

THE PERFORMANCE OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA IN MAKING THE ELECTORAL JUSTICE OF THE LOCAL LEVEL (A study of the Electtoral Dispute Trial of Local Election 2017)

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ABSTRACT

This research aims at: 1) describing the enforcement of procedural justice in the electoral dispute trial of local election by the Constitutional Court of the Republic of Indonesia; 2) analyzing the enforcement of substantive justice in the aforementioned electoral dispute trial.

This research is content analysis, with qualitative-comparative approach. Source of data used is paper type, in the form of primary documents of Constitutional Court decisions in electoral dispute session 2017 and secondary document. Procurement of data is done by downloading all decisions through the official website of the Constitutional Court, namely www.mahkamahkonstitusi.go.id. The instrument used is the researcher himself with the help of check list and recording note. Data validity checked used is semantic and predictive validity. The analysis employs descriptive analysis and inferential analysis. From this research, it can be concluded: *First*, the Constitutional Court has actually performed well enough to uphold procedural justice in the examination of cases of electoral dispute in conjunction in 2017. The Constitutional Court is fully consistent to make the Article regarding the deadline for filing the petition and the legal position of the applicant as an acceptable parameter of whether the petition is accepted or not. This is the result of the adoption of the dismissal process, namely the work of the judge to examine and sort the lawsuit into court as a consequence of the principle of *Ius Curia Novit/Curia Novit Jus*. So that the courts or the judge should not refuse a case. *Second*, the enforcement of procedural justice in the electoral dispute trials by the Constitutional Court is not necessarily in line with the realization of substantive electoral justice. There is a tendency that the dismissal decisions made by the Constitutional Court ignore substantive justice. There are two matters which have potential to make the procedural justice unable to realize substantive justice in the process of electoral dispute trials in the Constitutional Court. 1) Deadline. It deviates from the principle of constitutional law principle, that is *nunc pro tunc*, which means that the court can accept the lawsuit after the time limit specified by the law as long as the indication of new fraud is found. 2) Percentage of voting result in electoral dispute, i.e. no more than 0.5%, 1%, 1.5% or 2%. Thus the candidate pairs should only optimize the victory achieved beyond the threshold of the difference from the candidate pairs of competitors, even if it is gained with fraud. Because with the difference of the votes exceeds that percentage, the losing candidate pair will surely be deemed to have no legal standing by the panel of judges of the Constitutional Court to file a dispute lawsuit. By itself, the substance of fraud committed by the candidate pair who won the big vote will not be examined in the trial of electoral dispute in the Constitutional Court.

Kata Kunci: *Electoral Justice, Constitutional Court, Electoral Dispute, Local Election*