JURIDICAL ANALYSIS OF THE CONSTITUTIONAL COURT'S DECISION CONCERNING THE ELECTION OF THE REGIONAL HEAD OF SAMPANG INDONESIA REGENCY IN 2018

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ABSTRACT

Against "Article 58 of Law Number 10 of 2016 concerning the Election of Governors, Regents, and Mayors". Judges as the basis for legal considerations in "Decision of the Constitutional Court Number 38/PHP.BUP-XVI/2018 concerning Sampang Regency Re-Voting". However, suppose it is carried out in substance. In that case, the Constitutional Court uses "Article 58 of Law Number 8 of 2015 concerning the Election of Governors, Regents, and Mayors even though this regulation has been amended by Law Number 10 of 2016 concerning the Election of Governors, Regents, and Mayors". Therefore, if it is carried out on a problem studied in this study, it is "the judge's accuracy in providing the basis for legal considerations in the decision of the Regional Head Election of Sampang Regency." The research method used is the normative legal research method by conducting a statutory approach method based on studies conducted to conclude "that the basic legal considerations given by the judges of the Constitutional Court are not correct, because they are based on the principle of the higher regulation beats the lower regulation or the principle of lex superior *derogat legi inferiori*, showing that it should be." Judges providing the basis for a legal consideration must be able to use Law Number 10 of 2016 concerning the Election of Governors, Regents, and Mayors.

KEYWORDS

The decision, judge's consideration, final voter list, constitutional Court, Sampang, Indonesia.

Democracy gives the understanding that "at the last level, the people make provisions in the main issues concerning their lives, including in assessing state policies, because state policies determine people's lives"[1]. The policies carried out by the state must be by the will carried out by the people because in this concept of democracy, where the highest power is exercised in the hands of the people and exercised it can be directly carried out by them or by representatives who later they can vote under an accessible voting system.

The word democracy or democracy in English was adapted from the word democratic in French in the 16th century. However, the origin of the word comes from "the Greek democratic, which is taken from the word demos which means people, Kratos means power/rule (rule)".[2] Almost all countries agree that democracy, which means that the people carry out Government, is a system that can later be accepted to realize the people's sovereignty.

According to Mac Iver, quoted in Muhadam Labolo and Teguh Ilham, "the practice of democracy is only possible in a country with a minimal area and number of citizens. For this reason, a democracy that involves the people directly in the government is not possible"[3]. This shows that if the State of Indonesia implements a democratic system with a large population, it must have an appropriate mechanism for implementing democracy.

The choice of the type of regional head election system (starting now referred to as Regional Head Election), which is carried out directly, can always consider an aspect of legitimacy and efficiency, which is always a trade-off. That is, "systems that have high

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[1] *Encik Muhammad Fauzan, Hukum Tata Negara, Setara Press Kelompok Intrans Publishing, Malang, 2016, hlm. 149.*

[2] *Ni'matu Huda, Ilmu Negara, Rajawali Pres, Jakarta, 2014, hlm. 200.*

[3] *Muhadam Labolo dan Teguh Ilham, Partai Politik Dan Sistem Pemilihan Umum Di Indonesia, Jakarta, Rajawali Pers, 2015, hlm. 8.*

legitimacy always have very inefficient consequences. On the other hand, if the focus is solely on efficiency, it will produce election results with very low legitimacy".[4]

Implementing a democracy that is less effective with a large population will cause several problems in its implementation, especially in terms of election management. This was proven in 2017 Sampang Regency held a Regional Head election. Elections in Sampang Regency can also be held simultaneously by 101 regions covering seven provinces, namely "Nanggroe Aceh Darussalam, Bangka Belitung, DKI Jakarta, Banten, Gorontalo, West Sulawesi and West Papua," and carried out by 76 districts and 18 cities.

