

REVIEW OF INDONESIAN CONSTITUTIONAL COURT DECISION NUMBER 135/PHP.BUP-XIX/2021

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Abstract

The determination of the elected Regent and Deputy Regent by the General Election Commission (KPU) of Sabu Raijua Regency was formed without paying attention to the provisions of the Legislation and General Principles of Good Governance. The reason is that Orient Riwu Kore was only known to have dual citizenship after issuing the KPU Decree. The Constitutional Court later annulled the KPU decree. In contrast, Article 24C of the Constitution mandates that the MK's authority decide disputes regarding the general election results. On the other hand, the KPU stipulation decree is related to the general election process, not a dispute over the vote results. The dispute resolution process should be done through administrative efforts to the BAWASLU and the PTUN. Therefore, it becomes a question regarding the basis of the authority and reasons for the Constitutional Court to resolve disputes over the general election process. This research is in the form of normative juridical. The approach used in this research is the statutory approach and the case approach. This research is categorized in a prescriptive research typology. The data that has been collected will be analyzed qualitatively, and the results of this study are categorized in the form of prescriptive-analytical research. The result of this research show if the dispute of the KPU decree should be solved by administrative efforts in the form of adjudication to Bawaslu. Only then can the PTUN lawsuit be filed. However, suppose the dispute resolution process is carried out through the Administrative Court, it will take a long time. So that it can be understood that the acceptance of the applicant's application by the Constitutional Court is due to the absence of a more effective mechanism that can be carried out for the determination of the KPU decree other than through the Constitutional Court.

Keywords: *Election Disputes, Constitutional Court Decision, Decrees, General Election Commissions*

A. Introduction

The elected Regent and deputy regent of Sabu Raijua Regency are determined based on the Decree of the General Elections Commission (KPU) Number 25/HK.03.1-Kpt/5320/KPU-Kab/I/2021, formed without paying attention to the provisions of the Legislation and the Principles of The General Principles of Good Governance (AAUPB). However, the Constitutional Court (MK) has annulled that KPU decree. The annulled has confused the authority to settle disputes over the regional head election

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process (Pilkada) conducted at the Constitutional Court. The dispute resolution process for the regional head election should be within the scope of administrative law, which is carried out by the Election Supervisory Body (Bawaslu) and the State Administrative Court (PTUN).

The KPU for Sabu Raijua Regency has appointed Orient Riwu Kore and Thobias Uly as regents and deputy regents for Sabu Raijua, East Nusa Tenggara (NTT). The decision was made in a plenary meeting on January 23, 2021, led by the Chairperson of the KPU Sabu Raijua, Kirenius Padji.¹ There is no dispute over the vote count results, but the problem is Orient Riwu Kore's citizenship status as an elected regent who has dual citizenship. Orient was known to have a United States passport when he registered as a candidate for Regent at the Sabu Raijua KPU until he was appointed as the elected Regent by the KPU. When registering with the KPU, Orient submits an ID card with the status of an Indonesian citizen and having an address in Kupang City.²

The problem in Sabu Raijua elected shows an imprecise implementation of government administration by the KPU. Because one of the requirements for regional head candidates in Law Number 10 of 2016 and General Election Commission Regulation Number 1 of 2020 is that they must be Indonesian citizens (WNI).³ Another affirmation is that Orient's citizenship status as an Indonesian citizen when registering is also in doubt. Based on Article 23 letter h of Law Number 12 of 2006 concerning Citizenship, it is stated that a person can lose his citizenship if he has a passport from another country.⁴

The problems above show the Decree of the General Election Commission of Sabu Raijua Regency Number 25/HK.03.1-Kpt/5320/KPU-Kab/I/2021 concerning the Determination of the Elected Pairs of Candidates for Regent and Deputy Regent in the Election of Regent and Deputy Regent of Sabu Raijua Year 2020 was formed without paying attention to the provisions of Law Number 30 of 2014 concerning Government Administration (UUAP). Article 9 paragraph (2) of UUAP states that every decision and/or action must be based on the provisions of legislation and the AAUPB.⁵

¹ Keputusan Komisi Pemilihan Umum Kabupaten Sabu Raijua Nomor 25/HK.03.1-Kpt/5320/KPU-Kab/I/2021.

² Sigiranus Marutho Bere, "Bupati Terpilih Sabu Raijua, Orient Riwu Kowe, Berkewarganegaraan Amerika Serikat," Kompas.com, 2021, <https://regional.kompas.com/read/2021/02/03/05150081/bupati-terpilih-sabu-raijua-orient-riwu-kore-berkewarganegaraan-amerika?page=all>.

