



## Limitation of Application for Cancellation of Election Results Regional Head in Justice Perspective

M. Abdim Munib; Made Warka; Slamet Suhartono

Faculty of Law, Universitas 17 Agustus 1945 Surabaya, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v8i12.3264>

---

### **Abstract**

The type of research used in this research is normative legal research. The ratio of legislative norms limiting applications for cancellation of regional head election results contained in Article 158 paragraph (1) and paragraph (2) of Law no.10 of 2016 is to ensure that the cases submitted are cases that have significance with the electability of pairs of candidates for regional head and deputy regional head and to avoid the large number of dispute requests submitted by pairs of candidates for regional head and deputy regional head who feel aggrieved to the Court Constitution. Second, Article 158 paragraph (1) and paragraph (2) of Law Number 10 of 2016 is an open legal policy that forms the law as an effort to encourage the development of an increasingly mature political ethics and culture. The existence of the threshold norm of the difference in votes in reality is not in line with the principle of protecting human rights as mandated in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, because it will hinder the rights of citizens to obtain legal protection and fair legal certainty. Not all cases of dispute over the results of regional head elections that are submitted to the Constitutional Court meet the threshold for the difference in votes in Article 158 paragraph (1) and paragraph (2) of Law no. 10 of 2016. The breakthrough made by the Constitutional Court as an effort to realize substantive justice for justice seekers, but this condition creates legal uncertainty.

**Keywords:** *Regional; Justice*

### **Introduction**

The election of regional heads and deputy regional heads is an implementation of democracy that involves the direct participation of the people in a fairly large number, so that the potential for disputes is quite high and cannot be avoided. Therefore, in the election of regional heads, a comprehensive system is needed to ensure free, honest and fair regional head elections with democratic principles, a comprehensive legal system and the provision of institutions that handle disputes over election results.

The causes of problems with election results can be caused by fraud, mistakes, non-fraudulent misconduct and extrinsic events or acts of god. According to the philosophical aspect, Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia (UD NRI 1945) states that "Governors, Regents, and Mayors respectively as heads of Provincial, Regency and City governments are democratically elected". The meaning of democracy in the formulation of Article 18 paragraph (4) of the

1945 Constitution of the Republic of Indonesia can be conducted either through the institution of the Regional People's Representative Council (DPRD) or by direct elections by the people. The legislators finally chose the meaning of democracy as regional head elections which were carried out directly which were legitimized by the issuance of Law Number 32 of 2004 concerning Regional Government (Law No. 32 of 2004). Strictly speaking, Article 56 paragraph (1) of Law no. 32 of 2004 reads: "The Regional Head and the Deputy Regional Head are elected in one pair of candidates which is carried out democratically based on the principles of direct, general, free and confidential, honest and fair".

The election of regional heads and deputy regional heads is an implementation of democracy that involves the direct participation of the people in a fairly large number, so that the potential for disputes is quite high and cannot be avoided.

According to the juridical aspect, explicitly in Article 157 paragraph (3) of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayor Becomes Law (Law No. 10 of 2016) states: "Cases of dispute over the determination of the results of the election are examined and tried by the Constitutional Court until a special judicial body is formed". In addition to regulating the institutions authorized to examine and adjudicate disputes over the results of the Regional Head Election UU no. 10 of 2016 determines the threshold for pairs of candidates who will apply for the cancellation of the determination of the vote count results determined by the Provincial and Regency/Municipal General Election Commissions as organizers. According to the sociological aspect, general elections are almost impossible without the presence of political parties in the community. The existence of parties is also one of the realities of implementing the principle of people's sovereignty, because with the existence of political parties all aspirations of the people which are manifestations of sovereignty are in the hands of the people, the structure and power of power is built from below. Based on the description in the background of the problem above, it can be raised the question of whether the legal ratio limiting the request for cancellation of the results of the regional head election in Article 158 of Law no.10 years 2016? and What is the concept of limiting requests for cancellation of regional head election results in a justice perspective?

### ***Research Method***

The type of research used in this research is normative legal research. (Michael, 2020)

### ***Research Results and Discussion***

#### **Legislative ratio limiting applications for cancellation of regional head election results in Article 158 of Law Number 10 of 2016**

The rationale for the birth of the legislation mentioned above, because since the implementation of direct elections for regional heads and deputy regional heads in Indonesia in 2005 based on Law no. 32 of 2004 until the implementation of regional head and deputy elections which were carried out simultaneously through Law Number 1 of 2015 was always colored by the rise of requests for cancellation of the determination of the votes that had been determined. In Article 158 of Law no. 10 of 2016 there is an administrative requirement to file a lawsuit to the Constitutional Court, where each region that files a lawsuit must count the number of valid votes and then calculate the difference in the number of votes. Article 158 states that: Paragraph (1) Contestants for the Election of Governor and Deputy Governor may submit an application for the cancellation of the determination of the results of the vote count with the provisions.

