

# Decentralized Design of Dispute Resolution for Regional Head Elections in Indonesia

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## Abstract

The pattern of resolving disputes in regional head elections still adheres to a centralistic system or is carried out by institutions at the central level even though regional head elections are a regime of regional government not central government. This study aims to outline the urgency and challenges of decentralizing dispute resolution of regional elections. At the same time, an ideal design form for election dispute resolution with a decentralized model is also offered ranging from relief, competence to procedural law. This research uses a normative type of research with an approach to the provisions of laws and regulations, concepts, and cases. The centralization of electoral dispute resolution has implications for regime misalignment, making for a corrupt judicial process and requiring high accommodation costs. The antithesis to the centralization model of dispute resolution is through decentralization, which is an election dispute resolution that is tried at the regional level according to the location of the election so that there is a harmony of the regime model between the dispute resolution regime and the electoral regime. The decentralization

model starts from the judicial institutions that stand at the regional level, their absolute and relative competence and procedural law starting from subjectum letis, objectum letis and verdicts.

**KEYWORDS** *Decentralization, Disputes, Local Elections*

## Introduction

Elections are a concrete form of the exercise of popular sovereignty. Elections are conducted to fill strategic positions in government both at the national and local levels. Elections in Indonesia are divided into two. Namely, the general election includes the election of members of the House of Representatives, regional representative council, regional people's representative council, and the president and vice president.<sup>1</sup> The second form of election is the regional head election, which is a type of election to elect the Governor/Deputy Governor, Regent/Deputy Regent, mayor, and deputy mayor.<sup>2</sup>

The separation of elections and local elections is based on the following: First, the scope. Elections to elect state administrators at the central level while elections to elect state administrators at the regional level.<sup>3</sup> This difference is also related to voters, wherein in the election of regional heads, voters are only limited to the area or region holding the polls. For example, when the Sumenep Regency organizes elections, only residents of Sumenep Regency can use their voting rights. In contrast, other areas, such as Pamekasan Regency, cannot use their voting rights.

Secondly, arrangements that have a relationship between Regional Head Elections and General Elections in the supreme law or constitution are placed in different chapters. General Elections are regulated in Chapter VII B, while Regional Head Elections are regulated in Chapter VI. The difference in the placement of arrangements in the constitution certainly shows that the General and Regional Head Elections are two different things. General Elections in

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<sup>1</sup> "Article 22 of the 1945 Constitution of the Republic of Indonesia,".

<sup>2</sup> Ahmad Siboy et.al., "Legal Social Justice in Appointment Non-Definitive Regional Heads toward Welfare State," *BESTUUR* 11, no. 1 (12 Agustus 2023): 150, <https://doi.org/10.20961/bestuur.v11i1.71055>.

<sup>3</sup> Yulianto Yulianto, "Problematika Dan Tantangan Penyelesaian Sengketa Proses Pemilu Dan Pemilihan Tahun 2024," *Jurnal Keadilan Pemilu* 2, no. 2 (8 Desember 2021): 80, <https://doi.org/10.55108/jkp.v2i2.139>.

Chapter VII show that General Elections are a separate regime in the Indonesian constitutional structure. Regional Head Elections are in the local government regime, considering that the arrangements for Regional Head Elections are in Chapter VI, which regulates local government. This regime difference can automatically be interpreted as a difference in the implementation pattern at the process, results, and dispute resolution levels.

Third, funding. Financing between General Elections and Regional Head Elections also comes from different budgets. General Elections are sourced from the State Budget (APBN), while Regional Head Elections are sourced from the Regional Budget (APBD). Article 166 paragraph (2) and paragraph (3) states:

- (1) The Regional Budget shall bear funding for election activities and may be supported by the State Budget by the provisions of laws and regulations.
- (2) Ministerial regulation regulates Further provisions regarding the funding of Election activities sourced from the Regional Budget.

Fourth, dispute resolution. Arrangements regarding the types and patterns of settlement between General Elections and Regional Head Elections differ. In general elections, the problems are divided into four types: general election violations, election process disputes, election result disputes, and code of ethics violations. Meanwhile, in the Regional Head Election, the problems are divided into six types: administrative Violations, Election Administrative Violations, Election Administrative Disputes, Election Crimes, Election Result Disputes, and Ethical Violations.<sup>4</sup>

**TABLE 1.** Differences in The Types of Problems Between Elections And Local Elections

| No. | General Elections                | Regional Head Elections             |
|-----|----------------------------------|-------------------------------------|
| 1   | Election Violations              | Administrative Violations           |
| 2   | Electoral Process Disputes       | Electoral Administration Violations |
| 3   | Disputed Election Results        | Electoral Administrative Disputes   |
| 4   | Violation of the Code of Conduct | Electoral Crimes                    |
| 5   |                                  | Disputed Election Results           |
| 6   |                                  | Ethics Violations                   |

Fifth, result dispute resolution. In resolving disputes over the results of General Elections and Regional Head Elections, they are also distinguished

<sup>4</sup> Ahmad Siboy, "Constitutionality of Constitutional Settlement of Disputes for the Election of Local Heads," *Jurnal Cakrawala Hukum* 13, no. 2 (1 Agustus 2022): 120, <https://doi.org/10.26905/idjch.v13i2.6457>.

