



Constitutionality of constitutional settlement of disputes for the election of local heads

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Abstract

The authority to adjudicate disputes over the results of regional head elections continues to experience a shift in the judiciary. The delegation of authority to judge to the courts caused a polemic when the Pilkada was returned to the electoral regime, considering that the handover of auto power he the Special Courts Agency was based on the Constitutional Court's decision that the Regional Head Elections was a not General Election regime but the Regional Head Election regime. The purpose of this study is to describe the dynamics and the basis for the constitutionality of the authority to try it. The survey results stated that the judiciary's regulation on the settlement of ciary experienced three shifts, namely from the Supreme Court, the Constitutional Court, and the Special Courts Agency. However, the Special Courts Agency payment is unconstitutional because it is not a judicial institution that is explicitly and directly by the Constitution. The compensation of the amount by the Agency must be concretely normalized in the Republic of Indonesia Constitution so that the settlement process no longer moves, especially when the Regional Head Election is again designed to be returned to the General Election regime.

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1. Introduction

General elections are one form of concrete manifestation in a democratic country. Through elections, there will be a transition process of leadership that comes from by and for the people. Universal Declaration on Democracy adopted by the Inter-Parliamentary Union (IPU, 1997), elections are a crucial element for running a democracy. The second part of Number 12 of this declaration states: The critical component of exercising democracy is holding free and fair elections at regular intervals, enabling the people's will to be expressed. These elections must be controlled based on universal, equal, and secret suffrage so that all voters can choose their representatives in conditions of equality, openness, and transparency that stimulate political competition. To that end, civil and political rights are essential. Among them are the right to vote and be elected, freedom of expression and assembly, access to information, and the right to organize political parties and carry out political activities. Party organization, activities, finances, funding, and ethics must be appropriately regulated impartially to ensure the integrity of the democratic processes."

Elections are juridically defined as the exercise of popular sovereignty to elect representatives who will sit in the People's Representative Council, Regional Representative Council, Regional People's Representative Council, and the President/Vice President. Miriam Budiardjo stated that the election or the electoral system is considered a symbol as a landmark for democracy. Meanwhile, Maridjan said that the election was a method of translating the vote gains in the election into the seats won by the party or candidate. General Election, referred to as Ron General Election, is a means of implementing people's sovereignty which is carried out directly, publicly, freely, confidentially, honestly, and reasonably within the Republic of Indonesia based on Pancasila and the Con-

stitution of the Republic of Indonesia. General elections are held to elect members of the People's Representative Council, Regional Representative Council, and President of the Regional People's Representative Council.

In Indonesia, elections are held directly. It includes the general election for the legislature and the President/Vice President (Election) as well as the election for regional heads. The people can directly determine their representatives who will sit in parliament and become President and Vice President as well as regional heads. These arrangements are contained in the 1945 Constitution of the Republic of Indonesia, Law Number 7 of 2017 concerning General Elections, and Law 10 of 2016 (as amended by Government Regulation instead of Law (Peru) Number 2 of 2020).

However, as a democratic party that involves the people directly, the general election and local elections are always accompanied by various problems during the implementation process. Problems in the election can be multiple, ranging from ethical, administrative, and even criminal issues.

For various problems that usually arise in the implementation of elections, a mechanism for resolving election and regional elections problems is designed using a settlement approach based on the type of object of the problem. Issues that occur in the election. For example, in the event of an election violation of an administrative nature, the settlement is through the administrative organization mechanism. In the event of a breach in the criminal realm, the settlement mechanism is through a criminal process. It means that although the general election is held as a part of a series of arrangements, the settlement process can be carried out by different judicial institutions and is not even tied to one. The resolution of election problems based on the type of object of the case, will automatically cause judicial institutions that

are involved or have the authority to resolve disputes in the administration of elections not only in one judicial institution but also in various judicial institutions. In general elections, for example, the judiciary may consist of judicial bodies within the Supreme Court and the Constitutional Court, whereas in the local head election, the judiciary institutions within the Supreme Court and the Special Courts Agency.

