

**LEGAL ANALYSIS TO CONSTITUTIONAL COURT DECISION  
NUMBER 134/PHP.BUP-XIX/2021 IN THE CASE OF ELECTORAL RESULT  
DISPUTE OF THE REGENT AND THE DEPUTY REGENT ELECTION  
OF SABU RAIJUA REGENCY, NUSA TENGGARA TIMUR PROVINCE****Rustam Paula<sup>1</sup>, Abd Rasyid Talib<sup>2</sup>, Jalaluddin<sup>3</sup>, Nasrullah<sup>4</sup>,  
Gunawan Arifin<sup>5</sup>, Nasrum<sup>6</sup>, Suardi<sup>7</sup>, Abraham Kekka<sup>8</sup>**<sup>1</sup>Tadulako University

Jl. Soekarno Hatta Km. 9, Tondo, Palu, Central Sulawesi, 94148, Indonesia

Telp./Fax: +62-451-45446 Email: rustampaula@untad.ac.id

<sup>2</sup>Tadulako University

Jl. Soekarno Hatta Km. 9, Tondo, Palu, Central Sulawesi, 94148, Indonesia

Telp./Fax: +62-451-45446 Email: rustampaula@untad.ac.id

<sup>3</sup>Tadulako University

Jl. Soekarno Hatta Km. 9, Tondo, Palu, Central Sulawesi, 94148, Indonesia

Telp./Fax: +62-451-45446 Email: rustampaula@untad.ac.id

<sup>4</sup>Tadulako University

Jl. Soekarno Hatta Km. 9, Tondo, Palu, Central Sulawesi, 94148, Indonesia

Telp./Fax: +62-451-45446 Email: rustampaula@untad.ac.id

<sup>5</sup>Tadulako University

Jl. Soekarno Hatta Km. 9, Tondo, Palu, Central Sulawesi, 94148, Indonesia

Telp./Fax: +62-451-45446 Email: rustampaula@untad.ac.id

<sup>6</sup>Tadulako University

Jl. Soekarno Hatta Km. 9, Tondo, Palu, Central Sulawesi, 94148, Indonesia

Telp./Fax: +62-451-45446 Email: rustampaula@untad.ac.id

<sup>7</sup>Tadulako University

Jl. Soekarno Hatta Km. 9, Tondo, Palu, Central Sulawesi, 94148, Indonesia

Telp./Fax: +62-451-45446 Email: rustampaula@untad.ac.id

<sup>8</sup>Tadulako University

Jl. Soekarno Hatta Km. 9, Tondo, Palu, Central Sulawesi, 94148, Indonesia

Telp./Fax: +62-451-45446 Email: rustampaula@untad.ac.id

Submitted: June 13, 2021; Reviewed: Jul 07, 2021; Accepted: Oct 05, 2021

**Abstract**

*The Local Head General Election is a means of implementing people's sovereignty at the local level which has the potential to be colored by disputes or disputes. The formulations in this study are (1) Is the stipulation of Decision Number 134/PHP.BUP-XIX/2021 by the Constitutional Court following its authority as regulated in Constitu-*

*tional Court Regulation No. 6 of 2020 concerning Legal Procedures in Disputes on the Results of the Election of Governors, Regents, and Mayors? (2) What are the juridical and non-juridical implications of the Constitutional Court's Decision No. 134/PHP.BUP-XIX/2021 in a dispute over the results of the election of the Regent and Deputy Regent in Sabu Raijua Regency, East Nusa Tenggara Province? The research was carried out using a normative legal research type. The conclusions in this study are: Based on the Constitutional Court Regulation Number 6 of 2020 concerning Procedures in Disputes over the Election Results of Governors, Regents, and Mayors, the applicants do not have legal standing to apply to the Constitutional Court; Both the objectum litis and the deadline have been determined in the procedural law contained in the Law on the Election of Local Heads and the Regulations of the Constitutional Court, so the petition is no longer the authority of the Constitutional Court to examine, hear and decide. (2) Juridically, the Constitutional Court's decision has an impact on the conflict of authority between the Constitutional Court and the KPU in canceling the Sabu Raijua KPU Decision. Non-juridically, this decision has implications for the indirect loss of political rights to Thobias who is the elected Deputy Regent of Sabu Raijua Regency.*

