

OVER THE LIMIT OF AUTHORITY OF THE CONSTITUTIONAL COURT IN RESOLVING DISPUTES ABOUT THE RESULTS OF THE GENERAL ELECTION

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Abstract

The limits of authority possessed by the Constitutional Court in deciding disputes regarding the results of general elections as stipulated in Article 24C paragraph (1) of the 1945 Constitution have given a narrow interpretation which is to assess the difference in the figures set by the KPU. The limited authority of the Constitutional Court has caused the decline in the quality of elections. The Constitutional Court does not dare to take on its broader authority even though its position as guardian of the constitution as well as the guardian of democracy. The wider authority of the Constitutional Court needs to be given that every election will always be followed by violations and fraud.

Keyword: Authority; Constitutional Court; Dispute; Elections.

1. INTRODUCTION

This article is not to reiterate about one of the powers of the Constitutional Court, namely to decide disputes about general election results that have been widely expressed by constitutional law experts. The author would like to reaffirm the authority of the Constitutional Court as the guardian of the constitution with one of its powers to decide disputes regarding the results of the general elections. This is because the current Constitutional Court in deciding disputes regarding general election results tends to ignore the quality of the general election and only decides on the difference in numbers that have been decided by the organizers, namely the General Election Commissions. The Constitutional Court does not want to know from the implementation of the general election that many violations and fraud occurred.

Article 24 paragraph (2) of the 1945 Constitution stipulates, “one of the judicial powers is exercised by a Constitutional Court”, then Article 24C paragraph (1) of the 1945 Constitution gives authority to the Constitutional Court as a new state institution in the Indonesian constitutional system, one of which is decide disputes about the results of the general election. This authority shows that the Constitutional Court has a function as a guardian of the constitution, namely that general elections are held in accordance with the provisions of the 1945 Constitution. The authority of the Constitutional Court is related to Article 22E paragraph (1) of the 1945 Constitution which stipulates that, “general elections are carried out in a direct, general, free, secret, honest and fair manner every five years”. This provision shows that the democracy that is built should be a

national civilization for the progress of democracy in Indonesia, with the Constitutional Court participating in overseeing the implementation of democratic general elections.

General elections known in Indonesia in accordance with the 1945 Constitution are legislative elections (DPR and DPD general elections), presidential and vice presidential elections and regional head elections (elections which are then included in the electoral regime). Elections that should be held directly, publicly, freely, confidentially, honestly and fairly as an implementation of democratic civilization, may in practice occur violations and fraud. The existence of these violations and fraud will of course affect the results of the general election and injure democracy itself. Therefore, the legal framework must regulate mechanisms and effective dispute resolution to realize democratic elections, including the political rights of citizens in general elections. This was said by Ramlan Surbakti, because the right to vote is a human right. Legal remedies for violations of the right to vote are also human rights.¹

Because every general election (both legislative, presidential and regional elections) is always followed by violations and fraud, so there is a need for institutions or institutions that can resolve disputes, including election supervisory agencies. Faturrahman said that, in every democratic country there is an election supervisory and/or monitoring institution in order to minimize the occurrence of fraud or violations in the implementation of general elections².

The Constitutional Court is specifically authorized by the 1945 Constitution as a judicial institution authorized to decide disputes regarding the results of the general election. The final result of the general election which is often a problem for election participants causes disputes, because the results are not as desired by the general election participants due to the implementation of the general election there are many violations and fraud. These violations and frauds have resulted in poor quality elections and have reduced the principles of direct, general, free, confidential, honest and fair elections. The general election should be held in accordance with Article 22E paragraph (1) of the 1945 Constitution which was carried out directly, publicly, freely, confidentially, honestly and fairly, but because there were violations and fraud which resulted in the results of the general election being questioned. Therefore, the provisions of Article 22E paragraph (1) of the 1945 Constitution indicate that the general election which should be carried out through direct, general, free and secret means is a form of civilized democracy built in the context of building the nation's civilization.

These frauds and violations ultimately lead to disputes and disputes resulting in the results obtained are not as expected from the implementation of general elections that are built in a civilized manner. Thus, according to Ramlan Surbakti, dispute over general election results or better known as dispute over general election results is a

¹ Ramlan Surbakti, et-al, 2011, *Penanganan Sengketa Pemilu*, Kemitraan Partnership, Jakarta, pg. 21.

