

Disqualification of the Candidate Pair for the Elected Regional Head of Sabu Raijua Regency

Irfan Amir

Lecturer at State Institute of Islamic Studies of Bone

Email: irfanamir066@gmail.com

Abstract

The dispute over the results of the regional head election of Sabu Raijua Regency which is legally formal has passed the deadline for submitting a dispute request (expired). Through the Constitutional Court Decision No. 135/PHP.BUP-XIX/2021, cancels KPU's decision regarding the determination of the elected pairs of candidates for Regent and Deputy Regent and orders a re-election and disqualification of the elected candidate pair. This research is normative juridical research (doctrinal law research) using a statutory approach and a case approach. The data obtained were analyzed and presented descriptively analytically. The finding in this study indicates that, the basis for the consideration of the Constitutional Court in ordering a re-election and disqualifying the chosen pair chosen by the people of Sabu Raijua Regency, is based on the legal fact that the violation of the principle of 'honest' from the Orient Patriot Riwu Kore pair who from the beginning of the registration stage the prospective candidate pair hides the United States citizenship status he holds, which if this foreign citizenship status is known from the beginning, then administratively does not qualify as a candidate pair. In addition, the election dispute for Sabu Raijua Regency is specific and casuistic which creates a legal need and vacuum, and if it is not acted upon, in principle it has violated the exclusive rights of citizens in government guaranteed by the 1945 Constitution.

Sengketa perselisihan hasil pemilihan kepala daerah Kab. Sabu Raijua yang secara yuridis formal telah melewati tenggat waktu pengajuan permohonan sengketa perselisihan (daluwarsa). Melalui Putusan MK No. 135/PHP.BUP-XIX/2021, membatalkan keputusan KPU terkait penetapan pasangan calon Bupati dan Wakil Bupati terpilih dan memerintahkan untuk dilakukan pemungutan suara ulang dan mendiskualifikasi pasangan calon terpilih. Penelitian ini merupakan penelitian yuridis normatif (penelitian hukum doctrinal) dengan menggunakan pendekatan perundang-undangan dan pendekatan kasus. Data yang diperoleh dianalisis dan disajikan secara deskriptif analitis. Temuan dalam penelitian ini menunjukkan bahwa, dasar

Disqualification of the Candidate Pair for the Elected Regional...

Irfan Amir

DOI: 10.35673/al-bayyinah.v4i2.1830

pertimbangan Mahkamah Konstitusi dalam memerintahkan pemungutan suara ulang dan mendiskualifikasi pasangan terpilih pilihan rakyat Kab. Sabu Raijua, didasari adanya fakta hukum bahwa pelanggaran terhadap prinsip/asas 'jujur' dari pasangan Orient Patriot Riwu Kore yang sedari awal tahap pendaftaran bakal pasangan calon menyembunyikan status kewarganegaraan Amerika Serikat yang dipegangnya, yang seandainya status kewarganegaraan asing ini diketahui dari awal, maka secara administratif tidak memenuhi syarat sebagai pasangan calon. Selain itu, sengketa pemilihan Kab. Sabu Raijua bersifat spesifik dan kasuistis yang menimbulkan kebutuhan dan kekosongan hukum, dan apabila dibiarkan maka secara prinsipil telah melanggar hak eksklusif warga negara dalam pemerintahan yang dijamin oleh UUD 1945.

Key words: *Disqualification; elected candidates; district head; re-election.*

Introduction

Speaking of regional head elections (Regional Head Election), in essence it is a means of people's participation in an area in determining the direction of government administration. Therefore, local elections as a means of competitive power struggle must be carried out and carried out based on the principles (principles) of organizing elections, namely direct (*langsung*), general (*umum*), free (*bebas*), confidential (*rahasia*), honest (*jujur*) and fair (*adil*) (LUBER and JURDIL). This *Luber* and *Jurdil* principles, not only binding on the General Elections Commission (KPU) and The General Election Supervisory Agency (Bawaslu) as election organizers, but also binding on other main election actors, ranging from voters as voting rights holders, political parties, and regional head candidate pairs as election participants, both candidate pairs promoted by political parties or coalitions of political parties, as well as candidate pairs who join through individual channels.

However, it is undeniable that the Regional Head Election as a means of grabbing local elite power, whether held during normal times or during the Covid-19 pandemic, will in fact never escape various forms of violations that can result in disputes over election results. The argument is not without reason, data and facts show that in the midst of the Covid-19 pandemic, of the 270 regions that have held the Regional Head Election in 2020, at least 4,250 alleged violations were recorded during the Regional Head Election. Some of these violations come from direct findings from Bawaslu or reports from the public. Violations stemming from Bawaslu's findings were 3,194 violations and 1,056 other violations were reports

Disqualification of the Candidate Pair for the Elected Regional...

Irfan Amir

DOI: 10.35673/al-bayyinah.v4i2.1830

from the public.¹ As for election disputes, especially those related to disputes over election results to regions, in reality when compared to disputes over the results of the previous election (Regional Head Election in 2018), election disputes in 2020 experienced a significant increase, which is four times that of the previous Regional Head Election disputes.

