



# Constitutional Efforts in Resolving Disputes Regional Elections in Indonesia

Fitri Atur Arum <sup>1\*</sup>

## ABSTRACT

The pattern of regional head election dispute resolution still adheres to a centralized system, which is carried out by institutions at the central level, despite the fact that regional head elections are a regional government matter rather than a central government issue. This study aims to outline the urgency and challenges of decentralizing the settlement of election disputes. At the same time, it offers an ideal design for election dispute resolution based on a decentralized model, addressing aspects such as relief, competence, and procedural law. This research employs a normative approach, utilizing statutory provisions, concepts, and case studies. The centralization of electoral dispute resolution has implications for regime misalignment, leading to a corrupt judicial process and requiring high accommodation costs. The antithesis to the centralized model of dispute resolution is decentralization, which entails adjudicating electoral disputes at the regional level, corresponding to the location where the election takes place. This alignment ensures consistency between the dispute resolution regime and the electoral regime. The decentralization model begins with establishing judicial institutions at the regional level, defining both absolute and relative competence, and outlining procedural law. Key elements of this model include subjectum litis, objectum litis, and decision-making processes.

**Keywords:** : *Constitutional, Decentralization, Dispute, Election.*

<sup>1</sup> Faculty of Sharia and Law, Universitas Islam Negeri Sunan Kalijaga, Yogyakarta, Indonesia.

Corresponding author:

19910324000002391@uin-suka.ac.id

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## 1. | INTRODUCTION

Elections are a tangible manifestation of the implementation of people's sovereignty. Elections are held in order to fill strategic positions in government both at the national and regional levels. Elections in Indonesia are divided into two. The first is the general election (Pemilu) which includes the election of members of the House of Representatives (DPR), the regional representative council (DPD), the regional people's representative council (DPRD), as well as the president and vice president<sup>1</sup>. While the second form of election is the regional head election (Pilkada), which is a type of election to elect the Governor / deputy Governor, regent / deputy regent, mayor and deputy mayor.<sup>2</sup>

The separation of general and local elections is based on: Firstly, scope. Elections are to elect state administrators at the central level, while local elections are to elect state administrators at the regional level. The difference is of course also related to voters, where in local elections, voters are only limited to the area or region that organises the election. For example, when Sumenep District organises local elections, only residents of Sumenep District can exercise their voting rights, while other areas such as Pamekasan District cannot exercise their voting rights.<sup>3</sup>

Second, the arrangements. The arrangements between elections and elections in the supreme law or constitution are regulated in different chapters. Elections are regulated in Chapter VII B while elections are regulated in Chapter VI. The difference in the placement of arrangements in the constitution certainly shows that elections and local elections are two different things. Elections in Chapter VII show that elections are a separate regime in the Indonesian constitutional structure, while regional elections are in the regional government regime, considering that the regulation of regional elections is in Chapter VI which regulates regional government. These regime

differences can automatically be interpreted as differences in implementation patterns at the level of process, outcome, and dispute resolution.<sup>4</sup>

Third, funding. Financing between elections and local elections also comes from different budgets. Elections are guided by the State Budget (APBN), while regional elections are sourced from the Regional Budget (APBD). Article 166 paragraphs (1) and (3) state: (1) Funding for election activities shall be borne by the Regional Budget, and may be supported by the State Budget in accordance with the provisions of laws and regulations. (3) Further provisions regarding the funding of election activities sourced from the Regional Budget shall be regulated by Ministerial Regulation.

Fourth, dispute resolution. Regulations regarding the types and patterns of resolution between elections and regional elections differ from one another. In elections, the problems are divided into four types of problems which include Election Violations, Election Process Disputes, Election Result Disputes, and Code of Ethics Violations. Meanwhile, in regional elections, the problems are divided into six consisting of Administrative Violations, Election Administration Violations, Election Administrative Disputes, Election Crimes, Election Result Disputes, and Ethical Violations<sup>5</sup>.

**Table 1.** Differences between Election and Regional Head Election Issues

No.	Selection	Elections
1	Election offences	Administrative Offences
2	Election Process Dispute	Election Administration Violations
3	Disputed Election Results	Election Administrative Dispute
4	Breach of Code of Ethics	Election Crimes
5		Disputed Election Results
6		Ethics Violations

<sup>1</sup> Article 22 E of the 1945 the Republic of Indonesia (Undang-Undang Dasar Negara Republik Indonesia Tahun 1945).

