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## Vol. 24 (2021): A new decade for social changes



DOI: <https://doi.org/10.47577/tssj.v24i1>

Published: 2021-10-09

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**Technium Social Sciences Journal**

(ISSN: 2668-7798)

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**Technium**  
by OJS PKP



**TECHNIUM**  
**SOCIAL SCIENCES JOURNAL**

**Vol. 24, 2021**

**A new decade  
for social changes**

[www.techniumscience.com](http://www.techniumscience.com)

ISSN 2668-7798



9 772668 779000

## **Legal standing of a legislative candidate from the same political party in an election dispute based on Constitutional Court Regulation No 2 of 2018 tied with the principle of justice**

**Setioko Yudha Pamungkas<sup>1</sup>, Demson Tiopan<sup>2</sup>**

<sup>1</sup><sup>2</sup>Universitas Kristen Maranatha

[syudhapamungkas@gmail.com](mailto:syudhapamungkas@gmail.com)

**Abstract.** An election is a democratic system in which the public can choose its representative to sit within an institution. The Constitutional Court Regulation No 2 of 2018 regulates that in the case of candidates for membership in The House of Representative and the Regional Representative Assemble, a written permit from the secretary-general or the leader of the party is needed to obtain legal standing as a requirement regarding the dispute of electoral result. The research used the juridical-normative method that reviewed multiple literature works of secondary legal materials. The result of this research showed that the secretary-general or the leader of the party's denial of a permit to file a plea at the Constitutional Court is an internal dispute in the party and it is not within the authority of the Constitutional Court to settle such dispute, but rather it is within the authority of the Political Party's Court.

**Keywords.** election, legal standing, legislative, Constitutional Court

### **A. Background**

In the practice of election, a violation of the principles of election is not impossible. Furthermore, there are multiple forms of violation and occurrence of disputes regarding electoral result by the Election Committee which is considered inappropriate by some sides such as political parties. Thus, a strict legal mechanism is needed, along with the institution authorized to settle such disputes. The Constitutional Court is the state institution within Indonesia's state administration system that holds judicial power along with the Supreme Court. Therefore, the Constitutional Court is on equal standing as the People's Consultative Assembly, the House of Representative, The Regional Representative's Assemble, the Presidency, the Audit Board of Indonesia, and the Supreme Court. As a new institution, the Constitutional Court is one of the executors of judicial power, along with the Supreme Court<sup>(1)</sup>.

The 1945 Constitution of the Republic of Indonesia Chapter 24 C article 1 regulates that the Constitutional Court has the authority to judge on the first and final level where the verdicts are final; one of those verdicts is about disputes on the electoral result<sup>(2)</sup>. Furthermore, what is called a dispute over the electoral result is a dispute between electoral candidates and the Electoral Committee as the executor of election; this notion is also written in Chapter 24 C article 1 of the 1945 Constitution which is passed down to Chapter 474 article (1) of Law No.

7 of 2017 regarding the Election which states that disputes regarding verdicts on the electoral result by the Electoral Committee can be sued through the Constitutional Court <sup>(3)</sup>.

Law No. 7 of 2017 chapter 414 and 415 regarding the Election stated that the requirement for a political party of a legislative candidate to be declared fit by the Election Committee to earn seats in the House of Representatives is by fulfilling the parliamentary threshold of 4% (four percent). In the calculation process done by the Election Committee, there are possibilities of errors that cause disputes over election results where the parties suffered, later can be named the petitioner, can file a suit to the Constitutional Court. In the process of petitioning to the Constitutional Court in regards to a dispute over an election result, a petitioner must fulfill one of the conditions which are to have a clear legal standing since in settling a dispute over an election result, the Constitutional Court must first assess the legal standing of the petitioner. The verdict may be a denial, unacceptance, partly denied, or fully approved based on the legal standing.