The official website of the Constitutional Court stated that of the 270 regions holding elections in 2020, there were 150 registered election results disputes. Consisting of 22 cases that were granted, 100 cases were not accepted, 13 cases were rejected², 7 cases were withdrawn, 2 cases were rejected, and 2 cases were outside the jurisdiction of the Constitutional Court to adjudicate.³ Of the 22 cases that were granted, the Constitutional Court ordered that a re-election (Pemungutan Suara Ulang/PSU) be conducted on 16 cases, one of which was a case related to the election dispute in Sabu Raijua Regency. The Constitutional Court ordered a re-election (PSU) in all polling stations (Polling stations) in Sabu Raijua Regency with the provision that the selected pair of candidates (candidate number (2) Orient Patriot Riwu Kore and Thobias Uly) was disqualified by the Constitutional Court.

If examined further, the basis for the consideration of the Constitutional Court in ordering a re-election and disqualifying the elected candidate pair chosen by the people of Sabu Raijua, was not due to the findings of structured, systematic, and massive violations. Even if seen with the naked eye, the Regional Head Election for Sabu Raijua Regency has been a success. This can be seen and traced from every stage of the election, starting from determining who is eligible to vote (determination of the Permanent Voter List/DPT), determining the list of candidate pairs for Regent and Deputy Regent, campaign implementation, voting, vote counting, to the determination of KPU regarding the results of the recapitulation of the calculation of the vote acquisition for the Sabu Raijua Regency election which was won by the Candidate Pair Number (2) namely Orient Patriot Riwu Kore and Thobias Uly. Likewise, regarding the election results, after KPU established the Orient Patriot Riwu Kore and Thobias Uly as the elected candidate pairs, Candidate Pair Number (1) Nicodemus N. Rihi Heke, M.Si and Yohanis Uly

¹Farisa, Fitria Chusna, Kompas.com, source: <https://nasional.kompas.com/read/2020/12/17/21573191/ada-4250-dugaan-pelanggaran-bawaslu-pilkada-belum-seperti-yang-kita-harapkan?page=all>, accessed on August 28, 2021.

²The decision of the Constitutional Court is (1) the application cannot be accepted, if the applicant and/or his application does not meet the formal requirements of the application (2) the application is rejected, if the application meets the formal requirements and the principal of the application has no legal basis, or the application is partially or completely granted, if the application fulfills the formal requirements and the principal of the application is grounded according to law in part or in whole.

³Constitutional Court of the Republic of Indonesia.

Disqualification of the Candidate Pair for the Elected Regional...

Irfan Amir

DOI: 10.35673/al-bayyinah.v4i2.1830

Kale and Candidate Pair Number (3) Ir. Taken Radja Pono, M.Si and Herman Hegi Radja Haba, M.Si neither of the two pairs of candidates objected and filed a dispute over the election results at the Constitutional Court until the specified time limit, namely the dispute over the election results was submitted to the Constitutional Court no later than three working days after KPU announced the determination of the vote acquisition result.⁴

However, the political constellation changed before the elected candidate pair was sworn in by the Ministry of Home Affairs. Even though the time limit for submitting a dispute has expired and the object of the dispute does not meet the requirements for the maximum 2% difference in votes, Candidate Pair Number (3) Ir. Taken Radja Pono, M.Si and Herman Hegi Radja Haba, M.Si continue to file a dispute over the election results to the Constitutional Court with the argument "foreign citizenship status of the Orient Patriot Riwu Kore" as well as a violation of the exclusive rights of citizens to occupy government political positions that should be protected by the state. For example, in the case of the position of Minister of Energy and Mineral Resources in the Jokowi era, Yusuf Kalla, which was initially filled by Archandra Tahar, who was appointed and then after a few weeks was honorably dismissed because he had a foreign passport.⁵

Seeing the legal issues that arise in the dispute over the election results of Sabu Raijua Regency which are different from other election disputes that have occurred, this study intends to study further and examine the *ratio decidendi* of the Constitutional Court in deciding the dispute over the election of Sabu Raijua Regency, the submission of the dispute application legally has expired, and also does not meet the requirements for the object of the case, namely the dispute over the new election results can be submitted to the Court if there is a difference of at most 2% of the total valid votes from the final stage of vote counting determined by the Regency KPU. However, the Court overruled this provision and the application for dispute over the election of Sabu Raijua Regency was still examined, tried, and decided by the Constitutional Court's decision Number 135/PHP.BUP-XIX/2021 and ordered a re-election (PSU).

Methodology

This research is a type of normative legal research using a statutory approach and a case approach, namely examining, and analyzing the Constitutional Court

⁴Article 157 Paragraph (5) of Law 10 of 2016 as well as Article 7 Paragraph (2) and Article 9 Paragraph (7) of the Regulation of the Constitutional Court Number 6 of 2020 concerning Procedures in cases of disputes over the results of the election of Governors, Regents, and Mayors.

⁵Kurniawan, M. B. (2018). Penggunaan Diskresi dalam Pemberian Status Kewarganegaraan Indonesia terhadap Archandra Tahar ditinjau dari Asas Pemerintahan yang Baik. *Jurnal Penelitian Hukum p-ISSN, 1410, 5632.*

Disqualification of the Candidate Pair for the Elected Regional...

Irfan Amir

DOI: 10.35673/al-bayyinah.v4i2.1830

Decision Number 135/PHP.BUP-XIX/2021 regarding the dispute over the results of the Regional Head Election in Sabu Raijua Regency. The analysis was carried out on secondary data obtained from library research, which consisted of primary legal materials and secondary legal materials. Primary legal materials such as legislation on Regional Head Elections and legislation on citizenship. Secondary legal materials, consisting of the results of previous studies, books, and journals related to the Regional Head Election. The data obtained were then analyzed and presented analytically descriptive.

