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RESEARCH ARTICLE

Substantive Justice in Regional Election Dispute Resolution: Analyzing the Constitutional Court's Approach and Challenges in Indonesia

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ABSTRACT

In the 2020 regional election period, the Constitutional Court tried to provide as much space as possible for justice seekers to file their cases. On this occasion, the Constitutional Court developed the concept of implementing substantive justice in its resolution. Purpose This research is intended to find an ideal election dispute resolution model. The method used in this research, which uses a normative approach, tries to trace and find out what is being debated in the concept applied by the Constitutional Court, including the researcher's criticism of its implementation. The study results indicate that applying substantial justice in resolving regional head elections disputes at the Constitutional Court is a solution to various things that hinder justice seekers from getting justice in the chaos of implementing regional head elections throughout Indonesia. However, it is necessary to review the initial examination mechanism for cases exceeding the percentage provisions stated in Article 158 of Law No. 10 of 2016.

1. INTRODUCTION

Law is formulated in general to accommodate variations in legal events, in addition to possible developments in the future. Justice attempted to be formulated in legal norms is certainly also limited to justice understood and felt by the law makers and limited to the time the legal norms are formed. Law is intended to meet the needs of society for good legislation. (AR, 2019) .

On the other hand, society's sense of justice continues to develop in line with the development of the conditions of society itself (Gaffar & Budiarti, 2012). Law can be seen in its form through explicitly formulated rules. In the rules or legal regulations, there are actions that must be carried out by law enforcement. Laws are created to be implemented, so unsurprisingly, laws can no longer be called laws if they are never implemented. The implementation of the Law always involves humans and their behaviour. Laws also cannot be implemented by themselves. This means that the Law cannot realize the promises and desires contained in the legal regulations (Sari *et al* ., 2023).

Indonesia was idealized and aspired to by *the founding fathers* as a State of Law (*Rechstaat/The Rule of Law)* UUD 1945 Article 1 paragraph (3) emphasizes that "The State of Indonesia is a State of Law". In the Law, as a unified system, there are (1) institutional elements (*institutional elements),* (2) elements of rules and regulations *(instrumental elements*), and (3) elements of the behaviour of legal subjects who have rights and obligations determined by the norms of the rules. (subjective and cultural elements). The three elements of the legal system include (a) law-making activities, *(* b) law-administrating activities, and *(* c) law-*adjudicating activities.* Usually, the last activity is also commonly referred to as law enforcement activities in the narrow sense*.* (Asshiddiqie, 2015) .

Law enforcement, or what is called *law enforcement* in English. According to Black's Law Dictionary (Black, 1991), *law enforcement* is defined as *the act of putting something such as a law into effect, executing the Law, or carrying out a mandate or command*. Simply put, it is formulated that law enforcement *is* an effort to enforce legal norms and, at the same time, the values behind those norms. Thus, law enforcers must genuinely understand the spirit of the Law *(legal spirit)* that underlies the legal regulations that must be enforced, and this will be related to various dynamics that occur in the process of making legislation *(law-making process).* Another side related to the process of making these laws and regulations is the balance, harmony and compatibility between the legal awareness instilled from, above, and by the authorities *(legal awareness)* with the spontaneous legal feeling of the people *(legal feeling)* (Muladi, 2002) .

In law enforcement contains the supremacy of substantial values, namely justice. However, since the use of modern Law, the Court is no longer a place to seek justice *(searching of justice).* The Judicial Institution as a law enforcer is nothing more than a mouthpiece of the Law, which plays a role in procedural rules of the game. The judicial institution used to be a place to seek justice but has changed into a place to implement laws and procedures (Haryono, 2019) .

In practice, judges, as law enforcers, still decide cases in accordance with standard procedures and based on applicable laws and regulations, with the jargon being legal certainty. So, if they have fulfilled the procedural provisions and applicable laws and regulations, the judge has decided the case fairly. Such law enforcement only produces procedural justice, not substantive justice (Haryono, 2019).

