

Problems with Regional Head Elections: Constitutional Court Decisions on Disputes over Regional Head Election Results in Jambi Province

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Abstract: This research is entitled Problems of Regional Head Elections (Study of Constitutional Court Decisions regarding Disputes over Regional Head Election Results in Jambi Province). This type of research is normative legal research. The focus of the research is to examine what are the legal issues for regional head elections submitted by the Petitioners in cases of regional head election results in the Jambi province region to the Constitutional Court and how the trend of decisions based on legal considerations of the Constitutional Court in cases of regional head election disputes in the Jambi province region. The results of the study show that the legal issues raised by the Petitioners in the case of disputes over the results of regional head elections to the Supreme Court of the Constitution are quite numerous and varied, some are proven, and some were not proven because the Court did not believe in the evidence presented by the Petitioners, and some were not proven because the Court had not considered them. These problems in general include: administrative violations, legal violations in the form of money politics, intimidation and mobilization of civil servants, village heads, and village officials by the incumbent regional head candidate. The organizers allow violations and side with one pair of candidates. As for the issue of decision trends, the majority of applications were rejected and could not be accepted, while for requests that were and there were only 2 (two) cases, namely the 2013 Election of the Regent and Deputy Regent of Kerinci district and the 2020 Election of the Governor and Deputy Governor of Jambi province. Then, there are different trends in MK decisions, *Niet Ontvankelijke Verklaard*), and focus more on the formal requirements of the application which often overrides the substance of the case.

Keywords: Problems, Pilkada, Jambi Province, Trends in Constitutional Court Decisions.

Abstrak: Penelitian ini berjudul Permasalahan Pemilihan Kepala Daerah (Studi Terhadap Putusan Mahkamah Konstitusi Tentang Perselisihan Hasil Pemilihan Kepala Daerah Di Provinsi Jambi). Jenis penelitian ini adalah penelitian hukum normatif. Fokus penelitiannya adalah mengkaji apa saja permasalahan hukum pemilihan kepala daerah

yang diajukan para Pemohon dalam perkara hasil pemilihan kepala daerah di wilayah provinsi Jambi ke Mahkamah Konstitusi dan bagaimana kecenderungan putusan berdasarkan pertimbangan hukum Konstitusi. Pengadilan dalam perkara perselisihan pemilihan kepala daerah di wilayah provinsi Jambi. Hasil penelitian menunjukkan bahwa permasalahan hukum yang diajukan para Pemohon dalam perkara perselisihan hasil pemilihan kepala daerah ke Mahkamah Agung Konstitusi cukup banyak dan beragam, ada yang terbukti dan ada pula yang tidak terbukti karena Mahkamah tidak percaya terhadap bukti-bukti yang diajukan para Pemohon, bahkan ada pula yang tidak terbukti karena Mahkamah tidak mempertimbangkannya. Permasalahan tersebut secara umum antara lain: pelanggaran administratif, pelanggaran hukum berupa politik uang, intimidasi dan mobilisasi aparatur sipil negara, kepala desa, dan perangkat desa oleh calon kepala daerah petahana. Penyelenggara membiarkan pelanggaran dan berpihak pada salah satu pasangan calon. Sedangkan untuk persoalan kecenderungan pengambilan keputusan, mayoritas permohonan ditolak dan tidak dapat diterima, sedangkan untuk permohonan yang ada dan hanya ada 2 (dua) kasus yaitu pada Pemilihan Bupati dan Wakil Bupati Kerinci Tahun 2013 dan Pemilihan Bupati dan Wakil Bupati Kerinci Tahun 2013. Pemilihan Gubernur dan Wakil Gubernur Provinsi Jambi Tahun 2020. Kemudian, terdapat kecenderungan berbeda dalam putusan MK, *Niet Ontvankelijke Verklaring*), dan lebih fokus pada persyaratan formal permohonan yang seringkali mengesampingkan substansi perkara.

Kata Kunci: Permasalahan, Pilkada, Provinsi Jambi, Tren Putusan Mahkamah Konstitusi.

Introduction

Regional Head Elections (Pilkada) are elections held to elect Governors and Deputy Governors at the Provincial level, Regents and Deputy Regents at the district level, as well as Mayors and Deputy Mayors at the city level. sometimes there are problems in the implementation of the Pilkada. Problematic Regional Head Elections can occur due to various reasons. The emergence of problems is also caused by the regional head election system itself.