Second, when the judiciary that adjudicates disputes in the implementation of the general election is not only the Constitutional Court, is there any guarantee that the decisions of the matters adjudicated by institutions other than the Constitutional Court can be declared constitutional considering that the only judicial institution that has a function as the guardian of the constitution is the Constitutional Court.

Until now, the Constitutional Court of the Republic of Indonesia has for more than 12 years carried out its function and authority as a judicial body for disputes over the results of regional head elections. In its journey, the Constitutional Court of the Republic of Indonesia has produced quite dynamic, significant, and sometimes controversial developments (compared to the exercise of authority in resolving disputes over the Legislative and Presidential Elections). (Taufik, 2021)

2. Methods

The research on the constitutionality of dispute resolution resulting from the simultaneous regional head elections was conducted using a juridical normative – namely, doctrinal research analysis philosophical approach, a concept approach, a legislation approach, and a case approach. Legal materials consist of primary, secondary, and tertiary legal materials. Legal materials collection techniques include inventory, classification according to sub-discussions, and descriptive and prescriptive analysis. (Ibrahim, 2008)

3. Result and Discussion

To fully and comprehensively the current situation for the local election result dispute cases, it is necessary to provide background on the Constitutional Court of Indonesia. The Indonesian national government created the Constitutional Court of Indonesia through the Third Amendment to the 1945 Constitution in 2001 (Article 24C of the 1945 Constitution). Subsequently, Law No. 24/2003, amended by Law No. 8/2011, granted the Court its full authority (Law No. 8, 2011). (Kelliher, 2019)

Constitutionality is where everything must be contained in the constitution, or everything must be resolved based on constitutional standards. For a country with a written form like Indonesia, it is certain and undoubted straight forward to determine whether something is constitutional or not. In terms of general elections and regional head elections, the General Election and Regional Head Election can be declared constitutional if all stages of the election are carried out following the principles contained in the constitution. Election principles in the body are direct, general, free, confidential, honest, and fair (*Luber and Jurdil*). Honest and fair elections are among the most critical essentials in a democracy. It has found that there has been a very excellent legal material that can be made to hold elections, institutions that have elections, a people's culture and legal awareness of elections and government governance, and judicial institutions can resolve elections issues. (Hidayat, 2019)

The principles are interpreted as follows: a). Direct, every citizen can exercise their right to vote directly. People have the right to vote directly and according to their conscience without intermediaries and ranks; b). General, every Indonesian citizen who has fulfilled the requirements as a voter has the right to cast his vote; c). Free, every voter is free to choose a leader according to his conscience. Every voter has the right to vote and, for

exercised/they're to vote without any influence, pressure, or coercion from anyone/with anything; d). Confidential, the choice of a leader chosen by every citizen has the right to be kept secret and guaranteed by laws and regulations; e). Honest, every citizen has the right to select prospective leaders honestly according to the choice of his conscience without influence from other parties; f). Fair, every citizen has the same opportunity to exercise their right to vote (Marijan, 2019).

The above principles must be embodied in every dimension of the implementation of the General Election and the Regional Head Election. In general, the dimensions of those implementations can be divided into the dimensions of the nomination stages, the election process, and dispute resolution. Dispute resolution is one of the elements of performance of them. It is because it was realized from the start that in an election contest that contains a power struggle, there must be conflicts and disputes involving many parties, especially those caused by differences in choices and various frauds contained therein. The dimension mainly occupies a dimension in the implementation size elections, especially the Regional Head Election. Because, in a dispute, its argument and appropriate resolution process. If the dispute resolution process is not fast and precise, then the debate has the potential to give birth to a more significant conflict and can damage its nature.

