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MIMBAR KEADILAN

Election Omnibus: Efforts to Realize Legal Certainty in General Elections in Indonesia

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Abstract

Constitutional Court Decision Number 85/PUU-XX/2022 explicitly states that there is no longer any difference between the Election regime and the Regional Election regime. This decision, in addition to providing legal certainty regarding which institution is authorized to resolve disputes over the results of the Regional Election, on the one hand also creates legal uncertainty itself. The legal uncertainty is regarding the extent to which the Regional Election regime is merged into the Election regime as stated in the decision, whether it is only limited to the principles of implementation and institutions authorized to resolve disputes over results or all of them. On that basis, this study aims to examine and analyze the urgency of forming an omnibus Election law in order to realize legal certainty for Elections in Indonesia. This research is a legal research using a statutory approach, conceptual approach, and case approach. The results of this study indicate that the meaning of merging the Regional Election regime into the Election regime must be interpreted as a whole. Starting from the organizing institution, the principles of implementation, to the institution authorized to resolve disputes over results. So, it is important to form what is called an omnibus Election law. This is because to realize legal certainty; To implement Constitutional Court Decision Number 85/PUU-XX/2022; and To realize a meaningful election.

1. Introduction

The existence of the Constitutional Court Decision Number 85/PUU-XX/2022 has brought a number of legal implications for the course of the general election contest (hereinafter referred to as the Election) in Indonesia.[1] This is because the Constitutional Court no longer differentiates between the election regime and the regional head election regime (hereinafter referred to as Pilkada).[2] The *a quo* decision is a decision that is very different from the previous decision, namely the Constitutional Court Decision Number 97/PUU-XXI/2013. In the previous decision, the Constitutional Court firmly stated that the two regimes were two different things in terms of legal interpretation. However, through the Constitutional Court Decision Number 85/PUU-XX/2022, the Constitutional Court actually stated that the two things were two of the same things. This practice in common law is known as the inpercuriam system or in the rules of *usul fiqh* it is known as *la yunkaru taghayyur al ahkam bi taghayyur al azman*.[3]

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[1] Baharuddin Riqiey, "Kewenangan Mahkamah Konstitusi Dalam Memutus Perselisihan Hasil Sengketa Pilkada Pasca Putusan Mahkamah Konstitusi Nomor 85/PUU-XX/2022," *Jurnal APHTN-HAN* 2, no. 1 (2023).
[2] Baharuddin Riqiey, "Pemilihan Kepala Daerah oleh Dewan Perwakilan Rakyat Daerah Pasca Putusan MK No. 85/PUU-XX/2022," *Constitution Journal* 2, no. 1 (2023).
[3] Muhammad Taufiq dan Syarkawi, "Fleksibilitas Hukum Fiqh dalam Merespons Perubahan Zaman," *Jurnal Al-Nadhair* 1, no. 01 (2022).

The affirmation regarding the merger of the two regimes as above does not actually create legal certainty itself. This is because there are no clear boundaries regarding what in its implications is merged into one with the Election regime. Currently, the legal implications arising from the Constitutional Court Decision Number 85/PUU-XX/2022 are only limited to the principle that the implementation of the Pilkada must be in accordance with the Election, namely as stated in Article 22E paragraph (1) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia) so that the Pilkada by the Regional People's Representative Council, which was originally intended to be a constitutional mechanism, has since changed to being unconstitutional.[4] Then regarding the institution that has the authority to resolve disputes over the results of the regional elections, it is no longer the Special Court but the Constitutional Court. Apart from these two things, its status and existence are unclear. Therefore, in the practice of elections in Indonesia, there are still several things whose status and existence are unclear.

First, regarding the existence of the Election Law and the Regional Election Law. Both laws are still in effect and are used as a constitutional basis for the implementation of the Election and Regional Election contests. In fact, if we refer to the Constitutional Court Decision Number 85/PUU-XX/2022, the two regimes have become one. So logically, the existence of these laws shows that there are still differences between the two regimes. *Second*, regarding the leave period for incumbents in the Election regime and the Regional Election regime. If we refer to the Election Law, the leave period for incumbents is not during the full campaign period, but still pays attention to the implementation of the state and regions. As for the Regional Election Law, the leave period for incumbent Regional Heads is during the full campaign period and must be replaced by an Acting Officer while the incumbent is on leave.

