



THE AMBIVALENCE OF REGIONAL ELECTION DISPUTE RESOLUTION IN INDONESIA:

The Dynamics of the Constitutional Court's Interpretation of Dispute Resolution Designs on Regional Election Results

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Abstract

The design of the regional elections (*Pilkada, Pemilihan Kepala Daerah*) court as a mechanism for resolving disputes over the results of the regional elections is experiencing changing dynamics. The dynamics of these changes are due to the different interpretations of Indonesia's Constitutional Court (*Mahkamah Konstitusi*) on the regional election provisions in the 1945 Constitution. This study seeks to elaborate in depth on the inconsistencies in the Constitutional Court's interpretation of the constitutionality of regional elections, which caused ambivalence in the design of regional election dispute resolution. It employs a normative legal research model and a case approach. This research also shows the Constitutional Court's process and articulation of constitutional interpretation in constructing regional electoral justice. Based on the analysis, this study concludes that the shift in the constitutionality of regional election dispute resolution is caused by the constitutional interpretation of the phrase "democratically elected" in Article 18 paragraph (4), which has been interpreted dynamically and differently by the Constitutional Court. This is proven in several decisions, including Constitutional Court Decision No. 072-073/PUU-II/2004, No. 97/PUU-XI/2013, and No. 85/PUU-XX/2022. In line with developments in the constitutionality of general elections (*Pemilu, Pemilihan Umum*), the Constitutional Court has reconstructed regional elections as part of the general election. The Constitutional Court will always have the ability to settle regional election disputes. As a result, to protect electoral justice, it is vital to improve legislation and enhance the institution.

Keywords: regional election, Pilkada, Constitutional Court.

INTRODUCTION

Indonesia has established democracy as a state political system in its Constitution, making policies and public decisions and filling positions. This notion is enshrined in Article 1, paragraph (2) of the 1945 Constitution of the Republic of Indonesia (*Undang Undang Dasara Negara Republik Indonesia*), which states unequivocally that sovereignty is in the hands of the people and is administered by the Constitution. Democracy is enshrined in the Constitution as a framework for political power control. The Constitution determines the movement of the democratic pendulum as the highest legal rule. This system requires Indonesia to

execute democratic ideals based on the rule of law (constitutional democratic state) and be a rule-of-law state with democratic pillars.

This design has ramifications for state political system operations, particularly in filling and appointing public positions that require large popular engagement (Gunawan, 2018). As part of the people's sovereignty system, a general election (*Pemilu, Pemilihan Umum*) mechanism is implemented, which is also expressly guaranteed in Article 22 E of the 1945 Constitution. The existence of this election is a demonstration of the people's sovereignty mechanism (Harefa et al., 2020). This viewpoint is also consistent with the guarantee of international human rights as outlined in Article 25 letter b of the International Covenant on Civil and Political Rights (ICCPR), which states that: "to vote and to be elected at genuine periodic elections by universal and equal suffrage and held by secret ballot, guaranteeing the free expression of the electors."

The concepts and methods of popular sovereignty as an expression of democracy are implemented locally through regional elections (*Pilkada, Pemilihan Kepala Daerah*) to fill political positions in the region (Respationo, 2013). This results from a reformist mentality that has succeeded in applying the concept of popular sovereignty as a direct democratic process for deciding political positions up to the regional level (Nasrullah, 2017). Democracy has become a significant tool in regional government administration since the constitutional revision, as stated expressly in Article 18 paragraph (4) of the 1945 Constitution. The revision to the Constitution's provisions for controlling regional administration has stressed that the method for determining regional heads, which consists of governors, regents, and mayors who each operate as regional heads of provinces, districts, and cities, is democratically elected. Regional Government Law No. 32 of 2004 strengthens this democratic system by confirming that regional heads and deputy regional heads are elected directly by the people and nominated by political parties or coalitions of political parties. Regional elections serve as a platform for discourse and a mechanism for the people, as holders of sovereignty, to participate in defining the administration of government in the region through this system.

Regional elections have been categorized as general elections since the introduction of direct elections by the people to elect regional heads in 2005, as confirmed in Law No. 22 of 2007 concerning the implementation of elections (Satriawan, Kasim, and Rachmatika, 2012). Indeed, regional elections are always fraught with complications and disputes. At least three types of conflicts frequently occur in regional elections: administrative disputes, disagreements between pairs of candidates, and disputes over regional election results that must be

settled within the time limit given (Daud and Haryadi, 2022). Aside from that, structure regulations, such as minimal penalties for infractions, financial transparency of regional election funds, and other issues in upholding electoral justice, remain a big issue in sustaining local democracy. A fair and effective system of law enforcement and conflict settlement is, in fact, one of the most essential indicators in democratic elections (Sihotang and Simamora, 2022).