The quickness of the Regional Election that is by the above principles (democracy) is determined by the form of the election. Election forms can be selection and indirect election. These two forms of election can be regarded as a democratic electoral system or by the mandate of Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia (Siboy, 2018).

Quickly settle election disputes are the resolution of regional election disputes that are not protracted and have legal certainty. The speedy settlement of regional election disputes can prevent political tensions from increasing towards conflict and space to avoid a power vacuum. After all, the election results exceed the expiry period of the incumbent regional head (Harun, 2016), preventing the proper election dispute resolution based on the election dispute settlement: First, institutions. The institution that will resolve the Regional Head Election dispute must be the right institution. Namely, judicial and non-judicial institutions that have the competence to adjudicate. The competence of this institution is based on the institution's existence that is intended to resolve legal disputes, including disputes. (Sanjaya, 2019)

Second, institutions' existing case in the election dispute becomes one of the parameters or standards to ensure that the dispute resolution is carried out correctly. Although the implementation of the Regional Head Election is one unit from the beginning to the end, the dimensions of rights that arise in it vary, both legal disputes in the administrative, criminal, and other jurisdictions. The legal fields in the Regional Head Election dispute must be considered because each legal area has a different settlement system. Disputes of an administrative nature certainly cannot be resolved criminally or civilly. Likewise, its crime cannot be determined using an organizational dispute settlement system.

The types of cases and various judicial institutions in settlement of the Regional Head Election above indicate that, First, every problem or dispute in the Pilkada has its settlement of each dispute has a different dimension from one. For example, in violation of criminal administration, as regulated in Article 135a, differs from the elements of a breach of electoral state administrative disputes. It is held in Article 1 of the Regional Head

Election Law. I breathe of criminal administration violations, the viol, which occurs after the prospective pair of election participants has been determined to be eligible participants. At the beach, an election participant, the person concerned, commits violations such as money politics (and the like), Ate structured, systematic, and massive.

Meanwhile, a state administrative dispute is a dispute related to determining pairs of candidates participating in the Regional Head Election. Here, there are pairs of candidates who feel aggrieved by the decision of the Pilkada organizers, such as not being passed as election participants because they are considered not to meet the requirements that have been s, et such as educational requirements. From the elements of criminal administration violations and state administrative disputes, it appears that criminal, administrative violations, and state administrative disputes are different, wherein criminal administration violations are clear violations that fall within the realm of criminal law and state ad. Criminals fall within the realm of administrative law.

The settlement mechanism for these problems also cannot be united in one judicial institution. This is because each judicial institution in Indonesia has different competencies. For example, the State Administrative Court only has absolute competence in administrative l criminal offenses, such as an executive, PTUN tries criminal offense. It becomes something that is not appropriate se PTUN tries a criminal offense such as an administrative offense. The general court cannot endeavor State Administrative Disputes, considering that administrative disputes are in the State Administrative Court. (Subiyanto, 2019)

One of the processes for resolving disputes/problems in the regional head election is the debate over the results of the provincial head election. Namely, the disagreement between the pairs of candidates participating in the regional head election and provincialional General Election

Comdisagreement regarding the determination of the vote acquisition results from the election. The settlement of disputes over the results of determininglections is tried by the Special Judiciary Agency, although it is not yet clear how the structure and how works. For the time being, the authority of the Special Judiciary Agency to adjudicate disputes over the results of the Renal Head Elections is tried by the Constitutional Court.

The settlement of disputes over the results of the Regional Head Elections by the Special Judiciary Agency occurred after the decision of the Constitutional Court number 97/PUU-XI/2013, which explicitly stated that the Regional Head Election was not an election regime regulated in Article 22 E of 1945, Constitution of the Republic of Indonesia. The authority to adjudicate disputes over the results of regional head elections has been exercised by the Supreme Court and the Constitutional Court.