³ Pasal 7 Undang-Undang Nomor 1 Tahun 2015 tentang Perubahan Kedua Atas Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2014 tentang Pemilihan Gubernur, Bupati, dan Wali Kota menjadi Undang-Undang *jo* Pasal 1 Angka 18 Peraturan Komisi Pemilihan Umum Nomor 1 Tahun 2020 tentang Perubahan Ketiga Atas Peraturan Komisi Pemilihan Umum Nomor 3 Tahun 2017 tentang Pencalonan Pemilihan Gubernur dan Wakil Gubernur, Bupati dan Wakil Bupati, dan/atau Wali Kota dan Wakil Wali Kota.

⁴ Pasal 23 Huruf h Undang-Undang Nomor 12 Tahun 2006 tentang Kewarganegaraan.

⁵ Pasal 9 Ayat (2) Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan.

In this regard, a question arises regarding the validity of the Sabu Raijua Regency KPU Decree, which refers to the fact that there have been problems in the Pilkada process. Regarding process disputes, the institutions authorized to receive, examine, and decide on the dispute resolution process are Bawaslu and PTUN.⁶ However, on March 9, 2021, an application for dispute resolution on election results was made to the Constitutional Court, and it was decided in decision Number 135/PHP.BUP-XIX/2021.⁷ The Court, in its decision, annulled several Sabu Raijua KPU Decrees relating to the stipulation of Orient Riwu Kore as the elected Regent and ordered re-election.⁸

Referring to the root of the problem again, the *objectum litis* of this dispute is a formally flawed State Administrative Decree (KTUN) with the substance that the elected candidate and regent have a nationality other than Indonesian citizens. As a result of this decision, there was an election dispute between Pilkada participants and Pilkada organizers categorized as a 'process' dispute.⁹ So it is not appropriate if the Constitutional Court becomes an instrument to resolve this dispute. Because based on Article 24C paragraph (1) of the Constitution of the Republic of Indonesia (UUD NRI 1945), the MK's authority is to "decide disputes regarding the results of the general election".¹⁰ Therefore, it should be noted that the highlight, in this case, is not the dispute regarding the determination of the election results as stated in the Constitutional Court's decision Number 135/PHP.BUP-XIX/2021, it can be said that the Constitutional Court has exceeded its authority.

Regarding the action of the Constitutional Court, which can be considered unconstitutional in resolving this dispute, it will raise concerns that in the future, there will be ambiguity in the settlement in administrative law, so it is essential to find an ideal concept in dispute resolution in the Pilkada process. The discussion of this paper will focus on the understanding that the Pilkada regime has been included as an election regime. The legal basis for organizing Pilkada is regulated in Law No. 32 of 2004 concerning Regional Government (UU No. 32/2004), but Pilkada has not been included in the electoral regime in this law. However, the discussion in this paper refers to after the enactment of Law Number 22 of 2007 concerning General Election Organizers (UU No. 22/2007), the election regime is not only within the scope of the central government, but also Pilkada is added to it so that it is officially named General Election of Regional Heads and Deputy Regional Heads. Furthermore, through the

⁶ Pasal 93 Huruf b Angka 2, Pasal 95 Huruf d, Pasal 467-471 Undang-Undang Nomor 7 Tahun 2017 tentang Pemilihan Umum *jo* Pasal 2 Ayat (1) Peraturan Mahkamah Agung Nomor 5 Tahun 2017 tentang Tata Cara Penyelesaian Sengketa Proses Pemilihan Umum di Pengadilan Tata Usaha Negara.

⁷ Putusan Mahkamah Konstitusi Nomor 135/PHP.BUP-XIX/2021, P. 4.

⁸ *Ibid*, P. 174.

⁹ Undang-Undang Nomor 7 Tahun 2017 tentang Pemilihan Umum.

¹⁰ Pasal 24C Ayat (1) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

Constitutional Court Decision Number 55/PUU-XVII/2019, the Constitutional Court also stated that there are main things in implementing the Indonesian General Election, namely no longer separating the General Election and the Regional Head Election. In the decision, the Constitutional Court also provided recommendations regarding variants of the model for holding simultaneous elections, one of which was to conduct simultaneous general elections for regional heads.

B. Identified Problems

Based on the problems that have been described, this paper will examine the dispute resolution of the Pilkada process and the authority of the Constitutional Court in the dispute resolution process for the determination of the Sabu Raijua KPU Decree, with the formulation of the problem:

1. How is the dispute resolution process for the Regional Head Election over the determination of the Sabu Raijua KPU Decree based on Article 53 paragraph (2) of the State Administrative Court Law?
2. Why was the dispute resolution of the regional election process carried out over the determination of the Sabu Raijua KPU Decree based on the Constitutional Court Decision Number 135/PHP.BUP-XIX/2021?