In its development, resolving regional election disputes as the final mechanism for ending disputes over regional election results that resulted in regional heads' determination has also experienced various dynamics. These dynamics have changed models and designs for resolving regional election disputes. To guarantee the realization of regional elections by democratic principles, the implementation of regional elections must be carried out based on the principle of free and fair in the format of a good and integrated system, taking into account, among others: 1) the availability of a legal design and framework that is binding and serves as a guideline. For contestants, organizers, and constituents in carrying out their respective roles and functions; 2) the implementation of all regional election processes and stages by statutory regulations; and 3) there is an integrated effort in the law enforcement process between regional elections regulations and each step of the process, both with administration, ethics enforcement, election crimes, to the design mechanism for resolving disputes over regional elections results (Lailam and Anggia, 2020).

Suppose the historical movement in regional election dispute resolution model design is examined in depth. In that case, it may be traced back to a constitutional interpretation decided by Indonesia's Constitutional Court (*Mahkamah Konstitusi*) through a statutory review procedure. Historically, Indonesia's Supreme Court (*Mahkamah Agung*) was appointed by lawmakers as the judicial design that decided regional election issues under the requirements of Article 106 of Law No. 32 of 2004 about regional government. However, in addition to the issuance of Constitutional Court Decision No. 072-073/PUU-II/2004, which states that direct regional head elections can be part of the general election regime regulated in Article 22 E of the 1945 Constitution, the government has confirmed the existence of regional elections as part of elections in Law No. 22 of 2007 concerning the implementation of general elections and shifting the paradigm of regional head elections. The architecture for resolving disputes over election results in regions turned and moved to the power of the Constitutional Court due to this paradigm shift. The jurisdiction of the Constitutional Court to settle disputes over regional election results was later confirmed in the second modification to the Regional Government Law, as stated in Law No. 12 of 2008. As a result,

the Constitutional Court has become a battleground in determining the outcomes of post-conflict regional election disputes since 2008 (Ali, 2008).

After a five-year hiatus, the Constitutional Court gave a constitutional interpretation of the plan for resolving regional election disputes. The Constitutional Court has emphasized that it no longer has the authority to decide disputes over the results of the regional election and returns in Constitutional Court Decision No. 97/PUU-XI/2013, which examines the Constitutional Court's basic authority in resolving disputes over regional election results as confirmed in Law No. 12 of 2008 concerning the second amendment to the regional government law and Law No. 48 of 2009 concerning judicial power. This ruling is based on interpreting the requirements of Article 18 paragraph (4) and Article 22 E of the 1945 Constitution. However, the Constitutional Court stated in its considerations and ruling a quo decision that as long as there is no law regulating the resolution of disputes over regional election results, the resolution can still be resolved at the Constitutional Court for the time being as a legislative policy transition process (Nazriyah, 2016).

To satisfy the Constitutional Court Decision No. 97/PUU-XI/2013, the government established a special judicial body to settle disputes over regional election results. Article 157 of Law No. 10 of 2016 concerning the second amendment to Law No. 1 of 2015 concerning the determination of Government Regulation in Lieu of Law (*Perpu, Peraturan Pemerintah Pengganti Undang-Undang*) No. 1 of 2014 concerning the election of governors, regents, and mayors became law, regulating dispute settlement using this specific court model. According to the quo article, the special judicial body must be constituted before the simultaneous regional elections. Regional head election problems will be decided at the Constitutional Court if no special judicial body is formed. As a result, the Constitutional Court's authority to settle regional election disputes is only provisional (Suhartono, 2016).

However, with Constitutional Court Decision No. 85/PUU-XX/2022, the architecture for addressing disputes arising from regional head elections using a special judicial model was revised once more. This ruling invalidates the Constitutional Court's "temporary" status in resolving challenges over regional head election results. The Constitutional Court stressed in this decision that the Constitutional Court's resolution of complaints over regional head election results is a permanent authority. As a result, a special judiciary is no longer required.

It is possible to conclude that the constitutionality of the design for resolving regional election disputes in the Indonesian state administration has resulted in constitutional interpretations that are highly dynamically inconsistent and create ambiguity in the enforcement

of regional election law. The dynamics and changes in constitutional interpretation in the various decisions are, of course, based on the ratio decidendi of the Constitutional Court judges in interpreting the provisions of the 1945 Constitution by socio-political developments in Indonesian state administration.

Many studies on the constitutionality of regional election dispute settlement have been discovered. These studies concentrate on the concept of constitutionality of elections and regional elections (Hantoro, 2023; Pambayun, 2023; Purwadi et al., 2022; Seran, 2019; Suhartono, 2016), legal politics of resolving regional election disputes (Alwi et al., 2022; Almalibari et al., 2021; Nazriyah, 2016), and the performance. As a new effort to complete the study on the constitutionality of regional elections, this research seeks to explore and elaborate in greater detail on the dynamics and development of Constitutional Court interpretations that are used as legal considerations in interpreting the concept of resolving regional head elections, until the Constitutional Court re-establishes itself as an institution. This study will map the interpretation processes the Constitutional Court employs in decisions relating to regional election implementation and the institutional design of regional election dispute resolution.

