

# Dispute Resolution Option on the Result of the Simultaneous Regional Head Election Without the Enactment of Vote Difference Threshold

Sudarsono (Corresponding author)

Professor at Faculty of Law, University of Brawijaya, Malang, Indonesia

E-mail: Sudarsono.ast11@gmail.com

Ahmad Siboy

Student of Doctoral Program of Law, Faculty of Law, University of Brawijaya, Malang, Indonesia

E-mail: siboyalman@yahoo.com

Jazim Hamidi

Levturer of Faculty of Law, University of Brawijaya, Malang, Indonesia

E-mail: jazimub@gmail.com

Moh. Fadli

Lecturer of Faculty of Law, University of Brawijaya, Malang, Indonesia

E-mail: mfadlifhub@gmail.com

## Abstract

Enactment of the vote difference threshold as a requirement to file a dispute over the result of a simultaneous election of regional head to the judiciary has had implications for the dispute resolution process which is not in accordance with general dispute resolution principles to the detriment of the candidate pairs. The threshold of the vote difference is not appropriate to be applied in the case of dispute over the results of the regional head election so that the enactment of the vote threshold should be removed and at the same time a new form of dispute resolution of the simultaneous election result of regional head shall be made. Some forms of dispute resolution on the regional head election result without the enactment of the vote difference threshold can be done through the formation of a special justice body of regional head election, establishment of special justice body in provincial level and or trial by other judicial institution first prior to submitted to the Constitutional Court.

**Keywords:** Election of Regional Head, Dispute of Election Result, Threshold of Vote Difference

## 1. Introduction

Election of regional head simultaneously is a new form applied by the Indonesian government. Election of regional head simultaneously is a regional head election regime where the election of regional heads in all provinces, districts and municipalities is held at the same time. It is different from the regional head election system previously conducted in different times from region to other regions. Election of regional heads is simultaneously selected in order for effectiveness and efficiency. As evidence that the implementation of regional head elections conducted simultaneously can make the budget efficiency, it can be seen from the election of West Sumatra Governor. At Regional Head Election in West Sumatra in 2010, the election of the Governor was merged with 13 elections of the Regent / Mayor. In this election, the fund spent was 62 billion or saving as much as 134 billion from the budget ceiling of IDR 196 billion. In the election of the regional head in the province of Nangroe Aceh Darussalam in 2006, the election of the Governor was merged with the election of 19 regents / mayors, the budget used was 60% i.e. IDR 38 Billion (Kumolo, 2015).

The second implication is that when the regional head elections are held simultaneously, the struggle of political power is not only concentrated in one regional only so that political tension can be reduced. It is because the

election of regional heads is not only a battle of politicians at local level but also politicians at national level.

On the other hand, the simultaneous election of regional heads implicates the increasing number of disputes that the judiciary must decide at the same time. Decision on the case of dispute over election result of regional head must be decided simultaneously because the settlement period of dispute over election result of regional head is limited by time limit. This condition then becomes the problem in the settlement of disputes election results in the implementation of regional head elections simultaneously. Because, firstly, the judiciary institution which is given the authority to adjudicate the case of dispute over the election results is only the Constitutional Court (Article 157 paragraph 2 of Law 10 of 2016 on Regional General Election), whereas the position of the Constitutional Court is only domiciled at the central level while the number of cases of dispute over the election result of regional heads reaches hundreds since there are 541 areas which will hold simultaneous elections. The potential number of cases filed with the condition that the Constitutional Court only consisted of nine constitutional judges; hence, naturally it is extremely ineffective or is able to be ascertained that the judicial process will not run optimally.

By this condition, then, the legislators take the legal policy of applying the threshold of the vote difference as a condition to be able to file a dispute over the results of regional head election to the Constitutional Court. The threshold of the vote difference is the maximum difference between the vote acquisition of the candidate pair and the acquisition of the candidate pairs who get the most votes. The threshold of vote difference between candidate pairs of the election is between 0.5%-2% depending on the number of people in the region that organizes the election of regional heads. Previously, the threshold of the vote is enacted in both general election of legislative and President (Edy, 2017).

As a result of the enactment of the vote difference threshold, not all cases of dispute over the election result of the regional head may be applied to the Constitutional Court. Even if there is a dispute case that does not meet the threshold of the vote but still filed to the Constitutional Court, the Constitutional Court will declare that it cannot accept the petition because it does not comply with the provisions of Article 158 of Law Number 10 of 2016 regarding the Regional Head Election which regulates the threshold of the vote difference. As the evidence, at the 2015 election disputes, there are 147 petitions that have been decided by the Constitutional Court, 97 of which are declared unacceptable for not meeting Article 158. In the election of regional heads in 2017, there were 55 petition of election disputes submitted to the Constitutional Court and 1 granted, 6 rejected and 43 declared unacceptable (Decision of Constitutional Court 1/PHP.BUP-XIV/2016-147/PHP.BUP-XIV/2016 and the Constitutional Court Decision Number 1/PHP.BUP-XV/2017-55/PHP.BUP-XV/2017).

