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Study of the Verdict of Constitutional Court on Regional Leaders Election Dispute in the Province of East Nusa Tenggara in 2018

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ABSTRACT

Direct election of the regional or local leaders began in several provinces in 2005 while the regional elections in the Province of Nusa Tenggara Timur (NTT) materialized in 2008; it became an attractive affair captivating the attention of the people both at the provincial and at the district level. The election has been a momentum of the people to flourish democratization and open pathways to advance the development of the

area. Since then, eleven (11) local elections took place in NTT in 2018 consisting of 10 (ten) local elections to elect the local officeholders at the district or municipality level and 1 (one) regional election to elect Governor were held simultaneously on 27 June 2018 in which 50% of the elections filled a lawsuit against the dispute of the local election result to the Constitutional Court in which all submissions were rejected due absence of legal standing and inadequate reason. The study is made to scrutinize and to understand the local elections that took place in 2008 and 2018 and the disputes for the reference of the prospective regional leaders participating the 2020 election contest. The qualitative documentary research uses descriptive analytical approach to examine the implementation of the Constitutional Court rules and regulation were based on three (3) conditions namely (1) the authority of the Constitutional Court; (2) the legal standing of the supplicants, and (3) the tolerance to the time allotment. The outcome shows that 3 (three) things attributed to the court of the lawsuit by the Constitutional Court namely (1) the delicacy of the juridical status and insufficient legitimate reasons of the claim; (2) the inability to persuasively present substantiation in the court; and (3) the invalid legality of the lawsuit.

Keywords: *Verdict of the Constitutional Court, Dispute of Local Election*

INTRODUCTION

A robust indication about the implementation of direct local elections has existed since the second amendment to the 1945 Constitution of the Republic of Indonesia (UUD 1945). In the provisions of article 18 paragraph (4) of the 1945 Constitution that stated: "Governor, Regent and Mayor respectively as Head of Provincial, Regency and City Government are elected democratically". Stronger solid indication appears when Article 62 of Law Number 22 of 2003 on the Composition and Position of the People's Consultative Assembly (MPR), The House Representatives (DPR), The

Regional Representative Council (DPD), and The Regional Legislative Council (DPRD) negates the duty and authority to elect Regional Heads and Deputy Regional Heads. The above is also supported by changes in the system of government and state administration in the reform agenda which are important and absolute. The spirit of the system of government and state administration began by replacing the centralized Law (UU) of Regional Government Number 5 of 1974 with Law Number 22 of 1999 which carried the spirit of decentralization and regional autonomy. As Law No. 22/1999 has not regulated the direct election of regional heads yet, Law No. 22/1999 was replaced with Law No. 32/2004 on Regional Government.

The local leaders' elections in several provinces in Indonesia began in 2005 while the local elections in NTT Province commenced in 2008 and become a very interesting activity that attracted public attention both at the provincial level and in regencies and municipalities spread across the province. It was uniquely becoming interesting activities in the era of regional autonomy that actively involved the voters from the preparation stage to implementation stage when the people determine and chose the regional or local leader for themselves. Significantly crucial as the people regarded the momentum as strategic steppingstone to bring about changes and advancement of holistic development in the area, in addition to that of nurturing the democratization in Indonesia; it withdrew people's attention and absorbed people's faculties to seize the momentum and compete to win their candidate. The event became the headlines of most of the electronic and printing media at national and local levels.

An interesting phenomenon occurred in 2014, where through Law Number 23 of 2014 concerning Government, the duties and authority to elect a Governor were taken back from the people and handed over to the regional legislative council, while the duties and authority to elect a Regent/Mayor were taken back from the people and handed over to the Regency/Municipal legislative council. This provision sparked protests and even anger from many parties, both academics, activists, and politicians. The people considered the direct election as democratic spring

that was born from the womb of democracy and was proud of it but was killed. The government under President Soesilo Bambang Yudhoreo (SBY) and the House Representatives for that period was criticized and urged to cancel this provision. Government Regulation in Lieu of Law (PERPPU) Number 2 of 2014 abolished the authority to elect a Governor from the regional legislative council and the authority to elect a Regent/Mayor from the Regency/Municipal legislative council to subsequently re-transfer the authority to the people.

