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## Dispute Settlement of Regional Head General Election Results On the Difference in Voting; Analysis of the Decision of the Constitutional Court No.28/PHP.BUP-XVI/2018 Regarding the Determination of the Regional Head of Bogor Regency 2018\*

Muhammad Latief,<sup>1</sup> Siti Ngainnur Rohmah<sup>2</sup>

Constitutional Law Study Program (siyazah)

Fakultas Syariah, Institut Agama Islam Az-Zaytun Indonesia

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### *Abstract*

*The dissatisfaction of the Bogor Regency Regent and Deputy Regent candidates caused the Jaro Ade-Inggrid Kansil pair to sue the Bogor KPUD at the Constitutional Court. After carrying out the trial by examining the evidence and listening to witnesses, the Constitutional Court issued a shocking decision. In the decision of the Constitutional Court Number 28/PHP.BUP-XVI/2018, the Constitutional Court considered that Article 158 paragraph (2) letter d of the Pilkada Law stated that the determination of the results of the vote count with the provisions of districts/cities with a population of more than 1,000,000 people, Disputes over the acquisition of votes can be made if there is a difference of at most 0.5 percent of the total valid votes from the final stage of vote counting for Regency/Municipal KPU. This study uses a literature review research method with a legal approach, namely research on legal products. After being researched, it was found that the dispute resolution process of the post-conflict local election results was in accordance with the judicial procedural law at the Constitutional Court.*

**Keywords:** *Constitutional Court; Election Results Dispute*

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<sup>1</sup> **Muhammad Latief** is an Undergraduate student of the Constitutional Law Study Program, Faculty of Sharia, Az-Zaytun Indonesian Islamic Institute in 2019.

<sup>2</sup> **Siti Ngainnur Rohmah** is a Lecturer of the Constitutional Law Study Program, Faculty of Sharia, Institute of Islamic Religion Az-Zaytun Indonesia. email: [siti.ngainnur@iai-alzaytun.ac.id](mailto:siti.ngainnur@iai-alzaytun.ac.id)

## A. INTRODUCTION

People are all too familiar with the term "democracy." Democracy, as a word with a meaning for a change, is frequently used in ways that are not balanced with the meaning it should have. People have a simple understanding of democracy, which means that everything is in the hands of the people, that the people and their decisions are absolute as a holder of power, and that democracy is always interpreted in the political realm.<sup>3</sup>

Indonesia has known democracy since the beginning of independence. It should make the Indonesian nation a condition of experience with democracy. The application of democracy can be seen, how democracy manifests itself in various aspects of national and state life. Indeed, citizenship rights have not been fully fulfilled, but at least little by little this nation has made the transition from various models of democracy. There are four phases of the democratic model in Indonesia with various problems in it; post-independence period for Parliamentary Democracy 1945-1959, Guided Democracy period 1959-1965, Pancasila Democracy period 1965-1998, and Democracy period 1998 (Reformasi) until now.<sup>4</sup> In short, Parliamentary and Guided Democracy existed in the Soekarno era, Pancasila democracy in the Suharto era and finally the Reform democracy model was the post-Soeharto period which included state leaders from B.J. Habibie, Gus Dur, Megawati Soekarno Putri, Susilo Bambang Yudhoyono and now Jokowi.

Democracy is still a topic that is often discussed. There are more supporters of democracy than those who reject democracy. Because in principle democracy is a constructive system and is able to make differences in ethnicity, religion, and thinking, in the same direction, without distinguishing factors and identities as separators. This is the goal of society.

In building a government system, of course, there is a close relationship with the building of the party system and elections. The presidential system adopted by Indonesia as stated in the 1945 Constitution, brings derivatives to the

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<sup>3</sup> A. Ubaedillah. "Pancasila, Demokrasi & Pencegahan Korupsi". (Jakarta: Kencana, 2015), 109.