From the facts of dispute over the results of regional head elections in 2015 and 2017, it is apparent that the enactment of the threshold of voice difference as a condition to file a dispute over the results of the regional head election is not the right solution to minimize the number of dispute cases elected by the regional head. On the other hand, the enactment of the vote threshold can minimize the number of cases of election disputes that must be tried by the Constitutional Court at the same time but on the other hand many disputes over the results of the regional head election cannot be judged when the victory or acquisition of votes is obtained by means of which is fraudulent or violates the provisions of legislation.

## **2. Research Problems**

- 2.1 What is the basis for the enactment of the vote difference threshold in the settlement of disputes over the results of the regional head election?
- 2.2 Why a vote difference threshold should be removed as a condition for filing a result dispute case to Constitutional Court?
- 2.3 What is the form of dispute resolution on the regional head election result without the enactment of the vote difference threshold?

## **3. Research Methods**

This research is a legal research that is a research conducted in order to find the dogma, theory, and principles on legal issues discussed. The approaches used are legislation approach, concept approach, case approach, and historical approach. The source of legal material consists of primary, secondary, and tertiary legal material sources.

#### 4. Discussion

The threshold of vote difference as a requirement to file a dispute over the results of the regional head election shall be regulated firstly in a Government Regulation in Lieu of Law. The regulation on the threshold of vote difference has been applied for judicial review to the Constitutional Court three times and has been decided by the Constitutional Court through decision number: 26/PUU-XIII/2015, 51/PUU-XIII/2015, and 73/PUU-XIII/2015. There are four reasons for the Constitutional Court to strengthen the enactment of the threshold of the vote. First, the Constitutional Court states that the enactment of the vote difference threshold is open legal policy. Open legal policy for the formation of Act which limits the number of cases of dispute over election result based on the threshold of vote difference is considered as a legal policy that is not contradictory to the human rights principle considering that not all restrictions are prohibited by the 1945 Constitution of the Republic of Indonesia. The Constitutional Court also considers that such restrictions are needed to provide legal certainty for the significance of the vote acquisition of the electoral candidates who receive the most votes. It is important according to the Constitutional Court in order to build a culture of readiness to accept defeat for all election candidate pairs because in practice, the petition for dispute over the result of the regional head election is submitted to the Constitutional Court not because of the violation but because the candidate pair of election candidates who apply is not ready to accept defeat or even think to bribe constitutional justices to grant their requests and defeat candidate pairs who gain the most vote.

However, the enactment of the vote difference threshold has implications for the dispute resolution process of the election result of regional head which is not in accordance with the objective. With the enactment of the vote difference threshold, the candidate pairs are divided into two categories. A prospective election candidate who meets the threshold of the vote may have the right to file a legal action while those who do not meet the threshold of the vote cannot file a legal action. From this, it can be concluded that the candidate pairs of election who do not meet the threshold of the vote difference cannot fight for their rights which are violated to the Constitutional Court when the judicial process in the Constitutional Court is a form of legal protection for the justice seekers who feel their rights are violated and through the process of the justice in the Constitutional Court, the justice and legal certainty for the settlement of dispute over the results of regional head election will be obtained so that if the case of dispute over the election result cannot be submitted or tried by the Constitutional Court because it does not meet the threshold of the vote difference, it is exactly the same as stating that the dispute case election results that do not meet threshold vote difference does not contain fraud or violation. It is certainly an improper logic because in the significant vote difference between candidates, it does not reflect that there is no violation. Vote differences between candidate pairs cannot necessarily be a measure that the election of regional head has been running democratic or not fraudulent.

Therefore, the limitation of disputes over the results of regional head elections through the enactment of vote difference threshold is not an exact formula because the violations in the regional head election cannot be measured from the significance of differences in the vote differences between candidates. In the significant vote difference between candidate pairs, it cannot be guaranteed that the candidate pairs who get the most votes and significant is obtained in a non-cheating way. The example is the vote difference in the election of the head of Mandailing Natal Region where the difference between the vote acquisition of candidates filing the petition with the candidate pairs who get the most votes above the threshold of the vote difference but the Constitutional Court decided that the acquisition of votes obtained by the candidate pairs with the vote most of which are obtained by fraudulent ways. The enactment of the the vote difference threshold should not be applied anymore to limit the number of cases of dispute over the results to be submitted to the Constitutional Court and as an alternative choice of dispute over the result of the regional head election after the non-voting threshold difference is applied in three ways: 1. Tried by other agencies before they are submitted or tried by the Constitutional Court. 2. Establishment of a special judicial institution that handles all kinds of problems in the implementation of regional head elections. 3. Establishment of Special Justice Board at the regional level.