<sup>2</sup> Saputra, Darwin, Amiludin Amiludin, Dwi Nur Fauziah Ahmad, and Imran Bukhari Razif. "Comparison of Dispute Resolution in General Elections in Indonesia and Thailand." *Indonesia Law Reform Journal* 4, no. 1 (2024): 102-118.

<sup>3</sup> Siboy, Ahmad. "The integration of the authority of judicial institutions in solving general election

problems in Indonesia." *Legality: Jurnal Ilmiah Hukum* 29, no. 2 (2021): 237-255.

<sup>4</sup> Rosidi, Ahmad, and Edy Nurcahyo. "The Authority To Resolve Disputes For The Election Of Village Head In The Indonesian Area." *International Journal of Educational Research & Social Sciences* 2, no. 2 (2021): 255-269.

<sup>5</sup> Ahmad Siboy, *Designing the Integration of Electoral Justice Institutions* (Depok: Rajawali Press, 2021).

Fifth, dispute resolution of results. In terms of dispute resolution, the results of elections and regional elections are also distinguished from each other. If the authority to resolve elections is in the Constitutional Court (MK),<sup>6</sup>, then for regional elections, the authority to resolve disputes is in the Specialised Judicial Body (BPK)<sup>7</sup>.

However, the differences between elections and local elections do not apply absolutely to the regulation of the handling of disputes in regional elections and local elections. The pattern of resolving violations, disputes, criminal acts, and disputes over the results of regional elections is still not resolved based on the principles of decentralisation or regional autonomy or still following the institutions and processes that apply in elections. In this case, it occurs in terms of judicial institutions that are authorised to hear problems/disputes of regional elections.

The judiciary in various qualifications of election issues is still located in institutions at the central level or has not been decentralised to local governments. In resolving disputes over election results, for example, the Specialised Judicial Body (BPK), which is located at the central level, has the authority to adjudicate. Not only that, in the case of violations of election administration, the authority to decide at the final level is the Supreme Court (MA) which is located as a central judicial institution.

The settlement pattern above shows how the process of solving regional election problems is still tied to central institutions or not autonomy in the hands of the region. The settlement pattern that is still centralised certainly has several implications: First, regime reduction. The pattern of election dispute resolution that is not fully submitted to the regions automatically reduces the meaning of the existence of Pilkada as part of the regional government regime even though Pilkada has been carried out constitutionally (both based on the constitution and the Constitutional Court's decision) as part of the regional government regime, by itself all matters relating to the regions must be purely the affairs of the regional government, including in terms of resolving election disputes. If the settlement pattern still relies on central institutions, it only shows that the process of exercising the right to vote is the autonomy of the

local government, while the settlement affairs and the judicial process still depend on the central government. This is certainly not in line with the local government system, which is based on the principle of decentralisation or the widest possible autonomy.

Secondly, an electoral dispute resolution process that is still related to the centre certainly makes an independent and autonomous electoral dispute resolution process prone to being tainted by the intervention of central-level political elites. The intervention of the central political elite in the electoral dispute resolution process is that when the electoral dispute resolution process is resolved by a central-level institution, it will invite politicians at the central level to actively interfere in influencing the decision-making of the electoral dispute. This is because central-level politicians have certain access to the judiciary at the central level, especially to certain judges who can be influenced. The case against the Chief Justice of the Constitutional Court in relation to the resolution of various disputes over election results is a series of evidence that confirms that the resolution process conducted by the central judiciary opens up the possibility that decisions on electoral disputes can be played out at the central level, while the regions can only accept the processes and decisions of the judiciary at the central level.

Third, accommodation costs. The process of resolving electoral disputes handled by central-level judicial institutions certainly has implications for the judicial process, which is very expensive for the community or justice-seeking parties who feel they are victims of fraud in the implementation of Pilkada. The settlement process, which must be completed at the central judicial institution, requires the parties to attend the trial process in Jakarta (the national capital region). This condition certainly makes the accommodation costs that must be incurred very large considering the trial process that is followed not only once but must be many times.

Meanwhile, in terms of time efficiency, it is certainly less effective considering the number of cases that must be tried is very large or not only in one or two regions. This is because the elections have been held simultaneously, especially in 2024 where the elections will be held simultaneously nationally with

<sup>6</sup> 'Article 24 C of the 1945 Constitution'.

<sup>7</sup> 'Article 157 of Law Number 10 Year 2016 on the Election of Governors, Regents, and Mayors.', p. 60.



the number of elections reaching more than five hundred regions.