METHOD

This study employs a normative legal research paradigm to address the research challenge that has been posed. Legal study that places law as a system of norms in the form of principles, norms, statutory regulations, and judicial decisions is known as normative legal research (Fajar and Achmad, 2010). This study aims to explain the dynamics and shifts in interpretation regarding the constitutionality of regional election dispute resolution by referring to several Constitutional Court decisions relating to the implementation of regional elections and the design of resolving regional election disputes as legal material. A qualitative analysis method was utilized to examine the Constitutional Court's rulings (Salim and Nurbani, 2013), with a case approach and a conceptual approach (Muhaimin, 2020). The legal reasons for the Constitutional Court's ruling are analyzed using a case approach. In contrast, the arguments for the legitimacy of the regional election judicial architecture are analyzed using a conceptual approach.

RESULTS AND DISCUSSION

The Constitutionality of Regional Election

The 1945 Constitution does not explicitly and firmly define the mechanism and design for resolving disputes over the outcomes of

regional head elections in the Indonesian Constitution. Regulations governing regional heads are included in regional government regulations, which are governed by Article 18, Article 18 A, and Article 18 B. The 1945 Constitution controls the method for determining regional heads, comprising governors, regents, and mayors, each carried out through democratic elections. The phrase "democratically elected," as defined in Article 18 paragraph (4) of the 1945 Constitution, determines the architecture of the regional election judiciary. As a result, it is critical to investigate the concept of regional head elections in the Constitution as a foundation for determining the regional election dispute settlement model.

Historically, the provisions governing democratic regional elections, as outlined in Article 18 paragraph (4) of the 1945 Constitution, are the outcome of a constitutional amendment. Constitutional amendments have resulted from constitutional reform as part of political reform and a wave of democratization. Constitutional reforms have made regional government management adjustments to become more democratic through the greatest feasible autonomous authority. Regions are provided freedom and independence in controlling and administering their government matters with this independent authority (Harefa et al., 2020).

The award of autonomous authority is not confined to government issues; it also has ramifications for regional political decentralization. It is reflected in Article 18 paragraph (4) of the 1945 Constitution, which underlines that "Governor, regent, mayor, each as head of provincial, regency, and city regional government are democratically elected." Based on these standards, it is important to underline that the selection of regional leaders must incorporate community participation. The mechanism for involving community participation can be carried out by institutionalizing the Provincial Legislative Council (*DPRD, Dewan Perwakilan Rakyat Daerah*) as a regional community representation institution or by a deliberation mechanism with direct election by the people.

According to the minutes of Indonesia's People's Consultative Assembly (*MPR, Majelis Permusyawaratan Rakyat*) session that created the existence of Article 18 paragraph (4), the writers of the Constitution decided that the election of governors, regents, and mayors would be carried out through a democratic method. The phrase "democratic" was agreed upon because the framers of the Constitution intended to provide legislators with flexible regulatory space in regulating the implementation of regional head elections based on the conditions of diversity and needs of each region while remaining by democratic

principles, given that Indonesia is made up of various areas, ethnicities, and cultures (MPR, RI 2000)

It was supported by the statements of witnesses Patrialis Akbar and Lukman Hakim Saifuddin, who were also culprits during the People's Consultative Assembly Ad Hoc Committee I hearing and presented during the trial of revising Law No. 32 of 2004 concerning regional government. He indicated in his declaration that (Constitutional Court Decision No. 072-073 /PUU-II/2004, 2004):

"At the time, the justification for drafting Article 18, paragraph 4 was that the voting system that would be established would be tailored to societal advances. The community can choose between a representative system (elections conducted by the Provincial Legislative Council) and direct elections (elections conducted directly by the people). The goal is to provide the community some leeway in establishing the regional head election procedure. It is related to the Constitution's respect for the diversity of people's customs and cultures in different places. Both direct and indirect election systems fall under the umbrella of democratic regimes. It was subsequently decided to use the phrase "democratic" based on these two (two) points of view. Because it is stated in the following paragraph, namely paragraph (7) of Article 18 of the 1945 Constitution, that the structure and procedures for administering regional government are regulated in the law, the law will determine whether the regional head election is carried out directly by the people or as previously carried out by the Provincial Legislative Council, the most important thing is that the basic principle is democratic".

Aside from that, from a socio-political standpoint, adopting a democratic process is an implication of the transition in the election model for the president, from being elected by the People's Consultative Assembly body to being elected directly by the people. The United Development Party (PPP, *Partai Persatuan Pembangunan*) faction noted in the minutes of the Ad Hoc Committee I meeting: "governor, regent, and mayor are elected directly by the people, which is further regulated by law; this is consistent with our desire for the Presidential election to be elected directly as well (MPR RI, 2000)." Based on these conditions, the definition of being elected democratically, as stated in Article 18 paragraph (4) of the 1945 Constitution, can be interpreted in the same way as the mechanism for selecting the president and vice president, as stated in Article 22 E of the 1945 Constitution regarding general elections (Suharizal, 2011).