Third, regarding the time for resolving disputes over results at the Constitutional Court. In the case of disputes over presidential election results, the Constitutional Court must resolve them within a maximum of 14 (fourteen) working days, while in the case of disputes over legislative election results, the Constitutional Court must resolve them within a maximum of 30 (thirty) working days. This is also different in relation to the time for resolving disputes over regional election results at the Constitutional Court, which is a maximum of 45 (forty-five) working days. These three things are part of the provisions that still differentiate between the election regime and the regional election regime. So, it can be said that the birth of the Constitutional Court Decision Number 85/PUU-XX/2022 has indirectly created legal certainty in the election contestation in Indonesia.

Various parties want the two regimes to be separated as per Constitutional Court Decision Number 97/PUU-XXI/2013. With the pretext that the original intent of the interpretation is the correct interpretation, so the implication is that the Constitutional Court is not authorized to resolve disputes over the results of the regional elections and future regional elections can be carried out by the DPRD. Some other parties also welcome the merger of the two regimes, but with the note that the merger of the two regimes is also accompanied by the formation of an election omnibus. This is so that election organizers are not confused and can realize legal certainty in elections in Indonesia.

[4] Syofyan Hadi, "Makna Pasal 18 Ayat (4) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945," *DiH: Jurnal Ilmu Hukum* 19, no. 1 (2023).

Seeing the above problems, this study will examine and analyze the urgency of forming an election omnibus and whether the formation of an election omnibus is in accordance with the Constitutional Court Decision Number 85/PUU-XX/2022. This study has a fairly high level of originality, because during the author's research, no researchers have been seen studying this matter. However, if we look at the research that examines the Constitutional Court Decision Number 85/PUU-XX/2022, including I Dewa Gede Palguna and Bisariyadi[5], Patoni dkk[6], Geofani Milthree Saragihg[7], dll. The study discusses the history of the Constitutional Court's authority in deciding disputes over regional election results, then the study also analyzes the consistency of the Constitutional Court in deciding the authority of disputes over regional election results, and the study also confirms that the Constitutional Court after the Constitutional Court Decision Number 85/PUU-XX/2022 has the authority to resolve disputes over regional election results. On that basis, this study is certainly different from previous studies, because this study specifically examines the urgency of the election omnibus. This is one of the follow-ups to the unification of the Pilkada regime and the Election regime as confirmed by the Constitutional Court. Thus, this study has quite high originality.

2. Methods

H.J. van Eikema Hommes said in his book that every science has its research method.[8] Because this research is related to legal science, the research used this time is legal research.[9] The approach methods used are the legislative, conceptual, and case approaches. The legal materials used in the study are primary legal materials and secondary legal materials. The two legal materials above were collected using different methods, primary legal materials used the inventory and categorization method while secondary legal materials used the literature search method. After the two legal materials above were collected, an analysis was carried out using legal reasoning with the deductive method.[10]

3. Results and Discussion

Article 1 paragraph (2) of the UUD NRI 1945 expressis verbis that sovereignty lies in the hands of the people. One form of sovereignty lying in the hands of the people is that the people can directly elect their leader candidates through general elections. This concept is known as the concept of democratic elections. As is known, Indonesia has a state agenda every 5 (five) years to elect leader candidates. This is commonly known as the General Election and Regional Election. The General Election itself includes the election of the President and Vice President, the People's Representative Council, the Regional People's Representative Council, and the Regional Representative Council. Meanwhile, the Regional Election includes the election of the Governor, Regent, and Mayor.

