

The Authority of the Constitutional Court on Decide the Election Results Disputes of Palembang City (Study of Legislation and Regulatory Aspects)

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Abstract

The authority of the Constitutional Court to decide the elections result seen from constitutional legal aspects was not regulated in the Indonesian Constitution and it is contrary to the law state. The Constitutional Court's decision on the Palembang City election which based on the Registrar's Letter, and Home Minister's decision, does not have a strong legal basic. From the administration legal aspect especially on *beshickking* (designation) the letter was not included in the legal norms, but after in depth studied the decision was contained crime elements (bribery).

Keywords: The Constitutional Court's authority, Election, Constitutional Court's Decision, Laws and Regulations.

1. Introduction

In accordance with Article 106 Law No. 32 Year 2004 on Regional Government, the authorities to decide the General Election disputes exist on the Supreme Court. Furthermore, according to the Constitutional Court Decision No. 72-73/ PHPU-II/ 2004, this authority turned to the Constitutional Court's authority. In deciding the disputes of Palembang City Election, the Constitutional Court decision was emerged the controversy, in which the vote counts were won by Ir. H. Sarimuda, MT as Mayor and Nelly Rasdiana as Deputy Mayor of Palembang City and issued by the General Election Commission Decree No. 35/KPTS/KPU.Kota-006.435501/2013 dated of 14 April 2013 on the Establishment of elected Mayor and Deputy Mayor Candidates on period of 2013-2018. Then Ir. Romi Hertton, SH, MH and H. Harno Joyo, S.Sos filed a lawsuit to the Constitutional Court and exit the Decision No 42/ PHPU.D-XI / 2013 concerning the election of Mayor and Deputy Mayor of Palembang contains two meanings are not revoke the General Election Commission Decision No. 35/Kpts/KPU.Kota-006.435501/2013 dated 14 April 2013 on the Establishment of elected Mayor and Deputy Mayor Candidates on the period of 2013-2018 Ir. H. Sarimuda, MT and Nelly Rasdiana, and also not granting the pursuit of H. Romi Hertton, SH, MH and H. Harno Joyo, S.Sos and just canceled the Vote Count Results Recapitulation of Mayor and Deputy Mayor Election of Palembang City. Furthermore was elaborated the petition and injunction of Constitutional Court decision.

In the Constitutional Court decision, the Petitions were requested by petitioner are as follows:

1. Accept and grant the application in its entirety;
2. Declare and assign that the News of Election Results Recapitulation of Major and Deputy Major by the General Election Commission of Palembang dated 13 April 2013 in conjunction with the General Election Commission Decision of Palembang No. 34/KPTS/KPU.Kota-006.435501/2013 dated 13 April 2013 on the Determination of Election Results Recapitulation of the Mayor and Deputy Mayor of Palembang City in 2013, which was announced on 13 April 2013 were null and void and has no legal force.
3. Declaring and assigning the right and legal of election results recapitulation are as follows: Mularis Djahri and Drs. H. Husni Thamrin, MM are get 97.810 votes; H. Romi Hertton, SH, MH and H. Harno Joyo, S.Sos are get 316.921 votes; Ir. H. Sarimuda, MT and Nelly Rasdiana are get 316 897 votes;
4. Canceled the General Election Commission Decision No 35/KPTS/KPU.Kota-006.435501/2013 dated 14 April 2013 on the Establishment of Candidates of Mayor and Deputy Mayor election on the period of 2013 – 2018 in 2013;
5. Established the candidate pair number 2 of Ir. H. Romi Hertton, SH, MH and H. Harjono, S.Sos as a candidate pair were elected in the Mayor and Deputy Mayor elections of Palembang City on period of 2013-2018 in 2013.

The Constitutional Court Decisions are as follows:

1. To grant the petitioner's request in a part;
2. Canceling News of Election Results Recapitulation of Mayor and Deputy Mayor Election of Palembang City Scale by the General Election Commission of Palembang, dated 13 April 2013, along with its Attachment; and the Palembang General Election Commission's decision No. 34/Kpts/KPU.Kota-006.435501/2013 on determination of Election Results Recapitulation of Mayor and Deputy Mayor of Palembang in 2013 dated of 13 April 2013 and its Attachment, along with the candidates' votes acquisition in TPS (Election Place) 13 of Karya Jaya Village, Kertapati District, TPS 5 Talang Semut Village, Bukit Kecil District; TPS 20 of Talang

Aman Village, Kemuning District; and TPS 3 and 13 of Sukajaya Village, Sukarami District.