The change was followed by the issuance of several Regulations in Lieu of Law and/or Laws, including Law Number 8 of 2015 concerning Amendments to Law Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning Election of Governors, Regents, and Mayors to become Law Number 9 of 2015 concerning the Second Amendment to Law Number 23 of 2014 concerning Regional Government.

Eleven (11) regional or local elections took place in NTT province in 2008, consisting of 10 (ten) Regent and Deputy Regent elections and 1 (one) the Governor and Deputy Governor election that were conducted simultaneously across the province on 27 June 2018. Five of the ten regent/city elections (50%) held in the regent of (1) Southwest Sumba, (2) Rote Ndao, (3) East Manggarai, (4) Alor, and (5) Timor Tengah Selatan, filed a lawsuit over the dispute over the results of the election to the Constitutional Court.

METHOD

This article was written as a normative study based on documentary research, while the analysis of the collected data is carried out and presented in a qualitative-descriptive manner. The main source of data needed in the study is court' verdict of Constitutional Court on Regional Leaders Election Disputes in The Province of Est Nusa Tenggara combined with library materials obtained from existing literature searches such as

journals, published research reports and literature. Furthermore, to enrich the findings in the study, primary data was collected through interviews and/or in-depth interviews with resource persons/informants. Theoretically, document study is also referred to as literature review, which is a study based on existing documents in the form of written library materials, as well as non-library materials in the form of recordings, virtual forms, and films. Creswell added that the documents referred to include public documents such as minutes of meetings and newspapers and discussions via email.

RESULT & DISCUSSION

I. LOCAL ELECTION DISPUTE IN NTT AND THEIR CURRENT DEVELOPMENT

The press release issued by the Constitutional Court on Friday, January 30, 2009, explained that during 2008 from January to December 2008, the Court had received, examined, and tried 27 electoral dispute cases of the regional head elections. The results generally stated that the majority or 85.2% of the cases were either rejected or not accepted. In detail, 20 disputes or 74.1% of the cases were declared rejected, 3 disputes or 11.1% of the disputes were declared unacceptable (Dutch: *niet ontvanklijke verklaard / NO*) and only (14.8%) were partially granted. The data of regional head election disputes during the period January to December 2008 is presented in Table 1 below.

TABLE 1. Election Dispute List at the Constitutional Court Year 2008

No	Applicants/Attorney of Power/ Respondent	Case Number	Court Decision
1	Applicant: Drs. H. Asrin Naim and Drs. H. Legimun S, M.Pd, Applicants' legal attorney: Benyamin, S.H., et al Respondent: General election Commission (KPU) District (Kabupaten) Langkat	66/PHPU.D-VI/2008	Rejected