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[5] I Dewa Gede Palguna dan Bisyariyadi, "The Power of Constitutional Court to Settle Disputeson Local Election Results," *Jurnal Konstitusi* 20, no. 1 (2023).
[6] Rizal Patoni, Gatot DH Wibowo, dan RR Cahyowati, "Konsistensi Putusan Mahkamah Konstitusi Terkait Penyelesaian Sengketa Hasil Pemilukada," *Indonesia Berdaya* 4, no. 3 (2023).
[7] Geofani Milthree Saragih, "Kewenangan Penyelesaian Sengketa Pemilihan Kepala Daerah Pasca Putusan Mahkamah Konstitusi Nomor 85/PUU-XX/2022," *Jurnal Hukum Caraka Justitia* 2, no. 2 (2023).
[8] Hendrik van Eikema Hommes, *Encyclopedie der Rechswetenschap* (Deventer: Kluwer, 1972).
[9] Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2021).
[10] Irwansyah dan Ahmad Yunus, *Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel* (Yogyakarta: Mirra Buana Media, 2020).

The two election concepts as above are also regulated in different provisions in the 1945 Constitution of the Republic of Indonesia. In relation to the Regional Election, it is regulated in Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia. In relation to the General Election, it is regulated in Article 22E paragraph (1) of the 1945 Constitution of the Republic of Indonesia. For anyone who reads the provisions as above, simply reading the two things is two different things, and the two things cannot be made into one unit. This was also once believed by the Constitutional Court in 2013 through Constitutional Court Decision Number 97/PUU-XXI/2013. Textually or in terms of original intent, the two election concepts are two different things. So that the Constitutional Court's authority to resolve disputes over the results of the Regional Election is not the authority of the Constitutional Court as regulated in Article 24C paragraph (1) of the UUD NRI 1945.

Article 24C paragraph (1) of the UUD NRI 1945 mandates the Constitutional Court to resolve disputes over election results, not disputes over regional election results.[11] That is what was emphasized by the Constitutional Court through Decision 97/PUU-XXI/2013 above. However, if an institution has not been formed to resolve disputes over the results of the regional elections, then the Constitutional Court still has the authority to resolve them. This is because the Constitutional Court is the guardian of the constitution. In 2016, through Article 157 paragraph (1) of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law, it was expressly stated that the authority to resolve disputes over the results of the regional elections is the Special Judicial Body.

After the provisions as above came into effect, it was conscious that the formation of the Special Judicial Body had no follow-up. Therefore, at that time the one handling the Pilkada result dispute was the Constitutional Court. Seeing the problem as above, Perludem as a foundation that has a special concern for the General Election and Pilkada in Indonesia filed a constitutional review at the Constitutional Court regarding the provisions above. Perludem through its petitium requested that the provisions be declared contrary to the UUD NRI 1945 as long as they are not interpreted as being able to be examined and tried by the Constitutional Court. Based on the request submitted by Perludem, the Constitutional Court through Constitutional Court Decision Number 85/PUU-XX/2022 reversed its argument in 2013, by stating that the Election regime and the Pilkada regime are two of the same things. Thus, the Constitutional Court has the permanent authority to resolve disputes over Pilkada result disputes.

This phenomenon (changing views) is permissible for the Constitutional Court to do, because in the rules of *usul fiqh* it says *la yunkaru taghayyur al ahkam bi taghayyur al azman*. However, according to the author, the two regimes above are two different things, so when the Constitutional Court declares itself permanently authorized to resolve disputes over the results of the regional elections, it must go through an amendment process.[12] This was also

[11] Baharuddin Riqiey, "Urgensi Pembatasan Waktu Pengujian Perppu Oleh Mahkamah Konstitusi," *Jurist-Diction* 6, no. 4 (2023).
[12] Pan Mohamad Faiz, *Amendemen Konstitusi Komparasi Negara Kesatuan dan Negara Federal* (Depok: Rajawali Pers, 2019).

stated by the Constitutional Court in 2003 through Constitutional Court Decision Number 004/PUU-I/2003. In essence, the decision emphasized that the addition and reduction of the authority of the Constitutional Court must go through an amendment process. Although in theory and concept, constitutional changes can be done in various ways, such as through court decisions, it is much better and has much more binding power if it is stated through an amendment process.[13]