According to this explanation, although the 1945 Constitution only reads "democratically elected," legislators eventually compared and paralleled the determination of regional leaders with the election of the

president and vice president. As a result, the term "democratically elected" is construed and limited to being directly elected by the people (Nazriyah, 2016). It was demonstrated when, during the process of drafting Law No. 32 of 2004 on regional government, which was submitted by the government and negotiated with the Regional Representatives Council (*DPR, Dewan Perwakilan Rakyat*), there was no disagreement over whether regional leaders were elected by the Provincial Legislative Council or by the people. At the time, the majority discourse resulted in an agreement that the people would elect regional chiefs directly. The third amendment to the 1945 Constitution agreed that the president and vice president would be elected directly by the people. Second, the mechanism for collecting aspirations, carried out by the Ministry of Home Affairs of Indonesia team and the Regional Representatives Council, predominantly requires that regional heads be elected directly by the people (Zoelva, 2013).

The legislators' decision to use a direct election method to determine regional leaders is based on at least five factors: First, direct regional elections are in line with people's demands and aspirations because they are carried out directly from the president to the village head; second, direct regional elections are regarded as a manifestation of the constitutional command of Article 18 paragraph (4); third, direct regional elections are a medium for people to learn democracy; fourth, direct regional elections have strengthened autonomous authority. The region's people can decide on the regional head who can bring prosperity to the area through a direct election mechanism; fifth, regional elections directly become a means of carrying out the cadre formation of national leaders (Zoelva, 2013).

Finally, the legal politics producing rules governing regional administration have established that the people must elect regional chiefs directly. The direct election process by the people has been employed since the introduction of Law No. 32 of 2004 concerning regional government until the most recent regulation, namely Law No. 23 of 2014 and its amendments. As a result, it becomes increasingly obvious that "democratically elected" in the constitutional constellation is read in practice as a direct decision by the people.

Interpretation of the Constitutional Court as a Method of Legal Finding

Constitutional interpretation is frequently interpreted as an attempt to interpret constitutional standards. This constitutional interpretation mechanism is commonly carried out in an adjudication format, where the terms and procedures are carried out using judicial review authority (Ducat, 2012). Interpretation is a legal discovery process

that gives explicit explanations about the law so that the scope of the regulations can be modified to a specific event. The judge's interpretation must result in societally acceptable implementation of legal requirements in particular circumstances (Sudikno and Pitlo, 2013). Asshiddiqie (1997) stated emphatically that interpretation is the court's attempt to find certainty in understanding special legal norms or laws. Interpretation activities are the court's attempts to achieve confidence and the aims and objectives of law-making.

The relevance of interpreting the Constitution stems from the fact that the Constitution frequently lacks the normative requirements for governmental life. As a result, efforts to interpret the Constitution must be founded on specific procedures and techniques that can be tracked. It is necessary so that efforts to enforce the Constitution are in line with contemporary developments and do not contradict the aims and objectives of the Constitution's formulation (Asshiddiqie, 1997).

There are at least three models of constitutional interpretation. The first model is grammatical interpretation, which openly evaluates the Constitution based on the sound of the constitutional text. The second approach is constitutional interpretation, founded on the original intent of the Constitution's framers. Meanwhile, the third model is a progressive and responsive interpretation employed to solve modern societal challenges (Post, 1990).

The authority to interpret the Constitution is institutionally tied to the Constitutional Court, as stipulated in Article 24 C of the 1945 Constitution. The Constitutional Court's authority includes the following: reviewing laws for compliance with the 1945 Constitution; deciding disputes over state institutions whose authority is granted by the 1945 Constitution; settling on the dissolution of political parties; resolving disputes over general election results; and providing a decision on impeachment of the president and vice president. In evaluating laws for constitutional violations, the Constitutional Court defends constitutional principles by ensuring that a law does not violate the Constitution. A law is only valid or constitutional if its substance and process are consistent with constitutional norms and principles (Sirait et al., 2020).

In reality, judicial review by the Constitutional Court is limited to determining the constitutionality of legal norms. The concept of constitutionality is not confined to what is written in the text of the Constitution but might consider larger dimensions of constitutionality. Four principles can be used to examine the constitutionality of a legal standard, namely: First, the official constitutional text of the 1945 Constitution; second, written documents that are closely related to the constitutional text, such as minutes of sessions, people's consultative

assembly decisions and decrees, certain laws, and disciplinary rules; and; third, written documents that are closely related to the constitutional text, such as minutes of sessions, people's consultative assembly decisions and decrees, certain laws. Constitutional values and principles that live in constitutional practice are considered an inseparable part of the requirements and habits in state administration. Fourth, values that live in the awareness of people's understanding and the reality of citizens' political and legal behavior are considered ideal habits and necessities in state life (Asshiddiqie, 2006).