The quality of implementing a general election that is carried out from time to time will not be able to increase with the existence of something carried out by an election administration system that constantly changes. Changes made to an electoral system do not necessarily result in the General Election expected by the people.[5] The practice carried out by holding this Election, which is full of manipulative and strong political intervention, can show that this nation's efforts to organize an excellent political system have not been achieved according to the wishes carried out by reform.

In general, as mandated by "Amendment to Law Number 1 of 2015, as lastly amended by Law Number 10 of 2016 concerning the Election of Governors, Regents, and Mayors. Hereinafter referred to as Election is the exercise of popular sovereignty in the provinces and districts/cities to elect the Governor and Deputy Governor, Regent and Deputy Regent, as well as Mayor and Deputy Mayor directly and democratically"[6].

The authority and responsibility carried out by the holding of this simultaneous Election are the "General Election Commission of the Republic of Indonesia and the Election Supervisory Body of the Republic of Indonesia. The two institutions regulate the general framework for organizing elections. In this case, the Election of the Regent and Deputy Regent of Sampang Regency is held by the Sampang Regency GENERAL ELECTIONS COMMISSION and the Sampang Regency Supervisor of Election. In other words, the procedures, procedures, or mechanisms for organizing elections held by the GENERAL ELECTIONS COMMISSION in Sampang Regency and Supervisor of Election in Sampang Regency, the two institutions are also carried out by seven provinces and 92 regencies/cities which also hold elections, including the province of East Java and its regencies/cities.

Even though they have the same procedures, procedures, or mechanisms, there are exciting things in determining the number of the Permanent Voter List (from now on referred to as DPT) in the implementation of elections in Sampang Regency, and this began to appear after the issuance of the "interlocutory decision by the Constitutional Court (hereinafter referred to as DPT). called M.K.) Number 38/PHP.BUP-XVI/2018 on the application submitted by the Candidate Pair for Regent and Deputy Regent of Sampang Regency number 2 (two) on behalf of Dr. H. Hermanto Subaidi and Suparto".

Talking about the Regional Head Election, the people will determine who can become the leader in their respective regions. "The people are the most substantial idea of sovereignty so that the role of the people determines the future of the nation and state, including in determining the elite that leads" (Juliansyah 2013)[7]. Therefore, to determine which people have voting rights in a Regional Head Election, an accurate formulation is needed in determining voters in the Regional Head Election called DPT.

Voters are "residents who are at least 17 (seventeen) years old or have/have been married registered in the Election".[8] This means that a resident who is 17 years old or who has/had been married, then that resident is included in the DPT as a resident who has the right to vote in an election. Simultaneous elections held on July 27, 2018, have resulted in several regional leaders being elected according to the number of votes received by each candidate, but the Regional Head Election held in Sampang Regency which has won the

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[4] Ni'matul Huda, Dinamika Ketatanegaraan Indonesia Dalam Putusan Mahkamah Konstitusi, FH UII Press, Yogyakarta, 2011, hlm. 197.
[5] Jimly Assiddqie, Menegakkan Etika Penyelenggara Pemilu, Rajawali Pers, Jakarta, 2011 hlm. 70.
[6] Article 1 paragraph (1) of Law Number 10 of 2016 concerning the Election of Governors, Regents, and Mayors. "Election is the exercise of people's sovereignty in the provinces and districts/cities to elect the Governor and Deputy Governor, Regent and Deputy Regent, as well as Mayor and Deputy Mayor directly and democratically."
[7] Elvi Juliansyah, Sistem Politik Indonesia Pasca Reformasi, Mandar Maju, Bandung, 2013, hlm. 218.
[8] Article 1 paragraph (5) of Law Number 10 of 2016 concerning the Election of Governors, Regents, and Mayors. Voters are residents who are at least 17 (seventeen) years old or have/have been married registered in the Election.

candidate pair to the top 1 (one) the names of H. Slamet Junaidi and Abdullah Hidayat were not completed at that time. Candidate pair number 2 (two), on behalf of Dr. H. Hermanto Subaidi, M.S. and Suparto, have filed a dispute over the voting results issued by the GENERAL ELECTIONS COMMISSION to the Constitutional Court. In "Decision Number 38/PHP.BUP-XVI/2018 issued by the Constitutional Court," it has been determined that the voting process carried out by the Sampang Regency GENERAL ELECTIONS COMMISSION must be carried out by a re-voting (starting now referred to as PSU), meaning that the filing of a dispute over the results of the vote must be submitted. The votes submitted by the candidate pair for Regent number 2 (two) in Sampang Regency were partially granted by the Constitutional Court.

