

## **CHAPTER ONE**

### **INTRODUCTION**

#### **A. Background**

Since the transfer of authority to settle the dispute on the results of the election from the Supreme Court (MA) to the Constitutional Court (MK) until November 2012, number of disputes over the election result at the Constitutional Court has reached 452 cases.<sup>1</sup>With the number of that much cases, it can be noted that the volume of disputes election results submitted to the Constitutional Court is very high. Moreover, the dispute over the election must be settled within a short period of 14 days but on Law Number 8 Year 2015 Constitutional Court shall decide the dispute at the latest 45 (fourty five) days after the receipt of the petition.

General Election of Regional Head and Deputy Regional Head (local general election) is a concept of democracy to create democratic leadership in a country, especially at region level. As the implementation of a democratic concept that requires direct participation of the people on a large scale, the potential for violations in the local general election is also quite high. Friction between local general election participants and local general election organizers among the local general election participants and the society

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<sup>1</sup> See Iwan Satriawan and Khairil Azmin Mokhtar, 2015, the Constitutional Court's Role in Consolidating Democracy and Reforming Local Election, *Constitutional Review*, Vol.1, Number 1, p.112

during local general election resulted in many political and legal issues and even social issues.<sup>2</sup>

In Indonesia, the term of democracy is explicitly mentioned in the 1945 Constitution, namely Article 1 paragraph (2) of the phrase "sovereignty is in the hands of the people" and Article 18 paragraph (4) in a clause referred to "democratically elected". Democracy is run based on the law and the law is executed based on democracy. Both likened as two sides of one same coin so they cannot be separated. Changes of the Constitution has changed the life of a democratic country.<sup>3</sup>

According to Aidul Fitriadi Azhari, the provisions of Article 1 paragraph (2) of the Third amendment of the 1945 Constitution contains clues about the relationship between democracy and the interpretation. Interpretation over democracy should refer to the Constitution. This clearly shows the construction of the internal perspective that is closed because the reference is completely on the text of the Constitution itself (*self-referential*). From this article there is preference in written text compared to the text of the Constitution extensively. Promoting over the Constitution as written constitutional text can guarantee legal certainty and stability.

However, when it means in deterministic aspect it will imply the Constitution being frozen and unresponsive to the development of community. Therefore, it is still treated the room for interpretation that is

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<sup>2</sup> See Helmi Kasim, et.al, 2011, *Compability Method of Evidence Interpretation of Constitutional Judges on General Local Election Disputes*, Jakarta, Studies and Research Center p.3

<sup>3</sup> Refly Harun, 2016, *Pemilu Konstitusional: Desain Penyelesaian Sengketa Pemilu Kini dan Kedepan*, Jakarta, PT RajaGrafindo Persada, p.59

critical related to the definition of sovereignty of the people or democracy. In that provision, it did not give birth to pretensions on constitutionalism in form of legalism that were extravagant, and that were strongly inconsistent with the principle of the sovereignty of the people or democracy itself.<sup>4</sup>

Democracy in Indonesia is laid out in the frame of constitutional norms contained in the 1945 Constitution. Indonesian democracy is not synonymous with "*vox populi vox dei*" (voice of the people is the voice of God), also Indonesian democracy is not similar to "the voice of the majority is the voice of truth". The size of the truth in Indonesia's democracy is the norm of the law of the Constitution. Therefore, in order that the appropriate pace of democracy can spin a spice of democracy, that democracy must be preserved. This is where the position of the Constitutional Court as the guardian of the Constitution must always maintain democracy as executor of the norm of the Constitution.<sup>5</sup>

According to the data, since the authority of disputes resolution on the result of local election from Supreme Court to the Constitutional Court until November 2012, number of disputes on the results of regional election which has entered to the Constitutional Court amounted to 477 cases. With that number of cases, it can be inferred that the volume of disputes on the results of regional election submitted to the Constitutional Court is huge. Moreover, the dispute must be resolved shortly within 14 days but on Law number 8 Year 2015 Constitutional Court shall decide the dispute at the latest 45

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<sup>4</sup> *Ibid.*

<sup>5</sup> Iwan Satriawan, et.al; Proceeding Seminar Nasional PK2P, FH UMY, October 17, 2015, p.225

(fourty five) days after the receipt of the petition by the judges of the Constitutional Court of 9 people, while the Constitutional Court is centralistic, hence the rulings will not be effective. Thus, in the process of organizing of regional election, it was extremely ineffective and inefficient if reviewed from the weakness of it's results dispute resolution process.<sup>6</sup>

Therefore, it is interesting to examine the effectiveness of dispute resolution of the results of regional election by the Constitutional Court. Through understanding and analysis the procedure before and after the enactment of Law No. 8 of 2015. The research also attempts to explore the obstacles that arise in attempting to develop the system of "*rule of law*" which is expected to become effective and stable systems of democracy. In the process of transitional democracy, democratic values are needed to be institutionalized officially into the Constitution, laws and regulations.<sup>7</sup> The Law Number 8 of 2015 on Local Disputes Settlement amended that the regional election result disputes should be examined and treated by a special court.

## **B. Problems Formulation**

Based on the background above, it is necessary to formulate the main issues as follows:

1. What are the institutions provided to settle the result of local election disputes before and after the issuance of Law Number 8 of 2015?

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<sup>6</sup> Iwan Satriawan, et.al; *Op cit*, p.225

<sup>7</sup> Iwan Satriawan, et.al; *Op.cit*, p.227

2. How are the procedures of local election disputes settlement by the institutions provided before and after the enactment of Law Number 8 of 2015?

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

1. To understand the provided institution to settle the disputes on the results of local election before and after the issuance of Law Number 8 of 2015.
2. To analyze the procedures of local election disputes settlement by the provided before and after the enactment of Law Number 8 of 2015.
3. To suggest a better recommendation on the procedures to settle the dispute on the results of local election.

### **D. Benefit of research**

1. Theoretically: the research would give insightfull theory related to the procedure of local election dispute settlement before and after the enactment of law number 8 of 2015.
2. Practically: the research provide better understanding on differences between the procedure of local election dispute settlement before and after the enactment of law number 8 of 2015.