

**Institutional comparison study for the dispute settlement of regional head election in
Indonesia and Brazil**

**Estudo de comparação institucional para solução de controvérsias para eleições de
chefes regionais na Indonésia e no Brasil**

**Estudio de comparación institucional para la solución de controversias de la elección de
jefes regionales en Indonesia y Brasil**

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Abstract

This article is a legal research which conducts a comparative study of the dispute resolution institutions between the Indonesian and Brazilian elections. The purpose of writing this article is to map the similarities and differences in the practice of dispute resolution between regional head elections in Indonesia and Brazil to take good aspects that are suitable for implementation in Indonesia. In the discussion, it also covers the practice of organizing elections, election management organs and institutions, including the practice of dispute resolution for Election /

Pilkada in both countries. The research method used is normative legal research using primary legal materials in the form of statutory regulations and court decisions, using a comparative approach, a statutory approach and a conceptual approach. Conclusions from the discussion of the research results, the authors propose two institutional options for Pilkada dispute resolution in Indonesia: a) Establishing a special election / election court under the PTUN environment. This Special Judiciary is domiciled in each provincial capital to adjudicate and decide on election result disputes (Election / Pilkada Crime and also examine and adjudicate election / election / election process / administration disputes), or b) Define the authority of the Constitutional Court of Justice to adjudicate disputes over the results of the Pilkada (in addition to PPHU) without any differentiation of regime.

Keywords: Regional head elections; Dispute resolution institutions; Comparative studies Indonesia and Brazil.

Resumo

Este artigo é uma pesquisa jurídica que realiza um estudo comparativo das instituições de resolução de disputas entre as eleições indonésias e brasileiras. O objetivo de escrever este artigo é mapear as semelhanças e diferenças na prática de resolução de disputas entre as eleições de chefes regionais na Indonésia e no Brasil, para considerar bons aspectos que são adequados para implementação na Indonésia. Na discussão, também cobre a prática de organização de eleições, órgãos e instituições de gestão eleitoral, incluindo a prática de resolução de disputas para Eleições / Pilkada nos dois países. O método de pesquisa utilizado é a pesquisa jurídica normativa que utiliza materiais jurídicos primários na forma de regulamentos legais e decisões judiciais, usando uma abordagem comparativa, uma abordagem estatutária e uma abordagem conceitual. Conclusões da discussão dos resultados da pesquisa, os autores propõem duas opções institucionais para a resolução de disputas de Pilkada na Indonésia: a) Estabelecer um tribunal eleitoral / eleitoral especial no ambiente do PTUN. Este Judiciário Especial está domiciliado em cada Capital Provincial para julgar e decidir sobre disputas de resultados eleitorais (Eleição / Crime de Pilkada e também examinar e julgar disputas de eleição / eleição / processo eleitoral / administração), ou b) Definir a autoridade do Tribunal Constitucional de Justiça para julgar disputas sobre os resultados de Pilkada (além de PPHU) sem qualquer diferenciação de regime.

Palavras-chave: Eleições para chefes regionais; Instituições de resolução de disputas; Estudos comparativos Indonésia e Brasil.

Resumen

Este artículo es una investigación jurídica que realiza un estudio comparativo de las instituciones de resolución de disputas entre las elecciones de Indonesia y Brasil. El propósito de escribir este artículo es mapear las similitudes y diferencias en la práctica de resolución de disputas entre las elecciones de jefes regionales en Indonesia y Brasil para tomar buenos aspectos que sean adecuados para su implementación en Indonesia. En la discusión, también cubre la práctica de organizar elecciones, órganos e instituciones de gestión electoral, incluida la práctica de resolución de disputas para Elecciones / Pilkada en ambos países. El método de investigación utilizado es la investigación jurídica normativa que utiliza materiales legales primarios en forma de reglamentos estatutarios y decisiones judiciales, utilizando un enfoque comparativo, un enfoque estatutario y un enfoque conceptual. Como conclusiones de la discusión de los resultados de la investigación, los autores proponen dos opciones institucionales para la resolución de disputas de Pilkada en Indonesia: a) Establecer un tribunal especial de elecciones / elecciones en el entorno de PTUN. Este Poder Judicial Especial tiene su domicilio en cada capital provincial para juzgar y decidir sobre disputas sobre resultados electorales (Elección / Crimen de Pilkada y también examinar y adjudicar elecciones / elecciones / procesos electorales / disputas administrativas), o b) Definir la autoridad de la Corte Constitucional de Justicia para resolver disputas sobre los resultados de Pilkada (además de PHPU) sin ninguna diferenciación de regimen.