The Supreme Court hears disputes over the results of the regional head elections based on Article 236c of Law 32/2004 concerning Regional Government. In adjudicating disputes over the Regional Head General Election results, not all conflicts over effects are handled directly by the Supreme Court. The Regional Head General Election resultsdjudicate disputes over the results of the regional head elections to the High Court for disputes over results or disputes over vote acquisition in the election of Regents/deputy Regents and Mayors/Deputy Mayors. And the Supreme Court hears arguments over results related to the election of the Governor/Deputy Governor.

The authority given to the Supreme Court arguments cites the Regional Head Election cannot be legally blamed. In addition to the fact that this authority is given by law, the Supreme Court is also legitimate to adjudicate disputes over the results of the Regional Head Elections because Article 24A of the 1945 Constitution of the Republic of Indonesia concerning the Supreme Court's

authority, contains the words “and other authorities.” Constitutional Court as an institution an independent judiciary and free from the influence of any party in deciding a case.” ill only base on consideration law, suf, sufficient evidence, and then, judge’s conviction in making decisions. (Supriyadi, 2014)

Upon the decision of the Constiof tutional Court, the legislators transferred the authority of the Supreme Court in adjudicating regional head general election disputes to the Constitutional Court. This transfer can be seen from the provisions of Article 1 paragraph (4) of Law 22/2007, which states that the election for regional heads/ deputy regional heads is an election to elect regional heads and debut regional heads directly within the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution. Regional head elections as part of the electoral regime as referred to in Article 22E of the 1945 Constitution of the Republic of Indonesia. From here, the potential for disputes over the Regional Head General Election results can be tested before the Constitutional Court. Because, in Article 24C, the Constitutional Court has the authority to adjudicate disputes over the results of the general election.

The Constitutional Court is legitimate to adjudicate disputes over the election results because it is the court of the first and last level. One means that the election disputes can be carried out by the Constitutional Court other than because the elections have been included in the election regime; still, the Court is also correct to adjudicate disputes over the results of the polls because, as a judicial institution of the first and final level, it will become legitimacy to adjudicate the Regional Head Elections issues. As a court of the first instance, it means showing that the Constitutional Court can immediately become a place to judge the results of the Regional Head Elections after the decision to determine the number of votes or

the determination of the selected election participants appears. One means that disputes over election results can be directly submitted to the Constitutional Court without going through the judicial process at the previous level. One is different when the authority to adjudicate disputes over the results of the Regional Head Election is left to the Supreme Court. Because the Supreme Court is a court of cassation level, the judicial process on the results of the regional head election dispute must be tried in a court under or within the Supreme Court, or it cannot be directly submitted to the Supreme Court because as a court of cassation, it automatically has to wait for a cassation request from the Supreme Court. Parties who have been decided at the lower level courts, namely the appeals level and the First Level.

The final level will make the Constitutional Court’s decision related to the results of the regional head election unable to be followed by a judicial process again so that the Constitutional Court’s decision is directly *Eintracht* (has binding legal force) and can be now implemented. This is undoubtedly very important for the legal certainty of the results of regional head elections. It is because decisions related to the effects of regional head elections are needed quickly and *interact*. After all, they will be directly related to the position of regional heads in an area.

However, the authority of the Constitutional Court to adjudicate disputes over the results of regional head elections since 2008 must be terminated after the grant of a judicial review of the provisions of Article 236c of Law 12/2008 concerning Regional Government. The Constitutional Court’s decision number 97/PUU-XI/2013 is a decision that ends the regional head election regime from the general election regime. The Constitutional Court’s decision has several meanings. First, the sense that the regional head election regime is an extension of the importance of Article 22E of the 1945 Constitution of the Republic of

Indonesia is inappropriate. Second, if the provincial head election is categorized as part of the general election, then the election is not only held once every five years but also many times.

Third, the addition of the Constitutional Court's authority to adjudicate disputes over the results of regional head elections is an authority that is not per the provisions of the Constitutional Court. This is because the power to judge issues in the provincial head election is not mentioned in the article regulating the Constitutional Court's authority.