² Fatkhurohman, et al, 2004, *Memahami Keberadaan Mahkamah Konstitusi Di Indonesia*, Citra Aditya Bakti, Bandung, pg. 49.

dispute between general election participants and the KPU as the organizer of the general election regarding the national determination of vote acquisition results from the general election by the General Elections Commission.³

The Constitutional Court, which is given the authority to settle disputes over the results of the general election, must of course be able to fairly and wisely decide the dispute. Because the Constitutional Court as an institution guarding the constitution or guardian of the constitution which is also a guardian of democracy so that the constitutional rights of citizens are maintained from the implementation of general elections which are always followed by violations and fraud. It can also be said that the authority of the Constitutional Court in resolving disputes over general election results does not interpret the settlement of disputes over the final general election results in the form of differences in numbers, but can see the reality of the implementation of general elections which were carried out in accordance or not with the principles of direct, general, free, confidential, honest and fair. The author tries to analyze further in the following discussion.

2. DISCUSSION

General Elections as a Constitutional Practice

Reforms in all aspects of life that have taken place since 1999 require changes, including amendments to the 1945 Constitution, and one of the changes is in the political field, namely the issue of general elections. The general election was one of the crucial problems at that time because it was not carried out democratically. General elections as the implementation of people's sovereignty should be carried out democratically. This is why general elections need to be regulated in the 1945 Constitution, and these arrangements are a manifestation of the will of the people so that elections are held democratically, which is a civilization of the nation. General elections have broad implications, not only the will of the people and the change or formation of power, but also on changes in people's lives that are more humane and democratic, of course the need for good governance in a clean government.

General elections are one of the main means of establishing a democratic political order. Its function is as a tool to nourish and perfect democracy, not as a goal of democracy. Elections are an acknowledgment and embodiment of the people's political rights and at the same time the delegation of these rights by the people to their representatives to run the government⁴.

General elections (elections) are a political necessity to form a democratic government, even in most democratic countries, elections are considered a symbol as

³ Ramlan Surbakti, et-al. *Op.cit*, pg. 6.

⁴ M. Rusli Karim, 1991, *Pemilu Demokratis Kompetitif*, PT. Tiara Wacana Yogya, Yogyakarta, pg. 1-2.

well as a benchmark of democracy itself⁵. This is because the general election is a real manifestation of the implementation of democracy⁶. In other words, general elections are a logical consequence of adhering to democratic principles⁷. Therefore, general elections as an aspect of democracy must also be held democratically. Democratic elections are not just symbols, but democratic elections must be competitive, periodic, inclusive and definitive⁸, in accordance with the principles of the general election itself.

The 1945 Constitution after the amendments placed general elections as a constitutional practice which was held regularly every five years which was carried out democratically. Placement of the general election in the 1945 Constitution as a state administration practice, because in the administration of government must place the people as the real power holders. General elections are held to elect members of the People's Representative Council, Regional Representative Council, Regional People's Representative Council, General Election of President and Vice President and general election of Regional Heads. In addition, there is a need for an independent general election organizer.⁹

General elections are held to elect members of the People's Representative Council, Regional People's Representative Council and Regional Representative Council, which later became known as the legislative general election, namely the general election to elect the membership of the People's Consultative Assembly/People's Representative Council/Regional Representative Council. Next is the general election for the President and Vice President, known as the Presidential Election, to the general election for regional heads known as the General Election of Regional Heads. The general election must be held in a direct, general, free, secret, honest and fair manner once every five years. The principle of direct, general, free, confidential, honest and fair is the democratization of general elections which is also a new civilization that is built in the implementation of general elections in Indonesia. According to Mukthie Fadjar, that the realization of a democratic general election is not enough just to fulfill the formal attributes of democracy, such as the existence of representative institutions, the existence of more than one political party competing in the general election, and the general election being held periodically. According to Mukthie Fadjar, democracy and the process of democratizing general elections must be based on human rights standards so that they are more participatory and emancipatory, otherwise democracy will be easily co-opted and distorted.¹⁰ Therefore, general elections must be held on the principle of direct, general, free, secret, honest and fair.