This research aims to examine constitutional efforts to resolve regional election disputes in Indonesia, with a focus on the design of decentralised electoral dispute resolution, the role of judges in regional judicial institutions, and the draft Regional Judicial Institutions Decree. How can the ideal design of decentralised electoral dispute resolution help address regional challenges and needs? How can the role of judges in regional courts ensure fairness and independence in handling regional electoral disputes? How can the draft Regional Judicial Institution Decree create a solid legal foundation for regional election dispute resolution? In this context, this research will investigate these aspects using a normative approach involving relevant legal provisions, concepts and cases.

## 2. | RESEARCH METHODS

This research is a normative juridical study that focuses on analyzing legal provisions, regulations, and judicial decisions. It involves a thorough examination of relevant legal materials, which were gathered through internet searches and literature review. The research employs both descriptive and prescriptive analytical techniques to interpret the data. Descriptive analysis outlines the existing legal framework and practices, while prescriptive analysis offers recommendations for improvements in the resolution of electoral disputes. By examining the current centralized system and proposing a decentralized model, this study aims to enhance the efficiency and integrity of electoral dispute resolution at the regional level, ensuring better alignment between the electoral and dispute resolution regimes.

## 3. | RESULTS AND DISCUSSION

### 3.1. Design for Decentralised Election Dispute Resolution

The centralized settlement of electoral disputes poses a significant challenge in the context of regional elections, prompting a search for alternative designs. This study advocates for the antithesis of the centralized model through the exploration of a decentralized pattern for resolving electoral disputes. Rooted in the principle of decentralization, which involves the delegation of power from the central government to the regions, this research delves into

the urgency and challenges associated with establishing independent electoral court institutions at the regional level.

The decentralization of electoral court institutions serves not only to empower regions with the authority to regulate their own electoral processes but also to reinforce the distinct separation of regional head elections from the central electoral regime. Constitutional considerations, including Article 18 and Article 22E of the 1945 Constitution, coupled with Constitutional Court Decision Number 97/PUU-XI/2013, underscore the need for a departure from the centralization paradigm.

Despite the constitutional imperative for decentralization, the transition to a decentralized model faces fundamental challenges. Legal barriers, as defined in Article 10 number 1 of Law Number 23 of 2014 concerning Regional Government, present a formidable hurdle. However, the research contends that the absolute authority of the central government in legal matters is not insurmountable, allowing for regional-level resolution of electoral disputes through carefully crafted statutory rules.

Constitutional provisions, such as Article 24 of the 1945 Constitution, emphasizing the independence and autonomy of the judiciary, raise concerns about the establishment of regional judicial institutions. The study argues for a reconsideration of these provisions, proposing a model where regional judicial institutions operate independently and autonomously, unencumbered by a centralized structural relationship with the Supreme Court. Principles of judicial independence, though challenging in the context of regional governments, can be safeguarded through strategic measures. Mandating each region to establish an independent election court, guided by transparent and professional principles, ensures a degree of insulation from political interference.

#### 3.1.1. Institutional Forms of Regional Courts

So what is the design of a regional judicial body? A judicial body established to adjudicate disputes over the conduct of regional elections can be established with several considerations: first, it is specialised and singular. The judicial institution to be established has a special function. This means that the judicial body is only established to hear disputes related to the implementation of regional elections. This is important so that there is no expansion of authority and other

cases that must be tried. This is because if the regional election court does not focus on election disputes, it may violate the nature of the establishment of regional level judicial institutions. Conversely, when election courts at the regional level are established with the specificity to hear only electoral disputes, this in itself will facilitate other matters such as the recruitment of judges who are only competent in the electoral field.<sup>8</sup>

Second, it is *ad hoc*. The regional election court to be established should be *ad hoc* or non-permanent. The institution is only formed when the regional elections will begin and end at the inauguration process of the elected regional head and deputy regional head. The *ad hoc* nature of the regional courts is based on the premise that regional elections are held every five years. Elections are routine activities that take place for five years or not every year, so if the judicial institution is formed permanently, it is certainly not effective and efficient considering that there will be more than four years for the regional election court not to carry out any activities. In fact, all operational costs and accommodation related to the institution must still be provided if the institution is not dissolved after the inauguration of the elected regional head / deputy regional head.<sup>9</sup>