In relation to national life, our constitution has regulated and determined the objectives of law enforcement by judges, namely justice. Article 24, paragraph (1) of the 1945 Constitution states that judicial power is an independent power to administer justice in order to uphold Law and justice. Article 28D paragraph (1) states that everyone has the right to recognition, guarantee, protection and certainty of fair Law and equal treatment before the Law. Furthermore, if we pay attention to the provisions of Article 24 paragraph (1) of the Third Amendment to the 1945 Constitution, which is formulated as follows: *"judicial power is an independent power to administer justice in order to uphold law and justice"* , then based on these provisions, it can be seen that judicial power is an independent power, with the main task of administering justice in order to uphold Law and justice.

Judges are encouraged to explore the sense of substantive justice *in* society rather than being bound by statutory provisions *(procedural justice)* (Malang, 2009). In this case, justice is not only positive legal justice but also includes the values of justice that are believed and developed in society. In the justice referred to as substantive justice, when deciding a case, the judge does not only carry out the prescription contained in the Law. Here, the judge realizes the justice that is to be achieved by the rule of Law by considering the sense of justice that will likely differ for each case, time and specific society. Even if the existing legal rules are not the justice to be achieved, the judge must prioritize justice and form a new law that better fulfils the sense of justice. Therefore, here, the judge is not a mouthpiece of the Law; on the contrary, the judge is a lawmaker *(judge made Law).*[1]

The Constitutional Court plays an important role in law enforcement in Indonesia and is designed as an institution that guards and interprets the constitution (*the guardian and interpreter of the constitution*). (Librayanto *et al* ., 2019) . As the guardian, protector and interpreter of the Constitution, the Constitutional Court is given authority and burdened with obligations [2]. The Constitutional Court has the authority to try at the first and last instance whose decisions are final to test laws against the Constitution, decide on disputes over the authority of state institutions whose authority is granted by the Constitution, decide on the dissolution of political parties and decide on disputes over election results [3].

The authority of the Constitutional Court to resolve election results is regulated in Article 24C paragraph (1) of the 1945 Constitution. Article 22E paragraph (2) of the 1945 Constitution explains that elections are held to elect DPR, DPD, President and Vice President, and DPRD members.

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[1] Janedjri M Gaffar, Op. Cit. p . 137-138.
[2]Article 24C paragraphs (1) and (2) Amendment Third, the 1945 Constitution
[3] Article 10 Law no. 24 of 2003 Concerning Court Constitution .

Therefore, Law No. 23 of 2004 concerning the Constitutional Court also emphasizes that what is meant by election result disputes is legislative elections and presidential elections (Widodo, 2018) .

Ultimately, the authority to resolve election disputes has been expanded to include disputes over the results of regional head elections. [4]In the judicial review of Case No. 072-073/PUUII/2004, the Constitutional Court thinks that the direct regional head election regime, although formally determined by the legislators not to be an election regime, is substantively an election, so that its implementation must meet the constitutional principles of elections. This decision influenced legislators to shift regional head elections to become part of general elections. Therefore, regional head elections are defined as general elections to elect regional heads and deputy regional heads directly, [5]In this case, the implementation of elections is a characteristic of a state based on the rule of Law (Faqi *et al* ., 2023) . The implications of the Constitutional Court's Decision relating to the judicial review of laws are that the Constitutional Court's Decision with the ruling stating that the contents of the paragraphs, articles, and/or parts of the Law conflict with the 1945 Constitution, the contents of the paragraphs, articles, and/or parts of the Law do not have binding legal force (Soedharmanto *et al* ., 2022) .

Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulation instead of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors into Law, which strengthens that the resolution of regional election disputes remains resolved in the Constitutional Court and then mandates the creation of a unique judicial body under the Supreme Court and before the Special Court has not been formed, the authority to adjudicate remains with the Constitutional Court. The Constitutional Court then confirmed this in the Constitutional Court Regulation concerning procedural law guidelines.