**Keywords:** *Constitutional Court Decision; Electoral Dispute; Local Election*

## INTRODUCTION

The implementation of the Local Head and Deputy Local Head Elections (hereinafter referred to as *Pilkada*) in Indonesia is a process of transition and/or change of power at the local level periodically and is also one of the manifestations of the recognition of human rights principles, which is also one of the characteristics of the implementation of democracy itself.<sup>1</sup> This gives a signal that the administration of government must be accountable to the public.<sup>2</sup>

The spirit of carrying out direct elections is a correction to the indirect (representative) democratic system in the previous era, where local heads and deputy local heads were elected by the DPRD, becoming a democracy rooted directly in the people's choice (voters).<sup>3</sup> This is under the definition of General Election (hereinafter referred to as election) which is a mechanism for political change regarding the pattern and direction of public policy, and/or regarding elite circulation, which is carried out periodically and in an

<sup>1</sup> Siti Zuhro, in "Understanding Local Democracy: Local Election, Challenge, and Prospect", General Election and Democracy Journal Volume 4 December 2012, p. 30-31.

<sup>2</sup> Aldi Saputra Dg Panggesa, Abdul Rasyid Thalib, and Rahmat Bakri, "Authority of Local Governments In The Supervision Supply Allocation (Add) Based On Law of Number 6 Year 2014 On The Village", Tadulako Master Law Journal Volume 3,

No. 3 (23 October 2019): 202-22). Accessed from <http://jurnal.untad.ac.id/jurnal/index.php/TMLJ/article/download/10612/pdf> on 27 October 2021.

<sup>3</sup> Mustafa Lutfi. (2010). *Local Election Dispute Law in Indonesia The Idea of Expansion of the Constitutional Authority of the Constitutional Court*. Cetakan Pertama. Yogyakarta: UII Press. p. 130.

orderly manner.<sup>4</sup> Pilkada cannot be separated from general elections because, in local political life, pilkada is an activity whose value is parallel to legislative elections, it is proven that local heads and DPRD are partners.<sup>5</sup>

It is recorded that since 2005, Indonesia has carried out direct local elections. This is based on the provisions of Law No. 32 of 2004 concerning Local Government (hereinafter written Law No. 32 of 2004) based on the provisions of Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia (hereinafter written the 1945 Constitution of the Republic of Indonesia). Which stipulates that the Governors, Regents, and Mayors respectively as heads of provincial, district, and city administrations are democratically elected. The implementation of Local Head Elections in Indonesia (hereinafter referred to as Pilkada) is regulated in Law Number 10 of 2016 (hereinafter

referred to as Law No. 10 of 2016) concerning the Second Amendment to Law Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Laws Number 1 of 2014 concerning the Election of Governors, Regents and Mayors to become a law.

To ensure the realization of direct local head elections that are truly by democratic principles, their implementation and enforcement must be carried out with a system based on honest and fair principles, as well as proving that the implementation of local elections does not contain structured, systematic, and massive violations. This principle is applied by a good and integrative system, including: (1) the availability of applicable material and formal legal framework, which is binding and becomes a guideline for organizers, contestants (candidate pairs), and voters in carrying out their respective roles and functions, (2) implementation of all activities or stages directly related to the implementation of local head elections based on statutory provisions, (3) integration of the law enforcement process (electoral law enforcement) on the local head election regulations following the stages in each level, both regarding administra-

<sup>4</sup> Ramlan Surbakti. (2008). *The Electoral System and Democratic Political Order*, in Ramlan Surbakti, et. al. (Ed.), *Electoral System Engineering for the Development of a Democratic Political Order*, Jakarta: Kemitraan, p. 27, and Luki Sandra Amalia, Syamsuddin Haris, Sri Nur Yanti, Lili Romli, Devi Darmawan. (2016). *Evaluation of the 2014 Legislative Election: Process and Outcome Analysis*. Yogyakarta: Pustaka Pelajar. p. 8.