Palabras clave: Elecciones de jefes regionales; Instituciones de resolución de disputas; Estudios comparados Indonesia y Brasil.

1. Introduction

The 1998 reform movement is often identified as a turning point in the democratization life in Indonesia. One result of the reform movement was decentralization in the form of a more democratic regional autonomy. This massive wave of decentralization in the early post-reform era began at the time of the crisis that was hitting Asia, and in the domestic sphere of Indonesia, it coincided with the end of the New Order regime towards a change in a more democratic era.

Post-reform democratization has resulted in a constitutional system design that is significantly different from the state structure of the New Order regime. This significant difference is influenced by fundamental changes in the nation's life and state due to amendments to the constitution. It is recorded that after the 1998 reform, the 1945 Constitution has undergone four changes. It was during post-reformation that the 2004 Presidential Election was

carried out directly. At that time, for the first time, the Indonesian people could directly elect the President and Vice President. It also inspired the holding of direct Regional Head Elections (*Pilkada*). Previously, the Regional Head Elections in Indonesia was held through the Regional People's Representative Council (DPRD).

As a political contestation, the process of holding Regional Head Elections is also often accompanied by violations, criminal acts, and conflicts that lead to disputes. In general, the settlement of election disputes in Indonesia is regulated in Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UUD NKRI). This article stipulates that the Constitutional Court of the Republic of Indonesia has the authority to decide election result disputes, which is later revealed in Article 10 paragraph (1) of Law Number 24 of 2003 concerning the Constitutional Court. In this regard, in the development of constitutional political dynamics, the notion of General Election has undergone a shift and expanded (including Regional Head Elections) so that it also affects the types of disputes over the results of the General Election, which are the authority of the Constitutional Court of the Republic of Indonesia to try them. In the Constitutional Court decision Number 072-073/PUU-II/2004, the Court stated that the Regional Head Elections regime is substantively a General Election so that the Indonesian Constitutional Court has the authority to try it.

Based on the constitution, the implementation of Regional Head Elections in Indonesia is regulated in Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia, which states: "Governors, Regents, and Mayors respectively as Heads of Provincial, Regency, and City Government are elected democratically". Post-reform, by the legislators, the phrase "democratically elected" is translated to mean "directly elected by the people" in Law Number 32 the Year 2004 concerning Regional Government. However, at this point, problems began to arise. The phrase "democratically elected," which is used to hold Regional Head Elections, is different from the phrase "general election", as stipulated in Article 22E of the 1945 Constitution of the Republic of Indonesia, which regulates General Elections in Indonesia. The difference in the placement of Regional Head Elections in the part that regulates Regional Government, apart from the regulation on Election, has created quite heated constitutional discourse, whether Regional Head Elections is included in the "regional government regime" or "election regime". It also results in a heated debate, whether the Indonesian Constitutional Court has the authority to adjudicate disputes over the results of the Regional Head Elections or not.

Amid the heat of the constitutional discourse, through the decision on case number 97/PUU-XI/2013 that tested Law 12 of 2008, the Indonesian Constitutional Court decided that

the dispute over the results of the Regional Head Elections is not a limitation authority which is the authority of the Constitutional Court of the Republic of Indonesia as regulated in the constitution. In its consideration, the Court is of the opinion that the limits of the authority of the Constitutional Court of the Republic of Indonesia have been determined in Article 24C Paragraph (1) of the 1945 Constitution of the Republic of Indonesia. While in original intent, general elections, according to Article 22E of the 1945 Constitution of the Republic of Indonesia, must be interpreted in a limited manner, namely general elections held to elect members of the DPR (People's Representative Council), DPD (Regional Representative Council), President and Vice President, and DPRD (Regional People's Representative Council) and held every five years. In this provision, it does not cover the Regional Head Elections, so that the dispute over the Regional Head Elections results is not part of the Constitutional Court's authority to try it.

