



Continuing Disputes and Validity of Voting for the Regent and Deputy Regent of Yalimo Regency in Papua Indonesia

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Abstract: *This study examines the disputed decisions made by the Constitutional Court of the Republic of Indonesia on the election of the Regent and Deputy Regent of Yalimo Regency, Papua Province, in 2020 that do not adhere to the principle of permanent and final legal force. The Constitutional Court's decision on the dispute over the election of the elected Regent and Deputy Regent resulted in a lengthy case due to the possibility of re-election, which still resulted in general election disputes. The author discusses the consequences of re-election, which has the potential for ongoing disputes at the Constitutional Court of the Republic of Indonesia, as well as non-compliance with the principle of final punishment, which has permanent legal force from the standpoint of fairness and justice. Findings from the study of the proposed candidate having been sentenced by the court, as well as the validity of the vote count results in the District that has been declared valid and not re-voted in the Constitutional Court Decision Number 97/PHP.BUP-XIX/2021 (Study of Constitutional Court Decision Number 145/PHP BUP-XIX/2021) are also presented. According to this study, in the dispute over the election of Yalimo's regent and deputy regent, the judge decided on the same case, which had permanent legal force and violated the principle of legal certainty.*

Keywords: *election dispute; Constitutional Court; final; legal force*

I. Introduction

Indonesia is a country that uses a democratic political system in its governance process, in which democracy is defined as power by the people. The theory of popular sovereignty is basically related to the principles of people's sovereignty or democracy (Finn, 2021). The implementation of Regional Head Election (PILKADA) is a form of democratic government in order to realize a democratic government (Yuliati & Widayati 2021; Nadeau, Daoust & Dassonneville, 2021). Democracy can really be felt by the community if direct general elections are held to determine the candidate who is worthy of holding the government power (International Institute for Democracy and Electoral Assistance, 2021). The holding of regional head elections or commonly called Regional Head Election (PILKADA) is a form of guaranteeing the freedom of citizens through direct elections by the local community as a form of broad public participation because it is a means of people's sovereignty, where the highest power is in the hands of the people.

The year 2020 is the fourth wave of simultaneous regional elections in Indonesia. The Government and the DPR (People's Representative Council) had agreed that the simultaneous regional elections would be held on 23 September 2020, but the government decided to postpone the regional elections to 9 December 2020 due to the global Corona Virus Disease 2019 pandemic. (Covid-19). The voting, which was held on December 9, 2020, was carried out in 270 regions in Indonesia, covering 9 provinces, 224 regencies, and 37 cities (Rajabi, 2019).

Yalimo Regency is one of the regencies that held simultaneous regional elections in 2020. Yalimo Regency consists of five districts, namely Elelim, Apalapsili, Abenaho, Benawa, and Welarek. Based on the Decree of the Yalimo Regency General Election Commission Number 044/PL.023-Kpt/9122/KPU-Kab/IX/2020 concerning the Determination of the Candidate Pairs for the 2020 Yalimo Regency Regent and Deputy Regent Elections and based on the Decree of Yalimo Regency General Election Commission Number 045/ PL.02.3-Kpt/9122/KPU-Kab/IX/2020 concerning the Determination of the Serial Number and List of Candidates for the Election of Regent and Deputy Regent of Yalimo Regency in 2020, the Yalimo Regency KPU (General Election Commission) had determined the pair of candidates and the serial number of the pairs of candidates participating in the Election of Regent and Deputy Regent of Yalimo Regency in 2020, namely Erdi Dabi-John W. Wilil as candidate pair number 01 (one) and Lakius Peyon-Nahum Mabel as candidate pair number 02 (two). (Komisi Pemilihan Umum Kabupaten Yalimo, 2020).

