

## CHAPTER ONE

### INTRODUCTION

#### A. Background

The disputes over the result of regional election became the issue that must get special attention from the Government of Indonesia. Based on the data, the disputes over the regional election received by the Constitutional Court from 2008 to 2017 amounted to 905 cases. In sequences, there were 27 cases in 2008, 230 cases in 2010, 132 cases in 2011, 105 cases in 2012, 192 cases in 2013, 9 cases in 2014, 152 cases in 2016, and 55 cases in 2017. Detail records can be seen in the following table<sup>1</sup>

Table 1.1  
Detail Regional Election Dispute Settlement in Constitutional Court

Regional Election Dispute Settlement in Constitutional Court		
Year	Cases accepted by Constitutional Court	Constitutional Court Decision
<b>2008</b>	27	18
<b>2009</b>	3	12
<b>2010</b>	230	224
<b>2011</b>	132	131
<b>2012</b>	105	104
<b>2013</b>	192	196
<b>2014</b>	9	13
<b>2016</b>	152	152
<b>2017</b>	55	53
<b>Total</b>	905	

<sup>1</sup> Indonesian Constitutional Court “Rekapitulasi Perkara Perselisihan Hasil Pemilihan Umum Kepala Daerah dan Wakil Kepala Daerah” available at <http://www.mahkamahkonstitusi.go.id/index.php?page=web.RekapPHPUD> accessed on Monday, 8th May 2017 at 14.35 p.m.

The data show that there were many cases were accepted by the Constitutional Court from 2008 to 2017. The data imply that there were many unresolved disputes at the Constitutional Court.

Indonesia is one of the democratic states. The concept of democracy applied by Indonesia is a constitutional democracy as mentioned in Article 1 paragraph (2) of the 1945 Constitution which says that “Sovereignty is in the hands of the people and is implemented according to this Constitution”.<sup>2</sup> The basic principle of democratic state is the citizen right’s to participate actively in the political process, which concretely implied in the free and fair elections.

Election is the main way to establish a democratic political arrangement as it is the recognition and realization form of the political rights of the people as well as the rights of their representatives in carrying out the governance. It is the constitutional right of citizens to elect and to be elected. Elections are held based on the equality before the law principle<sup>3</sup> and equal opportunity principle<sup>4</sup> based on Pancasila in the Republic of Indonesia. From those principles, it is highlighted that election is very important political activity in carrying out democracy states.

Article 18 paragraph (4) of The Second Amendment of 1945 Constitution prescribes that “Governors, Regents and Mayors, respectively as head of regional government of the provinces, regencies and municipalities, shall be elected democratically”. The provision has encouraged the democratic spirit at the regional level (province, district, and city) so that the head of region can be

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<sup>2</sup> Article 1 paragraph (2) of the 1945 Constitution.

<sup>3</sup> Article 28D paragraph (1) of the 1945 Constitution.

<sup>4</sup> Article 28D paragraph (3) of the 1945 Constitution.

elected directly by the people or indirectly through the Regional House of Representatives, but the sovereignty is still in the hand of the people.

Successful elections are not only measured by the execution of the voting, but also determined by how the disputes settlement is run. Based on the data above, it implies the existing judicial institutions have limitations and are not sufficient to achieve electoral justice. There are loopholes in the electoral dispute resolution mechanism. As a result, real justice has not been obtained by all participants involved and thus it was harmed in electoral contestation.<sup>5</sup>

Regarding the electoral law enforcement, especially the dispute settlement of regional election, it has been ups and downs, starting from the authority of the Supreme Court (Court of Appeal) which is authorized to resolve election dispute, but it was shifted to the Constitutional Court. The authority of the Constitutional Court in resolving the regional election dispute has been ineffective, as shown by the accumulation of cases in the Constitutional Court and there were some cases that were not settled in their registered year.

When regional election disputes cases are compared to the other three functions of the Constitutional Court, it seems to be more electoral court, whereas the grand design of the Constitutional Court is designated as guard the constitutional rights of the citizens through the judicial review. It has the potential to injure and discourage the opportunity of citizens to maintain their rights.

The idea that appear as a solution to the problem is the establishment of a special institution in the form of a judicial institution that can resolve the regional

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<sup>5</sup> Refly Harun, 2016, *Pemilu Konstitusional: Desain Penyelesaian Sengketa Pemilu Kini dan ke Depan*, Jakarta, PT RajaGrafindo Persada, p. 339.

election disputes. This becomes something important and urgent to do in order to maintain the implementation of democracy in Indonesia that is direct, free and fair.

## **B. Problem Formulation**

What is the urgency of the establishment of special court bodies in the disputes settlement of regional elections in Indonesia?

## **C. Objective of the Research**

1. To understand the current mechanism of regional election dispute settlement in Indonesia.
2. To analyse the urgency of Special Court for regional election dispute settlement in Indonesia.
3. To propose recommendation for a better mechanism of regional election disputes settlement in Indonesia.

## **D. Benefits of Research**

1. Theoretical Aspect

The research aims to give theoretical understanding on the urgency of special court of regional election disputes settlement in Indonesia.

2. Practical Aspect

To propose a better recommendation for the settlement of regional election disputes in Indonesia.