

# REFLECTION ON THE ROLE OF CONSTITUTIONAL COURT IN RESOLVING 2004 GENERAL ELECTION DISPUTE

Sri Hastuti Puspitasari  
Faculty of Law, Indonesian Islamic University  
Jl. Taman Siswa No 158 Yogyakarta  
E-mail: [hastuti@fh.uii.ac.id](mailto:hastuti@fh.uii.ac.id)

## Abstract

The amendment of UUD 1945 implicates on the establishment of Constitutional Court. One of the authorities of the institution whose authority is equal to Supreme Court is to resolve the dispute of general election. The success of Constitutional Court in resolving the 2004 general election dispute proved that the principles of court justice have been implemented in order to keep democracy and to establish the constitution.

Keywords: *the role of constitutional Court, Election Dispute Resolution*

## Introduction

The political reformation in 1998 has brought significant influence to the political order in Indonesia. The New order regime had the agenda to bear democratic political system including running democratic general election. Conceptualization on democratic election basically should be supported by independent justice institution. The existence and the role of justice institution as the pillar of democracy will give the way to the realization of democratic election through its repressive authority that is to enforce the law for the violation of electoral law. Therefore, democratic election is not only seen from the normative procedure and it will not stop when the election phase is finished. However, the democratization of the election is also seen from the enforcement aspect on the electoral law violation or dispute on the election result.

Law enforcement on the election dispute in Indonesia in 2004 after the second election in the reformation era had been started by Constitutional Court (MK). Constitutional Court is an institution which was formed as the consequence of state structure reformation through the amendment of the 1945 Constitution (UUD 1945).

Mainly, constitutional Court is a new phenomenon in some countries that have just experienced transition from authoritarian to democratic regime such as South Africa, South Korea, Lithuania, and Ceko<sup>1</sup>. The idea about the birth of Constitutional Court in Indonesia cannot be apart from shift of authoritarian new order regime to the transition regime to democracy. In fact, the political system established after the new order regime tends to aim to democratic political system. Normatively, democratic political system is bound with democratic political system indicator from Robert Dahl that include:<sup>2</sup> 1. Control over governmental decision about policy is constitutionally vested in elected officials; 2. Elected officials are chosen and peacefully removed in relatively frequent, fair, and free election in which coercion is quite limited; 3. Practically all adults have the rights to vote in these elections; 4. Most adults have the rights to run for public offices for

---

<sup>1</sup> See Jimly Asshiddiqie, *Format Kelembagaan Negara dan Pergeseran Kekuasaan Dalam UUD 1945*, Cet. 1, 2004, FH UII Press, Yogyakarta, pp. 89

<sup>2</sup> Those indicators are proposed by Robert Dahl, as quoted by Affan Gaffar, *Politik Indonesia; Transisi Menuju Demokrasi*, cet. II, Pustaka Pelajar, Jogjakarta, pp. 7

which candidate run in these election; 5. Citizens have an effectively enforced rights for freedom of expression, particularly political expression, including criticism of the officials, the conduct of the government, the prevailing political, economic, and social system, and dominant ideology; 6. They also have access to alternative sources of information that are not monopolized by government or any other single group; 7. Finally, they have effectively enforced the right to form and to join autonomous associations, including political parties and interest group that attempt to influence the government by competing in elections and by other peaceful means.

In the context of democratic political system, the justice institution may play a very vital role. This institution will not only be procedural justice institution but it will also enforce the justice substantially by showing its role more than being the sparking tube of constitution. The idea of establishing Constitutional Court became an oasis in the substantial justice value crisis especially related to the protection of constitutional rights of the citizens which did not get optimal attention even from the justice institution during the new order era.

The realization of Constitutional Court establishment eventually occurred when Indonesia was conducting amendment to its constitution. The Constitution amendment is one of the ways to do restructuration of state organization constructively and legally. The emergence of Constitutional Court through the amendment of 1945 Constitution is a very positive, constructive, and strategic step for the State organization of Indonesia.