According to the author, something is interesting but "contradictory" in the verdict. On the one hand, the Constitutional Court of the Republic of Indonesia decides that the Constitutional Court of the Republic of Indonesia's authority to adjudicate disputes over Regional Head Elections results is unconstitutional. However, command number 2 states, "The Constitutional Court has the authority to adjudicate disputes over the results of Regional Head Elections as long as there is no law regulating this matter". The Constitutional Court of the Republic of Indonesia argues that it is to avoid doubt, legal uncertainty, and the vacuum of the authorized institution to settle general election results disputes; because there is no law regulating this matter, the resolution of the general election result dispute remains the authority of the Constitutional Court of the Republic of Indonesia.

After the decision of the Constitutional Court of the Republic of Indonesia Number 97/PUU-XI/2013, there was a heated debate between supporters of "Regional Head Elections as a general election regime" so that they still supported the Indonesian Constitutional Court in adjudicating the dispute over the Regional Head Elections results with those who disagreed that the Indonesian Constitutional Court adjudicated the dispute. The discourse lasted quite a long time and even tended to drag on, which then the legislators issued Law Number 8 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning Elections of Governors, Regents, and Mayors into Laws, which were later amended again with Law Number 10 of 2016. Both laws mandate establishing a "special judicial body", whose formation must be realized before implementing the National Simultaneous Regional Head Election.

At this point, the mandate for the establishment of a "special judicial body" as referred to in Article 157 paragraph (1) and paragraph (2) of Law Number 10 of 2016 has not stopped the polemic. From this article, it is not clear about the form, institutionalization, and jurisdiction of the agency's authority. Likewise, in the Elucidation section of this article, it only states that Article 157 is "quite clear". Of course, it does not explain the legislators' intent or background regarding the form and jurisdiction of the special judicial body's authority concretely. Supposedly, the "explanation" section is an "official interpretation" (authentic) of the legislators, which can help determine the purpose or background of the formation of these laws and regulations (Indrati, 2007).

The polemic of establishing the Regional Head Elections Dispute Court has been going on for a long time. The proposal for establishing a special judicial body to handle Regional Head Elections disputes was once made by the Chairman of the Constitutional Court of the Republic of Indonesia, Arief Hidayat, and the Chairman of the Supreme Court of Indonesia Hatta Ali. The establishment of this special judicial body needs to be done immediately to provide legal certainty for the Regional Head Elections Dispute Court and avoid potential constitutionality problems for dispute resolution over Regional Head Elections results. It also has the potential to become the object of judicial review in the Constitutional Court of the Republic of Indonesia, which has the impact of a complicated constitutionality problem that has the potential to cause upheaval in the life of the state and disrupt political, economic, cultural, defense, and national and regional security stability.

2. Methodology

This research is normative legal research that used primary legal materials in the form of statutory regulations and Court decisions and secondary legal material in the form of legal literature relevant to the issues discussed. In writing this article, a comparative approach, a statutory approach, and a conceptual approach was employed (Marzuki, 2011).

3. Results and Discussion

As a political contestant for public office, the logical consequence of direct regional head elections is disputes over regional head elections. Problems can include administrative matters, criminal acts, or disputes over each pair of candidates' vote acquisition results. Of the three problems, disputes over results are crucial issues because they are the final battle to

determine who will lose and win. In this context, there is the potential for each pair of candidates to use various means to influence the results of the vote acquisition, including during the judicial process, even in regional head election disputes.

Election of regional heads, according to Article 1 Number 1 of Law Number 8 of 2015, is the Election of Governors and Deputy Governors, Regents and Deputy Regents, and Mayors and Deputy Mayors, hereinafter referred to as Election is the implementation of people's sovereignty in provincial and regency/municipal areas to elect Governor and Deputy Governor, Regent and Deputy Regent, and Mayor and Deputy Mayor directly and democratically. Meanwhile, "regional head election dispute" can be seen etymologically from the term dispute, which is an implication of the emergence of problems arising in the direct regional head elections. The electoral dispute is "any complaint, challenge, claim or contest relating to any stage of the electoral process" (IDEA International, 2010). From this definition, the electoral dispute coverage is basically broad and covers all stages of general elections, including regional head elections.

Law Number 10 of 2016 sorts several types of disputes, including violations of the code of ethics resolved by the Honorary Council of Election Administrators (DKPP), while administrative disputes are resolved by Bawaslu (Election Supervisory Agency). Disputes related to TUN Pilkada (State Administration for Regional Elections) are tried by PT-TUN (High Court of State Administration), while disputes over interim results are tried by the Constitutional Court of the Republic Indonesia, and election crimes are resolved by the General Court. This division of dispute types is in line with the Electoral Justice System concept --EJS (IDEA International, 2010). According to Ahsanul Minan, Electoral Justice is defined as a system that involves devices and mechanisms to ensure that every action, procedure, and decision-related to elections is in accordance with statutory provisions, protects, or restores electoral rights, and gives rights to all parties who feel disadvantaged to file complaints and lawsuit to get justice. The EJS is a guarantee that elections must be carried out according to the rule of law and gives public confidence to the injured party to defend themselves.

