

Rasio Decidendi Constitutional Court Ruling Resolving Disputes in Regional Head Election Results 2015 Concurrent in East Java Indonesia

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Abstract

This research seeks to analyze and find rasio decidendi Constitutional Court Decision Resolving Disputes in Regional Head Election Results Live, especially in East Java. There are three legal issues raised, namely: (1) rasio decidendi Constitutional Court decisions; (2) The applicant juridical arguments and the Constitutional Court; and (3) Implications of Constitutional Court decisions. This research method using legal research methods to approach concepts, the normative approach and the approach of the case. The study found that rasio decidendi Constitutional Court Decision Resolving Disputes in Regional Head Election Results Live in East Java, based on a cumulative requirement for the applicant to be able to apply for cases of disputes the determination of votes on election refers to Law No.8 / 2015 on the election of Governors, Regents and Mayors, which rests on four (4) terms, namely; (I) the deadline for filing the petition; (Ii) the applicant's legal standing; (Iii) related to the object of the petition, namely Determination of acquisition results of vote counting in the Election; and (iv) limit the percentage of the difference of votes that absolutely must be met by the applicant. However, in cumulative terms, which became an important point is the percentage limitation on the difference of votes that absolutely must be met for the applicant, which refers to the provisions of Article Article 158 paragraph (2) of Law No. 8/2015, because most of the decision of the Court is relying on the provisions of Article 158 paragraph (2) of Law No.8 / Year 2015, without considering other aspects, such as fraud during the Election Day. Thus, if the request for the applicant does not qualify as specified in Article 158 paragraph (2) of Law No. 8/2015 and Article 6 MPK 1/2015, the request was rejected by the Constitutional Court. Decision of the Court in deciding the case of disputes dispute Election results are final and binding. The implication is rejected the disputed results of local elections Directly in three (3) locations, and reinforces the Regional Commission Decision which sets Sound Acquisition and Results of Election of Regent and Vice Regent of 2015.

Keywords: Rasio Decidendi, Decision MK, Dispute Election Results

Introduction

Pemilukada essentially regarded as an expression of democratic practice most perfect, because with direct local elections is expected to bring prospective leaders are known and closer to the people. Theoretically certainly Election immediately provide a very broad space for people to participate actively in determining public officials in their respective regions.

Implementation of Election held under Law No. 8 2015 on the Amendment of Law No. 1 of 2015 on Stipulation of Government Regulation in Lieu of Law No. 1 Year 2014 regarding the Election of Governors, Regents and Mayors into law. Article 157 paragraph (1), paragraph (2), and paragraph (3) of Law No. 8 2015 states: "Matters of disputes Election results examined and tried by a special judicial body". Special judicial bodies referred to in paragraph (1) is formed prior to the implementation of the national Electoral simultaneously. Case disputes the determination of votes on Election examined and tried by the Constitutional Court until the establishment of a special judicial body. When referring to the provisions of Article 157 paragraph (3) of Law No. 8 in 2015, then Case disputes the determination of votes on Election examined by the Court prior to the formation of a special court.

Pemilukada case is a dispute between the pair of candidates Regional Head / Deputy Head of the region to the Provincial Election Commission, or District/ City Election Commission regarding the determination of votes on the General Election. While the object of the election is the vote count results stipulated by the Provincial/District/City Election Commission are responsible: (i) the determination of candidates who can follow the second round of the General Election; or (ii) election of pair of candidates for regional head and deputy regional head. In addition, the Election process affecting voting for the candidate pair Election violations were systematic, structured, and massive performed before, during, and after voting.

Method

Legal research by Morris L. Cohen (1992: 1) as cited again by Peter Mahmud Marzuki (2005: 29), namely legal research is the process of finding the law that governs activities in human society. In this study, using the approach to the concept, approach to legislation and case approach. In this study, the concept approach is used to find an idea or ideas that will produce the concept of ratio decidendi of the decision of the Constitutional Court.