Based on the two considerations above, a regional election court could be established in each province, district and city. This means that 34 provincial election courts will be established, given that there are 34 provinces in Indonesia. Meanwhile, 416 regencies and 98 municipalities will be established. However, this choice is not absolute, as election courts can be modelled on the State Administrative Court (PTUN), which was formed on the basis of not following the division of the number of regions in Indonesia. There are only 28 PTUNs at the district and city level (courts of first instance) and 4 at the provincial level (courts of first instance). For example, at the Surabaya State Administrative Court, the relative competence or jurisdiction that can be heard includes Surabaya City, Pasuruan City and Regency, Probolinggo Regency and City, Lumajang Regency, Jember Regency, Situbondo Regency, Bondowoso Regency, Banyuwangi Regency,

Trenggalek Regency. Ngawi Regency, Magetan Regency, Madiun Regency, Nganjuk Regency, Jombang Regency, Kediri Regency, Malang Regency and City, Batu City, Sidoarjo Regency, Gresik Regency, Lamongan Regency, Tuban Regency.

As for the flow of formation, the flow of formation of regional judicial institutions must be established through statutory provisions. This is because an institution that will carry out judicial functions or judicial power must be regulated by law. Article 24 of the 1945 Constitution of the Republic of Indonesia states that "Other bodies whose functions are related to judicial power shall be regulated by law". From this provision, the first step is to issue a law linking the establishment of election courts at the regional level. Such arrangements could be established in a specialised law on regional electoral courts. However, another alternative is to simply add provisions to the law on regional elections, namely Law Number 10/2016 on the Election of Governors, Regents and Mayors. Both regulatory options are equally in line with the provisions of the constitution (Article 24 of the 1945 Constitution of the Republic of Indonesia) considering that the constitution only states that it shall be regulated through a law, meaning that the regulation of regional judicial institutions shall be regulated in the form of a law or not other types of legislation such as government regulations (PP) or Presidential Regulations (Perpres).

From the issuance of regulations on the validity of the existence of the election court, the regional head can form a selection committee or selection team to carry out the process of forming and filling positions in the election court. This selection team will then make technical guidelines for the selection process of the panel of judges who will hear the election disputes. However. The technical guidelines will be much more effective if before they are passed, coordination or discussion is carried out with the Regional People's Representative Council (DPRD) both at the Provincial and Regency / City DPRD levels.

<sup>8</sup> Suparto, Suparto, Ellydar Chaidir, Ardiansyah Ardiansyah, and Jose Gama Santos. "Establishment of Electoral Court in Indonesia: Problems and Future Challenges." *Journal of Indonesian Legal Studies* 8, no. 2 (2023): 501-544.

<sup>9</sup> Amiruddin, Amiruddin, and Rizki Ramadani. "Judicial Activism in Regional Head Election Dispute: The Practice and Consistency of The Indonesian Constitutional Court." *Substantive Justice International Journal of Law* 6, no. 1 (2023): 56-70.



### 3.1.2. Regional Judicial Competence

Competence or authority is the scope of legitimacy of an institution to carry out an activity. Authority itself is defined as what is called formal power and is granted by law.<sup>10</sup> In the *ius constituentum* or in Law number 30 of 2014 concerning Government Administration, authority is defined as the power of government bodies and/or officials or other state administrators to act in the realm of public law<sup>11</sup>.

As for the figure to exercise its own power can be through three ways. Namely Attribution, Delegation and Mandate. Attribution is an authority obtained through legislation directly. This means that the attributive authority comes from the provisions contained in the laws and regulations.<sup>12</sup> Therefore, attributive authority depends on the legislators in determining the authority to be given to state institutions or state administrators. The responsibility for the authority obtained from laws and regulations lies with the recipient of the attribution<sup>13</sup>.

For a judicial institution, including a regional election court to be established, the regulation of its authority must be strictly mapped and regulated so that the establishment of a regional-level judicial institution is in accordance with the nature or spirit of its establishment, which is planned to realise a simple, fast, cheap, effective and efficient process of resolving election disputes. At this level, the absolute authority to determine includes absolute authority and relative authority.