C. Research Methods

This research is normative juridical which puts the law as a system of norms, and focuses on the object of legal study which is conceptualized as a norm or rule. The approach used in this research is a statutory approach which uses legislation and regulations,¹¹ which include: the 1945 Constitution of the Republic of Indonesia, Law Number 5 of 1986 concerning the State Administrative Court, Law Number 32 of 2004 concerning Regional Government, Law Number 12 of 2006 concerning Citizenship, Law Number 30 of 2014 concerning Government Administration, Perbawaslu Number 15 of 2017, PKPU Number 15 of 2019, PKPU Number 1 of 2020, which are laws and regulations above is the primary legal material in this research.

In addition, another approach that is also used is the *case approach* to analyze the *ratio decidendi* or the legal reasons used by the judge to arrive at his decision.¹² In this regard, the decision used is the Constitutional Court Decision Number 135/PHP.BUP-XIX/2021, which is also the primary legal material in this study. This study also uses secondary data that explains primary legal materials,¹³ such as books and scientific magazines from legal experts related to the discussion in this research. In addition to primary and

¹¹ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2006).

¹² Ibid, P. 119.

¹³ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Raja Grafindo Persada, 2010).

secondary legal materials, this research is also supported by tertiary legal materials such as internet searches.

Referring to the main problem to be discussed, it is found that this research is categorized in a prescriptive research typology, which is intended to get suggestions on what to do to overcome specific problems.¹⁴ In line with this, this study tries to analyze the authority to resolve administrative defects in the decision letter to determine the elected Regent and Deputy Regent of Sabu Raijua Regency and what kind of mechanism is appropriate to take. Then the data collected will be analyzed qualitatively, and the results of this study will be presented in the form of research reports categorized as prescriptive-analytical research.

D. Research Findings and Discussions

1. Dispute Settlement of the Regional Head Election Process on the Determination of the Sabu Raijua Regency KPU Decree Based on the State Administrative Court Law

Raijua Regency KPU Decree Number 25/HK.03.1-Kpt/5320/KPU-Kab/I/2021 Regarding the Determination of the Elected Pairs of Regent and Deputy Regent Candidates in the 2020 Sabu Raijua Regent and Deputy Regent Election (hereinafter referred to as *a quo* decree), is one of several decrees that the Sabu Raijua Regency KPU has stipulated regarding regional head elections.¹⁵ The *a quo* decree is a form of action by the State Administration Agency or Official in public law. Public law referred to here is within the scope of state administrative law. State administrative law, according to RJHM Huisman is:

“The law that regulates government actions and regulates the relationship between the government and citizens or the relationship between government organs contains all the regulations relating to how government organs carry out their duties. So the State Administrative Law contains the game's rules relating to the functions of government organs.”¹⁶

Based on this understanding, the decree issued by the KPU as a state institution that organizes general elections is a form of government action in the administrative law, and the KPU in issuing

¹⁴ Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: UI Press, 2015).

¹⁵ Keputusan Komisi Pemilihan Umum Kabupaten Sabu Raijua Nomor 152/HK.03.1-Kpt/5320/KPUKAB/IX/2020 tentang Penetapan Pasangan Calon Peserta Pemilihan Bupati dan Wakil Bupati Sabu Raijua Tahun 2020. Keputusan Komisi Pemilihan Umum Kabupaten Sabu Raijua Nomor 153/HK.03.1-Kpt/5320/KPUKAB/IX/2020 tentang Penetapan Nomor Urut dan Daftar Pasangan Calon Peserta Pemilihan Bupati dan Wakil Bupati Sabu Raijua Tahun 2020. Keputusan Komisi Pemilihan Umum Kabupaten Sabu Raijua Nomor 342/HK.03.1-Kpt/5320/KPU-Kab/XII/2020 tentang Penetapan Rekapitulasi Hasil Perhitungan Suara dan Penetapan Hasil Pemilihan Bupati dan Wakil Bupati Sabu Raijua Tahun 2020.