The Decree Number 055/PL.02.6-Kpt/9122/KPU-Kab/XII/2020 concerning the Determination of the Recapitulation of Vote Count Results for the 2020 Yalimo Regency Regent and Deputy Regent based on the Yalimo Regency General Election Commission stipulates the recapitulation of the election vote results of Yalimo Regent and Deputy Regent in 2020 as follows: candidate pair number 01 (one) Erdi Dabi-John W. Wilil obtained 47,881 votes and candidate pair number 02 (two) Lakius Peyon-Nahum Mabel obtained 43,067 votes. Based on the Determination of the 2020 Recapitulation of Vote Calculation for the Yalimo Regency Regent and Deputy Regent, candidate pair number 02 (two) submitted an application for a dispute over the results of the 2020 Yalimo Regency Regent and Deputy Regent election with a letter of application dated 21 December 2020 which was submitted to the Registrar of the Court Constitution (hereinafter referred to as the Registrar of the Court) on December 21, 2020 based on the Deed of Submission of the Petitioner's Application Number 100/PAN.MK/AP3/12/2020 and recorded in the Electronic Constitutional Case Registration Book (e-BRPK) with Case Number 97/PHP.BUP-XIX/2021 dated January 18, 2021 which was verified and received at the Registrar's Office of the Court on December 23, 2020.

The Constitutional Court has the authority to adjudicate at the first and last levels in accordance with Article 157 paragraph (3) of Law Number 1 of 2015 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors to become the Law, as had been amended several times, namely by Law Number 10 of 2016 concerning the Second Amendment and lastly amended by Law Number 6 of 2020 concerning the third 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 the Law (hereinafter referred to as the Election Law). In cases of disputes over the determination of the final stage of vote acquisition, the results of the election are examined and judged by the Constitutional Court until the establishment of a Special Judicial Body.

The decision of the Constitutional Court of the Republic of Indonesia Number 97/PHP.BUP-XIX/2021 on the case of the dispute over the results of the election of the Regent and Deputy Regent of Yalimo Regency in 2020 that cancels the Decision of the General Election Commission of Yalimo Regency Number 55/PL.02.6-Kpt/9122/KPU-Kab/XII/2020 concerning the Determination of the Recapitulation of Vote Counting Results for the 2020 Yalimo Regent and Deputy Regent Elections ordered the Respondent (KPU Yalimo Regency) to carry out re-voting at all Polling Stations (TPS) in Welarek District as well as at 29 Polling Stations (TPS) in Apalapsili District, which was attended by both pairs of candidates of the 2020 Yalimo Regency Regent and Deputy Regent Election with the supervision of the

Papua Province General Election Commission and the General Election Commission and with strict supervision by the General Election Supervisory Agency of Yalimo Regency supervised by the General Election Supervisory Agency of Papua Province and the General Election Supervisory Agency of the Republic of Indonesia.

In accordance with the provisions of Article 157 paragraph (10) of the Election Law which states that the Provincial KPU and/or Regency/Municipal KPU are obliged to follow up on the decision of the Constitutional Court, the Yalimo Regency KPU did a follow-up on the Constitutional Court Decision Number 97/PHP.BUP-XIX/2021 by holding re-voting at all polling stations in Welarek District as well as at 29 polling stations in Apalapsili District. The results of the re-voting at all polling stations in Welarek District as well as at 29 polling stations in Apalapsili District are stated in the Decision of the General Election Commission of Yalimo Regency Number 117/PL.01.8-Kpt/9122/KPU-Kab/XII/2020 concerning the Determination of the Recapitulation of Vote Count Results after the Constitutional Court Decision Number 97/PHP.BUP-XIX/2021 in the 2020 Yalimo Regent and Deputy Regent Election.

Based on the determination of the results of the recapitulation of the vote count after the decree of the Constitutional Court Number 97/PHP.BUP-XIX/2021, the candidate pair number 02 (two) again filed an application with a letter of application dated May 17, 2021 which was submitted to the Registrar of the Constitutional Court based on the Deed of Submission of Application Petitioner Number 149/PAN.MK/AP3/05/2021, subsequently verified and accepted at the Registrar's Office of the Court on 19 May 2021, and recorded in the Electronic Constitutional Case Registration Book (e-BRPK) dated 24 May 2021 as Case Number 145/PHP .BUP-XIX/2021. However, one of the main points of the petition is that there was a violation of election administration that was carried out by candidate pair number 01 for the 2020 Yalimo Regent and Deputy Regent, namely a violation of the Candidate Requirements as stipulated in Article 7 paragraph (2) letter g of Law of the Republic of Indonesia Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law and Article 4 paragraph (1) letter f of General Election Commission Regulation Number 3 of 2017 concerning the Nominations for Election of Governor and Deputy Governor, Regent and Deputy Regent, and/or Mayor and Deputy Mayor.