### 3.1.3. Design of Absolute Authority of Local Judicial Institutions

Absolute authority or absolute competence is the competence given to an institution on what it can do or the limitations on what it can do.<sup>14</sup> The determination of the absolute competence of the election court can refer to the types of problems or types of cases of regional head elections as stipulated in Law Number 10 of 2016 concerning Pilkada, where

in the law, the types of cases or disputes that exist in the region. Pilkada is divided into six parts which include:

1. Administrative violations are violations that include procedures, procedures, and mechanisms related to the implementation of elections at each stage of the election outside of election crimes and violations of the election organiser's code of ethics (Article 138);
2. Violations of Election Implementation are violations that occur in a structured, systematic, and massive manner (Article 135 A);
3. Election Administrative Dispute is a dispute arising in the field of state administration between Candidates for Governor and Deputy Governor, Candidates for Regent and Deputy Regent, and Candidates for Mayor and Deputy Mayor with the Provincial and/or Regency/City KPU. KPU due to the issuance of the Decree of the Provincial KPU and / or Regency / City KPU (Article 153);
4. An Election Offence is a breach or violation of the Election provisions as set out in this Act (article 145).
5. Election Result Dispute is a dispute between the Provincial KPU and/or Regency/City KPU and election participants regarding the determination of election results (Article 156);
6. Violation of the Election Organiser Code of Ethics is a violation of the ethics of election organisers who are guided by the oath and/or promise before carrying out their duties as election organisers (Article 136).

<sup>10</sup> Ateng Syarifuddin, *Towards Clean and Responsible Governance, Journal of Pro Justicia Edition IV* (Bandung: Parahyangan University).

<sup>11</sup> 'Article 1 Number 6 of Law Number 30 Year 2014 on Government Administration'.

<sup>12</sup> Kusdarini, Eny, Anang Priyanto, Sri Hartini, and Suripno Suripno. "Roles of justice courts: settlement of general election administrative disputes in Indonesia." *Heliyon* 8, no. 12 (2022).

<sup>13</sup> Ahmad Siboy, Sholahuddin Al-Fatih, and Abdul Kadir Jaelani, 'A Plan for Resolving Disqualification Cases of Winning Election Candidates in Indonesia', *Central Asia and the Caucasus*, 23.1, 632-642 <<https://doi.org/10.37178/cac.23.1.056>>.

<sup>14</sup> Shodiqin, Ahmad. "Application of the Authority of the Constitutional Court in Resolving Disputes on Regional Head Election Results." *JUSTICES: Journal of Law* 2, no. 3 (2023): 164-172.



**Table 2.** Election Dispute Qualifications

No.	Type	Legal basis
1	Administrative Offences	(Article 138 of Law 8/2015)
2	Election Administration Violations (Structured, Systematic, and Massive)	(Article 135 A and Article 73 of Law 10/2016)
3	Election Governance Dispute	(Article 153 of Law 10/2016)
4	Election Crimes	(Article 145 of Law 1/2015)
5	Disputed Election Results	(Article 156 of Law 10/2016)
6	Ethics Violations	(Article 136 of Law 1/2015)

All six types of issues can be given absolute competence or jurisdiction by regional election courts to hear them.

### **3.1.4. Design of Relative Authority of Regional Judicial Institutions**

The relative competence or relative authority of a regional election judiciary is the authority of the judiciary based on the region. The relative competence of a judicial body is determined by the boundaries of its jurisdiction. A judicial body is declared authorised to examine a dispute if one of the parties to the dispute (Plaintiff/Defendant) is domiciled in one of the jurisdictions where the court is located.<sup>15</sup>

In terms of the establishment of regional election courts, their relative competence may depend on the form of institution chosen. Firstly, if an election court is to be established in accordance with the number of regions throughout Indonesia or election courts are located in each regency/city and province, then the relative competence of each court follows the area of a region. For example, the Malang City Election Court institution, the relative competence is the election of the Mayor/Deputy Mayor of Malang, the Sumenep District Election Court institution, the relative competence is the election of the Regent/Deputy Regent of Sumenep while for the East Java Provincial Election Court institution, the relative

competence is the election of the Governor/Deputy Governor of East Java.

Secondly, if an election court is only established in each province, then its relative competence adjusts to the scope of the area in the province concerned. This means that the relative competence of the judiciary follows the number of regions in a province. For example, the Province of East Java, which consists of 38 regencies and cities, then the East Java Regional Election Court has relative competence covering the elections of all Regents / Deputy Regents, Mayors and Deputy Mayors throughout the Province of East Java and also adjudicates disputes in elections. Election of Governor/Deputy Governor of East Java.