from one another. If the General Election has the authority to be resolved by the Constitutional Court, then the Regional Head Election has the authority to be determined by a Specialized Judicial Body.<sup>5</sup>

However, the differences between General Elections and Regional Head Elections only apply somewhat to the regulation of dispute handling in Regional Head Elections and General Elections. The pattern of settlement of violations, disputes, criminal acts, and disputes over the results in the Regional Head Elections is still not based on the principle of decentralization or autonomy at the regional level or still following the institutions and processes applicable to General Elections. In this case, the judicial institution is authorized to hear problems/disputes in the Regional Head Elections.<sup>6</sup>

Judicial institutions with various qualifications for problems in regional head elections are still in central institutions or are not decentralized to regional governments. In settling disputes over the results of the Regional Head Elections, for example, the authority to adjudicate is the Specialized Judicial Body located at the central level. Not only that, in the case of election administration violations, the authority to decide at the final level is the Supreme Court, which is located as a central judicial institution.

From the settlement pattern above, it is apparent that resolving the issue of Regional Head Elections is still tied to central institutions or not autonomy in the hands of the regions. The centralized settlement pattern certainly has several implications: First, regime reduction. The settlement pattern of disputes over Regional Head Elections that are not fully submitted to the regions automatically reduces the meaning of the existence of Regional Head Elections as part of the regional government regime. In contrast, when the Regional Head Elections have been constitutionally (both based on the constitution and the decision of the Constitutional Court) as part of the regional government regime, everything related to the regions must automatically become purely regional government affairs, including in terms of dispute resolution of Regional Head Elections. Suppose the settlement pattern still depends on the central institution. In that case, it only shows that the process of using voting rights is the autonomy of the local government. In contrast, the finishing and judicial processes still depend on the central government. This is certainly different from

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<sup>5</sup> “Article 157 of Law Number 10 of 2016 concerning the Election of Governors, Regents and Mayors,” t.t.

<sup>6</sup> Moch. Marsa Taufiqurrohman, Jayus Jayus, and A'an Efendi, “Integrasi Sistem Peradilan Pemilihan Umum melalui Pembentukan Mahkamah Pemilihan Umum,” *Jurnal Konstitusi* 18, no. 3 (15 Februari 2022): 562, <https://doi.org/10.31078/jk1834>.

the regional government system based on the principle of decentralization or the broadest possible autonomy.

Second, the process of resolving disputes over the handling of Regional Head Elections that are still related to the center certainly makes an independent and independent resolution process prone to being tainted by the intervention of the political elite at the central level. The intervention of the central political elite in the process of resolving disputes over the Regional Head Election is that when central-level institutions resolve the process of resolving disputes over the Regional Head Election, it will invite politicians at the central level to intervene in the process actively in influencing the decision on the Regional Head Election dispute. This reality occurs because politicians at the central level certainly have specific access to judicial institutions at the central level, especially to certain judges who can be influenced. The case that the Chief Justice of the Constitutional Court in terms of resolving various disputes over the results of the Regional Head Elections is a line of evidence that confirms that the settlement process carried out by the central-level judicial institution opens up space that the decision on the Regional Head Election dispute can be played at the central level. At the same time, the regions can only accept the process and decision of the judicial institution at the central level.

Third, accommodation costs. Resolving disputes over Regional Head Elections handled by central-level judicial institutions certainly has implications for the judicial process. It is costly for people seeking justice or parties who feel they are victims of fraud in implementing Regional Head Elections. The settlement process that must be completed at the central judicial institution certainly requires the parties to attend the trial process in Jakarta (the national capital region). This condition certainly makes the accommodation costs that must be incurred very much considering the trial process that is attended not only once but many times.

Meanwhile, regarding time efficiency, it is undoubtedly inadequate considering the number of cases that must be tried is very large or not only in one or two regions. This happens because the Regional Head Elections have been held simultaneously, especially in 2024, when they will be held simultaneously nationally, with the number of Regional Head Elections reaching more than five hundred regions.

This research is normative juridical research, which is based on the study of the provisions of laws and judicial decisions. Legal materials were obtained through internet searches and related literature. The legal materials were then analyzed using descriptive and prescriptive techniques.

## The Urgency and Challenges of Decentralization of Election Dispute Resolution

The problem of centralized or centralized dispute resolution of regional head elections is certainly a problematic resolution of regional head elections that must be found in an alternative solution design. In this case, the alternative that can be taken is to antithesis the centralized settlement pattern. The decentralization pattern is a pattern of dispute resolution of Regional Head Elections that can be used as an antithesis to the centralized settlement system. The principle of decentralization is the devolution of power from central to local governments. Rondinelli and Cheema define decentralization as the transfer of planning, decision-making, administrative units, semi-autonomous and parastatal organizations, local governments, or non-government organizations.<sup>7</sup>