- a. For a province with a population of up to 2,000,000 (two million) people, the submission of a dispute over the vote acquisition is carried out if there is a difference of at most 2% (two percent) of the total valid votes resulting from the final stage of vote counting determined by the provincial General Elections Commission;
- b. Provinces with a population of more than 2,000,000 (two million) people, up to 6,000,000 (six million) people, submission of votes can be made if there is a difference of at most 1.5% (one point five percent) of the total valid votes obtained. final vote count determined by the Provincial General Election Commission;
- c. Provinces with a population of more than 6,000,000 (six million) up to 12,000,000 (twelve million) people, the submission of a vote dispute shall be made if there is a difference of at most 1% (one percent) of the total valid votes resulting from the vote count. the final stage determined by the provincial General Election Commission;
- d. For a province with a population of more than 12,000,000 (twelve million) people, the submission of a dispute over the vote acquisition is carried out if there is a difference of at most 0.5% (zero point five percent) of the total valid votes resulting from the final vote count determined by the Commission. Provincial General Election.

Paragraph (2) Contestants for the Election of Regents and Deputy Regents as well as Mayors and Deputy Mayors may apply for the cancellation of the determination of the results of vote acquisition with the following provisions;

- a. Regency/City with a population of up to 250,000 (two hundred and fifty thousand) people, the submission of a dispute over the vote is made if there is a difference of at most 2% (two percent) of the total valid votes resulting from the final vote count determined by the General Elections Commission. Regency/City;
- b. Regency/City with a population of more than 250,000 (two hundred fifty thousand) up to 500,000 (five hundred thousand) people, the submission of a dispute over the vote is made if there is a difference of at most 1.5% (one point five percent) of the total valid votes resulting from the final stage of vote counting determined by the Regency/City General Election Commission;
- c. Regency/City with a population of more than 500,000 (five hundred thousand) up to 1,000,000 (one million) people, the submission of a dispute over the vote is made if there is a difference of at most 1% (one percent) of the total valid votes resulting from the vote count. the final stage of the Regency/City General Election Commission;
- d. Regency/city with a population of more than 1,000,000 (one million) people, the submission of a vote dispute is submitted if there is a difference of at most 0.5% (zero point five percent) of the total valid votes resulting from the final stage of the General Election Commission's vote count Regency/City.

This statement was strengthened by the Constitutional Court in its decision Number 51/PUU-XIII/2015 affirming that the requirement for the difference in votes in Article aquo is an open legal policy of the legislators to determine it because the limitation is logical and legally acceptable because it is to measure the significance of the candidate's vote. The attitude and stance of the Constitutional Court is also applied to its decisions Number 58/PUU-XIII/2015 and Number 73/PUU-XIII/2015, all of which are requests for judicial review of Law No. 8 of 2015.

This consideration is based on the statement of the House of Representatives of the Republic of Indonesia which was submitted in the trial that the formulation of Article 158 which regulates the

requirements for submitting the cancellation of the determination of the vote count results is to ensure legal certainty over the results of the regional head elections. The limit of the difference between the vote acquisition and the results of the calculation of the Regency/Municipal General Election Commission or the Provincial General Election Commission as stipulated in Article 158 of the regional head election law is set to ensure that the number of votes is significantly harmed. The percentage is determined according to the number of representations of the population in the area concerned. This is because to protect every vote cast by citizens who feel aggrieved.

The research findings, namely the rationale for the birth of Law no. 10 of 2016 in Article 158 Paragraph (1) and Paragraph (2) due to frequent disputes over election results. This was triggered by the difference in votes from the results of the regional head election, and was caused by various violations, fraudulent practices, manipulations and actions that were not in line with democratic principles and the principles of direct, free, honest and fair and carried out in a structured, systematic manner and the massive that preceded it.