Regarding "Decision Number 38/PHP.BUP-XVI/2018 issued by the Constitutional Court" regarding the Implementation of the PSU by the Sampang Regency GENERAL ELECTIONS COMMISSION, the Court made "Article 58 of Law Number 10 of 2016 concerning the Election of Governors, Regents, and Mayors as a reference for GENERAL ELECTIONS COMMISSION in re-determining the number of DPT that will be used in the PSU of Sampang Regency". However, in substance, the Constitutional Court uses "Article 58 of Law Number 8 of 2015 concerning the Election of Governors, Regents, and Mayors even though this regulation has been amended by Law Number 10 of 2016 concerning the Election of Governors, Regents, and Mayors".

Based on these considerations, it can be seen that the Constitutional Court uses "Article 58 of Law Number 10 of 2016 concerning the Election of Governors, Regents, and Mayors as the legal basis for determining the number of DPT". However, if in substance, the Constitutional Court uses "Article 58 of Law Number 8 of 2015 concerning the Election of Governors, Regents, and Mayors". Because the Constitutional Court can state a reference in determining the DPT, it can only use population data issued by the Ministry of Home Affairs C.Q. Against the Directorate General of Population and Civil Registration. Whereas what is contained in "Article 58 of Law Number 10 of 2016 concerning the Election of Governors, Regents, and Mayors. There are two things that become the reference for determining the DPT, namely the DPT in the last Election and the DP4 from the Ministry of Home Affairs.

Based on these problems, it can be interesting to conduct an analysis of a "Constitutional Court Decision Number 38/PHP.BUP-XVI/2018 in which the Constitutional Court has issued an inappropriate legal consideration in determining the Permanent Voter List for District Re-Voting. Sampang is in accordance with Article 58 of the Law of the Republic of Indonesia Number 10 of 2016 concerning the Election of Governors, Regents".

METHODS OF RESEARCH

This research is normative juridical research using statutory and conceptual approaches. This research is a normative juridical with a literature approach, namely by studying journals, books, legislation, and other documents related to this research. Normative law is directly related to law practice, which involves two main aspects, namely the formation of law and the application of the law. This approach views law as synonymous with written norms made and promulgated by official institutions or officials (Poglabba. C 2017)[9].

There are 3 (three) legal materials in this study: primary, secondary, and tertiary legal materials. *Primary legal materials* are provisions relating to regulations related to the regional head election law and decisions of the Constitutional Court and other relevant theories. (Nishikawa. Y 2020)[10]. Secondary legal materials, namely all publications on a law that are not official documents (books, dictionaries, journals), while tertiary legal materials, namely: sizeable Indonesian language dictionaries, Thursday law, encyclopaedias, and others.

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[9] Poglabba, C (2017) Tinjauan Yuridis Penyertaan Dalam Tindak Pidana Menurut KUHP, LEX CRIMEN
[10] Nishikawa., Y (2020). The Reality of Protecting the Rohingya: An Inherent Limitation of the Responsibility to Protect Asian Security. https:doi.org/10/1080/14799855.2018.1547709

The legal material analysis technique used is content analysis, which is any systematic procedure that is encouraged to examine the content of the information obtained[11]. This analysis focuses on all secondary data obtained; after obtaining the necessary data, this paper analyses the data logically, systematically, and juridically. Logical means that the data collected is analysed by the principles of deductive logic, namely concluding a general problem to the concrete problems faced[12]. Systematic means to analysed data with one another that are interconnected and dependent. Furthermore, the data were analysed juridically, namely starting from the existing regulations and related to the positive law that is currently in effect. [13].