According to Mustafa Lutfi, elections for regional heads which are carried out by way of appointment or appointment by the President will cause problems in the form of the absence of a regular election mechanism with a clear time, not competitive, dishonest, and unfair. Another problem, namely the

narrow rotation of power, so that the position of the regional head is held continuously by a person or his family or from a certain party. Then, the creation of a Regional Head who mines public accountability.¹ Joko J. Prihatmoko even further highlighted the weakness of the indirect (representative) election system because it was often colored by many cases, such as money politics and the dismissal of regional heads. After all, did not accommodate the interests of the DPRD.²

As a synthesis of thoughts towards improving the quality of the Pilkada which is zero money politics, a direct Pilkada system was proposed. The results of direct local elections are considered more objective³. Nevertheless, some opinions doubt direct regional elections, because direct regional elections are considered to have the potential to create conflict problems between

¹ Mustafa Lutfi, Law on Election Disputes in Indonesia: Ideas for Expansion of the Constitutional Authority of the Constitutional Court (Yogyakarta: UII Press, 2010).

² Joko J. Prihatmoko, Direct Regional Head Elections: Philosophy, Systems and Problems of Their Implementation in Indonesia (Yogyakarta: Student Library, 2005).

³ Prihatmoko.

communities supporting each candidate. Then, efforts to minimize the problem of money politics are not necessarily successful, given the consumptive and materialistic model of society, political preferences for candidates are not determined by the quality of these candidates, but are determined by the extent to which they can provide short-term benefits.⁴ This means that in direct Pilkada, money politics still has the potential to occur.

Another reason is that the cause of money politics has the potential to expand because the implementation of direct regional elections requires large funds for campaigning and face-to-face meetings with the public. There is even a phenomenon of capital owners who have certain interests in approaching Regional Head Candidates in the direct Pilkada system, so that direct Pilkada which requires large costs becomes a transactional election between regional head candidates and capital owners.⁵ So the most disadvantaged from transactions between capital owners and regional head candidates is the community.

The government elects a direct regional head election system. The birth of Perpu Number 1 of 2014 is the antithesis of Law No. 22 of 2014. In essence, the government is aware that direct regional elections are not without problems, but the government with the election regulations is trying to make improvements to the direct election problems that occur.⁶ The Perpu Pilkada has been passed into Law No. 1 of 2015 with several amendments. Pilkada's legal issues are

regulated by at least six (6) issues, namely violations of the code of ethics, administrative issues, election disputes, election criminal acts, regional election administrative disputes, and election result disputes.⁷

Jambi is a province that currently has 11 (eleven) regencies/cities. Jambi Province is one of the first generations to carry out direct regional elections, therefore it is interesting to study Pilkada problems in Jambi Province to find out what the problems are, so that in the end they can formulate Pilkada problems and look for solutions to Improve Pilkada so that every district/city in Jambi province can carry out a good Pilkada process, and also produce good Regional Heads.

Problems with Regional Head Elections (Pilkada) in Jambi Province

Hamdi Rachman and Juhartono stated that the 2010 Batang Hari district election was marked by the practice of money politics in all sub-districts of Batang Hari district. Then, the Batang Hari district KPUD also allowed the practice of money politics.⁸ The results of the consideration of the Constitutional Court stated that the violation was not proven. Then, Sinwan and Arzanil also considered that the 2015 Batang Hari district election was colored by the practice of money politics.⁹ In addition, there is also the omission of voting by those who are not entitled, while those who are registered on the DPT are not even given an invitation to vote. As well as the existence of State Civil Apparatus and Village Apparatuses which allegedly are not

⁴ Prihatmoko.

⁵ Sarjan Sarjan, Kemal AL Kindi Mulya, and Siti Chadijah, "Problematics and Technical Implementation of Regional Head Elections During the Covid 19 Pandemic," *Rechtsregel: Journal of Legal Studies* 3, no. 1 (2020): 59, <https://doi.org/10.32493/rjih.v3i1.6620>.

⁶ President, "Government Regulation in Lieu of Law Number 1 of 2014 Concerning the Election of Governors, Regents and Mayors" (2014).

⁷ Ari. Hidayat, Defril. Bakti Windi Aji, "Rio Law Journal" 158 (2022), <https://ojs.umb-bungo.ac.id/index.php/RIO>.