<sup>4</sup> Mubarak, M Zaki. "Demokrasi dan Kediktatoran: Sketsa Pasang Surut Demokrasi di Indonesia." *Jurnal Politika: Jurnal Pencerahan Politik Untuk Demokrasi III*, Desember 2007: No 3, 61.

policy setting of the party system, legislative elections as well as presidential elections.<sup>5</sup>

As for the simultaneous regional head elections conducted directly, among others, it can be observed in Article 18 of the 1945 Constitution of the Republic of Indonesia. The provisions of the 1945 Constitution of the Republic of Indonesia are revealed in Law of the Republic of Indonesia No. 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors to become Laws.<sup>6</sup>

December 9, 2015 was a milestone in the practice of Indonesian state administration because for the first time the elections for Regional Heads and Deputy Regional Heads (Pilkada) which included the Governor and Deputy Governor, Regent and Deputy Regent, and Mayor and Deputy Mayor were held simultaneously. The implementation of this simultaneous regional election is a mandate from Article 5 of Government Regulation in Lieu of Law (Perppu) Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors which have been stipulated as Law Number 1 of 2015 as amended by Law Number 8 2015 which states "Elections are held once every 5 (five) years simultaneously throughout the territory of the Unitary State of the Republic of Indonesia."<sup>7</sup>

In accordance with the provisions of Article 5 paragraph (3) of the Regional Head Election Law, after the stages of voting implementation, vote counting and recapitulation of vote counting results, determination of elected candidates, settlement of violations and disputes over election results are carried out. The result dispute stage is the stage where after the determination of the results of the recapitulation of the election results, for election participants who are dissatisfied with the stipulation, they can apply for a dispute over the election results at the Constitutional Court (MK).

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<sup>5</sup> Huda, Ni'matul, dan Imam Nasef. *Penataan Demokrasi dan Pemilu di Indonesia Pasca Reformasi*. (Jakarta: Kencana, 2017).

<sup>6</sup> Hutabarat, Samuel M.P. *Tribunsumsel.com*. 27 Juni 2018. <https://sumsel.tribunnews.com/2018/06/27/pilkada-serentak-hukum-dan-pembelajaran-politik> (diakses Februari 7, 2020)

<sup>7</sup> Anggono, Bayu Dwi. "Pembatasan Pengajuan Perkara Sengketa Hasil Pemilihan Kepala Daerah di Mahkamah Konstitusi dan Implikasinya Terhadap Jaminan Keamanan Nasional." *Rechtsvinding Media Pembinaan Hukum Nasional*, 2016: 1-18.

With this authority, of course, there is hope for the community participating in the post-conflict local election to the Constitutional Court to obtain legal certainty related to the implementation of democratic regional head elections. However, when referring to Article 158 of the Law on the Election of Governors, Regents, and Mayors, there is a limitation on the submission of Regional Head Election disputes to the Constitutional Court. This is because based on Article 158 of the Law on the Election of Governors, Regents, and Mayors, it is regulated regarding the requirements for the number of residents with the percentage difference in the results of the determination, as is the case if a Province with a population of up to 2,000,000 (two million) people, submits a dispute over the vote acquisition. if there is a difference of at most 2% (two percent) from the determination of the results of the vote count by the Provincial KPU (Article 158 paragraph (1) letter a).

The implementation of the Bogor regional elections is carried out to elect the Regent and Deputy Regent. This election itself was followed by 5 (five) candidate pairs, namely, the first was Fitri Putra Nugraha alias Nungki-Bayu Syahjohan while the second pair was Ade Yasin - Iwan Setiawan. The third pair Ade Jaro Ade-Ingrid Kansil, while Gunawan Hasan with Fikry Zulfikar Irama or Vicky Rhoma got the fourth serial number. The candidate pair for the individual track, Ade Wardhana Adinata and Asep Ruhiyat, got number five. In the plenary meeting to determine the winner of the Bogor post-conflict local election, it was decided that the winner of the post-conflict local election was the pair Ade Yasin-Iwan Setiawan. Ade Yasin-Iwan Setiawan got 912,221 votes, while Jaro Ade-Ingrid Kansil got 859,444 votes.<sup>8</sup>