⁵ Miriam Budiardjo, 2008, *Dasar-dasar Ilmu Politik*, edisi Revisi, Gramedia Pustaka Utama, Jakarta, pg. 94.

⁶ Muktie Fadjar, *Pemilu: 2003, Perselisihan Hasil Pemilu dan Demokrasi*, Setara Press, Malang, pg. 1.

⁷ Harry Setya Nugraha, 2015, "Redesain Kewenangan Mahkamah Konstitusi dalam Penyelesaian Sengketa Perselisihan Hasil Pemilihan Umum Presiden dan Wakil Presiden di Indonesia", in the Journal of Law *Ius Quia Iustum* No. 3 Vol 22 Juli 2015, pg. 421.

⁸ Muktie Fadjar, *Op.cit*, pg. 28.

⁹ Sodikin, 2014, *Hukum Pemilu, Pemilu Sebagai Praktik Ketatanegaraan*, Gramata Publising, Bekasi, pg. 47.

¹⁰ Mukthie Fadjar, *Op.cit*, pg. 28.

In fact, in general election practice, fraud and violations occur. The implementation of general elections since the amendments to the 1945 Constitution, namely the 2004, 2009, 2014 and 2019 elections has caused many problems, especially the occurrence of fraud and violations. Fraud and violations have eliminated the nature of direct, public, free, confidential, honest, and fair. The principles of direct, general, free, secret, honest and fair are mutual agreements which constitute a democratic civilization built in the 1945 Constitution.

Violations and fraud in the general election seem to be part of the democratic party itself, there is even an assumption that if you want to get votes or win in a democratic party, you must commit fraud and violations. Fraud and violations will of course affect the results of the general election which is then determined by the General Elections Commission. Various laws and regulations were made and perfected, but fraud and violations still persist. The losing party will claim that it has been cheated so that the results are not as expected. Nevertheless, general elections must still be held considering that the 1945 Constitution as the state constitution requires general elections to be held regularly every five years.

The Authority of the Constitutional Court in the Implementation of General Elections

The Constitutional Court as a state institution in the Indonesian constitutional system has the authority, one of which is to decide disputes regarding the results of the general election. Article 24C Paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UUD 1945) contains provisions concerning the authority of the Constitutional Court of the Republic of Indonesia to decide at the first and final level whose decisions are final to decide “disputes about the results of the general election”. The authority to settle disputes regarding general election results is further regulated in Law Number 24 of 2003 concerning the Constitutional Court.¹¹ Disputes over the results of the general election that are under the authority of the Constitutional Court are finalizing the general election for members of the People’s Representative Council, Regional Representative Council, President and Vice President, and members of the Regional People’s Representative Council and the general election for Regional Heads.

The provisions in Article 24C Paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UUD 1945) which are then set forth in Law Number 24 of 2003 concerning the Constitutional Court as amended for the second time by Law Number 4 of 2014 concerning Stipulation Government Regulation in Lieu of Law becomes a law

¹¹ Law Number 24 of 2003 concerning the Constitutional Court as amended by Law Number 8 of 2011 concerning Amendments to the Constitutional Court (LNRI No. 70 of 2003 TLNRI Number 5226), then amended again by Law Number 4 of 2014 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2013 concerning the Second Amendment to Law Number 24 of 2003 concerning the Constitutional Court into Law

on the Constitutional Court is a concrete manifestation of the Constitutional Court in participating in the implementation of the general election.

In addition, the presence of the Constitutional Court is also to implement the principle of constitutionalism in the life of the state and nation. Violations and fraud in the implementation of general elections are also violations of the constitution, this of course cannot be tolerated because it will lead to arbitrary power. The principle of direct, general, free, confidential, honest and fair in the implementation of general elections is a principle adopted so that the constitution functions as a guardian of Indonesian constitutional life. Thus, the principles of democracy and respect for human rights are needed so that the Constitutional Court will easily supervise the exercise of the powers of state institutions in accordance with the will of the people. That is, because the power of the state comes from the people, it will always be controlled by the people and always respect the basic rights of the people.