##### *4.1 The Alternative of Being Adjudicated By Other Institutions First*

In case of dispute resolution result design of regional head election if percentage restriction is not applied anymore, hence there are some alternatives of procedural law that can be reached. First, that the case of dispute over election result of regional head that can be submitted to Special Judicial Board/Constitutional Court (BPK/MK) is a case disputes over the results that are actually indicated that there are violations that affect the election results. Therefore, allegations of violations affecting the election result as money politics and other cases must be proven by the other judicial institution first and rulings of the other judiciary board which is used as one of the conditions in order that the case can be filed to the Constitutional Court (MK). Thus, the case petitioned for dispute result is a strong indication that there is a violation therein. In addition, the dispute cases of the

proposed petition are only to postpone legal certainty for a winning candidate can be anticipated.

If the above alternative is selected, then: (i). There should be strong arguments and legal grounds for stating that the case is not included in the Regional Head Election Result Dispute (PHPKada) qualification which is the absolute competence of Special Judicial Board/Constitutional Court (BPK/MK) even if it occurs during the voting period or at the time of vote counting. Among the arguments that can be filed is that such violations such as money politics or administration are not competence of the Special Judicial Board/Constitutional Court (BPK/MK). Special Judicial Board/Constitutional Court (BPK/MK) is a judicial institution which only has the authority to adjudicate cases of mere dispute over matters affecting the acquisition of election results but does not prove on material violations that affect the outcome. In this context, Special Judicial Board/Constitutional Court (BPK/MK) is positioned as an institution that will process or legitimize whether the General Election Board's decision on the acquisition of voting results has been based on legal facts that actually occur in the field and apart from all violations. Offenses such as money politics despite being a violation affecting the vote not be the realm of the Special Judicial Board/Constitutional Court (BPK/MK) because basically the violation is designed under the authority of the other judicial institution.

II. Judicial institutions that will adjudicate cases of money politics and other electoral violations should be judicial institutions that have the authority to prosecute material offenses such as money politics. In this case, it can still be done by the judiciary which since before the ballot has been given the authority to judge the violation namely Bawaslu (Election Supervisory Agency)-Police-Attorney-Court for Criminal cases. Bawaslu (Election Supervisory Agency)-PT (High Court)-MA (Supreme Court) for administrative violations.

If the choice remains to be given to such institutions, there must be a provision governing how the judicial process for violations affecting outcomes may proceed fairly and openly and with permanent legal force.

Fair and open in this context is that there should be as much effort as possible in terms of regulation and enforcement in respect of the settlement of the violation. So far, judicial institutions dealing with local election disputes tend to be regarded as failing or disappointing justice institutions for the people. It is proven when the authority to adjudicate disputes over regional head elections is still conducted by the Supreme Court (MA). Supreme Court (MA) rulings are deemed not to meet the element of justice and openness.

In addition to issues of openness and justice, if material violations affecting the Constitution will still be tried by an institution that has since been resolved to settle the dispute over the elections and is also related to the decision of the judiciary institution. The decision of the judiciary institution must be *inrucht* and may be followed or constituted as the basis of the decision of the Constitutional Court.

*Inrucht* or permanent legal force means that the decision of the institution is a decision that is final or cannot be taken yet another legal effort so that when the decision is made, the basis of a decision by the Court when trying the Regional Head Election Result Dispute (PHPKada) no longer cause polemic.

The lawfulness here must also have a binding meaning. That is, the judicial decision of judicial violations that affect the results must be *erga omnes* (Mas, 2017) which is actually used as the basis in deciding by the Special Judicial Board/Constitutional Court (BPK/MK) trial of Election Result Dispute (PHP) so that the verdict on violations that affect the results is linear with the result of dispute resolution issued by the Constitutional Court.

However, the meaning of binding the Supreme Court's decision on the basis of the decision to be issued by the Constitutional Court is very difficult to be realized. It is because it relates to the independence of each judicial institution. In the context of Indonesian constitutional law, each judicial institution in exercising judicial power is an independent and independent judiciary. That is, each judicial institution in adjudicating a case is not bound by any decision or legal process of other judicial institutions. It is certainly a problem in itself considering the decision of the Court may be different from the decision of the Supreme Court. For example, in the judicial process run by the Supreme Court, it is evident that the violations affecting the outcome are proven but in the court, the dispute result in the Constitutional Court is decided that there is no violation so the decision of the Constitutional Court reinforces the determination of the Election Commission. From here, it clearly looks strange. Then, the violation is materially proven but not formally proven.

Therefore, a regulation governing that the decision on violations affecting the outcome should be *erga omnes* or binding on decisions to be decided by other judicial institutions so that a rigorous judicial ruling takes place between the judiciary. On the other hand, this kind of arrangement can be regarded as an arrangement that makes the Constitutional Court as a seal institution only or merely conducts a formal justice process. This assumption may be justified but that does not mean denying the role of the Constitutional Court. Therefore, the authority to adjudicate disputes over election results is basically only the meaning of the authority to hear the acquisition of a

vote only or on the basis of mere counting. Conversely, if the Constitutional Court judges matters outside the vote then it will create the impression that the Constitutional Court has expanded its own authority.