In the Decree of the Constitutional Court Number 145/PHP.BUP-XIX/2021, the Constitutional Court handed down an Interlocutory Decision in the case of the Dispute on the Results of the Election of the Regent and Deputy Regent of Yalimo Regency in 2020 with the decisions, namely:

1. Declared the disqualification of the Candidate for Regent Erdi Dabi from the Candidate Pair for Regent and Deputy Regent of Yalimo Regency Number 01 because he no longer meets the requirements as a candidate pair for the Election of Regent and Deputy Regent of Yalimo Regency in 2020;
2. Declared the cancellation of the Decree of Yalimo Regency General Election Commission Number 55/PL.02.6-Kpt/9122/KPU-Kab/XII/2020 concerning the Determination of the Recapitulation of Vote Counting Results for the 2020 Yalimo Regent and Deputy Regent Elections, dated 18 December 2020, and the Decree of Yalimo Regency General Election Commission Number 117/PL.01.8-Kpt/9122/KPUKab/V/2021 concerning the Stipulation of the Recapitulation of Vote Count Results after the Decree of the Constitutional Court Number 97/PHP.BUP-XIX/2021 in the Election of Regent and Deputy Regent of Yalimo Regency in 2020, dated May 11, 2021;

3. Declared the cancellation of the Decree of Yalimo Regency General Election Commission Number 044/PL.02.3-Kpt/9122/KPU-Kab/IX/2020 concerning the Determination of the Candidate Pairs for the 2020 Yalimo Regent and Deputy Regent Elections, dated 23 September 2020, and the Decree of the General Election Commission of Yalimo Regency Number 045/PL.02.3-Kpt/9122/KPU-Kab/IX/2020 concerning the Determination of Serial Number and List of Candidates for Election of Regent and Deputy Regent of Yalimo Regency in 2020, dated 24 September 2020;
4. Ordered the Respondent to carry out re-voting in the 2020 Yalimo Regency Regent and Deputy Regent Election, followed by Candidate Pair Number 02 (Lakius Peyon and Nahum Mabel), as long as they still meet the candidacy requirements, and open opportunities for the new candidate pair including giving John W. Willil an opportunity as long as he meets the requirements.

The results of the 2020 Regent and Deputy Regent Election Vote Count in case of further dispute the results will be submitted to the Constitutional Court for the aggrieved party. The disqualification of the candidate pairs for the election of regent and deputy regent proposed by the Petitioner is contrary to Article 7 Number 2 Letter (g) of Law Number 10 of 2016 concerning the second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulations substituting Law No. 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law which reads:

"he/she has never been a convict based on a court decision that has permanent legal force or for former convicts have openly and honestly stated to the public that the person concerned is a former convict";

Article 90 paragraph (1) letter b of General Election Commission Regulation Number 1 of 2020 concerning the Third Amendment to General Election Commission Regulation Number 3 of 2017 concerning the Nominations for the Election of Governors and Deputy Governors, Regents and Deputy Regents, and/or Mayors and Deputy Mayors reads:

"Candidate Pairs shall be subject to sanctions of cancellation as election participants by the Provincial KPU/Aceh KIP or Regency/Municipal KPU/KIP, if the Candidate Pair is proven to have committed a criminal offense which is punishable by a minimum imprisonment of 5 (five) years or more based on a court decision that has permanent legal force, before voting day"

In this case, Candidate for Regent Erdi Dabi was involved in a criminal case and sentenced to prison for 4 (four) months through the Jayapura's Court Decree Number 500/Pid.Sus/2020/PN.Jap, which has permanent legal force after the completion of the registration process as a Candidate for Regent and proven to have committed a crime after voting day. Therefore, the author is interested in discussing more deeply related to these legal issues legally and theoretically.