The Jaro Ade-Ingrid Kansil pair were dissatisfied with the KPUD's decision. This dissatisfaction has caused the Jaro Ade-Ingrid Kansil pair to sue the Bogor KPUD at the Constitutional Court. After carrying out the trial by examining the evidence and listening to witnesses, the Constitutional Court issued a shocking decision. In the decision of the Constitutional Court Number 28/PHP.BUP-XVI/2018, the Constitutional Court considered that Article 158 paragraph (2) letter d of the Pilkada Law stated that the determination of the results of the vote count was provided for districts/cities with a population of more than 1,000,000 people. Disputes over vote acquisition can be made if there is a difference of at most 0.5 percent of the total valid votes from the final stage of vote counting for Regency/Municipal KPU. Meanwhile, based on the results of the KPU's determination of the Jaro Ade-Ingrid Kansil pair, the difference in

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<sup>8</sup> Liputan6.com, 2018. [Jaro Ade-Ingrid Kansil Ajukan Gugatan Hasil Pilkada Bogor ke MK - Pilkada Liputan6.com](#), diakses pada tanggal 11 Januari 2020 jam 20.30 wib.

votes is quite far from the elected Regent pair Ade Yasin-Iwan Setiawan, which is 2.38 percent. After the trial, the Bogor Regency KPU stated that they would immediately determine the elected regent pair.<sup>9</sup>

From what has been described above, the authors are interested in conducting more in-depth research with the title: Dispute Resolution of Regional Head General Election Results on Differences in Vote Acquisition; Analysis of the Decision of the Constitutional Court No.28/PHP.BUP-XVI/2018 concerning the Appointment of the Regional Head of Bogor Regency 2018.

The research objective is the answer or goal the author wants to achieve in a study. Therefore, the objectives of this research are: 1). Understand how the dispute resolution process at the Constitutional Court in resolving disputes over the results of the Bogor regional head elections; 2). Understand the implications of the Constitutional Court's decision on the dispute over the regional head election dispute.

## **B. METHODS**

This research is a text study or literature study. Text studies according to Noeng Muhadjir include: first, a theoretical study of a scientific discipline that needs to be continued empirically to obtain empirical truth as well. Second, a study that seeks to study the entire object of research philosophically or theoretically and is related to validity. Third, studies that seek to study theoretical linguistics. Fourth, is the study of literary works.<sup>10</sup>

This research is closer to the first type of literature study where this study seeks to examine the concepts in this study how to access and the research is mostly taken from library materials, namely materials that contain new or up-to-date scientific knowledge, or new understandings of known facts or about ideas, in this case include books, journals, dissertations or theses and other legal materials. This normative legal research fully uses primary legal materials and secondary legal materials.<sup>11</sup> The primary legal material in this study consists of

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<sup>9</sup> Pikiranrakyat.com, 2018. [Menang Gugatan di MK, KPU Segera Tetapkan Ade Yasin Bupati Bogor Terpilih - Pikiran-Rakyat.com \(pikiran-rakyat.com\)](#), diakses pada tanggal 11 Januari 2020 jam 21.12 wib.

<sup>10</sup> Noeng Muhadjir, "Metode Penelitian Kualitatif", (Yogyakarta: Rake Paskin, 1996).

<sup>11</sup> Amiruddin, dan Zainal Asikin. Pengantar Metode Penelitian Hukum. Jakarta: Rajawali Press, 2006.

the Constitutional Court Decision No.28/PHP.BUP-XVI/2018 concerning the Determination of the Regional Head of Bogor Regency 2018.