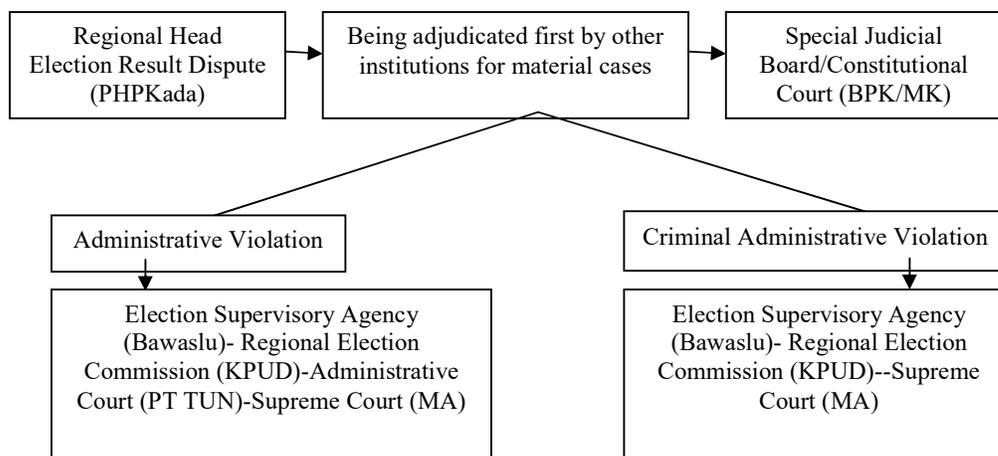


Figure 1. Description for the above figure. Regional Head Election Result Dispute (PHPKada) Resolution Flow by Other Institutions Prior to Special Judicial Board/Constitutional Court (BPK/MK)

#### 4.2 The Alternative through the Establishment of a Single Judicial Institution Prior to the Constitutional Court

Establishing a single judicial institution in the dispute resolution of the regional head election prior to submission to the Constitutional Court can be one of the options for limiting the submission of a petition for dispute over the results of the Regional Head Election to Special Judicial Board/Constitutional Court (BPK/MK) following the absence of article 158 of Law 10/2016 about Regional Head General Election. This sole judicial institution will adjudicate the dispute over the election of regional heads which affect the acquisition of a vote such as a structured, systematic, and massive violation with all kinds of actions. The presence of this new judicial institution can be positioned as a judicial institution of the ladder to the proceeds in the case of Special Judicial Board/Constitutional Court (BPK/MK).

The presence of a single judicial institution can prosecute all types of cases, both administrative and criminal cases. Only after the judicial process in this single judicial institution ends, it can be sorted out which cases can be submitted to Special Judicial Board/Constitutional Court (BPK/MK). Thus, not all cases can submit Election Result Dispute (PHP) to Special Judicial Board/Constitutional Court (BPK/MK). This mechanism is certainly wiser in the restriction of cases that can submit Election Result Dispute (PHP) to Special Judicial Board/Constitutional Court (BPK/MK) rather than the provisions of section 158 of Law 10/2016 about Regional Head General Election.

The selection of forming a single agency as the judiciary that will select the cases that can be proposed to Special Judicial Board/Constitutional Court (BPK/MK) or as a mechanism for limiting the case to be tried by the Special Judicial Board/Constitutional Court (BPK/MK) also can cut the judicial process of regional head election dispute that takes relatively a lot if cases that affect results remain to be made by the competent agency to adjudicate the dispute of regional head election (Pilkada) which emerged as a judicial process for electoral crimes and administrative disputes. The judicial process by more than one judicial institution will surely make the judicial process take time. In addition, the number of judicial institutions involved can also make the judicial process not fast, simple and not costly and ignore the nature of the problems in the implementation of regional head elections are interconnected with each other.

In contrast, with the establishment of a single judicial institution, the judicial process in a material verification of cases affecting the election result will speed up the judicial process and be costly because the whole matter is tried by a judicial institution and the verdict is not mutually exclusive overlap.

The effort to realize a single judicial institution will certainly have its own dilemma. On the other hand, in establishing a single judicial institution, absolutely the thing that shall be considered is the competence of the judicial institution, especially its absolute competence. The absolute competence of the single judicial institution has the potential to experience conflict of authority among other judicial institutions. It is because the authority

to be exercised by a single judicial institution is essentially the authority of the existing judicial institution and is given the authority to adjudicate the same case with the authority of the single judicial institution. For example, the authority to adjudicate violations related to the structured, systematic, and massive violations is a criminal case. Hence, the criminal case is the authority of Election Supervisory Agency (Bawaslu), and then Cassation is sent to the Supreme Court (MA). When referring to this authority, the authority to adjudicate criminal cases remains the competence of the Supreme Court- Election Supervisory Agency (Bawaslu), not by a single judicial institution. If it is done by a single judicial institution, it will automatically lead to a conflict of authority and present a dispute over the authority of the state institution. Election Supervisory Agency (Bawaslu)-Supreme Court (MA) will dispute authority with a single judicial institution. On the potential of this issue, the effort to establish a single judicial institution is difficult to be realized. Moreover, the establishment of a new judicial institution tends to cause new problems rather than become the solution to the existing problems.

