

## Implications of Separation of Dispute Resolution of Election Results in Indonesia

Ahmad Siboy<sup>1</sup>✉

<sup>1</sup>Faculty of Law, Universitas Islam Malang, Indonesia

✉ corresponding email: [siboysalman@unisma.ac.id](mailto:siboysalman@unisma.ac.id)

Article	Abstract
<p><b>Keywords:</b> Separation; Presidential Election; Regional Head Election; Village Head Election.</p> <p><b>Article History</b> Received: Jan 30, 2025; Reviewed: Feb 21, 2025; Accepted: Mar 11, 2025 Published: Mar 25, 2025.</p>	<p>Presidential, regional, and village head elections are forms of elections that stand on the principle of popular sovereignty. However, in terms of resolving disputes over election results, the pattern of resolution of the three types of elections is different from one another and does not show a pattern of handling that is fair and in harmony with one another. This research aims to explain the differences in the handling patterns of the settlement of disputes over the results of the Presidential Elections, Regional Head Elections, and Pilkades (Village Head Elections) and the implications caused. This research used normative juridical research with a conceptual approach, legislation, and case approach. The results showed that the Constitutional Court adjudicated the Presidential Election, the Regional Head Election was adjudicated by a Special Judicial Body, while the Pilkades did not have a judicial process but a settlement process carried out by the Regent, even though the Regent is an executive official or political position. The different patterns of settlement indicate that: (i) there is a disregard for the similar characteristics of disputes over election results and the handling of disputes over Pilkades results as a settlement process that is ruled out considering that there is no judicial institution authorized to adjudicate until the absence of procedural law. (ii) Prioritization.</p>

When the election result dispute resolution institution is separated into three different institutions, it certainly also reveals the different treatment of each result dispute resolution and ignores the principle of simple justice.



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## Introduction

The Unitary State of the Republic of Indonesia is divided into Provincial regions, and each Provincial region is further divided into Regency/City regions. The division of territorial levels of the unitary state is also aligned with its governmental hierarchy. Namely, the Central Government led by the President, the Provincial Government led by the Governor, and the Regency/City Government led by the Regent/Mayor.

The process of filling public positions through direct elections is a form of implementation of popular sovereignty that is considered the most representative.<sup>1</sup> Through direct elections, everyone has the same treatment in terms of exercising their right to vote (one man, one vote, one value).<sup>2</sup> In Indonesia, officials acquire crucial and strategic positions from the election process for national and regional level officials, even down to the village level.<sup>3</sup> Elections at the national level, especially in the executive branch of power, are direct elections to elect the President/Vice President. The election for the first-level region or province is the election of the Governor/Deputy Governor. The election for the second level region of regency/city level is the election of Regent/Deputy Regent. While for the smallest regional level or village is the election of the Village Head.<sup>4</sup>

<sup>1</sup> Fuqoha, "Pengisian Jabatan Presiden dan Presidential Threshold Dalam Demokrasi Konstitusional Di Indonesia", *Jurnal AJUDIKASI* 1, 2 (2017): 27-38, <https://doi.org/10.30656/ajudikasi.v1i2.495>

<sup>2</sup> Rapika Wulandari, "Strategi Kampanye Politik Koalisi Partai Pengusung Afi-Mukmin Dalam Pemilihan Gubernur Tahun 2013", *Dunia Komunikasi* 1, 4 (2013): 221, <https://ejournal.ilkom.fisip-unmul.ac.id/site/?p=1070>

<sup>3</sup> Siti Muslikhatul Ummah, et.al., "Demokrasi Dan Otonomi Desa Dalam Proses Pemilihan Kepala Desa Pasca Reformasi", *Jurnal USM Law Review* 6, 3 (2023): 1223-1233, <http://dx.doi.org/10.26623/julr.v6i3.6818>

<sup>4</sup> Abdul Rohman, "How the Concept of Leader Selection in the Perspective of the Indonesian Constitution and Islam", *Jurnal At-Tadbir: Media Hukum dan Pendidikan* 31, 2 (2021): 139-152, <https://doi.org/10.52030/attadbir.v31i2.78>

The three types of elections are carried out immediately or not through representatives.<sup>5</sup> Direct elections are certainly an electoral competition that will create a very dynamic political condition considering that in electoral competition, the competing parties both want to win so that various ways and efforts will be made as much as possible, even methods that are not in accordance with the provisions of laws and regulations are inevitable considering that what is prioritized is how to win, not how to make electoral competition a democratic party. Various violations and crimes that occur in each election show that the election participants still make victory the main goal of an election so that the principle of “ready to lose” is not built into the mindset and attitude in participating in elections.<sup>6</sup>

Various violations and crimes during the election process certainly must be handled. Handling violations and crimes during elections in Indonesia can be realized through prevention and prosecution.<sup>7</sup> Prevention of violations is how various instruments are provided so that the parties can comply with all regulations that have been enacted. The prevention mechanism can be carried out by various institutions that are integral to organizing elections, such as the General Election Supervisory Committee.<sup>8</sup>