Discussion

In the midst of the government's efforts to control the spread of Covid-19 through Large-Scale Social Restrictions (PSBB), on one hand, we are also faced with the Regional Head Election stage which reached its peak on December 9, 2020. The 2020 Regional Head Elections will be held simultaneously in 270 regions, consisting of 9 provinces, 224 regencies, and 37 cities in Indonesia. In line with the PSBB policy, KPU together with the Government and DPR initially agreed to stop every stage of the ongoing Regional Head Election. However, this attitude is only temporary. Through the Government Regulation in Lieu of Law (Perppu) Number 2 of 2020, the government emphasizes that it will continue to carry out each stage of the Regional Head Election that is pending, provided that each stage is carried out in accordance with strict health protocols. This Perppu also serves as a legal umbrella for the postponement of voting day. Initially, it was scheduled for September, then it was postponed to December 9, 2020. The government argued that the Perppu was issued amid the high number of spread and deaths due to Covid-19⁶ based on the consideration that regional heads are the spearhead of controlling Covid-19 in their respective regions, so the Covid-19 pandemic, which is uncertain when it will end, should not only be handled by Temporary Officials (PJS) whose scope of authority is limited. Therefore, the 270 positions of regional heads must be filled and held by definitive officials who have strong legitimacy from the people in their respective regions through vote support in the Regional Head Election.

⁶The Corona Virus Disease 2019 (Covid-19) pandemic that hit most countries in the world, has caused many deaths. At least in 2020, as of May 27, there were 5,716,621 people infected with the Covid-19 virus with a death toll of 352,956. In Indonesia, as one of the countries affected by Corona Virus Disease 2019 (Covid-19), in 2020 the death rate due to Covid-19 has reached 1,473 people from 23,851 confirmed cases. There was an increase in the death rate, which initially on May 4, 2020 (when the Perppu was ratified) the confirmed number of Covid-19 was 11,587 people with 864 deaths. Source: <https://www.worldometers.info/coronavirus/>, accessed on August 8, 2021 and <https://covid19.go.id/p/berita/infografis-covid-19-4-mei-2020> accessed on August 17, 2021.

Disqualification of the Candidate Pair for the Elected Regional...

Irfan Amir

DOI: 10.35673/al-bayyinah.v4i2.1830

Among the 270 regional heads whose term of office ended, and re-election was held, were the positions of Regent and Deputy Regent of Sabu Raijua Regency. In plain view, the implementation of the Regional Head Election for Sabu Raijua Regency has actually run successfully as explained at the beginning that after KPU announced the results of the recapitulation of election votes, none of the two losing pairs of candidates objected to the results of the recapitulation of KPU votes and submitted a dispute over the results of the Sabu Raijua Regency election to the Constitutional Court until the specified time limit, namely the dispute over the election results was submitted to the Constitutional Court no later than three working days after KPU announced determination of the voting results of the election.⁷

A new legal issue arises and becomes public attention when all stages of the Regional Head Election have been completed and the selected candidate pairs have been proposed to the Ministry of Home Affairs for inauguration. The citizenship status of the Orient Patriot Riwu Kore as the winner in the Regional Head Election of Sabu Raijua Regency is in the public spotlight. This issue is no longer local but has become a national issue. In addition to having Indonesian citizenship, the Orient Patriot Riwu Kore is also known to have the status of a citizen of the United States. In fact, Indonesia as a sovereign legal state does not adhere to dual citizenship (dual citizenship/bipartite), so that in principle he does not meet the requirements to become a candidate in the Regional Head Election or to occupy a public office. And of course, in the perspective of the constitution, being passed as a candidate pair for the election, clearly violates the exclusive rights of citizens as stipulated in the 1945 Constitution which guarantees that every citizen (not every person) has the same position in law and government and has the right to have equal opportunities in the government, vide Article 27 Paragraph 1 and Article 28 D Paragraph (3) of the 1945 Constitution. This provision is then further elaborated and confirmed in the law, one of which is the Regional Head Election law that candidates for regional heads must be Indonesian citizens.⁸

The disclosure of the United States citizenship status held by Orient Patriot Riwu Kore through a reply letter from the Consul General of the United States Embassy in Indonesia as of February 1, 2021⁹ then creates a legal vacuum in its resolution. This is because all stages of the Regional Head Election have been

⁷Article 157 Paragraph (5) of Law 10 of 2016 as well as Article 7 Paragraph (2) and Article 9 Paragraph (7) of the Regulation of the Constitutional Court Number 6 of 2020 concerning Procedures in cases of disputes over the election results of Governors, Regents, and Mayors.

⁸Article 7 Paragraph 1 of Law no. 10 of 2016.

⁹In response to the letter from Bawaslu Sabu Raijua Regency number 136/K. Bawaslu-SR/HK.00.021/IX/2020 regarding United States Citizenship Status of Orient Patriot Riwu Kore.

Disqualification of the Candidate Pair for the Elected Regional...

Irfan Amir

DOI: 10.35673/al-bayyinah.v4i2.1830

carried out so that disputes over the election process and disputes over the Election State Administration can no longer be reached through the Bawaslu of Sabu Raijua Regency and the State Administrative Court (PTUN). Likewise with the settlement of disputes over the results of the post-conflict local election which is the scope of the authority of the Constitutional Court, formally juridical can no longer be submitted because it has expired, and the object of the case does not meet the requirements. However, because the legal issue of the Regional Head Election for Sabu Raijua Regency is principled and different from the previous post-conflict local election disputes, the Constitutional Court overruled this provision.