From the above conditions, there are two options, namely if a single judicial institution still want to be established, then the existing institutions with the same authority can still be maintained with the condition that restrictions on the use of authority based on time are there such as criminal offenses and violations of electoral administration that occur since and after the voting period is no longer the authority of Election Supervisory Agency (Bawaslu)-Supreme Court (MA) or Election Supervisory Agency (Bawaslu)-Administrative Court (PT TUN)-Supreme Court (MA) but has become the domain of the single judicial institution's power to be established. By this time limitation, the judicial institutions which previously have the authority to adjudicate the issues contained in the local elections can understand its authorities that the cases that become their absolute competence (Election Supervisory Agency (Bawaslu)-Administrative Court (PT TUN)-Supreme Court (MA)) is the case that occurs before the time of vote collection or their limitation to adjudicate is only until the voting period. This time-based limitation model has actually been done in the provisions of Law 10/2016 on Regional Head General Election (Pilkada). In the event of a violation of the Electoral Administration as regulated in article 135A of Law 10/2016 on Regional Head Election, the judicial process for the violation is stipulated that the decision on such administrative violation shall be followed up if not less than 30 (thirty) days from the time of voting. This kind of thing is not only in administrative violations. In the case of administrative election (STUN-P), it is also stipulated that the Supreme Court's decision regarding the STUN-P appeals shall be acted upon if the decision is not less than 30 days from the time of the voting (Article 154 paragraph (12) of Law 10 of 2016 on Regional General Election).

Another option that can be taken if one wants to attend a single judicial institution in a dispute over the results of the election of regional heads for all violations that occur before and until the determination of the election results can also be done by maintaining the institutions that have been formed and do not need to establish a new institution. The establishment of new judicial institutions tends to create new problems such as authority conflicts and ignore the principles of effectiveness and efficiency of new institutions.

If it does not want to establish a new judicial institution, it is enough to give all the authority to adjudicate all disputes on the results of the election of regional heads prior to the Special Judicial Board/Constitutional Court (BPK/MK) to the existing judicial institutions and have the authority to adjudicate elections such as Administrative Court (PTUN)-Supreme Court (MA) or Election Supervisory Agency (Bawaslu). It is certainly an easier option to do because the institutions that will be given the authority have institutional infrastructure and only manage their human resources.

Submission of authority to the institution is enough through the amendment of law. With the transfer of authority through the law, the existing judicial institution may be the sole institution which has the authority to adjudicate all cases in the election of regional heads from before and until the counting of the election results before being tried in the Constitutional Court. Submission of authority through the regulation of the law is the delivery of attribution (Law Number 30 of 2014 on Government Administration) on an institution so that the institution concerned becomes the legal institution/agency to adjudicate the elections since voting up to the determination of the results. It is important to anticipate the polemic of authority issues between the judiciary elections simultaneously.

The problem that may arise if the authority is submitted to a judicial institution that has been formed is the nature of the institution that will receive or implement the authority. In Indonesia, the judiciary is formed by the separation of one judicial institution from each other and each institution is formed with different authority character from each other. For example, the State Administrative Court (Administrative Court) is a judicial institution established to adjudicate election state administration disputes. The authority of this institution is the trial of state administrative dispute between the candidate pairs and the election commission, while the cases such as the crime of elections are conducted by the District Court so that if the election problem since before the

voting to the voting is tried by one of the institutions either the State Administrative Court or the District Court, the question of whether one of these institutions is competent to handle it will appear. If, for example, it is given to the Administrative Court, then the problem arises as to whether the Administrative Court (PTUN) judges a case that contains a criminal element. Conversely, if submitted to the District Court (PN), is PN appropriate to adjudicate administrative cases. It is where the crucial problems lie, this condition clearly complicates the handover to a judicial institution to adjudicate the problems in the implementation of elections that occur before the voting period until the determination of vote acquisition or before entering the realm of disputes to Special Judicial Board/Constitutional Court (BPK/MK) results.

