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## Article Title

### Implications of Constitutional Court Decision Number 85/PUU-XX/2022 for the Dispute Resolution of Regional Head Election Results

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## **ABSTRACT**

*This study aims to analyze the juridical implications of Decision Number 85/PUU-XX/2022 for the dispute resolution of Regional Head Election results in Indonesia and examine the position and authority of the Constitutional Court following the decision. This research employs a normative legal research method with statutory and conceptual approaches. The analytical techniques used are qualitative-descriptive and interpretative analysis techniques to examine and interpret legislation, Constitutional Court decisions, and relevant legal literature. The results show that Decision Number 85/PUU-XX/2022 has re-established the Constitutional Court's permanent authority to adjudicate disputes over Regional Head Election results, previously annulled through Decision Number 97/PUU-XI/2013. Decision Number 85/PUU-XX/2022 is based on a constitutional interpretation that there is no distinction between the General Elections regime and the Regional Head Election regime within the framework of the 1945 Constitution. The juridical implication of this decision is the establishment of legal certainty regarding the institution authorized to resolve disputes over Regional Head Election results, namely the Constitutional Court, with definitive authority that is no longer ad hoc. In addition, this decision can potentially increase the effectiveness of the dispute resolution of Regional Head Election results and strengthen the electoral democratic system at the local level. To strengthen the position and ensure the continuity of the Constitutional Court's authority, it is recommended to amend Law Number 48 of 2009, Law Number 10 of 2016, and the 1945 Constitution to explicitly mention the Constitutional Court's authority in adjudicating disputes over Regional Head Election results.*

**Keywords:** *Constitutional Court; Dispute Resolution of Regional Head Election Results; General Elections; Special Judicial Body.*

## **INTRODUCTION**

The dynamics of regulating and practicing the dispute resolution of Regional Head Election results in Indonesia have experienced fluctuations, particularly concerning the institutions authorized to handle them (Riqiey, 2023b). Initially, Law Number 32 of 2004 mandated the Supreme Court as the competent institution to settle disputes over Regional Head Election results. However, in practice, the Supreme Court's performance drew criticism for its perceived failure to deliver just and legally specific resolutions. Instead of mitigating conflicts, the Supreme Court's decisions, which often ordered re-voting or ballot recounting, were frequently re-challenged, thus complicating and prolonging the dispute-resolution process (Saragih, 2022). This situation eroded public trust in the Supreme Court as the final arbiter of disputes regarding Regional Head Election results and spurred aspirations to transfer this authority to the Constitutional Court.

A fundamental change occurred when the paradigm of Regional Head Elections shifted to become part of the General Elections regime. This transformation began with the enactment of Law Number 22 of 2007, which implicitly categorized Regional Head Elections as a component of General Elections through the use of the terminology "General Elections" instead of "Elections" in Article 1 point 4 of the law. This paradigm shift paved the way for the Constitutional Court to assume a role, considering that Article

24C section (1) of the 1945 Constitution grants the Constitutional Court the authority to adjudicate disputes concerning General Election results. Further reinforcement was established in Article 236C of Law Number 12 of 2008, which explicitly transferred the authority for the dispute resolution of Regional Head Election results from the Supreme Court to the Constitutional Court. Consequently, the Constitutional Court officially assumed the role of a guardian of democracy within the context of Regional Head Elections, alongside its function as a guardian of the constitution.

However, the discourse regarding the Constitutional Court's jurisdiction in disputes over Regional Head Election results experienced a dramatic turning point with Decision Number 97/PUU-XI/2013. In this verdict, the Constitutional Court declared itself no longer authorized to adjudicate disputes over Regional Head Election results, arguing that the expanded interpretation of the phrase "General Elections" in Article 22E of the 1945 Constitution, which had served as the basis of its authority, was deemed unconstitutional (Febriyanto & Firman, 2023). As a juridical consequence, the Constitutional Court ordered the establishment of a unique judicial body to handle disputes concerning Regional Head Election results. Ironically, while awaiting the formation of this unique body, the Constitutional Court was still mandated to resolve disputes over Regional Head Election results, which substantively negated its verdict (Bantu et al., 2024). Following Decision Number 97/PUU-XI/2013, the status of the Constitutional Court's authority in handling disputes over Regional Head Election results became *ad hoc* or temporary, as regulated in Article 157 section (3) of Law Number 10 of 2016 (Kamila, 2024).