Thus, the Constitutional Court carries out a very important mandate to maintain democracy through the pillars of the rule of law, so that the Constitutional Court which contains judges who are qualified in the field of law and constitution is expected to be able to carry this mandate so that the implementation of the general election becomes a civilized general election. The Constitutional Court can also make efforts to save the implementation of general elections which are always accompanied by fraud and violations. A strategy for the sustainability of democratic life is highly expected from the Constitutional Court, because if the public does not believe in the Constitutional Court, it will have implications for the legitimacy of the general election results whose dispute is the authority of the Constitutional Court to judge.

General Election Result Dispute Resolution

Elections have become a global phenomenon in the world, which occurs in both developed and developing countries. Elections are one of the best means to facilitate a peaceful change of power, but in practice, elections show a wide variety, from free and fair implementation to elections full of violations and fraud. Therefore, one important agreement that has been built and is universal in nature is that the integrity of elections is an important aspect of a democratic system in particular. The consequences of the absence of elections with integrity are very serious, even at a certain point it can lead to the delegitimization of the elected government and ultimately trigger political instability in a country.¹²

As well as the system for organizing general elections is designed, there is always the possibility of violations that can reduce the quality of the general election. For this reason, the system for organizing general elections is the best, in which there is always a reliable institutional mechanism available to resolve various types of election

¹² Mudiayati Rahmatunnisa, 2017, "Mengapa Integrasi Pemilu Penting", in the *Journal of Bawaslu*, Vol. 3 No. 1 2017, pg. 9.

complaints and disputes.¹³ Election disputes arise because of violations and fraud in the general election. Election violations and fraud can occur from the stages the general election is made up to the counting of votes from the general election results. The stages of holding a general election are made by the election organizer, namely the General Election Commission which is then supervised by the general election supervisor in the case of the General Elections Supervisory Agency (*Bawaslu*).

As it is known that the implementation of elections is carried out through several main stages, the occurrence of disputes or violations is very likely to occur at every stage of the implementation of elections. The possibility of these violations could be caused by fraud, mistakes, or election winning strategies that do not violate the law but reduce public trust (non-fraudulent misconduct).¹⁴

Efforts to resolve disputes by involving various state institutions that are given special authority in resolving general election disputes. The Constitutional Court is one of the state institutions authorized to resolve general election disputes, namely disputes over election results. Various efforts have been made to organize quality general elections, namely through comprehensive, clear and precise legal arrangements. This effort will automatically result in the implementation of quality general elections and away from various potential violations in all their forms.

The potential for violations and fraud in the general election will continue to occur which raises fundamental issues in the resolution of general election disputes, namely (1) the validity of the results, and thus the right to test or challenge the results of the general election; (2) administrative actions of the general election organizers to correct or resolve a problem, which is disputed by justice seekers whose election rights have been violated; and (3) criminal prosecution for those who commit criminal acts in the general election process.¹⁵

The first issue of the three issues is the validity of the general election results which result in the final election results being the final result of an election. If the implementation is carried out with a common will as regulated in the legislation, the validity of the final result can be accepted, but if the general election is carried out with many violations and fraud, then the final result will be questioned with its validity in question. The final result with questionable validity was then widely disputed with the Constitutional Court.

This dispute concerns the determination of the results of the national general election conducted by the General Elections Commission which results in a person who should be elected either as a member of the Regional Representatives Council, the People's

¹³ Firdaus, 2014, "Penyelesaian Sengketa Pemilu Sebagai Upaya Memulihkan Kepercayaan dan Memperkuat Legitimasi Pemerintahan Demokrasi", *Fiat Justicia Jurnal Ilmu* Vol 8 No. 2 April-Juni 2014, pg. 209.

¹⁴ Janedjri M. Gaffar, 2013, *Politik Hukum Pemilu*, Konstitusi Press, Jakarta, pg. 77.

¹⁵ Ramlan Surbakti in Zainal Arifin Hoesein dan Rahman Yasin, 2015, *Pemilihan Kepala Daerah Langsung (Penguatan Konsep dan Penerapannya)*, LP2AB, Jakarta, pg. 155.

Representative Council or the Regional People's Representative Council or influences the steps of the candidates for President and Vice President to proceed to the next round (round second) the election of the President and Vice President or influencing the final results of the pairs of candidates elected to become President and Vice President as well as pairs of candidates for regional heads. This happened because the calculation of the votes from the general election was done incorrectly or incorrectly, either intentionally or unintentionally.