## **C. RESULTS AND DISCUSSION**

### **1. Dynamics of Democracy in Indonesia**

Since its inception, the Unitary State of the Republic of Indonesia has expressed its identity as a Democratic State.<sup>12</sup> This can be seen about 3 months after independence was proclaimed by Soekarno and Mohammad Hatta, the interim government led by President Soekarno and Vice President Mohammad Hatta wanted to hold elections in early 1946.<sup>13</sup> Before becoming a democratic country as it is today, Indonesia has tried several times to implement a different democratic system. Based on historical developments, democracy in Indonesia can be divided into four periods, namely the period of Parliamentary Democracy, the period of Guided Democracy, the period of Pancasila Democracy, and the period of Democracy after the New Order.

### **2. General Elections in Indonesia**

According to Harris G. Warren and colleagues, elections are: *“Elections are the accostions when citizens choose their officials and decide, what they want the government to do. In making these decisions citizens determine what rights they want to have and keep.”*<sup>14</sup> The point of view is that elections are an opportunity for citizens to elect government officials and determine what they want the government to do when they make decisions. In connection with this, Ali Moertopo put forward the definition of Election as follows:

*“In essence, elections are a means available for the people to exercise their sovereignty in accordance with the principles contained in the Preamble to the 1945 Constitution. The election itself is basically a democratic institution that elects members of the people’s representatives in the MPR, DPR, DPRD, which*

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<sup>12</sup> Nur Hidayat Sardini. Restorasi Penyelenggara Pemilu. (Yogyakarta: Fajar Media Press, 2011), 1.

<sup>13</sup> Ibrahimsyah Amirudin. Hukum Kelembagaan Negara. (Yogyakarta: Leksbang Grafika, 2016), 19.

<sup>14</sup> Harianto. Partai Politik untuk Tujuan Umum. (Yogyakarta: Liberty, 1998), 81.

*in turn tasked with cooperating with the government, determining the politics and running of the country's government.”<sup>15</sup>*

People's sovereignty with a representative system or democracy is also known as a representative democracy or indirect democracy. In this representative democracy, the people who carry out the sovereignty of the people are the representatives of the people who sit in the people's representative institution or commonly called the parliament. The representatives of the people act on behalf of the people and it is they who then determine the style and course of the government of a country, as well as what goals are to be achieved both in the short term and in the long term.

In the Indonesian legal system, people's sovereignty is channeled through general elections which are held periodically every 5 (five) years. The results of this general election then fill the positions of state institutions that exercise people's sovereignty in the form of rule of law. It is recorded that the general election in Indonesia has been carried out 12 times. Elections of 1955, 1971, 1977, 1982, 1987, 1992, 1997, 1999, 2004, 2009, 2014 and 2019.

### **3. Regional Head Election**

The demands for reform require that the 1945 Constitution of the Republic of Indonesia be amended. The results of the amendments or amendments to the 1945 Constitution have brought major changes to the Indonesian constitutional system. One of the changes is related to filling the position of Regional Head as stipulated in Article 18 paragraph (4) of the 1945 Constitution.<sup>16</sup> It is stated in Article 18 paragraph (4) of the 1945 Constitution that "Governors, Regents and Mayors respectively as heads of provincial, district and city governments are democratically elected." The phrase "democratically elected" is flexible, so it includes the notion of direct election of regional heads by the people or by DPRD as has generally been practiced in regions based on the provisions of the applicable laws.<sup>17</sup>

Elections for regional heads such as governors, regents and mayors since Indonesia's independence before 2005 have only been elected through the local

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<sup>15</sup> Murtopo, Ali. *Strategi Politik Nasional*. (Jakarta: CSIS, 1974), 61.

<sup>16</sup> FX Sumarja. "Hasil dan Prospek Amandemen UUD 1945." *Jurnal Konstitusi PKK* Volume III, 2011: 12

<sup>17</sup> Jimly Asshiddiqie. *Konsolidasi Naskah UUD 1945 Setelah Perubahan Keempat*. (Jakarta: Pusat Studi Hukum Tata Negara UI, 2001), 22.