1. Candidate Pair Number 1 was gained 97.809 votes.
2. Candidate Pair Number 2 was gained 316.919 votes
3. Candidate Pair Number 3 was gained 316 896 votes.
4. Ordered to Palembang City General Election Commission to implement this decision;
5. Refuse to Petitioners' argument for apart and so on.

From the Constitutional Court Decision above, then the verdict was is a part granted, namely canceled the News of Election Results Recapitulation of Mayor and Deputy Mayor of Palembang City by the General Election Commission of Palembang, dated April 13, 2013, along with its Attachment; and the Palembang General Election Commission's decision No. 34/Kpts/KPU.Kota-006.435501/2013 on Establishment of Election Results Recapitulation of Mayor and Deputy Mayor of Palembang in 2013 dated of 13 April 2013 and its attachment, in line with the candidates' vote acquisition in the TPS 13 of Karya Jaya Village, Kertapati District, TPS 5 of Talang Semut Village, Bukit Kecil District, TPS 20 of Talang Aman Village, Kemuning District; and TPS 3 and 13 of Sukajaya Village, Sukarami District. Whereas the Palembang General Election Commission Decision No. 35/KPTS/KPU.Kota-06.435501/2013 on Establishment of Candidate of Mayor and Deputy Mayor Elected on period of 2013 to 2018 were never revoked altogether. Thus the Constitutional Court decision is controversy, because on the one hand does not revoke the old General Election Commission decree on the other hand confirmed that the correct number of votes is Romi Hertan. From the results of Constitutional Court decision, the General Election Commission was not able to carry out the orders of judges, and make a letter to the Court by letter number 35/KPTS/KPU.Kota-06.435501/2013 subjected on request the written instructions on Constitutional Court decision no. MK/PHPU.D.XI / 2013 dated 25 May 2013 were aimed to the Chairman of the Constitutional Court, which was signed by the Chairman of General Election Commission of Eftiyani, SH.

The General Election Commission letter was answered by the Registrar of the Constitutional Court with the Registrar Letter No. 96/PAN/MK/5/2013 on the implementation of the Constitutional Court Decision No. 42/PHPU.DX/2013. The letter contents on number 4 was reads that associated with your doubts on the implementation of the decision, we was confirmed that the cancellation of election result recapitulation of mayor and deputy mayor of Palembang at the regency level and the Palembang General Election Commission Decision dated 13 April 2013 and its attachment and the Palembang General Election Commission Decision No. 34/KPTS/KPU/KPU/Kota-00643250/2013 on the establishment of the election result recapitulation of mayor and deputy mayor of Palembang in 2013 in Palembang City General Election Commission dated 13 April 2013 and its attachments also lead to void the General Election Commission Decision No 35/KPTS/KPU.Kota-006.435501/2013 because this decision was based on the news of the election result recapitulation of Mayor and Deputy Mayor of Palembang in the regency level by the KPU Palembang and KPU Decree No. 34/KPTS/KPU/Kota-006.435501/2013. Then exit the General Election Commission Letter No. 38/KPTS/KPU/City-006.435501/2013 on the establishment of Palembang Mayor and Deputy Mayor elected in period of 2013 to 2018 with the legal basis on the Constitutional Court Decision No. 42/PHPU.D-XI/2013 dated May 20, 2013, and also based on the Registrar Letter No. 96/PAN /MK/5/2013 on the implementation of MK Decision No. 42/PHPU.D-XI/2013 dated May 29, 2013. Then, based on the Registrar letter on the Implementation of the Constitutional Court decision, followed up by the Home Affairs Minister Decision No. 131.16-4574 in 2013 conjunction with the Home Affairs Minister Decree No. 131.16-4574 in 2013 on ratification and appointment of the Mayor of Palembang City in South Sumatra Province, dated June 17, 2013, and the Home Affairs Minister Decree No.132.16-4574 in 2013 on the ratification and appointment of Deputy Mayor of Palembang City in South Sumatra Province dated 17 June 2013. Then the inauguration was done by the Governor of South Sumatra Province.