Until 2022, the mandated unique judicial body had not been realized amidst the looming simultaneous Regional Head Elections scheduled for 2024. This situation prompted the Association for General Elections and Democracy (Perludem) to file a judicial review of Article 157 sections (1) to (3) of Law Number 10 of 2016 to the Constitutional Court in August 2022. This petition was granted through Decision Number 85/PUU-XX/2022, which declared these articles to conflict with the 1945 Constitution and no longer legally binding. This decision marks a new chapter by permanently re-establishing the Constitutional Court's authority to adjudicate disputes over Regional Head Election results. Nevertheless, the implications of this decision are not as straightforward as they might appear, particularly concerning legal harmonization, given that Law Number 10 of 2016 remains textually in effect and has not been amended. Therefore, this study aims to comprehensively examine the position of the Constitutional Court's authority following Decision Number 85/PUU-XX/2022. Furthermore, this study will analyze the juridical implications of the decision on the dispute resolution of Regional Head Election results, particularly from the perspective of legal certainty and the effectiveness of dispute resolution.

## **METHOD**

This study is based on the normative legal research paradigm, applying a statutory and conceptual approach (Qamar & Rezah, 2020). The choice of this type of normative legal research is based on the focus of the study, which is directed at the substance and hierarchy of legislation, court decisions, and legal doctrines closely related to the authority of the Constitutional Court in resolving disputes over Regional Head Election results, especially following the issuance of Decision Number 85/PUU-XX/2022. As an analytical instrument, the statutory approach is used to comprehensively review and analyze legislation relevant to the central issue of the research. The primary focus is on legislation governing the authority of the Constitutional Court in the dispute resolution of Regional Head Election results, along with its dynamic changes. In this case, Decision Number 85/PUU-XX/2022 becomes an essential object of study in addition to several related laws.

A conceptual approach is also applied to examine and fundamentally understand legal concepts relevant to the research issue to deepen the analysis. These concepts are critically analyzed by referring to the views of legal experts, as contained in various literature, scientific journals, and other authoritative legal sources. The legal material collection method applied in this research is library research. Through this method, an in-depth inventory and review of legislation, court decisions, books, scientific journals, and other documents related to the object of research are carried out. The collected legal materials are then classified into two main categories, namely primary and secondary legal materials. Primary legal materials include legislation and decisions of the Constitutional Court, while secondary legal materials include legal literature, scientific journals, articles, and other documents deemed relevant to the research topic.

The analysis of the collected legal materials is carried out using qualitative-descriptive and interpretative analysis techniques (Sampara & Husen, 2016). With qualitative-descriptive techniques, the data and information obtained are presented and described systematically, comprehensively, and in-depth, especially concerning the discourse on the authority of the Constitutional Court in resolving disputes over Regional Head Election results based on relevant legislation and jurisprudence. Furthermore, interpretative techniques, including grammatical, systematic, historical, and comparative interpretations, are utilized to interpret and explore the substantive meaning of legal norms contained in legislation and Constitutional Court decisions, particularly those related to the authority of the Constitutional Court following Decision Number 85/PUU-XX/2022. The genealogy and philosophical background of the regulation regarding the Constitutional Court's authority are also traced through historical interpretation techniques. As a complement, comparative interpretation techniques are also applied by comparing the dispute resolution models for General

Elections/Regional Head Election results in Indonesia with other relevant jurisdictions. By integrating these two analytical techniques, it is hoped that this study can present a holistic, in-depth, and argumentative understanding of the juridical implications of Decision Number 85/PUU-XX/2022 for the dispute resolution of Regional Head Election results in Indonesia.

## **RESULTS AND DISCUSSION**

### **A. The Position of the Constitutional Court's Authority in the Dispute Resolution of Regional Head Election Results Following Decision Number 85/PUU-XX/2022**

The birth of the Constitutional Court as one of the pillars of judicial power in Indonesia resulted from the reform movement's spirit, which demanded a mechanism of checks and balances among the branches of power. Introduced through the third amendment to the 1945 Constitution, the presence of the Constitutional Court brought a new conception to the state administration system, particularly in safeguarding the Constitution (Arifin, 2023). From a philosophical perspective, the existence of the Constitutional Court embodies the principle of the rule of law (*rechtsstaat*), which necessitates the supremacy of law and the constitution as the fundamental basis for the administration of the state (Muhtamar & Bachmid, 2022). As an independent judicial institution, the Constitutional Court, as asserted by Lailam (2015), performs the crucial function of checking on law violations in the state administration field. This view is supported by Gaffar (2009), who states that the Constitutional Court has a constitutional mandate as the vanguard in guarding and interpreting the Constitution, manifested in each of its decisions. The operational legal basis for the Constitutional Court was then formulated in Law Number 24 of 2003, which has undergone several amendments, most recently with Law Number 7 of 2020 (Rezah & Sapada, 2023).