Regional People's Representative Council (DPRD). However, since the enactment of Law Number 32 of 2004 concerning Regional Government, regional heads are directly elected by the people through the Election of Regional Heads and Deputy Regional Heads or abbreviated Pilkada. The first Regional Head Election was held in June 2005. Article 56 paragraph (1) of Law Number 32 of 2004 states that "The regional head and deputy regional head are elected in one pair of candidates which is carried out democratically based on the principle of direct, general, free, confidential, honest and fair."

The advantages that have been felt since the first Pilkada in 2005, among others, are, first, the elected regional head will have a very strong mandate and legitimacy because it is supported by the voice of the people who vote directly. Second, direct Pilkada is more accountable than other systems that have been used so far because the people do not have to entrust their votes to members of the legislature partially or fully. Third, the checks and balances between the legislature and the executive can be more balanced. Fourth, the elected regional head (actually) does not need to be tied to the concessions of the parties or political factions that have nominated him. Fifth, the criteria for regional head candidates can be assessed directly by the people who will cast their votes.<sup>18</sup>

With regard to local government, there are at least three main reasons why the direct election of regional heads must be democratically elected. First, democratic local government opens up space for the community to participate in various political activities at the local level (political equality). Second, democratic local government prioritizes services to the public interest (local accountability). Third, democratic local governance increases the acceleration of socio-economic development based on the needs of the local community (local responsiveness). These three things become the main reference in an effort to roll out the direct election discourse so that the direction of its development has a solid backing.<sup>19</sup>

The implementation of a general election directly cannot be separated from an institution that coordinates in carrying out its duties as organizers. This is one of the important prerequisites in organizing elections in a democratic country that the elections are carried out by institutions that are independent from the government. Pilkada organizers have been guaranteed in Article 22E of

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<sup>18</sup> Rambe Kamarul Zaman. *Perjalanan Panjang Pilkada Serentak*. (Jakarta: Expose, 2016), 30.

<sup>19</sup> Widodo, Wahyu. "Pelaksanaan Pilkada Berdasarkan Asas Demokrasi dan Nilai-Nilai Pancasila." *Jurnal Ilmiah CIVIS*, Volume V No 1, 2015: 682.



the 1945 Constitution, Law Number 32 of 2004 concerning Regional Government and Government Regulation Number 6 of 2005 concerning Election, Ratification, Appointment and Dismissal of Regional Heads and Deputy Regional Heads. This direct election of the Regional Head and Deputy Regional Head is different from the general election of the legislative body as well as the President and Vice President which is carried out by the General Elections Commission (KPU) but by the KPUD. The KPUD is not responsible to the DPRD for carrying out the duties of the KPUD. This change is based on the decisions of the Constitutional Court in cases Number 072-073/PUU-II/2004 and Number 005/PUU-III/2005.<sup>20</sup>

So that currently the election of regional heads, both governors and deputy governors, mayors and deputy mayors, as well as regents and deputy regents who are directly elected by the people, are not categorized as election regimes. This can be seen in 2013 the Constitutional Court re-corrected its decision which said Pilkada was included in the electoral regime, so that although currently the Regional Head Election is carried out directly, in fact the Regional Head Election is no longer included in the election regime.

#### **4. General Election Result Dispute Resolution**

As an important part of the electoral justice system, a comprehensive prevention system is absolutely necessary, because the best dispute resolution mechanism is prevention so that election disputes do not occur. The legal vacuum as well as the lack of adequate action can be a source of electoral disputes.