One of the case examples of disputes regarding an election result to ever emerged is when the Constitutional Court held a follow-up trial regarding the dispute over the 2019 election result for membership of The House of Representative and The Regional People's Representative Assembly (Plea over 2019 Legislative Election Result), on Tuesday, July 16<sup>th</sup>, 2019. The Election Committee as the respondent, the involved parties, and the Election Oversight Body (Bawaslu) were present to answer the petitioner's proposition. The trial is led by Constitutional Judge I Dewa Gede Palguna, accompanied by Constitutional Judge Suhartoyo and Wahiduddin Adams. Previously, the Party *Berkarya* was at issue regarding the transfer of votes within the internal of the party. The petition was for the seat at the Regional People's Representative Assembly of Pangkajene County, South Sulawesi Province. Candidate number 8 with the name Nurhidayah earned 951 votes based on the C1; however, the Election Committee determined the result to be 942 votes. The transfer of the petitioner's votes to the Party's vote occurred at Voting Venue 07 of Tamangapa Village. Nurhidayah should have earned 6 votes, but it was deducted by 3 votes. Then the three votes were added to the Party's vote. She further accused the respondent of errors in vote input. She explained that at Venue 02 of Pitue Village there was an addition for Candidate number 1 by 2 votes, Candidate number 3 by 2 votes, and candidate number 7 by 1 vote. There were also deductions of votes for the petitioner occurred at Venue 12 of Attang Salo Village. The respondent determined that Nurhidayah only earned 2 votes. <sup>(4)</sup>

The petitioner was found not to belong to one of the criteria listed in the Constitutional Court Regulation No. 2 of 2018 regarding Procedures in dispute case over election result for membership of The House of Representatives and the Regional People's Representative Assembly chapter 3 which states<sup>(5)</sup> :

- (1) Petitioners as meant in Chapter 2 letter a are:
  - a. The participating Political Party at the election for membership at the House of Representative and the Regional People's Representative Assembly.
  - b. Individual candidate for membership at the House of Representative and the Regional People's Representative Assembly from a Political Party who has acquired written permit from the General Leader and Secretary-General or other equal titles in the relevant political party.

The condition of earning a written permit from the general leader and secretary-general can be abused and the petitioner may face difficulties in receiving justice.

From the above description, there are problems the author is interested to investigate, which are: How was the legal standing of legislative candidates from the same political party in settling disputes over election result based on the Constitutional Court Regulation No. 2 of

2018? How was the settlement of the aforementioned dispute over an election result for the sides in the same political party linked to the principle of justice?

The research conducted by the author was juridical normative legal research. The approach used in this research is the statute approach and conceptual approach done by studying legal regulation linked to the problems being researched which are Law no. 7 of 2017 regarding the Election and Constitutional Court Regulation No. 2 of 2018 regarding Procedures in dispute case over election result for membership of The House of Representatives and the Regional People's Representative Assembly. This research utilized secondary data which were divided into three parts are Primary, Secondary, and Tertiary Legal Material. The Primary Legal Material consisted of the 1945 Constitution of the Republic of Indonesia, Law no. 17 of 2017 regarding the election, the law no. 8 of 2011 regarding amendments over Law no. 24 of 2003 regarding Constitutional Court, Law no. 2 of 2011 regarding amendments over Law no. 2 of 2008 regarding political parties, and Constitutional Court Regulation no. 2 of 2018 regarding Procedures in dispute case over election result for membership of The House of Representatives and the Regional People's Representative Assembly. The Secondary Legal materials were books and written data relevant to the problems being researched, along with articles, journals, documents, and data from the internet which are also relevant to the problems being research. Tertiary legal material consisted of a material that can explain primary and secondary legal material; which is the Indonesian Dictionary.

## **B. Discussion**

### **1. The legal standing of a legislative candidate from the same political party in a dispute over an election result based on Constitutional Court Regulation No. 2 of 2018**

The definition of legal standing is explained by Harjono as follows: "Legal standing is a state where a person or a party is considered to have fulfilled requirements and thus earned the right to sue a petition for settlement over disputes or cases in the presence of the Constitutional Court." <sup>(6)</sup>In Chapter 51 article (1) of Law number 24 of 2003 regarding the Constitutional Law, there is an explanation as follows: The petitioner is a party who considered his/her/their constitutional rights and/or authority to be abused by the implementation of the law, including:

- a. Individual citizen of Indonesia;
- b. A union of cultural law society as long as it is still alive and following the progress of general society and the principle of the Republic of Indonesia regulated in the law;
- c. Public or private legal institution; or
- d. State institution

Electoral disputes will be specialized to the disputes over processes and Disputes Over Election Result which occurred during the simultaneous election, with the systematics and order of elaboration as follows: electoral criminal violations, disputes over processes, and Disputes Over Election Result at the Constitutional Court. As stated in Law number 7 of 2017 regarding the Election, an electoral violation is divided into three types, electoral criminal violations, electoral ethical violations, and electoral administrative violations.<sup>(7)</sup>

Chapter 24C article (1) or the 1945 Constitution stated that: "The Constitutional Court has the authority to judge at on the first and final level in which the verdict is final to test laws against the Constitution, settle disputes regarding the authority of a state institution whose authority was granted by the Constitution, deciding the disbanding of a political party, and settling a dispute over an election result. Chapter 74 article (2) letter a and c of the Law number 24 of 2003 regarding Constitutional Court which was amended by Law number 8 of 2011 gave the understanding that petitioners suing objections over a decision on the result of election done nationally by the Election Committee which influenced the selection of a Candidate for the

House of Representative and the gaining of seats for political parties participating in an election at an electoral area may sue petitions in the Constitutional Court.