According to Mardian, this condition requires a reinterpretation of open legal policies in the form of control in the form of restrictions on the freedom of legislators in formulating a legal norm. The door to constitutional freedom granted by the Constitutional Court through the concept of an open legal policy is reviewed not with the intention of eliminating the freedom of legislators, but to ensure that an open legal policy will not harm the community (residents or citizens). (Wibowo, 2019)

### **Concept of Limitation of Application for Cancellation of Regional Head Election Results in the Perspective of Justice**

The concept of limiting the application for cancellation of the results of the regional head election in the perspective of justice in question is: first, still providing restrictions to pairs of regional head and deputy regional heads who submit applications for cancellation of regional head election results with a determined percentage of 0.5% - 2% as stated in Article 158 paragraph (1) and paragraph (2) of Law no. 10 of 2016. Second, adding a new norm, namely giving the Constitutional Court the flexibility to continue to examine and adjudicate cases submitted by pairs of candidates for regional head and deputy regional head, if according to the Constitutional Court there is sufficient evidence of various forms and practices of violations and fraud committed structured, systematic, and massive in nature as well as other violations that can threaten the principle of fair and just regional head elections and the establishment of democracy.

Justice is basically a relative concept, everyone is not equal, fair according to one is not necessarily fair to the other, when someone asserts that he does a justice, it must be relevant to public order in which a scale of justice is recognized. The scale of justice varies greatly from place to place, each scale is defined and fully determined by the community according to the public order of the community. (Santoso, 2012)

To analyze the problems mentioned above, the author uses the theory of justice put forward by John Rawls who put forward two principles of justice as (Dionigi & Kleidosty, 2017) "First: each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others. Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all". In realizing justice as fairness, regarding the distinction and limitation of freedom, John Rawls emphasizes that restrictions can indeed result in inequality in political freedom, but this inequality is allowed if it is important to ensure the freedom of disadvantaged groups. In that context, certain restrictions introduced into the law can be justified as long as they are intended to guarantee the right to equal political participation for all citizens of different backgrounds and resources. (Ujan, 2009) This is reinforced by the results of research by Bayu Dwi Anggono, who said that the presence of Article 158 is an effort to prevent conflict through ensuring that dispute cases can be handled by the Constitutional Court which will have implications for maintaining national security guarantees. At the same time, Article

158 must be accompanied by optimizing the resolution of regional head elections disputes by institutions outside the Constitutional Court in a transparent, accountable, thorough and fair manner. The party who is harmed by the limitation in Article 158 can propose to the legislators to eliminate or change it (Anggono, n.d.).

### **Conclusion**

The ratio of legislative norms limiting applications for cancellation of regional head election results contained in Article 158 paragraph (1) and paragraph (2) of Law no.10 of 2016 is to ensure that the cases submitted are cases that have significance with the electability of pairs of candidates for regional head and deputy regional head and to avoid the large number of dispute requests submitted by pairs of candidates for regional head and deputy regional head who feel aggrieved to the Court Constitution. Second, Article 158 paragraph (1) and paragraph (2) of Law Number 10 of 2015 is an open legal policy that forms the law as an effort to encourage the development of an increasingly mature political ethics and culture. The existence of the threshold norm of the difference in votes in reality is not in line with the principle of protecting human rights as mandated in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, because it will hinder the rights of citizens to obtain legal protection and fair legal certainty. Not all cases of dispute over the results of regional head elections that are submitted to the Constitutional Court meet the threshold for the difference in votes in Article 158 paragraph (1) and paragraph (2) of Law no. 10 of 2016. The breakthrough made by the Constitutional Court as an effort to realize substantive justice for justice seekers, but this condition creates legal uncertainty.

### **References**

- Anggono, B. D. (n.d.). Pembatasan Pengajuan Perkara Sengketa Hasil Pemilihan Kepala Daerah Di Mahkamah Konstitusi dan Implikasinya Terhadap Jaminan Keamanan Nasional. *Jurnal Rechts Vinding, Media Pembinaan Hukum Nasional*, Volume 5 Nomor 1, April 2016.
- Dionigi, F., & Kleidosty, J. (2017). Theory of justice. In *Theory of Justice*. <https://doi.org/10.4324/9781912303441>
- Michael, T. (2020). Bentuk Pemerintahan Perspektif Omnibus Law. *Jurnal Ius Constituendum*. <https://doi.org/10.26623/jic.v5i1.2222>
- Santoso, A. (2012). *Hukum, Moral dan Keadilan Sebuah Kajian Filsafat Hukum*. Kencana.
- Ujan, A. A. (2009). *Filsafat Hukum: Membangun Hukum, Membela Keadilan*. PT. Kanisius.
- Wibowo, M. (2019). *Kebijakan Hukum Terbuka Dalam Putusan Mahkamah Konstitusi, Konsep Dan Kajian Dalam Kebebasan Pembentuk Undang-Undang*. PT. RajaGrafindo Persada.

### **Copyrights**

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).