⁸ Constitutional Court, "DECISION Number 204/PHPU.D-VIII/2010 Concerning Decisions on Disputes on the Results of the General Election of Regional Heads and Deputy Regional Heads of Batang Hari Regency in 2010" (Jakarta, 2010).

⁹ Constitutional Court, "Decision Number 124/PHP.BUP-XIV/2016 Concerning Disputes over the Election of the Regent of Batang Hari Regency, Jambi Province in 2015" (Jakarta, 2016).

neutral.¹⁰ However, the Court did not consider these violations, because they were deemed to have no legal standing.

Sudirman Zaini and Ardiansyah stated that the implementation of the 2015 Bungo district elections involved the practice of money politics. Another problem is that the distribution of invitations to voters (C6-KWK Model) is not optimal, causing tens of thousands of voters registered on the DPT to be unable to exercise their right to vote. Then, there was the involvement of the Voting Organizing Group (KPPS), Civil Servants, and the Village Head as a team/supporter for candidate pair number 2 (two). Another subject, namely that the Bungo district Panwaslu did not exercise its authority to follow up on violations that occurred in the Bungo district election.¹¹ The Constitutional Court also did not consider the violation, because it was deemed to have no legal standing.

As'ad Isma and Maryadi Syarif stated that the 2011 regional election for Sarolangun district had many violations which included: The practice of money politics in various modes, in the form of door prizes, donations, and in other forms. There is also the phenomenon of illegal voters being given the right to vote, even though they are not registered on the DPT. Then there was the involvement of Civil Servants and Village Heads as the winning team for candidate pair number 1 (one).¹²

Muhammad Madel and Muharsyah stated that the 2017 Pilkada of Sarolangun district was marred by the practice of violations in the form of money politics practices by the success team for the pair of Regent and deputy Regent candidates serial number 2 (two), administrative violations related to

incomplete attachments to the minutes of voting and vote counting model C1- KWK, and the distribution of voter invitations was not maximal (C-6). Then, there was also engineering of the C1 model related to the number of voters who attended TPS 10 in the Sungai Banteng sub-district, Singkut sub-district.¹³

Adirozal and Zainal Abidin stated that the implementation of the 2013 regional elections for Kerinci district was filled with various systematic, structured and massive violations. In more detail regarding the form of violation, namely Civil Servants (PNS) and Structural Officials were made the winning team to win candidate pair number 3 (three), and even an intern team was also formed from PNS in 16 (sixteen) sub-districts. There were acts of intimidation for civil servants and village heads who did not want to be used as winning machines. Then, the pair of regional head candidates also placed their successful team in the ranks of organizers at the District level (PPK), Village level (PPS), and TPS (KPPS).¹⁴ During the Pilkada implementation, there was no statement regarding the practice of money politics.

Zainal Abidin and Arsal Apri stated that the 2018 regional elections for the Kerinci district were more widespread. There was a lot of involvement of the Village Head and the State Civil Apparatus (ASN) to become the winning team for the pair of Regent and Deputy Regent candidates serial number 2 (two), there were even several unscrupulous Village Heads who were sentenced to criminal sanctions by the Sungai Full District Court for supporting by pointing 2 (two)) finger when taking a photo with the Deputy Regent candidate serial number 2 (two) as a

¹⁰ Constitutional Court.

¹¹ Constitutional Court, "DECISION Number 53/PHPU.D-IX/2011 Concerning Cases of Disputes on the Results of the General Election of Regional Heads and Deputy Regional Heads of Sarolangun Regency in 2011" (Jakarta, 2011).

¹² Constitutional Court.

¹³ Constitutional Court, "Decision Number 32/PHP.BUP-XV/2017 Concerning Disputes over the Results of the 2017

Election of Regent and Deputy Regent of Sarolangun Regency, Jambi Province" (Jakarta, 2017).