Through the two constitutional court decisions, namely Constitutional Court Decision 97/PUU-XXI/2013 and Constitutional Court Decision 85/PUU-XX/2022, it is clear that there has been a change in its position. First, initially in Constitutional Court Decision 97/PUU-XXI/2013 it was stated that Pilkada and General Election were two different things, which can be proven by the different regulations regarding this matter, namely Pilkada is regulated in Article 18 paragraph (4), while General Election is regulated in Article 22E but through Constitutional Court Decision 85/PUU-XX/2022 the two regimes are emphasized as one unit. Second, the expansion of the meaning of the election as emphasized in Constitutional Court Decision 97/PUU-XXI/2013 is unconstitutional, now through Constitutional Court Decision 85/PUU-XX/2022 it has become constitutional. Third, initially in the Constitutional Court Decision 97/PUU-XXI/2013 it was stated that the Constitutional Court was not authorized to resolve disputes over regional election results, but now through the Constitutional Court Decision 85/PUU-XX/2022 the Constitutional Court has the authority to permanently resolve disputes over regional election results.

The merger of the Election regime and the Pilkada regime is considered by some to have created legal certainty, especially for elections in Indonesia. The author also believes in part. However, the legal uncertainty itself arose after the Constitutional Court Decision Number 85/PUU-XX/2022. The uncertainty is because there is no clarity regarding the extent of the implications of the merger of the two regimes. Is it limited to the principles of implementation and the institutions authorized to resolve disputes over results or as a whole. Something like this is a basic thing that we can think about. Because when talking about the merger of the two regimes, it is clear that there are still two laws in force in Indonesia, namely the Election Law and the Pilkada Law. Of course, something like this is strange and unclear.

Many things indirectly indicate that the practice of elections and regional elections are still two different things. First, regarding the existence of the Election Law and the Regional Election Law. Currently, the provisions governing the Election and Regional Election are still regulated separately, namely through the Election Law and the Regional Election Law. If we refer to the Constitutional Court Decision Number 85/PUU-XX/2022, the regulations regarding the two things should not be regulated separately but rather regulated into one, because according to the Constitutional Court, the two things have now become one. This is one indicator that the presence of the Constitutional Court Decision Number 85/PUU-XX/2022 leads to legal uncertainty itself. It is none other than because the Constitutional Court does not provide clear and rigid boundaries regarding what matters have implications for the merger of the regimes.

[13] I Dewa Gede Atmadja, *Hukum Konstitusi, Problematika Konstitusi Indonesia Sesudah Perubahan UUD 1945* (Malang: Setara Press, 2012).

The author understands that the presence of the Constitutional Court Decision Number 85/PUU-XX/2022 only has implications for which institutions are authorized to resolve disputes over the results of the regional elections and also has implications for the principles of organizing regional elections. Regarding the institutions authorized to resolve disputes over the results of the regional elections, the Constitutional Court has firmly stated that it has permanent authority.[14] As for the principles of organizing regional elections, the implication is that it must be adjusted to the principles of organizing elections as stated in Article 22E paragraph (1) of the 1945 NRI Constitution. Thus, the concept of regional elections chosen by the DPRD, which is constitutional and falls into the democratic category as intended by our founding parents when formulating Article 18 paragraph (4) of the 1945 NRI Constitution, is currently unconstitutional. The lawmakers are no longer allowed to design the concept of regional elections chosen by the DPRD permanently.

Second, there is a difference in the leave period for incumbents who wish to run again in the next contest. In the context of the Election regime, incumbents who wish to run again must take leave. However, the implementation of the leave is not carried out during the full campaign period, meaning for 2 (two) full months, but must still pay attention to the organization of the state and regional administration. This is as regulated in the provisions of Article 281 paragraph (2) of Law 7/2017. This means that in the Election concept there is no Acting Officer when the incumbent takes leave during the campaign period and also means that the incumbent may continue as the position held until the term of office has ended. The incumbent must still apply for leave during the campaign period but it does not last for the full campaign period and must still pay attention to the organization of the state and regional administration.