The Authority of the Constitutional Court in the Settlement of Disputes on the Results of the Regional Head Election

Historically, the birth of the Constitutional Court in Indonesia cannot be separated from various constitutional law issues that arise in the dynamics of the life of the nation and state. And these legal issues require a legal forum (legal court) to handle them, not a political forum (political court) where decisions are made based on the majority vote of the people's representatives (voting). Therefore, referring to the practice in several countries that form special courts outside of the Supreme Court whose special authority is to handle constitutional cases, on August 13, 2003, Indonesia officially established the Constitutional Court of the Republic of Indonesia. The accommodation of the idea of the Constitutional Court in the Indonesian constitutional system can be seen from two sides, namely the legal and political side.

From a legal perspective, the birth of the Constitutional Court is an implication of the amendment to the 1945 Constitution which no longer adheres to the supremacy of the MPR (People's Consultative Assembly), but adheres to the notion of constitutional supremacy, which emphasizes that sovereignty rests with the people and is implemented according to the Constitution. Indonesia is a democratic legal state, or a democratic state based on the laws of Article 1 Paragraph (2) and Paragraph (3) of the 1945 Constitution after the third amendment. From the perspective of state politics, the power to make laws is in the hands of the DPR together with the President, therefore laws as the basis for state administration should not be used as a means of legitimizing the tyranny of the majority of the people's representatives and the president who are directly elected by the people. This is important to understand because it has a direct connection with the presence of the Constitutional Court which aims to balance the law-making powers of the House of Representatives and the President, which are usually laws passed based on the shared political interests of the majority of the people's representatives who control the legislature, so that minority rights are often

Disqualification of the Candidate Pair for the Elected Regional...

Irfan Amir

DOI: 10.35673/al-bayyinah.v4i2.1830

ignored or even violated.¹⁰ Therefore, to protect the rights and interests of every citizen, the Constitutional Court is given the authority to examine the constitutionality of laws against the 1945 Constitution. In addition to this authority, the Constitutional Court is given other powers, namely, to examine, listen and decide on Disputes on the Authority of State Institutions (SKLN) whose authority is given by the Constitution, to decide on the dissolution of political parties and to decide disputes over the results of the general election. The Constitutional Court is also obliged to examine, listen, and decide on the opinion of the DPR on alleged violations of the law committed by the President and/or Vice President or that the President and Vice President no longer meet the requirements as President and/or Vice President as stated in Article 10 Paragraph 1 of the Constitutional Court Law.

As described above, one of the powers of the Constitutional Court is to decide disputes over general election results. With reference to the provisions of the 1945 Constitution Article 22 E Paragraph 2, which are classified into the electoral legal regime are the election of the president and vice president, the election of candidates for members of the DPR, Provincial DPRD, Regency/Municipal DPRD as well as the election of candidates for members of the Regional Representative Council (DPD). Meanwhile, the Regional Head Election which is emphasized in Article 18 Paragraph 4 of the 1945 Constitution is not included in the electoral law regime but is classified into the regional government legal regime which is further regulated in the Regional Government Law. So that at first it was not called the General regional head election General regional head election (pemilukada), but the Regional Head Election (pilkada).

In line with Law No. 22 of 2007, in 2008 it was the turn of the Law on Regional Government to be revised. In the revision of the Regional Government Law, one of the provisions ordered that the handling of disputes over the results of the Regional Head Election and deputy regional heads be transferred to the Constitutional Court. This transfer of authority is carried out no later than 18 (eighteen) months after Law no. 12 of 2008 was promulgated.¹¹ With these two provisions, the scope of authority of the Constitutional Court in dealing with disputes over the results of the general election is expanded, namely handling disputes over the results of the Regional Head Election. The expansion of this authority indicates two things, namely that the Regional Head Election is within the scope of the general election regulated in Article 22 of the 1945 Constitution,

¹⁰Konstitusi, T. P. H. A. M. (2010). *Hukum Acara Mahkamah Konstitusi*. Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi.

¹¹Article 236 C of Law no. 12 of 2008 concerning amendments to Law no. 32 of 2004 concerning Regional Government.

Disqualification of the Candidate Pair for the Elected Regional...

Irfan Amir

DOI: 10.35673/al-bayyinah.v4i2.1830

because from the beginning of the establishment of the Constitutional Court only election disputes were the authority of the Court. Second, the Constitutional Court, apart from being the guardian of the constitution, also carries out its function as the guardian of democracy. In guarding democracy, the Constitutional Court is the final decision-maker on election disputes whose decisions do not only concern the candidates who are competing, but determine the fate of the people and democracy, especially in areas where elections are held.

In its development, the expansion of the authority possessed in fact had a negative impact on the dignity of the Constitutional Court. The high volume of disputes over the results of the Regional Head Election has kept the Constitutional Court busy in examining disputes over the results of the Regional Head Election rather than cases of judicial review. The high number of disputes over election results has made former Chief Justice of the Constitutional Court Akil Mochtar fall into the vortex of corruption over the results of the General regional head election General regional head election (pemilukada).

Five years after being given the authority to handle disputes over the results of the post-conflict local election, the Constitutional Court through its decision Number 97/PUU XI/2013, canceled this authority.¹² Therefore, after the decision of the Constitutional Court No. 97/PUU/XI/2013, the Constitutional Court should no longer have the authority to decide disputes over the results of the Regional Head Election, and in line with this, through Law Number 10 of 2016 a special judicial body will be established to settle disputes over election results. But the fact is, until the 2020 simultaneous Regional Head Elections, the special court in question has not yet been formed, so based on the provisions of Article 157 Paragraph 3 of Law no. 10 of 2016, the authority to decide disputes over the determination of the results of the Regional Head Election is still temporarily handled by the Constitutional Court until a special judicial body is formed.