No	Applicants/Attorney of Power/ Respondent	Case Number	Court Decision
2	Applicant: Yansen Akun Effendy and Abdullah, Applicants legal attorney: Raymundus Loin, S.H. and Cristof H. Purba, S.H. Respondent: KPU Kabupaten Sanggau	64/PHPU.D-VI/2008	Rejected
3	Applicants: H. Asmauddin and Salmaza; Applicant legal attorney: Drs. Jurnal, S.H., M.H., et al; Respondent: KIP Kota Subulussalam	65/PHPU.D-VI/2008	Rejected
4	Applicant: Sujiwo and Raja Sapta Oktohari, Applicants legal attorney: Rezki, SH	63/PHPU.D-VI/2008	Rejected
5	Drg. Gregorius Mau Bili F., DDPH and Drs. Berchmans Mau Bria, M.Sc.	62/PHPU.D-VI/2008	Rejected
6	Applicant: Ir. H. Ami Taher and Dianda Putra, S.STP, Msi; Applicants legal attorney: Zainudin Paru, S.H., et al; Respondent: KPU Kabupaten Kerinci	61/PHPU.D-VI/2008	Rejected
7	Applicant: Drs. Parlemen Sinaga, MM and Dr. Budiman Simanjuntak, M.Kes; Applicant legal attorney: Roder Nababan, Horas Siagian; Respondent: KPU Kabupaten Dairi	61/PHPU.D-VI/2008	Rejected
8	Applicant: H. Reskan Effendi and Dr. drh. Rohidin Mersyah, MMA,	57/PHPU.D-VI/2008	Partially accepted
9	Applicant: H. Rahmad Pardamean Haasibuan and Aminusin M. Harahap	55/PHPU.D-VI/2008	Rejected
10	Applicant: Ir. Roy Mangontang Sinaga and Ir. Djudjung Pangondian Hutaauruk	49/PHPU.D-VI/2008	Partially accepted
11	Applicant: Drs. Daniel Banunaek, MA and Drs. Alexander Nakamnanu	44/PHPU.D-VI/2008	Partially accepted
12	Applicant: Herson Tanuab, SH and Ir. Vivo Enu Ballo	45/PHPU.D-VI/2008	Rejected
13	Applicant: Hj. Khofifah Indar Parawansa and Mudjiono	41/PHPU.D-VI/2008	Partially accepted
14	Applicant: Hi. Samsudin Madja, SH. and A. Renreng Palloloi	43/PHPU.D-VI/2008	Not accepted
15	Applicant: Dr. Ramon Amiman and Drs. Martin L. Maabuat	39/PHPU.D-VI/2008	
16	Applicant: H. A. Idris Manggabarani and H. A. Muh. Adil Patu, Applicant's legal attorney: DR. Kamri Ahmad, S.H., M.H., et al, Resondent: KPU Kota Makassar	36/PHPU.D-VI/2008	Rejected
17	Applicant: Aladin S. Mengga and H. Andi Muhammad Ain Manggabarani, applicant's legal attorney Muhammad Hatta, S.H., dkk Termohon KPU Kabupaten Polewali Mandar	35/PHPU.D-VI/2008	Rejected
18	H. Basmin Mattayang H. Buhari Kahar Muzakkar	35/PHPU.D-VI/2008	Rejected

No	Applicants/Attorney of Power/ Respondent	Case Number	Court Decision
19	Applicant: Reyneilda M. Kaisiepo, S.Si., MTh and Max Richard Funmawi Krey, Amd., TS	37/PHPU.D-VI/2008	Rejected
20	Applicant: H. A. Asmidin and Drs. H. Mohammad Ridwan, M.Pd	34/PHPU.D-VI/2008	Rejected
21	Applicant: Thariq Modanggu, S.Ag. M.Pd and Djafar Ismail	31/PHPU.D-VI/2008	Rejected
22	Applicant: H. Sjamsuddin Zainal, S.E.,and M.P Djahini, S.H	38/PHPU.D-VI/2008	Rejected
23	Applicant: Iskandar, SE Kukuh Pudiartyo	29/PHPU.D-VI/2008	Rejected
24	Applicant: Drs. Kasman Lassa, S.H	28/PHPU.D-VI/2008	Rejected
25	Applicant: DR. H. Djakaria Machmud, S.E., S.H., M.Si. and PRA. Arief Natadiningrat, S.E.	30/PHPU.D-VI/2008	Rejected
26	Applicant: Drs. H.M. Ali Usman, M.Si and A. Fahrur Paturusi, SE	40/PHPU.D-VI/2008	Not accepted
27	Applicant: H. Bachtiar Basri, S.H., M.M. and Slamet Haryadi, S.H., M.Hum. applicants' legal attorney: Abi Hasan Mua'an, S.H., et al joined by the lawyer team of Bactiar-Slamet"	25/PHPU.D-VI/2008	Not accepted

Source: <http://www.mahkamahkonstitusi.go.id>

The local election to elect the Governor and the Regent was conducted 13 times in the Province of NTT during 2008; One was to elect the governor and 9 times was to elect the head of the district. The details are shown in the following table:

TABLE 2. Local Election of Governor & Regent in the Province of NTT (2008)

No	District / Province	F	Round I	Round II	Dispute
1.	District of Sikka	1	16-042008	-	-
2.	District of Nagakeo	1	16-07-2008	-	-
3.	District of Manggarai Timur	2	30-09-2008	30-12-2008	-
4.	District of Sumba Tengah	1	08-09-2008	-	-
5.	District of Sumba Barat Daya	1	14-10-2008	-	-
6.	District of Rote Ndao	2	13-10-2008	13-12-2008	-
7.	District of Timor Tengah Selatan	2	23-10-2008	16-12-2009 *)	✓
8.	District of Kupang	2	29-10-2008	30-12-2009	✓
9.	District of Belu	2	11-10-2008	09-12-2008	✓
10.	Province of NTT	1	14-06-2008	-	-