The above matters are different from the context of the regional election regime. In the context of the regional election regime regulated in Article 73 paragraph (3) of Law 10/2016, incumbents who wish to run again in the same region must apply for leave during the full campaign period.[15] This means, if referring to the General Election Commission Regulation Number 2 of 2024 concerning the Stages of the Election of Governor and Deputy Governor, Regent and Deputy Regent, and Mayor and Deputy Mayor in 2024, the incumbent must take leave for 2 (two) full months. Textually, this provision is clearly different from the Election regime above, where the incumbent must still take leave during the campaign period, but the implementation of the leave does not last for 2 (two) full months. This kind of thing shows that there are still provisions that clearly differentiate the two regimes. Apart from that, the regulation of leave time during the campaign period for incumbents in the Pilkada contest in full has its own advantages and disadvantages.[16]

Third, regarding the time for resolving disputes over results at the Constitutional Court. In the context of the Election regime, the time for resolving disputes over results at the

[14] Bimo Fajar Hantoro, "Pembatasan Yudisial dan Perluasan Kewenangan Mahkamah Konstitusi dalam Memutus Sengketa Hasil Pilkada," *Media Iuris* 7, no. 1 (2024).
[15] Muhammad Rudi Juanda, "Konstruksi Hukum Wajib Cuti Bagi Petahana Kepala Daerah Berdasarkan Putusan Mahkamah Konstitusi Nomor 60/PUU-XIV/2016," *Jurnal Ilmu Hukum* 8, no. 1 (2019).
[16] Jamaludin Ghafur dan Allan Fatchan Gani Wardhana, "Problematika Pengaturan Cuti Kampanye Bagi Incumbent Dalam Pemilihan Kepala Daerah dan Wakil Kepala Daerah di Indonesia," *Jurnal Hukum Novelty* 8, no. 1 (2017).

Constitutional Court is divided into two, namely for the Presidential Election and for the Legislative Election. In relation to the Presidential Election, the time for resolving disputes over results at the Constitutional Court is a maximum of 14 (fourteen) working days. This is as stated in Article 475 paragraph (3) of Law 7/2017 in conjunction with Article 78 letter a of Law 7/2020. In the context of the time for resolving disputes over results at the Legislative Election, it is a maximum of 30 (thirty) working days. In the context of the same Election regime, there are also differences regarding the time for resolving them as described above. The author does not know what the indicator of the time for resolving disputes in the context of the Presidential Election is much shorter, whether it is intended to immediately provide legitimacy to the elected President and Vice President or whether the lawmakers consider the process of resolving disputes over the Presidential Election to be an easy thing. Questions like that are currently in the author's head.[17]

In the context of the regional election regime, the time for resolving regional election result disputes by the Constitutional Court is a maximum of 45 (forty five) working days.[18] This is as stated in Article 157 paragraph (8) of Law 10/2016. Provisions such as this and also those above are provisions that are of an open legal policy nature, namely the authority of the legislators in full.[19] In the preparation of the provisions as above, it would be better if it is based on rational matters, so that the determination of the figures as above can be understood by the majority of the community. When looking at the dispute over the results of the Presidential Election, in the author's imagination it is a complicated matter to be able to resolve it, but why is it given such a short time, namely 14 (fourteen) working days. Apart from that, the point is that the provisions regarding the time for resolving disputes over the results of the General Election and Regional Elections are still in different circumstances.

If we refer to the Constitutional Court Decision Number 85/PUU-XX/2022 which no longer distinguishes between the Election regime and the Regional Election regime, it will create its own problems again. Because, how big is the burden borne by the Constitutional Court in resolving disputes over the results at the same time. This kind of thing will later interfere with the effectiveness of the Constitutional Court and will interfere with the formation of decisions that are fair, certain, and beneficial. So, it is necessary to make clear boundaries regarding the extent of the merger of the Election regime and the Regional Election regime itself. If we state that the two regimes have been merged but there are still differences between the two, can something like that be said to be the same or have been merged into one. Of course this raises an interesting discussion.

One way to solve the problems as the problems above is by forming an election omnibus. This means that all provisions regarding elections are outlined in one law that is drafted using the omnibus method. The omnibus method itself is currently a method for forming constitutional laws and regulations. This is as stated in Article 64 paragraph (1a) of Law 13/22.

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[17] Agus Widjajanto, "Paradigma Pengadilan Pemilu dalam Rangka Penyelesaian Perselisihan Pemilukada," *JURNAL RECTUM: Tinjauan Yuridis Penanganan Tindak Pidana* 5, no. 1 (2022).