RESULTS AND DISCUSSION

The decision is "the end of a process of examining a case carried out by a panel of judges, with first deliberation and each judge is obliged to submit written considerations or opinions on the case being examined and become an inseparable part of the decision based on the provisions of Article 14 of the Law on Judicial Power". The decision is a statement made by a judge as an actor of judicial power which is authorized to be pronounced in a trial open to the public, which is also in order to be able to resolve a dispute case between the parties.

The judge's decision, in this case, is "a decision in the context of carrying out the Court's primary duties, namely receiving, examining, and adjudicating and resolving cases submitted to the Court. It is the judge who ultimately determines the decision on a case based on the judge's intellectual, moral, and integrity to the values of justice"[14].

The Court can function to be able to administer justice in order to be able to enforce the law and also to be able to enforce a justice based on "Pancasila and the 1945 Constitution for the implementation of the State of Law of the Republic of Indonesia". The judge is one of the main actors who can function in a court. Therefore, all of the authority and also the duties that the judge can possess must be carried out in order to be able to enforce the law and enforce justice.

If the code of ethics guides it and the guidelines for the behaviour of judges, the word fair itself can be given a meaning to be able to put something in its place. They can also give their rights based on the principle that all people are equal before the law. Thus, with such a statement, the most basic demand for justice is being able to provide treatment and being able to provide an equal opportunity, and being able to carry out a balance of legal protection carried out against the disputing parties.

The independence of the judiciary, which in this case is "the Constitutional Court, legally has obtained independence guarantees both through the 1945 Constitution of the Republic of Indonesia and through the Law on judicial power as has been amended and refined several times as seen from Law No. 48 of 2009 concerning Judicial Powers". Likewise, the independence of the judge who is carried out personally has been guaranteed by law to carry out a dissenting opinion in submitting his legal considerations and opinions. This must be included in the considerations made by the judge in his decision.[15]

The authority of the Constitutional Court in deciding a Dispute on Election Results (from now on referred to as PHPU) can stem from the understanding that the Election is an instrument of democracy. This can be by the principle, namely, "a democratic rule of law and democracy based on the laws adopted in the 1945 Constitution of the Republic of Indonesia, there must be guarantees that elections as a democratic mechanism run by the rules of law and democracy. If there is a violation or error in the administration of the Election, the

[11] Cheng, M., Edwards, D., Darcy, S., & Redfern, K (2018) A Tri-Metod Approach to a Review of Adventure Tourism Literature: Bibliometric Analysis, Content Analysis, and a Quantitative Systematic Literature Review, Journal of Hospitality and Tourism Research. https;//doi.org/10.1177/1096348016640588

[12] Lisdiyono, E (2017). Improving legal argument critically in the litigation mechanism in Indonesia (an empirical study of environmental verdicts). Sriwijaya Law Review. https;//doi/org/10.28946/slrev.Vol.IsS1.10.pp080-092

[13] Kruyen, P. M., & Van Genugten, M (2017). Creativity in Local Government Definition and determinants. Public Administration. https://doi.org/10.1111/padm.12332

[14] Feri Amsari, Pengisian Jabatan Hakim Agung dan Hakim Konstitusi, Raja Grafindo Persada, Jakarta, 2016, hlm. 308

[15] Article 14 of Law Number 48 of 2009 concerning Judicial Powers

violation must be legally resolved. The Constitutional Court has the authority to settle the law at the national level."[16].

Based on the provisions of "Article 13 paragraph (1) of the Regulation of the Constitutional Court Number 15 of 2008 is determined in a limited manner regarding the decision on the dispute over the results of the Regional Head General Election which is final and binding". The Constitutional Court's decision can be pronounced after being decided in a Deliberative Meeting of Judges, which can be pronounced to be carried out in a plenary session open to the public which can be attended by at least 7 (seven) constitutional judges.[17]. As for what is done to a form of dispute resolution in the election results, it can include the following things[18].