The electoral dispute resolution system which is the core of the electoral justice system has two main functions, namely corrective and punitive. Corrective action is aimed at dealing with election complaints whose purpose is to cancel or modify or acknowledge any irregularities in electoral actions, and provide protection of electoral rights or restore and fulfill violated electoral rights. The main areas of election complaints in the conduct of elections include: preparation of voter lists, lawsuits against candidates, appointment of election

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<sup>20</sup> Wahyu Widodo. "Pelaksanaan Pilkada Berdasarkan Asas Demokrasi dan Nilai-Nilai Pancasila." *Jurnal Ilmiah CIVIS*, Volume V No 1, 2015: 682.

management bodies and ad hoc committees, intimidation, campaign violations, voting and counting violations, vote tabulation and seat allocation violations.<sup>21</sup>

The electoral dispute resolution system also includes a punitive function, namely the imposition of punitive sanctions on persons responsible for election violations and election crimes. The punitive function of the electoral dispute resolution system is a set of procedures to ensure that electoral obligations and responsibilities are carried out, punishing perpetrators or persons responsible for election crimes or election violations.

Imposing criminal sanctions on someone who is responsible for election violations and crimes requires several prerequisites such as; first, a clear definition of a criminal offense, its sanctions and penalties for violating it, and must be clearly stated in the law. Second, legal provisions that stipulate an administrative offense or criminal offense and appropriate sanctions or punishments must embody the principles of legal certainty and objectivity. Third, provisions that stipulate sanctions or penalties need to be interpreted and applied strictly. The principles of legality require that no argument by analogy be applied, and no argument of common sense should be applied. The use of such arguments will cause uncertainty as to whether or not the behavior or omission is punishable.

According to Chad Vickery (2011), election dispute resolution experts agree that a good electoral dispute resolution system must meet the following elements:

- a. The existence of the right to obtain an election dispute resolution;
- b. There are clearly defined electoral standards and procedures;
- c. The existence of a case deciding body (arbitrator) who is knowledgeable and impartial;
- d. The existence of a judicial system that facilitates decision making;
- e. There are clear arrangements regarding the burden of proof and clearly defined standards for submitting evidence;
- f. The existence of an effective and meaningful settlement system;
- g. There is effective stakeholder education.

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<sup>21</sup> Medianeliti.com, PARTISIPASI PERS DALAM MENDEMOKRASIKAN PEMILIHAN KEPALA DAERAH (neliti.com), diunduh pada tanggal 12 Januari 2020 jam 21.00 wib.

Election disputes that occur because of victory and defeat in a lawsuit are often determined by which party can provide evidence. The plaintiff must actually provide the truth of the fact that he strongly suspects the number of violations is greater.

### **5. Analysis of Constitutional Court Decision No. 28/PHP.BUP-XVI/2018 Regarding the Determination of the Regional Head of Bogor Regency 2018**

Based on Bogor Regency statistical data, from 2014 to 2017 population statistics it is known that 5,715,009 (five million seven hundred fifteen thousand nine) spread over 40 (forty) sub-districts in Bogor Regency. The provisions of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into law. The law states that for a Regency/City with a population of more than 1,000,000 (one million) people, the submission of a dispute over the votes is made if there is a difference of no more than 0.5 percent (zero point five percent) of the total valid vote count results in the final stage.

The foregoing is also stipulated in Article 7 paragraph (2) letter d, which states:

- a) In a regency/city with a population of more than 1,000,000 (one million) people, the Respondent may file a dispute over the acquisition of votes if there is a difference of no more than 0.5 percent (zero point five percent) of the total valid votes resulting from the final determined vote count.
- b) Whereas before assessing the fulfillment of the Petitioners' vote difference threshold based on the formula for determining the difference in the number of votes as mentioned above, the Constitutional Court should first assess and examine several legal facts that caused the difference in votes between the Petitioners and Candidate Pair Number 2, namely; (1) procedural defects/legal defects in the implementation; (2) the violation and the fact of manipulation to widen the difference in votes between pairs of candidates so that from the start it is deemed not to meet the formal requirements for filing a dispute over the results of the Regional Head election to the Constitutional Court.