¹⁶ Ridwan H. R., *Hukum Administrasi Negara* (Jakarta: Rajawali Pers, 2014).

the decree is domiciled as an agency or official state administrative (TUN official). As a TUN official, referring to Article 1 point 9 of the Law on State Administrative Courts (UU PTUN), which can be objects of TUN disputes are:

“ [...] a written determination issued by a state administrative agency or official containing legal actions for state administration based on applicable laws and regulations, which are concrete, individual, and final, which have legal consequences for a person or civil legal entity.”¹⁷

The KTUN, in the form of an *a quo* decree, can be the object of a TUN dispute. However, there are exceptions. If the KPU Decree is "the result of a general election," it cannot be classified as a decision in government affairs. Therefore, as long as the decision is not a "general election result" and meets the criteria of Article 1 point 3 of the Administrative Court Law, it remains the Administrative Court's authority to examine and try it.¹⁸

About the substance of the *a quo* decree which stipulates the pairs of candidates for the regent and deputy regent of Sabu Raijua Regency, it is known that there are formal legal defects in its formation. The problem in the *a quo* decree does not contain substance regarding the dispute over the results or the dispute over the determination of the vote acquisition. However, the problem lies in the KPU's negligence in checking and ensuring the fulfillment of the administrative requirements of the candidates for the Regional Head Election and causing the Orient Rawu Kore to participate in the Pilkada. In addition, the KPU also appointed Orient as the elected regent without knowing his dual citizenship status. Orient is known to have a United States passport when registering as a candidate for regent at the Sabu Raijua KPU. When registering with the KPU, Orient submits an ID card with the status of an Indonesian citizen and having an address in Kupang City.¹⁹

Based on Article 53 of the UU PTUN, a lawsuit can be filed against the *a quo* decree to the Administrative Court to be declared null or void, with or without a claim for compensation and/or rehabilitation.²⁰ Because the *a quo* SK fulfills the element that it is contrary to the applicable laws and regulations,²¹ namely Article 7 of

¹⁷ Pasal 1 Angka 9 Undang-Undang Nomor 50 Tahun 2009 tentang Perubahan Kedua Atas Undang-Undang Nomor 5 Tahun 1986 tentang Peradilan Tata Usaha Negara.

¹⁸ Surat Edaran Mahkamah Agung Nomor: 071Bua.6/HS/SP/V/2010 tentang Petunjuk Teknis Sengketa Mengenai Pemilihan Umum Kepala Daerah (Pilkada), P. 2.

¹⁹ Bere, "Bupati Terpilih Sabu Raijua, Orient Riwu Kore, Berkewarganegaraan Amerika Serikat."

²⁰ Pasal 53 Ayat (1) Undang-Undang Nomor 50 Tahun 2009 tentang Perubahan Kedua Atas Undang-Undang Nomor 5 Tahun 1986 tentang Peradilan Tata Usaha Negara.

²¹ Ibid.

Law Number 10 of 2016 jo. Article 1 number 8 of PKPU Number 1 of 2020 which requires that the candidate for regional head (in this case the regent) is an Indonesian citizen. These regulations are also in line with Article 23, letter h of the Citizenship Law, which states that a person can lose his citizenship if he has a passport from another country.²² Therefore, it can be understood that the ownership of a United States passport by the Orient has shown its status, which is no longer an Indonesian citizen, so it does not meet the requirements for nomination for regional heads.

Article 53 paragraph (2) of Law Number 9 of 2004 emphasized that the reason for filing a lawsuit other than the KTUN is contrary to the laws and regulations and the AUPB. According to Philipus M. Hadjon, although it is known that AUPB is not a written norm, it must always be guided and obeyed by the government.²³ The AUPB in question can be found in the Elucidation section of Article 10 paragraph (1) of the UUAP, one of which is the principle of accuracy, namely:

“A decision and/or action must be based on complete information and documents to support the legality of the determination and/or implementation of the decision and/or action so that the decision and/or action concerned is carefully prepared before the decision and/or action is determined and/or done.”²⁴

A *quo* decree contradicts several laws and regulations. It also reflects an inadvertent action taken by the Sabu Raijua Regency KPU because the stipulation is not supported by complete information to support the legality of the decision, which is not what he knew about the possession of passports of other countries from the Orient.

Referring to the problems that have been described and the provisions of Article 477 of the Election Law, the handling of disputes in the general election process can be carried out through the Bawaslu. The process of handling election disputes as contained in Articles 467, 468, 469, and 471 of the Election Law, namely Bawaslu, Provincial Bawaslu, and Regency /Municipal Bawaslu, carries out dispute resolution processes in 2 stages through mediation or deliberation and consensus if the parties do not reach an agreement, it is carried out through mediation or deliberation and consensus. adjudication.²⁵

²² Pasal 23 huruf h Undang-Undang Nomor 12 Tahun 2006 tentang Kewarganegaraan.