¹⁴ Constitutional Court, "DECISION Number 125/PHPU.D-XI/2013 Concerning Decisions on Disputes on the Results of the General Election of Regional Heads and Deputy Regional Heads of Kerinci Regency in 2013" (Jakarta, Indonesia, 2013).

form of support..¹⁵Other violations, in the form of money politics practices by the campaign team for candidate pair number 2 (two) and there are also violations in the form of many voters voting even though they are not registered on the DPT and do not have Kerinci regency KTPs.¹⁶

Herman Muchtar and Nuzran Joher are of the opinion that the 2015 SungaiFull Mayoral Election was filled with violations which included: a). ASN/PNS involvement by candidate pair number 1 (one); b). the use of APBD for the winning candidate pair number 1 (one); c). candidate pair number 1 (one) intervenes against ASN/PNS who do not support it by transferring; d). money politic ; e). the favor of the KPU and the Supervisory Committee for the city of Sungai Full.¹⁷

Fikar Azami and Yos Andrino argued that there was a violation of the nomination requirements, namely in the form of invalid political party support for the candidate pair for Mayor and Deputy Mayor number 1 because the candidacy of Fikar Azami and Yos Andrino was supported by the majority of political parties (Parpol) in the city of Sungai Besar. , if converted in the acquisition of support seats as many as 24 seats out of 25 seats in the DPRD Kota Sungai full, so that at that time there was only 1 (one) vote left from 1 (one) Political Party, namely the Indonesian Democratic Party of Struggle (PDIP).¹⁸

Violation of the candidate requirements, because there were differences in the name writing between the candidate requirements documents, namely in some written documents Ahmadi and in several other

official documents written by Ahmadi Zubir.¹⁹That's what the applicant's question is, name

The 2020 Jambi Province Pilkada level was also marked by violations and fraudulent practices. According to Cek Endra and Ratu Munawaroh, there was a phenomenon of voters who were not registered with the DPT and did not have an electronic KTP and did not have a statement that they had recorded their E-KTP data.²⁰

The details of these violations occurred in several districts/cities in the province of Jambi: Muaro Jambi Regency totaling 196 (one hundred and ninety six) people, in 3 (three) sub-districts, 20 (twenty) sub-districts/villages, and 59 (fifty nine) Problem TPS. Then, in Kerinci district there were 20 (twenty) people in 4 (four) sub-districts, 6 (six) sub-districts/village, and 7 (seven) polling stations with problems. Batang Hari Regency has a total of 15 (fifteen) people in 4 (four) sub-districts, 7 (seven) sub-districts/villages, and 7 (seven) polling stations with problems. There is 1 (one) person in the City of SungaiFull in Koto Baru sub-district, Dujung Sakti Village, TPS 01. East Tanjung Jabung Regency as many as 36 (thirty six) people in 3 (three) sub-districts, 7 (seven) sub-districts, and 14 (four) twelve) TPS is problematic.²¹

The legal status of Pilkada violations in the province of Jambi, there are three legal circumstances. First, a proven violation, namely related to a violation of the 2013 election of the Regent and Deputy Regent (Pilbup) of Kerinci district and the 2020 election of the Governor and Deputy

¹⁵ Constitutional Court, "Decision Number 39/PHP.BUP-XVI/2018 Concerning Disputes over the 2018 Election Results for the Kerinci Regent of Jambi Province" (Jakarta, 2018).

¹⁶ Constitutional Court.

¹⁷ Constitutional Court, "Decision Number 143/PHP.KOT-XIV/2016 Concerning the Decision on the Dispute on the Results of the Election of Mayor and Deputy Mayor of Sungaipuh Province, Jambi, 2015" (Jakarta, 2016).

¹⁸ Constitutional Court, "DECISION NUMBER 67/PHP.KOT-XIX/2021 Concerning Disputes over the 2020

Election Results for the Mayor and Deputy Mayor of Sungaipuh City, Jambi Province" (Jakarta, 2021).

¹⁹ Constitutional Court.

²⁰ Constitutional Court, "DECISION NUMBER 130/PHP.GUB-XIX/2021 Concerning Disputes over the Results of the 2020 Election for the Governor and Deputy Governor of Jambi Province" (Jakarta, 2021).

²¹ Constitutional Court.

Governor of Jambi Province. Second, the violation was not proven, namely violations of the 2010 and Sarolangun Regency in 2011. Third, violations have not been proven, namely related to Pilbup violations in several districts and cities which include: Batang Hari district in 2015, Bungo district in 2015, Sarolangun district in 2017, Kerinci district in 2018, Sungai Full city in 2015 and year 2020.