Chapter 1 article (3) of the Law of Constitutional Court explains that Plea Over Electoral Result is a written request issued to the Constitutional Court regarding a dispute over an election result. Further detail on the matter is regulated in the Constitutional Court Regulation number 15 of 2008 regarding Procedural Guidelines for Plea over Electoral Result for Head of Region, Constitutional Court Regulation number 16 of 2008 regarding Procedural Guidelines for Plea over Electoral Result for membership of the House of Representative, Regional Representative Assembly, and Regional People's Representative Assembly, and Constitutional Court Regulation number 17 of 2008 regarding Procedural Guidelines for Plea over Electoral Result for Presidency and Vice-Presidency. According to said Constitutional Court Regulation, the Plea over Electoral Result is a submission of objection by a participant of the election against the decision of an electoral vote calculation result by the Election Committee in an Election for Membership of the House of Representatives, Membership of the Regional Representative Assembly, Membership of the Regional People's Representative Assembly, Presidency, and Vice-Presidency. In the Constitutional Court Regulation number 16 of 2008 regarding Procedural Guidelines for Plea over Electoral Result for membership of the House of Representative, Regional Representative Assembly, and Regional People's Representative Assembly, legal standing for a petition to the Constitutional Court is explained in Chapter 3 article 1: Parties with direct interests in the Plea over Election Result for membership of the House of Representative, Regional Representative Assembly, and Regional People's Representative Assembly are:

- a. Individual Citizen of Indonesia who is a candidate for membership in the Regional Representative Assembly participating in an election as the petitioner;
- b. Political Party participating in an election as the petitioner;
- c. Political party and local political party participating in an election for Regional People's Representative Assembly of Aceh and City's House of Representative in Aceh as the petitioner;
- d. The Election Committee as the respondent.

Furthermore, in 2013 the Constitutional Court issued Constitutional Court Regulation No. 3 of 2013 regarding Guidelines in Plea over Election Result for membership of the House of Representative, Regional Representative Assembly, and Regional People's Representative Assembly which also discuss the parties, particularly the legal standing of the parties wishing to sue a petition. However, there are additions in the conditions as written in Chapter 3 Article 1: Petitioners in the case of Plea over Election Result are:

- a. Political Party participating in an election for membership in the House of Representative and the Regional People's Representative Assembly;
- b. Individual candidate for membership in the House of Representative and the Regional People's Representative Assembly can be a petitioner if he/she acquired a written permit from the relevant participating political party;
- c. Local political party participating in an election for membership in the Regional People's Representative Assembly of Aceh and City's House of Representative in Aceh;
- d. Individual members in the Regional People's Representative Assembly of Aceh and City's House of Representative in Aceh can be a petitioner if he/she acquired written permit from the relevant participating local political party
- e. Individual candidate for Regional Representative Assembly participating in an election;

A year later, the Constitutional Court issued Constitutional Court Regulation No. 1 of 2014 regarding Guidelines in Plea over Election Result for membership of the House of



Representative, Regional Representative Assembly, and Regional People's Representative Assembly which in this case the legal standing of the parties wishing to sue a petition remains the same as the previous Constitutional Court Regulation, stating in Chapter 2 Article 1:

- a. Political Party participating in an election for membership in the House of Representative and the Regional People's Representative Assembly;
- b. Individual candidate for membership in the House of Representative and the Regional People's Representative Assembly who has acquired written permit from the relevant participating political party;
- c. Local political party participating in an election for membership in the Regional People's Representative Assembly of Aceh and City's House of Representative in Aceh;
- d. Individual members in the Regional People's Representative Assembly of Aceh and City's House of Representative in Aceh can be a petitioner if he/she acquired written permit from the relevant participating local political party
- e. Individual candidate for Regional Representative Assembly participating in an election;

It can be concluded from the three Constitutional Court Regulation that there is no difference in submitting a Plea over Election Result for membership of the House of Representative, Regional Representative Assembly, and Regional People's Representative Assembly which is to own written permit from the party's leader or secretary-general although in practice the people or society choose members of the House of Representative based on the individual and not the political party.