Thirdly, if the regional election judiciary is to be modelled on the state administrative court (PTUN), then its relative competence should follow the pattern of the PTUN's relative competence. Namely, one election judicial institution in a region can have coverage in several regions. For example, an election court in Surabaya could have relative competence to cover all elections of regents/deputy regents and mayors/deputy mayors for all provinces in East Java, West Nusa Tenggara and East Nusa Tenggara.<sup>16</sup>

### **3.1.5. Design of Subjectum Letis of Regional Judicial Institutions**

As a judicial institution, of course, the regional election court cannot hear an election directly or cannot stand alone. Courts cannot stand alone in terms of enforcing election law because the construction of judicial institutions rests on the principle of passive institutions or cannot hear cases. As a judicial institution, of course, a regional election court can only hear a case that is requested to be heard. Therefore, it is also necessary to regulate the institution or who can file a case to the regional court or who has the *legal standing* to file a case / complaint to the regional election court. The parties who have legal standing are called *subjectum letis*. According to Maruarar Siahaan, *subjectum letis* is the parties to a dispute or litigation.<sup>17</sup>

Then who is the *subjectum letis*? In terms of *subjectum letis* or parties who can file a case/dispute,

<sup>15</sup> 'Competence of State Administrative Court in PERATUN(Ptun-Palembang.Go.Id'.

<sup>16</sup> Asa, Simplexius. "Study of the Verdict of Constitutional Court on Regional Leaders Election Dispute in the Province of East Nusa Tenggara in

2018." *Journal of Law and Legal Reform* 3, no. 4 (2022): 567-588.

<sup>17</sup> Maruarar Siahaan, *Procedural Law of the Constitutional Court* (Jakarta: Sinar Grafi ka).



those who have *legal standing* are parties who feel aggrieved or are directly related to the problems that arise in the Pilkada. Given the number and types of cases in the elections are divided into six qualifications, the determination of the *legal standing of the parties* in resolving cases/disputes in the election court must also be based on each type of problem. The subjectum *letis* mapping can be described as follows:

1. Administrative violations, administrative violations are violations between participants and organizers and among fellow participants, who can be parties are regional head candidates, Regional General Election Commissions (KPUD), and Regional Election Supervisory Bodies (Bawaslu). While the defendant is the party suspected of committing the violation;
2. Election administration violations, in the event of an election administration violation, the one who can file a lawsuit is Bawaslu together with the prosecutor's office considering that the qualification of election administration violations is a type of violation that is a criminal offence so that those who can be given *legal standing* must be law enforcement officials. Meanwhile, the defendant is the candidate pair and/or success team suspected of violating the provisions of laws and regulations or committing a criminal offence;
3. Election Administrative Disputes, in this case, those who can file a lawsuit are candidate pairs who feel aggrieved by the KPUD's decision;
4. Election violations, in the case of election violations, the police or prosecutors can file a lawsuit considering that election violations are purely criminal law violations;
5. Result dispute case is a case between the husband and wife of regional head candidates and the election organiser regarding the determination of election results, from here the applicant can be a pair of regional head candidates.
6. Where the perpetrator of a breach of the code of conduct is a regional election management board, the petitioner in this case may be the general public and/or a candidate pair.

### 3.2. Judges of Regional Judicial Institutions

The composition of election court judges can be made up of professionals, both academics and practitioners. The composition of the panel of judges from among professionals is necessary for two

reasons. Firstly, competence. people from professional circles certainly have more guaranteed competence considering that prospective judges from professional circles must have a *track record* in the field of law. The competence of judges from academia, for example, must have knowledge and work on elections. This track record is a parameter and proof that academics are worthy of becoming judges at the regional level judicial institutions considering that a *track record* in the form of academic work is clear evidence that an academic has adequate knowledge related to election issues.

Professionals, of course, do not only come from academia, but can also come from non-academics or legal practitioners such as from non-governmental organisations (NGOs) or lawyers. Practitioners can become judges because practitioners are people who also have a *track record* and understand electoral issues.

Second, neutralising the political element. The selection of judges in the election court must also come from professionals so as not to create the impression that there is a political element in the composition of the panel of judges. The political element will be very strong if the composition of the panel of judges comes from elements of the local government. This happens because those who will be appointed by the local government are people who have structural ties with the head of the region, so that those who will be appointed to the head of the region are people who can become accomplices of the head of the region. This will certainly increase politically when the incumbent regional head wants to run again as a regional head candidate (incumbent).

Third, independence. Professionals will certainly have a much more independent attitude than non-professionals. This is because people or prospective judges from the professions do not have affiliations or have quite broad freedoms. Academics, for example, are people who are not only affiliated with and free from political interests, but also have academic freedom guaranteed by the provisions of laws and regulations.