²³ Devi Melissa Silalahi, “Kompetensi Peradilan Tata Usaha Negara terhadap Pengawasan Penyelenggaraan Pemerintahan Ditinjau dari Perluasan Asas-Asas Umum Pemerintahan yang Baik Pasca Berlakunya Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan,” *Jurnal Komunikasi Hukum (JKH)* 6, no. 1 (2020): 50–63, <https://doi.org/10.23887/jkh.v6i1.23439>.

²⁴ Pasal 10 Ayat (1) Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan.

²⁵ Pasal 467-471 Undang-Undang Nomor 7 Tahun 2017 tentang Pemilihan Umum.

As has been explained, the filing of an objection to the KTUN is carried out through the mechanism of the state administrative court. According to S. Prajudi Atmosudirjo, state administrative justice is any form of settlement of the actions of an official of a state administrative agency that is suspected of causing harm to the community, community agency, or other government agency. Based on this understanding, we know that the judicial institution that handles problems related to state administration is the PTUN.

Submission of a lawsuit to the Administrative Court can only be made after administrative efforts have been made at Bawaslu, as stated in Articles 467, 468, and 469 of the Election Law. This adjudication entrance makes Bawaslu closer to *quasi-rechtpraak* (semi-judicial). When viewed from the dispute resolution process and the nature of the decision, it is final and binding.²⁶

2. Dispute Settlement of the Regional Election Process by the Constitutional Court Against the KPU Decree of Sabu Raijua Regency

a. Dispute Resolution of the Regional Head Election Process within the Administrative Legal Framework

Election disputes are divided into two: First, Election process disputes, which are disputes between candidates. The second, is a dispute over the election results, which is a dispute over the results of the election vote count, and the resolution is in the hands of the Constitutional Court.²⁷

In the case of electoral process disputes, the resolution is carried out quickly.²⁸ The objects of the dispute process are:²⁹

- 1) Different interpretations in a matter related to the implementation of the General Election;
- 2) There are different acknowledgments and/or denials of avoidance between Election participants; and/or;
- 3) Provincial or Regency/Municipal KPU decisions.

The state administrative dispute in PKPU Number 15 of 2019 also regulates the schedule of lawsuits and the maximum dispute resolution, which is from September 23, 2020, to November 9, 2020, which means that the TUN dispute settlement must be settled completed before the election day. Whether it is from the stage of submitting a dispute application

²⁶ Maulana Hasun et al., "Penyelesaian Sengketa Proses Pemilihan Umum di Indonesia," Tesis., (Universitas 17 Agustus 1945 Surabaya, 2020).

²⁷ Ramlan Surbakti et al., *Penanganan Sengketa Pemilu* (Jakarta: Kemitraan, 2011).

²⁸ Pasal 3 Peraturan Badan Pengawas Pemilu Nomor 15 Tahun 2017 tentang Tata Cara Penyelesaian Sengketa Pemilihan Gubernur dan Wakil Gubernur, Bupati dan Wakil Bupati, serta Wali Kota dan Wakil Wali Kota.

²⁹ Pasal 4 Peraturan Badan Pengawas Pemilu Nomor 15 Tahun 2017 tentang Tata Cara Penyelesaian Sengketa Pemilihan Gubernur dan Wakil Gubernur, Bupati dan Wakil Bupati, serta Wali Kota dan Wakil Wali Kota.

until when the dispute resolution process enters the cassation stage.³⁰

This confuses if the object of the dispute is not only regarding the determination of candidates for regional elections determined by the Regency KPU but other matters relating to the administrative realm that is known to be problematic after the election and vote counting. Regarding the Orient problem, if the object of the dispute is not the *a quo* decree but rather the three previous decree, namely regarding the determination of the candidate pair, the determination of the serial number, and the results of the recapitulation,³¹ then this will have a clearer election dispute resolution mechanism, as long as it is submitted as PKPU Number 15 of 2019.

A quo decree, if the dispute resolution process is carried out through the Administrative Court, it will take a long time. In contrast, if we look at these conditions, it cannot be allowed to experience a long legal vacuum. The administration of government must be implemented immediately. As a result, apart from overlapping institutions that resolve process disputes, there is also a lack of clarity on dispute resolution mechanisms that can accommodate them quickly.