It is proven that based on the trial evidence, the Constitutional judges believe that election violations actually occurred. Meanwhile, it is not proven otherwise, that is, based on the available evidence, the constitutional judges believe that regional election violations did not occur.²² Then, the legal status that has not been proven is for decisions with unacceptable status (*niet van ontvankelijk verklaard*), namely related to the provisions of the formal requirements of the application not being fulfilled.²³ Proven violations must be a serious concern for improving the quality of the Pilkada, and for violations that are not proven it also needs to be recorded, because the status of violations may really have occurred but the judges did not examine them because certain conditions were not fulfilled.

Forms of Pilkada violations with serious attention include: 1). The involvement of civil servants and structural officials to become the winning team; 2). acts of intimidation for civil servants and village heads who don't want to be used as winning machines; 3). Placement of success teams in the ranks of administrators at the sub-district level (PPK), village level (PPS), and TPS (KPPS); 4).

Voters do not have the right to be given the opportunity to vote at polling stations which are widespread in Jambi province.

The forms of Pilkada violations that need to be noted are: 1). Money Politics (money politic). This problem is difficult to process legally, but this is actually happening with various creative modes in various regions, one of the causes of money politics is due to weak regulations that cause the subject of the perpetrator to escape the law.²⁴ 2). Pilkada Organizer Professionalism. This issue needs to be an important note, because the professionalism and integrity of Pilkada organizers determines the quality of Pilkada.²⁵ These two problems are important to pay attention to, because they determine whether an election is democratic, honest and fair or even vice versa.

Trends in Decisions of the Constitutional Court (MK) in Cases of Disputes over Regional Head Election Results in Jambi Province

Based on the facts of the trial, the Constitutional Court (MK) is of the opinion that all of the arguments of the Petitioner's petition in the case of the dispute over the 2010 Batang Hari District Regent Election (Pilbup) are not proven, both the arguments regarding money politics and intimidation, mass mobilization of non-residents of Batang Hari district to vote, and the omission of voting/voting by voters who do not have the right to vote. The Court was also of the opinion that even if there were unstructured, systematic and massive violations. Therefore,

²² Refly Harun, "Reconstruction of the Authority to Resolve Disputes on the Results of the General Election Reconstruction of Authority in The," *Journal of the Constitution* 13, no. 1 (2016).

²³ Andi Suci Syifawaru, Mulyati Pawennei, and Ahmad Fadil, "Juridical Analysis of the Judge's Decision Declaring the Plaintiff's Lawsuit Unacceptable," *Journal of Lex Generalis (JLS)* 3, no. April (2022): 148–66.

²⁴ Lati praja delmana, "Problematics and Strategies for Handling Money Politics in the 2019 Simultaneous Elections

in Indonesia," *Electoral Governance Indonesian Journal of Election Governance* 1, no. 2 (2020): 1–20, <https://doi.org/10.46874/tkp.v1i2.61>.

²⁵ W Silalahi, "Integrity and Professionalism of Election Organizers for the Realization of Democratic Elections," *Journal of the Riau Islands Province Bawaslu* 4 (2022): 71–83, [http://journal.bawaslu.go.id/index.php/JBK/article/](http://journal.bawaslu.go.id/index.php/JBK/article/views/94)

the Court rejected the petition of the applicant in its entirety.²⁶

In contrast to the 2015 Batang Hari district election dispute case, it did not consider the arguments for the petition and the evidence submitted by the Petitioner, because the Court was of the opinion that the Petitioner had no legal standing to file the Petition as stipulated in Article 158 Law No.8/2015. The verdict stated that the Petitioner's Petition could not be accepted.²⁷ the fact that the difference in votes between the applicant and the winner of the most votes in this case is more than the maximum difference required by law.

The Bungo district election dispute case in 2015 was also the same, the Constitutional Court stated that the Petitioner's petition could not be accepted, because the applicant did not have legal standing as stipulated in Article 158 of Law No.8/2015.²⁸ The maximum difference between the votes acquired by the applicant and those with the most votes is 1.5%, but the facts show that the difference between the votes obtained by the applicant and those with the most votes is 30.77%. In this case, the Court also did not consider the arguments for the petition and the evidence presented by the Petitioners.