Source: KPU Prov. NTT - *) Re-election of regional head in some sub districts

The table above shows that the Regional Head Election that took place in NTT Province contributed 3 (three) of the 27 cases/disputes that were received, examined, and tried by the Constitutional Court, namely: (1) the dispute over the Regional Head Election of the District of Timor Tengah Selatan, (2) Election of Regional Head of Kupang District and (3) Election of Regional Head of Belu District. The data in Table 1 also shows that the Constitutional Court has decided to partially accept the applicant's demands in the dispute over the regional head election in Timor Tengah Selatan District however the other two disputes, on behalf of the applicants Herson Tanuab, SH and Ir. Vivo Enu Ballo for the dispute over the election of the Regional Head of Kupang Regency; and the applicant Drg. Gregory Mau Bili Fernandez, DDPH and Drs. Berchmans Mau Bria, MSc for the dispute over the election of the Regional Head of Belu Regency; rejected by the Constitutional Court. Basic assumptions drawn from the data includes:

1. The knowledge and understanding of the formal and juridical material of the election dispute is still very scarce
2. The evidentiary process carried out is not persuasive so that it is unable to convince the Constitutional Court that the issues argued are factual and true.
3. The Constitutional Court has thus granted some of the petitions from the TTS district, but rejected the petitions submitted by the applicants from Belu and Kupang district.

It should be noted at this point that going forward, the General Election will be to elect the President and Vice President, Governor and Deputy Governor, Regent/Mayor and Deputy Regent/Deputy Mayor as well as to elect members of the Regional Representatives Council (DPD), the People's Representative Council of the Republic of Indonesia, the Provincial People's Representative Council and the Regency/City Regional People's Representative Council will be held simultaneously.

In 2018 in NTT Province, 11 (eleven) local elections took place simultaneously, consisting of 10 (ten) Local elections to elect the Regent and Deputy Regent and 1 (one) local to elect the Governor. The local

elections were held simultaneously on 27 June 2018. Five of the ten local elections held to elect the Regent in 5 (five) Regencies or 50% (fifty percent) to elect the Regent and Deputy Regent among others, filed a dispute over the results to Constitutional Court. The details are shown in the following chart.

TABLE 3. Disputes of local election of Governor and Regent in NTT (2018)

No	District / Province	File dispute to Constitutional Court	
		Yes	No
1.	District of Sikka	-	✓
2.	District of Nagakeo	-	✓
3.	District of Sumba Tengah	-	✓
4.	District of Timor Tengah Selatan	✓	-
5.	District of Kupang	-	✓
6.	District of Ende	-	-
7.	District of Alor	✓	-
8.	District of Rote Ndao	✓	-
9.	District of Sumba Barat Daya	✓	-
10.	District of Manggarai Timur	✓	-
11.	Province of NTT	-	-

Source: Provincial KPU and <http://www.mahkamahkonstitusi.go.id>

Facts and data show that not less than 50% (fifty percent) of the results of the local elections are sued (requested for judicial review) to/in/by the Constitutional Court, so that when the General Elections are held simultaneously, the Constitutional Court will experience a pile of election disputes, generally number is very large. On the other hand, about 75% (seventy five percent) of the lawsuits submitted to the Constitutional Court were declared inadmissible (Dutch: *niet ontvanklijke verklaard*). Therefore, it is necessary to examine the formal juridical requirements that must be considered in the context of filing a dispute over the results of the general election to the Constitutional Court and on the other hand to see the suitability of the application of these requirements in the dispute over the results of the local election submitted by the applicants against the results of the local elections which took place in five districts in the province of NTT.

Based on the data and facts above, several critical questions were raised, including:

1. What are the formal and juridical material requirements that must be met in an application for dispute over the regional head election?
2. What reasons were put forward by the applicants in their application to the Constitutional Court to examine, to hear and to decide on disputes over the results of the regional head elections?
3. What are the considerations of the Constitutional Court in granting or rejecting the application for examination of the regional head election dispute submitted by the applicant?