The Constitutional Court's decision to revoke the authority to adjudicate disputes over the results of the Regional Head General Election from him, of course, returns the discourse on where debates over the results of regional head elections will be adjudicated into the hands of legislators. It is the legislators who will determine where the authority will be transferred. In this context, leg-

islators have two options. First, the legislators can transfer the power to adjudicate disputes over the results of the regional head election to the Supreme Court as has been regulated in the provisions of Law 32/2004 concerning Regional Government. If it is returned to the old form, it will undoubtedly cause debate because of historical and institutional considerations. If it is returned to the Supreme Court, it will certainly reduce public confidence in resolving the regional head election's problems.

The second option is to form a new institution. The judicial process over the dispute over the results of the regional head election after the 2014 Constitutional Court's decision can also be pursued by establishing a new institution. Namely, legislators can mandate the establishment of a particular judicial institution to adjudicate disputes over the results of regional head elections. This option is open for two reasons. First, the Constitutional Court's decision implicitly restores the

Table 1 Dynamics of authority arrangements to adjudicate disputes over the results of the regional head elections

| No | Legal basis | Years | Institution |
|----|--|-----------------|--|
| 1 | Article 106 of Law 32/2004 concerning Regional Government | | Supreme Court |
| 2 | Article 1 paragraph (4) of Law number 22 of 2007 concerning General Election Organizers | 19 April 2007 | Constitutional Court |
| 3 | Article 236 of Law Number 12 of 2008 concerning Amendments to Law Number 32 of 2004 concerning Regional Government | 2008 | Constitutional Court |
| 4 | Article 29 of Law 48 of 2009 concerning Judicial Power | 29 October 2009 | Constitutional Court |
| 5 | Constitutional Court Decision 97/2013 | | Canceling article 236c, the Constitutional Court is not authorized to try. |
| 6 | Article 157 of Law Number 1 of 2014 concerning Regional Head Election | | Supreme Court and PT |
| 7 | Article 157 of Law Number 1 of 2015 | | Special Judiciary |
| 8 | Article 157 of Law Number 8 of 2015 Regional Head Election | 18 March 2015 | Special Judiciary |
| 9 | Article 157 of the Law of the Republic of Indonesia Number 10 of 2016 Regional Head Election | July 2016 | Special Judiciary |

Source: Processed from the Kontruksi Hukum Pilkada

legal choice of the regional head election judicial process depending on the legislators.

Third, the constitution guarantees the space to form a unique judiciary through law. Article 24 paragraph (3) of the 1945 Constitution of the Republic of Indonesia states, "Other agencies whose functions are related to judicial power are regulated in law." For these three options, the legislators chose to form a new judicial institution that would adjudicate disputes over the results of the regional head elections. This authority is contained in Article 157 paragraph (1) of the Pilkada Law, which states, "Cases of a dispute over election results are examined and tried by a special judicial body."

The release of the authority to adjudicate disputes over election results from the Constitutional Court to the Special Judiciary Agency certainly raises questions related to the constitutionality of the Regional Head Election and the constitutionality of resolving disputes over the results when the Constitutional Court is no longer trying it. This constitutionality issue arises, at least for several reasons. First, the Regional Head Election is regulated in the Regional Government chapter. The regional head election is in CHAPTER VI Article 18 paragraph (4), not the article that governs the election, namely Article 22 E. It implies that the Regional Head Election is indeed not the regime of the election and is the regime of the regional government. Therefore, regional head elections do not have to be the same as general elections.

The issues related to the constitutionality of holding the Regional Head Election or measuring whether an election can be said to be constitutional or not. If the election (elections for People's Representative Council, Regional Representative Council, Regional People's Representative Council, and President/vice president) can be declared constitutional after fully filling the overflow and fairness principles, then for the regional head elec-

tions, it is not possible to automatically use the overflow and fairness principles as a measuring tool. In provincial government regulations regarding the appointment of governors, regents, and mayors, the principles of overflow and fairness are not used as parameters for filling them out.