[18] Selviana Teras Widy Rahayu dan Yoyon M Darusman, "Implikasi Peralihan Kewenangan Penyelesaian Sengketa Hasil Pemilihan Kepala Daerah Dari Mahkamah Konstitusi Republik Indonesia," *Jurnal Surya Kencana Dua: Dinamika* 6, no. 1 (2019).

[19] Sultoni Fikri et al., "Problematika Konstitusionalitas Presidential Threshold di Indonesia," *Jurnal Hukum Positum* 7, no. 1 (2022).

In line with the suggestion above, YM. Enny Nurbaningsih on her occasion at the Faculty of Law, Brawijaya University when giving the opening ceremony also proposed this, because she considered that there was still a test regarding the Pilkada Law. Therefore, she encouraged academics and students to design the election omnibus itself from the start.

Based on all of that, today it is seen as urgent to form what is called an election omnibus. This is none other than because:

1. Realizing Legal Certainty

The legal uncertainty regarding elections in Indonesia today is regarding the regulation of the two regimes in two different laws. Thus, various provisions in the two laws are regulated differently. This has become irrelevant after the Constitutional Court Decision Number 85/PUU-XX/2022 which explicitly and clearly combines the Pilkada regime with the Election regime. The affirmation of the Constitutional Court through this decision creates its own legal uncertainty, this is because the Constitutional Court is not specific about what is combined with the Election regime. So that as of today, some groups are still questioning the constitutionality of the Pilkada law. Therefore, the presence of this election omnibus will later realize the ideals of a state of law, namely creating legal certainty.

Legal certainty is the main characteristic of a rule of law.[20] The terms legal certainty in foreign language literature are *Rechtssicherheit* (German), *Securite juridiqie* (France), *Cartezza del Diritto* (Italy), *La seguridad juridical* (Spain), Rattsakherheit (Sweden), *Rechtzakerheid* (Netherlands), Legal Certainty, Legal determinacy, and Legal security (England). From this terminology, legal certainty consists of 2 (two) words: certainty and law. Thus, we can define legal certainty as the existence of certain and definitive laws. Legal certainty itself is the opposite of legal uncertainty.[21] In the rule of law tradition, legal certainty is part of the formal aspect of the rule of law where the requirement is that laws should be validly made and publicly promulgated, of general application, stable, clear meaning, consistent and prospective.[22] With the above conditions, everyone can obtain protection from the arbitrary use of power in creating and implementing the law.

According to Sudikno Mertokusumo, legal certainty guarantees that the law is implemented properly.[23] In another expression, the essence of legal certainty is the existence of laws (legal norms) that legal subjects know regarding permitted and prohibited actions and their legal consequences. Legal certainty also requires accessibility and predictability of the law. The law must be formulated precisely and with other requirements to make this happen. Satjipto Rahardjo himself said that legal certainty is certainty about the law itself (*sicherkeit des rechts sellbst*).[24] Thus, if we want to realize the essence of the law itself, the law must be formulated clearly, precisely and unambiguously. If the law itself does not formulate this, the essence or purpose of the law will never be achieved.

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[20] Syofyan Hadi, *Pengantar Ilmu Hukum* (Surabaya: R.A.De.Rozarie, 2021).
[21] Moh Fadli dan Syofyan Hadi, *Kepastian Hukum: Perpektif Teoritik* (Malang: Nuswantara Media Utama, 2023).
[22] Bronislav Totskyi, "Legal Certainty as a Basic Principle of the Land Law of Ukraine," *Jurisprudence* 21, no. 1 (2014).
[23] Sudikno Martokusumo, *Penemuan Hukum* (Yogyakarta: Liberty, 2009).
[24] Satjipto Rahardjo, *Hukum Dalam Jagat Ketertiban* (Jakarta: UKI Press, 2006).

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Legal certainty is an integral part of the rule of law and the main foundation of the rule of law. Legal certainty is a sine qua non condition of a democratic society/state based on law. Legal certainty is one of the rights of every citizen which is classified as a non-derogable right. Therefore, legal certainty is the main requirement of the law itself. Legal certainty was born to oppose the uncertainty of the law itself (legal uncertainty/legal indeterminacy). The loss of legal certainty can lead to the emergence of tyranny and injustice.[25] There is a principle that states *ibi jus incertum, ibi jus nullum* where the right is uncertain, there is no right (where there is no legal certainty, there is no law).[26] Laws that do not provide certainty lose their meaning as law.