In addition, regarding the issue of candidate requirements that have been determined by the Yalimo Regency KPU, the legal mechanism has been regulated independently in the legislation (vide Article 22B, Article 30, Article 153 and Article 154 of Law Number 10 of 2016 in conjunction with Article 3 and Article 4 Perbawaslu Number 2 of 2020), whose procedure can only be taken through an application for an election administration dispute to the Yalimo Regency Bawaslu, the Makassar State Administrative High Court, and/or an appeal to the Supreme Court of the Republic of Indonesia, which is not the authority of the Constitutional Court to examine and judge (Wico, et al, 2022).

Furthermore, regarding the determination of the vote count, the Constitutional Court's decision attaches one characteristic that is not possessed by other courts in Indonesia, namely

the final and binding nature. The final and binding nature means that the Constitutional Court's decision is the first and last decision for which there is no legal room to judge anymore. This has recently received a lot of criticism from some constitutional law experts. If at any time there is a decision of the Constitutional Court that actually harms the people as the owner of sovereignty, or is contrary to the state ideology of Pancasila, even though the Constitutional Court's decision is final and binding, our law does not provide a solution, even though the potential, however small, is still possible. As Sher (1995) argued that we put the highest sovereignty in the hands of the people, not in the hands of the law, because the law is a representation of the state which tends to oppress the people.

Based on the background of the above problems, the problem statement can be formulated, namely how valid the results of the vote count in the district which were declared valid and were not re-voted is based on the Decree of the Constitutional Court Number 97/PHP.BUP-XIX/2021. This study contributes to the scientific thought in the field of legal science which is expected to be useful for wider readers. Based on the formulation of the problem above, the authors hope that through this legal research, we can understand the validity of the results of the vote count in the district which were declared valid and were not re-voted based on the Constitutional Court Decision Number 97/PHP.BUP-XIX/2021.

II. Review of Literatures

Disputes over the calculation of votes in the general election have previously piqued the interest of academics. Election disputes, according to some experts, occur as a result of the use of technology in elections (Odote & Kanyinga, 2021), negative electoral integrity and election violations (Rajib & Karismawan, 2018; Bell & Chernykh, 2019), historical injustice (Fisher & Sällberg, 2020; Birch, Daxecker, & Höglund, 2020), electoral fraud and electoral corruption, or electoral manipulation (Siahaan & Tampubolon, 2021). Furthermore, general election disputes must be resolved through the Constitutional Court, and this dispute falls under its jurisdiction (as outlined in Article 24 C paragraph (1) of the Republic of Indonesia's 1945 Constitution). Importantly, the Constitutional Court's decision is final and binding (Johansyah, 2021).

The study also mentions that the Constitutional Court has jurisdiction over disputes over regional head elections. This method of resolving disputes also recognizes final and binding decisions (Tatawu, 2017). The Constitutional Court is obligated to settle regional head election disputes (PILKADA) (Nugraha, 2016). The Constitutional Court will only rule on the regional head election dispute once (Mahkamah Konstitusi Republik Indonesia, 2020).

III. Research Methods

This study employed normative legal research, namely conceptualizing what is written in the legislation as rules or norms that become a benchmark for human behavior that is considered appropriate. The approach used in this study was a statutory approach. The secondary legal materials consisted of books, journal articles, papers presented in lecture meetings, and lecture notes. The data collection technique used in this study was library research, namely an effort to obtain data from library searches. This study used a qualitative perspective analysis method, which is in the form of an in-depth interpretation of legal materials as normative legal research in general. Furthermore, the results of the analysis were linked to the problems in this study to produce an objective assessment in order to assess and answer the problems.

IV. Discussion

Based on the Decree of the Constitutional Court Number 97/PHP.BUP-XIX/2021 as determined by the Yalimo Regency General Election Commission Number 117/PL.01.8-Kpt/9122/KPU-Kab/XII/2020, the pair of candidates with serial number 02 (two) re-submitted the application with a letter of application dated May 17, 2021 which was submitted to the Registrar of the Constitutional Court based on the Deed of Submission of the Petitioner's Application Number 149/PAN.MK/AP3/05/2021, where one of the main points of the petition was a violation of election administration by Candidate Pair 01 Election of Yalimo Regent and Deputy Regent in 2020 Erdi Dabi and John W.Willi, namely a violation of the Candidate Requirements as stipulated in Article 7 paragraph (2) letter g of the Law of the Republic of Indonesia Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law which reads:

"Never as a convict based on a court decision that has obtained permanent legal force or for a former convict has openly and honestly stated to the public that the person concerned is a former convict"

In addition, article 4 paragraph (1) letter f of General Election Commission Regulation Number 3 of 2017 concerning the Nominations for the Election of Governor and Deputy Governor, Regent and Deputy Regent, and/or Mayor and Deputy Mayor reads:

"Never as a convict based on a court decision that has permanent legal force, convicts for minor negligence (culpa levis), convicts for political reasons, convicts who are not serving a sentence in prison are obliged to openly and honestly state to the public that the person concerned is serving a sentence. not in prison."

The violation of election administration in question is the existence of a traffic accident crime that was committed by Erdi Dabi which has been decided by the Jayapura District Court Judges on Thursday, February 18 2021 as stated in Decision Number 500/Pid.Sus/2020/PN. Jap. However, the candidates or pairs of regional head candidates who had post-voting convict status have not been clearly regulated in the legislation. This was emphasized by the General Elections Commission of the Republic of Indonesia (KPU-RI) that there are no provisions governing the cancellation of candidates or pairs of candidates because of their status as convicts during or after voting in Law Number 10 of 2016 concerning the Election of Governors, Regents, and Mayors. This was revealed by the Commissioner of the Indonesian KPU in the trial of the Election Result Dispute (PHP) for the Yalimo Regency Regent in 2020 with the case register Number 145/PHP.BUP-XIX/2021. The General Elections Commission of the Republic of Indonesia (KPU-RI) stated that:

"As far as we know, there was no cancellation of a candidate when he was a convict at the time of voting so that the KPU could not impose sanctions because there was no law governing it, and even administrative sanctions for cancellation did not exist".

Article 90 paragraph (1) letter b states, "The Candidate Pair is proven to have committed a criminal offense punishable by a minimum imprisonment of 5 (five) years or more based on a court decision that has permanent legal force, before voting day. The PKPU formula does not meet the Regional Head Election Law which does not regulate the status of candidates or pairs of candidates who are subject to criminal penalties after voting."

Referring to Law Number 32 of 2004 concerning Regional Government amended by Law Number 12 of 2008 and replaced by Law Number 23 of 2014 concerning Regional Government, there is no provision that regulates an elected regional head candidate who is designated as suspect defendants and convicts. There is also Law Number 1 of 2015 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors as amended the second by Law Number 10 of 2016. All of these only regulate the legal implications if the regional head has the status of a suspect, defendant, and convict.

Based on the above explanation, it seems that there has been a legal vacuum regarding candidates or pairs of candidates for regional heads who have post-ballot convict status. This was emphasized by the Constitutional Court by stating that the General Election Commission (KPU) understood that there was a void in the rules regarding the cancellation of sanctions for candidates or pairs of regional head candidates who were convicted after voting. This is a separate problem in the implementation of democracy at this time. The case of the Yalimo Regent Candidate can be a reference for the government, in this case including the KPU, to examine more deeply related to the legal vacuum as well as setting a clear mechanism if administrative violation occurs.

Based on the decision above, it is clear that the re-voting (PSU) was only carried out in two districts, namely all polling stations in Welarek District and 29 polling stations in Apalapsili District. The results of the re-voting (PSU) were combined with the results determined by the Respondent as stated in the Decision of the General Election Commission of Yalimo Regency Number 55/PL.02.6-Kpt/9122/KPU-Kab/XII/2020 concerning the Determination of the Recapitulation of Calculation Results Vote for the 2020 Yalimo Regency Regent and Deputy Regent Election, dated December 18, 2020 for which a new decision was made in accordance with the new results.

Based on the Decree of the Constitutional Court Number 145/PHP.BUP-XIX/2021, candidate pair number 2 stated that there was a violation of election administration that had been carried out by Candidate Pair 01 for the 2020 Yalimo Regent and Deputy Regent Election Erdi Dabi and John W.Willi. Erdi Dabi committed a traffic crime according to the Jayapura District Court Decree Number 500/Pid.Sus/2020/PN. Jap. The court sentenced Erdi Dabi to 4 (four) months in prison. The Constitutional Court's decision ultimately disqualified Erdi Dabi and declared a re-vote.