The mandate of the Law above, which requires the Constitutional Court to be the arbiter of regional election disputes, is answered by the Constitutional Court by organizing the resolution of regional election disputes properly and continuously undergoing a transformation from year to year by improving the Constitutional Court Regulation which becomes the procedural Law of the Constitutional Court in adjudicating regional election disputes. Initially, since the Regional Head Election Case only focused on the examination of regional election results based on Constitutional Court Regulation Number 15 of 2008 Concerning Guidelines for Proceedings in Regional Head Election Result Disputes, Article 4 states that *The object of the Regional Election dispute is the vote counting results determined by the Respondent which affect: (a) Determination of the Candidate Pairs who can participate in the second round of the Regional Election; or (b) the election of the Candidate Pairs as regional head and deputy regional head.*

Over time, the Constitutional Court, in examining the East Java Regional Head Election Results Dispute Case filed by the Candidate Pair Khofifah Indar Parawansa-Mudjiono against the East Java General Election Commission which, determined the Candidate Pair Soekarwo-Saifullah Yusuf to be the winner, the Court, in the case, (DECISION Number 41/PHPU.D-VI/2008) [6], has provided legal considerations that expand the area of examination of general election result disputes to not only be a mere examination of result disputes but then become a milestone for examination of regional head election result dispute cases, which are known by the term Structured, Systematic and Massive (TSM).

The decision has created a breakthrough to advance democracy and free itself from the habit of systematic and massive structured violations (TSM). The Constitutional Court not only recounts the vote count results but must also explore justice by assessing and adjudicating disputed results (Ali *et al* ., 2012) .

Although the Constitutional Court has provided access to regional election cases that exceed the provisions in Article 158 of Law No. 10 of 2016 in the form of access to substantive justice, has its implementation truly reflected substantive justice, wherein the initial examination (for cases that exceed the provisions of Article 158 of Law No. 10/2016), the Constitutional Court has not fully

[4]Heru Widodo, ibid. p. 88

[5]Article 1 number 4 of Law No. 22 of 2007 concerning Organizer General elections .

[6] Consideration Decision Court Constitution No. 41/PHPU.D-VI/2008 , p . 127-135

provided access to substantive justice to those seeking it. The Constitutional Court examines the cases in question only as far as the initial examination in the form of the Application, Respondent's Response (KPU), Related Party's Response (Regional Election Winner based on KPU's determination) and "only examines documentary evidence. The Constitutional Court does not provide access to the Applicant to prove his arguments further. In the position of the Applicant, we can never choose which evidence comes to us that is the strongest; we cannot "only" rely on written evidence; what about cases where the strength of the evidence lies in the testimony of witnesses, and the witnesses in question are officers in the field (Organizers) who are not allowed by the Court to testify because the decision of the KPU (Respondent) is a collective collegial decision in all lines. From the description above, it is clear that the Constitutional Court needs to affirm the appropriate dispute resolution rules for resolving various types of disputes and violations related to regional head elections.

2. RESEARCH METHODS

The approach used is a normative legal approach, which is complemented by a case approach. The case approach used in this study is to study the decisions of the Constitutional Court that override Article 158 of Law. No. 8 of 2015 (Shaban, 1998) . This study will be conducted by examining the Law that has been conceptualized as a norm or rule that applies in society and becomes a reference for the behaviour of every person in national life. The applicable legal norms are in the form of written positive legal norms, which include the constitution, laws, government regulations and so on, as well as legal norms born of judicial institutions (*judge Law*) in the form of jurisprudence.
This study focuses on literature studies (secondary data), considering that in normative legal research, the data needed is secondary data that is distinguished between legal materials originating from Law, namely legislation, legal documents, court decisions, legal reports and legal records. As for those originating from science, namely legal teachings or doctrines, legal theories, legal opinions, and legal reviews (Abdulkadir, 2004). The analysis used is a qualitative legal analysis that describes quality data in the form of regular, coherent, logical, non-overlapping, and effective sentences so as to facilitate data interpretation and understanding of the results of the analysis.[7]