Taking into account the urgency aspect and especially its relevance, the study below focuses more on the latest legal materials submitted to the Constitutional Court in the 2018 dispute. In 2018 there were five (5) regions with 6 (six) cases/applications for examination of local elections disputes submitted by applicants from NTT, respectively:

1. Tarsisius Sjukur, SS and Yoseph Byron Aur, S.Sos as recorded in the Constitutional Case Registration Book with Case Number 16/ PHP. BUP-XVI/2018 on July 23, 2018;
2. Drs. Obed Naitboho, M.Sc., and Alexander Kase, S.Pd.K Based on the Deed of Submission of the Petitioners' Application Number 53/1/ PAN. MK/2018, the Petitioner's petition was filed at the Registrar's Office of the Court on Tuesday, July 10, 2018;
3. Drs. Mesakh Nitanel Nunuhitu, M.Sc., and Drs. Samuel Conny Penna as recorded in the Constitutional Case Registration Book with Case Number 23/ PHP. BUP-XVI/2018 on July 23, 2018;
4. Bima Theodorianus Fanggidae and Drs. Erenst Salmun Zadrak Pella, M.Si as recorded in the Constitutional Case Registration Book with Case Number 14/ PHP.BUP-XVI/2018 on 23 July 2018;
5. Dr. Immanuel Ekadianus Blegur, M.Sc. and H. Taufik Nampira, SP, M.M. as recorded in the Constitutional Case Registration Book with Case Number 60/ PHP. BUP-XVI/2018 on July 23, 2018;

6. Markus Dairo Talu, S.H. and Gerson Tanggu Dendo, S.H. as recorded in the Constitutional Case Registration Book with Case Number 49/ PHP. BUP-XVI/2018 on July 23, 2018.

In the decision of the Constitutional Court against the dispute submitted, it turned out that most of them were declared unacceptable / Niet ontvanklijke verklaard. There are 3 (three) things considered by the Constitutional Court in relation to formal and material juridical requirements, namely (1) aspects of the Court's authority, (2) the legal standing of the applicants, and (3) the grace period for submitting the application. Based on the data and facts, the reasons used to apply for the examination of the dispute over the regional head election are: (a) There is an inflated vote made by the respondent to win one pair; (b) There is a reduction in the number of valid votes in one of the pairs; (c) General election Commission (KPUD) and Election Supervisory Committee (PANWASLU) carry out elections in an undemocratic manner and do not heed the principles of holding constitutional elections; (d) Money politics; (e) Involvement of State Civil Apparatus (ASN); (f) The existence of a criminal act in the general election/elections in the form of the use of violence and fraud that is carried out systematically by and for the benefit and victory of certain pairs of candidates for Regional Head and Deputy Regional Head; and (g) Elections are not held in a direct, open, free, confidential, and honest and fair manner (violation of the LUBER & JURDIL principle).

Several parties (applicant, respondent, and related parties) quoted the writings and studies of the Honorable Judge of the Constitutional Court Prof. Saldi Isra, who stated:

“... from the start, I was one of those who pushed for a certain percentage limit to be able to submit a dispute request to the Constitutional Court. However, these restrictions are not intended to eliminate the opportunity for pairs of candidates who feel totally cheated to choose the path to the Constitutional Court. This means that the threshold can still be breached

through a preliminary examination mechanism (dismissal process) if the applicant is able to show very strong evidence that a TSM violation has occurred. As has been accepted in several decisions, because of its position and nature as a constitutional court, the Constitutional Court must not allow the rules of procedural justice to stifle and override substantive justice because the legal facts as described above constitute a violation of the constitution, especially Article 18 paragraph (4) of the 1945 Constitution which requires that local elections be conducted democratically, and does not violate the principles of direct, general, free, secret, honest and fair elections as stipulated in Article 22E paragraph (1) of the 1945 Constitution. The Constitutional Court once decided that in guarding the constitution, the Constitutional Court could not allow itself to be shackled by procedural justice alone, but also had to realize substantial justice. Moreover, previously through Decision No. 41/PHDU.D-IV/2008 regarding the dispute over the results of the East Java post-conflict local election, the Constitutional Court has also considered that in order to maintain a balance in the application of the principles of justice, legal certainty and the principle of benefit in the implementation of justice, the Constitutional Court cannot be confined only by the sound of the law but must explore sense of justice by remaining guided by the substantive meaning of the law itself. If it is consistent with these considerations, the space for hitting the threshold is certainly wide open."