Essentially, the decision of the Constitutional Court which is final and binding has its own legal meaning. The phrase “final” in the Great Dictionary of the Indonesian Language is defined as “the last of a series of examinations”, while the phrase binding is defined as “to tighten”, “to unite”. Based on these literal meanings, the final phrase and the binding phrase are related to each other like two sides of a coin, meaning the end of an examination process has the power to bind or unite all wills and cannot be disputed.

On the other hand, in the settlement of regional election disputes, the decision of the Constitutional Court, which is final and binding, contains four legal meanings, namely: (1) to realize legal certainty as soon as possible for the disputing parties; (2) the existence of the Constitutional Court as a constitutional court; (3) as a form of social control carried out by the Constitutional Court; and (4) as the sole custodian and interpreter of the constitution. Basically, the decision of the Constitutional Court, which is final and binding, gives rise to a number of legal consequences in its application, namely the decision of the Constitutional Court which has positive legal consequences and negative legal consequences. The legal

consequences that have a positive meaning are ending a legal dispute, maintaining the principle of checks and balances, and encouraging the political process. Meanwhile, the legal consequences of the constitutional decisions that are final and binding are not only limited to written decisions, but can also be carried out effectively in their implementation (Johansyah, 2022).

Basically, dispute resolution related to general elections both in Indonesia and other countries is carried out quickly in order to avoid the potential loss of the rights of voters and election participants and prevent disruption of filling positions or vacancies in the government. However, the problem in Indonesia is the large number of bodies in the election dispute resolution. There are at least five institutions that have the authority to resolve disputes related to general elections, namely Bawaslu, the Supreme Court, the District Court, the Election Organizing Honorary Council (DKPP), the State Administrative Court (PTUN), and the Constitutional Court (MK). This causes dispute resolution ineffective and efficient and can lead to overlapping decisions.

The Constitutional Court, which basically only has the authority to decide disputes over election results, is not only presented with requests for resolution of disputes over results, but also arguments related to the violations of election administration, election crimes, electoral state administrative disputes, and even violations of the electoral code of ethics.

Referring to the practice of democracy in several countries, there are two fundamental principles in a democratic political system, namely (i) the existence of a balancing function in the separation of powers between government, parliament, and judiciary; and (ii) the existence of free choice as an important part of public participation. On the basis of these principles, the existence of the Constitutional Court in resolving disputes over general election results is believed to be able to contribute to the democratic political system.

Regarding the Decree Number 97/PHP.BUP-XIX/2021 and Decree Number 145/PHP.BUP-XIX/2021, the Petitioner's petition in the Decree Number 97/PHP.BUP-XIX/2021 is a case of dispute over the final stage of vote acquisition results from the Election for Regent and Deputy Regent of Yalimo Regency in 2020, while in the Decree Number 145/PHP.BUP-XIX/2021, the Petitioner's application is a case of dispute over the determination of the votes obtained from the election of the Regent and Deputy Regent of Yalimo Regency in 2020 in the Re-Voting of the Regent Election and Deputy Regent of Yalimo dated May 5, 2021. Basically, these two decisions have the same object of application, namely a dispute over the vote acquisition results for the Election of the Regent and Deputy Regent of Yalimo Regency. The difference is that Petition Number 145/PHP.BUP-XIX/2021 is based on PSU or the result of the implementation of Decision Number 97/PHP.BUP-XIX/2021. However, if we look at the basis, basically the petition filed is the same, namely related to the results of the election votes for the Regent and Deputy Regent of Yalimo or, in other words, the petition submitted by the Petitioner in Decision Number 145/PHP.BUP-XIX/2021 *ne bis in idem* with Decision Number 97/PHP.BUP-XIX/2021.

Although the Constitutional Court Law only discusses *ne bis in idem* in judicial review, we can use this principle in general, both in civil and criminal law. This is also closely related to legal certainty, where in Decision Number 97/PHP.BUP-XIX/2021 the results of voting outside the two districts, namely all TPS in Welarek District and 29 TPS in Apalapsili District were declared valid, with the Decree No. 145/PHP.BUP-XIX/2021 which annulled the validity of the results of the votes outside the two districts. Therefore, there was no legal certainty. In addition, if we relate it again to the final and binding nature of the Constitutional

Court Decisions, the principle of *ne bis in idem* in these two decisions is very close considering that things that have been decided should not be re-decided.