Regional Head Election Results Dispute Resolution Mechanism

Upholding the constitution and guarding democracy, the Constitutional Court in its authority as one of the executors of judicial power has its own procedural law that is adapted to its uniqueness as a constitutional court. The provisions of the procedural law of the Constitutional Court are regulated in Chapter V of the Constitutional Court Law and are divided into two parts, namely general procedural law, and special procedural law. The general procedural law contains provisions of a general nature, namely those related to the trial, the terms

¹²Samsul, I. (2014). SENGKETA PEMILIHAN KEPALA DAERAH PASCA PUTUSAN MK: KEWENANGAN SIAPA? *Info Singkat Bidang Hukum*, 6(10), 1-4.

Disqualification of the Candidate Pair for the Elected Regional...

Irfan Amir

DOI: 10.35673/al-bayyinah.v4i2.1830

of the application and regarding the verdict of Article 28 to Article 49 of the Constitutional Court Law. While the special procedural law, which is more detailed, regulates who is the applicant, the respondent, the object of the case and the decision that is adjusted to the specificity of the types of cases that are the authority of the Constitutional Court itself. (Albab, 2018) One of them is the procedural law relating to disputes over general election results (PHPU) which is regulated in Article 74 to Article 79.

Furthermore, for the smooth implementation of its duties and authorities, the Constitutional Court can further regulate the necessary matters (vide Article 86), namely through the Regulation of the Constitutional Court (PMK). The existence of provisions as stipulated in Article 86 of the Constitutional Court Law, aims to fill the possibility of deficiencies or vacancies in the procedural law of the Constitutional Court. For example, in order to support the duties and authority of the Constitutional Court to examine disputes over the results of the Regional Head Election, which previously was not part of its authority, the Constitutional Court issued Constitutional Court Regulation (PMK) No. 6 of 2020 concerning the procedure for disputes over results. Regional Head Election.

In the PMK, it is explained that what is meant by dispute over the results of the election (Regional Head Election) is a dispute that arises between election participants and the Provincial KPU/KIP (Election Independent Commission) or KPU/KIP regarding the determination of the vote acquisition results from the election. The object of the dispute is the Decision of the Provincial KPU/KIP and/or Regency KPU/KIP regarding the vote acquisition results that are significant and may affect the determination of the elected candidate. If we trace the various decisions of the Constitutional Court that have been decided before, the object of the dispute over the results of the Regional Head Election gets an expansion, namely:

1. The results of the vote count determined by the Provincial KPU/KIP or Regency/Municipal KPU/KIP that affect:
 - a. Determination of candidate pairs who can participate in the second round of the Regional Head Election; or
 - b. The election of candidate pairs as regional heads and vice regional heads
2. Regional Head Election process that affects the vote acquisition of candidate pairs due to systematic, structured, and massive election violations that are carried out before, during and after voting. These violations do not only occur during voting, so the problems that occur must be traced to events that occurred before the voting.

Disqualification of the Candidate Pair for the Elected Regional...

Irfan Amir

DOI: 10.35673/al-bayyinah.v4i2.1830

3. Violations of the provisions of laws and regulations in the Regional Head Election process that affect the vote acquisition and vote count results can also be considered as part of the General regional head election dispute, including the requirements for candidates for regional heads or vice regional heads.

In addition to the object of the dispute which needs to be understood by the candidate pair as the applicant for the dispute, it is also necessary to know, understand and remember that no matter how good the arguments and evidence presented by the applicant in his application, the Court will not be examined by the Court if it has passed the deadline for submitting the application, that is, the applicant must register his/her application at the Constitutional Court no later than three working days as of KPU/Provincial KIP or Regency/Municipal KPU/KIP announcing the results of the election. Then, the question is what about the dispute over the results of the Sabu Raijua District General regional head election, which legally has exceeded the deadline for submitting a dispute and the object of the case does not meet the requirements for filing a dispute at the Constitutional Court?

***Ratie Decidendi* of the Constitutional Court in Protecting the Exclusive Rights of Citizens in Disputes over the Results of the Regional Head Election of Sabu Raijua Regency.**

The dual citizenship status of the Orient Patriot Riwu Kore has only become a polemic, after his victory in the Regional Head Election contestation in Sabu Raijua Regency. In addition to having Indonesian citizenship, the Orient Patriot Riwu Kore is also suspected of having the status of a citizen of the United States. In fact, Indonesia as a sovereign legal state does not adhere to the principle of dual citizenship (bipartite).¹³ The existence of a foreign citizenship status held by the Orient Patriot Riwu Kore, principally does not meet the requirements to become a candidate in the Regional Head Election and violates the exclusive rights of citizens as stated in the constitution which guarantees that every citizen (not everyone) has the same position under the law. and government and have the right to have equal opportunities in the government as seen in Article 27 Paragraph 1 and Article 28 D Paragraph (3) of the 1945 Constitution. This provision is then elaborated and

¹³As the provisions in Article 6 Paragraph 1 of Law 10 of 2016 regulates related to the possibility of dual citizenship status (the principle of limited citizenship), According to him, children who have dual citizenship after 18 years of age or are married must state that they choose one of their nationalities.