Regarding legal certainty, here are some criteria that reflect legal certainty, including:

1. The law must be positive;
2. The law must be announced;
3. The law must be prospective and not retroactive;
4. The law must be predictable;
5. The law must be easily accessible;
6. The law must be stable and not easily changed;
7. The law must be formulated clearly and easy to understand;
8. The law must be formulated in general; and
9. The law must be consistent.

Seeing the way to create legal certainty as above, then pouring it into the form of an election omnibus is the right step. So, the entire election process becomes clear and certain. There is no longer any doubt whether in the election we use the Election Law and then in the case of the regional election we use the Regional Election Law. Later, the election omnibus will regulate everything regarding the election process, especially up to the process of resolving disputes over the results. The simple design that the author can suggest is to regulate one thing in common in the omnibus, and if there really has to be a difference in certain circumstances, it must be based on rational reasons.

2. Implementing Constitutional Court Decision Number 85/PUU-XX/2022

The Constitutional Court's order through Constitutional Court Decision Number 85/PUU-XX/2022 must be interpreted as a whole, so that the conclusion obtained is a merger in the overall sense. Not only bound by the principles of implementation and institutions authorized to resolve disputes over Pilkada results, but also all aspects of the provisions contained therein. However, if there are two different things in the previous regulations, the legislators can choose one of them or choose another option between the two that is better for the Election in Indonesia in the future. Because, such a matter is the realm of the legislators as a whole.

The hope for the future is that there will no longer be the same regulation of one thing in different statutory provisions. This actually indirectly shows that the two things are still in different groups, even though this is not the case. It becomes important when formulated into one provision in an omnibus law, namely revoking all previously applicable provisions. This

[25] Totskyi, "Legal Certainty as a Basic Principle of the Land Law of Ukraine."
[26] Jason Stone, "Ubi Jus Incertum, Ibi Jus Nullum: Where the Right Is Uncertain, There Is No Right: United States v. Navajo Nation," *Pub. Land & Resources L. Rev.* 27 (2006): 149.

kind of thing is none other than to realize legal certainty and prevent confusion among the public. The author remembers that when the author had the opportunity to learn directly with Simon Butt about the practice of changing laws in Australia, Simon Butt said that if there is a change in the law, the previous law must be revoked and then the formulation of the changes is stated in the new law.

This practice is actually different from that in Indonesia.[27] In Indonesia, when making changes to a provision in a law, there are provisions that are still valid in the old law and there are new provisions in the new law. This practice clearly causes confusion for readers. Moreover, it is a law that combines various types of topics into one law, such as the Job Creation Law and the Health Law. Both laws use the omnibus method in their preparation, but readers find it difficult to understand and find what provisions are still valid in the old law and what provisions have been changed in the two laws.

The push to form a single law that regulates the General Election and Regional Election has been widely voiced by various parties. This is none other than because it has encountered many problems in practice. However, the push to form a single omnibus law long before the Constitutional Court Decision Number 85/PUU-XX/2022. The simple logic is that if they voiced such a thing before the decision, then now it should be the main thing we discuss and implement. Once again, the Constitutional Court expressis verbis said that there is no longer any difference regarding the General Election regime and the Regional Election regime. As a legal implication arising from the Constitutional Court's decision, the legislators must implement all legal implications that arise as a result of this.

If we look at the provisions of Law 12/2011, a law is formed because of a Constitutional Court Decision. Therefore, it is natural that currently the law makers collaborate with various experts and academics, as well as parties who are directly or indirectly involved in designing the election omnibus. It does not mean that it must be done quickly and without participation, but must also pay attention to formal and material aspects in the formation of laws and regulations.[28] Because, if this is not the case, the potential for the Constitutional Court to annul provisions which are technically different from the election regime is very large.