In the context of the dispute resolution of Regional Head Election results, the position and authority of the Constitutional Court have fluctuated along with the dynamics of regulations and the Constitutional Court's jurisprudence (Rumesten, 2014). Prior to the issuance of Decision Number 85/PUU-XX/2022, the Constitutional Court's authority in handling disputes over Regional Head Election results was uncertain, especially following Decision Number 97/PUU-XI/2013. The quo decision declared that the Constitutional Court did not have the authority to resolve disputes over Regional Head Election results and mandated the establishment of a unique judicial body. Philosophically, this decision reflects the debate in the discourse of constitutional law regarding the scope of the Constitutional Court's authority, whether limited to judicial review or extended to include the dispute resolution of Regional Head Election results. However,

interestingly, following that decision, the Constitutional Court continued to carry out the function of dispute resolution of Regional Head Election results with a temporary status of authority. It was regulated in Article 157 section (3) of Law Number 10 of 2016, essentially the antithesis of Decision Number 97/PUU-XI/2013. The philosophical basis for the existence of this article was to fill the legal vacuum (*recht vacuum*) while awaiting the formation of the mandated unique judicial body (Riqiey, 2023a).

Decision Number 85/PUU-XX/2022, which granted the petition for judicial review filed by the Association for General Elections and Democracy (Perludem), marked a new era in the configuration of the Constitutional Court's authority related to the dispute resolution of Regional Head Election results. This decision firmly re-established the Constitutional Court's permanent authority to adjudicate disputes over Regional Head Election results. The primary philosophical basis of this decision is the reaffirmation of popular sovereignty, realized through Regional Head Elections, which must be safeguarded in its purity through a practical and legally specific dispute resolution mechanism. With the declaration that Article 157 sections (1) and (2) of Law Number 10 of 2016 are no longer legally binding, the legal basis governing the temporary authority of the Constitutional Court in handling disputes over Regional Head Election results is nullified. Thus, the Constitutional Court now has definitive authority that is no longer *ad hoc* (Harahap, 2022). Furthermore, this decision also implicitly corrected the direction of Decision Number 97/PUU-XI/2013, which had previously annulled the Constitutional Court's authority, and reaffirmed the position of the Constitutional Court as the guardian of the constitution in the context of Regional Head Elections.

For comparison, the model for resolving disputes over General Elections and Regional Head Election results in the Philippines is worth examining further. The Commission on Elections (COMELEC) in the Philippines is an independent commission with a constitutional mandate and broader authority than the General Election Commission in Indonesia. COMELEC is one of three constitutional state commissions regulated explicitly in the Philippine constitution, with characteristics of neutrality, impartiality, and freedom from political intervention (Taufiqurrahman et al., 2023). Philosophically, the existence of COMELEC reflects an effort to create a strong and independent institution for organizing General Elections and Regional Head Elections, capable of ensuring the integrity and credibility of the democratic process. Although the state administration systems of Indonesia and the Philippines have fundamental differences, the structured and systematic model for resolving disputes over General Elections/Regional Head Election results in the Philippines, with apparent institutional authority, can be a source of inspiration for Indonesia in formulating a more effective and accountable

institutional design for the dispute resolution of Regional Head Election results in the future (Bima, 2023).

## **B. Juridical Implications of Decision Number 85/PUU-XX/2022 on Legal Certainty and the Effectiveness of Dispute Resolution of Regional Head Election Results**

Prior to Decision Number 85/PUU-XX/2022 issuance, the discourse surrounding the institution authorized to resolve disputes over Regional Head Election results was marked by dynamics and shifts in authority among judicial institutions. Under Law Number 32 of 2004, the Supreme Court was initially mandated to handle such disputes. From a rule of law perspective, granting this authority to the Supreme Court was intended to ensure the existence of a fair and legally specific dispute resolution mechanism. However, in practice, the Supreme Court's performance in resolving disputes over Regional Head Election results drew sharp criticism for being ineffective and unresponsive to the dynamics of local politics.