<sup>5</sup> Agus Hadiawan, *Evaluation of Direct Local Head Elections in Lampung Province (Study in South Lampung Regency, Metro City and Bandar Lampung City*, Bandar Lampung, Academic Journal of Public Administration and Development, Universitas Lampung, Volume 3, Number 7, July-December 2009, p. 637.

tive, criminal, ethical issues, as well as electoral disputes results.<sup>6</sup>

In addition, in realizing free, independent, democratic, and transparent general elections at the local level, the Regency/Municipal General Election Commission is chosen as the organizing agency. Independent implementation is intended not only for efficiency and professionalism. However, the most basic is within the framework of creating independence and impartiality. As for what is meant by independence and impartiality, is that is holding the Election of Local Heads and Deputy Local Heads, the organizers and all related implementers are not under the control of a group, groups that become successful teams, candidate pairs, and campaign teams, local government political parties, DPRD, but entirely based on laws and regulations and a code of ethics for the implementation of the General Election which is enforced objectively and professionally.<sup>7</sup>

<sup>6</sup> Hamdan Zoelva in Heru Widodo. (2013). *Procedural Law of Disputes over the Results of Simultaneous Local Elections*. Jakarta: Sinar Grafika. p. v-vi.

<sup>7</sup> Yuliana and Lukman Ilham, *The Role of the General Election Commission (KPU) of Takalar Regency in the Implementation of the General Election System*, Makassar, Tomalebbi Journal, Volume 1, Nomor 2, September 2014, p. 101. Accessed from <https://ojs.unm.ac.id/tomalebbi/article/download/1657/699> on 22 February 2021.

However, during the 2020 Pilkada, there was an unusual legal problem related to the citizenship status of the elected local head in Sabu Raijua Regency, East Nusa Tenggara Province, after he was declared the winner in the Pilkada contestation through the Decision of the General Election Commission of Sabu Raijua Regency Number 342/HK. 031-Kpt/5320/KPU-Kab//XII/2020 Regarding the Determination of the Recapitulation of Vote Count Results for the 2020 Sabu Raijua Regent and Deputy Regent Election.

Orient Patriot Riwu Kore was the elected regent of Sabu Raijua Regency, East Nusa Tenggara (NTT) Province in the results of the simultaneous local elections on December 9, 2020, with 21,359 votes, or around 48%, outperforming his two political opponents, Candidate 01, Nicodemus H Riki Hake-Yohanis Uly Kale, who got 13,292 votes (31.1%) and candidate pair 03 Takem Irianto Radja Pono-Herman Hegi Radja Haba who got 9,569 votes (21.6%).<sup>8</sup>

After the stipulation of Orient as the winner in the election contestation in Sabu

<sup>8</sup> Ahmad Naufal Dzulfaroh, *NTT Regent as a Foreign Citizen, How Is The Law?* Accessed from <https://www.google.com/amp/s/amp.kompas.com/ren/read/2021/02/04/105500565/ramai-soal-bupati-ntt-berstatus-wna-bagaimana-aturannya->, Kompas.com on 5 February 2021.

Raijua Regency through the Decision of the Local General Election Commission of Sabu Raijua Regency Number 342/HK.031-Kpt/5320/KPU-Kab//XII/2020 concerning Determination of the Recapitulation of Vote Count Results for the Election of Regents and Deputy The Regent of Sabu Raijua in 2020, it was confirmed that Orient is a citizen of the United States (US) through the Election Supervisory Body (hereinafter referred to as Bawaslu) of Sabu Raijua Regency who received an electronic mail reply from the US embassy regarding Orient's citizenship status on February 1, 2021. The reply to the electronic letter reads "We would like to inform you that Mr. Orient Patriot Riwu Kore is holding a US Citizenship (We would like to inform you that Mr. Orient Patriot Riwu Kore holds United States citizenship)", and a passport that is still valid until 2027.<sup>9</sup> On the other hand, the Election Commission Local General of Sabu Raijua Regency, East Nusa Tenggara Province (hereinafter referred to as KPUD Sabu Raijua NTT) stated that procedurally the Orient had fulfilled all the candidate requirements stipulated by the Prevailing Laws.