### 3.5. Draft Regional Judicial Institution Decree

According to Leden Marpaung, a court decision is defined as a conclusion or result of a matter through very careful consideration and judgement which is



then issued in written or oral form<sup>18</sup>. Local election court decisions must be final and binding<sup>19</sup>.

A final and binding decision is necessary for the regional electoral court to function as a judicial body of first and last instance. This final and binding decision applies to all types of disputes to be adjudicated by the regional electoral court. Such a judicial model is necessary to avoid tiered or multi-tiered judicial processes, overlapping judgements, ease of execution, and legal certainty.

The centralised settlement of electoral disputes in Indonesia poses a significant challenge to the principles of regional autonomy. This article explores the necessity of an alternative, decentralised pattern for resolving election-related conflicts, countering the prevailing centralised system. Decentralisation, as defined by Rondinelli and Cheema, involves transferring decision-making power to local governments. This decentralised approach provides regions with the authority to regulate their own electoral processes, including the establishment of independent election courts.

To strengthen the argument for decentralisation, it is crucial to highlight the constitutional basis. Articles 18 and 22E of the 1945 Constitution, along with Constitutional Court Decision Number 97/PUU-XI/2013, emphasize the complete separation of regional head elections from the broader electoral regime. The centralised model, which includes regional head elections under the Constitutional Court's authority, is considered inconsistent with the original intent of elections and risks altering the constitutional balance.

Establishing regional election courts becomes a key component of the decentralised model. Contrary to concerns about violating the unitary state principle, the formation of these institutions adheres to the unitary state principle, as the process remains within the regional context. Each region establishes its election court, limited to adjudicating disputes within its jurisdiction, ensuring a localized approach to conflict resolution.

Several arguments support the implementation of a decentralised system in resolving local election

disputes. Firstly, regional variations in conditions and situations motivate different election problems, necessitating region-specific resolutions. This regional specificity enables the preservation of local wisdom without compromising national laws and regulations. Secondly, decentralisation simplifies the judicial process, providing ease of access for parties involved without the need for complicated, central-level procedures. Lastly, a decentralised judicial model ensures legal certainty by offering a streamlined process with a regional court as the first and final arbiter.

Despite the advantages, the transition to decentralised election dispute resolution faces fundamental challenges. The legal process, defined as an absolute authority of the central government, conflicts with the decentralisation principle. However, a nuanced understanding suggests that exceptions based on the legal principle of *lex specialis derogat lex generalis* can accommodate the decentralised pattern without altering constitutional provisions.

The provisions of Article 24 of the 1945 Constitution present another challenge, as they seemingly restrict the formation of regional judicial institutions. The article argues that a unified relationship pattern between regional and central-level judicial institutions contradicts the spirit of judicial decentralisation. Anticipatory measures, such as forming independent special teams during the establishment process, can mitigate concerns about political intervention in the creation of regional-level judicial institutions.

The design for decentralised election dispute resolution emerges as a viable alternative to the current centralised system in Indonesia. While challenges exist, a careful examination of constitutional principles, legal provisions, and regional autonomy can pave the way for a more equitable, simplified, and region-specific approach to handling electoral conflicts. The establishment of regional election courts, when done transparently and professionally, ensures an independent and accountable electoral judicial institution. This decentralised model promises to align better with the

<sup>18</sup> Leden Marpaung, *Legal Events in Practice* (Jakarta: Attorney General's Office of the Republic of Indonesia).

<sup>19</sup> M. Agus Maulidi, 'Questioning the Executorial Power of Final and Binding Decisions of the Constitutional Court', *Constitutional Journal*, 16.mor 2, 339-362.



principles of regional autonomy and the unique dynamics of local elections in Indonesia.

#### 4. | CONCLUSION

The pattern of dispute resolution arising in the implementation of regional head elections (Pikada) still uses a centralised pattern even though the regional head election regime has entered the regional government (Pemda) regime so that it must automatically use a decentralised pattern. . As a result of this centralised pattern, the resolution of electoral disputes is not in line with the government system. Not only that, the centralised settlement process makes the process of resolving electoral disputes tiered so that it takes a relatively long time and the cost of accommodating the judicial process is also quite large. Therefore, the centralisation of electoral dispute resolution should be replaced with a decentralised model. Namely, the dispute resolution model is held at the regional level (the principle of regional autonomy) so that there is harmony/continuity between the regional election regime and the dispute resolution regime, both of which are within the regional government regime. The design of decentralised electoral dispute resolution can be done through the establishment of regional election courts at both the provincial and district/city levels. Of course, the establishment of these regional-level judicial institutions is also accompanied by arrangements for absolute competence, relative competence, and subject matter.