A fundamental shift occurred through Article 1 point 4 of Law Number 22 of 2007, emphasizing the phrase "General Election for Regional Head and Deputy Regional Head." Philosophically, the phrase "General Elections" reflects the recognition that Regional Head Elections are an integral part of the General Elections regime. Consequently, based on Article 24C section (1) of the 1945 Constitution, which grants the Constitutional Court the authority to adjudicate disputes over General Elections results, the Constitutional Court has a constitutional basis for handling disputes over Regional Head Election results (Banafanu et al., 2023). This recognition was a step forward in strengthening the legitimacy of the Constitutional Court as the deciding institution for the dispute resolution of Regional Head Election results.

Efforts to further solidify the Constitutional Court's position in the dispute resolution of Regional Head Election results were manifested in Law Number 12 of 2008. Article 236C of the law explicitly transferred the handling of disputes over Regional Head Election results from the Supreme Court to the Constitutional Court. This transfer of authority, which was to be completed within a maximum of 18 months from the law's enactment, was a concrete form of effort to create a more effective and efficient dispute resolution system. Philosophically, this transfer reflects a paradigm shift from a judicial dispute resolution to a more constitutional one, where the Constitutional Court, as the guardian of the constitution, is considered more appropriate to safeguard the purity of the Regional Head Election process.

Support for the Constitutional Court's authority was further consolidated with the issuance of Law Number 48 of 2009. Article 29 section (1) point d of this law provides a strong legal basis for the Constitutional Court to exercise other authorities granted by law, including the authority to adjudicate disputes over Regional Head Election results. Philosophically, this article affirms the Constitutional Court's position as a judicial institution with flexibility in exercising its authority as long as it remains within the corridor of the Constitution and applicable legislation. In the context of regional head elections, this provides room for the Constitutional Court to develop jurisprudence and dispute resolution practices based on the dynamics and needs of the ground. For example, Decision Number 41/PHPU.D-VI/2008 regarding the dispute over the Regional Head Election results in East Java became a landmark decision that not only strengthened the Constitutional Court's position but also became an important precedent and reference (legal precedent) in handling disputes over Regional Head Election results in the future ([Satriawan et al., 2012](#)).

However, the Constitutional Court's consistency in exercising this authority was severely tested when it issued Decision Number 97/PUU-XI/2013. This decision declared that the Constitutional Court was no longer authorized to adjudicate disputes over Regional Head Election results, based on a restrictive interpretation of the phrase "General Elections" in Article 22E of the 1945 Constitution. According to the Constitutional Court, the phrase only covers General Elections to elect legislature members (DPR, DPD, DPRD) and the President and Vice President and does not include Regional Head Elections. Philosophically, this decision reflects a battle of interpretation between textualism and purposivism in interpreting the Constitution. On the one hand, a restrictive interpretation is based on the original intent of the constitution's framers (originalism), which tends to be textualist. On the other hand, a more purposive view, as reflected in the dissenting opinion of Justice Arief Hidayat, emphasizes the importance of interpreting the constitution as a living constitution that must be able to respond to the challenges of the times. This decision also mandated the establishment of a unique judicial body to handle disputes over Regional Head Election results, which has not yet been realized ([Syaidi et al., 2024](#)). Then, the Constitutional Court issued Decision Number 55/PUU-XVII/2019, which introduced the concept of National General Elections and Local General Elections (including Regional Head Elections) in the context of holding Regional Head Elections. It seemed to obscure the original intent of the General Elections regime itself ([Muzakkir et al., 2021](#)).

Finally, through Decision Number 85/PUU-XX/2022, the Constitutional Court corrected the direction of Decision Number 97/PUU-XI/2013 and reaffirmed its permanent authority to adjudicate disputes over Regional Head Election results.



This decision was based on a holistic and integrative constitutional interpretation, which stated that there is no substantial difference between the General Elections regime and the Regional Head Election regime within the framework of the 1945 Constitution. Thus, Article 24C section (1) of the 1945 Constitution, which grants the Constitutional Court the authority to adjudicate disputes over General Elections results, must also be interpreted as including disputes over Regional Head Election results. Philosophically, this decision reflects the triumph of a more dynamic and progressive constitutional interpretation, which prioritizes the principles of electoral justice and popular sovereignty as fundamental values in the democratic system (Bachmid, 2020). Consequently, Article 157 sections (1) and (2) of Law Number 10 of 2016, which regulate establishing a unique judicial body, lose their constitutional relevance and are declared to conflict with the 1945 Constitution (Pakaya et al., 2023).