There should be at least three important elements in a plea at the Constitutional Court. The three bases are the formal and material requirements of a plea.

Chapter 74 article (1) of the Constitutional Court Law explains who can be a petitioner in a case of Plea over Election Result for membership of the House of Representative, Regional Representative Assembly, and Regional People's Representative Assembly. In the case of Election for the House of Representative and Regional People's Representative Assembly, the petitioner the political party participating in the election as regulated in Chapter 74 article (1) letter c of the Constitutional Court Law.

The plea that is submitted must follow Chapter 6 of Constitutional Court Regulation no. 2 of 2018 regarding Guidelines in Plea over Election Result for membership of the House of Representative, Regional Representative Assembly, and Regional People's Representative Assembly. In length, the chapter was written as follows:

1. A plea is submitted 3 x 24 hours at the latest since the nation-wide result announcement of election for membership of the House of Representative and Regional People's Representative Assembly by the respondent.
2. The plea as meant on article (1) is submitted in written form, using Bahasa Indonesia, and signed by the petitioner.
3. In the case that the authority for submission of the plea is given to a legal assistant, the plea was signed by the legal assistant.
4. The plea as meant in article (2) is submitted in 4 stacks with one of them to be the original. On the other hand, Chapter 7 of Constitutional Court Regulation no. 2 of 2018 states that:
  1. The submission of the plea as meant in Chapter 6 is done by the Central Board of the participating Political Party.
  2. The submission of a plea by the Central Board of the participating Political Party as meant in article (1) is signed by the general leader and the secretary-general or other title of the same role.

Therefore, the petitioner who is a member of a political party or a regional administrator of a certain political party cannot directly submit a plea without going through the central leadership of his/her party. If it is not fulfilled, the legal standing of the petitioner will be questioned and the Constitutional Court can determine that the plea is unacceptable, as meant in Chapter 77 article (1) of Law no. 8 of 2011 regarding the amendments over Law no. 24 of 2003 regarding the Constitutional Court.

The conditions where the plea is signed by the central leadership of the political party are not included in the regulation for Chapter 74 juncto page 77 article (1) of the Law no. 8 of 2011 regarding amendments over Law No. 24 of 2003 regarding the Constitutional Court related to the cause of plea denial, however, the regulation of Chapter 7 of Constitutional Court Regulation number 2 of 2008 must be considered as one part inseparable from the *a quo* Law. Therefore, following the regulation stated in Chapter 7 of Constitutional Court Regulation number 2018, if the signature of the leadership of the related political party is not found, the Constitutional Court will decide that the plea to be unacceptable.

Conditions that are not regulated in the Law of the Constitutional Court need to be technically regulated by the Constitutional Court since if all member of a party and/or the leadership of the political party is permitted to submit a plea, there will be complications in the Constitutional Court. If there are three members of the same political party but with different opinions in seeing the election result, the Constitutional Court will have the impression of trying to settle an internal affair of a political party regarding the electoral result, thus there will be a piling of cases which is not limited by Chapter 7 of the Constitutional Court number 2 of 2018. However, if there are fellow political party candidate who also questions the electoral result gained by a fellow party member, he/she can be included as a relevant party regulated in Chapter 3 article 3 number 2 of Constitutional Court Regulation number 2 of 2016<sup>(8)</sup>.

The petitioner must explain that the plea is related to the dispute over the election as stated in Chapter 30 letter d of Law no 8 of 2011 regarding Amendment over Law no 24 of 2003 regarding Constitutional Court. The plea must also contain at least what was regulated in Chapter 31 of the Law of Constitutional Court;

- a. Name and address of the petitioner (identity), as well as the petitioner's legal standing;
- b. Elaboration of the election result being disputed (*posita*)
- c. Matters aimed to be settled (*petitum*)

The submission must also be followed by adequate evidence according to Chapter 31 article (2) of Law no 8 of 2011 regarding Amendment over Law no 24 of 2003 regarding Constitutional Court. As regulated by Chapter 45 article (2) of the Law of Constitutional court, the petitioner must submit at least 2 (two) pieces of evidence in the trial. The due time of the petition for a dispute over legislative election result is in accordance with Chapter 74 article (3) of the Law of Constitutional Court which mentions that petition can only be submitted 3x24 hours since the Election Committee announced nation-wide the result of the election at the latest. The notion is also regulated in Chapter 6 article (1) of Constitutional Court Regulation no 2 of 2018 regarding the procedure in dispute case over the election for membership at the House of Representatives and Regional People's Representative Assembly.