#### References

- Amiruddin, Amiruddin, and Rizki Ramadani. "Judicial Activism in Regional Head Election Dispute: The Practice and Consistency of The Indonesian Constitutional Court." *Substantive Justice International Journal of Law* 6, no. 1 (2023): 56-70.
- Asa, Simplexius. "Study of the Verdict of Constitutional Court on Regional Leaders Election Dispute in the Province of East Nusa Tenggara in 2018." *Journal of Law and Legal Reform* 3, no. 4 (2022): 567-588.
- Competence of Administrative Court in PERATUN (Ptun-Palembang.Go.Id)
- Constitutional Court Decision Number 97/PUU-XI/2013
- Hakim, Lukman. *The Philosophy of the Authority of Regional Organisations: Perspectives on the Theory of Autonomy & Decentralisation in the Implementation of Law and Unity State Administration*. Malang: Setara Press, 2012.\*
- Kusdarini, Eny, Anang Priyanto, Sri Hartini, and Suripno Suripno. "Roles of justice courts: settlement of general election administrative disputes in Indonesia." *Heliyon* 8, no. 12 (2022).
- Law Number 1 of Law Number 23 Year 2014 on Regional Government
- Law Number 10 Year 2016 on the Election of Governors, Regents, and Mayors. (p. 60)
- Law Number 6 Year 2014 on Government Administration
- Marpaung, Leden. *Legal Events in Practice*. Jakarta: Attorney General's Office of the Republic of Indonesia
- Maulidi, M.Agus. "Questioning the Executorial Power of Final and Binding Decisions of the Constitutional Court." *Constitutional Journal*, 16.mor 2, 339-362.
- Rosidi, Ahmad, and Edy Nurcahyo. "The Authority To Resolve Disputes For The Election Of Village Head In The Indonesian Area." *International Journal of Educational Research & Social Sciences* 2, no. 2 (2021): 255-269.
- Saputra, Darwin, Amiludin Amiludin, Dwi Nur Fauziah Ahmad, and Imran Bukhari Razif. "Comparison of Dispute Resolution in General Elections in Indonesia and Thailand." *Indonesia Law Reform Journal* 4, no. 1 (2024): 102-118.
- Shodiqin, Ahmad. "Application of the Authority of the Constitutional Court in Resolving Disputes on Regional Head Election Results." *JUSTICES: Journal of Law* 2, no. 3 (2023): 164-172.
- Siahaan, Maruarar. *Procedural Law of the Constitutional Court*. Jakarta: Sinar Grafi ka.
- SiBoy, Ahmad, Sholahuddin Al-Fatih, and Abdul Kadir Jaelani. "A Design for Resolving Disqualification Cases of Winning Election Candidates in Indonesia." *Central Asia and the Caucasus*, 23.1, 632-642  
<<https://doi.org/10.37178/cac.23.1.056>>.
- Siboy, Ahmad. "The integration of the authority of judicial institutions in solving general election problems in Indonesia." *Legality: Jurnal Ilmiah Hukum* 29, no. 2 (2021): 237-255.
- Siboy, Ahmad. *Design of Integration of Election Justice Institutions*. Depok: Rajawali Press, 2021.
- Subagyo, Bambang Sugeng Ariadi, et al. "A Study of the Application of the Ultra Petita Principle to Ex Aequo Et Bono Petitum." *Yuridika*.

- Sucipta, Pery Rehendra, et al. "Lex Specialis Derogat Legi Generali As a Principle of Preference in Sea Transportation Accidents of People's Shipping." *IUS Journal of Law and Justice Studies*, 140-150
- Suparto, Suparto, Ellydar Chaidir, Ardiansyah Ardiansyah, and Jose Gama Santos. "Establishment of Electoral Court in Indonesia: Problems and Future Challenges." *Journal of Indonesian Legal Studies* 8, no. 2 (2023): 501-544.
- Syarifuddin, Ateng. "Towards Clean and Responsible Governance." *Journal of Pro Justicia Edition IV*. Bandung: Parahyangan University.
- The 1945 Constitution of the Republic of Indonesia (UUD NRI Tahun 1945)
- Wirawan, Jamitko and Muhammad Syabil ryandika. "Application of the Role of Supreme Court Judges as Judex Juris in Criminal Cases Study of Supreme Court Decision No. 2239 K. Pid. Sus/2012." *Journal of Legal Research*, 2.2 (2015), 90-104.



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