The judges of the Court consider the following considerations:

- 1) Contrary to what is stated in Article 1 point 4 of the Regional Head Election Law, "Candidates for Regent and Candidate for Deputy Regent, Candidate for Mayor and Candidate for Deputy Mayor are election participants proposed by political parties, coalitions of political parties, or individuals registered or registered with the General Election Commission County/City." Article 157 paragraph (4) of the Regional Head Election Law states; "Election contestants may submit an application for the cancellation of the determination of the vote count results by the Provincial KPU or Regency/Municipal KPU to the Constitutional Court." Article 2 letter a of PMK 5/2017 states, "The parties in a dispute over the election results are: a. Applicant ..."; and Article 3 paragraph (1) PMK 5/2017 states; "The applicants as referred to in Article 2 letter a are: a. pairs of candidates for Governor and Deputy Governor; b. pairs of candidates for Regent and Deputy Regent; or c. pairs of candidates for Mayor and Deputy Mayor."
- 2) 2) Whereas the Decision of the General Election Commission of Bogor Regency Number 45/PL.03.2-Kpt/3201/KPU/Kab/II/2018 concerning the Determination of the Pairs of Candidates for Regent and Deputy Regent of Bogor in 2018 dated February 12 2018, stated that the Petitioners are Candidates for Regent and Deputy Regent of Bogor Regency in the Election of Regent and Deputy Regent of Bogor Regency in 2018 [vide evidence P-2 = evidence PT-01] and Bogor Regency General Election Commission Decree Number 46/PL.03.2-Kpt/3201/KPU/Kab/II/ 2018 concerning the Determination of the Lottery Results of the 2018 Bogor Regent and Deputy Regent Candidate Pairs, stating that the Petitioners are the 2018 Bogor Regent and Deputy Regent Candidates Pairs, 2018 Number 3 [vide evidence P-3 = evidence PT-02];
- 3) Whereas based on the above considerations, the Petitioners are Candidates for Regent and Deputy Regent in the Election of Regent and Deputy Regent in Bogor Regency in 2018, with Serial Number 3.
- 4) Considering whereas Article 158 paragraph (2) letter d of the Regional Head Election Law states, "Participants in the Election of Regents and Deputy Regents as well as Mayors and Deputy Mayors may apply for the cancellation of the determination of the results of the counting of votes provided that: Regencies/cities with a population of more than 1,000,000 (one million) people, the submission of a dispute over the vote acquisition is made if there is a difference of at most 0.5% (zero point five percent) of the total valid votes from the final stage of vote counting for

Regency/Municipal KPU"; and Article 7 paragraph (2) letter d of PMK 5/2017 states, "The applicant as referred to in Article 3 paragraph (1) letter b and letter c submits an application to the Court with the following provisions: a. a regency/city with a population of more than 1,000,000 (one million) people, the submission of a dispute over the vote acquisition is made if there is a difference of at most 0.5% (zero point five percent) of the total valid votes resulting from the final vote count determined by the Respondent."

- 5) Whereas the population is based on Population Aggregate Data per District (DAK2) Semester I of 2017 from the Ministry of Home Affairs to the General Elections Commission as in the Minutes of Handover of Population Aggregate Data per District (DAK2) Semester I of 2017 Number 470/8641/Dukcapil lines under Number 43/BA/VII/2017 dated July 31, 2017, which the General Election Commission submitted to the Court, the total population in Bogor Regency is 4,246,307 (four million two hundred forty-six thousand three hundred seven) people, so that the difference in the number of votes between the Petitioners and the pairs of candidates receiving the most votes is at most 0.5% (zero point five percent) of the total valid votes resulting from the final stage of vote counting determined by the Bogor Regency KPU;
- 6) Whereas the total difference in the number of votes between the Petitioners and the pairs of candidates who received the most votes was at most  $0.5\% \times 2,218,296$  votes (total valid votes) = 11,091 votes. Thus, the maximum number of differences to be able to file a dispute over results to the Constitutional Court based on Article 158 of the Regional Head Election Law and Article 7 of PMK 5/2017 is 11,091 votes.
- 7) Whereas the vote acquisition of the Petitioners was 859,444 votes, while the votes acquired by the Related Party (the pair of candidates who received the most votes) was 912,221 votes, so that the difference in the number of votes between the Related Parties and the Petitioners was  $(912,221 \text{ votes} - 859,444 \text{ votes}) = 52,777$  votes (equivalent to 2, 38%);
- 8) Considering whereas based on the above legal considerations, the Court is of the opinion that even though the Petitioners are Candidates for Regent and Deputy Regent in the 2018 Election of Regent and Deputy Regent of Bogor, the Petitioner does not fulfill the requirements for submitting an application as referred to in Article 158 of the Pilkada Law and Article 7 PMK 5/2017, so that the Petitioner does not have the legal