3.1 Comparison between the implementation of general elections/regional head elections and the model of dispute resolution in Indonesia and Brazil

The comparative approach in this article was carried out on the General Elections/Regional Head Elections dispute resolution model using the Electoral Court model in Brazil. Voting in the General Elections/Regional Head Elections in Brazil is held

simultaneously. On October 7, 2018, around 147 million Brazilians had cast their votes on the Regional Head Elections to elect and 27 State Governors. The Regional Head Elections were held simultaneously with the President and Congress's General Elections and more than 1,650 national and state-level positions. Voters elected the 38th President of the country. The simultaneous elections were also to contest most seats in Congress — including two-thirds of the 81-member Senate and 513 positions in the Lower House — and 1,059 positions in the country's legislature.

Brazil, which is officially named the Federative Republic of Brazil, is a country located in South America with the largest population in the region. Brazil is the Federation Republic with a Presidential Cabinet. In Brazil, there are twenty-six (26) states (*estados*) and one federal district (*distrito federal*). Brazil has taken the example of the United States in holding direct elections for its regional heads or state governors (Coulson & Campbell, 2014).

In contrast to Brazil, the institutions involved in organizing general elections in Indonesia are very complex (not including the agencies/institutions involved in resolving disputes). At least three general election institutions carry it out, namely the Honorary Council of Election Administrators (DKPP), the Election Supervisory Board (Bawaslu), and the General Election Commission (KPU). In terms of function, each institution does not have a different task. The KPU is in charge of organizing and implementing the election stages. Bawaslu performs a supervisory function. Meanwhile, DKPP is tasked with enforcing the election administration code of ethics. The number of election management institutions in Indonesia is due to the experiences of political players in Indonesia, namely political parties, factions in the DPR to the President. These political players then made laws and formed election management institutions.

In Indonesia, the Election for the President/Vice President, the Election for the People's Representative Council - DPR, the Election for the Regional Representative Council - DPD, and the Election for the Regional People's Representative Council - Regency/Municipal DPRD, are held by the KPU RI which is independent in nature. Meanwhile, the Election of Regional Heads for Governors is carried out by the Provincial KPU, and the Elections for Regents/Mayors are carried out by Regency/Municipal KPUs according to their authority under the coordination of KPU RI. Supervision is carried out by Provincial Bawaslu and Regency/Municipal Bawaslu. Especially in the Special Region of Aceh Province, regional head elections are held by the Independent Election Commission (KIP) under the supervision of the Election Supervisory Committee (Panwaslih). The tenure of the KPU RI and the ranks of the KPU below are five years, which are selected openly and competitively. One thing that has

become the weakness of the elected KPU is the tight time interval between the selection of KPU members and the holding of general elections to affect the performance of the elected KPU.

It is different from Brazil since it was formed in 1932, the Superior Electoral Tribunal - the SEC has broad powers, covering all aspects of elections and political parties. The SEC has the authority to answer questions from political parties relating to electoral matters, approve vote counts, authorize the country's division into constituencies, and take other measures deemed necessary to enforce the election law. The SEC also serves as the highest body in the electoral Courts in Brazil, whose powers include legalizing the registration of political parties and presidential and vice-presidential candidates, handling jurisdictional conflicts between local electoral Courts, handling election final outcome disputes, and receiving appeals from local electoral Courts (Bisariyadi, 2012).

Like Indonesia, Brazil is one of the countries where the Election Management Institution uses the Independent organizer model; the election organizers' culture and commitment highly uphold an independent attitude. Such an organizer model requires strong leadership. For example, the independent election organizer's leadership position can be filled by a senior judge from the state judicial institution. The presence of senior judicial members in the election management can reduce the government's negative influence or opposition parties. However, it can also be a blunder if the judicial institution itself is not impartial and free from corruption or does not have sufficient members to avoid conflicts of interest in the Court (Alan, et al., 2016).