Disqualification of the Candidate Pair for the Elected Regional...

Irfan Amir

DOI: 10.35673/al-bayyinah.v4i2.1830

confirmed in the Regional Head Election Law that candidates for regional heads must be Indonesian citizens.¹⁴

However, the dishonesty of the Orient Patriot Riwu Kore regarding his United States citizenship status was covered up from the registration stage of the candidate pair until the determination of the chosen candidate and was only revealed after a reply letter from the Consul General of the United States Embassy in Indonesia as of February 1, 2021.¹⁵ This condition creates a deadlock and legal vacuum in its resolution. This is because all stages of the Regional Head Election have been carried out so that disputes over the election process and electoral state administrative disputes can no longer be reached through the Bawaslu of Sabu Raijua Regency and the State Administrative Court (PTUN). Likewise with the settlement of election results disputes which are the additional scope of authority of the Constitutional Court, formally juridical can no longer be submitted because they have expired, three working days have passed after the Sabu Raijua Regency KPU stipulates the recapitulation of the vote count results. Likewise with the Ministry of Home Affairs, which did not take a stand and seemed to be waiting for the decision of the Constitutional Court.

By looking at the legal issues of the election of Sabu Raijua Regency which are principal and different from the Regional Head Election disputes that have occurred, this becomes the basis and reason for the Candidate Pair Number (3) Ir. Taken Radja Pono, M.Si and Herman Hegi Radja Haba, M.Si continue to dispute it and file a dispute over the election results of Sabu Raijua Regency to the Constitutional Court which legally, the application has expired, after the deadline for submitting a dispute over the election results as stipulated in the PMK No. 6 of 2020.

Understanding the formal procedural application that has expired, in his application the applicant tries to convince the Court to give special treatment in examining disputes in order to realize substantive justice and override procedural justice related to the requirements for filing a dispute application both from the time of filing the application and from the requirement for the percentage of difference in votes that can be submitted. dispute in the Court. Therefore, the candidate pair Number (3) postulates that first: filling in government/state positions must be filled by citizens, not foreign nationals because this is an exclusive right of citizens that has been guaranteed by the constitution, vide Article 27 Paragraph 1 and Article 28 D. Paragraph (3) of the 1945 Constitution which

¹⁴Article 7 Paragraph 1 of Law no. 10 of 2016

¹⁵In response to the letter from Bawaslu Sabu Raijua Regency number 136/K. Bawaslu-SR/HK.00.021/IX/2020 regarding the United States Citizenship Status of Orient Patriot Riwu Kore

Disqualification of the Candidate Pair for the Elected Regional...

Irfan Amir

DOI: 10.35673/al-bayyinah.v4i2.1830

explicitly states that "citizens" (not everyone) and further elaborated in the Regional Head Election Law (Vide Article 7 Paragraph 1 of Law 10 of 2016) which from the outset indeed, the elected candidate pair Orient Patriot Riwu Kore and Tobias Uly did not meet the requirements as a candidate pair to participate in the election.

Second, Article 22 E Paragraph 1 also emphasizes that every general election must be held based on the principles of Direct, General, Free, Confidential, Honest and Fair (Luber-Jurdil), as well as Regional Head Elections which adopt the Luber-Jurdil principle. In the case of the General regional head election (pemilukada) of Sabu Raijua Regency, the dishonesty of the Orient Patriot Riwu Kore regarding his citizenship status is a violation of the "honest and fair" principle. The principle of honesty does not only bind election organizers, government officials, election supervisors and election observers. However, all relevant parties including voters and election participants must act honestly. So that the election is not infiltrated by various forms of engineering and manipulation that can benefit one party and harm the other, such as engineering the administrative requirements of prospective participants. Likewise, the applicable mechanisms and procedures must be carried out fairly so that every voter and election participant gets the same treatment and is free from fraud from any party.

Third, the passage of foreign nationals as candidates for regional heads is in principle a form of the unprofessional attitude of the election organizers (KPUD) in validating data, so that the passage of foreign nationals as participants in the Regional Head Election is a serious violation of the ideals of the Regional Head Election with integrity. should not be left on the grounds that (i) each stage of the General regional head election (pemilukada) has been completed, (ii) the elected candidate pair is the people's direct choice as the holder of sovereignty; (iii) and the absence of legal provisions that clearly regulate the a quo case so that the settlement is deadlocked due to a legal vacuum in its settlement.

With respect to the arguments presented by the petitioner above, in principle the Constitutional Court in examining, adjudicating, and deciding cases in addition to being guided by general and special procedural law, the Constitutional Court is also bound by general principles or principles of procedural law. The general principles or principles of procedural law in the context of the Procedural Law of the Constitutional Court are principles or guidelines that are used as the basis or even the spirit in the administration of constitutional justice which aims to achieve the objectives of the judiciary, namely the enforcement of law and justice, especially the supremacy of the constitution and the protection of the constitutional rights of citizens.¹⁶ The principles in question are the *ius curia novit*

¹⁶(Konstitusi, 2010) p. 15

Disqualification of the Candidate Pair for the Elected Regional...

Irfan Amir

DOI: 10.35673/al-bayyinah.v4i2.1830

principle, the trial is open to the public, the trial is carried out simply, quickly and at low cost, the right to be heard in a balanced manner, independence and impartiality and the principle of presumption of validity. And here are some of the principles that the author describes for this case.