The issue of citizenship status was then disputed by 3 (three) parties to the

<sup>9</sup> *Ibid.*

Constitutional Court (hereinafter referred to as the Constitutional Court), namely candidate pair number 01 (Nikodemus N. Rihi Heke and Yohanis Uly Kale), candidate pair number 03 (Takem Radja Poni and Herman Regi Radja) and the Alliance of People Care for Democracy (Ampedo) Sabu Raijua Regency. Because one of the things that can become a lawsuit is the candidate pair for local head and deputy local head who is declared not to meet the requirements as a candidate for local head and deputy local head.<sup>10</sup>

Until finally the Constitutional Court issued its decision through the Decision of the Constitutional Court Number 134/PHP.BUP-XIX/2021 on April 15, 2021.<sup>11</sup> In that decision, the petitioner stated that based on the legal review carried out by the Petitioners, it was concluded that currently the settlement of this issue cannot be resolved through the Administrative Court lawsuit process, as regulated in Article 1 points 9 and 11 jo. Article 5 paragraph (1) Regulation of the Supreme Court of the Republic of Indonesia Number 11 of 2016 concerning Proce-

<sup>10</sup> Moh. Mahfud MD, *Politics of Law in Indonesia*, Jakarta, Rajawali Press, 2009, p. 348.

<sup>11</sup> Sania Mashabi, *Ended Orient Riwu's Polemic of Authority, Disqualification Aad Re-Voting*, accessed from <https://nasional.kompas.com/read/2021/04/16/08122381/akhir-polemik-kewarganegaraan-orient-riwu-diskualifikasi-hingga-pemungutan>, Kompas.com on 26 April 2021.

dures for Settlement of Election State Administrative Disputes and Election Administration Violations Disputes<sup>12</sup> because the time has passed (expired). In addition, the dispute resolution regarding the Candidate for Regent from Pair 02 Orient Patriot Riwu Kore who has United States citizenship also cannot be resolved by Bawaslu as mandated by Article 142 jo. Article 143 paragraph (2) of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors to become Laws because they have overdue (expired).<sup>13</sup> Even Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors to become Laws also does not regulate the disqualification of spouses. candidates for regent and deputy regent

who have been designated as pairs of elected candidates but later it is discovered that their candidacy is formally flawed which in the application does not meet the requirements of being an Indonesian citizen because the person concerned has a foreign citizen, namely a citizen of the United States of America.

Thus, the applicants consider that there is a legal vacuum (*rechtsvacuum*) in the case. Therefore, based on the authority guaranteed by Article 24C paragraph (1) of the 1945 Constitution, Law Number 48 of 2009 concerning Judicial Power and Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court, the Constitutional Court is deemed necessary in its function as the positive legislator to make legal discoveries (*rechtsvinding*) to solve legal deadlocks and to obtain truth and substantive (material) justice for the Petitioners and the establishment of the constitution, law, and morals, as well as to provide solutions for the continuation of the system and wheels of government in the Regency Sabu Raijua. In line with this, there are at least five functions inherent in the existence of the Constitutional Court and carried out through its authority, namely as the guardian of the constitution, the final interpreter of the constitu-

<sup>12</sup> It is stated in the “*Sitting Case*” section in the Decision of the Constitutional Court Number 134/PHP.BUP-XIX/2021 letters o and p.

<sup>13</sup> Article 142 of Law Number 10 of 2016 stipulates that Election Disputes consist of: 1. disputes between election participants; and 2. disputes between Election Participants and Election organizers. Article 143 paragraph (2) of the Law no later than 12 (twelve) days from the receipt of the report or findings”.

tion, the protector of human rights, the protector of the citizen's constitutional rights, and the protector of democracy.<sup>14</sup>

Then in that decision, the Constitutional Court disqualified the candidate pair number 02 and canceled all Sabu Raijua Regency KPUD decisions relating to serial number 02 which stated that they were invalid and had no legal basis and were against and therefore canceled the Decision of the General Election Commission of Sabu Raijua Regency Number 152/HK.03.1-Kpt/5320/KPU-Kab/IX/2020 concerning the Determination of Candidate Pairs for the 2020 Sabu Raijua Regent and Deputy Regent Elections, 23 September 2020, Decision of the Sabu Raijua Regency General Election Commission Number 153/HK.03.1-Kpt/5320/Kpu-kab/IX/2020 concerning Determination of Serial Numbers and List of Candidate Pairs for Election of Regent and Deputy, Decision of the General Election Commission of Sabu Raijua Regency Number 342/HK .03.1-Kpt/5320/KPU-Kab/XII/2020 concerning Determination Recapitulation of Vote Count Results and Determination of the Results of the 2020