The regulation of Constitutional Court in 1945 Constitution includes the aspect of position, duty and authority, judge membership, and its requirements. Constitutional Court as part of justice authority has the role to conduct trial to enforce the law and justice independently (Article 24 verse (1)).

The authority of Constitutional Court given through Article 24C verse (1) and verse (2) of 1945 Constitution include; 1. Testing the bill to the Constitution; 2. To decide resolution for dispute on state institution authority which authority given by the constitution; 3. Decide the dismissing of political party; 4. To determine resolution on election dispute; 5. Make decision on the parliament's opinion about the suspicion of violation done by the President or Vice President.<sup>3</sup>

Besides, in article 7B, 1945 Constitution, the constitutional Court also has the authority to make decision on parliament opinion that the president or vice president no longer meets the qualification to be in the position.

### **The Constitutional Court and General election Dispute Resolution**

The special authority of the constitutional Court in resolving the election dispute is the authority which is in line with the democratization climate being built by Indonesia at this present. This authority, besides creating balancing power between state organs, also gives opportunities for the public whose rights were violated in the election and who want to find justice in this democratic political climate through the Constitutional Court. Henry W. Ehrmann, by referring to some democratic practices in some countries, adds to principles in democratic political system. The first is balancing the function of the power separation between government, parliament, and judiciary. The second is free choice of

---

<sup>3</sup> The violation suspects include betrayal to the country, corruption, bribery, and other penal violation or immoral action.

alternative is much important for a substantial participation of the society.<sup>4</sup> Based on the two principles, the existence of Constitutional Court with its authority to resolve the election dispute will positively contribute to the democratic political system. The Democratic political system in any country may not ignore those two principles.

In addition, Michael Saward proposes that democratization of a system requires some minimum conditions such as basic freedom assurance like freedom of speech and expression, freedom of movement, freedom of association, rights to get equal treatment under the law; citizenship and participation; administrative code; and publicity and social rights<sup>5</sup>. Moreover, there are some political values and principles to run the democracy principles altogether such as political stability, justice, nationalism, the environmental imperative, and efficiency.<sup>6</sup> Based on those principles, general election in any political system will tend to cause instability. The effort to create stable condition does not merely lie on the security and defense factor. Stability will happen when the justice principle exists. The justice value will be difficult to achieve when there is no institution that has the authority to enforce law and justice independently. This is the urgency of justice institution such as Constitutional Court in the democracy process. It is because the process of democracy itself often tolerates violation as a usual thing, whereas it is potential to cause conflict and injustice.

The role of Constitutional Court in the election dispute settlement can be interpreted as part of state responsibility in actualizing democratic election whose procedure meet the international formulation from the Inter Parliamentary Union in its conference in Paris, 1994. There are some requirements that become the rights and the responsibility of the state that include following aspects;<sup>7</sup> First (1), The state should take legislative procedures and other necessary actions according to the constitutional process to assure the rights and institutional frame for a periodic, clean, free and fair general election based on its obligation according to International Bill that include arranging effective procedure, nonpartisan and not discriminative for the voter registration, setting clear criteria for voter registration according to the age, nationality, and domicile, and make sure that the stipulation was held without any difference; support the forming and free operations of political parties, hardly attempt to allocate the funding of political party and election campaign, assure the separation between political party and state, and create the good condition for competition in legislative election based on equality. Second (2), make policy and institutional procedure in order to gain progress achievement and democratic idea consolidation, including the forming of neutral mechanism in the election implementation that cover the responsibility to provide trained and non partisan human resources, informing the election procedure to the society, assuring the voters registration, renewing voters list and the voting procedure, encouraging the political parties, candidates, and mass media to run code of conduct to regulate the election campaign and voting; assuring the integrity of ballot box through proper procedures to

---

<sup>4</sup> Henry W. Ehrmann (ed), *Democracy in Changing Society*, Frederick A. Preager Publishers, USA, 1964, pp. 10-11