3. DISCUSSION

1. Settlement of regional election disputes based on substantive justice

Compared to the 2004 period, the Constitutional Court's decision in exercising its authority to decide on legislative election result disputes used more *procedural justice approaches*. However, if we look closely at the 2009 election result disputes, the Constitutional Court's decision was more based on and used a *substantial justice approach* [8]that questioned *the electoral process*. The Court firmly justified that it had the authority to question the judicial process to ensure the quality, not just the quantity, of the election by stating that there had been a material violation of the provisions of the Regional Election that affected the vote acquisition. At that point, the Court also made a qualification, whether the violation was systematic, structured and massive, even though this caused the Constitutional Court's decision to be "considered" to exceed the limits of its authority so that *ultra vires* and *ultra petita occurred* [9].

The enactment of Law of the Republic of Indonesia Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulation instead of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law, drastically changed the process of regional head election disputes in the Constitutional Court. In this case, the Unitary State of the Republic of Indonesia consists of provincial, district, and city regions, each of which has a regional government in the framework of organizing regional government in accordance with the mandate of the 1945 Constitution (Inggit *et al* ., 2014) which is held through general elections.

[7] Ibid., p. 127.
[8] Consideration Decision Court Constitution No. 41/PHPU.D-VI/2008 , pp . 125-137
[9]M. Mahrus Ali et al ., Ibid, p . 193.

According to the official website of the General Election Commission (KPU), 41,205,115 voters throughout Indonesia were registered for this simultaneous regional election. They voted at 98,259 polling stations spread across 30 provinces. The 101 regions consist of 7 provinces, 18 cities, and 76 districts. Voting will be held simultaneously on Wednesday, February 15, 2017.[10]

Of the several regions holding regional head elections, as a result of the provisions of Article 158 of Law No. 10 of 2016 concerning the threshold for submitting candidates' cases, only half of them submitted to the Constitutional Court, namely only 50 dispute applications. Of that number, only 7 election dispute applications continued to the evidentiary hearing stage after 40 applications "fell" during the reading of the *dismissal decision* on April 3-5, 2017, and 3 other applications were decided to re-vote (PSU) and re-count the votes.[11]

However, in connection with the provisions of Article 158 of the Law 10 Years 2016 based on Constitutional Court Decision Number 14/PHP.BUP- XV/2017, dated 3 April 2017, Constitutional Court Decision Number 42/PHP.BUP-XV/2017, dated 4 April 2017, Constitutional Court Decision Number 50/PHP.BUP-XV/2017, dated 3 April 2017, and the Decision Constitutional Court Number 52/PHP.BUP-XV/2017, dated 26 April 2017, The Court may postpone the applicability of the provisions of Article 158 of Law 10/2016 as long as it meets the conditions as considered by the Court in these decisions. Therefore, the Court will consider the applicability of Article 158 of Law 10/2016 provisions in general casuistry. Disputes may only be filed if the difference in votes does not exceed the limit of 0.5-2%; however, in the 2020 Regional Elections, the Constitutional Court has made Constitutional Court Regulation Number 2 of 2020, which remains subject to the provisions of Article 158 of Law No. 10 of 2016, but makes adjustments. [12]The Constitutional Court has prepared the Constitutional Court Regulation without setting aside Article 158 because this provision must be used, but it has shifted its paradigm.

If, in the election period before 2020, the case files are examined at the clerk's office, and if they pass the threshold of a 2% difference, the case dispute will be resolved or decided not to be continued through an interim decision. This must be examined in resolving the 2020 election case because the presentation is part of the dispute. So, if there is one that exceeds 2%, it will still be examined, and then the Constitutional Court will examine whether the difference is really in principle in conflict, which will then examine the main case in the next section. If, in the examination, the difference is correct, or, in other words, there is no problem in the acquisition of votes, then there is no *legal standing* or the right to sue the results of the election in question. This differs from the case examination process in the previous election period (AR, 2019).