Sabu Raijua Regent and Deputy Regent Elections, dated December 16, 2020, and the Decision of the Sabu Raiju Regency General Election Commission a Number 25/HK/03.1-Kpt/5420/KPU-Kab/2021 concerning the Determination of the Elected Pairs of Regent and Deputy Regent Candidates in the 2020 Sabu Raijua Regent and Deputy Regent Elections, January 23, 2020. And ordered a re-voting without being followed by the candidate pair number 02. In the settlement of the case, the Constitutional Court agreed that it was per the authority of the Constitutional Court because these cases were hard cases or hard cases that were not regulated by law and did not have jurisprudence so that the Constitutional Court based on its function as the positive legislator can make legal discoveries.

This is not following the authority of the Constitutional Court as stated in Article 2 of the Regulation of the Constitutional Court Number 6 of 2020 concerning Proceedings in Disputes on the Results of the Election of Governors, Regents, and Mayors which is the basis for the Constitutional Court in deciding a dispute over the results of the Local Head election. Article 2 of the Constitutional Court Regulation No. 6 of 2020 expressly states that the object in the case of dispute over the elec-

<sup>14</sup> Ayu Desiana, Analysis to Constitutional Court Authority in *Analisis Kewenangan Mahkamah Konstitusi In Issuing Decisions That Are Ultra Petita Based On Law Number 24 Year 2003*, article in Forum Akademika Magazine Volume 25 Nomor 1: 2014, p. 50.



tion results is the Respondent's decision regarding the determination of significant votes and can affect the determination of the selected candidate. Meanwhile, in that case, candidate pair number 02 has met all the requirements and gone through all the stages. This means that this case is not a dispute over the results of the vote. Then, if you look at the expiration time of the application for election disputes to the Constitutional Court, the case has passed 3 days as safely stipulated in Article 7 paragraph (2) of the Constitutional Court Regulation Number 6 of 2020.<sup>15</sup> Thus, there are irregularities in the Constitutional Court Decision No. 134/PHP.BUP-XIX/2021 with the Constitutional Court Regulation No. 6 of 2020 concerning Procedural Procedures in Disputes on the Results of the Election of Governors, Regents, and Mayors. In addition, as a result of the issue of election dispute enforcement, justice has not been obtained by those involved and disadvantaged in the election contestation.<sup>16</sup> Because with the Constitutional Court Decision No. 134/PHP.BUP/XIX/2021 has implications

<sup>15</sup> To declare that the Application as referred to in paragraph (1) shall be submitted no later than 3 (three) working days as of the announcement of the determination of the results of the Election by the Respondent.

<sup>16</sup> Refly Harun. (2016). *Constitutional Elections: Design of Election Dispute Resolution Now and in the Future*, Jakarta: PT. RajaGrafindo Persada, p. 339.

for the loss of political rights of the Deputy Regent of Sabu Raijua, East Nusa Tenggara. Democratic elections must provide justice for all parties, including the elected representatives.

Therefore, this discussion of this research consists of two major legal issues i.e. is the stipulation of Decision Number 134/PHP.BUP-XIX/2021 by the Constitutional Court by its authority as regulated in Constitutional Court Regulation Number 6 of 2020 concerning Proceedings in Disputes on the Results of the Election of Governors, Regents, and Mayors? and What are the juridical and non-juridical implications of the Constitutional Court Decision Number 134/PHP.BUP-XIX/2021 in the dispute over the results of the election of the Regent and Deputy Regent in Sabu Raijua Regency, East Nusa Tenggara Province?

## METHODS

The research method used in this study is a normative legal research method with a library research model, namely the study of written information about the law that comes from various sources and is widely published and is needed in normative legal research,<sup>17</sup> namely writing based on data- The data that is used as the

<sup>17</sup> Jhony Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, Malang: Bayumedia., p. 392.



object of writing is then studied and compiled comprehensively.