From the above description, caused some problems, which the authority of the Constitutional Court to settle the elections disputes of Mayor and Deputy Mayor of Palembang were viewed from various aspects of the law and legislation, and whether the letter are included in legal norms. So this article focuses on the Constitutional Court's authority to settle the disputation of Mayor and Deputy Mayor Election of Palembang City (Study of Legal and Legislation aspects).

2. Methods

Type of research is Dokrinal, the type of data is secondary, which includes the rule of law and the judge's decision, rule of law includes legislation being the judge's decision is a decision of the Court. and also includes other Judges Decision. Legal norms under study include law Sync Vertical or horizontal legal synchronization of legislation that is also carried interpretation. Because every interpretation see reality from the perspective of this activity norm called creative activity but is still guided by norms (Harjono, 2008: 63).

3. Results and Discussion

3.1 Aspects of Constitutional Law

In Article 24 C of paragraph (1) of 1945 Indonesian Constitutional, the Constitutional Court's authorities are: 1) Testing the Law to the Constitution; 2) Settle the dispute of the state institutions' authority were granted by the Constitution; 3) Decide the political parties dissolution; 4) decide the disputes of general election results; 5) The Constitutional Court shall give a decision on the Parliament premise to the alleged violations by the President and / or Vice President based on the Constitution.

From these conditions, there is not article was explained that the Constitutional Court has the authority to decide the election disputes, the authority actually exist in the Supreme Court based on the article 16 of Law No. 32 of 2004 on Regional Government. The Constitutional Court was made its own interpretation of article 18 paragraphs 4 which reads that the local government head elections are done in the democratic election. The democratic are interpreted as directly election, but the definition can be directly and also through Parliament. Then the Constitutional Court was interpreted the Article 22 E, were stated that the general elections are directly elected. It turns that the Constitutional Court was interpreted that the general election are equated with the local election were not appropriated because the general elections were held for 5 years, whereas the local election were not included in general election, since the local election is not simultaneous, then Constitutional Court Making Decision No. 72-73/PUU-II/2004, and took over the authority. Not long after exit Law Number 12 Year 2008 on the Government, in which the Article 236 C was said that in the event of election disputes were resolved in the Constitutional Court. Furthermore, the Constitutional Court was reinstated its authority by Constitutional Court Decision No. 97/PUU-XII/2014. Then appear Law Number 32 year of 2014 on the Local Government that the Election for Regency and City were elected by parliament. And appear Regulation No. 2 year of 2014 that local election was directly elected, and then appear again Law No. 22 Year 2014 on General Election (Election by Parliament). But then the government was issued a decree No. 1 year of 2014 that the local election was directly elected, and to uphold the Law Supremacy on authority to decide the local election disputes submitted back to the Supreme Court (Explanation Decree No. 1 year of 2014). The alternating of the authority to settle the election disputes because not has a strong legal foundation, and from the Constitutional Law aspect, the Constitutional Court authority was not rooted in the Constitution.

3.2 Legal Aspects of Public Administration

Back to the issues of Palembang elections, furthermore, the plaintiff filed a lawsuit against the Home Affairs Minister to the Jakarta Administrative Court, the lawsuit were stated that the Home Affairs Minister, Decree are in the form of determination, and in his petition that requested canceled by the Administrative Court, but after going through a lengthy process, the Administrative Court was decided that the authority to prosecute is not the authority of the Administrative Court. The General Election Commission Decision on Determination of Regional Head Winner, created and listed separately, to the Regional Head has its own decree, as well as Home Affairs Minister made separately on the Appointment of Regional Head and Deputy Regional Head, while the Constitutional Court decision was not separated, even the Constitutional Court decision was canceled both. The Constitutional Court decision are ruling final, automatically should be recognized by other state agencies, including the General Election Commission and the Home Affairs Minister. Thus, the Home Affairs Minister decision is the authority of the Administrative Court, while the General Election Commission decision is not the authority of the Administrative Court, whether the Home Affairs Minister only annul on Regional Head decision alone, while Regional Head Deputy is not canceled, as well as was the General Election Commission only canceled Regional Head only. The verdict Administrative Court decisions are final and individual as well as concrete. This is caused lack of legal certainty, and this was revealed in the administrative court trial in Jakarta. The authority to annul decision of the General Elections Commission and Home Affairs Minister while the General Election Commission decision and the Constitutional Court decision was not the authority of the Administrative Court, so that the lawsuit was defeated, because it concerns the competence of the Court. The decisions were made by the General Election Commission and the Home Affairs Minister was based on the results of the Constitutional Court decision.