Chapter 78 letter b of the law of Constitutional Court was explicit in its determination of due-time for the verdict. The Constitutional Court's verdict regarding a petition for a dispute over an election result; especially for membership at the House of Representatives, Regional Representative Assembly, and Regional People's Representative Assembly must be made in 30 working hours since the petition was recorded in the Registration Book of Constitutional Case at the latest. The notion regarding the due time of the verdict is also regulated in the



Constitutional Court Regulation no 2 of 2018. If the petition is submitted after the due date determined by the aforementioned Law, the Constitutional Court will deem the petition unacceptable.

As what can be seen occurred in the simultaneous election of 2019 to select members of the House of Representatives, Regional Representative Assembly, and Regional People's Representative Assembly, as well as the Presidency, many problems occurred before, during, and after the election. One of them was Case Number 229-07-27/PHPU.DPR-DPRD/XVII/2019 in which the legislative candidate from Berkarya Party complained about vote transfer within the party's internal which is known after the Election Committee declared the votes for each of the candidates simultaneously in the national, province, and county/city level. The petition is for the seat at the Regional People's Representative Assembly of Pangkajene County, South Sulawesi Province. Candidate number 8 with the name Nurhidayah earned 951 votes based on the C1; however, the Election Committee determined the result to be 942 votes. The transfer of the petitioner's votes to the Party's vote occurred at Voting Venue 07 of Tamangapa Village. Nurhidayah should have earned 6 votes, but it was deducted by 3 votes. Then the three votes were added to the Party's vote. She further accused the respondent of an error in vote input. She explained that at Venue 02 of Pitue Village there were additions for Candidate number 1 by 2 votes, Candidate number 3 by 2 votes, and candidate number 7 by 1 vote. There were also deductions of votes for the petitioner occurred at Venue 12 of Attang Salo Village. The respondent which in this case the Election Committee declared the petitioner only earned 2 votes. The petition for the dispute over an election result was eventually denied by the Constitutional Court due to the petitioner not having a legal standing to submit a petition regarding the election result since she didn't earn an agreement or permit from the general leader and secretary-general of the Berkarya Party as a requirement written in Chapter 3 of Constitutional Court Regulation No. 2 of 2018 regarding procedures in dispute case over election result for membership in the House of Representatives and the Regional People's Representative Assembly.

## **2. Settlement of dispute over an election result among people of the same parties tied to the principle of justice.**

Disputes can occur in every step of the election as stated by Janedjri M. Gaffar and cited by Refly Harun that the occurrence of disputes or violations is highly probable in every step of the election. The possibility can be caused by fraud, mistake, or non-fraudulent misconduct which does not against the law but lowered public trust. Electoral law enforcement is one of the indicators of a democratic election, thus if one wished to see the success of an election, one of the measurements that is important to see is whether or not the process of law enforcement works. Also when a vote manipulation took place, the present legal mechanism can provide a solution or even restore voters' electoral rights <sup>(9)</sup>.

The large amount petitions over legislative election result that reach 392 petitions and the obligation to settle them in a specific amount of time mad the Constitutional Court which comprised of 9 judges added several requirements, one of them is the need for permission from the leader and the secretary-general of the political party.

The above factors are used as a reference in the inclusion of the requirement to earn a permit from the secretary-general and the leader of the party in the Constitutional Court Regulation no. 2 of 2018 to be in accordance with the instruction of the 1945 Constitution Chapter 22E to choose the House of Representative, The Regional Representative Assembly, The Regional People's Representative Assembly, the President, and the Vice President in manners that are direct, public, free, confidential, honest, and just once every five years.

Just is the only principle born along with the birth of reformation and was written for the first time in Law number 12 of 2003 regarding the Election. However, in Law number 7 of 2017 regarding the Election, said principle has an abstract meaning. Chapter 22 E of the 1945 Constitution gave the constitutional role of being participants of Elections for Representative Assemblies to the political parties. The first direct election was held in 2004 and later 2009 and 2014 according to the instruction of the 1945 Constitution Chapter 22E to choose the House of Representative, The Regional Representative Assembly, The Regional People's Representative Assembly, the President, and the Vice President in manners that are direct, public, free, confidential, honest, and just once every five years.