From the principle of decentralization, the regions have full authority to regulate their regions, including establishing judicial institutions for Regional Head Elections. Decentralization to establish judicial institutions for regional head elections independently is also to strengthen the logic and legal basis that regional head elections have been completely separated from the general election regime as stipulated in Article 18 and Article 22E of the 1945 Constitution and the decision of the Constitutional Court Number 97/PUU-XI/2013. The Constitutional Court stated that if you include regional head elections as part of general elections so that it becomes the authority of the constitutional court to hear disputes over the results, it is not only not by the original intent of general elections.<sup>8</sup> In addition, the authority of state institutions that have been regulated imitatively by the provisions of the 1945 Constitution of the Republic of Indonesia should not be added or reduced by the requirements of the law or the court's decision because it will take away the role of the framer of the 1945 Constitution of the Republic of Indonesia.<sup>9</sup>

Therefore, the addition of the authority to adjudicate disputes over the results of regional elections through the expansion of the meaning of elections

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<sup>7</sup> Luqman Hakim, *Filosofi Kewenangan Organ Lembaga Daerah: Perspektif Teori Otonomi & Desentralisasi Dalam Penyelenggaraan Pemerintahan Negara Hukum dan Kesatuan* (Malang: Setara Press, 2012), 20.

<sup>8</sup> Ahmad Siboy, *Pengantar Hukum Pilkada* (Depok: Rajawali Press, 2022), 50.

<sup>9</sup> Muhammad Reza Winata, "Judicial Restraint Dan Constitutional Interpretation Terhadap Kompetensi Mengadili Pelanggaran Pemilihan Umum Terstruktur, Sistematis, Dan Masif," *Jurnal Legislasi Indonesia* 17, no. 4 (30 Desember 2020): 423, <https://doi.org/10.54629/jli.v17i4.663>.

as stipulated in Article 24E of the 1945 NRI Constitution is unconstitutional.<sup>10</sup> It would be unreasonable if the elections that had been constructed as part of the local government regime but the establishment of the judicial institutions were still carried out by the central government.

On the other hand, the establishment of judicial institutions by the regions is not a process of establishing institutions that are contrary to the principle of a unitary state, considering that the process of establishing judicial institutions for regional elections at the regional level remains within the principle of the unitary state of the Republic of Indonesia. The process of establishing judicial institutions for regional elections by the regions can be said to be contrary to the principle of the unitary state if the regions establish regional judicial institutions through methods prohibited by the central government or are considered small kings.<sup>11</sup>

Establishing judicial institutions for Regional Head Elections in each region only applies to the area concerned. Each region only establishes a judicial institution to adjudicate the Regional Head Election that applies in its region. For example, the Sumenep District established a Regional Head Election judicial institution only to adjudicate disputes arising during the implementation of the Regional Head Election in the Sumenep District. At the same time, Regional Head Election issues in other areas (such as Sampang District) cannot be resolved in the judicial institution established by the Sumenep District government.

In addition, there are several additional arguments for applying a decentralized system in settling disputes over the Regional Head Elections. First, the problems of Regional Head Elections between one region and another are certainly motivated by different conditions and situations. This certainly makes the resolution pattern of various Regional Head Election issues between one area and another not wholly equated. Therefore, the presence of a local judicial institution will support resolving Regional Head Elections that are still based on local wisdom without overriding national laws.

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<sup>10</sup> “Constitutional Court Decision No. 97/PUU-XI/2013,”.

<sup>11</sup> M. Arafat Hermana and Arie Elcaputera, “Kedudukan Gubernur Sebagai Wakil Pemerintah Pusat Di Daerah Dalam Sistem Ketatanegaraan Indonesia,” *AL IMARAH: Jurnal Pemerintahan dan Politik Islam* 5, no. 2 (10 Agustus 2020): 113, <https://doi.org/10.29300/imr.v5i2.3482>.

Second, a simple judicial process.<sup>12</sup> Decentralizing judicial institutions for regional elections will also make the judicial process simple. When the judicial institution exists at the regional level, the parties can easily file a dispute and undergo all stages of the judicial process. This convenience arises because the parties who want to file a lawsuit do not need to go through the process between various institutions and must reach the judicial process at the central level.

Third, legal certainty.<sup>13</sup> A decentralized model of judicial institutions or regional judicial institutions will undoubtedly speed up the judicial process in providing legal certainty. This is because the judicial process only occurs once, and the regional judiciary will function as the first and last judicial institution with a final and binding decision.<sup>14</sup>

Of course, the design of decentralizing the resolution of Regional Head Election disputes from the center to the regions takes work. The transition process will face several fundamental challenges. First, resolving disputes in the Regional Head Elections is a legal process or legal affairs. Legal affairs in the context of the government system of the Unitary State of the Republic of Indonesia is one type of affair that becomes the absolute competence of the central government or an authority that becomes the absolute authority of the central government that cannot be decentralized to local governments.<sup>15</sup> This provision is contained in Article 10, Number 1 of Law 23 of 2014, concerning regional government. In this article, six central government affairs cannot be the authority of local governments, namely:

- a. foreign policy;
- b. defense;
- c. security;
- d. judiciary;
- e. national monetary and fiscal; and
- f. religion.<sup>16</sup>

<sup>12</sup> Shifa Adinatira Harviyani, "Penyelesaian Gugatan Sederhana Sebagai Pelaksanaan Asas Peradilan Sederhana, Cepat, Dan Biaya Ringan Untuk Mewujudkan Access To Justice," *Verstek* 9, no. 3 (2021): 651, <https://doi.org/10.20961/jv.v9i3.55056>.

