. This career judge deals with judges who have performed their duties as judges for a minimum of three years, if in a court there is no judge whose tenure has reached three years.

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<sup>21</sup> see novianto M. hantoro, *mewujudkan kepastian hukum dalam penyelesaian kepada daerah dan penghentian hukum liberal*. Jurnal Negara hukum: vol. 6, no. 2, November 2015, p.107-130.

<sup>22</sup> Hamdan Zoelva, *aspek konsittusionalitas pengadilan khusus di Indonesia*, dalam putih hitam PENGADILAN KHUSUS, diterbitkan oleh sekretarisat jendral KYRI, cetakan pertama, Jakarta, 2013, hlm. 170

<sup>23</sup> <http://httpsd.aceproject.org/diakses> pada 25/12/2019.

<sup>24</sup> banyak Negara tidak yang mengadopsi pilkada sebagai bagian dari pilkada secara langsung. selain itu, tidak banyak Negara – negara yang menyelesaikan sengketa pemilu dengan mempertimbangkan adanya kecurangan atau pelanggaran pemilu.

<sup>25</sup> The existence of legal academics is expected to be able to generate public trust and except to enrich the perspective with good quality in the decision of the Regional Head Election case. The decision by the special court for the Regional Head Election is better to be final and binding so that justice and legal certainty can be obtained immediately.

Each special court has nine judges, which at the time of the examination hearing can be divided into three panels, consisting of three special court judges who are assigned the task of conducting a preliminary examination hearing.<sup>26</sup> The next stage is a Consultative Meeting of Judges which is closed and confidential. This meeting can only be attended by constitutional judges and clerks.<sup>27</sup> Finally, Plenary Session, a trial conducted by a panel of constitutional judges attended by a minimum of seven constitutional judges. This trial is held open to the public with the agenda of a trial examination or the reading of a decision.<sup>28</sup> This special court's decision is final and binding. Final and binding, which means that binding force is immediately born (*Verbindende kracht*) and has permanent legal force. Regarding the competence of judges, in the future the needs of judges in this special court, there is no need to worry, because since 2019, based on Regulation Number 6 of 2017, the Supreme Court has prepared and has at least 234 special judges who have electoral competence to adjudicate electoral disputes. These special judges have been trained and have special certificates to resolve dispute cases in the electoral field<sup>29</sup>.

### 3. Special Judicial Procedure

According to Heru Widodo's dissertation research, the Constitutional Court during its exercise of authority to resolve disputes over the results of the Regional Head General Election has shifted and expanded its procedural law, especially regarding legal standing, object of dispute, and the subject matter of the case. He explained that it was found that the development of the procedural law for resolving disputes over the results of the Regional Head General Election had developed very significantly. Significant changes from the original function of correcting errors in the results of the vote count, extending to considering and reviewing violations that are measurable and SSM (structured, systematic, and massive). Such a shift and expansion are very understandable because the case for the Regional Head General Election is categorized as a political case which in its implementation must be based on the principles in the Constitution and the principle of an overflow and fair election<sup>30</sup>.

In time, this special court must adopt several principles, including:

1. The principle independent and impartial
2. The principle of the trial public
3. The principle of justice is carried out quickly, simply, and cheaply
4. The principle of the right to be heard equally (*Audi et Alteram Partem*)
5. The principles of active and passive judges in the trial process,
6. The principle of *Ius Curia Novit*, to obtain justice, although the law has not yet regulated it.

### 4. Reconstructing the Function of Election Supervisory Agency (Bawaslu)

Currently, both Law Number 15 of 2011, Law Number 8 of 2012 or Law Number 1 of 2015 on Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 on the Election of Governors, Regents, and Mayors become Laws. The law as has changed several times, most recently with Law Number 6 of 2020 placing ESA as an institution that has the main task of supervising the implementation of elections and regional elections. Sure, it is very logical because elections and regional elections are run without a mechanism and a climate of free and independent supervision will become contested arenas filled with fraud. So that elections and regional elections will be carried out in a dishonest and fair manner. It is from this understanding that placing election supervision as a "basic and objective need" of every general election held, both nationally and locally in each region in the Regional Head Election, becomes important. Referring to the provisions of Article 24 Section (2) of the 1945 Constitution of the Republic of Indonesia, it has been clearly determined that Judicial Power is exercised by the Supreme Court and the Constitutional Court. The embodiment of this provision, in Article 27 Section (1) of Law Number 48 of 2009 on Judicial power stipulates, "Special Courts can only be formed in one judicial environment which is under the Supreme Court." So that the formation of a special judicial body outside the Supreme Court can be said to be unconstitutional.

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<sup>26</sup> This trial is held to examine the legal standing of the applicant and the contents of the application. The special court judge can advise on the improvement of the application.

<sup>27</sup> In this meeting, the case is discussed in depth and detail and the decision of the Constitutional Court is taken which must be attended by at least seven constitutional judges. During the CMJ, the Registrar records and records every subject and conclusion.

<sup>28</sup> The trial examination includes listening to the applicant, witness testimony, experts and related parties as well as examining evidence.

<sup>29</sup> Currently, the Supreme Court has at least 234 judges who have the ability and competence to handle election disputes, consisting of 217 judges at the first level and 17 judges at the appellate level.

<sup>30</sup> Heru Widodo, Dissertation on the Doctoral Program of Legal Studies concentrating on Constitutional Law studies at Padjadjaran University: "Resolution of Regional Election Disputes: Evaluation of Procedural Procedures at the Indonesian Constitutional Court 2008-2014 which was later recorded with a slight adjustment with the title: Procedural Law of Disputes over Simultaneous Election Results in the Court Constitution, Sinar Graphic, Bandung, 2015.

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