There are separate reasons why the authority to hold general elections in Brazil is devolved to the judiciary. In Brazil, the issue of electoral justice is very strong. Brazil believes that the judicial institution's role is vital for the creation of general election justice. The Superior Electoral Tribunal plays an essential role in building and developing democracy in Brazil. As an election organizer, this institution has primary duties and functions not only in terms of implementation. Apart from that, this institution has full authority over supervisory duties and becomes a general election Court (Sardini, 2015).

If the General Election Commission (KPU) in Indonesia is an election organizer, a state institution with levels from national to regional levels, the Superior Electoral Tribunal in Brazil is an election management institution at the national level. Meanwhile, voting outside the territory of Brazil is held by the Election of the Federal District Court, with the support of the Consulate and diplomatic missions in each country (Sardini, 2015).

The holding of general elections/regional head elections in Indonesia is very complex. Since the Governor, Regent, and Mayor were directly elected in 2005, the dynamics have been

very dynamic. Until 2020, there are a total of 514 districts and cities, consisting of 416 regencies and 98 cities and 34 provinces in Indonesia. Of these, minus five municipalities in DKI Jakarta and DI Yogyakarta Province did not directly elect their regional heads. During 2005-2015, Indonesia's regional head elections were held based on completing of the regional head's tenure in each region concerned. It caused the news about the regional head elections at that time in Indonesia to be heard almost every day throughout the year. As a result, voting in Indonesia's regional head elections has lost its prestige, which can be seen from the decreasing level of voter participation in regional head elections.

To deal with regional heads' tenure disparities and the tendency to decrease voter participation rates in regional head elections in Indonesia, starting in 2015, regional head elections have been held simultaneously. Since then, there have also been three simultaneous regional head elections: 2015, 2017, and 2018 (see Table 1).

Table 1. Recapitulation of the Number of Dispute Cases on the Results of Simultaneous Regional Head Elections Tried by the Indonesian Constitutional Court 2015-2018.

Number	The Year of the Simultaneous Regional Head Elections	Number of Regions	Number of Cases
1.	2015	269	152 cases
2.	2017	101	60 cases
3.	2018	171	71 cases

Source: Secondary Legal Materials, (2020).

From Faiz's notes regarding the simultaneous regional elections and dispute resolution, it could be seen that from the 2015 simultaneous regional head elections held in 269 regions, the number of disputes was 152 cases entered into the Constitutional Court of the Republic of Indonesia from 137 regions. In 2017, regional head elections were held simultaneously in 101 regions, with 60 cases of dispute filing from 50 different regions. In the last simultaneous regional head elections in 2018, there were simultaneous regional head elections in 171 regions with 71 cases of disputes submitted to the Constitutional Court of the Republic of Indonesia from 58 regions (Faiz, 2018).

In the context of the 2020 Simultaneous Regional Head Elections, it will be held simultaneously amid the COVID-19 pandemic. Two hundred seventy regions hold Regional

Head Elections, where the Regional Head Election stages start from the end of August to December 2020. The 2020 Regional Head Elections are held in 270 regions, covering nine provinces, 224 regencies and 37 cities.

The campaign period lasts for 71 days, starting from September 26 and ending December 5, 2020. Meanwhile, the Regional Head Election's voting day is planned to be held simultaneously on December 9, 2020. This date has changed from initially scheduled for September 2020.

The implementation of Regional Head Elections in Indonesia, which is distinguished from the holding of the General Election, is different from the practice in Brazil, which implements the simultaneous General Election model by combining the General Election of the President and Members of Parliament at the national level, with the General Election of Governors and Legislators at the State level.

As a federal state, the states are led by Governors and Deputy Governors, who are directly elected through general elections. Meanwhile, the States are divided into cities headed by the Mayor and elected by the city's citizens concerned. Brazil implements the use of the general election system simultaneously. The simultaneous implementation of General Elections in Brazil can be viewed from the Presidential Election and the Legislative Election, which are held simultaneously, accompanied by general elections for local or sub-national (legislative and executive) as a whole (or almost entirely).