Among several Experts who suggested the theory of justice was John Rawls who opined that it is the method for a social institution in distributing internal basic rights and obligations as well as to determine the division of benefits gained from social cooperation. After achieving an agreement with the position of justice in a social institution, the next step is to determine the functionally appropriate principle of justice as a base of regulation for the social institution. Of the criteria, Rawls postulated that "Everyone is presumed to act justly and to do his part in upholding just institutions". The principle encompasses freedom in participating in political life, freedom of assembly and to speak as well as freedom of press and freedom in committing religious practice <sup>(10)</sup>.

Robert Dahl stated that democracy emphasized the aspect of competition, participation, and political and civil freedom. Competition is also known as contestation that requires contestants in the race for state powers. The proper contestation is established by the existence of competition within a measured space and regulation as well as an assurance of the existence of freedom and justice. This also applies in the contestations within the 2019 election which for the first time executed simultaneously to choose members of the House of Representatives, the Regional Representative Council, and the Regional People's Representative Assembly, as well as the President and Vice President. <sup>(11)</sup>

Eric Barendt, Professor of University College, London, in his view about democratic election criteria, was not so different from other experts or international regulation on human rights regarding an election. Barendt stated four principles must be fulfilled by a democratic election and firmly stated in a constitution which are: regular, free, equal, secret, added with a requirement that a tribunal must have an authority to enforce said principles <sup>(12)</sup>.

Justice must be given to every electoral candidate. Different treatments to the candidates are something in conflict with the Constitution. This is not only due to it contradicts with the right to have an equal chance in government as regulated in Chapter 27 article (1) and Chapter 28D article (3) of the 1945 Constitution, but also since dissimilar treatments are the cause of Electoral injustice. One of the indicators of Electoral justice is the similar treatments among participants of Elections, whether it is for membership in the House of Representatives and the Regional People's Representative Assembly or elections regulated in the 1945 Constitution. In some countries, the principle of justice and freedom is an indivisible unity. In the United States of America, the principle of freedom and justice is the principle of a democratic election that promises good integrity from the executor and the political parties.

“Free and fair elections allow people living in a representative democracy to determine the political makeup and future policy direction of their nation's government. <sup>(13)</sup>

The issue of the Constitutional Court Regulation no. 2 of 2018 regarding the procedure in cases of disputes over the result of the election for membership in the House of Representative and Regional People's Representative Assembly created a new problem in which legislative candidates disputing over election result which involved internal parties or candidates for

Regional People's Representative Assembly from the same political party must first earn written permit from the leader and secretary-general of the party, where the granting of the permit is full of political interest and not putting election principles forward. The 1945 Constitution Chapter 22E Clearly states clearly to choose the House of Representative, The Regional Representative Assembly, The Regional People's Representative Assembly, the President, and the Vice President in manners that are direct, public, free, confidential, honest, and just once every five years.

By judging the Dispute over an election result, the Constitutional Court has become the guardian of the constitution which guards the execution of democracy as the constitutional basis of state life. The granting of special authority by law mad the Constitutional Court the final path which is considered the most righteous and authoritative in deciding the fate of our democracy since the election executioners do not guarantee the face of democracy expected by the people and thus the election executioners as the instrument of the state is an authority that must be guarded and supervised according to its corridor. This is due to Lord Acton's opinion that "power tends to corrupt; the absolute power corrupts absolutely". Therefore, with the existence of the Constitutional Court, there will be distinctive pressure towards the election executioners to not abuse their authority in deciding the vote result of the election.<sup>(14)</sup>

As discussed beforehand, if the emerging problem is due to the election result issued by the Election Committee, the one with the authority to judge the case is the Constitutional Court and some of the procedures required to rest a case at the Constitutional Court as regulated in the Law No. 8 of 2011 regarding amendment over Law no. 24 of 2003 regarding Constitutional Court, includes as follows:

1. Due to what is given to the Constitutional Court are matters regarding the implementation of the constitution and constitutional rights of the citizen, therefore it is appropriate that the trial is done openly to the public, done verbally, and publishable through information technology such as radio and television. The failure to fulfill Chapter 28 article (5) will result in the Constitutional Court's decision to be deemed invalid and have no legal provision.
2. The petitioner is the party who considered his/her/their constitutional rights and/or authority has been abused by the implementation of the law, which includes:
  - a. Individual citizen of Indonesia
  - b. A union of cultural law society;
  - c. Public or private legal institution; or
  - d. State institution

In the petition, the petitioner is obligated to elaborate his plea regarding his/her/their constitutional right and/or authority (legal standing) which is regulated in detail about the procedure for a legislative candidate according to Constitutional Court Regulation no. 2 of 2018.