Thus, it can be said that the dispute over the general election results is a dispute between the General Election Commission and the Election Contestants regarding the determination of the vote acquisition of the election results nationally. Disputes over election results can occur if the determination of the General Election Commission affects 1) the election of members of the People's Representative Council, Regional People's Representative Council and Regional Representative Council and the acquisition of seats for political parties participating in the election in one electoral district, 2) the determination of pairs of candidates who enter the second round of elections. president. and vice president as well as the election of pairs of presidential and vice presidential candidates, and 3) determination of pairs of regional head candidates who enter the second round of regional head elections and also the election of regional head candidate pairs. This has been determined in the Tenth Part of Law Number 24 of 2003 concerning the Constitutional Court as amended for the second time by Law Number 4 of 2014 from Article 74 to Article 79.

Constitutional Court as Enforcer of Democracy

Mahfud MD stated that there were two reasons for choosing democracy as a system of society and state. First, almost all countries in the world have made democracy a fundamental principle; Second, democracy as a principle of state has essentially provided direction for the role of the community to organize the state as its highest organization.¹⁶

In essence, the main function of the Constitutional Court is to ensure that the constitution is carried out consistently (the guardian of constitutions) and to interpret the constitution (the interpreter of constitutions). With this function, the existence of the Constitutional Court has an important and strategic role in the development of the current state administration because all provisions or policies made by state administrators can be measured in terms of constitutional or not by the Constitutional Court.¹⁷

As an institution that supervises the conformity of legal norms to the constitution, the Constitutional Court in Jimly Asshiddiqie's opinion has five functions as a manifestation of its authority, namely: 1. The Constitutional Court as the guardian of the constitution.

¹⁶ A. Ubaedillah dan Abdul Rozak, 2006, *Pendidikan Kewarganegaraan: Demokrasi, Hak Asasi Manusia, dan Masyarakat Madani*, ICCE UIN Syarif Hidayatullah, Jakarta, pg. 130-131.

¹⁷ Titik Triwulan Tutik, 2010, *Konstruksi Hukum Tata Negara Indonesia Pasca Amandemen UUD 1945*, Kencana, Jakarta, pg. 221.

2. The Constitutional Court as the controller of decisions based on a democratic system (control of democracy). 3. The Constitutional Court as the interpreter guardian of the constitution. 4. The Constitutional Court as the protector of the citizens constitutional rights. 5. The Constitutional Court as the protector of human rights. Of the five functions can be grouped into two main functions. First, the legal function, which is to keep all legal products within the framework and corridors of the constitution. Second, the political function, namely the decisions of the Constitutional Court clearly have a broad political influence. In this political dimension, the decisions of the Constitutional Court establish a new political system, structure and culture. Broadly speaking, this is the basis for developing democratic life in Indonesia.¹⁸

Because the Constitutional Court as a judicial institution to enforce law and justice, the Constitutional Court has a function to guard and interpret the constitution. In various countries, the Constitutional Court is also the protector of the constitution. Since the incorporation of human rights in the 1945 Constitution, the function of protecting the constitution in the sense of protecting human rights (fundamental rights) is also true.¹⁹ In addition, the existence of the Constitutional Court is also an enforcer of democracy, because the Constitutional Court was formed to lead to a democratic rule of law. One of the enforcements of democracy is the holding of direct, general, free, secret, honest and fair general elections. The Constitutional Court as an enforcer of democracy is tasked with maintaining direct, general, free, secret, fair and honest elections. The Constitutional Court with its authority to adjudicate disputes over general election results. This authority is not only a judicial institution but also an institution that oversees the establishment of democracy in Indonesia.

The great hope of the Indonesian people has finally made the Constitutional Court not only serve as a guardian of the constitution but also as a guardian of democracy.²⁰ According to Jimly Asshiddiqie, the Constitutional Court is also essentially the guardian of the Indonesian law.²¹ This means that to uphold democracy, the Constitutional Court plays a role in maintaining democracy by resolving disputes over the results of the general election decided by the General Elections Commission and also overseeing the implementation of general elections, so that the results of the general election are the results obtained through the implementation of general elections in accordance with the will The 1945 Constitution is through a direct, general, free, confidential, honest and fair process.