Another option that can be more effective is through administrative efforts, namely adjudication by Bawaslu, although disputes over the *a quo* decree may be difficult if resolved through this process. Because if there are parties who do not accept the decision, then a lawsuit can still be made against the PTUN. In addition, Bawaslu is not a judicial institution. Therefore, against a legal vacuum that occurs if the *a quo* decree is null and void, there is no binding force for Bawaslu to order re-election.

b. Legal Basis for the Authority of the Constitutional Court to Dispute Election Results

Referring to the provisions of Article 106 paragraph (1) of Law no. 32/2004 gave the Supreme Court the authority to adjudicate disputes over the results of the Pilkada.³² Then after

³⁰ Peraturan Komisi Pemilihan Umum Nomor 15 Tahun 2019 tentang Perubahan Ketiga Atas Peraturan Komisi Pemilihan Umum tentang Tahapan, Program dan Jadwal Penyelenggaraan Pemilihan Gubernur dan Wakil Gubernur, Bupati dan Wakil Bupati.

³¹ Keputusan Komisi Pemilihan Umum Kabupaten Sabu Raijua Nomor 152/HK.03.1-Kpt/5320/KPUKab/IX/2020 tentang Penetapan Pasangan Calon Peserta Pemilihan Bupati dan Wakil Bupati Sabu Raijua Tahun 2020. Keputusan Komisi Pemilihan Umum Kabupaten Sabu Raijua Nomor 153/HK.03.1-Kpt/5320/KPUKab/IX/2020 tentang Penetapan Nomor Urut dan Daftar Pasangan Calon Peserta Pemilihan Bupati dan Wakil Bupati Sabu Raijua Tahun 2020. Keputusan Komisi Pemilihan Umum Kabupaten Sabu Raijua Nomor 342/HK.03.1-Kpt/5320/KPU-Kab/XII/2020 tentang Penetapan Rekapitulasi Hasil Perhitungan Suara dan Penetapan Hasil Pemilihan Bupati dan Wakil Bupati Sabu Raijua Tahun 2020.

³² Pasal 106 Undang-Undang Nomor 32 Tahun 2004 tentang Pemerintah Daerah.

the promulgation of Law Number 12 of 2008 concerning the Second Amendment to Law 32/2004 and the signing of the minutes of the transfer of authority to judge from the Chief Justice of the Supreme Court to the Chairman of the Constitutional Court on October 29, 2008, the Constitutional Court's authority officially became wider in resolving PHPU namely, the addition of the Regional Head PHPU.³³

The authority in question is regarding the object of the dispute requested in the form of the respondent's decision regarding the determination of the voting results of the election that affect the election of a pair of candidates. It is different from the result dispute pre-concurrent local elections, which recognize the object of the case in the form of determining significant vote gains, which can affect the determination of candidates to advance to the next round, which uses a two-round system if the majority of the vote gainers have not reached 30%.

In addition, in particular, the Constitutional Court also established guidelines for Pilkada procedures for submission of application to MK. These procedural guidelines were established based on the Constitutional Court Regulation Number 15 of 2008 concerning Guidelines for Proceeding in Disputes over the Results of Regional Head Elections (PMK 15/2008) which has been amended into Constitutional Court Regulation Number 1 of 2015 (PMK 1/2015), and has also undergone several changes. Times of refinement through change. In the PMK, it is stated that those who can become Petitioners are pairs of candidates for the Regional Head Election. While the application is submitted in 3 x 24 hours since the KPU stipulates the results of the Pilkada.³⁴

Meanwhile, in simultaneous elections, the winner of the most votes is immediately determined to be the elected candidate pair. The new thing applied in simultaneous election disputes is the maximum requirement for the difference between the results of the vote candidate pair of applicants with the candidate pair winning the most votes. The maximum difference is set between 0.5% to 2% according to the population and differs between the gubernatorial election and the election of regents and mayors.³⁵

³³ Hamdan Zoelva, "Problematika Penyelesaian Sengketa Hasil Pemilukada oleh Mahkamah Konstitusi," *Jurnal Konstitusi* 10, no. 3 (2013): 377–98.

³⁴ Qurrata Ayuni, "Gagasan Pengadilan Khusus untuk Sengketa Hasil Pemilihan Kepala Daerah," *Jurnal Hukum & Pembangunan* 48, no. 1 (2018): 199–221, <https://doi.org/10.21143/.vol48.no1.1602>.

³⁵ Jeremy L. C. Sanger, "Kewenangan Mahkamah Konstitusi dalam Menyelesaikan Perselisihan Hasil Pilkada," *Lex Administratum* 6, no. 4 (2018): 92–100.

The addition of the authority possessed by the Constitutional Court means that first, the Court is not only the guardian of the constitution but is also given the function of being the guardian of democracy. Concerning its role as a guardian of democracy, the Constitutional Court is the final decider over disputes in the Pilkada. This is what makes the basis that the decisions made by the Constitutional Court related to the Pilkada dispute cannot be limited to only between the parties running for the Pilkada, but this concerns democracy and the future of the Indonesian people who will be led by the leader who wins in the Pilkada.³⁶ Second, the Pilkada becomes an election regime because Article 22E of the 1945 Constitution only regulates the election as an authority within the Constitutional Court.