Based on the quote, the petitioners then stated that the democratic general elections in case the local election cannot be created if the spaces to achieve them are limited and closed to be resolved through a judicial mechanism if a dispute arises in the process, especially if the applicant finds a difference in votes between the applicant and the candidate. The Candidate Pair that has the most votes is based on a method that is against the law or fraud which is carried out in a structured, systematic and massive way.

As mentioned earlier, although it is carried out in the context of building a democratic Indonesian state, the implementation of the election leaves

many serious problems, both for candidates and/or for political parties that carry a candidate for regional leader as well as for the community supporting certain candidates and political parties. In fact, this problem has given rise to many election disputes since 2005 until now. According to His Excellency, the former Justice of the Constitutional Court, Prof. Maruarar Siahaan, all disputes that can occur in the regional head election process as regulated in Law no. 32 of 2004 and Government Regulation Number 6 of 2005, can be divided into 4 (four) categories, namely:

1. Election disputes that do not contain a criminal element.
2. Election disputes that contain criminal elements.
3. Disputes of an administrative nature.
4. Disputes over the results of the vote count were determined by the KPUD.

Furthermore, His Excellency, the former Judge of the Constitutional Court, Prof. Maruarar Siahaan that all dispute resolutions must be synchronized in the time frame. This means that the dispute resolution must have been achieved at each stage of the local election implementation so that the results can be used as material for the next stage of dispute resolution. The results of the settlement, especially regarding disputes containing criminal aspects, can be used as evidence in determining disputes over the results of the regional head election, if necessary. It should also be noted that not all disputes must be resolved by the judiciary. There are disputes that do not have a criminal aspect, and therefore must be resolved by the supervisory committee. Likewise, disputes of an administrative nature, such as the administrative requirements of a candidate for Regional Head and/or Deputy Regional Head, requirements to be registered as voters and requirements to vote and be elected. The data and facts above provide a temporary picture that the public (in this case the Petitioner) has not yet understood the juridical requirements needed to dispute the election results with the regions in the Constitutional Court. While confirming the statement from His Excellency, the former Justice of the Constitutional Court, Prof. Maruarar Siahaan, we need to pay attention to the conditions in the form of structured, systematic and massive

errors/errors/frauds in the implementation of the General Elections which were introduced from the nature and requirements of the 1945 Rome Statute for the International Court of Justice to try International Crimes, including genocide, crimes against humanity and war crimes.

II. CONSIDERATION OF THE CONSTITUTIONAL COURT

The consideration of the Constitutional Court is always formally related to 3 (three) things, namely: (1) aspects of the authority of the Constitutional Court; (2) the legal standing of the applicants, the respondent and related parties; and (3) the grace period for submitting the application. In considering its authority, the Constitutional Court always checks the provisions of Article 157 paragraph (3) of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and The mayor becomes a law, the case of disputes over the determination of the results of the election is examined and tried by the Constitutional Court until a special judicial body is formed.

Regarding this matter, in a formal juridical manner, the legal standing of the Petitioners according to Article 2 letter a and Article 3 paragraph (1) of the Regulation of the Constitutional Court Number 5 of 2017 concerning Guidelines for Proceeding in Cases of Disputes over the Election Results of Governors, Regents, and Mayors states that The parties in a dispute over election results are (1) the Petitioner; (2) Respondent; and (3) Related Parties. Specifically for the Petitioners are (1) Pairs of candidates for Governor and Deputy Governor; (2) Pairs of candidates for Regent and Deputy Regent; and (3) Pairs of candidates for Mayor and Deputy Mayor. The Respondent is the organizer of the election while the Related Party is the Election Supervisory Body (BAWASLU) and/or the Party that is announced/determined as the Winner in the election contest.