¹⁸ Bachtiar, 2015, *Problematika Implementasi Putusan Mahkamah Konstitusi pada Pengujian UU terhadap UUD*, Raih Asa Sukses, Jakarta, pg. 109.

¹⁹ Maruarar Siahaan, 2006, *Hukum Acara Mahkamah Konstitusi Republik Indonesia*, Konstitusi Press, Jakarta, pg. 5.

²⁰ Muhammad Iwan Satriawan dan Mukhlis, 2018, "Memurnikan Mahkamah Konstitusi", Scientific Journal "SASI", Volume 24, Number 1 January – June 2018, pg. 50.

²¹ Jimly Asshiddiqie, 2010, *Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi*, Sinar Grafika, Jakarta, pg. 135.

Democracy is enforced through the implementation of general elections that apply the principles of direct, general, free, secret, honest and fair, so that the Constitutional Court as an enforcer of democracy is tasked with maintaining a fair and honest general election through the authority to adjudicate disputes over the results of the general election. This means that the Constitutional Court does not only act as a judicial institution but also as an institution that oversees the establishment of democracy in Indonesia.

This also needs to be understood in the context of being a guardian of democracy, that democracy must be interpreted or understood not only in the context of general elections. In the context of state administration, especially in the life of the nation and state, the application of democracy is not only related to the implementation of general elections, but democracy must be understood as a broad system of government and always provides opportunities for every Indonesian citizen to express himself in terms of politics, law, economics and other aspects of life as long as they involve constitutional rights and constitutional obligations as citizens.

Understanding the democratic system as a system of government, the Constitutional Court in deciding disputes over election results between participants and election organizers, must be decided through a judicial mechanism that is truly objective, not influenced by the interests of the government, participants, or election organizers. This is where the importance of the authority of the Constitutional Court to decide disputes over election results to ensure that the election results are truly in accordance with the people's choice. The Constitutional Court must act as a judge and at the same time keep democracy upheld.

Limits of the Authority of the Constitutional Court in Settlement of Election Result Disputes

The 1945 Constitution which is the Constitution as the highest law regulates the administration of the state based on democratic principles and one of the functions of the constitution is to protect human rights guaranteed in the constitution so that they become the constitutional rights of citizens. Therefore, the Constitutional Court also functions as the guardian of democracy, the protector of citizen's constitutional rights and the protector of human rights.²² The existence of the Constitutional Court is understood as the guardian of the constitution to strengthen the basics of constitutionalism in the 1945 Constitution. Therefore, the Constitutional Court has the authority within the limits of the guardian of the constitution whose function is to uphold justice in the midst of people's lives.

²² *Enam Tahun Mengawal Konstitusi dan Demokrasi, Gambaran Singkat Pelaksanaan Tugas Mahkamah Konstitusi 2003-2009*, Sekjend dan Kepaniteraan Mahkamah Konstitusi, Cetakan Pertama Jakarta, 2009, pg. 13 in Ni'matul Huda, 2011, *Dinamika Ketatanegaraan Indonesia dalam Putusan Mahkamah Konstitusi*, FH UII Press, Yogyakarta. pg. 37

The limit of authority possessed by the Constitutional Court as the guardian of the constitution and guardian of democracy not only resolves disputes over the results of the general election, but also encourages and ensures that the constitution is respected and implemented by all components of the state consistently and responsibly. In other words, one of the powers of the Constitutional Court as stipulated in Article 24C paragraph (1) of the 1945 Constitution is the expansion of the authority of the Constitutional Court in terms of deciding disputes over general election results which conceptually is practically not trapped in the mathematical context of vote counting determined nationally by the General Election Commissions. The Constitutional Court in an effort to uphold the constitution and the principle of the rule of law in accordance with its duties and authorities as stipulated in the 1945 Constitution. Therefore, the Constitutional Court has that authority as part of an institution that upholds the dynamics of democracy through its main function as an institution that maintains the honor and authority of the Constitution. 1945. This expansion of the authority of the Constitutional Court provides a door for public hope in maintaining the constitutionality of democracy.

