

Rekonseptualisasi Ambang Batas Pengajuan Permohonan Sengketa Perselisihan Hasil Pemilihan Kepala Daerah di Mahkamah Konstitusi

Abstrak

Penelitian ini membahas mengenai ambang batas pengajuan permohonan sengketa Perselisihan Hasil Pemilihan Kepala Daerah (PHPKada) di Mahkamah Konstitusi (MK) sebagaimana diatur dalam Pasal 158 Undang-Undang Pemilihan Kepala Daerah (Pilkada). Terdapat 3 (tiga) tujuan penelitian ini, yaitu, *pertama*, untuk menguraikan konsep ambang batas pengajuan permohonan sengketa Perselisihan Hasil Pemilihan Kepala Daerah (PHPKada) di Mahkamah Konstitusi (MK); *kedua*, untuk menganalisis problematik yang timbul dari pengaturan ambang batas pengajuan permohonan sengketa PHPKada di MK; dan *ketiga*, untuk merekonseptualisasi ambang batas pengajuan permohonan sengketa PHPKada di MK agar dapat mewujudkan unsur kepastian, keadilan, dan kemanfaatan hukum.

Penelitian ini merupakan penelitian hukum normatif (*doctrinal legal research*) dengan menggunakan 3 (tiga) pendekatan yakni *pertama*, pendekatan perundang-undangan (*statute approach*), *kedua*, pendekatan konseptual (*conceptual approach*), dan *ketiga*, pendekatan kasus (*case approach*). Cara pengumpulan bahan hukum dilakukan dengan studi pustaka, studi dokumen, dan wawancara terhadap narasumber terkait.

3 (tiga) hasil dalam penelitian ini, yaitu, *pertama*, konsep ambang batas yang ditujukan untuk membatasi perkara Pilkada, dalam perkembangannya mengalami pergeseran penerapan dari kaku hingga kasuistik, oleh karena untuk mencapai keadilan substantif Pilkada. *Kedua*, inkonsistensi MK dalam menggunakan ketentuan ambang batas pengajuan permohonan sengketa PHPKada membawa problematik tersendiri dalam penyelesaian sengketa Pilkada di MK. Antara lain, 1) terjadinya ketidakpastian hukum ketentuan *legal standing* dalam PHPKada di MK; 2) munculnya problematik kelembagaan di tubuh MK; dan 3) terjadi tumpang tindih mekanisme penyelesaian pelanggaran Pilkada. *Ketiga*, rekonseptualisasi ambang batas pengajuan permohonan sengketa PHPKada di MK ini dilakukan dalam dua hal, yakni pengaturan dan penerapan. Pengaturan ambang batas dibuat secara kuantitatif dan secara kualitatif. Dalam hal penerapan, MK harus menerapkan ketentuan ambang batas sesuai konsep pengaturan sebagaimana telah diuraikan di atas dan kemudian, MK perlu dibatasi dalam ruang penafsirannya.

Penelitian ini juga mendorong untuk dilakukannya penataan ulang terhadap penyelesaian sengketa Pilkada di level penyelenggara dan pada proses sebelum sengketa hasil di MK yang jauh lebih efisien dan berkualitas, serta perlunya untuk segera membentuk badan peradilan khusus pemilihan.

Kata Kunci: ambang batas pengajuan permohonan sengketa Perselisihan Hasil Pemilihan Kepala Daerah, Mahkamah Konstitusi, Pemilihan Kepala Daerah, rekonseptualisasi.

Reconceptualization of the Threshold for Submission of Disputes over the Results of Regional Head Elections at the Constitutional Court

Abstract

This research discusses the threshold for submitting dispute applications for Disputed Results of Regional Head Elections (PHPKada) in the Constitutional Court (MK) as stipulated in Article 158 of the Regional Head Election Law (UU Pilkada). There are 3 (three) purposes of this research, namely, *first*, to outline the concept of the threshold for submitting dispute applications for disputed disputes over the results of regional head elections (PHPKada) in the Constitutional Court (MK); *second*, to analyze the problems arising from setting the threshold for submitting PHPKada dispute applications in the MK; and *thirdly*, to conceptualize the threshold for submitting PHPKada dispute applications in the MK in order to realize the elements of certainty, justice, and legal expediency.

This research is normative legal research (*doctrinal legal research*) using 3 (three) approaches, namely *first*, the statutory approach (*statute approach*), *second*, the conceptual approach (*conceptual approach*), and *third*, the case approach (*case approach*). How to collect legal materials is done by literature studies, document studies, and interviews with related sources.

3 (three) results in this study, namely, *first*, the concept of thresholds aimed at limiting the case of the Election, in its development has shifted its application from rigid to *kasuistik*, because to achieve substantive justice of the Regional Elections. *Second*, the inconsistency of the MK in using the provisions of the PHPKada dispute application threshold brings its own problems in the resolution of election disputes in the MK. Among other things, 1) the occurrence of legal uncertainty of *legal standing* provisions in The PHPKada in the MK; 2) the emergence of institutional problems in the MK body; and 3) there is an overlap of the mechanism for solving violations of the Regional Elections. *Third*, the reconceptualization of the threshold for submitting PHPKada dispute applications in the MK is carried out in two ways, namely regulation and application. Threshold's norms are made quantitatively and qualitatively. In the case of application, the MK must apply the threshold provisions according to the concept of arrangement as outlined above and then, the MK needs to be limited in its interpretation space.

This research also encourages the rearrangement of the settlement of election officials at the organizing level and in the process before disputed results in the MK which is much more efficient and qualified, as well as the need to immediately establish a special judicial body of elections.

Keywords: threshold for submitting applications for disputed results of regional head elections, Constitutional Court, Regional Head Election, reconceptualization.