The arguments of the petitioner in the dispute over the 2011 Pilbup in Sarolangun district related to money politics, neutrality of government administrators/PNS, voting violations, and increasing the number of illegal voters were deemed by the Constitutional Court not proven. The Court is of the opinion that all of the arguments for the petition are not proven, either because

no evidence was presented to support the petition, nor was there any evidence presented by the Petitioner, but the evidence submitted by the petitioner was not sufficient to convince the court that these arguments were proven. Therefore, in its ruling the Court rejected the entire petition of the Petitioner in its entirety.²⁹

After examining the dispute over the results of the Sarolangun Regent election in 2015, the Court rendered a decision in the form of declaring the Petitioner's application unacceptable with the legal considerations that the petition filed by the Petitioner exceeded the maximum deadline. The announcement of the determination of the results of the election vote acquisition was made by the KPU of Sarolangun Regency on 22 February 2017 at 22.30 WIB, the Court is of the opinion that the petition should be filed no later than Friday 24 February 2017 at 24.00 WIB. The fact is that the application was filed on February 27 2017 at 13.05 WIB.³⁰ The decision of the Constitutional Court is in accordance with article 157 of Law No.10/2016 and MK Regulation No. 1 of 2017, namely: that cases for disputes over regional head election results are submitted by election participants no later than 3 (three) working days after the announcement of the determination of vote acquisition election results by Provincial and/or regency/city KPU.

The results of the examination of the dispute over the results of the election for the Kerinci Regent in 2013, the Court in its legal considerations stated that it was proven that

²⁶ Constitutional Court, "DECISION Number 204/PHPU.D-VIII/2010 Concerning Decisions on Disputes on the Results of the General Election of Regional Heads and Deputy Regional Heads of Batang Hari Regency in 2010."

²⁷ Constitutional Court, "Decision Number 124/PHP.BUP-XIV/2016 Concerning Disputes over the Election of the Regent of Batang Hari Regency, Jambi Province in 2015."

²⁸ Constitutional Court, "Decision Number 97/PHP.BUP-XIV/2016 Concerning Disputes over the 2015 Election

Results for the Regent of Bungo Regency, Jambi Province" (Jakarta, 2016).

²⁹ Constitutional Court, "DECISION Number 53/PHPU.D-IX/2011 Concerning Cases of Disputes on the Results of the General Election of Regional Heads and Deputy Regional Heads of Sarolangun Regency in 2011."

³⁰ Constitutional Court, "Decision Number 32/PHP.BUP-XV/2017 Concerning Disputes over the Results of the 2017 Election of the Regent and Deputy Regent of Sarolangun Regency, Jambi Province."

the parties concerned deliberately and tried to place their successful team consisting of the Village Head and the Village Secretary to become the Election Organizers in the positions of PPK, PPS and KPPS with the aim of winning himself. And the fact was also obtained that the ranks of the SKPD, sub-district heads, village heads, and civil servants were present at the consolidation event for the winning team of related parties who served as the incumbent Regent.³¹

Other violations also occurred, namely, attempts to coerce civil servants, Kerinci Regency Government Bureaucrats, so on Village Government Officials to support Related Parties was proven by taking an oath. Then, there were no efforts, efforts and concrete steps from the Election Organizer (Respondent) and the Election Supervisor for these various violations. Systematic, structured and massive violations occurred in two sub-districts, namely Siulak Mukai and Sitinjau Laut, so that the Court is of the opinion that the arguments of the Petitioner's petition are legally proven.³² Therefore, the Court granted the Petitioners' Petition and ordered profitably that a Repeat Vote (PSU) be held at the places where the violations were alleged by the Petitioners.³³

The Court declared that the Petitioner's Petition could not be accepted in the 2018 Kerinci district election dispute. In fact, the Petitioner had submitted evidence to prove the argument for his petition, but the Constitutional Court did not consider the substance of the petition nor did it consider

the evidence presented, because the Petitioner was deemed not to have legal position as stated in article 158 of Law No.8/2015. The difference in vote acquisition exceeds the maximum figure required by the Article, that is because they are considered to have no legal status even though the difference is only no more than 2% (two percent).³⁴

In the 2015 SungaiFull Mayoral Election dispute, the Constitutional Court decided that the Petitioner's petition could not be accepted on the basis of the consideration that the Petitioner did not have legal standing to submit the application as stated in Article 158 of Law No.8/2015. The maximum difference should not be more than 2% (two percent), but the facts at trial show that the difference between the Petitioner and the owner of the most votes is more than 2% (two percent), namely 28.99% (twenty-eight point ninety-nine percent).³⁵

The dictum of the Court's decision in the case of dispute over the results of the 2020 Mayoral Election of Sungai Kunci, namely the Court stated that the Petitioner's petition could not be accepted on the grounds that the Petitioner did not have legal standing to file a petition. The maximum difference should be 2% (two percent), but the difference exceeds the maximum required number, even though the excess does not reach 1% (one percent).³⁶ The Court also stated that the Petitioners' petition had no legal grounds, and therefore the petition could not be granted³⁷

³¹ Constitutional Court, "DECISION Number 125/PHPU.D-XI/2013 Concerning Decisions on Disputes on the Results of the 2013 Regional Head and Deputy Regional Heads of Kerinci Regency Election."