<sup>13</sup> Henri Wijaya, Menakar Derajat Kepastian Hukum Dalam Pemilu Pada Undang-Undang Nomor 7 Tahun 2017, *Jurnal Ilmiah Dinamika Sosial* 4, no. 1 (2020): 82-104.

<sup>14</sup> M.Agus Maulidi, "Menyoal Kekuatan Eksekutorial Putusan Final dan Mengikat Mahkamah Konstitusi," *Jurnal Konstitusi* 16, no. 2 (2019): 355.

<sup>15</sup> Sherlock Halmes Lekipiouw, "Konstruksi Penataan Daerah dan Model Pembagian Urusan Pemerintahan," *SASI* 26, no. 4 (2020): 557, <https://doi.org/10.47268/sasi.v26i4.414>.

<sup>16</sup> "Article 10 number 1 of Law Number 23 of 2014 concerning Regional Government," t.t.

However, although resolving disputes over regional head elections is the scope of the absolute competence of the central government, this does not mean that it is a dead end to create a judicial design for regional head elections at the regional level. The judicial process over disputes in the implementation of Regional Head Elections can still be carried out by the regions, considering that the provisions regarding the absolute competence of the central government in terms of legal affairs are competencies that are not absolute, considering that these provisions can be changed or excluded. This means that resolving disputes over the settlement of Regional Head Elections can still be carried out at the regional level using a law-level regulation that excludes or overrides the provisions in Article 10 number 1 of Law Number 23 of 2014 concerning Regional Government. The exception is allowed based on the legal principle of *lex specialis deroget lex generalis*. If this pattern is to be chosen, it is sufficient to regulate the Law on Regional Head Elections alone or without having to change the provisions in the Law on Regional Government, considering that the Law on Regional Head Elections is a particular type of law and is newer than the Law on Regional Government (*lex posterior derogate lex priori*).

Second, the provisions of Article 24 of the 1945 Constitution. Article 24 of the 1945 Constitution states that the Judiciary is independent and autonomous and is carried out by the Supreme Court and the Constitutional Court.<sup>17</sup> The provisions in Article 24 of the 1945 Constitution of the Republic of Indonesia certainly prevent regions from establishing their own judicial institutions to handle disputes over regional head elections. This is because the provisions of Article 24 a *contrario* prohibit the establishment of judicial institutions outside the Supreme Court and Constitutional Court. The Supreme Court is the top judicial institution that also has branches at the regional level, both at the Provincial and Regency / City levels with a centralized relationship pattern.

The relationship between the Supreme Court and the judicial institutions at the regional level is a unitary relationship where the regional judicial institutions are only a bridge in the dispute resolution process before being submitted to the Supreme Court. This means that regional judicial institutions at both the district (first) and provincial (appeal) levels are judicial processes at

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<sup>17</sup> Rinsofat Naibaho dan Indra Jaya M. Hasibuan, "Peranan Mahkamah Agung Dalam Penegakan Hukum Dan Keadilan Melalui Kekuasaan Kehakiman," *Nommensen Journal of Legal Opinion (NJLO)* 2, no. 02 (2021): 205, <https://doi.org/10.51622/njlo.v2i02.388>.

the *judex facie* level,<sup>18</sup> that is, a judicial process prior to the *judex juris* judicial process in the Supreme Court.<sup>19</sup> This relationship pattern is undoubtedly different from the spirit of judicial decentralization in resolving disputes over regional head elections. This is because such a pattern still places the regional-level judiciary as part of an institution still centralized or centralized with the central-level judiciary. In contrast, the decentralization of the Regional Head Election judiciary is fully designed as a judicial institution at the regional level, or the judiciary at the regional level functions as a judicial institution that exercises the authority of the *judex facie* and *judex juris* and is separated from the structural relationship with the central level judiciary.

Third, principles, one of the principles inherent in the judiciary is that the judiciary is independent and free from the influence of power, including that of the government. Independent judiciary means that this institution (judiciary) stands alone and has no relationship with other institutions. Meanwhile, the independence of the judiciary means that in carrying out its functions, the judiciary cannot be intervened by anyone, including the authorities. The judiciary works based on the logic of law and justice alone.

The demand for judicial institutions to be independent and autonomous is undoubtedly tricky in the establishment process. This is because if a regional-level judicial institution is to be established and will not be affiliated with the central-level judicial institution, it will automatically become the responsibility of the regional government to develop it. The formation process by the local government will then be considered unable to realize an independent and independent judicial institution for Regional Head Elections. The regional government comprises the regional head (Governor/Regent) and the Regional People's Representative Council. These two institutions are certainly filled by politicians, considering that regional heads and Regional House of Representatives members are products of general and regional head elections from political parties. So, when forming a regional head election judicial institution at the regional level, the potential for political intervention will

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<sup>18</sup> Bambang Sugeng Ariadi Subagyo, Johan Wahyudi, dan Razky Akbar, "Kajian Penerapan Asas Ultra Petita Pada Petitum Ex Aequo Et Bono," *Yuridika* 29, no. 1 (2014): 105, <https://doi.org/10.20473/ydk.v29i1.360>.