Normative approach or commonly known as the approach of the legislation, namely the approach taken to analyze all laws and regulations pertaining to the main issue, namely dispute over local elections directly. While the approach that is used to analyze the case and find the ratio decidendi of the decision of the Constitutional Court in resolving the dispute over the results of local elections directly.

Results and Discussion

Ratio decidendi is a Latin term that is often translated literally as "the reasons for the decision". Kusumadi Pudjosewojo (1976) defines as the true factors, material fact, the factors that actually lead to the decision essential so that.¹ Understanding the ratio decidendi or deliberations of the judge is the argument / reason judges are used by judges as legal considerations which form the basis before deciding the case. In this study the ratio decidendi in question is essential factors that made the Constitutional Court in memutusa dispute election results, especially in East Java.

The results of the study informed that the Constitutional Court's decision in Case Dispute Election Results Regent and Vice Regent in Jember, Malang and Sumenep, ratio decidendi her based on the terms of cumulative for the applicant to be able to apply for cases of disputes the determination of votes on the election that refer in Law No.8 / 2015 on Election of Governor / Regent / Mayor, namely; (1) The deadline for filing the petition (vide Article 157 paragraph (5) of Law 8/2015); 2) the parties are eligible to apply (legal standing) (vide Article 158 of Law 8/2015); (3) cases of disputes referred to in the Election Law of Governors, Regents and Mayors is the case of dispute the determination of the acquisition of the vote count results in Elections (vide Article 157 paragraph (3) and (4) of Law 8/2015; and (4) The provision regarding limitation of the percentage of the difference of votes that absolutely must be met when the parties in casu participating governors, regents and mayors to apply for cancellation of the determination of the calculation results sura, both for participants election of governor and deputy governors, regents and deputy regents, as well as the mayor and deputy mayor (vide Article 158 paragraph (1) and (2) of Law 8/2015).² Court arguments on the application of cumulative terms over depart from philosophy, where the Law No.8 / 2015 contained the legal function as a means of social engineering (law as a tool of social engineering), namely that the law serves to reform society from a state towards a desired.

Therefore, the Constitutional Court eventually rejected the request because the applicant does not meet the provisions of Article 158 of Law No.8 / 2015 and Article 6 PMK No. 1-5 / 2015. Article 158 paragraph (1) of Law No. 8/2015 states: Participants election of Governor and Deputy Governors may apply for the cancellation of the establishment of vote counting results with the following provisions:

- a. Province with a population of up to 2,000,000 (two million) people, filing disputes the vote be done if there is a difference at most 2% (two percent) of the determination of the vote counting results by the Provincial Election Commission;
- b. Province with a population of more than 2,000,000 (two million) of up to 6,000,000 (six million), the filing disputes the vote be done if there is a difference at most equal to 1.5% (one point five percent) of the determination of the vote counting results by the Provincial Election Commission;
- c. Province with a population of more than 6,000,000 (six million) to 12,000,000 (twelve million) people, filing disputes the vote be done if there is a difference at most 1% (one percent) of the determination of the vote counting results by the Provincial Election Commission; and
- d. Province with a population of more than 12,000,000 (twelve million) people, filing disputes the vote be done if there is a difference at most 0.5% (zero point five percent) of the determination of the calculation results of the vote by the Provincial Election Commission.

While Article 158 paragraph (2) of Law No. 8/2015 states: Participants Election of Regent and Vice Regent and the Mayor and Deputy Mayor may apply for the cancellation of the determination of the vote counting results with the following provisions:³

- a. Regency / City with a population of up to 250,000 (two hundred and fifty thousand), the submission of a dispute the vote be done if there is a difference at most 2% (two percent) of the determination of the vote counting results by Regency / City Election Commission;
- b. Regency / City with a population of up to 250,000 (two hundred and fifty thousand) to 500,000 (five hundred thousand), the submission of a dispute the vote be done if there is a difference at most equal to 1.5% (one point five percent) of the establishment the results of the counting of votes by Regency / City Election Commission;
- c. Regency / City with a population of up to 500,000 (five hundred thousand) of up to 1,000,000 (one million) people, filing disputes the vote be done if there is a difference at most 1% (one percent) of the

¹ Majalah *Konstitusi* No.48-Januari 2011.