3.3 The Assessment of General Election Commission and Registrar letter viewed from legal norms.

The norm is a measure that must be obeyed by humans in the relations with each other or to the environment, then it was interpreted as a criterion or standard size for human in the act, so the norm core are all of the rules that must be obeyed (Satjipto Raharjo: 27). Each existing norms on social order are containing messengers and prohibitions coercive. Such a situation was called the legal norm (Satjipto Raharjo: 27). The legal norms can be formed in written or unwritten, while norms of traditional moral, religious and other are unwritten but grow and evolve from existing habits in the society (Maria Farida, 2009: 6). Thus the existing norms in the society, both written and unwritten, have a set of rules, but the legal norm does not have the force and sanctions for those who violated the rules or standards of norm (Sudikmo Martokusumo, 1991: 5). This paper was examined whether the

letter are including in legal norms. According to C.S.T. Kansil, one of the administrative means that as a function or activity that is as governmental activities that this means to take care the interests of state activity (Marbun, SF, 2001: 8). According to Utrecht in the book of *Pengantar Hukum Administrasi Negara dalam Teori Sisa* (Residue Theory), the state administration as *complex ambten/apparaat* or the combination of administrative positions under the leadership of the government was performed some tasks of government that was not assigned to the judiciary and legislators and lower government agencies (Utrecht, 1960: 11). According to G. Pringgodigdo, the State Administration is the State Administration Law (HTUN) that related to the correspondence or archival. The administration word is comes from the English *administration* that was originally derived from the Latin word of *administrare* which means to serve. The means of administration in the narrow sense means are all of activities of writing, typing, notes, correspondence, storage and handling problems of administrative activity only. So the means of administration in the narrow sense is synonymous with administration activity.

The General Election Commission letter No. 325/Kota-006435501/V/2013 answered by the Constitutional Court Registrar by letter No. 96/PAN/MK/5/2013, because the General Election Commission decision was issued after issuance of the Registrar letter, then issued the KPU Decree No. 38/KPTS/KPU/KOta-006.435501/2013 on the Establishment of Mayor and Deputy Mayor of Palembang elected in period of 2013-2018 was established H. Romi Hertan, SH, MH and H. Harno joyo, S.Sos as the elected Mayor and Deputy Mayor with legal basis of the Constitutional Court Decision No. 42/PHPU.D-XI/2013 dated May 20, 2013, and also by letter of Constitutional Court Registrar No. 96/PAN/MK/5/2013 on the implementation of Decision No. 42/PHPUD-XI/2013 dated May 29, 2013. If we were examined carefully, then the Constitutional Court decision was implemented with the Constitutional Court Registrar No. 96/PAN/MK/5/2013 thus the title of the Constitutional Court decision should the Constitutional Court Registrar Letter No. 96/PAN/MK/5/2013 on the implementation of the Constitutional Court decision No. 42/PHPUD-XI/2013 dated of May 29, 2013

However, in the preamble was stated that Constitutional Court Decision No. 42/PHPUD-XI/2013 dated of May 29, 2013. Due to the General Election Commission decision cannot filled to the Administrative Court. But in this case the Minister of Home Affairs Decision, precisely define the decision on Appointment of Mayor and Deputy Mayor of Palembang City based on the General Election Commission Decision. Then the Constitutional Court Registrar authority is as coordination of judicial administrative implementation (Presidential Decree No. 49 on the secretariat and the Secretary General of the Constitutional Court) is not as interpreter of Constitutional Court decision. The General Election Commission mistake is making a letter to the Constitutional Court, since the enactment of the Constitutional Court Decision, then General Election Commission immediately follow up the Constitutional Courts decision not to ask for directions to the Constitutional Court. The Home Affairs Minister mistake is only followed the General Election Commission decision, with no noted, that the Constitutional Court decision was held by Registrar letter.