The authority to judge disputes over election results whether it is Legislative or Presidential is held by the Constitutional Court. The authority of the Constitutional Court to judge disputes over election results is granted directly by Chapter 24C of the 1945 Constitution of the Republic of Indonesia. The Constitutional Court is chosen as the institution that judges disputes over election result since the Constitutional Court is the first and final level judicative institution whose decision is final and binding which therefore in accordance with the legal process over disputes over election result which must be settled quickly. The granting of authority to judge disputes over election results to the Constitutional Court is not a mistake. However, the problem is linked to the execution of simultaneous Election which causes the settlement of electoral disputes must also be done simultaneously. This condition will surely become a problem if

related to the Constitutional Court's objective condition such as the composition of constitutional judges with a very limited number (nine personnel) while the number of dispute cases has the potential to reach thousands. Furthermore, the disputes over election results are disputes that take place in the County/City regional level whereas the Constitutional Court is a judicial institution on the Central level.<sup>(16)</sup>

The solving for a problem where a legislative candidate not given a permit to submit petitions to the Constitutional Court or not getting a legal standing refers to internal matters of the political party itself, which is in accordance with the circular of the Supreme Court no 4 of 2016 regarding the Implementation of Formulation of the Result of the 2016 Supreme Court Plenary Room Meeting as a role execution guidance for trials. Through this Circular, some rooms in the Supreme Court agreed on several formulations of legal problems as a result of the plenary room meeting. One of the is that special civil room for disputes of political parties, which is fully in the authority of the Political Party Court or the like with different names. Furthermore, it is agreed that the District Court's verdict is a first and final level verdict. This formulation closed any chances for parties who aim to submit cassation to the Supreme Court as instructed in Chapter 33 article (2) of Law no 2 of 2011 regarding Political Parties. These internal matters include the denial of issuing a letter of recommendation for a cadre who asks for a written permit to submit a petition over election result to the Constitutional Court. Chapter 32 article (4) and (5) of Law no. 2 of 2011 regarding Political Parties emphasized that the Political Party Court must settle disputes between their cadres<sup>(17)</sup>.

Chapter 32 article 1 of the Law of Political Parties stated that disputes in a political party must be settled internally as regulated in their Basic Consideration and Household Consideration. Article (2) states that settlements of disputes in a political party's internal as described in Article (1) is done by a political party tribunal or the like with different names which are formed by the political party. Explanation of Chapter 32 article 1 stated that what is referred to as a political party dispute includes disputes regarding management, violation of a member's rights, discharge without a clear reason, abuse of authority, financial liability, and objections towards a decision by the political party. When a settlement is not achieved, Chapter 34 article 1 explained: In the case, that settlement as meant in Chapter 32 is not achieved, settlement of the dispute will be done through the District Court.

Through the Political Party Court, someone who is not satisfied with a political party's decision over a cadre can earn justice, and if an agreement is not achieved, the cadre can submit a petition to the District Court. However, in the implementation, the settlement through Political Party Court may sometimes consume a lot of time, and the members of said Court came from the party's internal which are feared to take the party higher-ups' side which has been considered to be unjust towards the cadres and might draw additional time until the due of submitting a petition for a dispute over an election result regulated in the Constitutional Court Regulation no 2 of 2018, which is 3x24 hours.

If the cadre submits a petition to the District Court over internal party matters as explained above, therefore the time between registration until the verdict is made might take a long time between 2-3 months which of course harmful to parties aiming to submit their petition over election results to the Constitutional Court which has a time limit. The Supreme Court must make a regulation design that prioritizes and shortened the time needed to a settlement over internal parties which require swift handling so that it can be settled in the District Court between 1-2 days such as the issuing a letter of recommendation for the cadre aiming for a settlement of a dispute over an election result. A legal product that can be issued by the Supreme Court can be in the form of Supreme Court Regulation, however, in settling short-term



problems, the Political Party Court cannot be expected to be able to settle internal matters before going through litigation path.