- Unacceptable Application *(Niet Ontvankelijk Verklraad)*. A decision that cannot be accepted can be imposed because "the application submitted by the Petitioner contains elements of error in persona[19], error objects[20], the application is past due or expired[21], and the application does not meet the formal requirements of an application as regulated in Article 6 PMK Number 15 of 2008";
- Granted Application. The arguments in the application that can be proven to be grounded and subsequently to the Constitutional Court can cancel the results of the vote count, which can be determined by the GENERAL ELECTIONS COMMISSION/provincial KIP or can be determined by the Regency/Municipal GENERAL ELECTIONS COMMISSION/KIP, and can determine a result of counting of correct votes;
- Rejected Application. If it is carried out against the arguments in an application, this is unreasonable, and there is no evidence of the Petitioner. This is not convincing to the judge so that the Constitutional Court can declare rejection of an application.

The decisions of the Constitutional Court, including the decisions on disputes over the results of the post-conflict local elections, are final and binding.[22]. The decision made by the Constitutional Court must be implemented by all parties. To facilitate the implementation of the decision so that the decision is submitted to the Respondent, the Petitioner, the local Regional House of Representatives, the Government, and related parties. Provincial GENERAL ELECTIONS COMMISSION/KIP or Regency/Municipal GENERAL ELECTIONS COMMISSION/KIP, the local Regional People's Representative Council, and the Government are obliged to follow up on the Constitutional Court Decision."[23]. In this case, an interest in an examination carried out by the Constitutional Court may determine an interim decision that may relate to a recount of votes[24].

The Indonesian state of the law is "something that can enforce law and justice so that legal certainty and justice must be the product of a judge's decision."(Syarif Mapiase 2015)[25] The pattern of reasoning carried out on prismatic law in the Indonesian state of the law is "the obligations of judges carried out in order to develop law in court practice. It is time for the judges' mindset to change in line with the dynamics of society." Paul Scholten stated that there was something to be done against the law in the law, but that still had to be discovered. This means that intelligence that is carried out in moral and judicial discretion must be able to change the mindset of legalism, which can be legalistic and prismatic.[26]

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[16] Janedri M. Gaffar, Demokrasi dan Pemilu di Indonesia, Jakarta, Konstitusi Press, 2013, hlm, 168.
[17] Article 13 paragraph (2) PMK Number 1 of 2017 concerning Guidelines for Proceeding in Disputes on the Results of the Election of Governors, Regents, and Mayors
[18] Article 13 paragraph (3) PMK Number 1 of 2017 concerning Guidelines for Proceeding in Disputes on the Results of the Election of Governors, Regents, and Mayors
[19] Article 3 PMK Number 1 of 2017 concerning Guidelines for Proceeding in Disputes on the Results of the Election of Governors, Regents, and Mayors
[20] Article 4 PMK Number 1 of 2017 concerning Guidelines for Proceeding in Disputes on the Results of the Election of Governors, Regents, and Mayors
[21] Article 5 PMK Number 1 of 2017 concerning Guidelines for Proceeding in Disputes on the Results of the Election of Governors, Regents, and Mayors
[22] Article 2 and Article 13 paragraph (3) and paragraph (6) of PMK Number 1 of 2017 concerning Guidelines for Proceeding in Disputes on the Results of the Election of Governors, Regents, and Mayors.
[23] Article 13 paragraph (5) and paragraph (6) of PMK Number 1 of 2017 concerning Guidelines for Proceeding in Disputes on the Results of the Election of Governors, Regents, and Mayors
[24] Article 8 paragraph (4) PMK Number 1 of 2017 concerning Guidelines for Proceeding in Disputes on the Results of the Election of Governors, Regents, and Mayors
[25] Syarif mapiase, Logika Hukum Pertimbangan Putusan Hakim, Jakarta, Prenadamedia Group, 2015. hlm, 134.
[26] Ibid. hlm. 135

The primary considerations made by the judge in passing a decision in the Court need to be carried out so that it can be based on theory and can also be produced on research which can be related to each other so that later results are obtained for research that is maximal and also carried out in a balanced manner at the level of theory as well as in practice. One of the efforts made to achieve judicial legal certainty is that judges are law enforcement officers who can, through their decisions, be a benchmark for achieving legal certainty.