<sup>5</sup> Michael Saward, *Democratic Theory and Indices of Democratization* in David Bentham (ed) *Defining and Measuring Democracy*, Sage Publication, Ltd., London, pp. 16-17

<sup>6</sup> Ibid, pp. 20

<sup>7</sup> Those requirements were quoted from *Free and Fair Election: International Law and Practices*, written by Guy, S. Goodwin-Gill, Inter Parliamentary Union, Geneva, 1994, translated by Nurhasan, published By Pirac and The Asia Foundation, Jakarta, 1999.

prevent double voting or voting by ineligible person; and warranting the integrity of voting counting process. Third (3), the state should respect and assure the human right of every citizen and must obey the stipulation. Fourth (4), the state should take necessary steps to provide opportunity for political party and the candidates to expose their election platform. Fifth (5), the state should guarantee the confidentiality principles of voting; assure that voters may vote freely without fear and intimidation. Sixth (6), the state should warranty that the voting is free from counterfeiting and illegal things and warranty that the vote counting conducted by well-trained personnel and the vote counting can be overseen and/or verified fairly. Seventh (7), the state should assure the transparency of the whole election process. Eighth (8), the state should pledge that political parties, the candidates, and the supporters get collective protection and the state should prevent violence in the election. Ninth (9), the state should assure that the human right violation and all indictment related to the election process should be followed up immediately in the period of election process and conducted effectively by non partisan independent institution such as election commission or court.

After the 2004 legislatives and presidential election, the constitutional Court received some cases related to the election result dispute. The legality of Constitutional Court in handling the election dispute is in the article 24C verse (1), article 74 and 75 of 2003 Act no 24 about the Constitutional Court, and article 134 of act no 12 year 2003 about the election of House of Representatives (DPR), Region Representatives (DPD), and Local Parliament (DPRD). The petitioner in the election dispute is election participant who is the citizen of Indonesia individually as the candidate of Region Representatives, political party, and president and vice president candidate. Related to the election dispute, the Constitutional Court has issued two stipulations i.e. Constitutional Court Stipulation no 04/PMK/2004 about The Procedural Guide in Election result Dispute and the Constitutional Court Stipulation no 05/PMK/2004 about the Objection Proposal procedure for election result determining for President and Vice President. According to the article 24c verse (1) of the Republic of Indonesia 1945 Constitution and article 10 verse (1) 2003 Act no 24 about Constitutional Court, one of its authorities is resolve dispute on general election result. The election meant here is the election for the member of House of Representatives, regions representatives, and local parliament, and the president and vice president election, (vide article 22E verse (2), 1945 Constitution). The next is article 85 Act of 2003 no 23 about president and vice president election that decide “ If there is a dispute on president and vice president election as meant by article 68, the case will be investigated and determined in the first and last level by Constitutional Court”. According to those explanations, the Court is authorized to investigate, to judge, and to decide a quo proposal.

The legal standing of the petitioner in article 74 b verse (1), (2), and (3) UUMK juncto article 68 verse (1) and (2) of Presidential Election Act decided following things; a. The petitioner is the election participants who become the candidates of president and vice president; b. The petition can only be proposed to the decree of election result that is conducted nationally by Election Commission that influence the decision of candidates; c. the candidates that join the second round of the election and after the announcement of selected president and vice president candidates; d. the petition can only be proposed the latest at 3 x 24 hours (three times twenty four hours) after the General Election Commission announce the decision on the election result nationally.

In the 2004 election, the objection proposal for the election result decision by the General Election Commission proposed to the Constitutional Court is 448 (four hundred and forty eight). It consists of 23 (twenty three) unregistered proposal because of not meeting the requirement, and the other 273 (two hundred and seventy three) were registered after meeting the qualification and they are included in election dispute. The registered proposals include 252 (two hundred and fifty two) proposed by political parties and 21 (twenty one) were proposed by region representatives. From the proposals proposed by political parties, 131 (a hundred and thirty one) cases were rejected, and 15 (fifteen) proposals were approved.<sup>8</sup> Whereas, for the president and vice president election result, there was one approved proposal put forward by Wiranto as the President candidate and it was disapproved by the Constitutional Court.