² See Decision MK Number 140/PHP.BUP-XIV/2016, *h. 36*.

³ See also Article 6 PMK No.1/2015.

- determination of the vote counting results by Regency / City Election Commission; and
- d. Regency / City with a population of more than 1,000,000 (one million) people, filing disputes the vote be done if there is a difference at most 0.5% (zero point five percent) of the determination of the vote counting results by Regency / City Election Commission.

Rasio decidendi Constitutional Court Decision In Resolving Disputes Election Results of Regional Head Live, especially in East Java, based on a cumulative requirement for the applicant to be able to apply for cases of disputes the determination of votes on election refers to Law No.8 / 2015 on the election of Governor, regents, Mayors, revolves around the four (4) terms, namely; (1) The deadline for filing the petition; (2) the legal standing of the applicant; (3) associated with the object of the petition, namely Determination of acquisition results of vote counting in the Election; and (4) limit the percentage of the difference of votes that absolutely must be met by the applicant.

First, the grace period (expiration) is the deadline in the filing of the petition, Article 74 paragraph (3) of the Constitutional Court stated that the petition can only be filed within a period of at least 3 x 24 hours (three times twenty-four) hours since the Commission announced the establishment Election results. Related to the upcoming elections, under Article 157 paragraph (5) of Law No. 8 of 2015 which states: Participant Selection apply to the Constitutional Court referred to in paragraph (4) a maximum of 3 x 24 (three times twenty four) hours since announced the establishment of the acquisition Election results sound by Provincial Election Commission and Regency/City Election Commission.

Article 157 paragraph (7) of Law No. 8 of 2015 also confirms In the event of submission of the application referred to in paragraph (5) are incomplete, the applicant can improve and complete the application for a maximum of 3 x 24 (three times twenty four) hours of receipt of the request by Constitutional Court. This is also confirmed in the provisions of Article 5 (1) of PMK No. 1 of 2015, the deadline for filing application for cancellation of the determination of votes on the election of Governor / Regent / Mayor, no later than 3x24 (three times twenty-four) hours from the Respondent announcement of the vote results. (Article 5 (1) PMK 1/2015). Petition melewati the time limit can not be registered in the Constitutional Case Register in the Constitutional Court. In fact, Article 157 paragraph (8) of Law No. 8 of 2015 confirms Constitutional Court judge disputes dispute Election results longest 45 (forty five) days of receipt of the request.

When linked with the deadline for filing the petition in the implementation of the elections in the district of Jember, the Constitutional Court assesses still within the deadline for filing the petition, because it was based on the applicant's submission Act No. 69 / PAN.MK / 2015.¹ so also with the submission of application in the implementation of the elections in the district of Malang, the Constitutional Court assesses still within the deadline for filing the petition, as recorded by deed of submission of application the applicant No. 31 / PAN.MK / 2015. The same condition also occurs in the submission in the implementation of the elections in Sumenep, the Constitutional Court assesses still within the deadline for filing the petition, based on the applicant's certificate of submission of application No. 50 / PAN.MK / 2015,² so the third petition filing dispute election results in three districts are to be accepted by the Court since the complaint registration period is still within the time limit stipulated by the Act and the Regulations of the Court.