The legal basis for power exercised by the judiciary is regulated in the "NRI 1945 Constitution Chapter IX Article 24 and Article 25 as well as in Law Number 48 Year 2009 concerning Judicial Power". This is explicitly stated in "Article 24, especially in the explanation of Article 24 paragraph (1) and the explanation of Article 1 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, the definition of judicial power is the power of an independent state to administer justice to enforce the law. and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia for the sake of the implementation of the constitutional state of the Republic of Indonesia".

The judge's decision is a crown and the culmination of a case, which can be examined and tried by the judge. The process carried out in imposing a judge's decision is a process that can be carried out in a complex and challenging manner, so it can require training, experience, and exercising a policy. In the sentencing process, namely "it is carried out, a judge must be able to believe whether a person commits a criminal act to a defendant or does not commit a criminal act, or in a civil case, while still being guided and can be done in evidence to be able to determine the existence," a violation of the law which can be committed by one of the parties who can litigate.

The process of selecting regional heads in Sampang Regency has led to a dispute over the results of the regional head election, which was carried out in a case at the Constitutional Court, considering that it was indeed carried out within the authority of the Constitutional Court to resolve disputes over election results conducted by the head of the district. Regions before the existence of a special election court. In the decision issued by the "M.K. judge Number 38/PHP.BUP-XVI/2018 which stipulates the holding of a re-voting process for regional head elections". In the decision can be seen the basis of the judge's consideration which states:

"...then the Court has concluded that the 2018 Sampang Regency Regent and Deputy Regent Elections must be re-voted by first making improvements in the preparation and determination of the DPT by the Respondent which is carried out in accordance with the provisions of the legislation by referring to the DP4 issued by the Ministry of Home Affairs. *cq.* Directorate General of Population and Civil Registration, so that a valid and logical DPT is produced..."[27].

The judge's considerations in "decision number 38/PHP.BUP-XVI/2018, which stipulates the holding of a re-voting process for the regional head election of Sampang Regency, the primary basis that convinces the judge to decide this is the illogicality of the number of Permanent Voters List. From now on referred to as DPT. so that the Sampang Regency GENERAL ELECTIONS COMMISSION can determine it as the organizer of the Sampang Regency Regional Head Election.

This incredible determination of the number of DPT occurred due to an irregularity carried out in determining the number of DPT, which can be used as the basis for conducting an Election of Regent and Deputy Regent of Sampang Regency in 2018. Population data that is used as the basis for the issuance of DP4 is population data as listed in the Population Aggregate Data per District table (from now on referred to as DAK2), which is submitted by the Ministry of Home Affairs to the General Elections Commission for the 2018 simultaneous regional elections, through Letter Number 470/8641/Dukcapil and Number 43/BA/VII/2017 dated July 31, 2017, regarding DAK2 Semester I of 2017 as of June 30, 2017, in areas holding Simultaneous Regional Head Election in 2018, the total population of Sampang Regency is 844,872". Based on what was done to the data, the Ministry of Home Affairs was

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[27] *Constitutional Court Decision Number 38/PHP.BUP-XVI/2018*

able to determine a DP4 of 662,673 who were declared as residents who had the right to vote, namely those who could be over or aged 17 years until June 27, 2018, aged less than 17 years old. Alternatively, has been married and is not currently a member of the TNI/Polri.