<sup>19</sup> Muhammad Sabil Ryandika dan Jatmiko Wirawan, "Penerapan Peran Hakim Agung Sebagai *Judex Juris* Dalam Perkara Pidana Studi Putusan Ma No. 2239 K/pid.sus/2012," *Jurnal Penelitian Hukum Gadjah Mada* 2, no. 2 (2015): 100, <https://www.neliti.com/id/publications/122856/>.

automatically be very open, which can reduce the spirit of an independent regional head election judicial institution.<sup>20</sup>

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However, such concerns can be anticipated in various ways. For example, that each region is required to form an election court and the process of making it is left entirely to the regions. However, in the process of its formation each region remained tied to the principles of the formation of a transparent and professional judicial institution. Where, the regions are given the authority to form regional-level judicial institutions but in the process of forming their institutions, they are regulated in law so that each region cannot form a judicial institution in accordance with its political interests. In the law, it must be stipulated that in the establishment of a regional election court, the local government is obliged to form a special team of an independent nature. It is through the formation of a special team that is independent, then the impression of political intervention or politicization of the formation of regional-level judicial institutions can be avoided.

Fourth, the absolute competence of regional-level judicial institutions. One of the questions that arises if a judicial institution for regional head elections is established at the regional level by the regional government is related

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<sup>20</sup> Faiqah Nur Azizah, Nur Kholifah, dan Athari Farhani, "Penguatan Etika Profesi Hakim Dalam Mewujudkan Penegakan Hukum," *SALAM: Jurnal Sosial dan Budaya Syar-i* 10, no. 2 (2023): 670, <https://doi.org/10.15408/sjsbs.v10i2.32137>.

<sup>21</sup> Muhamad Raziv Barokah dan Anna Erliyana, "Pergeseran Kompetensi Absolut Dari Peradilan Umum Ke Peradilan Tata Usaha Negara: Gugatan Perbuatan Melawan Hukum Oleh Penguasa (Onrechtmatige Overheidsdaad)," *Jurnal Hukum & Pembangunan* 51, no. 4 (2021): 830, <https://doi.org/10.21143/jhp.vol51.no4.3290>.

to its competence, namely whether the judicial institution established by the regional government can enforce the law on regional head election laws established by the central government and is national? This is something that does not need to be worried about. This is because, although the government forms the judicial institution, it does not mean it only has the authority given by the local government. The judicial institution established by the local government still has to enforce the law on regional and national head elections. This is because:

- a. Institutionally, the regional judicial institution is indeed established at the regional level, but the region establishes a regional judicial institution because national laws or laws order it;
- b. The regional government only establishes the institution while the absolute competence and relative competence of the judicial institution for regional elections at the regional level still refer to national laws;
- c. The regional government only establishes a regional election judicial institution, but the judicial institution is independent and autonomous and is not responsible or accountable to the regional government;

## **Decentralized Design of Electoral Dispute Resolution**

### **A. Institutional Forms of Regional Judicial**

Then what is the design of the judicial institution at the regional level? The judicial institution that will be established to hear disputes over the implementation of Regional Head Elections can be established with several considerations: first, special and single. The judicial institution to be established with a special function. This means that the judicial institution is only established to hear disputes related to the organization of Regional Head Elections. This is important so that there is no expansion of authority and other types of cases that must be tried. This is because if the Regional Head Election judicial institution at the regional level is not focused on disputes over the Regional Head Election, then it may violate the nature of the establishment of the judicial institution at the regional level.

On the other hand, if the Regional Head Election judiciary at the regional level is established with the specificity to hear disputes over Regional Head Elections only, this will automatically result in the ease of other matters such as the recruitment of judges who are only competent in the field of elections.

Second, it is ad hoc.<sup>22</sup> The regional head election judicial institution to be established must be ad hoc or not permanent. The institution is only formed when the Regional Head Election will begin and end in the inauguration process of the elected regional head and deputy regional head. The ad hoc nature of the regional judicial institution is based on the argument that the Regional Head Election is held once every five years. The Regional Head Election is a routine five-year activity or is not held every year so that if the judicial institution is formed permanently then it is certainly not effective and efficient considering that there will be more than four years of Regional Head Election judicial institution at the regional level will not do any activity. In fact, all operational costs and accommodation related to the institution must still be provided if the institution is not dissolved after the inauguration of the elected regional head / deputy regional head.