The Constitutional Court in examining, adjudicating, and deciding disputes over general election results may also adjudicate not only disputes over general election results, but also in the entire general election process as long as the process is proven in the trial to violate the principles of direct, general, free, confidential elections, honest and fair. If this is done, it is actually an attempt by the Constitutional Court to achieve substantial democracy, not just procedural democracy.

In the case of general election results, the authority of the Constitutional Court is not only to count vote disputes, but is obliged to seek justice for violations of democratic election principles. The Constitutional Court is indeed not allowed to try election violations that are criminal and administrative in nature, because they are not within its authority. However, if you see that election principles or principles have been violated so as to cause injustice in the implementation of the general election, the Constitutional Court should be careful and selective in adjudicating it.

Therefore, the limit of the authority of the Constitutional Court is not only to adjudicate disputes regarding the results of the general election in the form of numbers, but the Constitutional Court must carry out its function as a guardian of the constitution and the protector of the constitutional rights of citizens. In many cases handled by the Constitutional Court, both legislative elections, presidential elections and post-conflict local elections, so that democracy is only a body and skin, not its substance. The spirit of democracy is held hostage and marginalized by various forms of violations, dishonesty, partiality, money politics, even threats and intimidation. Consequently, the government that is formed is only a government labeled and claims democracy, a government that

has democratic legitimacy because it wins direct elections, but overrides the values of democracy and a republican state in running the government.²³

General elections are the main means of establishing and administering democracy because in it there is people's participation in choosing and determining their leaders and representatives. General elections must be carried out in a direct, general, free, secret, honest and fair manner, so that no more votes are not counted or manipulated, because this is tantamount to abusing people's sovereignty.

Thus, the legitimacy of the Constitutional Court as an institution that guards the constitution in terms of resolving disputes over election results is highly at stake, because so far the Constitutional Court in exercising its authority to decide at the first and final levels whose decisions are final and binding to decide disputes regarding general election results that still do not meet the requirements of the Constitutional Court. a sense of justice for the people who seek justice through an institution called the Constitutional Court. Lately, the Constitutional Court has not played its role properly in resolving disputes over election results, both for the legislative election, presidential election and post-conflict local election. The spirit of reform to democratize the general election has encountered obstacles in its journey, namely that the spirit of reform has not been internalized in the implementation of the general election itself. This is clearly seen by the limited authority of the Constitutional Court in exploring justice in the process of resolving disputes over the results of the general election.

There is a problem within the Constitutional Court itself, namely in interpreting or interpreting the phrase "election results" in a narrow sense which is only interpreted as a dispute regarding the determination of election results conducted nationally by the KPU. The narrow meaning of the phrase "election results" has made the Constitutional Court now referred to as the "Calculator Court" in terms of resolving disputes over the settlement of general election results, which no longer functions as the Constitutional Court as a guardian of the constitution, namely guarding the principles of direct general elections, free, confidential and fair. Article 24C paragraph (1) of the 1945 Constitution states, among other things, that the Constitutional Court has the authority to settle disputes over general election results, but the Constitutional Court does not provide a clear understanding of the purpose of disputes over election results.

According to Simon Butt, the Constitutional Court should not be referred to as the "Calculator Court" which only judges related to miscalculations. The Constitutional Court must act as a judiciary that prioritizes substantive justice. Butt stated: ...By 2008, the Court was handling *Pemilukada* disputes and, in its decisions, introduced 'substantive justice' tests, ordering recounts and even some re-elections when faced with evidence that electoral administrators or competing parties had violated electoral laws

²³ Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, 2010, *Membangun Demokrasi Substansial Meneguhkan Integrasi Institusi: Refleksi Kinerja MK 2010-Proyeksi 2011*, Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, Jakarta.

in a ‘structured, systematic and massive’ way. In other words, the Court shifted from checking vote counts to checking for improprieties occurring before voting or counting took place. For example, the Court ordered several re-elections in the face of widespread vote buying by competing parties and official bias against particular candidates...²⁴

The author considers that recently every case of dispute over the general election results decided by the Constitutional Court is only limited to assessing whether or not the vote count has been determined nationally by the General Elections Commission. The narrow meaning of the general election results has made the Constitutional Court a hostage in carrying out its duties as the guardian of the democracy. It is only natural that the Constitutional Court is now referred to as the “Calculator Court”. This is as stated by Refly Harun, who questioned that the dispute over the general election results, the mandate given to the Constitutional Court is only a matter of dispute over vote acquisition, more specifically vote acquisition which affects the general election results. Issues related to the electoral process are the responsibility of other courts to decide.²⁵