³² Constitutional Court.

³³ Constitutional Court.

³⁴ Constitutional Court, "Decision Number 39/PHP.BUP-XVI/2018 Concerning Disputes over the Results of the 2018 Election of the Kerinci Regent of Jambi Province."

³⁵ Constitutional Court, "Decision Number 143/PHP.KOT-XIV/2016 Concerning the Decision on the Dispute on the Results of the 2015 Mayor and Deputy Mayor Elections of Sungai Kunci, Jambi Province."

³⁶ Constitutional Court, "DECISION NUMBER 67/PHP.KOT-XIX/2021 Concerning Dispute over the 2020 Election Results for the Mayor and Deputy Mayor of Sungaipuh City, Jambi Province."

³⁷ Constitutional Court.

Legal considerations in the dispute over the results of the election for the Governor of Jambi Province in 2020, the Court stated that based on the facts of the trial, that it had been proven that there were voters who were not entitled but were allowed to cast their votes or vote at TPS as argued by the Petitioner, then the Constitutional Court was of the opinion that the KPU of Jambi Province or The Respondent deliberately allowed voters who were not entitled to cast ballots. This is contrary to Article 56 of Law no. 1/2015 Jo Article 57 and Article 61 of Law no. 10/2016.³⁸ It was also revealed that the legal fact was that the Respondent could not show the attendance list of the applicant's witnesses who came to the Election for the Governor of Jambi province. These violations made the public distrust the voting process, the validity of the results, and the purity of the vote acquisition as well as the integrity of the organizers.³⁹

The Court also doubted the implementation of the voting process for the Election of the Governor of Jambi Province, which also had an impact on doubts about the results of the vote acquisition, especially at the polling stations argued by the Petitioner. The Court also believes that there has been an election for the Governor of Jambi Province that violated regulations, particularly the implementation process which must be guided by the principles of direct, public, free, confidential, honest and fair. Therefore, in order to obtain the correct voting process and the validity of obtaining pure votes at these TPS, it is necessary to conduct a re-voting.⁴⁰ In order to guarantee the correct re-voting, the re-voting must be carried out by new KPPS and PPK officers and not the previous KPPS and PPK officers in all places where the Re-Voting (PSU) will be held. PSU

³⁸ Constitutional Court, "DECISION NUMBER 130/PHP.GUB-XIX/2021 Concerning Disputes over the Results of the 2020 Election for the Governor and Deputy Governor of Jambi Province."

³⁹ Constitutional Court.

was implemented in 5 Regencies/Cities consisting of 88 TPS.⁴¹

Finally, the Court gave a Decision on the dispute over the results of the election for the Governor and Deputy Governor of Jambi Province with a decision which essentially granted the petitioner's request in part and ordered a Re-Voting (PSU) in several TPS for violations as argued by the Petitioner.⁴²

There are three (3) models of decisions by the Constitutional Court regarding regional election disputes in Jambi Province: first, the request was granted because it was proven and followed by PSU. Second, the application was rejected because it was not proven. Third, the application cannot be accepted because the applicant does not have legal standing. As for the trend of the Constitutional Court's rulings on regional election disputes in Jambi Province as a whole, the majority of decisions are unacceptable petitions. Meanwhile, decisions based on the tempus (time) of case decisions, the trend of decisions under 2015 was that the majority were rejected or granted, while for 2015 and above the majority of decisions declared the Petitioner's application unacceptable.

Causes of Changes in Trends in MK Decisions related to Pilkada Disputes

Changes in the trend of constitutional court decisions are at least caused by several things, namely: first, a paradigm shift. From 2008 to 2013, the Constitutional Court was of the view that in the context of deciding regional election disputes, the Constitutional Court played the role of guardian of the constitution and upholding substantive, not procedural justice, and no one should benefit from fraud.⁴³ Therefore,

⁴⁰ Constitutional Court.