From the aforementioned problems, it is actually the reason that it is not possible for the authority to try it into a single judicial institution because the character of the judiciary in Indonesia is separated in accordance with their respective competencies need not be mentioned because when the transfer of authority is regulated by law, then the institution of the single court becomes lawful because the basis of the work of an institution including the judiciary depends on its authority. Therefore, there is no activity without authority. While, the argumentation of the problem on the ability of each judicial institution can be anticipated because although the Indonesian judiciary is separated, but its form is like a triangle that culminates at the top of the judiciary in Indonesia (Supreme Court). It means that although the Administrative Court (PTUN) and District Court (PN) are separated institutionally for the regional and provincial levels, but it still leads to Supreme Court (MA) and juridically the presence of the State Administrative Court and District Court (PN) is a judicial institution within Supreme Court (MA) (Article 24 paragraph (2) of the 1945 Constitution of the Republic of Indonesia). Thus, when the authority to adjudicate the case of the regional head election from the time of the voting to the determination of vote acquisition by the Regional Election Commission or before being taken to Regional Head Election Result Dispute (PHPKada) in the Special Judicial Board/Constitutional Court (BPK/MK) submitted to the agency of either the Administrative Court or District Court/High Court (PT), then the problems of character competence of the judiciary can be anticipated because when adjudicating these cases, penal of judges that will be formed may be comprised of panel of judges composition is composed of between the judges of the State Administrative Court and the District Court (PN). It is the solution and is possible in law. Moreover, in Indonesia, this merger model is applied to types of legal cases or disputes such as the connectivity justice system. The Constitutional Justice is a judicial system on suspected coup makers of inclusion between civilians and military personnel. In other words, it may also be said that the courts between those who are subject to the jurisdiction of the general and judicial courts of military (Hamzah, 2002; Subekti and Tjitrosoedibio, 1993).

The model can be adopted in the electoral justice system to adjudicate the cases that arose from before the voting period until the determination of the election results obtained by the Election Commission. This argument is built not only from the nature of the problems in Regional Head Election (Pilkada) simultaneously which is interrelated each other. This step is far more effective because the merger of the judges' judicial composition is not permanent but tentative. It depends on every case filed or appearing. This case is only a technical issue that can be managed alone in the internal Supreme Court (MA).

At the same time, the deadline for submission and completion of Election Result Dispute (PHP) must be changed. If the substantiation of a violation allegedly affecting the vote acquisition will be judged by another institution (whether single or not), then the completion period of the proposed Election Result Dispute (PHP) taking 3x24 hours and 45 days settlement period shall be amended and adjusted to the legal process of the other institution. If it still imposes a time limitation of three days from the time of determination by the Election Commission, then it will automatically make all cases to be taken out of court to the Constitutional Court. At this level, the time of submission of Election Result Dispute (PHP) to the Constitutional Court is 3 days after the verdict of the judicial institution that adjudicates the material case affecting the vote. Certainly, this option will have implications on the process of completion of Regional Head Election Result Dispute (PHPKada) in Special Judicial Board/Constitutional Court (BPK/MK) that can run backwards and potentially disrupt the turnover cycle of the regional head.

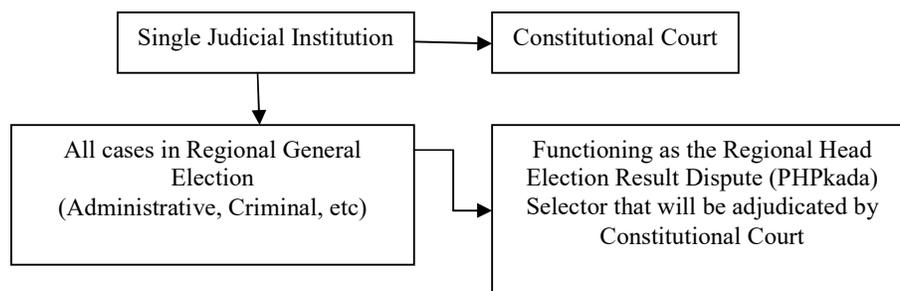


Figure 2. Election Result Dispute (PHP) Resolution Flow by Establishing a Single Judicial Institution

#### 4.3 The Alternative through the Establishment of a Provincial Justice Board

If the provision of Article 158 of Law 10/2016 on Regional Head Election is no longer applied as a formal requirement to submit a dispute over the result of Regional Head Election to Special Judicial Board/Constitutional Court (BPK/MK), then the alternative way to filter Election Result Dispute (PHP) submitted in order to not only to postpone legal certainty and only fulfill political desire of participants who are not ready to receive defeat so as to make the case in Special Judicial Board/Constitutional Court (BPK/MK) accumulates, then the alternative choice that can be reached is by the establishment of Special Judiciary Agency at Regional Level.

The above idea is an alternative reason to choose. Because, when the limitation of vote difference is no longer applied, then automatically all dispute result of Regional Head Election (Pilkada) can be submitted to Special Judicial Board/Constitutional Court (BPK/MK). It will certainly have implications for the amount of Regional Head Election Result Dispute (PHPKada) to be tried by Special Judicial Board/Constitutional Court (BPK/MK). The amount of Regional Head Election Result Dispute (PHPKada) potentially submitted will make the Special Judicial Board/Constitutional Court (BPK/MK) must handle Regional Head Election Result Dispute (PHPKada) highly unlikely to run optimally if the number of judges in the Special Judicial Board/Constitutional Court (BPK/MK) only slightly or institutions that have authority to adjudicate Regional Head Election Result Dispute (PHPKada) only in a single judicial institution throughout Indonesia. It is certainly not effective because in a relatively short time and the burden of the case to be cut in numbers, it will make the judicial process impossible to find the material truth as the basis of the judge's decision.