## ANALYSIS AND DISCUSSION

Conformity of Decision Number 134/PHP.BUP-XIX/2021 with the Authority of the Constitutional Court in Constitutional Court Regulation Number 6 of 2020 concerning Proceedings in Disputes on the Results of the Election of Governors, Regents, and Mayors

In the Dispute Case for the Local Head Election in Sabu Raijua Regency, East Nusa Tenggara Province, there are 3 (three) applicants to the Constitutional Court to request the Court to cancel all Sabu Raijua KPUD Decrees relating to the Candidate Pairs with serial numbers (Orient and Thobias). The three applicants include:<sup>18</sup>

Name : Herman Lawe Hiku

Occupation : Entrepreneur

Address : Menia, RT18 RW009 Menia Village, West Sabu District, Sabu Raijua Regency. In this case acting as an individual Indonesian citizen and registered in the Permanent Voters List in the 2020 Sabu Raijua Regent and

Deputy Regent Election, hereinafter referred to as Petitioner I.

Name : Marthen Radja

Occupation : Farmer

Address : Lobohode, RT 005/RW 003 Lobohede Village, Hawu Mehara District, Sabu Raijua Regency. In this case acting as an individual Indonesian citizen who is registered in the Permanent Voters List in the 2020 Sabu Raijua Regent and Deputy Regent Election, hereinafter referred to as Petitioner II.

Name : Yanuarse Bring Lomi

Position : Head of Sabu Raijua Democracy Concern Community Alliance

(AMAPEDO)

Address : Eilode, RT 012/RW 006 Hamlet 3 Eilode Village, Central Sabu District, Sabu Raijua Regency. In this case, acting for and on behalf of the Sabu Raijua Democratic Concerned Society Alliance (AMAPEDO), hereinafter referred to as Petitioner III.

Based on the consideration of the Constitutional Court that the three Petitioners above, (hereinafter referred to as the Petitioners) have Legal Standing to file this application because of the noble principles contained in the Constitution to protect all Indonesian citizens whose con-

<sup>18</sup> Constitutional Court of Republic of Indonesia, *Constitutional Court Decision Number 134/PHP.BUP-IX/2021*, p. 1-3.

stitutional rights have been violated, including the right to vote and be elected democratically, honestly, and fair through dignified elections. In addition, the Constitutional Court also considered that the petition of the Petitioners was motivated by the fact that there was now a legal vacuum (*rechtsvacuum*) so a progressive breakthrough was needed by the Constitutional Court. However, if you refer to the provisions of Article 4 paragraph (1) of the Regulation of the Constitutional Court Number 6 of 2020 concerning Procedures for Proceedings in Disputes over the Results of the Election of Governors, Regents, and Mayors (Constitutional Court Regulation 6 of 2020) which states: (1) Petitioners in the case of dispute over election results are: a. pairs of candidates for governor and deputy governor; b. pairs of candidates for regent and deputy regent; c. pairs of candidates for Mayor and Deputy Mayor; or d. election observers if there is only one pair of candidates. With this provision regarding legal standing, it means that not all people or parties have the right to apply to the Constitutional Court. Only those who have a legal interest may become applicants, but the Petitioners create new rules by making their interpretations/interpretations of the Petitioners' legal standing in the Petitioners'

petition, even though the provisions of Article 4 paragraph (1) of the Regulation of the Constitutional Court Number 6 of 2020 concerning Proceedings in Disputes on the Results of the Election of Governors, Regents and Mayors have very clear and determined that "The Petitioners in the case of dispute results are: a. Pairs of candidates for Governor and Deputy Governor, b. Pairs of candidates for Regent and Deputy Regent, c. Pairs of candidates for Mayor and Deputy Mayor, or d. Election observers if there is only one candidate pair.

Thus, based on the provisions of Article 156 paragraph (1) of Law Number 10 of 2016, the provisions of Article 4 paragraph (1) of the Regulation of the Constitutional Court Number 6 of 2020 letters b and d, then Herman Lawe Hiku, Marthen Radja are Indonesian citizens and Yanuarse Bawa Lomi for and on behalf of the Sabu Raijua Democratic Concerned Society Alliance (AMAPEDO) does not have the legal standing to apply with the Constitutional Court.

The determination of the vote acquisition results from the 2020 Sabu Raijua Regent and Deputy Regent elections was announced by the KPUD (Respondent) on December 16, 2020, at 14.15 WITA, thus the grace period of 3 (three) working days

for applying is December 16, 2020, until by 18 December 2020, while the Petitioner submitted an application to the Constitutional Court registered with Number 134/PHP.BUP/XIX/2021 on 16 February 2021 at 11.47 WIB and the revised application on 18 February 2021 at 14:42 WIB and registered on 26 February 2021 at 14.00 WIB. Thus, the petition submitted by the Petitioners to the Constitutional Court in the quo case does not meet the provisions as stipulated in Article 157 paragraph (5) of Law Number 10 of 2016 as well as the provisions stipulated in Article 7 paragraph (2) of the Regulation of the Constitutional Court Number 6 of 2020.