For dispute resolution institutions in Indonesia, several institutions are involved in settlement of Regional Head Election Disputes. In Chapter XX of Law Number 1 of 2015 that discusses Regional Head Election Disputes, the types of violations, disputes, criminal acts, and disputes over results are as follows:

- a. Violation of the Code of Conduct of Election organizers is a violation of Election organizers' ethics based on oaths and/or promises before carrying out their duties as election organizers. Election organizers' code of ethics violations is resolved by DKPP (Article 136 and Article 137 of Law Number 1 of 2015).
- b. Administrative Violations include violations of the procedures relating to the Election implementation administration in every stage of the Election. Provincial Bawaslu and/or Regency/Municipal Panwaslu make recommendations on the results of their studies related to Election administration violations. Provincial KPU and/or Regency/Municipal KPU are obliged to follow up on recommendations, resolve,

- examine, and decide violations of Election administration (Articles 138-141 of Law Number 1 of 2015).
- c. Election Disputes consist of 1) disputes between election participants and 2) disputes between Election Contestants and Election organizers. Provincial Bawaslu and Regency/Municipal Panwaslu have the authority to resolve disputes (Articles 142-143 of Law Number 1 of 2015).
 - d. Election Crime is a violation or crime against Election provisions as regulated in this Law. The District Court (through a special panel) examines, adjudicates, and decides on Election criminal cases (Article 145 and Article 147 of Law No.1 of 2015).
 - e. Electoral State Administrative Disputes are disputes arising in the field of Electoral state administration between Candidates for Governor, Candidates for Regent, and Candidates for Mayor and Provincial KPU and/or Regency/Municipal KPU as a result of the issuance of Decree of Provincial KPU and/or Regency/Municipal KPU. The State Administrative High Court (PT-TUN) examines and decides upon Article 153-154 of Law No.1 of 2015.
 - f. Election Result Disputes are disputes between Provincial KPU and/or Regency/Municipal KPU and Election participants regarding determining the votes acquired by the election results to be examined and adjudicated by a special judicial body (Article 157 paragraph (1) of Law Number 10 of 2016). However, the Election's votes are examined and tried by the Constitutional Court until a special judicial body is formed.

Likewise, with general election dispute resolution institutions, these institutions are general election dispute resolution institutions referred to in Law Number 7 of 2017 concerning general elections, which is then adopted into the Regional Head Election Law. From this, it also appears that the resolution of disputes related to regional head elections in Indonesia is still scattered across several institutions. This practice, of course, impacts the ineffectiveness of the settlement of regional head election disputes, where it has the potential to create legal uncertainty and contradicts the principle of efficiency in holding regional head elections.

It is undoubtedly different from practice in Brazil. Electoral Courts in Brazil are part of the Electoral Justice System, namely: (a) Superior Electoral Tribunal; (b) Regional Electoral Tribunals; (c) Electoral Judges; (d) Electoral Boards. Electoral Courts in Brazil are formed permanently in two levels, namely the electoral Courts at the federal state level called the Superior Electoral Tribunal and Regional Electoral Tribunals in each state. The Electoral Court

in Brazil is an amalgamation of the adjudicative body and the electoral management body (Dian & Ola, 2015).

The composition of judges in the Superior Electoral Tribunal (SEC) consists of seven judges with a composition of five judges, who are selected by three judges from the Supreme Federal Tribunal and two judges from the Superior Tribunal of Justice, while two more judges are appointed by the President with a background of advocates. The SEC is domiciled in the capital city of the country and has jurisdiction over all of Brazil. The Chair and Deputy Chairperson of the SEC are elected from the Federal Supreme Court judges and its Electoral Corregidor among the High Court judges (Bisariyadi, 2012).

Meanwhile, the judges in the Regional Electoral Tribunal consist of seven judges with a composition of four judges, which are selected by two judges from the Tribunals of Justice and two judges from state Courts appointed by the Tribunals of Justice, while the composition of three judges, which is selected by one judge from the Federal The Regional Tribunal and two more judges are appointed by the President with an advocate background (Dian & Ola, 2015).

In order to uphold the independence and impartiality, and non-political character of the electoral Court, judges serve for two-year terms and cannot serve for more than two consecutive terms. According to the IFES assessment, Brazil's election dispute resolution system is one of the world's most effective systems. It can be seen through the provisions regulated explicitly, both in the Constitution and the Election Law (Vickery, 2011).

3.2 The ideality of institutionalizing dispute resolution for regional head elections in indonesia in the future

Until now, the holding of general elections in Indonesia still leaves various problems, especially regarding the general election law enforcement process. The still distribution of the authority to adjudicate general election/regional head election disputes in several institutions, judicial bodies, and quasi-judiciary is, of course, counterproductive with the spirit of the principles of efficiency and effectiveness of general elections. Besides, handling cases of violations and the settlement of dispute cases tends to be prolonged and convoluted ignoring the principles of efficiency and effectiveness in enforcing the general election law. In fact, general elections require a quick solution to avoid the potential loss of voters and election participants' rights and prevent government disruption.