Second, the legal status (legal standing) applicant. Legal standing by Harjono (2008: 176) is a state in which a person or a party is determined eligible and therefore has the right to apply for settlement of disputes or disputes or cases before the Constitutional Court. Applicants who do not have legal status (legal standing) will accept the decision of the Court which states the petition can not be accepted (niet ontvankelijk verklaard).³ Legal standing includes the formal requirements as specified in the Act, and material requirements are constitutional rights and / or authorities with the enactment of Law petitioned, or in the context of the dispute over the results of the elections, then the applicant is a candidate for governor, regents and mayors.

Election results in the context of the dispute, the applicant is a pair candidate Regional Head and Deputy Head of Region, after the decision of the Court No.196-197-198 / PHPU.D-VIII / 2010, the court handed a legal status (legal standing) would be candidates to head regional and deputy regional head who has been treated unfairly by the defendant, so that would be candidates of the constitutional right to be a couple of candidates in the General Election.⁴ Beyond a couple Candidates Head and deputy head of the region does not have the legal standing to file the petition sengketa election results.

When linked with the three Election, then in the context of the General Election in Jember, applicants

¹ See Decision MK No 140/PHP.BUP-XIV/2016 dalam Perkara Perselisihan Hasil Pemilihan Bupati, dan Wakil Bupati Kabupaten Jember, h.44.

² See Decision MK No 135/PHP.BUP-XIV/2016 dalam Perkara Perselisihan Hasil Pemilihan Bupati, dan Wakil Bupati Kabupaten Sumenep, h.236.

³ Hukum Acara Mahkamah Konstitusi, Sekretaris Jenderal dan Kepaniteraan MK RI, Jakarta, 2010, h. 98.

⁴ Maria Farida, *Sengketa Pemilikada, Putusan-Putusan Mahkamah Konstitusi*, dan Pelaksanaan Putusan Mahkamah Konstitusi, dalam *Evaluasi Pemilikada, Op.Cit*, h. 76-78.

choose a legal position as an applicant because the applicant is a spouse Candidate Regent and Vice Regent Jember stipulated by decree Tender Jember Number: 809 / KPTS / KPU-Kab-014.329713 / PBLBU / 2015 on the establishment Counting of votes and results of Election of Regent and Vice Regent of Jember in 2015. so also in the case of the General Election in Malang, filed by the candidate pair Regent and Vice Regent 2015 established under Decision Malang Regency, No. 275 /Kpts/KPU-Kab-014.329781/2015, on Stipulation Number and where-name Candidate Regent and Vice Regent in 2015.

Election Sumenep applicant for a candidate for Regent and Vice Regent Sumenep 2015 set by KPU Decree No. 359/KPU-Kab-014.329908/VIII/2015 concerning the establishment Candidate Regent and Vice Regent Sumenep become participants Election dated August 3, 2015.¹

Third, related to the applicant's argument, it is closely related to the object of the petition. Article 157 paragraph (4) of Act 8 of 2015 states: Election Participants may apply for the cancellation of the determination of the vote count results by Provincial and Regency / Municipality to the Constitutional Court. Article 4 of PMK No. 1 in 2015 on the guidelines for the hearing of litigants dispute election results Governors, Regents and Mayors, said that the object in the case of dispute the election results is the Decision of the Respondent on the determination of votes on election affecting the election of pair Candidates for Governor / Regent / Mayor. Thus, the applicant is objectum litis the objection to the vote count results of local elections set by the Election Commission.

In this context, then the arguments of the applicant to be very important, with the extent to which the applicant is able to put forward arguments, both legally and facts in the field related to objectum litis, of course with the evidence and the evidence that supports it, such as the minutes and a copy of the announcement and counting the results of the local elections. Article 157 paragraph (6) of Law No. 8/2015, states: Submission of application referred to in paragraph (5) include evidence and KPU Decree Provincial and Regency / City on the results of vote count recapitulation. Additionally, evidence and other written documents can also be included, such as reports of violations of the elections to the Election Supervisory Body.