⁴¹ Constitutional Court.

⁴² Constitutional Court.

⁴³ La Ode Maulidin, "Analysis of Constitutional Court Decisions in Resolving Disputes over Election Results from a

the Constitutional Court at that time had the courage to make legal breakthroughs to create democratic, honest and fair regional elections. The MK, from 2015 until now, is of the view that the authority of the MK in deciding regional election disputes is only additional authority, not the main authority as deciding election dispute cases. And the Constitutional Court is also of the view that regional elections are different from general elections because local elections are regulated in Article 18, while general elections are regulated in Article 22 E of the 1945 Constitution.⁴⁴

Even the different paradigms related to the Pilkada issue are not part of the General Election regime, the Constitutional Court in its decision handed back the authority to examine, hear and decide on Pilkada dispute cases to the Supreme Court.⁴⁵ So basically the Constitutional Court no longer wants to make regional election disputes its authority.

Second, The change in the trend of the Constitutional Court's decision was due to regulatory differences. From 2008 to 2014, the regulations used were law number 32 of 2004 concerning Regional Government, and several amendments, namely law number 8 of 2005 and law number 12 of 2008. Meanwhile, in 2015, the regulations that the Constitutional Court relies on in deciding regional election disputes are different, namely: law number 1 of 2015, law number 8 of 2015 and law number 10 of 2016.

Progressive Legal Theory Perspective," *Journal of the Constitution* 4, no. 1 (2011): 65–102.

⁴⁴ Constitutional Court, "Decision Number 51/PUU-XIII/2015" (2019).

⁴⁵ Iza Rumesten RS, "Dilemmas and Legal Consequences of the Constitutional Court Decision Regarding the Authority to Decide Regional Election Disputes," *Journal of the Constitution* 11, no. 4 (2016): 693, <https://doi.org/10.31078/jk1145>.

⁴⁶ Ade Mazhar Amin Bahri, "Juridical Implications of the Threshold on Submission of Applications for Pilkada

The phenomenon of changing trends in MK decisions raises various criticisms, one of which is that the Constitutional Court's decision which prioritizes formal legal standing requirements based on Article 158 of Law No.8/2015 injures and limits the sense of justice.⁴⁶ Refly even stated that the regulation was unreasonable, and the Constitutional Court should have been able to set aside the regulation if it turned out that the Pilkada had not been carried out in an honest and fair manner.⁴⁷ However, there was also a response from the Constitutional Court, that the Constitutional Court must also comply with laws and regulations as well as the oath of office of the Constitutional Court judges, and actually with the Constitutional Court focusing on disputes over the results is also substantial because the Constitutional Court ascertains whether the Pilkada results are manipulated or are in accordance with the facts of the results of the votes obtained.⁴⁸

All parties have arguments, both pro and con, regarding the changing trend in the Constitutional Court's decision, but indeed it would have been better if the Constitutional Court did not only focus on matters of formality and put forward the substance of the Pilkada legal issues. Thus, it can be expected to create elections that are democratic, honest and fair. It's not that there are negative assumptions in society, if you want to win the Pilkada you have to cheat in totality so you can pass the minimum difference in votes to submit an application for an election dispute at the MK, so that the

Disputes," *Journal of Lex Renaissance* 5, no. 3 (2020): 730–46, <https://doi.org/10.20885/jlr.vol5.iss3.art14>.

⁴⁷ Refly Harun, "Refly MK Scores Should Not Set Percentage Difference Limits," *Detic.Com*, 2017, <https://news.detik.com/berita/d-3433097/refly-value-mk-seharusnya-tak-bikin-limit-percentage-difference-votes>.

⁴⁸ Aswanto, "The Court is Not a Calculator Court" (Jakarta, 2020), <https://www.mkri.id/index.php?page=web.Berita&id=16719>.

party who was defeated fraudulently cannot apply for an election dispute at the MK, because they are considered to have no legal standing.

Conclusion

There are still quite a lot of election problems in Jambi province. Then, there was a change in the trend of the Constitutional Court's decisions between 2008-2014 which tended to accept or reject, while the trend of the Constitutional Court's decisions between 2015 and above tended to be unacceptable (*Niet Ontvankelijke Verklaard*), as for the reason is the difference in views on whether the election is an election or not an election, and the difference in the basis of regulation.

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