As a precaution to face the potential of significant amount of Regional Head Election (Pilkada) in the implementation of elections simultaneously, the presence of Special Judicial Board (BPK) which will become a judicial institution that adjudicates Regional Head Election Result Dispute (PHPKada) can be formed not only one institution and located at the central level alone. Furthermore, the Special Judicial Board can be established at the regional level so that the amount of Regional Head Election Result Dispute (PHPKada) that will be handled by Special Judicial Board (BPK) can be divided proportionally. That is, the number of cases to be handled is balanced with the ability of the Special Judicial Board (BPK) within the specified time limit.

The Special Judicial Board (BPK) is established only in the provincial level so that the Special Judicial Board (BPK) institutions are at the central level and at the Provincial level. The choice to establish a Special Judicial Board (BPK) only at the provincial level only is based on the consideration that the presence of Special Judicial Board (BPK) is established at the regional level in order to provide a solution to resolve the dispute over cases and prevent potential new cases arising from the establishment of the Special Judicial Board (BPK) at the local level. Where, in the previous chapter, the formation of regional level of Special Judicial Board (BPK) up to the district and municipal levels can cause problems at the level of efficiency.

However, with only the establishment of the Special Judicial Board (BPK) at the provincial level, the efficiency aspect can be minimized and reduced. Special Judicial Board (BPK) at the provincial level can make the Election Result Dispute Resolution process much more effective than just being solved by Special Judicial Board (BPK) based only at the central level. With the establishment of a Special Judicial Board (BPK) at the regional level, then the settlement of Regional Head Election Result Dispute (PHPKada) can be split in two procedural laws based on region.

The Special Judicial Board (BPK) of the Republic of Indonesia is only authorized to adjudicate the case of the Provincial Office while the Provincial Special Judicial Board (BPK) is authorized to adjudicate Election Result Dispute (PHP) in the district/city. This division of authority is certainly an authority with the principle of equilibrium, that is, the number of cases to be tried by each Special Judicial Board (BPK) in accordance with the institutional capacity of Special Judicial Board (BPK). Thus, the maximum Special Judicial Board (BPK) of the Republic of Indonesia will prosecute 33 Election Result Dispute (PHP) at the same time while the provincial Special Judicial Board (BPK) in each province will adjudicate different Regional Head Election Result Dispute (PHPKada) but still in the amount that is still in accordance with the institutional capacity of the provincial Special Judicial Board (BPK).

With the pattern of division like this, then Special Judicial Board (BPK) of the Republic of Indonesia will not be in a hurry and accept the burden of many cases as well as the provincial Special Judicial Board (BPK) also will not have so many burden cases that will be tried. In addition, with the establishment of a provincial level Special Judicial Board (BPK), it will facilitate the judicial process for the parties, especially in Regional Head Election Result Dispute (PHPKada) in district/city. Parties who are people from the regions do not need to come to Jakarta for the process of Election Result Dispute (PHP) so that it will facilitate the parties in the region in gaining justice access.

The procedural law of Election Result Dispute (PHP) should also be adjusted to the establishment of a Special Judicial Board (BPK) at the provincial level, the most important dispute resolution settlement law to be corrected is related to the nature of the decision between Special Judicial Board (BPK) of the Republic of Indonesia and the provincial Special Judicial Board (BPK). The nature of the decision of the provincial Special Judicial Board (BPK) should be final and binding upon the Election Result Dispute (PHP) who is on trial. It is applied because Regional Head Election Result Dispute (PHPKada) is a type of case that must immediately get legal certainty. As a consequence of the nature of the final and binding decision of the provincial Special Judicial Board (BPK) is that such a decision cannot be filed another remedy. In this context, the logic applicable in the general justice system within the Supreme Court (MA) cannot be equated with the relationship between Special Judicial Board (BPK) of the Republic of Indonesia and the provincial Special Judicial Board (BPK), whereas one of the parties cannot accept the decision of the provincial Special Judicial Board (BPK) and may be given an opportunity to file an appeal to Special Judicial Board (BPK) of the Republic of Indonesia because the provincial Special Judicial Board (BPK) is the representative of Special Judicial Board (BPK) of the Republic of Indonesia at the provincial level so that Special Judicial Board (BPK) of the Republic of Indonesia can assess/re-define the decision of provincial Special Judicial Board (BPK) through appeal forum.