Based on the two considerations above, a regional-level Regional Election Tribunal can be established in each province, regency, and municipality. This means that 34 regional election courts will be established at the provincial level, considering the number of provinces in Indonesia, which consists of 34 regions. Meanwhile, 416 institutions will be based at the Regency level and 98 at the city level. However, this choice is not absolute, considering that the judicial institutions for Regional Head Elections can be modeled on establishing the State Administrative Court (PTUN), which was formed based on not following the division of the number of regions in Indonesia. There are only 28 PTUNs for regencies and municipalities (courts of first instance) and 4 for provinces (courts of first instance). For example, the Surabaya State Administrative Court, the relative competence or jurisdiction that can be tried includes Surabaya City, Pasuruan City and Regency, Probolinggo Regency and City, Lumajang Regency, Jember Regency, Situbondo Regency, Bondowoso Regency, Banyuwangi Regency, Trenggalek Regency, Ngawi Regency, Magetan Regency, Madiun Regency, Nganjuk Regency, Jombang Regency, Kediri Regency, Malang Regency and City, Batu City, Sidoarjo Regency, Gresik Regency, Lamongan Regency, Tuban Regency.

As for the flow of formation, the flow of formation of regional judicial institutions must be established through statutory provisions. This is because an institution that will carry out judicial functions or judicial power must be regulated by law. Article 24 of the 1945 Constitution of the Republic of

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<sup>22</sup> Tiara Kartika Nabela and Arfa'i Arfa'i, "Pengaturan Penyelenggaraan Pemilihan Kepala Daerah Serentak Tahun 2024 Berdasarkan Undang Undang Nomor 10 Tahun 2016," *Limbago: Journal of Constitutional Law* 3, no. 3 (2023): 420, <https://doi.org/10.22437/limbago.v3i3.22189>.

Indonesia states, "Other bodies whose functions are related to judicial power shall be regulated by law". From this provision, the first step is issuing a law that attributes establishing a judicial institution for Regional Head Elections at the regional level. The regulation can be established in a special law on judicial institutions for regional elections at the regional level. However, another alternative is adding provisions to the law on regional head elections, namely Law Number 10/2016 on the Election of Governors, Regents, and Mayors. These two regulatory options are both in line with the provisions of the constitution (Article 24 of the 1945 Constitution of the Republic of Indonesia), considering that the constitution only states that it is regulated through law, which means that the regulation of regional judicial institutions is regulated in the type of regulation in the form of a law or not other types of legislation such as government regulations (PP) or Presidential Regulations (*Perpres*).

From the issuance of regulations on the legitimacy of regional head election courts at the regional level, the regional head can form a selection committee or selection team to form and fill positions in the regional head election judiciary. This selection team will then make technical guidelines on selecting a panel of judges who will hear disputes over regional head elections. However, the technical guidelines will be much more effective if coordination or discussion is carried out with the Regional Representatives Council, Provincial Regional Representatives Council, and the Regency / City Regional Representatives Council before they are ratified.

## B. Regional Judicial Competence

Competence or authority is the scope of the legitimacy of an institution to carry out an activity. Authority itself is interpreted as what is called formal power and is given by law.<sup>23</sup> In its constituent or Law number 30 of 2014 concerning Government Administration, authority is defined as the power of government bodies and officials or other state administrators to act in public law.<sup>24</sup>

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<sup>23</sup> Ateng Syarifuddin, *Menuju Penyelenggaraan Pemerintahan Yang Bersih Dan Bertanggungjawab* (Bandung: Universitas Parahyangan, 2000), 55.

<sup>24</sup> "Article 1 number 6 Undang-Undang number 30 of 2014 concerning Government Administration,".

three ways. Namely Attribution, Delegation, and Mandate. Attribution is the authority obtained through legislation directly. This means attributive authority comes from the provisions of laws and regulations. Therefore, attributive authority depends on legislators' determining the authority to be given to state institutions or administrators. The responsibility for the authority derived from laws and regulations lies with the recipient of the attribution. Ned as the power of government bodies, officials, or other state administrators to act in public law.<sup>25</sup>

For a judicial institution, including for a regional election judicial institution at the regional level that will be established, the regulation of authority must be mapped and regulated explicitly so that the establishment of a regional judicial institution is by the nature or spirit of its establishment which is oriented towards creating a simple, fast, low-cost, effective and efficient process of resolving regional election disputes. At this level, the absolute authority to be determined includes absolute and relative authority.

### **C. Design of Absolute Authority of Local Judicial Institutions**

Absolute authority or absolute competence is the competence given to an institution regarding what can be done or restrictions on what can be done.

Determination of the absolute competence of the judicial institution for regional head elections at the regional level can refer to the types of problems or types of regional head election cases as stipulated in Law Number 10 of 2016 concerning Regional Head Elections, where in the law, the types of cases or disputes in Regional Head Elections are divided into six parts which include:

1. Administrative Violations are violations that include procedures, procedures, and mechanisms related to the administration of the Election in each stage of the Election outside of Election crimes and violations of the Election organizer's code of ethics (Article 138);
2. Election Administration Violations are violations that occur in a structured, systematic, and massive manner (Article 135 A);
3. Election Administrative Disputes are disputes arising in the field of Election state administration between Candidates for Governor and Deputy Governor, Candidates for Regent and Deputy Regent, and Candidates for Mayor and Deputy Mayor with the Provincial KPU and

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<sup>25</sup> Ahmad Siboy, Sholahuddin Al-Fatih, dan Abdul Kadir Jaelani, "Design to Resolve Case of Disqualification of Winning Candidates in Local Government Head Elections in Indonesia," *Central Asia and The Caucasus* 23, no. 1 (2022): 635, <https://ca-c.org>.