That is where the problem lies; the court, in examining cases that exceed the threshold according to the provisions of Article 158 of Law No. 10 of 2016, "only" examines cases limited to the Petitioner's Application, the Respondent's Response (KPU), and the Response from the Related Party (Candidate Pair who were determined as the Winner of the Regional Head Election), as well as evidence in the form of written evidence and audio video, if any.

According to Article 36 of the Constitutional Court Law, the evidence used by the parties to prove their arguments. This evidence is adjusted to the nature of the Constitutional Court's procedural Law so that it is somewhat different from the evidence known in civil procedural Law, criminal procedural Law and state procedural law. In the Constitutional Court's procedural Law, the evidence known is written evidence, witness statements, expert statements, statements of the parties, instructions, and evidence in the form of information spoken, sent, received or stored electronically with optical devices or similar. The judge will examine the evidence included in the application in the trial (Sumadi, 2011).

[10] https://news.detik.com/berita/d-3421244/ini-data-7-provinsi-18-kota-dan-76-kabupaten-di-pemilukada-2017 . Access Data, March 30, 2024, 12:25 PM

[11] https://www.hukumonline.com/berita/a/ketika-konsisten-pengacara-pemilukada-dipersoalkan-lt58eb74232f21b/ . Access Data, March 30 , 2024, 12:20

[12] Aswanto, Technical Court Procedure Law Constitution, Important for Advocates, in https://www.mkri.id/index.php?page=web.Berita&id=16514 access data September 15 , 2023 , 21:35

In examining cases that exceed the threshold that the Constitutional Court usually prioritizes, the Court "only" examines evidence in the form of written and other evidence but does not present witnesses or go as far as examining witnesses. Then, the Court will hold a Judges' Deliberation Meeting and issue a decision.[13]

If a comprehensive examination of the election dispute conducted by the Constitutional Court requires the presence of witnesses in the preliminary hearing, including if it turns out to be a potential witness, there is nothing wrong with the Constitutional Court implementing it if the obstacle is because the potential witness in question is an organizer. The solution is to provide special *treatment* for witnesses with the status of organizer in question, which can be done by offering the concept of *"justice collaborator",* as has been in effect in our country for criminal cases that are accommodated through various regulations in this country. *Justice collaborator* is a witness who cooperates with law enforcement officers in uncovering a particular crime. A *justice collaborator* has two roles at once: a suspect and a witness who must provide information in Court [14].

In adjudicating cases with a constitutional mandate, the Constitutional Court is not only fixated on the wording of the Law, which sometimes contradicts and ignores legal certainty and justice. The Constitutional Court is required to seek substantive justice, which the 1945 Constitution recognizes. The general principles of the Constitution and the judiciary are recognized. Law No. 24 of 2003 concerning the Constitutional Court also emphasizes, "The Constitutional Court decides cases based on the 1945 Constitution by the evidence and the judge's conviction." Evidence and the judge's conviction are the basis for decisions to uphold substantive justice. Efforts not to be fixated on the wording of the Law, then known among others, are conditionally constitutional decisions *,* conditionally unconstitutional *,* interim decisions in testing laws, retroactive decisions and so on.

2. **Review the provisions of Article 158 of Law no. 8 of 2015 concerning amendments to Law no. 1 of 2015 concerning government determination in lieu of law no. 1 of 2014 concerning the election of governors, regents and mayors becomes law**

Since the enactment of Law No. 8 of 2015, the Constitutional Court, during the 2015 regional election trial period, immediately made adjustments to its procedural Law through Constitutional Court Regulation No. 1 of 2015, which directly adopted Article 158 of Law No. 8 of 2015. This is what then forced several regional election contestants at that time to be unable to submit their cases to be tried at the Constitutional Court because of the inadequate difference that allowed for examination by the Constitutional Court. Several activists shouted against the implementation of Article 158, which was used as *the legal standing* for submitting regional election cases to the Constitutional Court.