Meanwhile, the DPT data that can be issued by the General Elections Commission to the Election of Regents and also to the Deputy Regents of Sampang Regency is based on "not DP4 data sourced from population data that has been determined by the Ministry of Home Affairs cq. The Directorate General of Population and Civil Registration mentioned above, but the number of DPT for the 2014 Presidential and Vice-Presidential Elections is 805,459". This is the last election data that is carried out and can then be adjusted to the latest population developments so that later it can be obtained in the number of DPT as much as 803,499.

Looking at the description above, it can be seen that the judge's consideration, which stated that there was illogicality in determining the number of DPT issued by the GENERAL ELECTIONS COMMISSION, was indeed correct because in "Article 58 paragraphs (1) and (2) of Law Number 10 of 2016 concerning the Election of Governors, Regents and Mayors."[28]. State:

- Voters List, namely "which can be permanent in the last general election used as a source of updating election data by considering the List of Potential Electoral Voters";
- The Population List of Potential Electoral Voters, as referred to in paragraph (1), namely "originating from the Regency/City Population and Civil Registration Service, which has been consolidated, verified, and validated by the Minister is used as material for compiling the voter list for the election."

Based on these considerations, in this decision, the judge thinks that the Court can conclude that the PSU must conduct the Election of the Regent and Deputy Regent of Sampang Regency in 2018. To be able to guarantee the protection of the constitutional rights of the people of Sampang Regency so that later it can be done by producing leaders who do this naturally, this can be the choice of the community according to their conscience.

When looking at the basis of the judge's considerations, we can find an error from a judge in applying the legal basis. The error in question is the judge's order to carry out the PSU, namely first, if it is made to an improvement in the preparation and determination of the DPT made by the Respondent, which, if carried out in accordance with a statutory provision, can guide the DP4 which the Ministry of Home Affairs can issue C.Q. Directorate General of Population and also conducted on Civil Registration. This order by the judge was based on "Article 58 of Law Number 10 of 2016 concerning the Election of Governors, Regents, and Mayors.

However, when scrutinized, the substance of the judge's considerations uses the old rules, namely Law Number 8 of 2015 concerning the Election of Governors, Regents, and Mayors, especially paragraphs (1) and (2)". More details can be seen in the following table:

Table 1 – Changes in setting the number of Permanent Voter List

No	Article 58 of Law Number 8 of 2015 concerning the Election of Governors, Regents, and Mayors	Article 58 of Law Number 10 of 2016 concerning the Election of Governors, Regents, and Mayors
1	(1) the List of Potential Residents, namely "Electoral Voters from the Regency/City Population and Civil Registration Service which has been consolidated, verified, and validated by the Minister is used as material for compiling the Voters list for Elections."	(1) Permanent Voters List, namely "the last general election is used as a source of updating election data by considering the List of Potential Electoral Voters."
2	(2) the list of voters as referred to in paragraph (1) is "performed by PPS, updating is carried out based on improvements from neighborhood units, community units, or other designations and additional voters who have met the requirements as voters no later than 3 (three) days after receiving the results of consolidation, verification, and validity".	(2) List of Potential Residents, namely "an Electoral Voter as referred to in paragraph (1) originating from the Regency/City Population and Civil Registration Service which has been consolidated, verified, and validated by the Minister is used as material for compiling the Voters list for Elections".

Source: Data processed, 2022

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[28] *Article 58 paragraphs (1) and (2) of Law Number 10 of 2016 concerning the Election of Governors, Regents, and Mayors.*

In forming a rule and also if it is carried out to be able to apply a statutory regulation, several principles can be adhered to, namely "First, higher regulations beat lower regulations or the principle of lex superior *derogat legi inferiori*, in the event of a conflict or conflict between laws and regulations. A high invitation with a low one, the high one must take precedence. Second, the newer regulations beat the older regulations or Lex posterior *derogat legi priori* is the principle of legal interpretation which states that the latest or posterior law overrides the old or prior law. This principle is usually used in both national and international law. Third, regulations governing specific issues override general regulations or *Lex specialis derogat legi* general is the principle of legal interpretation that states that special laws or *lex specialis* override general laws or *lex generalis*.