In the context of the mandate to establish a special judiciary body to resolve disputes over the results of regional head elections, it should be followed up in a comprehensive framework of thinking, how the institutional structure, competence of authority, composition of judges, including determining the jurisdiction of their positions. Ideally, this special court should not only be formed to resolve disputes over the results of regional head elections as mandated by Article 157 of Law No. 10 of 2016 alone, but must also be constructed as a general election Court that has the authority to resolve all disputes (administration/process and results) of general elections and regional head elections, except for disputes over the election results of the DPR, DPD, President and Vice President, and DPRD, which remains the authority of the Constitutional Court of the Republic of Indonesia.

At least, there are two options for institutionalizing regional head election dispute resolution in Indonesia. The first option, which is the author's primary option, is to form a special court for general elections/regional head elections under the administrative court. This Special Judiciary Body is domiciled in each Provincial Capital to adjudicate and decide on disputes over the results of general elections/regional head elections, adjudicate criminal acts of general elections/regional head elections, and examine and adjudicate process/administrative disputes for general elections/regional head elections. The second option is to define the Constitutional Court of the Republic of Indonesia's authority to adjudicate disputes over the results of regional head elections (in addition to PHPU) without any differentiation of regimes.

Regarding the first option, it is crucial to listen to the views of Irvan Mawardi, a PTUN judge, who stated that the choice of institutions for handling disputes over regional head elections through a special judicial body within the PTUN environment is based on several arguments, among others, that the determination of the results of regional head elections is a product of governance.

State enterprises, where the KPU is a state administration official. Besides, he stated that one of the structural designs for implementing regional head elections that can encourage effective and efficient administrative law enforcement for regional head elections is a special court's existence to handle and resolve disputes and violations in regional head elections. Moreover, Irvan considered that the PTUN burden is still relatively light. The number of cases submitted and handled by the PTUN is relatively small compared to other Courts. Every year, there are only 2,000 cases that go to PTUN; even then, it is dominated by land dispute cases (Mawardi, 2014).

This view is also supported by the opinion that in the context of HTN/HAN (Constitutional Law/State Administration Law), the KPU is a State Administration Officer

(TUN Official) who carries out government (executive) functions in the field of general elections/regional head elections. Any decision or determination made by the KPU has the consequence that it can be challenged or refuted by the party who feels aggrieved by the issuance of the KPU decision or determination. This condition is recognized by legislators because the potential for clashes, conflicts, and legal disputes in processes and stages is always there. Lawmakers are aware that in the process of implementing them, conflicts/disputes that occur must be given a place or means to resolve them (Munte, 2017).

According to Qurrata Ayuni, a similar idea that gives the authority to handle disputes over regional head elections at PT-TUN, according to Qurrata Ayuni, was conveyed several times by Yusril Ihza Mahendra, who suggested that regional head election disputes become the authority of PT-TUN, and the ideal is to handle regional election disputes Regency/City level is the local PT-TUN. The Supreme Court must immediately reproduce the TUN High Courts, which currently only exist in Medan, Jakarta, Semarang, Surabaya, and Makassar. The KPUD decision regarding the recapitulation of regional head election results and the winning pair's determination is essentially a state administration decision.

As a TUN official's decision, the one with the most authority to try it is the State Administration Court. However, to be faster, PT-TUN immediately. Nevertheless, PT-TUN opens a trial like a Court of the first instance, not examining files like an appeal hearing. PT-TUN can limit the time for examination of a regional head election case, for example, 30 working days from the time the case is registered. Considering that there are many TUN High Judges, they can form several panels, not just one panel like the Constitutional Court of Indonesia. Thus, the in-depth case examination process can be carried out by the judges' panel, not too hastily, chasing a target time (Ayuni, 2018).

For the relative competence of this special court, the author proposes to be domiciled in each provincial capital with authority to handle disputes for the election of regional heads of regents/mayors and disputes for the election of regional heads of governors in the respective provinces. This special judicial body is under the PTUN environment. This choice is supported by the argument that so far, handling cases of violations and the settlement of cases or disputes in general elections/regional head elections tends to be long and convoluted, which in fact ignores the principles of efficiency and effectiveness in enforcing the general election law.