The Central Executive Board of the Indonesian Democratic Union conducted a public examination of the Constitutional Court's decision and one of the conclusions was that the Constitutional Court was not authorized to give legal considerations regarding the general criminal case on behalf of Erdi Dabi which had been settled based on the Papuan customary law so that it cannot be re-examined in the district court (PN) as stated in the Decree of the Supreme Court of the Republic of Indonesia Number 1664 K/Pid/1988 dated 15 May 1991, in which a person cannot be sentenced twice for the same case (*ne bis in idem* principle).

Therefore, essentially, the results of the vote count in the district have been declared valid and no re-voting is carried out based on the Constitutional Court Decree Number 97/PHP.BUP-XIX/2021 (Study of Constitutional Court Decision Number 145/PHP.BUP-XIX/2021), which can be seen from various perspectives of the existing principles. From the perspective of *lex posterior derogat legi priori* principle, Decree Number 145/PHP.BUP-XIX/2021 annulled or defeated the previous decision, namely Decree Number 97/PHP.BUP-XIX/2021, which can be justified. However, from the perspective of *ne bis in idem* principle, this is not justified because the two decisions are basically related to the same thing, namely the results of the votes obtained for the election of the Regent and Deputy Regent of Yalimo, while the judge may not decide on the same case which has permanent legal force in order to prioritize legal certainty. Basically, a law exists to provide as many benefits to the community as possible. Therefore, from any perspective, we argue that this legitimacy must be based on the benefit of the community, where currently what Yalimo community needs is to quickly get a definitive leader to run the government.

Initially, it was the Supreme Court that had the authority to adjudicate disputes over the results of the post-conflict local election. This was based on the provisions of Article 106 paragraph (1) of Law Number 32 of 2004 concerning the Regional Government. Then, this authority was transferred to the Constitutional Court with the promulgation of Law Number 12 of 2008 concerning the Second Amendment to Law Number 32 of 2004 concerning Regional Government on April 28, 2008. The minutes of the transfer of authority to judge were signed by the Chief Justice of the Supreme Court to the Chairman of the Constitutional Court on 29 October 2008. Therefore, the Constitutional Court has officially expanded its authority in resolving disputes over general election results, including members of the DPR, DPD, DPRD, the president and vice president, as well as regional heads.

There is a legal vacuum related to candidates or pairs of candidates for regional heads who have post-voting convict status. This is a separate problem in the implementation of democracy at this time. The case of the Yalimo Regent Candidate can be a reference for the government, in this case including the KPU, to examine more deeply related to the legal vacuum as well as setting a clear mechanism if the administrative violation occurs.

V. Conclusion

The results of the vote count in the district have been declared valid and no re-voting is carried out based on the Constitutional Court Decree Number 97/PHP.BUP-XIX/2021 (Study of Constitutional Court Decision Number 145/PHP.BUP-XIX/2021), which can be seen from various perspectives of the existing principles. From the perspective of *lex posterior derogat legi priori* principle, Decree Number 145/PHP.BUP-XIX/2021 annulled or defeated the previous decision, namely Decree Number 97/PHP.BUP-XIX/2021, which can be

justified. However, from the perspective of *ne bis in idem* principle, this is not justified because the two decisions are basically related to the same thing, namely the results of the votes obtained for the election of the Regent and Deputy Regent of Yalimo, while the judge may not decide on the same case which has permanent legal force in order to prioritize legal certainty.

There is a need for regulations regarding the determination of candidates or pairs of candidates for regional heads who have post-voting convict status in the laws and regulations concerning the Election of Governors, Regents, and Mayors. There is also a need for regulations related to *ne bis in idem* in disputes over election results that are under the authority of the Constitutional Court, considering that *ne bis in idem* in the current Constitutional Court regulations is only related to the examination of legislation. Meanwhile, in disputes over election results, the issues that are decided are more complex and often intersect with other areas of law, whether criminal, civil, or administrative.

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