The Constitutional Court's evaluation of laws is essentially a process of examining and determining the meaning of the provisions, values, and principles of the 1945 Constitution's constitutional standards so that they can be utilized as touchstones. Such a procedure is a type of legal discovery based on constitutional interpretation. The Constitutional Court frequently employs the following models in developing constitutional arrangements: grammatical, original intent, systematic, contextual, critical, and even progressive techniques (Safaat et al., 2017).

Dynamics of Constitutional Interpretation of Regional Election Result Dispute Resolution

The Constitutional Court has issued numerous interpretations of the provisions of the regional election mechanism, including the impact on the design of resolving disputes over regional election results through the system of adjudication authority for judicial review. These varying constitutional interpretations have resulted in shifts and discrepancies in resolving regional election disputes in Indonesia's legal system. Constitutional Court Decision No. 072-073/PUU-II/2004 is regarded as monumental and has significantly impacted the redefining of the paradigm for settling regional election disputes. The Constitutional Court provided the following interpretation in its legal considerations through this decision:

"The Constitutional Court believes that legislators can constitutionally ensure that direct regional elections are an expansion of the meaning of elections as intended in Article 22E of the 1945 Constitution so that disputes over the results become part of the Constitutional Court's authority under the provisions of Article 24C paragraph (1) of the 1945 Constitution. Legislators can, however, determine that direct regional elections are not elections in the formal sense mentioned in Article 22E of the 1945 Constitution so that disputes over the results are resolved as additional Supreme Court authority, as is possible in Article 24A paragraph (1), which states, "The Supreme Court has the authority to adjudicate at the cassation level, examine statutory regulations under the law against the law, and has other authorities granted by law."

In these considerations, the Constitutional Court has interpreted the concept of elections with a dual model, namely the election regime accommodated in Article 22E of the 1945 Constitution, which is carried out on the principles of direct, general, free, secret, honest, and fair, and the regional election regime, which is elected independently and democratically, as regulated in Article 18 paragraph (4) of the 1945 Constitution. The Constitutional Court also believes that holding direct regional elections is an enlargement of the scope of elections as defined in Article 22E of the 1945 Constitution. As a result, the Constitutional Court's decision does not directly confirm that the results are challenged. Regional election is the Constitutional Court's authority. Still, this consideration has allowed for a broader interpretation of the meaning of Article 22E of the 1945 Constitution by incorporating regional head elections as part of election implementation. This decision model is an open legal policy model (Satriawan and Lailam, 2019) because it allows legislators to choose whether regional head elections are part of the election concept or become a regional government regulatory concept, and both options are constitutional (Nazriyah, 2016).

Constitutional Court Decision No. 072-073/PUU-II/2004 has used the original intent interpretation model focusing on the historical-teleological aspect, which seeks to reveal the intentions of those who formed the Constitution (Manullang, 2019). Methodologically, the teleological interpretation model is an interpretation that aims to grasp the intent and purpose of a law's text as well as its language. The function of judges in this position is critical to contextualizing the existence of laws with the demands and development dynamics of society (Isharyanto and Abdurrachman, 2016). It is demonstrated by the Constitutional Court's explanation of its considerations, which predicated on interpreting the definition of "democratically elected" in drafting the second amendment to the 1945 Constitution in 2000. The Constitutional Court holds that the meaning of "democratically elected" in Article 18 paragraph (4) of the 1945 Constitution must be linked to election implementation. Regional heads in special and special areas, as accommodated in Article 18B paragraph (1) of the 1945 Constitution (Decision Number: 072-073 /PUU-II/2004). Thus, the use of "democratically elected" editorial staff in the constitutional norms of Article 18 paragraph (4) is a form of accommodation for the regional head election model that is by the democratization needs of society in the region, even though the people's will expressed through legislators intended for them to be elected directly by the spirit reform.

In later developments, this opening legal policy decision served as the foundation for legislators at the statutory level to transform the legal and political paradigm of regional head choice from "democratically

elected" to "directly elected." This paradigm shift eventually resulted in a change in the architecture of resolving disputes over outcomes that previously belonged to the Supreme Court to become the authority of the Constitutional Court. This modification is indicated in Article 236 C of Law No. 12 of 2008 concerning the Second Amendment to the Regional Government Law and Article 29 paragraph (1) of Law No. 48 of 2009.

However, once the Regional Representatives Council and the government changed the notion of regional election as lawmakers, the Constitutional Court gave another constitutional interpretation relating to the design of resolving disputes over Regional election findings. Unlike previous constitutional arrangements, Constitutional Court Decision No. 97/PUU-XI/2013 emphasized the existence of a cleavage between the election regime and the Regional election regime. It stated that the regional election was not part of the election regime as regulated in Article 22E of the 1945 Constitution. The Constitutional Court removed its ability to settle complaints over regional election results based on this legal basis. The Constitutional Court Decision No. 97/PUU-XI/2013 is based on two important arguments: the interpretation of "democratically elected," which is the mechanism for determining regional heads, and the performance of the constitutionality of state institutions' authority as determined by the 1945 Constitution, particularly in regional election disputes.