Juridical and Non-Juridical Implications of the Decision of the Constitutional Court Number 134/PHP.BUP-XIX/2021 in Disputes on the Results of the Election of Regent and Deputy Regent in Sabu Raijua Regency, East Nusa Tenggara Province

The juridical implication, in this case, is about the conflict of authority between the KPU and the Constitutional Court in the case of an order for a re-voting (PSU). As stated by Veri Junaidi, the Constitutional Court's decision is an act that is inconsistent both formally and

materially in the implementation of democratic elections. Formally, the Constitutional Court has violated several laws and regulations, including Constitutional Court Regulation No. 15 of 2008 concerning Guidelines for Proceedings for the Settlement of Disputes on the Results of the Local Head General Election, article 4 which confirms that the object of the post-conflict local election dispute is the result of the vote count, and Article 13 paragraph (3) regarding the Constitutional Court's decision and Articles 2 and 7 of the Constitutional Court Regulation Number 6 of 2020 which reaffirms the object and time limit of the application for a dispute over the election results.

In addition, Hananto Widodo also revealed, in Article 75 of Law No. 23 of 2003 which has been updated to become Law No. 7 of 2020 concerning the Constitutional Court that in the application submitted, the applicant must clearly describe: 1) Errors in the vote count results announced by the Commission General Elections (KPU) and the correct calculation results according to the applicant; and 2) A request to cancel the vote count results announced by the General Elections Commission and determine the correct vote count results according to the applicant. Thus, the Constitutional Court's de-

cision on the local election of Sabu Raijua Regency, East Nusa Tenggara Province has violated Article 75 of the Constitutional Court Law. Article 75 of the Constitutional Court Law only relates to errors in vote counting results announced by KPU, not too formal defects in the validity of the requirements for local head candidates. Even the dispute over the results of the Pilkada in Sabu Raijua is not necessarily considered a form of fraud, because Orient has gone through all the procedural stages up to the stage of establishing himself as the winner in the contestation for the Sabu Raijua Pilkada.

The Constitutional Court's decision was also unable to be shown by the applicant related to the fraud in the vote count, namely valid and invalid ballots as mandated in Article 75 of the Constitutional Court Law because in this case, it was not a dispute over the election results. Apart from that, another juridical implication is regarding the conflict of authority between the Constitutional Court and the KPU in canceling all KPU Decrees. We all know that the KPU is an independent institution as regulated in Law Number 15 of 2011 concerning Election Organizers, it is regulated regarding the organizers of General Elections conducted by a General Election Commission (KPU) which is na-

tional, permanent, and independent. Thus, no one should intervene in all decisions of the General Elections Commission, including the Constitutional Court. The reason the Constitutional Court annulled all decisions of the Sabu Raijua KPUD based on formal defects was that in the Legislation it was clearly stated that foreigners could not fill government positions in this Republic. However, the cancellation cannot be carried out by the Constitutional Court because it is not the authority of the Constitutional Court.

If we examine the previous Constitutional Court decisions that are closely related to this case, 3 cases are most relevant to be compared with this case. Although in the case settlement of the previous 3 cases, the Court disqualified the candidate pairs, the decision was different from the case of the Dispute on the Election Results of the Regent and Deputy Regent of Sabu Raijua. The reason is that in the previous 3 cases there were structured, systematic, and massive frauds, such as money politics and other frauds. In addition, in the case of the Dispute over the Results of the Local Head Election in Morowali, although there was also no fraud, the formal defects were realized before the winner was determined.

## CONCLUSION

Based on the Constitutional Court Regulation Number 6 of 2020 concerning Procedures in Disputing the Results of the Election of Governors, Regents, and Mayors, the applicants do not have Legal Standing to apply to the Constitutional Court; Both the objectum litis and the deadline have been determined in the procedural law contained in the Law on the Election of Local Heads and the Regulations of the Constitutional Court, so the petition is no longer the authority of the Constitutional Court to examine, hear and decide.