Some examples of election dispute proposed by the Constitutional Court are: 1. the dispute on Region Representatives election result, case decree number 025/PHPU.A.-II/2004. The petitioner in this case was H. Ace Suhaedi Madsupi, the candidate of region Representatives of Banten Province who objects the Election Result Decision from the General Election Commission dated on 5 May 2004 for the election region of Banten Province. According to the petitioner, there had been a mistake in the vote counting that cause loss to the petitioner. The decision of the election result from the General election commission decided that the vote obtained by the petitioner was 73,077 and for Jawilan sub district was 1,437. The petitioner claimed that the correct vote number was 159,264 and 2,817 for Jawilan sub district. Thus, the petitioner had lost 65,567 votes. Consequently, the petitioner requested the Constitutional Court to approve his request and to annul the decision about the general election result from the General Election Commission. Constitutional Court compared the existing proofs from the petitioner with the existing files and the documents used by the Election Monitoring Body of Banten Province. In fact, there was no mistake of miscounting done by the General Election Commission. Besides, in the trial, it was also found out that the petitioner did not object the vote counting process in the voting venue, votes counting center, sub district votes counting, and the city general election commission. Therefore, the Constitutional Court decided that the request from the petitioner cannot be approved (*niet onvankelijk verklaard*);<sup>9</sup> 2. The dispute on region representatives election result. The case decree number 14/PHPU.A-II/2004 proposed by KH. Ahmad Chalwani as the first petitioner, and Drs. Dahlan Rais M.Hum as the second petitioner. Both of them were the candidates of region representatives for the Central Java Province. According to General election result decision from the general election commission, KH. Achmad Chalwani achieved the vote of 875,710 and was in the fifth rank, while Drs. Dahlan Rais M.Hum won 894,271 votes. Petitioner I proposed objection on the General election commission decision on the election result especially in the regency of Purbalingga, Purworejo, Wonosobo, Pemalang, Semarang, Klaten, Blora, Batang, and Banyumas. Petitioner I and II argued that there have been some mistakes in the election result counting that cause loss to the petitioners. Some articles in the 1945 constitution, act number 12 year 2003, and 2004 act number 2003 and also others constitutional law were applied in responding the request. According to the case No 14-207/PHPU.A-II/2004, at least there are 4 (four) substances decided by the Constitutional Court i.e.: a. The Constitutional Court approved

---

<sup>8</sup> Soedarsono, Op.Cit, pp. 208

<sup>9</sup> See, Case Decree number 025/PHPU.A-II/2004.