First, the Constitutional Court argued that because the people directly elect regional head elections, it does not automatically constitute the regional election part of the electoral system. Furthermore, as Article 22E of the 1945 Constitution specified, the election provisions have been limited to electing the president and vice president and the House of Representatives and Provincial Legislative Council. The Constitutional Court stressed that the regional election is not a component of the general election on this basis. This interpretation is explained as follows in the Constitutional Court's considerations:

"The term "democratic" first appears in Article 18, paragraph (4) of the 1945 Constitution. When the 1945 Constitution was revised, there were two (two) opposing views on how to elect regional chiefs. One school of thought believes that regional head elections should be held directly by the people or the Provincial Legislative Council. In contrast, another believes they should not be held directly by the people. At the time, the justification for the design of Article 18 paragraph (4) of the 1945 Constitution was a regional head election system implemented by societal trends and conditions in each region concerned.." ...

"Legislators have the authority to decide whether regional head elections are held directly by the people or through the Provincial Legislative

Council or other democratic election methods. If the legislator rules that regional head elections will be carried out by the Provincial Legislative Council based on their authority, then the Supreme Court or the Constitutional Court's ability to hear disputes over regional head election results is irrelevant. It also demonstrates that regional head elections are not general elections, as Article 22E of the 1945 Constitution intended. Similarly, just because legislators require that regional head elections be held directly by the people does not indicate disagreements over the outcomes of those elections must be handled according to the Constitutional Court."

Second, regarding the validity of state institutions' jurisdiction, the Constitutional Court highlighted that settling disputes over regional election results is not within the Constitutional Court's purview. This argument is based on previous decisions, specifically Constitutional Court Decision No. 1-2/PUU-XII/2014, which explains that to maintain the constitutional system that is related to the authority of state institutions as determined by the 1945 Constitution, the Constitutional Court must always use a rigid approach by the Constitution's provisions. If specific circumstances are met, the Constitutional Court must interpret this authority using a complete original intent, textual, and grammatical interpretation model. It must not stray from the authority expressly stated in the 1945 Constitution (Indonesia, 2013). Thus, if it is related to the authority to resolve disputes over regional election results, the Constitutional Court has violated the 1945 Constitution because the authority of the Constitutional Court as regulated in Article 24C of the 1945 Constitution is only related to elections as regulated in Article 22E of the 1945 Constitution.

The Constitutional Court demonstrates, through the two arguments indicated above, that the method of legal discovery utilized in Constitutional Court Decision No. 97/PUU-XI/2013 is a type of original intent legal interpretation model, which is textual, grammatical, and tends to be restrictive. This stringent and leaning to inflexible interpretation is carried out to limit the Constitutional Court's ability to abuse power and make arbitrary decisions. Even though the Constitutional Court stated that it no longer has the authority to resolve disputes over regional election results, it also emphasized in this decision that as long as no institution has been given authority to resolve disputes over regional election results, it is still under the Constitutional Court's authority for the time being. The Constitutional Court retains this temporary competence to avoid doubts, legal confusion, and the absence of judicial institutions in disputes over regional election results.

The Constitutional Court's "temporary authority" in resolving regional election disputes was then followed by awarding dynamic and

shifting authority. Initially, the design for resolving disputes over regional election results was handed to the High Court by appointing the Supreme Court in response to Constitutional Court Decision No. 97/PUU-XI/2013, based on Perpu No. 1 of 2014. However, the architecture of dispute resolution was revised once more, with a particular judicial design for regional elections. The design of the special regional election judiciary is a political and legal choice for legislators, as confirmed in Article 157 paragraph (1), paragraph (2), and paragraph (3) of Law No. 8 of 2015, which was then amended by Law No. 10 of 2016 concerning the second amendment to Law No. 1 of 2015 concerning government determination in Lieu of Law No. 1 of 2014 concerning the election of governors, regents, and mayors into law.

The procedure of shifting authority while resolving regional election results disputes by the Constitutional Court until the establishment of a special court is filed for judicial review to the Constitutional Court is currently in development. The Constitutional Court reinterpreted the legitimacy of resolving concerns over regional election results through the judicial review mechanism. The Constitutional Court, in Decision No. 85/PUU-XX/2022, reverted to the Constitutional Court the jurisdiction to adjudicate complaints over regional election results and found the formation of special regional election courts illegal. Strictly speaking, the Constitutional Court has invalidated its interpretation product (Constitutional Court Decision No. 97/PUU-XI/2013) and reinstated the previously nullified and proclaimed unconstitutional regulation.

The Constitutional Court argued in Constitutional Court Decision No. 85/PUU-XX/2022 that there has been no serious effort and commitment from legislators in designing special courts in the Indonesian legal system. However, the temporary deadline was confirmed before the 2024 simultaneous regional elections started. This condition undoubtedly impacts the lack of certainty in the law for resolving disputes over regional election results. It can cause conflict and social segregation, resulting in constitutional losses for citizens (Decision No. 85/PUU-XX/2022). Aside from these factual conditions, the Constitutional Court contends that there is a need to revise the interpretation of the term "democratically elected" that the Constitutional Court used in placing regional elections in the electoral regime (government) established by the 1945 Constitution. This shift in interpretation is based on the reality of resolving regional election disputes following Indonesian constitutional reform, particularly after the implementation of direct regional elections, which were deemed consistent, effective, and the best format (Decision No. 85/PUU-XX/2022).