3. Realizing a Meaningful Election

Not only in the context of the formation of legislation that must be meaningful, but in the context of elections it must also be meaningful.[29] Elections in a meaningful context are elections that run according to the mandate of Article 22E paragraph (1) of the UUD NRI 1945 and are also implemented democratically. In addition, meaningful elections can also be interpreted as the absence of laws and regulations that overlap with each other. So that in a context like this, legal certainty, which is one of the goals of creating the law, is created. In addition to the components as above, meaningful elections must also be interpreted as the absence of conflict between organizing institutions.

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[27] Putu Eva Ditayani Antari, "The Implementation of Omnibus Law in Indonesia Law Making Process on Philosophy Review," *De Jure: Jurnal Hukum dan Syar'iah* 14, no. 1 (2022), https://doi.org/10.18860/j-fsh.v14i1.15757.

[28] Syofyan Hadi et al., *Teknis Penyusunan Peraturan di Desa* (Yogyakarta: Jejak Pustaka, 2023).

[29] Madaskolay Viktoris Dahoklory dan Erwin Ubwarin, "Mewujudkan Pengawasan Pemilu Partisipatif Yang Lebih Bermakna (Meaningfull Participation)," *Community Development Journal* 4, no. 2 (2023).

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An example of overlapping regulations between the Election Law and the Regional Election Law is regarding the campaign leave period for incumbents as described above. Through Constitutional Court Decision Number 85/PUU-XX/2022, the Constitutional Court expressly stated that it no longer distinguishes between the Election regime and the Regional Election regime. However, in practice, there are still provisions that differentiate the two regimes. So, in this case the incumbent must use which provision, becoming even more confused when both regulations are still in effect. Practices like this are one example of overlapping regulations in their implementation.

Not only regarding the above, in relation to conflicts between institutions, there is also a great potential for them to occur in the election contest. One example is when the 2024 Presidential Election, Bawaslu in practice was felt by some groups to be less effective and optimal in following up on findings of violations that occurred, until the completion of the election. On that basis, the aggrieved party submitted findings of violations during the election process to be submitted as one at the Constitutional Court in order to file a dispute over the results. The Constitutional Court considered that in the context of the 2024 Presidential Election, Bawaslu was considered less effective and optimal in following up on these findings, therefore the Constitutional Court as the guardian of the constitution took that role in order to realize the election as mandated by Article 22E paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

The use of the omnibus method in terms of compiling elections in Indonesia itself certainly also faces its own challenges. These challenges include the fact that lawmakers must be careful and active in involving meaningful public participation, otherwise it will be something that is very fatal to the course of elections in Indonesia. Another challenge in compiling the omnibus for elections in Indonesia is coordination between organizing institutions, the many regulations that currently exist, both at the central and regional levels, so that harmonization is needed so that the omnibus law can be accepted and implemented consistently, and regarding law enforcement in the election sector.

The omnibus election design that the author can currently propose is, First, the provisions regarding the Pilkada regime and the General Election regime are combined into one unit, so that they are no longer regulated in two laws. Second, if faced with two different provisions such as regarding the leave period for incumbents in re-submitting the contest, then the better one must be taken. Third, in the omnibus election there must still be a distinction, such as regarding the time for resolving disputes over results at the Constitutional Court, this is none other than so that the Constitutional Court is not burdened. This distinction cannot be interpreted as an act of disobeying the decision of the constitutional court, but rather determining the accuracy and effectiveness of a regulation. Fourth, adopting the National Election and Regional Election models. National Elections include the election of the President and Vice President and legislative elections, while Regional Elections include the election of regional heads and members of the provincial/district DPRD. Fifth, a firm determination of the simultaneous election model, whether the election of the president and vice president is carried out simultaneously or not.

4. Conclusions

The Constitutional Court's order to no longer differentiate between the Election regime and the Regional Election regime in practice has created ambiguity. The ambiguity is due to the absence of clear parameters regarding the extent to which the equation must be created. Thus, in practice, there are still provisions that differentiate the two regimes, including the existence of the Election Law and the Regional Election Law, differences regarding the time of leave during the campaign period for incumbents, differences in time regarding the resolution of disputes over results by the Constitutional Court, and others. To overcome the various problems above, one of them is to form an election omnibus. This is important because it is for the sake of realizing legal certainty, implementing the Constitutional Court's Decision, and for the sake of realizing meaningful elections.

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6. Reference

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