The juridical implications of Decision Number 85/PUU-XX/2022 for legal certainty and the effectiveness of the dispute resolution of Regional Head Election results are significant and multidimensional. *First*, this decision ends the prolonged polemic and legal uncertainty regarding the institution authorized to resolve disputes over Regional Head Election results. With the Constitutional Court being confirmed as the sole authority, legal certainty, which is much needed to hold Regional Head Elections, is established. *Second*, this decision strengthens the legitimacy and position of the Constitutional Court in the Indonesian constitutional system, particularly in safeguarding the electoral democratic process at the local level. *Third*, with definitive authority that is no longer temporary or *ad hoc*, the Constitutional Court is expected to be more focused and optimal in developing jurisprudence and mechanisms for the dispute resolution of Regional Head Election results that are effective, efficient, and accountable. It will accelerate dispute resolution and provide legal certainty for disputing parties and the wider community (Husen et al., 2022). *Fourth*, this decision also has implications for strengthening the electoral democratic system as a whole because it provides a constitutional guarantee that every dispute over Regional Head Election results will be resolved through a legal mechanism that is fair, transparent, and credible, which in turn will increase public trust in the integrity of the process and the results of Regional Head Elections (Tatawu, 2017).

## **CONCLUSIONS AND SUGGESTIONS**

Based on the results and discussion, it can be concluded that Decision Number 85/PUU-XX/2022 has significant juridical implications for the dispute resolution of Regional Head Election results in Indonesia. Prior to this decision, the position and authority of the Constitutional Court in handling disputes over Regional Head Election

results experienced fluctuations, marked by a shift in authority from the Supreme Court to the Constitutional Court and a temporary annulment of the Constitutional Court's authority through Decision Number 97/PUU-XI/2013. Decision Number 85/PUU-XX/2022 ends this polemic by reaffirming the Constitutional Court's permanent authority to adjudicate disputes over Regional Head Election results. This decision is based on a constitutional interpretation that states there is no distinction between the General Elections regime and the Regional Head Election regime within the framework of the 1945 Constitution. Thus, Article 24C section (1) of the 1945 Constitution, which grants the Constitutional Court the authority to adjudicate disputes over General Elections results, must also be interpreted as including disputes over Regional Head Election results. The position of the Constitutional Court as the sole authority in the dispute resolution of Regional Head Election results following Decision Number 85/PUU-XX/2022 is further strengthened and is no longer temporary or *ad hoc*. This decision also has positive implications for legal certainty and the effectiveness of the dispute resolution of Regional Head Election results. Legal certainty is established because there is clarity regarding the authorized institution, while the effectiveness of dispute resolution can be improved because the Constitutional Court can focus more on developing the necessary jurisprudence and mechanisms. Furthermore, this decision strengthens the legitimacy of the Constitutional Court in the Indonesian constitutional system, particularly in safeguarding the electoral democratic process at the local level, and in turn, contributes to the strengthening of the electoral democratic system as a whole.

Based on the above conclusions, several recommendations have been made. *First*, there is a need to harmonize relevant legislation, primarily to strengthen the position and authority of the Constitutional Court in resolving disputes over Regional Head Election results permanently. This harmonization can be done through amendments to Law Number 48 of 2009 and Law Number 10 of 2016. Specifically for Law Number 10 of 2016, it is necessary to consider changing the terminology "Regional Head Election" to "General Election for Regional Heads" (encompassing Governors, Regents, and Mayors) to further emphasize the position of Regional Head Elections as an integral part of the General Elections regime. *Second*, to further strengthen the position and ensure the continuity of the Constitutional Court's authority in handling disputes over Regional Head Election results permanently, an amendment should also be considered, particularly to Article 24C section (1) of the 1945 Constitution, to explicitly mention the Constitutional Court's authority in adjudicating disputes over Regional Head Election results, including the General Election for Regional Heads. The same recommendation was made for amendments to Law Number 48 of 2009, explicitly mentioning the Constitutional Court's authority in adjudicating disputes over regional head election results. This amendment is important to prevent different interpretations from arising in the future and to provide a more solid constitutional

and legal basis for the Constitutional Court's authority. *Third*, the Constitutional Court needs to continuously develop jurisprudence and mechanisms for the dispute resolution of Regional Head Election results that are more effective, efficient, transparent, and accountable in order to increase public trust in the integrity of the process and the results of Regional Head Elections.

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