

CHAPTER TWO

LITERATURE REVIEW

A. Local Election

The embodiment of Article 1 Paragraph (2) of the 1945 Constitution of the State of the Republic of Indonesia (UUD 1945) which states that "sovereignty is in the hands of the people and carried out according to the Constitution", is through hosting general elections as well as regional head election (*pemilukada*).

Election is one of the means for the people to be active in the political process, so that it will reflect the basic principles of democratic state life.⁸ According to Jimly Asshiddiqie, one of the objectives of the elections is to exercise the sovereignty of the people in representative institutions.⁹

There are several terms to refer to the way of filling positions in local government. As part of the regional autonomy based on Law No. 32 of 2004 on regional government, filling the position of regional head using the term election of regional head or known as "pilkada" (*regional head election*).

Regional head elections are general elections held at the local level. Therefore, the meaning and purpose of the implementation of the regional head election is not different from the meaning and purpose of the general

⁸ Dahlan Thaib, 1993, *Implementasi Sistem Ketatanegaraan Menurut UUD 1945*, Liberty, Yogyakarta, Hal. 94.

⁹ Jimly Asshiddiqie, "Gagasan Kedaulatan Rakyat dalam Konstitusi dan Pelaksannya di Indonesia Pergeseran Keseimbangan Antara Individualisme dan Kolektivisme dalam Kebijakan Demokrasi Politik dan Demokrasi Ekonomi Selama Tiga Masa Demokrasi, 1945-1980-an, 1994", PT Ichtar Baru Van Hoeve, Hal.9, Dalam Khairul Fahmi, 2012, *Pemilihan Umum & Kedaulatan Rakyat*, Ed.1 Cet.2, PT. RajaGrafindo Persada, Jakarta, Hal. 276.

election. The difference which lies only in the election at the regional level is to elect leaders in the region.¹⁰

B. The Qualified Local Election

Local election is the primary means of realizing democracy in a country specifically in regions. The substance of local election is delivery of vote of the people to form representative and Government institutions as organisers of the region. Voice of the people is manifested in the form of voting rights, i.e. the right to choose representatives from various candidates. As a right, the right to choose is to be met and should be in accordance with the mandate of the Constitution. It is the responsibility of the State in the implementation conducted by General Election Commission as organizer of local election. Therefore, in the election act it is stated that voters must be registered by the KPU (General Election Commission).¹¹

To ensure that all citizens have voting rights, they may exercise their right of course certain procedures are required. The procedure is also needed to avoid the possibility of electoral fraud that is contrary to the principle of “Luber”¹² and “Jurdil”¹³, such as the possibility of a voter using their voting rights more than one time. In addition, the procedure is also needed in planning and distribution of logistics related to the local election and

¹⁰ Janpatar Simamora, “Eksistensi Pemilukada dalam Rangka Mewujudkan Pemerintahan Daerah yang Demokratis”, *Mimbar Hukum* volume 23, Nomor 1, Februari 2011, Halaman 1-236.

¹¹ Janedjri M. Gaffar, 2012, *Politik Hukum Pemilu*, Jakarta, Konstitusi Press (Konpress), p. 5. See further article 27 paragraph (2) of the ACT 42/2008.

¹² Luber : Direct, Public, Free and Confidentially

¹³ Jurdil : Honest and Fair

determination of polling stations. However the establishment of procedures should not preclude substantial things that meet the rights of voters to vote.¹⁴

C. Local Election Dispute

Etymologically, local election dispute can be seen from the term of dispute, as the implications of the incidence or problems arising in the elections, both disputes arising at the time of process of organizing, as well as disputes against the results of local election. The results of the research by the Institute for Democracy and Electoral Assistance (IDEA) defines the electoral dispute as "*any complaint, claim or challenge, contest relating to any stage of the electoral proces*".¹⁵ From above definition, it is understood that the scope of the electoral dispute is indeed wide and essentially covering all stages of local election affecting the quality of local election significantly.

The matter of local election dispute in Indonesia includes (1) a criminal offense and the administration of the elections; and (2) a dispute on the voting results. According to Topo Santoso what is called the dispute in organizing the elections indeed constitutes administrative violation or dissatisfaction against the decision of the organisers.¹⁶

The success of the elections is not measured from the implementation of the voting only, but also determined by how the settlement of dispute settlement accompanies it. The issue is too many institutions involved in local

¹⁴ *Ibid.*

¹⁵ IDEA International, *Electoral Justice: The International IDEA Handbook*, (Stockholm: Bulls Graphics, 2010, hlm.199

¹⁶ Topo Santoso, makalah berjudul "Perselisihan Hasil Pemilukada" presented at limited Discussion held on the Constitutional Court on march 24 2011 in jakarta.

election dispute settlement which certainly impacted the quality of that dispute settlement.¹⁷ In addition, the local election dispute settlement bodies often have changed, following the rhythms of legal policies of electoral law development electoral law politics.

D. Mechanism of Local Election Dispute Settlement

Against the local election dispute, based on Law Number 32 Year 2004, objections filed to the Supreme Court through the Court of appeal which leads the provincial law to be applied in its territory of local election. As for the disputes resolution authority against vote results in local election Regency/ city, delegate to Supreme Court High Court in Provincial jurisdiction of local election territory. Filing an objection to the Court of appeal delivered by the District Court that oversees the county or city jurisdiction of local election territory. Candidates who feel the objection against the results of local election can apply for settlement by the judiciary body.

Then, Article 236C of Law Number 12 Year 2008 stipulated that the authority of the Supreme Court in settling the dispute on result of local election is transferred to the authority of the Constitutional Court. Additionally also on Law Number 1 Year 2015 regulate the election disputes by the High Court and the filing of objection to Supreme Court.

Objections is filed within at least 3 (three) days after the determination of local election result. Objections is filed to the Supreme Court over the local

¹⁷ Kompas, 30 Sempember 2015: 2, dalam Anom Wahyu Asmorojati, proceeding Seminar Nasional PK2P, FH UMY, 17 Oktober 2015, hlm.279

election disputes. As for the dispute over the results of the local election Regency/city level, objections is filed to the High Court on jurisdictions conducting of local election. Objections may be filed only with regard to the results of the vote count that affects the election of candidate.

Dispute of the results of the vote is counted in the assign at least 14 (fourteen) days from his objection to the petition received by the District Court to local election regency or city level, or High Court to local election province level. The Court ruling over the disputed results of the electoral vote count district and the city are final and binding.

However, after the enactment of Law Number 8 of 2015 the dispute settlement about local election is mentioned on article 157. The procedure for settling the disputes in local election in Law Number 8 Year 2015 regulates the limitation of the case petition that is 3 x 24 hours since the announcement of the vote acquisition by the KPUD. Then for the deadline of court case 45 days from the receipt of the petition. Further deadline to objection is not specified in this Law because the Constitutional Court Decision is the first and final court in which the decision is final and binding. However, based on these provisions, there is a transfer of authorized institutions to resolve the results of direct local election disputes, in which the dispute over the results of the elections is finalized by the special courts. Moreover, what particular court of law is concerned, Article 157 of Law Number 8 Year 2015 is not defined in a limited manner.