Several objections to the results of the regional elections were still filed even though the final results were known because they exceeded the threshold stipulated in Article 158 of Law No. 8 of 2015 and the provisions referred to in PMK No. 1 of 2015. The Constitutional Court, in the Regulations issued for guidelines for litigation at the Constitutional Court specifically for regional election disputes, namely PMK No. 6 and PMK No. 7 of 2020, has accommodated and set aside Article 158 to fulfil substantive justice. This was taken after the Court conducted a comprehensive evaluation of the resolution of regional election disputes based on Article 158 of Law No. 8 of 2015, which was formulated in the Constitutional Court Regulation (PMK), which each period of regional election implementation is updated with important parts that are considered problematic in the previous implementation or by the latest provisions of laws and regulations.

The Constitutional Court, on various occasions, disseminated PMK No. 4, 5, 6 and 7 of 2020, which became the guideline for resolving disputes over the 2020 regional elections, explaining that the Constitutional Court deviated from the provisions of Article 158 of Law No. 8 of 2015 concerning the provisions on the threshold for cases that may be submitted to the Constitutional Court. The Court thinks that the renewal was carried out to provide the broadest possible access to justice seekers to submit their cases to the Constitutional Court, and if it is considered that the violations committed by

[13] Decision Court Constitution No. 44/PHP.BUP-XIX/2021

[14] https://www. Hukumonline.com/berita/a/justice-collaborator-lt6391a3b65612f/?page=all **What's that** *Justice Collaborator***?** Access Data, April 3 , 2024, 14:37.

the parties that affect the results of the vote acquisition are significant, then the Constitutional Court will try the case in question until the final decision, this is what is called, resolving regional election disputes based on substantive justice.

In general, applicants who file disputes with the Constitutional Court are of the view that the Constitutional Court should not be constrained by Article 158 of the Regional Election Law in order to uphold substantive justice. A number of applicants assessed that many reports were not followed up by the KPU, Panwas/Bawaslu throughout their ranks, as well as reports of criminal acts that were not resolved so that the Constitutional Court became the mainstay of the applicants' hopes. On the same occasion, a number of parties who felt disadvantaged in the regional election contestation assessed that there was massive fraud committed by the winner to obtain votes with a large margin so that it would not be examined by the Court.

On the other hand, the Respondent and Related (Election Winner) are of the opinion that Article 158 of the Election Law is a law that is still in force and binds all Indonesian people, including the Constitutional Court , so that in carrying out its duties, functions and authorities it must be guided by the 1945 Constitution and the laws that are still in force. Nevertheless, the Constitutional Court remains consistent in applying Article 158 of Law Number 8 of 2015 concerning Elections in examining and adjudicating the formal requirements for submitting election result disputes to the Constitutional Court.

Despite various criticisms from a number of parties, the Constitutional Court (MK) remains consistent with Article 158. The Court is of the opinion that the current regional election regulations are different from the previous regional election regulations, where the current regional election regulations determine the clear limits of the implementation of the *a quo authority* . In fact, I Gede Dewa Palguna **(MK judge)** said , "There is no other choice but for the Court to comply with the provisions which are *verbal expression* outlined in the Regional Election Law. Moreover, the Court Decision No. 51 /PUU-XIII/2015 dated July 9, stated that Article 158 is an open legal policy of the law maker."[15]

At this point, most of the regional election contestants felt that their right to justice had been taken away when the Constitutional Court did not dare to deviate from Article 158 of Law No. 8 of 2015. The protest arose when the regional election contestants found that their rivals in the regional election contest were brutally doing everything they could to win by a large margin in the hope that the margin would be large enough to exceed the provisions, so that the case would not be brought to the constitutional Court. This means that with this limitation, the Constitutional Court will reject applications that exceed the threshold due to the provisions of Article 158 from the start, so that the main issue related to fraud carried out in a structured, systematic and massive manner by the regional election contestants will not be examined again considering that the margin is already quite large, aka it does not meet the requirements as the formal requirements for the application, namely it must fall within *the range of* Article 158.