Therefore, the Home Affairs Minister decision would be brought to the Administrative Court, but in this case because the Home Affairs Minister decision is based on General Election Commission decision, whereas the General Election Commission decision could not be submitted to the Administration Court. Before making a decision, the Home Affairs Minister should be listening to the General Election Commission Decision. Because the General Election Commission decision are based on the letter of the Registrar, not based on the Constitutional Court decision. This is become a mistake for Home Affairs Minister in making the decision, because Letter of Registrar is not a legal norm it can be seen Laws No. 10 of 2004, as amended by Act No. 11 In 2012, Law No. 10 Year 2004 on the Laws and Regulations, Gazette of the Republic of Indonesia No. 53 of 2004 as amended by Act No. 12 of 2011. These legislative regulations set in Chapter XI other provisions of Article 54. The preparation technique and/or the President's decision form, Decision of People's Consultative Assembly Chairman, Decisions of House of People's Representatives Chairman, the Supreme Court's decision, the Constitutional Court Decisions, Decisions of Supreme Audit Board Head, Decision of the Indonesia Bank Governor, the decision of minister, decision of Head of the agency, institution, or commission equivalent with the decision of Provincial Parliament, the decision of governor, the Decision of Representatives Board Regency/City, Decision of Regent/Mayor, decision of Village Chief should be guided by the compiler techniques in this law. Thus, the Constitutional Court Registrar letter was not included in the legislation. If the administrative court judges look of preamble of attention the Registrar letter, the perch for Home Affairs Minister's decision, the lawsuit must be granted because the Registrar letter are legal deform as well as not as legal norms.

3.4 The General Election Commission Decision cannot be submitted to the administrative court

Beschikking is one of the government activities forms in carrying out its role belonging to the legal acts of government (*Rechtshandel ingen*). The *beschikking* term was originated from Netherlands, *acte administrative* (France), *ver waltunngsakt* (Germany). The sense is a multifaceted public legal act carried out by means of an administration tool is based on a special power.

Utrecht is a unilateral legal action in the field of government by governmental means based on the

authority that exist in these organs.

WF. Priny was defined as a legal act was performed by governmental means, the statements in the will of the governmental means in organizing special things with the intention of making changes in law field.

Van Der Pot, in other source was interpreted the *beschiking* as a decision issued by the administrative authorities that are concrete and specific, or decisions in the field of state administration carried out by officials or authorities-governmental agencies and special authorities for those.

Utrecht referred to as 'provision', while Prajudi Atmosudirdjo called them with 'fixing'. Utrecht, PRINS, and Van der Pot also explained that *beschikking* a multifaceted public legal act with the same or unilateral actions of the government and not a result of the approval of both parties. *Beschikking* according to the Law No. 5 of 1986 jo. UU no. 9 of 2004 Law No. 5 of 1986 on State Administrative Court was stated that the state administrative decision is a written determination issued by the Board or Administrative Officer containing administration legal action based on the legislation in force, which is concrete, individual, and final, which give rise to legal consequences for a person or agency of civil law.

From the definition according to the Law No. 5 of 1986 can be formulated the decision elements are as follows: the determinations are written and issued by agencies or officials of State Administration, contains legal action in the field of State Administration, based on the legislation in force, concrete, individual, and final, as well as rise the legal consequences for the person or agency of civil law.

However, we know that the General Election Commission is in Law No. 9 year of 2004 on amendments of the Law No. 5 of 1986 on the State administration court, especially in chapter 2 clearly explained that there are seven things that do not belong to the State decision in the Act No. 9 of 2004, namely: 1) the administrative decision which is an act of civil law; 2) the administrative decision which is the general regulation; 3) the administrative decision which still requires approval; 4) the administrative decision were issued based on the provisions of the Criminal Justice Act and the Code of Criminal Procedure Code or other laws that are criminal law; 5) the administrative decision were issued on the basis of the results of the examination of the Court under the provisions of the legislation in force; 6) the administrative decision concerning the administration of the Indonesian National Army; and 7) the General Election Commission decisions both at central and local levels regarding the elections results.

From the above description, is the decree issued by the General Election Commission is the object of State Administration Court? Because the object of State Administration Court is letter (statutes, decisions, etc.) were issued by the officials, however, we know that the General Election Commission is an independent agency, not a state official. Therefore, the decree or decision of the General Election Commission whether include as the object of State Administration Court, then we need to refer to the regulations relating to the object of the State Administrative Court on the Law Number 5 of 1986 on the State Administrative Court, as amended, Law number 9 of 2004 on the Amendment of Act No. 5 Year 1986 on State Administrative Court (Law number 9/2004), and lastly by Law No. 51 Year of 2009 on the Second Amendment of Act No. 5 Year 1986 on State Administrative Court (Law number 51/2009). The object of the Administrative Court dispute is the State Administrative Court decision (see Article 1 paragraph 10 of the Administrative Court Act). The definition of State Administrative Court decision is (Article 1 paragraph 9 of Law Number 51/2009). "..... a written determination were issued by agencies or officials of state administration which contain administrative law action based on the regulatory in force, which is concrete, individual, and final, emerged the law consequences for a person or private legal entities".