Furthermore, for the material for the application to be considered by the Judge (MK), it must be followed by supporting evidence provided by the Petitioner, Respondent and Related Parties. Proof is a process of providing certainty to the judge by using valid evidence, so that the judge is thus confident, as certain as possible that what is argued by one of the parties contains factual and juridical truth.

According to the provisions of article 9, Constitutional Court Regulation Number 15 of 2008, evidence in disputes over the results of the election can be in the form of: (a) statements of the parties, (b) letters or writings, (c) statements of witnesses (d) statements of experts, (e) instructions, and (f) other evidence in the form of information and or electronic communications.

In careful observation of the petition submitted by the petitioners, the argument was found that the violations committed by the respondent were structured, systematic and massive (TSM), so that the verification process became much more difficult than proving the existence of partial fraud. sporadic and casuistry may occur. It is understandable on the one hand – as something that can happen and is commonplace – because the regional election is the largest people's party organized by the state in an autonomous region with all its advantages and disadvantages, with all its advantages and disadvantages and, with all its freedoms and limitations.

It is understood on the other hand that even if there are those who - partially, sporadically, and casuistically make mistakes, errors or fraud (?) in the implementation, - it is very difficult if not impossible to state and/or can be proven as something structured, systematic and massive.

According to M. Mahrus Ali, et al in the abstract of the article entitled, Constitutional Interpretation of Systematic, Structured and Massive Regional Election Violations, namely the results of research published in the Journal of the Constitution Volume 9, Number 1, March 2012, stated:

“The results of the study show that during 2008-2011 the Constitutional Court has granted 32 (thirty-two) cases of Regional Head Election disputes.

Of these, 21 (twenty-one) cases were TSM. Meanwhile, the nature of TSM in these decisions is divided into 2 (two) namely cumulative and alternative, both of which can invalidate the results of the Regional Head General Election. There are 3 (three) types of violations in the Regional Head Election, first, violations in the process that do not affect the results of the Regional Head Election. Second, violations in the Regional Head Election process that affect the results of the Regional Head General Election; Third, violations related to the requirements to become a candidate that are principled and can be measured. Election violations that are TSM in nature are violations committed by structural officials, both government officials and local election organizers, not collectively, not individual actions, carefully planned (by design) and the impact of these violations is very broad, not sporadic."

Observing the views of Mahrus Ali, et al above and paying attention to the reasons stated in the application submitted to the Constitutional Court as previously mentioned, there are three reasons that can be correlated with the possibility of a TSM, namely: (1) KPUD and PANWASLU carry out elections in an undemocratic manner and do not heed the principle of holding a constitutional election; and (2) Involvement of the State Civil Apparatus (ASN), which of course is supported by the existence of (3) Money Politics. The three are very closely related, one influencing the other so that they can be distinguished but cannot be easily separated. It turns out that a violation can and can only be said to have fulfilled the TSM requirements if it is carried out by structural apparatus, both government officials and local election organizers, not collectively, not individually, carefully planned (by design) and the impact of this violation is very broad, not sporadic.

To ensure that there is an effort to move ASN and/or Election Organizers to work in a massive and structured manner, it is necessary to first determine the greatest interest that can be used as a motive and reason for involvement. In such a case, it is necessary to first emphasize that ASN and/or Election Organizers are passive, not neutral parties. It is said to be

passive because in the general election, all of them (read; ASN and Election Organizers) still have the right to vote, and therefore there must be a constitutional guarantee that each of them is one man, one right, one value and one vote. Their involvement can only be said to be in violation if each of them abuses the authority, opportunity or facilities available to them because of their position or position as ASN and/or Election Organizers to mobilize prospective voters to win certain Candidate Pairs (Paslon). Furthermore, it is also necessary to investigate further, their position in the winning structure of the Paslon, whether as the giver of orders and/or controllers of the operation or only as the executor of the operation. In the event that they are in the position of giving orders and/or controlling operations, the executor of the operation as far as possible must be people who are in the 'handle' of their power and control, taking into account several supporting criteria, namely: (1) the existence of a superior-subordinate relationship (superior-subordinate relationship) namely that the giver of orders/controllers oversees the operations, both de jure and de facto where they have the authority to give orders; (2) knowing or should have known (had reason to know) the actions of subordinates or people under their control (Latin: *mens rea*); and (3) not taking proper preventive measures (Latin: *actus reus*).