Over time, after being in effect for 5 years, Constitutional Court Regulation No. 5, 6, 7 and 8 of 2020 no longer includes the provisions for application requirements as stipulated in Article 158 of Law No. 8 of 2015. The courage to deviate from Article 158 is intended to provide space for justice seekers to obtain justice through the application of substantive justice in the examination of cases in the constitutional Court. However, the space opened by the Constitutional Court in resolving cases that exceed the percentage threshold based on Article 158 of Law No. 8 of 2015 in conjunction with Law No. 10 of 2016, but in its implementation is considered half-hearted because it does not provide access to the widest possible evidence to Justice Seekers.

The Constitutional Court only examines cases that exceed the threshold only to the extent of examining the application, examining evidence in the form of written evidence, but does not touch on other evidence such as witness examination, is this substantive justice?. At this point, each applicant cannot do anything when the strength of the evidence he has is in the witness's statement, not written evidence. It also becomes a dilemma when the witness he has is an organizer who

[15] https://www.mkri.id/index.php?page=web.Berita&id=12813

"notabene" is not allowed to testify on the grounds that the organizer's decision is a collective collegial one.

According to the Procedural Law that we understand, and which the Constitutional Court outlines in the procedural Law for dispute resolution at the Constitutional Court (vide article 36 of Law 24 of 2003 concerning the Constitutional Court) that the evidence is: (1) letters or writings; (2) witness statements; (3) expert statements; (4) statements of the parties; (5) instructions; and (6) other evidence in the form of information that is spoken, sent, received, or stored electronically with optical devices or similar. Without differentiating or privileging one evidence from another or the same quality. Therefore, from the examination method carried out by the Constitutional Court, the author assumes that the substantive justice that is touted by the Constitutional Court has not been fully provided.

The Constitutional Court should provide ample space for the parties to prove their arguments in Court to achieve justice as desired, including but not limited to allowing the organizers if they are the key to revealing everything related to the case, why not. Is it possible for example that they (the organizers) are given special treatment in the form of protection or special treatment as is known to have been regulated in the criminal realm, namely the provision of special *treatment* with the term " *justice collaborator* "?

According to the author, this needs to be considered by us all, especially the Constitutional Court, if we want to truly implement substantive justice. This certainly will not be difficult, perhaps by issuing a special number of Constitutional Court Regulations regarding the regulation of "Organizers Who Become Witnesses in the Election Dispute Court of the Constitutional Court".

4. CONCLUSION

The application of Substantive Justice in the settlement of regional head elections disputes in the Constitutional Court is a solution to overcome various things that hinder justice seekers from obtaining justice in the chaos of the implementation of regional head electionsthroughout Indonesia. However, it is necessary to review the initial examination mechanism for cases that exceed the percentage provisions as stated in Article 158 of Law No. 10 of 2016. In the dismissal process, the Constitutional Court should provide the widest possible space for the Applicant to prove his arguments, including providing access to witness examinations and allowing witnesses to attend the trial even though they are officers. For this, the Court needs to think about how to specifically regulate witnesses who are organizers but are key in resolving the disputes submitted, perhaps by making a kind of Constitutional Court Regulation to regulate " *justice collaborators* ".

BIBLIOGRAPHY

Book

Abdulkadir, M. (2004). *Law and Legal Research. PT. Citra Aditya Bakti* . Bandung.

Asshiddiqie, J. (2015). *The constitution of the state: The practice of dignified and democratic statehood* . Setara Press.

Black, H. C. (1991). Black's law dictionary, abridged sixth edition. *St. Paul, MN: West* .