According to the principle of enactment of statutory regulations, there is a principle of *Lex Posterior derogate legi priori*; namely, newer regulations can beat older regulations, meaning that if there is a new regulation regarding a matter, the old regulation cannot be reused.

If it is related to the legal considerations taken by the judges of the Court, it can be stated that the considerations given are not appropriate. Because in this consideration, the judge used the old regulation, namely "Law Number 8 of 2015 concerning the Election of Governors, Regents, and Mayors. In ordering the GENERAL ELECTIONS COMMISSION to improve the DPT used, even though the regulation has been replaced with Law Number 10 of 2016 concerning the Election of Governors, Regents, and Mayors".

The difference between the two mechanisms lies in reporting the GENERAL ELECTIONS COMMISSION's decision regarding the existence of a stage, and the program and schedule for the implementation of the re-voting are carried out to the Constitutional Court as the institution that decides on the re-voting. The difference is further stated in "Article 71 of the General Election Commission Regulation Number 8 of 2018 concerning the Voting and Counting of the Governor and Deputy Governor, Regent and Deputy Regent, and/or Mayor and Deputy Mayor". Whereas in the re-voting mechanism, after the decision of the Constitutional Court, the election participants cannot re-campaign either.

CONCLUSION

Against the Judges of the Constitutional Court in giving a legal consideration to the decision Number 38/PHP. BUP-XVI/2018 is not by the principle of enactment of Laws - Invitations because in that consideration there is a decision to conduct a re-voting, the judge uses the old regulation, namely "Law – Law Number 8 of 2015 concerning the Election of Governors, Regents, and Mayors". In ordering the GENERAL ELECTIONS COMMISSION to improve the DPT used, even though the regulation has been replaced with the rule "Law Number 10 of 2016 concerning the Election of Governors, Regents, and Mayors,".

REFERENCES

1. Amsari, Feri. 2016. Pengisian Jabatan Hakim Agung Dan Hakim Konstitusi. Jakarta: Raja Grafindo Persada.
2. Cheng, M. Edwards. 2018. "A Tri Metod Approach to a Review of Adventure Tourism Literature: Bibliometric Analysis, Content Analysis, and a Quantitative Systematic Literature Review." Journal of Hospitality.
3. Fauzan, Encik Muhammad. 2014. No Title. Malang.
4. Ferry Irawan Febriansyah. 2016. "Konsep Pembentukan Peraturan Perundang-Undangan Di Indonesia." 111(3): 223.
5. Huda, Ni"matul. 2011. Dinamika Ketatanegaraan Indonesia Dalam Putusan Mahkamah Konstitusi. Yogyakarta: FH UII.
6. 2014. Ilmu Negara. Jakarta: Rajawali Press.
7. Ilham, Muhadam Labolo dan Teguh. 2015. Partai Politik Dan Sistem Pemilihan Umum Di Indonesia. Jakarta: Rajawali Pres.
8. Jimly Asshiddiqie. 2011. Menegakkan Etika Penyelenggara Pemilu. Jakarta: Rajawali

Pres.
9. Juliansyah, Elvi. 2013. Sistem Politik Indonesia Pasca Reformasi. Bandung: Mandar Maju.
10. Kruyen, P.M. & Van Genugten. 2017. "Creativity in Local Goverment Definiton and Determinats." Public Administration.
11. Lisdiyono. 2017. "Improving Legal Argument Critically in the Ligitation Mechanism in Indonesia." Sriwijaya Law Review.
12. Nishikawa. Y. 2020. "The Reality of Protecting the Rohingya; An Inherent Limitation of the Responsibility to Protect Asian Security."
13. Poglabba. C. 2017. "Tinjauan Yuridis Penyertaan Dalam Tindak Pidana Menurut KUHP, Lex Crimen".
14. Syarif Mapiase. 2015. Logika Hukum Pertimbangan Putusan Hakim. Jakarta: Prenada Media Group.