- Regency / City KPU as a result of the issuance of Decisions of the Provincial KPU and Regency / City KPU (Article 153);
4. Election Crimes are violations or crimes against the Election provisions stipulated in this Law (Article 145).
  5. Election Result Dispute is a dispute between the Provincial and Regency/City KPU and the Election participants regarding the determination of the vote acquisition of the Election results (Article 156);
  6. Violating the Election organizer's Code of Ethics violates the ethics of the Election organizer, who is guided by an oath and promise before carrying out duties as an Election organizer (Article 136).

**TABLE 2.** Qualifications Election Disputes

| No. | Type                                                                           | Legal Basis                                      |
|-----|--------------------------------------------------------------------------------|--------------------------------------------------|
| 1   | Administrative Violations                                                      | (Article 138 of Law 8/2015)                      |
| 2   | Election Administration Violations<br>(Structured, Systematic, and<br>Massive) | (Article 135 A and Article 73 of Law<br>10/2016) |
| 3   | Electoral Governance Dispute                                                   | (Article 153 of Law 10/2016)                     |
| 4   | Electoral Crimes                                                               | (Article 145 of Law 1/2015)                      |
| 5   | Disputed Election Results                                                      | (Article 156 of Law 10/2016)                     |
| 6   | Ethics Violations                                                              | (Article 136 of Law 1/2015) No. 13               |

The six types of issues can be used as absolute competence, or the authority to adjudicate them is given to the Regional Head of Election judiciary at the regional level to adjudicate them.

## **D. Design of Relative Authority of Regional Judicial Institutions**

Relative competence or relative authority of a judicial institution for regional head elections is the authority of a judicial institution based on territory. The relative competence of a judicial body is determined by the boundaries of the jurisdiction over which it has jurisdiction. A court body is declared authorized to examine a dispute if one of the parties to the conflict (Plaintiff/Defendant) resides in one of the court's jurisdictions.

In terms of the establishment of regional election judicial institutions at the regional level, the relative competence may depend on the form of institution that will be chosen. First, if the Regional Election Judiciary is established by the number of regions throughout Indonesia or the Regional

Election Judiciary is located in each Regency/City and Province. The relative competence of each judicial institution follows the area of a region. For example, the judicial institution for the Regional Head Election of Malang City, then the relative competence is the election of the Mayor / Deputy Mayor of Malang, the judicial institution for the Regional Head Election of Sumenep District, then the relative competence is the election of the Regent / Deputy Regent of Sumenep while for the judicial institution for the Regional Head Election of East Java Province then the relative competence is the election of the Governor / Deputy Governor of East Java.

Secondly, if the Regional Election Tribunal is to be established only in each province, then its relative competence will adjust to the scope of the area in the relevant province. This means that the relative competence of the judicial institution follows the number of regions under one province. For example, the Province of East Java consists of 38 regencies and municipalities, so the East Java Regional Election Court Institution has relative competence covering the elections of all Regent/Vice Regent, Mayor, and Deputy Mayor elections throughout East Java Province as well as adjudicating disputes in the East Java Governor/Vice Governor elections.

Third, a regional head judicial institution will be established using the administrative judicial model or the State Administrative Court (PTUN). In that case, its relative competence will follow the pattern that applies to the relative competence of the PTUN. Namely, one regional head election judicial institution in one region can have a scope in many areas. For example, the judicial institution for the Regional Head Election of Surabaya, then its relative competence can cover all Regent / Deputy Regent and Mayor / Deputy Mayor elections for the entire East Java Province, West Nusa Tenggara Province, and East Nusa Tenggara.

## **E. Design of *Subjectum Letis* of Regional Judicial Institutions**

As a judicial institution, of course the judicial institution for Regional Head Elections at the regional level cannot directly adjudicate a Regional Head Election or cannot stand alone. The court cannot stand alone in terms of enforcing the law on Regional Head Elections because the construction of the judiciary stands on the principle of an institution that is passive or cannot seek cases to be tried. As a judicial institution, the Regional Head Election judicial institution at the regional level can only hear a case that is requested to be heard. Therefore, it is also necessary to regulate the institution or who can file a case at

the regional level judicial institution or who has legal standing to file a case / lawsuit at the regional level Regional Head Election judicial institution. The parties who have legal standing are termed as *subjectum letis*. According to Maruarar Siahaan, *subjectum letis* is the parties to a dispute or litigation.