In dealing with disputes over election results between the years 2004-2008, the Constitutional Court was always faced with petitioners who were not only concerned with counting election results by election administrators. However, there are other problems related to violations or stages in the election.³⁷ Against violations that have been believed to injure the principles of overflow and fairness, the Constitutional Court has a constitutional responsibility to resolve them. This is the basis for the Court in its decisions regarding disputes over the results of the Regional Head Elections in the Constitutional Court.

The Constitutional Court then does not only decide which party is right or which party is wrong. However, it also provides a decision for voting and recounting of votes, including prospective Pilkada candidates who were previously declared ineligible by the election organizers, even disqualifying certain pairs and determining certain pairs of candidates as winners in the implementation of the Pilkada.³⁸ This causes the Constitutional Court to handle many cases related to the difference in election votes (in this case, also including the results of the Regional Head Elections). In contrast, the dispute resolution process related to the election at the Constitutional Court must be handled and resolved within a limited period (30 days for legislative and regional elections and 14 days for the presidential election as well as the Pilkada).³⁹

³⁶ Zoelva, "Problematika Penyelesaian Sengketa Hasil Pemilukada oleh Mahkamah Konstitusi."

³⁷ Ibid.

³⁸ Janedjri M. Gaffar, *Politik Hukum Pemilu* (Jakarta: Konstitusi Press, 2013).

³⁹ Mohammad Mahfud Mahmodin, *Panduan Teknis Beracara dalam Perkara Perselisihan Hasil Pemilihan Umum Anggota DPR, DPD, dan DPRD* (Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, 2009).

c. Contextualization of Dispute in the Regional Election Process in the Decree of the KPU for Sabu Raijua Regency in Relation to the Constitutional Court Decision Number 135/PHP.BUP-XIX/2021

In the Constitutional Court Decision Number 135/PHP.BUP-XIX/2021, the Constitutional Court gave the consideration that the Court has the authority to hear the *a quo* petition previously. The respondent in the exception questioned that the applicant in his petition did not question the calculation of the Pilkada, which affected the results and determination of the candidate pair selected.

In addition to the respondent, the related parties view that the Constitutional Court has no authority regarding the alleged dual citizenship status of the Orient, which is within the authority of Bawaslu and the Administrative Court to resolve it.⁴⁰

Another important issue concerns the formal procedural law in the Sabu Raijua district election dispute, namely the application period. An application for dispute resolution of the Sabu Raijua district election was submitted on March 9, 2021, while based on PMK 15/2008, the application must be submitted no later than 3 x 24 hours after the stipulation, which in this case, the decision letter was issued on December 16, 2021. Based on this, the time limit for applying to the Constitutional Court has passed the stipulated time limit.

Furthermore, regarding the substance of the object of the petition, the Petitioner submitted 4 KPU documents for Sabu Raijua as the object of the election dispute case. One of the determinations of the Sabu Raijua KPU, which is the object of the petition, is the determination of the 'results of the recapitulation of the vote count.' In this case, it is the MK's authority in the settlement. Thus, the Court believes that the other 3 decisions from the Sabu Raijua KPU are certainly interrelated with the determination of the results of the recapitulation of the vote count. Because of this basis, the four determinations of the Sabu Raijua KPU, the object of the Application, can be interpreted cumulatively as a single unit as an application for the 'results of the recapitulation of vote counts.' The Court, in its consideration, refers to the provisions of Article 157 paragraph (3) and paragraph (4) of Law 10/2016, that "Cases of dispute over the determination of the final stage of the election results are examined and tried by the Constitutional Court until a special judicial body is formed."

⁴⁰ Putusan Nomor 135/PHP.BUP-XIX/2021, P. 151.

The Court, in its statement, believed that Orient did not have the competence in terms of candidacy for Regent. In this regard, automatically, the deputy regent of the Orient does not meet the requirements of a Deputy Regent. So that the results and the election of Orient as Regent and his deputy are invalid and must be declared null and void by law.⁴¹

The impact of this situation is a legal vacuum. However, on the other hand, another pair of candidates cannot automatically be declared the winner in the Pilkada because 3 pairs of candidates followed the Pilkada in Sabu Raijua Regency, so the votes obtained were divided into 3 re-voting, which is followed by 2 other pairs of candidates.⁴²