the request from petitioner I and II; b. The constitutional Court annulled the General Election Commission decree number 444/SK/KPU/2004 about the decision on election result for the member of House of the Representatives, Region representatives, and Local Parliament of Province and Regency in the 2004 election, attachment II/13 about region representatives election result in the 2004 election of Central java Province related to the correct vote counting result as follows: a. The Constitutional Court decided that the correct vote counting were: 881,050 votes for H. Achmad Chalwani as petitioner I, 880,774 votes for Drs. Dahlan Rais M.Hum as petitioner II, d. instructed the general election commission to execute this decree; 3. The election result dispute proposed by political parties. Case decree number 015/PHPU-C I-II/2004 with Erros Djarot and Suhardi Sudiri, Ir. MSc as the petitioners. Both acted for and on behalf of National Party of Independence Bulls (PNBK). The petitioners objected to the election result decision from the general election commission that caused loss to the party. According to the petitioners, there were some mistakes in the vote counting in Bali in election regions 3 such as Gianyar and Jembrana; in North Sumatra especially in Binjai City, Deli Serdang, election region I of Tapanuli, election region I of Toba Samosir, Sibolga, in Papua, in West Kalimantan, and Southeast Sulawesi. In the decision, the constitutional Court approved some of the petitioners requests and disapproved the rests. The quote of constitutional Court decree is following; a. Approve half of the petitioners request; b. Annul the general election commission decision number 44/SK/KPU/Year 2004 dated on 5 may 2004 related to the votes obtained by PNBK; (1) The candidates of Local Parliament of Binjai City from election region 2 of Binjai and the votes obtained by Partai Golongan Karya (Golkar) from Binjai City from election region 2 of Binjai. C. Decide that the correct votes obtained by PNBK for: (1) the candidates of Local Parliament of Gianyar regency in the Gianyar election region which is 2,166 votes, (2) the candidates of local parliament from Binjai City from election region 2 of Binjai is 1,565 votes and the votes obtained by Golkar for the same region is 8,206 votes; d. Declare that the request from the petitioners for; (1) The candidates of local parliaments from the election region 2 and 3 of Deli Serdang Regency, (2) The candidates of local parliament from election region of West Kalimantan, (3) The candidates of local parliament from election region 2 of Sibolga City cannot be accepted (*niet otvankelijk verklaard*); e. Refuse the rest of the request from the petitioners; f. Instruct the general election commission to execute this decree.; 4. The dispute of president and vice president. In the Case decree number 062/PHPU-B-II/2004, petitioners from the president and vice president candidates from Golkar Party i.e. H. Wiranto, S.H., and Ir. H. Salahudin Wahid proposed objection and could not accept the decision letter from general election commission number 79/SK/KPU/year 2004 dated on 26 July 2004 about the decision and announcement of votes counting result for president and vice president election and the recapitulation report on election result for president and vice president election by general election commission number 125/15-BA/VII/2004 with the reasons that there were some mistakes and misconduct in votes counting intentionally and unintentionally by the general election commission that cause significant loss for the petitioners and cause the petitioner became in the third rank and could not join the second round of presidential election. In the trial, the general election commission as the requested party confirm that the request from the petitioners should be disapproved for at least three reasons; a. The reasons from the petitioners did not meet the formal

requirement for a dispute request in the general election as stated by the legislature law. B. The request was blurred and not clear (*obscur libel*). The trial was also attended by some witnesses including expert witness like Roy Suryo (telematic expert) and Prof Dr. Harun Al Rasyid (expert on State Procedure Law). In the decision, the constitutional court declared that the proposition that the petitioners had lost some votes in some provinces were not proven true after observing carefully the votes obtained in 26 provinces one by one as cased by the petitioners. The court argued that the petitioners could not prove the mistake on votes counting that cause a loss as much as 5,434,660 votes for the petitioners. Therefore, the petitioners request is not reasonable and should be refused.<sup>10</sup> Thus, the Constitutional Court in its decree stated to refuse completely the request from the petitioners.

Some decrees discussed briefly above prove that the role of Constitutional Court in resolving dispute on the election result is very urgent. Besides, the trial conducted by the Constitutional Court in the dispute on election result have shown some commitments and consistence as law and justice enforcement institution and represent the state responsibility to realize democratic general election.

The decree of Constitutional Court in the case of election result dispute have reflected some principles as follows: 1. the principle of legality. This legality is related the request legality, petitioners legality as legal standing, and authority legality of Constitutional Court in resolving the election result dispute; 2. Quantitative Proof Accuracy Principle. The election result disputes are generally related with fault claims in the votes counting done by the general election commission. The petitioners commonly feel that they are significantly disadvantaged and caused vote loss for the petitioners or party. Therefore, The Constitutional Court is expected to do accurate quantitative proof cross check so that the decision will really cause justice for both the petitioners and the petitioned parties. This can be seen from the two examples above in the case decree no 14/PHPU.A-II/2004 conducted by petitioners I, KH. Achmad Chalwani and Drs. Dahlan Rais, M.Hum as the petitioner II who are both the candidates of region representatives for Central java Province. The proofs proposed by the petitioners should be tested factually with accurate proof; 3. Transparency Principle. The Constitutional Court conducted trial in the case of election result dispute openly that enable related parties and the society in the dispute to follow and monitor the judicature process; 4. Impartiality Principles. General election is an event which is risky with Political interest. Thus, the trial conducted by the constitutional Court is the judicature that win certain interest from the parties that proposed the case; 5. Objectivity and Judge Professionalism principle. Although among the constitutional judge who were the member of certain political party but in resolving the election result dispute, the constitutional judge are demanded to be objectives and they should be able to leave their political party attribute and work professionally. Therefore, the dignity of constitutional judge is protected from practical politics interest.