## BIBLIOGRAPHY

- Agus Hadiawan, *Evaluation of Direct Local Head Elections in Lampung Province (Study in South Lampung Regency, Metro City and Bandar Lampung City*, Bandar Lampung, Academic Journal of Public Administration and Development, Universitas Lampung, Volume 3, Number 7, July-December 2009.
- Ahmad Naufal Dzulfaroh, *NTT Regent as a Foreign Citizen, How Is The Law?* Accessed from <https://www.google.com/amp/s/amp.kompas.com/tren/read/2021/02/04/105500565/ramai-soal-bupati-ntt-berstatus-wna-bagaimana-aturannya->, Kompas.com on 5 February 2021.
- Aldi Saputra Dg. Panggesa, Abdul Rasyid Thalib, and Rahmat Bakri, *“Authority of Local Governments In The Supervision Supply Allocation (Add) Based On Law of Number 6 Year 2014 On The Village”*, Tadulako Master Law Journal Volume 3, No. 3 (23 October 2019): 202-22). Accessed from <http://jurnal.untad.ac.id/jurnal/index.php/TMLJ/article/download/10612/pdf> on 27 October 2021.
- Ayu Desiana, Analysis to Constitutional Court Authority in *Analisis Kewenangan Mahkamah Konstitusi In Issuing Decisions That Are Ultra Petita Based on Law Number 24 Year 2003*, article in Forum Akademika Magazine Volume 25 Nomor 1: 2014.
- Constitutional Court of Republic of Indonesia, *Constitutional Court Decision Number 134/PHP.BUP-IX/2021*.
- Heru Widodo. (2013). *Procedural Law of Disputes over the Results of Simultaneous Local Elections*. Jakarta: Sinar Grafika.
- Jhonny Ibrahim. (2005). *Teori dan Metodologi Penelitian Hukum Normatif*, Malang: Bayumedia.
- Law of the Republic of Indonesia Number 10 of 2016 Concerning Second Amendment of Law Number 1 Year 2015 Concerning Stipulation of Government Regulation in Lieu of Law Number 1 Year 2014 Concerning Election of Governor, Regent, and Mayor Into Law (State Gazette Number 130 Year 2016 and Supplement to the State Gazette of the Republic of Indonesia Number 5898).
- Moh. Mahfud MD. (2010). *Politics of Law in Indonesia*. Jakarta: Rajawali Press.
- Mustafa Lutfi. (2010). *Local Election Dispute Law in Indonesia The Idea of Expansion of the Constitutional Authority of the Constitutional Court*. Cetakan Pertama. Yogyakarta: UII Press.

- Ramlan Surbakti. (2008). *The Electoral System and Democratic Political Order*, in Ramlan Surbakti, et. al. (Ed.), *Electoral System Engineering for the Development of a Democratic Political Order*, Jakarta: Kemitraan, p. 27, and Luki Sandra Amalia, Syamsuddin Haris, Sri Nur Yanti, Lili Romli, Devi Darmawan. (2016). *Evaluation of the 2014 Legislative Election: Process and Outcome Analysis*. Yogyakarta: Pustaka Pelajar.
- Refly Harun. (2016). *Constitutional Elections: Design of Election Dispute Resolution Now and in the Future*. Jakarta: PT. RajaGrafindo Persada.
- Sania Mashabi, *Ended Orient Riwu's Polemic of Authority, Disqualification Aad Re-Voting*, accessed from <https://nasional.kompas.com/read/2021/04/16/08122381/akhir-polemik-kewarganegaraan-orient-riwu-diskualifikasi-hingga-pemungutan>, Kompas.com on 26 April 2021.
- Siti Zuhro, "Understanding Local Democracy: Local Election, Challenge, and Prospect", *General Election and Democracy Journal* Volume 4, December 2012.
- The 1945 Constitution of the Republic of Indonesia.
- Yuliana and Lukman Ilham, *The Role of the General Election Commission (KPU) of Takalar Regency in the Implementation of the General Election System*, *Tomalebbi Journal*, Volume 1, Nomor 2, September 2014, accessed from <https://ojs.unm.ac.id/tomalebbi/article/download/1657/699> on 22 February 2021.

\*\*\*