The limitation of the authority of the Constitutional Court which only adjudicates “disputes regarding the determination of election results conducted nationally by the General Election Commission” as the meaning of the phrase “election results” can be continued with the step that the Constitutional Court which functions as a guardian of the constitution and at the same time guardian of democracy in which it is overseeing the implementation of elections on the principle of direct, general, free, confidential, honest and fair. The wider limits of authority possessed by the Constitutional Court will be closer to the sense of community justice which leads to substantial justice from judging whether or not the vote count has been determined nationally by the General Elections Commission.

The existence of violations and fraud which is then disputed must be made by the Constitutional Court with its decision to uphold law and justice, moreover the violations and fraud that occur can be structured, systematic and massive. The spirit of democracy is held hostage and marginalized from various forms of violations, dishonesty, partisanship, money politics, and even threats and intimidation. This is in line with Article 24 paragraph (1) of the 1945 Constitution, namely “Judicial power is an independent power to administer justice to uphold law and justice”, and Article 28D paragraph (1) of the 1945 Constitution which states that “Everyone has the right to recognition of guarantees, protection and fair legal certainty and equal treatment before the law”.

Thus, the Constitutional Court must not override the rules of justice (procedural justice) that stifle substantive justice, because the legal facts revealed in the dispute over the settlement of the general election results are in fact a constitutional violation, because

²⁴ Butt, Simon. 2015, *The Constitutional Court and Democracy In Indonesia*, Leiden: Koninklijke Brill NV.

²⁵ Refly Harun, 2014, “Rekonstruksi Kewenangan Mahkamah Konstitusi dalam Menangani Perselisihan Hasil Pemilu” *Majalah Hukum*, edisi No. 341, 2014, pg. 52.

they violate election principles. One principle of law and justice that is universally adopted states that “...*nullus/nemo commodum capere potest de injuria sua propria*, which means that no one may benefit from deviations and violations committed by oneself and no one may be harmed by deviations and violations committed by someone else.”²⁶ The Constitutional Court will never try criminal and administrative violations in elections, but only take violations and fraud proven in court that affect the election results as the basis for decisions, and also do not impose criminal and administrative sanctions on the perpetrators. Such authority of the Constitutional Court will function as the guardian of the democracy whose authority is more substantive to maintain elections in accordance with the 1945 Constitution.

The existence of general elections is not only in order to achieve the goal of achieving popular support and legitimacy, but general elections must be carried out through procedures or procedures determined by law. Procedures and procedures provide guarantees for the establishment of democracy which guarantees equality of rights, equality and freedom itself. That is why the 1945 Constitution guarantees democracy in the implementation of elections as a civilization.

3. CONCLUSION

The limit of authority possessed by the Constitutional Court in deciding disputes regarding the results of the general election as stipulated in Article 24C paragraph (1) of the 1945 Constitution has interpreted the provision narrowly, namely only to assess the difference in the numbers that have been determined by the KPU. Such an interpretation causes substantive justice not to be obtained by justice seekers. Various decisions of the Constitutional Court regarding disputes over the results of general elections, both legislative elections, presidential elections and post-conflict local elections do not provide a sense of justice for justice seekers as citizens who have the right to participate in politics. The decision of the Constitutional Court related to disputes over election results that are not in favor of justice has caused the implementation of general elections to have reduced democracy and denied the principles of general elections.

The limit of authority of the Constitutional Court in disputes over general election results should penetrate the limits of authority that do not only judge numbers mathematically. The authority of the Constitutional Court must penetrate the limits of this authority considering that the Constitutional Court is the guardian of the constitution and must also look at the reality in the implementation of the general election that there are violations and fraud that will reduce the quality of the general election itself.

General elections must still be held in a quality and routine manner every five years. The quality of the general election is carried out democratically, namely with the principles of general election being heeded as a modern civilization in the implementation of

²⁶ Paragraph 3.27.10 Decision Number 1/PHPU. PRESS-XII/2014.

general elections in Indonesia and the Constitutional Court participating in overseeing the implementation of the general election.

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