The Administrative Court decision is not only a written determination were issued by the officials, but also by the body/agency. Thus, it is clear that the General Election Commission decision of the central and local on the result of elections are not include in Administrative Court decision, so it cannot be filed a lawsuit to the court, in this case the Administrative Court decision. While the General Election Commission decisions that can be sued to the administrative court is beside the General Election Commission decision on the general election results. This is based on the Supreme Court Letter No.7 of 2010 on Technical Guidelines for Dispute on Supreme Court Letter No.7 of 2010. In this case should be differentiated between two types of decision group, the decisions relating to the stage of election preparation, and on the other hand decisions were contained regarding the elections result. In fact on election implementation in the field, before the increase in phase of polling and counting (voting or polling), has done a variety of stages, for example voter registration stage, participants nomination stage, the campaign stage, and so on. At these stages there are decisions were issued by the Administrative Officer (*beschikking*), that is the General Election Commission's decision at the central and regional levels.

These decisions are not a "general election results" can be classified as a decision in the field of government affairs, and therefore all such decisions meet the criteria of Article 1 paragraph 3 of the Law on the State Administrative Court, it remains under the authority of the State Administrative Court to check and bring to justice. This due to the decision is out of range exception as defined by Article 2 letter g of Law on State Administrative Court. The decisions which contain the elections results are exceptions referred to in Article 2

letter g Law on the State Administrative Court, so it is not the authority of the State Administrative Court.

3.5 Criminal Law Aspects

After the lawsuit filed, KPK (Corruption Eradication Commission) smell a criminal action in deciding of election results, and in the process by KPK, so that the Mayor now blocked by the KPK, including also Regent of Empat Lawang in check by the KPK, in accordance with the Law on Corruption and much more decision of the Court which includes the criminal acts of bribery. The process is described by Chandra, representatives of the Palembang city of South Sumatra, who lawsuit questioning the Constitutional Court decision to election dispute of mayor election of Palembang were won by Romi Hertan-Harjono were suspected give political bribes to Constitutional Court judges. "The elections on 7 April 2013 it was clear wining by Sarimuda. But then the Constitutional Court was changed the decision. The winner become lose, loser become winner. Why? Where are our voices, the Palembang people voices? We get there are 16 members of the Sultan Mahmud Badarudin airport of Palembang know even make a statement that the money was to buy heavy equipment. Why 8 billion cash it can pass through the airport? It lasted four days before the Constitutional Court ruled. We have brought this to the Corruption Eradication Commission. And the Corruption Eradication Commission is investigating this case. At the moment, the chief of judge panelists is Akil Mochtar," Chandra said. Chandra asks the Corruption Eradication Commission in addition to checking Akil Mochtar, also check out the other 8 Constitutional Court Judges. Candra said that they also reported this case to the Judicial Commission.

Corruption Eradication Commission (KPK) stated Romi and his wife, Masyito, as suspects alleged bribe to the former chairman of the Constitutional Court Akil Mochtar and giving false information. Romi and Masyitoh were arrested after being examined by the Corruption Eradication Commission since 10:00 am about six hours at the KPK building Kuningan Jakarta on Thursday. In Palembang election dispute handling, Akil received Rp 19.87 billion from Romi through Mochtar Ependy. The money was transferred to Akil with a checking account in the name of his wife's company CV. Ratu Samagat and given gradually through Masyito. After going through the long process then Romi and his wife were proved to have done bribery of Akil, and have been sentenced to six years for Romi, 4 year for his wife Masyitoh, while Akil Muktar was proven to accept bribes and lifetime sentenced.

4. Conclusion

The authority of the Constitutional Court to decide the elections dispute seen from constitutional legal aspects, not regulated at all in the Indonesian Constitution, and it is contrary to the law state. Constitutional Court's decision on the Palembang election, which based on the Registrar Legtter, including the Home Affairs Minister's decision, do not have a strong legal basis. From the aspect of administrative law in particular *Beschiking*, the letter is not included in the legal norms, such as determination. After in deep studied turns the Constitutional Court decision on the Palembang election is contain criminal elements (bribery).

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