The relationship between Special Judicial Board (BPK) of the Republic of Indonesia and provincial Special Judicial Board (BPK) is merely an administrative and work governance institution, whereas related to the law of the event of Election Result Dispute (PHP) reconciliation; it can be made separately or has no relationship. It means that in prosecuting Regional Head Election Result Dispute (PHPKada) in district or city, provincial Special Judicial Board (BPK) is independent. It can be equalized with several cases in the general judicial process that cannot be filed namely:

- a. The verdict about pre-trial;
- b. Criminal matters which are punishable by imprisonment of a maximum of 1 (one) year and / or being sentenced to criminal fine;
- c. State administrative cases where the object of the lawsuit is a decision of a local authority whose decision range is applicable in the territory of the region concerned. (This provision does not include the decision of the state administrative officer from the authority not granted to the region in accordance with the laws and regulations) (Article 45 A of the Republic of Indonesia Law no.5 of 2004 on Amendment to Law Number 14 of 1985 regarding Supreme Court).

The choice of procedural law as above is a choice of procedural law that can be enforced if explicitly determined in the Election Law changes. The choice to make the judicial process in the provincial Special Judicial Board (BPK) as the first and the last trial process of Regional Head Election Result Dispute (PHPKada) in district or city is also to equate with the nature of the decision of the judicial process on the nature of the decision of the Special Judicial Board (BPK) of the Republic of Indonesia in trying Election Result Dispute (PHP) or provincial governor election where only one judicial process is there. It would be very strange if in the judicial process of regency or city elections, it recognizes the two-tier court system while the provincial level does not. From here, the dispute resolution system of election results will be in two different systems whereas the nature of the problems of the provincial and regency/city elections is same i.e. with regard to disputes over cases affecting the

acquisition of the vote results.

If the choice to establish a Special Judicial Board (BPK) up to every province in Indonesia is considered inefficient as it is impossible for one hundred percent of the districts to propose Election Result Dispute (PHP), the choice to establish a Special Judicial Board (BPK) may replicate the State Administrative High Court (PT TUN) which does not have to be in all provinces in Indonesia. State Administrative High Court (PT TUN) is only located in 4 provinces (PT TUN of Medan, PT TUN of Jakarta, PT TUN of Surabaya, PT TUN of Makasar) for all of Indonesians but the relative competence of the four State Administrative High Courts (PT TUN) covering the entire region of Indonesia. The model applied in the formation of State Administrative High Court (PT TUN) is one of the considerations in the establishment of Special Judicial Board (BPK) because the model adopted by State Administrative High Court (PT TUN) will reduce the proliferation of the number of Special Judicial Board (BPK) while the amount of Regional Head Election Result Dispute (PHPKada) that will be submitted cannot be ascertained in each region.

The choice of distribution of Special Judicial Board (BPK) that will be established if it will not be established in all provinces in Indonesia, then the establishment of Special Judicial Board (BPK) in the four provinces can be equated with State Administrative High Court (PT TUN) both regarding where it will be placed at once and its relative competence.

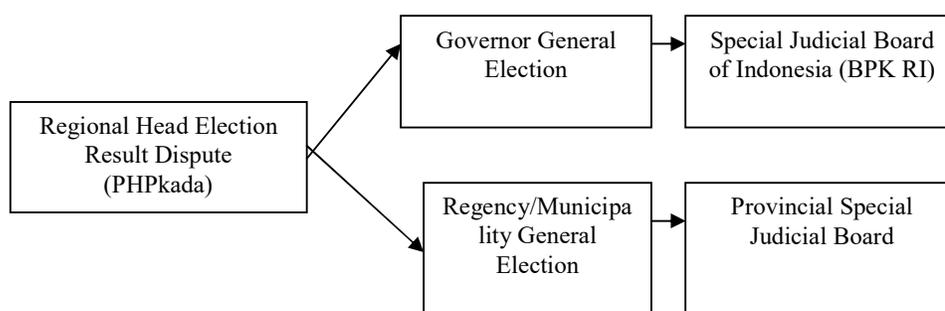


Figure 3. Election Result Dispute (PHP) Resolution Flow with Provincial Special Judicial Board (BPK) Establishment

## 5. Conclusion

The arrangement of the vote difference threshold as a condition to file a dispute over the results of the regional head election to the Constitutional Court (MK) is in order to ensure that the number of dispute cases that must be tried by the Constitutional Court are in accordance with the ability of the Constitutional Court and to build a culture of readiness to lose for each candidate pairs. However, the enactment of the threshold of the vote has resulted in the implication of a process of dispute resolution of election results which is not in accordance with the principle of dispute resolution in general where the rights of electoral candidates who feel disadvantaged are neglected or do not get guaranteed legal protection from the state. Therefore, the enactment of the vote difference threshold should be removed or may no longer be applied. In addition, the process of dispute resolution result of regional head election without the enactment of vote difference threshold can be reached through: 1. Tried by other agencies before they are submitted or tried by the Constitutional Court. 2. Establishment of a special judicial institution that handles all kinds of cases in the implementation of regional head elections. 3. Establishment of Special Justice Board at the regional area.

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