Suppose we look at the considerations of the Constitutional Court. In that case, it can be understood that the applicant's application was accepted due to the absence of a more effective mechanism that could be applied to the determination of the *a quo* decree other than through the Constitutional Court. Although conceptually, what was decided by the Court was not a resulting dispute but a process dispute. The Constitutional Court based its acceptance of this application on the precedents of the Constitutional Court, which had previously decided on cases that were not purely related to disputes over the determination of election results. Based on the decisions of the Constitutional Court regarding the dispute over the election results, it appears that the Court has expanded the object of the difference in the results of the elections, namely:⁴³

- 1) The determination of the vote results is determined by the Provincial, Regency/City KPU, which affects the determination of candidates who can take part in the second round of regional elections, or the election of a candidate pair as a regional head.
- 2) Pilkada stages that impact the results of the candidate pairs' votes as a result of structured, massive, and systematic violations before, during, or after the Pilkada.
- 3) Violations in statutory provisions during the Pilkada stage that affect the vote count results can also be interpreted as part of the Pilkada dispute.

If observed, the expansion in point c, which illustrates previous precedents, is also reflected in the dispute resolution of the election process against the *a quo* decree by the Constitutional Court. Giver of justice. Of course, this mission cannot be realized if the Court only plays its role in

⁴¹ Ibid, P. 171.

⁴² Ibid, P. 172.

⁴³ Zoelva, "Problematika Penyelesaian Sengketa Hasil Pemilukada oleh Mahkamah Konstitusi."

mathematically counting votes. Because, if so, the Constitutional Court does not carry out its function to examine legal facts that violate human rights, especially political rights, in the process of holding elections. The view above shows that if the Constitutional Court is positioned only to handle disputes over the results of the Regional Head General Election, then the Constitutional Court, as a state institution and the holder of judicial power, is positioned as a "tool" in assessing the performance of the KPU as an election organizer. If so, it will be far from the philosophy and purpose of handling election disputes.

Conceptually understood, the settlement of the *a quo* decree is the authority of the administrative court. However, if we go through this mechanism, it will take a long time compared to the mechanism in the Constitutional Court, where the decision is final. Settlement of disputes in the Constitutional Court is also intended to immediately provide legal certainty because the position of the regional head must be filled immediately.

In this regard, it is necessary to admit that the Constitutional Court, in its journey, continues to expand from the authority that is implicitly given to it. It is solely aimed at safeguarding the constitutional rights of citizens. Therefore, the author believes that regarding the settlement of election disputes, including regional election disputes in the Constitutional Court, and settlements through administrative mechanisms, it is necessary to clearly and completely formulate the criteria for the basis of a lawsuit or application.

In addition to clarifying the scope of duties of institutions related to the settlement of regional election disputes both in the administrative realm and through the Constitutional Court mechanism, the question that needs to be re-reflected is whether the Constitutional Court will continue to be a judiciary that resolves disputes, whether the resolution of disputes over results or other violations, which Does the Constitutional Court consider it a violation of a constitutional nature? Therefore, the urgent thing is to establish a special court to settle regional election disputes. Because of the mandate of Article 157 paragraph (1) of Law 8 of 2015 concerning Regional Head Elections mandates that the Special Courts Agency must resolve discrepancies in the results of regional head elections. However, Article 157 paragraph (3) states that as long as there is no special court, in the case of a dispute over the results of the Regional Head Election, the Court will try it.

E. Conclusions

1. The Decree of the General Election Commission (KPU) Number 25/HK.03.1-Kpt/5320/KPU-Kab/I/2021 is a form of action by the State Administrative Body or Official in the field of public law which can be sued to the Administrative Court. The *a quo* decree can become the object of dispute because the *a quo* decree fulfills the element that it is contrary to the applicable laws and regulations and the AUPB. Judging from the realm of dispute resolution of the Regional Head Election against the *a quo* decree, administrative efforts can be made in adjudication to Bawaslu. A lawsuit can be submitted to the State Administrative Court or PTUN.
2. Against the *a quo* decree, if the dispute resolution process is carried out through the Administrative Court, it will take a long time. Another option that can be more effective is through administrative efforts, namely adjudication by Bawaslu. However, an attempt will likely be made to the PTUN as well. Suppose we look at the considerations of the Constitutional Court. In that case, it can be understood that the applicant's application was accepted due to the absence of a more effective mechanism that could be applied to the determination of the *a quo* decree other than through the Constitutional Court. Here, it can be seen from the various decisions of the Constitutional Court dealing with the results of the Pilkada that the Constitutional Court has expanded the object of the dispute over the results of the Regional Head Election, which is the authority of the Constitutional Court in deciding disputes related to the election results.

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