Then who is the *subjectum letis*? Regarding *subject letis* or parties who can file a case/dispute, those with legal standing are parties who feel aggrieved or are directly related to the problems that arise in the Regional Head Election. Considering that the number and types of cases in the Regional Head Election are divided into six qualifications, the determination of the legal standing of the parties in settlement of cases/disputes in the Regional Head Election judicial institution must also be based on each type of problem. The subject of mapping can be described as follows:

1. Administrative violations, administrative violations that are violations between participants and organizers and between fellow participants, those who can become parties are the spouses of regional head candidates, the Regional Election Commission (KPUD) and the Regional Election Supervisory Agency. Meanwhile, the respondent is the party who is alleged to have committed the offence;
2. Violation of electoral administration, in the case of violation of electoral administration, the person who can file a lawsuit is Bawaslu together with the prosecutor's office considering that the qualification of violation of electoral administration is a type of violation that is a type of violation that is a criminal offense so that one who can be given *legal standing* must be a law enforcement agency. Meanwhile, the defendants are the spouses of candidates and/or successful teams who are suspected of violating the provisions of laws and regulations or criminal offenses;
3. Electoral Administrative Disputes, in this case, those who can file a lawsuit are the spouses of candidates who feel aggrieved by the decision of the KPUD;
4. Electoral offence, in the case of an electoral offence then the person who can file a suit is the police or prosecutor's office considering that for this electoral offence it is purely a violation of the criminal law;
5. The case of the release of the results, the case of dispute over the results is a matter between the spouse of the candidate for the regional head and the organizer of the election regarding the determination of the results of the election, from here the applicant can be the spouse of the candidate for the regional head.
6. Violation of the code of ethics whose perpetrator is the commissioner of the regional election organizer, then who can be the applicant in this case can

be the general public and/or the spouse of the candidate for the regional head.

### C. Panel of Judges of Regional Judicial Institutions

The panel of judges for the regional election judiciary comprises professionals, academics, and practitioners. The composition of the panel of judges from among professionals is needed for two reasons. First, competence.<sup>26</sup> People from professional circles certainly have more guaranteed competence, considering that prospective judges from professional circles must have a track record in law. For example, competent judges from academia must have knowledge and work on Regional Head Elections. This track record is a parameter and proof that academics are eligible to become judges at the regional level judicial institutions, considering that the track record in the form of academic work is clear evidence that an academic has adequate knowledge related to the issue of Regional Head Elections.

Professionals are certainly not only from academia but can also come from non-academics or legal practitioners such as from non-governmental organizations (NGOs) or lawyers. Practitioners can become judges because practitioners also have a track record and understand the issues of Regional Head Elections.

Second, neutralize political elements. The choice of judges in the judicial institution for regional head elections must also come from professionals to avoid the impression of a political component of the composition of the panel of judges. The political element will be decisive if the composition of the panel of judges comes from local government elements. This is because the local government will appoint a person with structural ties with the head of the region. Hence, the person who will be appointed to the head of the area is a person who can be an accomplice of a regional head. This will become more political when the incumbent regional head wants to run again as a regional head candidate (incumbent).

Third, independence.<sup>27</sup> Professionals will certainly have a much more independent attitude than non-professionals. This is because people or prospective judges from professional circles do not have affiliations or have quite

<sup>26</sup> Fence Wantu et.al., “Proses Seleksi Hakim Konstitusi: Problematika dan Model Ke Depan,” *Jurnal Konstitusi* 18, no. 2 (2021): 241–61, <https://doi.org/10.31078/jk1820>.

<sup>27</sup> Priandita Koswara and Megawati Megawati, “Analisis Prinsip Independensi Hakim Konstitusi Di Indonesia,” *Ahmad Dahlan Legal Perspective* 3, no. 1 (2023): 50, <https://doi.org/10.12928/adlp.v3i1.7902>.

broad freedoms. Academics, for example, are people who are not only affiliated with political interests, but also have academic freedom guaranteed by laws and regulations.

According to Leden Marpaung, a court decision is defined as a conclusion or the result of something through very careful considerations and judgments which are then issued in written or oral form.<sup>28</sup> The decision of the local election court must be final and binding.<sup>29</sup> In addition, a final and binding decision is needed so that the regional election court functions as the first and last level judicial institution. This final and binding decision applies to all types of disputes that will be tried by the regional election court. Such a model of judgment is needed in order to avoid multi-tiered or tiered judicial proceedings, overlapping judgments, ease of executory conduct and legal certainty.

## Conclusion

The pattern of dispute resolution that arises in the implementation of regional head elections still uses a centralization pattern even though the regional head election regime has been included in the regional government regime so that it must automatically also use a decentralized pattern. As a result of this pattern of centralization, the settlement of election disputes is not in harmony with the government system. Not only that, the settlement process with a centralization pattern makes the process of resolving election disputes tiered so that it takes a relatively long time and accommodation costs for the judicial process are also quite significant. Therefore, the centralization of settlement of election disputes must be diverted with a decentralized model. Namely, a dispute resolution model held at the regional level (the principle of regional autonomy) so that there is harmony / continuity between the regional head election regime and the dispute resolution regime which is both in the regional government regime. The decentralized design of resolving election disputes can be done through the establishment of regional election courts both at the Provincial and District/City levels. Of course, the establishment of such a regional-level judicial institution is also accompanied by arrangements on absolute competence, relative competence as well as its *subjectum*.

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<sup>28</sup> Leden Marpaung, *Peristiwa Hukum Dalam Praktek* (Jakarta: Kejaksaan Agung, 2010).

<sup>29</sup> Maulidi, "Menyoal Kekuatan Eksekutorial Putusan Final dan Mengikat Mahkamah Konstitusi," 360.

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