Second, the Special Judiciary Agency is not in the constitution. The position given the authority to adjudicate disputes over the results of the simultaneous regional elections is not explicitly mentioned as one of the institutions that exercise judicial power to uphold law and justice. The 1945 Constitution or the 1945 Constitution of the Republic of Indonesia only says the Supreme Court and the judicial agencies under it, General Courts, State Administrative Courts, Military Courts, and a Constitutional Court.

Suppose the Special Judiciary Agency is not explicitly mentioned, or there is no clarity on the position in the constitution. In that case, it will lead to a polemic about the constitutionality of resolving disputes over the results of the Regional Head Elections that are tried by institutions not regulated by the constitution. If the constitutional meaning is that everything must be written in the body, settling disputes over the results of the simultaneous regional elections by the Special Judiciary Agency can be declared unconstitutional. Its authority to adjudicate disputes over the results of the Regional Head Election is only attribution of authority from the law, not the constitution.

Third, the issue of the constitutionality of resolving disputes over the results of regional head elections by the Special Courts Agency is also related to the system of government of the Republic of Indonesia. Several absolute regions cannot carry out several fundamental competencies of the central government. Essential competencies are religion, defense, justice, monetary, and law.

Therefore, in terms of the relationship between the central and regional governments in the field of legal affairs field, the deconcentration

principle, for example, judges at the District Court (Regency/City level judicial institutions) and High Courts (Provincial level judicial institutions) are judges within the Supreme Court (central) assigned to the regions. Local governments should not intervene and regulate the District Courts and High Courts because they are the area of central government's scope of authority or absolute competencing to the unitary state model; it can automatically be concluded that local governments have no right to take care of matters relating to judicial or law enforcement issues, including in terms of disputes over the results of regional head elections. Suppose the Special Judiciary Agency adjudicates a dispute regarding the region's local election results, which is the provincial government's regime. In that case, it will automatically make the Special Courts Agency a judicial institution under the auspices of the regional government regime, even though the regional government is not allowed to intervene in law matters. If the provincial government intervenes in legal affairs, it is contrary to the principle of a unitary state and the division of labor between the central government and local governments.

Fourth, in the draft amendment to the general election law, the People's Representative Council, together with the government, has offered to change the electoral regime in Indonesia. This regime change will further sharpen the constitutionality of resolving disputes over the results of regional head elections. In the design of holding elections in Indonesia, it will be changed into two different regimes from the two currently in effect: the national and local elections. National elections include members of the People's Representative Council, Regional Representative Council, President/Vice President, and Regional People's Representative Council. One is the same as the situation for resolving disputes over the results of regional head elections as regulated in Article 263C of Law 12 of 2008.

the regional head election, action regime previously included in the provincial government regime, will be transferred to be part of the local election regime with the Regional People's Representative Council. This regime change impacts an impact on the resolution of disputes over election results. Suppose the regional head election has become an integral part of the regime with the Regional People's Representative Council election. In that case, the provincial head election will automatically enter the general election provincial. When the regional head election is entered into the general election regime (Election), it will automatically create less in resolving disputes over the election results. Namely, suppose the regional head election is included in the local election regime together with the election of the Regional People's Representative Council members. In that case, the settlement of disputes over the election results must also be paid with the payment of disputes over the results of the election of the Regional People's Representative Council members, which is submitted to the Constitutional Court. It is because the Constitutional Court is an institution that adjudicates disputes over the results of the general election, which includes the election of members of the People's Representative Council, Regional Representative Council, President/Vice President, and Regional People's Representative Council. One is the same as the situation for resolving disputes over the results of regional head elections as regulated in Article 263C of Law 12 of 2008.