In fact, general elections require a quick solution to avoid the potential loss of voters and election participants' rights and prevent government disruption. Thus, it further guarantees legal certainty so that comprehensive material truth is found as soon as possible.

This special court has the authority to judge at the first and last level whose decisions are final and binding, which means that the binding power (*verbindende kracht*) is immediately born and has permanent legal force since it is pronounced in a plenary session open to the public. On this decision, there are no other legal remedies that can be taken and are *erga omnes* (applicable to everyone), which must be obeyed and carried out immediately (self-executing) by all state administrative organs, law enforcement organs, and citizens. This type of decision adopts the nature of the Constitutional Court decision, which is needed to provide legal certainty and justice directly.

Meanwhile, for absolute competence in the form of a Court's authority to adjudicate a case according to the object, material, or subject matter of the dispute, the researcher proposes that this special court should be designed to have the authority to handle process (administrative) disputes, criminal acts, and disputes over results. Although departing from the Regional Head Election Law and only mandating the establishment of a Court for disputes over the results of Regional Head Elections, for the greater interest and paying attention to the legal needs of the community, the researcher proposes that this judiciary body be expanded to become a Special Election Judiciary Body, with authority to handle process disputes (administration) of General Election/Regional Head Election, criminal acts of General Election/Regional Head Election, and disputes over the results of Regional Head Elections (disputes over the results of General Elections remain in the Constitutional Court of the Republic of Indonesia). This special judicial body does not need to be authorized to handle violations of the organizers' code of conduct; it remains the authority of DKPP. The consequence of this choice is a reform of the Bawaslu function. The competence of adjudicating process disputes by Bawaslu must be evaluated and returned to the judiciary's realm through this Special Election Court.

This special court has the competence to handle process disputes and general election crimes, to disputes over the results of regional head elections. The dispute over the process (administration) of regional head elections arises because of a state administrative decision issued by the KPU, which is detrimental to the community or regional head candidate pairs. This type of dispute can also arise due to violations of the KPU decision by regional head candidates, such as violations of the campaign period.

For disputes that arise because of the administrative institution's administrative decision for general elections/regional head elections, the party who feels aggrieved can immediately file an administrative lawsuit to this special court. Likewise, with cases that arise because of

violations of state administrative decisions by regional head candidates, the public can report to a special court for trial.

4 Conclusions & Suggestions

Regarding the ideal model for special judicial bodies in Indonesia, there is no single method of dispute resolution model for general elections/regional head elections that is suitable for all countries. However, there are two options that the author proposes a) to form a special court for general elections/regional head elections under the PTUN environment.

This Special Judiciary is domiciled in each provincial capital to adjudicate and decide on disputes over the results of regional head elections (Crime of general elections/regional head elections and examine and adjudicate process disputes/administration of general elections/regional head elections), or b) to define the authority of the Constitutional Court of the Republic of Indonesia to adjudicate disputes over the results of regional head elections (in addition to PHPU) without any differentiation of regimes.

The choice of these two options is based on constitutional arguments that refer to the provisions of Article 24 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which explicitly determines that judicial power is exercised by a Supreme Court and by an Indonesian Constitutional Court. Derivative rules for these provisions are in Article 27 paragraph (1) of Law Number 48 of 2009 concerning Judicial Powers, which stipulates that "a special court can only be formed in one of the judicial circles under the Supreme Court" so that the formation of a special judicial body in outside the Supreme Court can be said to be unconstitutional.

We recommend a number of related matters to several parties, namely: first, the People's Consultative Assembly (MPR-RI), to make constitutional changes to several articles in the 1945 NRI Constitution, among others; a) Article 18 which regulates Regional Government; b) Article 22E relating to elections; and c) Article 24C which regulates the Constitutional Court. This is to synchronize these articles so that there is no longer any debate regarding the position of the regional election legal regime in the Indonesian constitutional system according to the constitution. Second, the President and the DPR, to form a new Election Law by merging a number of laws related to each other, namely the Law on Election for Members of the DPR, DPD and DPRD, the Law on the Election of President and Vice President, and the Law on General Election of Governors Regents and Mayors, codifying the Election Law, the Election Law Book. Including by rearranging the provisions of the law, so as to end the discourse on the

position of the election legal regime in the Indonesian constitutional system. Next is to appoint and firmly regulate the institutionalization of election / regional election dispute resolution bodies in Indonesia in the intended law.

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