(1) The principle of *ius curia novit*; that the court may not refuse, hear, and decide on a case submitted on the pretext that the law does not exist or is unclear. On the other hand, the judge must examine and try it according to Article 16 of the Law on Judicial Power. Historically, of course, no one denies how the United States Supreme Court Justice, chaired by John Marshall, made a legal breakthrough in deciding the case of Marbury vs Madison in 1803¹⁷ normatively there is no legal provision in either the constitution or the law that gives Judicial Review authority to the US Supreme Court. However, because of the awareness of his constitutional obligations, he has taken an oath to uphold and protect the constitution, then based on the principle of the supremacy of the constitution, laws that are contrary to the constitution must be declared not to have binding legal force. Likewise in this case which has a specific nature.

In the context of the constitutional court in Indonesia, the principle of *ius curia novit* must still be interpreted and applied in the court of the Constitutional Court to the extent of the authority of the Constitutional Court itself as regulated in a limited manner by the Constitution (UUD 1945). So in the a quo case, the argument stating that there is a legal vacuum and deadlock in its resolution is not entirely correct, because the a quo case was essentially before the enactment of Law no. 8 of 2015, the Regional Head Election is part of the election regime so that it is part of the scope of the case for dispute over election results (PHPU) which is limitedly confirmed in the constitution vide Article 24 C Paragraph 1 of the 1945 Constitution.

The implication of the classification of the Regional Head Election into the electoral regime is that the Constitutional Court must play its role as a guardian and guardian of the constitution which has the flexibility to exercise its constitutional authority over disputes over results. For example, in 2008-2014, the Court issued decisions containing legal breakthroughs, disputes over the results of the General regional head election (pemilukada) (terminology for Regional Head Elections after it was classified as an election regime) within the intended timeframe were not only related to disputes over results. However, it is also related to violations in the election process to achieve results or commonly known as structured, systematic, and massive violations (TSM).

¹⁷The United States Supreme Court overturned a provision in the Judiciary Act 1789 because it was considered contrary to the United States constitution.

Disqualification of the Candidate Pair for the Elected Regional...

Irfan Amir

DOI: 10.35673/al-bayyinah.v4i2.1830

However, after the enactment of the Regional Head Election Law, the Court's authority to decide disputes over the determination of election results is not permanent, but non-permanent and transitional until the establishment of a special judicial body based on Article 157 Paragraph (3) of Law no. 8 of 2015. Therefore, this authority is an additional authority that has different qualifications from the authority granted by the 1945 Constitution. Consequently, the Court no longer has the flexibility to exercise its constitutional authority, so that in exercising this additional authority, the Court is fully subject to the General Regional Head Election Law (pemilukada).

Based on the arguments above and referring to the *ius curia novit* principle and seeing the specifics of this dispute which causes the absence of legal certainty in its settlement, the Court overrides the application of Article 157 Paragraph 5 which regulates the deadline for submitting a dispute application no later than three working days after KPU announces the determination of the results of the General regional head election (pemilukada). In its judgment, the Court is of the opinion that (i) If the *a quo* provision is applied, then of course the applicant's application must be declared unacceptable (*niet ontvankelijk verklaard*) so that the specific conditions of the *a quo* dispute cannot be resolved. (ii) The inauguration of the selected pair of candidates is the last part of the election stage, however, the elected pairs have not yet been appointed and by considering the specific conditions of the *a quo* dispute, the court is of the opinion that it is still possible to resolve the specific conditions.

Furthermore, in line with the above considerations, the Court is of the opinion to override the requirement for a percentage limit regarding the difference in vote acquisition from the determination of the results of the vote count which absolutely must be met when the parties *in casu* participating in the Regional Head Election of Sabu Raijua Regency apply for the cancellation of the determination of the results of the vote count. The Court is of the opinion that: The conditions for filing a general regional head election dispute at the Constitutional Court are as stipulated in Article 158 Paragraph (2) letter a of Law no. 10 of 2016¹⁸, it is reasonable to rule out its application with the consideration that the argument put

¹⁸This article regulates the conditions for contestants in the election of regents and deputy regents to be able to apply for the cancellation of the determination of the results of the vote tally where the stipulation is that the submission of a dispute over the vote acquisition is carried out if there is a difference of at most 2% (two percent) of the total valid votes from the vote counting results. final determined by the Regency/City KPU. This applies to districts with a population of up to 250 (two hundred and fifty thousand) people.

Disqualification of the Candidate Pair for the Elected Regional...

Irfan Amir

DOI: 10.35673/al-bayyinah.v4i2.1830

forward by the applicant regarding "United States Citizenship Orient Patriot Riwu Kore" has been proven before the Court and the parties.¹⁹

The principle of a trial open to the public is interpreted as a trial process, which can be followed by the public so that in deciding cases based on evidence and arguments presented at trial, the judge will be objective. On the one hand, the public can also assess and accept the judge's decision. During the COVID-19 pandemic, this principle was really widely implemented, with the Large-Scale Social Restrictions (PSBB) and internet connection support making the judiciary, especially the Constitutional Court itself, innovate in holding case examination sessions. If before the pandemic, the case examination could only be seen and followed by the public, namely the public who were directly in the courtroom, then through the official account of the Indonesian Constitutional Court on the YouTube application, all Indonesian people can follow and see the trial process at the Court live. Likewise for the people of Sabu Raijua Regency as the owner of voting rights in the *a quo* case, in order to be able to assess and accept the judge's decision, especially in the *a quo* case the Constitutional Court held a trial live through the Youtube channel of the Indonesian Constitutional Court and as a result, the community accepted the Court's decision and participated in a re-election (PSU).