The Constitutional Court has altered the idea of electoral division, which has been used to interpret the validity of elections. The Constitutional Court has distinguished between the notions of election regime and regional election regime since Constitutional Court Decision No. 072-073/PUU-II/2004, which was upheld in Constitutional Court Decision No. 97/PUU-XI/2013. The constitutional interpretation of the division has been amended by integrating the two into a single election implementation concept, namely the general election, via Constitutional Court Decision No. 85/PUU-XX/2022.

The Constitutional Court concluded in its conclusion that the shift in understanding of the regional election dispute resolution scheme was due to various factors: First, the general election and regional election were both *de jure* and *de facto* carried out by the Electoral Commission (KPU, *Komisi Pemilihan Umum*), as stipulated in Article 22E paragraph (5) of the 1945 Constitution. Second, democratic elections are always conducted by direct, general, free, secret, honest, and fair principles. In truth, this idea is used not just for elections but also for regional elections. Third, both normatively and practically, the General Election Commission, the Election Supervisory Body (Bawaslu, *Badan Pengawas Pemilihan Umum*), and the Electoral Administration Honour Council (DKPP, *Dewan Kehormatan Penyelenggara Pemilu*) are involved in the implementation of elections and regional elections. The difference is only in regional coverage, but it is still within the same institution; fourth, election participants and voters understand the implementation of general elections and regional elections as the same concept; and sixth, the merger or fusion of the General Election and Regional election concepts will result in efficiency in state financial financing (Decision No. 85/PUU-XX/2022). As a result, the Constitutional Court merged and equated the two into an election, as specified in Article 22E of the 1945 Constitution.

Thus, amalgamation, which includes the elected post of the regional head in the election, has implications for the region's ability to resolve disputes over election results. The special regional election court's original power has been moved and made permanent to become the Constitutional Court's authority. This argument is bolstered by the reasons behind the 1945 Constitution's regulation of judicial power. All judicial institution rules must comply with the judiciary's provisions, including the Supreme Court and the Constitutional Court, as stipulated in Articles 24A and 24C of the 1945 Constitution. As a result, the special regional election court's design, beyond the provisions of judicial power under Article 24 of the 1945 Constitution, is unconstitutional. Aside from that, allowing the Constitutional Court the jurisdiction to address disputes over regional election results is considered a much more

effective choice for implementing electoral law based on the Indonesian legal system (Decision No. 85/PUU-XX/2022).

The Constitutional Court used progressive interpretation in interpreting election provisions based on the 1945 Constitution in Constitutional Court Decision No. 85/PUU-XX/2022. This is demonstrated by the Constitutional Court's decision to merge the concept of constitutionality of elections by not distinguishing between the election regime and the Regional election regime. The Constitutional Court has interpreted democratic elections as a mechanism for implementing people's sovereignty in determining public officials, both at the central and regional government levels, that is carried out on the principles of direct, general, free, confidential, honest, and fair with a 5-year cycle. As a result, as long as these principles are carried out in the electoral process, an election can be declared, as specified by Article 22E of the 1945 Constitution. This interpretation is consistent with the Constitutional Court's previous opinion in Constitutional Court Decision No. 55/PUU-XVII/2019 regarding the design of simultaneous elections, one model of which is holding regional head elections concurrently with the election of the president and vice president.

This Constitutional Court judgment departs from the original intent interpretation framework and grammatical interpretation paradigm. The Constitutional Court no longer relies exclusively on the meaning of legislators' will and the soundness of the Constitution's wording. They have, however, progressed to adopting an expanded interpretation approach by broadening the definition of the substance of elections in the Constitution, as well as a consensual method based on the reality of practice that emerges in society. Applying this paradigm is a reflective reading of the past course of implementing elections and regional elections, but it still leaves the problem of ineffectiveness. As a result, the Constitutional Court has broadened the scope of Article 22E of the 1945 Constitution to include regional elections as a type of election.