In the case of a request dispute Election in Jember, arguments applicant described in the petition, there are at least three (3) reasons that serve as the basis to apply the disputed election results to the Constitutional Court, namely: (1) take action intentionally done by the election organizers (Pantarlih) who do not share the C6 Form letters to voters who are in the voter base Paslon No. 1 is massive in almost all districts; (2) there has been a money politics in more than 16 sub-districts in Jember; and (3) occur DPT problematic as many as 88 675, where as many as 2,302 voters has a double NIK, and as many as 21 653 voters have the address and the same birth date, and 14 720 voters have NIK invalid.²

When we look at the first and second reason is the realm of administrative violations, related to the election organizers, both neutrality and professionalism. In the context of the first reason, which the applicant has happened deeds convey deliberately done by the election organizers (Pantarlih) who do not share the C6 Form letters to voters who are in the voter base Paslon No. 1 is massive in nearly all districts. Form C6 was a letter of invitation to the polls submitted by polling station officials, but unfortunately the applicant does not describe in more detail the efforts polling station officials for failing to submit a letter to the invitation, because it must be proved anyone of voters who are in the voter base Applicants who massively happened in almost all districts. If the allegations were not accompanied by sufficient evidence, then it is only a presumption without proven by several witnesses and evidence in support.

While DPT problems related reasons, should it have been confirmed at the stage of determination of DPT are based on Law No. 8/2015 must involve his campaign team and through a long process. When referring to the provisions of Article 58 of Law No. 8 of 2015 which determines that: (1) List of Potential Voters Election of the Department of Population and Civil Registration Regency/City which has been consolidated, verified, and validated by the Minister be used as the material composing the list Voters for Election ; (2) The Voter Register referred to in paragraph (1) by PPS upgraded accordingly based on the improvement of neighborhoods, neighborhoods, or other terms and additional voters who have met the requirements as Voters no later than three (3) days of receipt of the result of the consolidation, verification and validation. (3) The results of updating the voters list referred to in paragraph (2) shall be presented to the CO to do recapitulation Voters list PPK level; (4) Summary of the list Voters results of updating referred to in paragraph (3) submitted by the CO to the Regency/City KPU no later than three (3) days after completion of the updates to be done recapitulation list Voters district/city level, which is then set as the Temporary Voter List, (5) Temporary Voter List as referred to in paragraph (4) announced widely and through bulletin boards and harmonious neighborhood residents or other designation by the PPS to obtain input and feedback from the public for 10 (ten) days. (6) PPS improve the Temporary Voter List is based on input and feedback from the public not later than five (5) days after the input and feedback from the public referred to in paragraph (4) ends. The provisions of Article 58 of Law No. 8 of

¹ See Decision MK Nomor 135/PHP.BUP-XIV/2016, h.4.

² See Decision MK Nomor 140/PHP.BUP-XIV/2016, h. 6.

2015, has been set up in more detail how the process of preparation of the preliminary voters list (DPS) until the establishment of the final voters list (DPT).

Moreover, if we look, the applicant's argument in the petition does not describe in more detail the shape of the violation, which is accompanied by evidence. Especially the claims of the applicant has occurred politics money in more than 16 sub-districts in Jember, but unfortunately the applicant did not include evidence of money politics by the applicant had occurred in more than 16 sub-districts in Jember. Indeed, if the applicant alleged money politics has occurred in more than 16 sub-districts in Jember accompanied by evidence kogkrit and also reported to the Election Supervisory Committee, Jember Regency, it is very interesting and can be taken into consideration by the judge.

In the case of Malang Regency Election in different conditions. In their petition, based on the argument that there has been a breach in the form of budget politics according to the applicant without discussion right by Malang Regency on the budget changes in 2015 with a budget of deviation value 248 309 113 899, -. On the condition, the applicant then argues that there has been a bubbling sound acquisition candidate pair No. 1 605 817 which the applicant reached the sound, resulting in the vote Paslon No. 1 which is incumbent exceed voice applicant.¹ In their petition, provides a number of evidence of alleged irregularities in some of the Department, such as in the Department of Education, in the Department of Health, Department of Highways, Irrigation Department, the Department of Ciptakarya and Spatial Planning, Department of Cooperatives and SMEs, and several other agencies.