(3) Independence and impartiality, i.e. judges and judicial institutions must be independent, may not be intervened by any institution or interest, and do not take sides with any of the litigants, (4) The principle of justice is carried out quickly, simply and at low cost, (5) the principle of *audi et alteram partem* or the right to be heard in a balanced manner, for example in the case of a dispute over the results of the Regional Head Election, the right to be heard is not only for the litigants (against) such as participants in the Regional Head Election (Candidate Pair) with KPU, but also applies to all parties who are related and have an interest in the case being tried. (6) Judges are active in the trial; This principle is also in line with the principle of *ius curia novit*.

Therefore, in accordance with the nature of constitutional cases involving the public interest, in this case the dispute over the results of the Regional Head Election in Sabu Raijua Regency, for example, Constitutional Court Judges are always actively seeking information and data from documents, witnesses, experts, and related parties. Judges of the Court in examining the *a quo* case, do not only rely on the evidence and information submitted by the applicant and related parties as well as from the statements of witnesses and experts submitted by these parties. Even for the purpose of examining the *a quo* case, the Judge of the Court orders

¹⁹Constitutional Court's Decision No. 135/PHP.BUP-XIX/2021

Disqualification of the Candidate Pair for the Elected Regional...

Irfan Amir

DOI: 10.35673/al-bayyinah.v4i2.1830

evidence to be submitted to the Court or to summon witnesses and/or experts themselves. The application of this principle can be seen from the trial of the a quo case where the judges of the Court actively dig up information and data from evidence from letters, witnesses, experts and statements from related parties, (7) *praesumptio iustae causa* or the principle of presumption of validity which means that if it is drawn into the case of Regional Head Sabu Raijua Regency Election, then all actions taken by KPU at Sabu Raijua Regency, both in determining the pairs of candidates participating in the election to the determination of the elected candidates are considered valid until stated otherwise.

Conclusion

Based on the results of the analysis and description regarding the dispute over the results of the Regional Head Election of Sabu Raijua Regency and *ratio deducendi* from the Constitutional Court's decision, several conclusions can be drawn as follows; First: Since the beginning of the Regional Head Election, there has been a violation of one of the principles of the election, namely the violation of the "honest" principle by the Orient Patriot Riwu Kore whose citizenship status is covered, in addition to having an Indonesian passport, he also has a United States passport, which according to the laws and regulations in Indonesia and International Law, that a passport is proof of a person's citizenship. Second, the Sabu Raijua Regency KPU as the organizer of the election, although at the beginning it had been warned by the Sabu Raijua Regency Bawaslu to trace and re-validate the citizenship status of the Orient Patriot Riwu Kore, however, it was only confirmed that the Orient Patriot Riwu Kore had United States citizenship after KPU determined the results of the recapitulation of the vote. Third, the Constitutional Court in examining, adjudicating and deciding the case, basically acts as a temporary implementer of the Law (*in casu* Law No. 10 of 2016), not as a judge of the Law as confirmed in Article 24 C of the 1945 Constitution. Therefore, by looking at the specific nature of the Sabu Raijua Regency election dispute, the Constitutional Court overrules the application of formal requirements in filing a dispute over the election results, which is three working days after KPU determines the results of the recapitulation of the vote. Likewise, the provisions contained in Article 158 of Law no. 10 of 2016, the validity of which can be postponed and overruled by the Court because the election dispute is casuistic in nature.

References

- Albab, Abid Ulil. "Problem Kewenangan Mahkamah Konstitusi Memutus Perselisihan Hasil Regional Head Election." *Jurnal Hukum & Pembangunan* 48, no. 3 (2018): 542. <https://doi.org/10.21143/jhp.vol48.no3.1745>.
- Amir, Irfan. "An Analysis of Jokowi'S Policy in Refusing The Return of Former ISIS Foreign Terrorist Fighters Indonesia Citizens." *AlBayyinah: Jurnal of Islamic Law* 4, no. 1 (2020): 118–32. <https://doi.org/10.35673/al-bayyinah.v3i2.492>.
- Farisa, Fitria Chusna, Kompas.com, source : <https://nasional.kompas.com/read/2020/12/17/21573191/ada-4250-dugaan-pelanggaran-bawaslu-Regional-Head-Election-belum-seperti-yang-kita-harapkan?page=all>
- Konstitusi, Tim Penyusun Hukum Acara Mahkamah. *Hukum Acara Mahkamah Konstitusi Republik Indonesia*. Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, 2010.
- Kurniawan, M. B. (2018). Penggunaan Diskresi dalam Pemberian Status Kewarganegaraan Indonesia terhadap Archandra Thahar ditinjau dari Asas Pemerintahan yang Baik. *Jurnal Penelitian Hukum p-ISSN, 1410, 5632*.
- Law 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 Mayors to become Laws.
- Regulation of the Constitutional Court Number 6 of 2020 concerning Procedures in cases of disputes over the results of the election of Governors, Regents, and Mayors.
- Samsul, I. (2014). SENGKETA PEMILIHAN KEPALA DAERAH PASCA PUTUSAN MK: KEWENANGAN SIAPA? *Info Singkat Bidang Hukum, 6(10), 1-4*.
- Zoelva, Hamdan. "Problematika Penyelesaian Sengketa Hasil General regional head election (pemilukada) oleh Mahkamah Konstitusi." *Jurnal Konstitusi* 10, no. 3 (2013).