standing to file the a quo case. Thus, the Respondent's exception and the Related Party's exception that the Petitioner does not have a legal standing are grounded according to law;

- 9) Considering whereas because the Respondent's exceptions and the Related Party's exceptions regarding the Petitioners' legal standing are grounded according to law, the other exceptions of the Respondent and the Related Parties and the subject matter of the petition are not considered.

As for the Constitutional Court's ruling on the dispute over the results of this general election, it is stated that: a). Accept the exceptions of the Respondent and the Related Parties regarding the legal standing of the Petitioners; b). Stating that the Petitioner has no legal standing. Meanwhile, the background of the ruling that has no legal standing is based on the judge's considerations in points f and g.

- 1) Whereas the total difference in the number of votes between the Petitioners and the pairs of candidates who received the most votes was at most  $0.5\% \times 2,218,296$  votes (total valid votes) = 11,091 votes. Thus, the maximum number of differences to be able to file a dispute over the results to the Constitutional Court based on Article 158 of the Pilkada Law and Article 7 of PMK 5/2017 is 11,091 votes.
- 2) Whereas the vote acquisition of the Petitioners was 859,444 votes, while the votes acquired by the Related Party (the pair of candidates who received the most votes) was 912,221 votes, so that the difference in the number of votes between the Related Parties and the Petitioners was  $(912,221 \text{ votes} - 859,444 \text{ votes}) = 52,777$  votes (equivalent to 2,38%);
- 3) The Constitutional Court is of the opinion that the Petitioner does not fulfill the provisions for submitting the application as referred to in Article 158 of the Regional Head Election Law and Article 7 PMK 5/2017, so that the Petitioner does not have the legal standing to file the a quo case.

## D. CONCLUSIONS

The process of resolving disputes over the results of the 2018 Bogor regional head elections at the Constitutional Court is in accordance with the procedural law mechanism of the Constitutional Court. From submitting the application with its application letter dated July 10, 2018 which was submitted to

the Registrar of the Constitutional Court (hereinafter referred to as the Registrar of the Court) on July 10, 2018 based on the Deed of Submission of the Petitioner's Application Number 30/1/PAN.MK/2018 and recorded in the Constitutional Case Registration Book with Case Number 28/PHP.BUP-XVI/2018 dated July 23, 2018, preliminary examination on July 26 2018, hearing the respondent's answer, information from related parties, information from Bawaslu/Panwas and ratification of Evidence on July 31, 2018 and the pronouncement of the verdict on August 9 2018.

The judge's consideration of the settlement of disputes over the results of the 2018 Bogor regional head elections was to consider the 2.38% difference in the results of the calculation, greater than the 0.5% stipulated provision in the election law. The Constitutional Court is still guided by the election law so that the applicant is considered to have no legal standing.

The author suggests that applicants for disputes over the results of the regional head elections should pay attention to whether the difference in vote counts is in accordance with what has been stipulated in the election law, which is 0.5%. Because the Constitutional Court decides the dispute over the election results based on what is contained in the election law.

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