Aside from that, in an endeavor to find the law, the Constitutional Court adopted the prudential interpretation method in this ruling. In theory, prudential interpretation is based on variables other than the law or the parties' interests in the case. Prudential interpretation aims to achieve knowledge through judicial rulings (Isharyanto and Abdurrachman, 2016). The prudential technique incorporates characteristics of effectiveness and efficiency (cost and benefit) into the construction of case decision considerations (Bobbitt, 1982; Winata and Agustine, 2019). The Constitutional Court believes that by eliminating the division of the electoral regime and combining the general election and regional election in one concept and mechanism, implementing the general election and regional election, including its resolution, will be

more effective and efficient if it is determined in one institution. The Constitutional Court is the same as before. The combination of the general and regional elections, utilized as a criterion for judges, is also consistent with attempts to achieve state financial efficiency in election execution thus far. The state no longer needs to establish a special judicial institution for regional elections, the design of which is ambiguous because it is unclear whether the institution falls under the jurisdiction of the Supreme Court (which constitutionally oversees general justice, religious courts, state administrative courts, and military justice) or the Constitutional Court, given the judiciary's authority and power. Only the judiciary is assigned to both (the Supreme Court and the Constitutional Court). Aside from that, the concept of a special regional election court is considered ahistorical in light of the legal politics of resolving regional election disputes in the past, where the authority was previously with the Supreme Court, then shifted to the Constitutional Court, and will be returned to the Supreme Court with a special judicial model. As a result, the Constitutional Court believes that separating the notion of elections is no longer necessary because it will merely increase state resources while causing ineffectiveness and inefficiency in implementing and enforcing election law.

The Constitutional Court has made leaps and shifts in interpretation based on the constellation of constitutional arrangements regarding the concept of elections based on the 1945 Constitution, particularly the phrase "democratically elected" stated in Article 18 paragraph (4) of the 1945 Constitution and its relationship to the election regulations regulated in Article 22E of the 1945 Constitution. As a result, the regional election dispute resolution design dynamics are ambiguous and inconsistent in Indonesia's institutional arrangement of elections. Indeed, stability in the legal architecture for resolving regional election disputes is required for the development of democratic electoral system institutions and the assurance of electoral fairness.

Nonetheless, the discrepancy of the Constitutional Court's interpretation of the Constitutional Court's theory of elections is vital to recognize as a progressive and relevant legal conclusion. The disparities in interpretive methodologies utilized by judges in each legal review procedure resulted in the inconsistency in the constitutionality of the regional election dispute resolution scheme. The Constitutional Court's bravery in changing its mind about the previous decision by employing extensive methods has restored its authority in resolving disputes over regional election results while also uniting regional election and election regimes as a unified democratic election implementation system. This Constitutional Court interpretation product is thought to have transformed the Constitution's norms into living norms (living

constitution) by the supremacy of the Constitution, which is in line with the context of current needs and conditions (Ali, 2016). According to Kommers (2019), constitutional court decisions are enforceable on all parts of state administration but not on themselves. A constitutional court has the authority to make permanent changes to interpretation products based on the spirit of constitutionalism to create a constitution that meets the demands of society (Kommers, 2019).

As a result, efforts are needed to improve and organize regulations holistically, both at the level of laws and technical rules at the Constitutional Court, based on the legal politics of Constitutional Court Decision No. 85/PUU-XX/2022, which has permanently assigned the authority to resolve regional election disputes to the Constitutional Court. It is required since the Constitutional Court's approach to resolving regional election disputes still leaves a "red note" of issues with maintaining electoral justice. The Constitutional Court is frequently criticized for being formalistic and dogmatic and neglecting electoral justice (Ramadhanil, 2016). At times, there is still a gap between the Supreme Court's judgment as a mechanism for evaluating Electoral Commission decisions or resolving election offenses and the Constitutional Court's decision as a process for resolving disputes over regional election results (Basyari, 2021; Molan, 2013). Efforts to rebuild the Constitutional Court as an institution for resolving regional election disputes are unavoidable and must be pursued promptly, especially given the introduction of simultaneous regional elections in 2024.

CONCLUSION

The regional election judiciary, particularly in settling disputes over vote results, is one of the most essential instruments in implementing democracy and ensuring electoral justice. Regional elections are conceptually based on the word "democratically elected," defined in Article 18, paragraph (4) of the 1945 Constitution. The phrase "democratically elected" has given rise to various interpretation products, all of which have ramifications about anomalies in regional election dispute settlement architecture. Discrepancies in the constitutional interpretation of the Regional election and judicial authority to address disputes over Regional election outcomes result from differences in the interpretative methodologies the Constitutional Court utilizes in analyzing the validity of the Regional election's implementation.

The Constitutional Court issued Constitutional Court Decision No. 072-073/PUU-II/2004 through the adjudication system for examining the law. The Constitutional Court's decision separates the regional and election regimes. Legislators then accepted this decision by

delegating judicial jurisdiction to the Constitutional Court to handle disputes over regional election results. The Constitutional Court, however, removed this jurisdiction in Constitutional Court Decision No. 97/PUU-XI/2013. In the most recent development, the Constitutional Court granted the ability to resolve regional election results and make them permanent to the Constitutional Court through Decision No. 85/PUU-XX/2022. It is because the concept of separating between the regional and election regimes is no longer followed, as in the Constitutional Court's constitutional interpretation, which has been employed in analyzing the validity of elections. As a result, significant administrative and institutional adjustments are required to transform the Constitutional Court into a reputable, professional, and devoted institution committed to safeguarding electoral justice in Indonesia.

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