However, suppose the authority to adjudicate disputes over the results of the regional head elections is handed back to the Constitutional Court. In that case, this is contrary to the Constitutional Court's decision number 97/PUU-XI/2013, which explicitly states that the Court is not authorized to adjudicate claims of disputes over the results of regional head elections. This means that the Constitutional Court no longer has a constitutional basis for adjudicating disputes over the results of regional head elections.

On the other hand, the authority to adjudicate disputes over the results of the Regional Head Elections will still be given to the Special Judiciary Agency as mandated by Article 157 of Law 10/2016. The problem is related to the design of the general regime, when the regional Head Election becomes an integral part of the local election regime along with the election of the Regional People's Representative Council members, the separation of authority to adjudicate disputes over the results of the election of the Regional People's Representative Council members and regional heads becomes less precise. This is because if the electoral regime has become a single unit, then, in essence, the settlement must also be a unitary institution as in the national election where disputes over the election results for members of the People's Representative Council, Regional Representative Council, and the President/Vice President are tried by the same judicial institution, namely the Constitutional Court.

Therefore, the certainty of the constitutionality status of the settlement of disputes over the election results must be immediately concreted. Concreted in this context is how the authority to adjudicate cases of disputes over the results of the Regional Head Elections is normed in the constitution. The normalization of the body will end the debate on the constitutionality of the Regional Head Elections and the position of the Special Judiciary Agency. The norm includes at least two things. First, the Special Judiciary Agency must be mentioned as one of the judicial powers along with the Supreme Court and the Constitutional Court. By referring to the Special Judiciary Agency as one of the judicial powers that carry out the enforcing enforcement law and justice, even though it is named "the" Agency," it has the authority to enforce the law or pro-Justicia rule. So far, "Agency" has always been defined as an institution that does not have a pro-Justicia author; the results of its work are always recommendations, such as the Supreme Audit Agency.

Second is the certainty of the position of Pilkada in the constitution. The confidence of the part of the Regional Head Election is about its work, including the regional government regime or general election. This is important because when the Regional Head Election is not explicitly confident to be part of the electoral authority, it has been provided postwork including practical level. In the regime of Law No. 32 of 2004 to Law 12 of 2008, the Regional Head Election is included in the General Election regime because the dispute resolution of authority of the Pilkada is tried by the Supreme Court. However, after five powers of the Constitutional Court adjudicating cases of disputed results, the constitutional Court released this authority to the Supreme Court tried the dispute resolution of the results of the Pilkada regional Head Election was officially removed from the electoral regime.

Therefore, with the certainty of norms regarding the Regional Head Election and the Special Judiciary Agency in the constitution, the position on the constitutionality of its as a man removed of the implementation of people's sovereignty or constitutional democracy in the Republic of Indonesia will no longer be a problem.

4. Conclusion

The authority to settle disputes constitutionally by the Special Judiciary Agency has caused uncertainty in its constitutionality aspect, considering that it is not a judicial institution explicitly regulated in the constitution. In addition, the institution that has the function as guardian of the body is the Constitutional Court so that when disputes over the results of the Regional Head Elections longer tried by the Constitutional Court, the certainty of the constitutionality of the settlement of disputes over the body the Regional Head Election increasingly as the Constitutional Court no longer try disputes over the results of the Regional Head Elections Judiciary Agency in the 1945

Constitution of the Republic of Indonesia is a necessity. The normalization of the Special Judiciary Agency in the constitution can also anticipate the occurrence of debates related to the regional head election, which is re-designed into the local general election regime along with the election of members of the Regional People's Representative Council. The constitutionality of the judiciary's authority can be guaranteed if planes ple's Consul Assembly Assembly, as the institution authorized to amend the 1945 Constitution of the ReIndonesiaof Indones, concretely normalizes the tcourtary that will adjudicate disputes over the results of the Regional Head Elections in the amendments to the 1945 Constitution of the Republic of Indonesia.

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