In addition, the applicant also argued that any involvement of the State Civil Apparatus conducted incumbent, and according to the District Election Supervisory Committee applicants do not take precautions or taking legal action against violations of budget politics. That means, the applicant argued that the supervisory function Panwaslu very weak because no findings of violations of Election which followed the election to be a case of criminal law.

In the case of the General Election in Sumenep regency, even the applicant also has elaborate in greater detail, for example, about the errors in the determination of DPS, and DPTb DPT-1, and it has also been reported to Panwaslu. In addition, the applicant also argued that an error has occurred vote count results by detailing the vote that occurred on polling stations and sub-specific in 16 districts, where the applicant argues that there has been a loss of your voice as much as 19 391 voice according to the applicant transferred to the candidate pair monor sequence 1, which evidenced by some of the existing forms. Hence then the applicant claims there has been a violation of a structured, systematic and massive involving election organizers, namely the manipulation of data, reducing the vote as much as 19 691 voice applicant. In fact, the applicant claims that the violation involving the district and village heads through threats to voters if not choose pairs incumbent candidates. In addition recapitulation also not using forms C1 and C6 form purposely not share that is an invitation to come to the polling stations.²

Such violations are substantially injure the true principles of overflow and fair elections. If it is proven, then the Court should grant the petition of the applicant, or at least carry out the decision, namely to vote again or do a re-voting. Moreover, the applicant has described disera evidence of the occurrence report such violations to the Election Supervisory Committee. But it seems the Constitutional Court did not consider argumetasi-arguments of the applicant, because the Court only to dwell on the argument of Article 158 of Law No. 8 in 2015 is related to the percentage of votes the difference between an applicant with related parties are a couple of candidates for regent and vice regent who obtain the most votes set by the Election Commission.

If the condition is so, then the Court should not have to sit a long time to listen to the arguments of the applicant, the Court simply assess and sum the votes of candidates for regent and vice regent to be determined by the Election Commission, and compare the rates if the difference does not exceed the maximum limit as specified in Article 158 paragraph (1) and (2) Law No. 8 of 2015, so that any argument outside the provisions of Article 158 is no longer relevant to the applicant argumetasi basis. Thus, in the context of the dispute Election results only to the extent the court MK position calculator which has been unable to enforce substantial justice aspects in the implementation of the General Election, particularly the application of the principle of honest and fair in the election.

Nevertheless, the cumulative requirements for applicants, which became an important point is the percentage limitation on the difference of votes that absolutely must be met for the applicant, which refers to the provisions of Article Article 158 paragraph (2) of Law No. 8/2015, due largely Constitutional Court's decision is relying on the provisions of Article 158 paragraph (2) of Law No.8 / Year 2015, without considering other aspects, such as fraud during the election Day. Thus, if the request for the applicant does not qualify as specified in Article 158 paragraph (2) of Law No. 8/2015 and Article 6 MPK 1/2015, the request was rejected by the Constitutional Court.

¹ See Decision MK Number 79/PHP.BUP-XIV/2016, h.5.

² See Decision MK Number 135/PHP.BUP-XIV/2016, h.38.

According to the Constitutional Court, the provisions of applicants in applying for in the case a quo, the provisions of Article 108 of Law 8/2015 and Article 6 PMK No1 / 2015 can not be ruled out. Declared Article 158 of Law No. 8/2015 for an open legal policy of the legislators, it means the norm in article quo as the law remains in force, so as to implement the authority to investigate and adjudicate disputes the determination of the vote count results in Governor, Regents and the Mayor, the court must consistently obey.¹

In this context, it appears that only the Constitutional Court's decision rests on the provisions of Article 108 of Law 8/2015 and Article 6 of PMK No. 1 of 2015 which limits the percentage of the difference in terms of votes, it means the Supreme Court only deals with the calculator, which only rests on the numbers vote, and yet capable of answering substantive justice. It is different when the Constitutional Court Mahfud MD era, in which the Constitutional Court as the guardian of the constitution has the obligation to ensure that the implementation of the General Election Electoral not violate constitutional principles, namely Direct, general, secret, honest and fair.