Gaffar, JM, & Budiarti, RT (2012). *Constitutional democracy: The practice of Indonesian state administration after the amendment of the 1945 Constitution* . Konstitusi Press (Konpress).

Muladi. (2002). *Human Rights, Politics and the Criminal Justice System* . Diponegoro University Publishing Agency.

Shaban, R. (1998). *Robert K. Yin, Case Study Research: Design and Methods, Applied Social Research Methods, Volume 5, Sage Publications, California* (p. 13). Elsevier.

Widodo, H. (2018). *Procedural Law of regional election disputes: dynamics at the Constitutional Court* . Konstitusi Press.

Journal

Ali, MM, Rachman, IN, Wijayanti, W., Putranto, RTJ, Anindyajati, T., & Asih, PG (2012). Constitutional Interpretation of Systematic, Structured and Massive Regional Election Violations. *Constitutional Journal* , *9* (1), 189–230.

AR, ABI (2019). Principles of Establishing Legislation in Drafting Regional Regulations. *Restorative*

Justice Journal , *3* (1), 1–13.
Faqi, AF, Hasrul, M., Amaliyah, A., Iskandar, I., & Munandar, MA (2023). Perception of students as new voters towards the normalization of money politics in general elections. *Integritas: Journal of Anti-Corruption* , *9* (1), 17–30.
Haryono, H. (2019). Law Enforcement Based on Substantive Justice Values (Study of Constitutional Court Decision No. 46/PUU-VII/2012 Dated February 13, 2012). *Progressive Law Journal* , *7* (1), 20–39.
Inggit, AB, Razak, A., & Ilyas, A. (2014). *The Nature of DPRP Regulations on the Rules of Procedure of the Makassar City DPRD* . Analysis.
Librayanto, R., Riza, M., Ashri, M., & Abdullah, K. (2019). Arrangement of the Authority of the Constitutional Court in Strengthening the Independence of the Judicial Power. *Amanna Gappa* , 43–66.
Malang, FH (2009). Constitutional Journal Vol II No. 1, June 2009. *Constitutional Journal* , *2* (1), 115164.
Sari, SS, Ilmar, A., Djafar, EM, & Faiz, PM (2023). Disregarding the Constitutional Court Decision Concerning the Prohibition of Concurrent Deputy Minister Positions: Disregarding the Constitutional Court Decision Concerning the Prohibition of Concurrent Deputy Minister Positions. *Constitutional Journal* , *20* (4), 604–621.
Soedharmanto, S., Akub, MS, & Azisa, N. (2022). Synchronization of Constitutional Court Decisions on the Application of the Retroactive Principle. *Amanna Gappa* , 75–87.
Sumadi, AF (2011). Constitutional Court Procedural Law in Theory and Practice. *Constitutional Journal* , *8* (6), 849–880.

Website

Aswanto, Technical Procedure of the Constitutional Court, Important for Advocates , in https://www.mkri.id/index.php?page=web.Berita&id=16514 access data September 15, 2023, 21.35.
https://www.hukumonline.com/berita/a/ketika-konsisten-pengacara-pemilukada-dipersoalkan-lt58eb74232f21b/ . Access Data, March 30, 2024, 12.20.
https://www. Hukumonline.com/berita/a/justice-collaborator-lt6391a3b65612f/?page=all **What's that** *Justice Collaborator* **?** Access Data, April 3, 2024, 14:37.
https://news.detik.com/berita/d-3421244/ini-data-7-provinsi-18-kota-dan-76-kabupaten-di-pemilukada-2017 . Access Data, March 30, 2024, 12.25.
https://www.mkri.id/index.php?page=web.Berita&id=12813

Legislation and court decisions

The 1945 Constitution of the Republic of Indonesia.
Law No. 24 of 2003 concerning the Constitutional Court.
Law No. 22 of 2007 concerning General Election Organizers.

Decision

Constitutional Court Decision No. 41/PHPU.D-VI/2008.
Constitutional Court Decision No. 44/PHP.BUP-XIX/2021.