---

<sup>10</sup> The provinces are Nangroe Aceh, Kepulauan Riau, Riau, Jambi, South Sumatra, Bangka, Belitung, Banten, DKI, West Java, DIY, Central Java, East Java, Bali, NTB, NTT, West Kalimantan, Central Kalimantan, South Kalimantan, East Kalimantan, North Sulawesi, Central Sulawesi, Southeast Sulawesi, South Sulawesi, Gorontalo, North Maluku, and West Irian Jaya. See the Constitutional Court Decree number 062/PHPU-B-II/2004.

## Conclusion

The 2009 election will possibly make the Constitutional Court receive more cases on election result dispute. What have been done by the Constitutional Court in resolving dispute on the 2004 election result is reflection from Constitutional Court to keep maintaining principles reflected in its decrees.

The request on election result dispute to Constitutional Court and the law process which have run will strengthen the constitutional Court position in enforcing the pillar of democracy. Besides, such authority is a form of responsibility from the state in enforcing the democratic general election principles according to the ninth requirement from the right and responsibility of the state in realizing democratic general election that the state guarantee that human right violation and all report related in the election process should be handled immediately and effectively in the period of election process by the non partisan independent institution such as general election commission or court.

## References:

- Affan Gafar, *Politik Indonesia; Transisi Menuju Demokrasi*, cet ke II, Jogjakarta: Pustaka Pelajar, 2000.
- Gill., Guy S. Goodwin, *Free and Fair election: International Law and Practices*, Inter Parliamentary Union, Geneva, 1994, translated by Nurhasan, published By PIRAC and The Asia Foundation, Jakarta, 1999.
- Henry W.(ed), Ehrmann, *Democracy in Changing Society*, Frederick A. Preager Publishers, USA, 1964.
- IDEA, *Penilaian Demokratisasi di Indonesia*, Stocholm, Swedia: International IDEA, 2000.
- Jimly, Asshiddiqie, *Format kelembagaan Negara dan Pergeseran Kekuasaan dalam UUD 1945. Cet. I, Yogyakarta: FH UII Press, 2004.*
- Puspitasari, Sri Hastuti, "Pemilu dan Demokrasi: Telaah terhadap Prasyarat Normatif Pemilu", *Jurnal Hukum*, no 25 vol 11-2004
- Republik Indonesia, Undang-undang Dasar 1945 after amendment  
\_\_\_\_\_, Act no 12. Year 2003 about General Election  
\_\_\_\_\_, Act no 23 Year 2003 about president and vice president election.  
\_\_\_\_\_, Act no 24 year 2003 about Constitutional Court
- Republic of Indonesia Constitutional Court, case decree no. 14/PHPU.A-II/2004
- Republic of Indonesia Constitutional Court, case decree no. 015/PHPU-C I-II/2004
- Republic of Indonesia Constitutional Court, case decree no. 025/PHPU-A-II/2004
- Republic of Indonesia Constitutional Court, case decree no. 062/PHPU-B-II/2004
- Saward, Michael. *Democratic Theory and Indices of Democratization* in David Bentham (ed) *Defining and Measuring* London: Sage Publication ltd. 1994.
- Soedarsono, Mahkamah Konstitusi sebagai Pengawal Demokrasi: Penyelesaian Sengeketa Hasil Pemilu 2004 oleh Mahkamah Konstitusi, Sekretariat Jenderal dan Kepaniteraan MKRI, Jakarta, 2005.