Therefore, according to Mahfud MD (2012: 15), in the trial, the Court not only check the difference calculation Election results, but also examine and consider the violations occurred. If the offense injuring and damaging the principles of overflow and fair, the Constitutional Court has the constitutional obligation to straighten it. In fact, the Court is no longer simply decide counting who is right, but also gave birth to the implementation of the ruling of the repeat voting, entering certain candidates initially declared not qualify, disqualify certain candidates, conduct the vote count, even assign the applicant as the winner of the General Election.² A similar view was also expressed by Achmad Sodiki (2012: 39), according to the Constitutional Court to interpret the essence of the General Election as a process that starts from the preparation phase, the implementation phase and a final stage. The process yielded a result that reflects the quality and quantity of Election itself, which is largely determined by the various actors involved in the process, both the organizers, participants and the public who vote, as well as the infrastructure that supports it. If so, then the vote count results of the General Election is not the only measure of a person in the General Election victory.³

Constitutional Court's decision in the General Election on a petition of the applicant, the majority is dominated on the consideration of a serious violation, the term "structured, systematic and massive", always made the proposition and sizes for violations occurred, it becomes a justification for the Constitutional Court to annul the decision fixing the final results sound, and even there is a Constitutional Court ruling that ordered re-counting and re-voting, as well as disqualify one candidate Election participants.⁴ Later, the Constitutional Court ruling related to disputes over the results of the General Election is no longer considered a serious violation, the term "structured, systematic and massive", will no longer serve as the proposition and the size of the decision of the Constitutional Court, but the Court because it is based on a percentage of the difference in the vote the applicant with the related. So we can say that the Constitutional Court ruling in any dispute relating to Election results do not have the same interpretation, but it really depends on the interpretation made by the members of the Constitutional Court, more precisely a certain period of constitutional justice. To quote the words Gamawan Fauzi (2012: 33), there are a variety of "variant" of the Constitutional Court against lawsuit dispute the results of the General Election.

Related to the argument juridical petitioners in dispute over Election results argue that there has been an error in the vote count set by KPU areas that are usually accompanied by reasons, there have been a variety of fraud that occurred during the process pemilu, such as: the politics of money by various modes, not neutral election management, mobilization civilian personnel who are not a neutral country, errors in DPT, and there is even a political postulate budget used by the incumbent to win a campaign. While in every decision, the Constitutional Court has always construct argementasi juridical dispute over the election petition revolves around the three (3) things: the deadline for filing the petition, legal standing the applicant, and the arguments of the applicant.

The Constitutional Court is the first and last court against the decisions can not be made legal efforts. The Court shall deliver the decision to the parties within a period of seven (7) working days after the decision is made (vide Article 49 of the Law on the Constitutional Court). Thus, the position of the Regional Election Commission must carry out the decision of the Constitutional Court. This is affirmed in Article 157 (10) of Law No. 8 of 2015 which states that the Provincial Election Commission and / or the Regency / City shall follow the decision of the Constitutional Court.

Implications of the Constitutional Court decision which rejected the application for the disputed results of local elections Directly in three (3) locations, it reinforces the KPU Decision Sumenep Number: 656 / KPTS / KPU-Kab-014.329908 / XII / 2015 regarding the Stipulation Acquisition of Sound and Results election

¹ Decision MK No 135/PHP.BUP-XIV/2016, h. 234.

² M. Mahfud MD, *Evaluasi Pemilu*, Op.Cit, h. 15.

