

CHAPTER I

INTRODUCTION

A. BACKGROUND

Direct of local election (pemilukada) in Indonesia has become a national political consensus among political parties and government.¹ The direct local election is conceptually one of the important instrument in strengthening local autonomy in Indonesia. Since the enactment of Law No. 32 of 2004 about Local Government,² the implementation of direct local election have been held,³ there were 497 direct local election have done.⁴ Of 497 direct local elections that have been conducted, there were 440 dispute registered in Constitutional Court, and 392 have been decided.⁵

Based on the data, the number of Local Election disputes are quite many, while the number of Constitutional Court justices are only nine and they have to decide the disputes over result of local election within 14 days. It means that the role of Constitutional Court to settle the local election disputes could be questioned, whether the Court is able to settle the dispute effectively.

¹Eko Prasajo, et. al, 2006, *Desentralisasi & Pemerintahan Daerah: Antara Model Demokrasi Lokal & Efisiensi Struktural*, Jakarta, p. 40

²See article 24 point 5

³The first local election was held in Kutai Kartanegara on June 1st, 2005

⁴The data was taken from <http://www.depdagri.go.id/basis-data/2010/01/28/daftar-provinsi> downloaded on Saturday, April 7th, 2012 at 02.45 pm.

⁵Mahfud: *Hampir Seluruh Pilkada Berbuntut Sengketa*, retrieved from <http://nasional.kompas.com/read/2012/01/21/00040684/Mahfud.Hampir.Seluruh.Pilkada.Berbuntut.Sengketa>. Accessed on January 26th, 2012 at 12.35 pm.

Furthermore, based on the Constitutional Court's Regulations Number 15 Year 2008 about manual of procedure explains that the procedure of dispute settlement of local election is similar with the procedure of president and vice president's general election. The similarity is especially related to the proposal that have to register to the Constitutional Court within 3 days deadline after official announcement by the Local Election Commission. Yet, in fact, some petitioners come from provinces or district which are located far from Jakarta, where the Constitutional Court is located, for instance from Papua and Aceh that has limit time preparing the proposal bring to the Constitutional Court.

The problems of the effectiveness of the local election dispute settlement in the Constitutional Court are still lot of debate. There are two parties who agree and disagree. The problem is whether the local election disputes can be settled by the Constitutional Court or not accordance with easy, quick, and low cost. Constitutional law expert, Saldi Isra said that "When the local head elections bring to the high court so it would be closer where the events and political actors in the local elections. It would lead to higher tensions in the local." According to him, the distance away of the petitioner and the defendant may prevent the presence of the supporters of the local head candidates to Jakarta so that the tension between supporters can be minimized."⁶

⁶Penyelesaian Pilkada di Pengadilan Tinggi Bisa Timbulkan Konflik, retrieved from <http://www.suarakarya-online.com/news.html?id=257126>, accessed on February 16th, 2012 at 1.13pm

While according to Minister of domestic affair, Gumawan said that "It would be simpler if it could be completed local, the cost is much cheaper," it is far more cost-effective compared with the handling of the case in the Constitutional Court."⁷

Based on the above background, this research is going to analyze the role of the Constitutional Court in dispute settlement over the result of local election in the Constitutional Court.

B. RESEARCH QUESTION

How is the role of the Constitutional Court in deciding disputes over the result of local election?

C. OBJECTIVE OF RESEARCH

To know the role of the Constitutional Court on resolving disputes over the result of the local election disputes in Indonesia.

D. BENEFITS OF RESEARCH

1. Theoretically

The benefits of the proposal is to increase the knowledge about the role of the Constitutional Court in deciding disputes over the result of local election.

⁷Mendagri: Sengketa Pilkada Lebih Efisien Ditangani Pengadilan Tinggi, retrieved from <http://www.investor.co.id/home/mendagri-sengketa-pilkada-lebih-efisien-ditangani-pt/24700> accessed on february 16th, 2012 at 1.30pm

2. Practically

The paper aims at explaining science to the general public about the local election dispute settlement in the Constitutional Court. This study will provide legal awareness among society, government, academic and law enforcement officials related to the local election disputes that can be resolve the dispute accordance with the provisions.