If you look at the conditions above and pay attention to whether there is accessibility to ASN and/or Election Organizers, the party who has a high chance of being the giver of orders/controllers may only be in the Paslon with the incumbent status who actually has control over the ASN and/or the Election Organizer. For the incumbent candidate pair, the opportunity to be the giver of structured operations orders/controllers is very small if not said to be non-existent, except by carrying out money politics to mobilize and influence the choices of constituents/voters.

Proving the existence of TSM does not only require much greater effort, effort and/or mobilization of resources but also takes a very significant amount of time and cost. And behind all that, even if it can be proven that there was an error and/or fraud (quad-non), it is much more difficult to draw a connection between the error/cheat as an advantage for

the Winning Pair / Co-Respondent, considering the election (read: Presidential Election, Legislative Election), Pilkada/Election) adheres to the direct, open and free of secrecy – honest/truthful and fair (LUBER-JURDIL) principle.

The sub-optimal proving process carried out by the applicants, for example in presenting witnesses who can significantly meet the quality and quantity requirements, providing written evidence that meets formal juridical requirements, as well as competent experts, is the cause for the rejection of all of the applicant's applications by the Court.

It is also interesting to pay attention to the Regulation of the Constitutional Court Number 15 of 2008, which has made it possible to use remote examination facilities in the form of video conferencing, especially for the examination of witnesses. Especially for the NTT Province, this facility is available in the video conference room of the Faculty of Law, Nusa Cendana University, Kupang. The following conclusions and suggestions are drawn for the discussion.

CONCLUSION

1. Understanding of formal and juridical material requirements in election disputes is still very limited, so that in:
 - a. Decision on Dispute over the Election Results of the Regent and Deputy Regent of East Manggarai Regency, East Nusa Tenggara Province, number 16/PHP.BUP-XVI/2018;
 - b. Decision on Dispute over the Election Results of Regent and Deputy Regent of Rote Ndao Regency, East Nusa Tenggara Province number 23/PHP.BUP-XVI/2018;
 - c. Decision on Dispute over the Election Results of Regent and Deputy Regent of Rote Ndao Regency, East Nusa Tenggara Province, number 14/PHP.BUP-XVI/2018;

- d. Decision on the Dispute over the Election Results of the Regent and Deputy Regent of Alor Regency, East Nusa Tenggara Province number 60/PHP.BUP-XVI/2018;
 - e. Decision on the Dispute of Election Results for the Regent and Deputy Regent of Southwest Sumba Regency; and
 - f. Decision on Dispute on the Results of the Election of the Governor of East Nusa Tenggara Province number 49/PHP.BUP-XVI/2018; the Constitutional Court stated that the Petitioner had no Legal Standing. Meanwhile, in the Decision on the Dispute over the Election Results of the Regent and Deputy Regent of South-Central Timor Regency, East Nusa Tenggara Province, Number 61/PHP.BUP-XVI/2018 regarding the re-election of votes, the Constitutional Court stated that the main application was unreasonable, so that in its decision all applications were rejected by the Constitutional Court.
2. The evidentiary process carried out is not persuasive – especially in relation to the requirements of proof which are unable to convince the Constitutional Court that what is argued is factual.
 3. The Constitutional Court cannot accept the petition of the petitioner because the principle of the petition has no legal basis.

SUGGESTIONS

1. Efforts are needed to understand more broadly and deeply about the formal and material juridical requirements of the election and election disputes.
2. In compiling the application for examination of the dispute over the results of the election and the election dispute discussion, the applicants need to pay attention to and prioritize the arguments or reasons that are easy and simple to prove but have an impact and leverage on the change in the vote count results.

3. It is necessary to optimize the evidentiary process so that it can provide certainty and convince the Constitutional Court that the things postulated are factual and not just an outlet for disappointment.

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*All the great things are simple,
and many can be expressed in a
single word: freedom, justice,
honor, duty, mercy, hope.*

Winston Churchill