³ Achmad Sodiki, *Sengketa Pemilu* Op.Cit, h. 39-40.

⁴ M. Akil Mochtar, *Sengketa Pemilu dan Putusan-Putusan Mahkamah Konstitusi*, ..., Op.Cit, h. 76-78.

of Regent and Vice Regent Sumenep 2015, in conjunction with SK KPU Sumenep District Number: 25 / KPTS / KPU-Kab-014.329908 / 2015 regarding the Stipulation Summary of Results Count Acquisition of Sound and Results of election of Regent and Vice Regent Sumenep in 2015, who won a pair of candidates Head area Number 1, namely Dr. KH. Busyro A. Karim, M.Si and Achmad Fauzi.

So also in the case of elections in the district of Jember, reinforce the KPU Decision Jember Regency Number 809 / KPTS / KPU-Kab-014.329713 / PILBUB /2015 regarding the Stipulation Summary of Results Count Acquisition of Sound and Results of Election of Regent and Vice Regent of Jember 2015, which sets couples candidate serial number 2, namely Dr. Hj. Faida MMR and Drs. KH. A. Muqit Arief stated as a pair regent and deputy regent candidate elected Jember. The same condition also occurs in the case of elections of regional heads and deputy Head of the Region in Malang, the Constitutional Court ruling strengthens KPU Decision Malang District, No. 528 / KPTS / KPU-Kab-014.329781 / 2015 regarding the Stipulation Summary of Results Count Acquisition Sound And Results election of Regent and Vice Regent in 2015, which set the partner Renda Kresna- Sanusi as the elected candidate.

Conclusion

Rasio decidendi Constitutional Court Decision Resolving Disputes in Election results, based on a cumulative requirement for the applicant to be able to apply for cases of disputes the determination of votes on election refers to Law No.8 / 2015 on the election of Governors, Regents and Mayors. Nevertheless, the cumulative requirements for applicants, which became an important point is the percentage limitation on the difference of votes that absolutely must be met for the applicant, which refers to the provisions of Article Article 158 paragraph (2) of Law No. 8/2015, due largely Constitutional Court's decision is relying on the provisions of Article 158 paragraph (2) of Law No.8 / Year 2015, without considering other aspects, such as fraud during execution Pimilikada. Decision of the Constitutional Court in deciding the case of disputes dispute Election results are final and binding. Final nature of the decision that is the characteristic of a Constitutional Court justice. Thus, the implications of the Constitutional Court decision which rejected the application for the disputed results of local elections, reinforces the Regency KPU Decision on Establishment of Sound Acquisition and Results of Election of Regent and Vice Regent.

Departing from the above conclusion, it can recommend some of the following: First, idialnya Constitutional Court in resolving the dispute results of local elections do not dwell on the argument which refers to Article 158 of Law No. 8 of 2015 which corresponds to the percentage difference of votes between the requester the pair regent and deputy regent candidate winning the most votes, but also consider a variety of fraud that occurred during the General Election which indirectly affect the outcome of the General Election, particularly violations of the principle tergadap are honest and fair election. Secondly, when referring to previous decisions of the Court, in which the Constitutional Court to interpret the General Election as a process that starts from the preparation phase, the implementation phase and a final stage. The process yielded a result that reflects the quality and quantity of the General Election.

Therefore, the Constitutional Court's decision in the General Election on a petition of the applicant, the majority is dominated on the consideration of a serious violation, namely abuses structured, systematic and massive. So that the principle of free and fair Election can be enforced. It became the justification for the Constitutional Court to annul the decision fixing the final results, and there is even a Constitutional Court ruling that ordered re-counting and re-voting, as well as disqualify one candidate Election participants. Supposedly that's the position of the Constitutional Court, so that the position of Supreme Court not only as a calculator only calculates the percentage difference in the vote without considering other aspects, especially violations during the implementation process of the General Election.

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