Indeed, the challenge for the Political Party Court is to maintain independence or neutrality. Without independence, it is hard for the assembly to make decisions that accommodate all sides. Political Party Court which takes sides to one of the officials will make a partitioned decision which of course indecisive, and far from final or binding. This is not before considering how the Political Party Court has difficulties in gauging its independence since the assemble came from the party's internal which may have certain agendas. A political party should open a chance for outsiders or public figures to join in the role of settling a party's internal matters, which require progressive actions that go beyond the regulation's text. One of the aforementioned progressive actions is to go through non-litigation paths that involved the people, or precisely public figures who are considered neutral, while the people may give a response regarding their supported candidate in achieving fair treatment in the election.

The Election Supervision Board's checking and making a decision regarding disputes over electoral processes and electoral administrative violations are regulated in Chapter 94 article (2) letter d of Law of the Republic of Indonesia number 7 of 2017 regarding the Election, which describes that the Election Supervision Board is tasked "to make a decision over electoral administrative violations". Chapter 94 article (3) letter d and e describe that in the act on a dispute over the electoral process, the Election Supervision Board is tasked "to perform adjudication processes on a dispute over electoral process; making settlement decisions on a dispute over electoral process". Chapter 95 letter a and d of Law of the Republic of Indonesia number 7 of 2017 regarding the election stated that the Election Supervision Board has the authority "to check, review, and decide over electoral administrative violations and accept, check, mediate, or adjudicate and make settlement decision on a dispute over the electoral process."<sup>(18)</sup> The Election Supervision Institution can be the one to select the political party court assembly which is specifically made during the election period to settle internal party matters which require swift handling such as legal standing matters which always become a problem during an election, especially for legislative members. Therefore, once again, the member of the political party court may come from civil society organizations, public figures, and some of the political party members themselves.

### **C. Closing**

According to the Research Author, the Constitutional Court regulation related to the previous requirements for submitting petition over election result for membership of the House of Representative and Regional People's Representative Assembly requires the inclusion of permit form the leader of the political party, and until the latest regulation which is the Constitutional Court Regulation no. 2 of 2018, the same requirement is still included. This creates problems if a difference of vote count result between fellow cadres of the same political party, in which the party leader does not issue a permit to one of the cadres aiming to petition to the Constitutional Court because the other cadre has a special relationship with the secretary-general of the party leader. However, if one looks at the Constitutional Court's viewpoint who issued Constitutional Court Regulation no. 2 of 2018 along with the previous regulation that becomes the basis of petitions over election result requires a permit from the leader or secretary-general of the party, it is found that the problems like the short time given by the Law of Constitutional Court to the legislative election result cases which are 30 days after the petition are recorded in the Registration Book of Constitutional Cases and the sheer amount cases entering despite the requirements which are 339 petitions while the number of judges handling the cases is only 9 people.

To ensure the principle of justice for the candidates is fulfilled, in the event of issues during election occurred like what is elaborated above, the settlements are done by the Political Party Court. Through the Political Party Court, someone who is not satisfied with a party's decision toward a cadre may earn justice, and if an agreement is not achieved, the cadre can submit a petition to the District Court. However, in practice, the settlement through the Political Party Court may take a long time and the member of the Court itself came from the party's internal which is feared to take the side of the party's higher-ups who already being unfair to the cadre and might draw more time until the due of submitting a petition for a dispute over an election result regulated in the Constitutional Court Regulation no 2 of 2018, which is 3x24 hours.

Justice must be given not only to the participants or the votes but also to the institution judging the disputes emerging from the process of election, which in this case the Constitutional Court. In 2019, the Constitutional Court received 340 petitions over the election result, with the sheer number and the need to settle them in a short time, it can be considered to make sense that the Constitutional Court applied the requirements to preserve the sense of justice and humanity for the judges of Constitutional Court who are only 9 people.

For the Constitutional Court, in settling a dispute over an election result there is an obligation to judge as just as possible regardless of the person and source of the petition so that it becomes a base of legal certainty wished by all parties. Also, in making the regulation related to procedures regarding disputes over the election result, the Constitutional Court is meant to issue a regulation with requirements that do not hinder the petitioners or usable in a certain political interest, so that the petitioners may submit petitions easily as long as the basic requirements are fulfilled and a sense of justice is given to the petitioners.

As for the Political Parties, they are expected to act fairly and ensure the basic rights of their cadres and optimizing the Political Party Court with the hope to be able to settle internal matters before a litigation path is taken. The Election Supervision Institution can be the one to select the political party court assembly which is specifically made during the election period to settle internal party matters which require swift handling.

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