Meanwhile, handling violations and crimes in the form of prosecution can be done by taking action against all types of problems, violations, crimes, fraud, and disputes during the holding of elections.<sup>9</sup> So far, the problems of organizing elections have been sorted into process and post-process disputes.<sup>10</sup> Disputes during the process are disputes that occur before the vote counting of the election results,

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<sup>5</sup> Ahmad Siboy, “Alternatif Desain Penyelenggaraan Pemilihan Umum Pasca Putusan Mahkamah Konstitusi”, *Jurnal Arena Hukum* 15, 1 (2022): 200-219, <http://dx.doi.org/10.21776/ub.arenahukum.2022.01501.10>

<sup>6</sup> Yulianto, “Problematisasi Dan Tantangan Penyelesaian Sengketa Proses Pemilu Dan Pemilihan Tahun 2024”, *Jurnal Keadilan Pemilu* 2, 2 (2021): 75-89, <http://dx.doi.org/10.55108/jkp.v2i2.139>

<sup>7</sup> Ramlan Surbakti, et.al., *Penanganan Pelanggaran Pemilu* (Jakarta: Kemitraan bagi Pembaruan Tata Pemerintahan, 2010).

<sup>8</sup> Lusy Liany, “Kedudukan Dan Kewenangan Bawaslu Dalam Struktur Lembaga Negara Indonesia”, *Lex Jurnalica* 15, 3 (2018): 308-322, <https://doi.org/10.47007/lj.v15i3.2611>

<sup>9</sup> Monica Klauzia Aksa & Syaiful Munandar, “Peran Sentra Penegakan Hukum Terpadu dalam Penegakan Tindak Pidana Pemilu”, *Sumbang* 12 2, 2 (2024): 31-43, <file:///Users/ilhamrafiqi/Downloads/5766-17457-1-SM.pdf>.

<sup>10</sup> Bakhrol Amal, “Kewenangan Mengadili oleh Bawaslu atas Sengketa Proses Pemilu yang Diatur dalam Peraturan Komisi Pemilihan Umum”, *Masalah-Masalah Hukum* 48, 3 (2019): 306-311, <http://dx.doi.org/10.14710/mmh.48.3.2019.306-311>.

while disputes after the process are disputes that occur after the election organizer (General Electoral Commission/KPU) determines the winner of the election.<sup>11</sup> Election result dispute resolution is the most complex type of dispute resolution because the pattern of dispute resolution between each election is different from one another. The pattern of dispute resolution for the results of the Presidential Election, the results of the Regional Head Election, and the results of the Pilkades are different from one another, especially in terms of the institution that adjudicates the disputes.

Disputes over the results of the presidential election are adjudicated by the Constitutional Court,<sup>12</sup> regional head elections for both the election of Governors/Deputy Governors and the election of Regents/Deputy Regents or Mayors/Deputy Mayors are adjudicated by the Specialized Judicial Body.<sup>13</sup> Meanwhile, the settlement of disputes over the results of village head elections (Pilkades) is not provided by a special judicial institution, and even the settlement of disputes over the results of Pilkades is adjudicated by the executive body/Regent. This provision is regulated in Article 37 paragraph (6) of Law No. 6/2024 on villages, which states that in the event of a dispute over the Village Head election, the Regent/Mayor must resolve the dispute within 30 days.

The separation and differences in the election result dispute resolution models show that there is no system equality.<sup>14</sup> The choice of separating the settlement of disputes over the results of the Presidential Elections, Pilkada, and Pilkades into different patterns and judicial institutions automatically shows that the three elections

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<sup>11</sup> Novianto M. Hantoro, "Mewujudkan Kepastian Hukum Dalam Penyelesaian Perselisihan Hasil Pemilihan Kepala Daerah Dan Menghentikan Praktek Hukum Liberal", *Negara Hukum* 6, 2 (2015): 107-130, <http://dx.doi.org/10.22212/jnh.v6i2.250>.

<sup>12</sup> Abdurrachman Satrio, "Kewenangan Mahkamah Konstitusi Memutus Perselisihan Hasil Pemilu Sebagai Bentuk Judicialization of Politics", *Jurnal Konstitusi* 12, 1 (2015): 117-133, <https://doi.org/10.31078/jk1217>.

<sup>13</sup> Desak Made Widi Antari, "Kewenangan Mahkamah Konstitusi Republik Indonesia Mengadili Perselisihan Hasil Pemilukada", *Hukum Inovatif: Jurnal Ilmu Hukum Sosial dan Humaniora* 1, 4 (2024): 147-165, <https://doi.org/10.62383/humif.v1i4.645>

<sup>14</sup> Kuku Sudarmanto, "Hukum Administrasi Dan Sistem Peradilan Di Indonesia Yang Berkeadilan Sesuai Asas-Asas Pancasila", *Jurnal Ius Constituendum* 6, 2 (2021)" 408-424, <http://dx.doi.org/10.26623/jic.v6i2.4110>

are not unified or in the same system. The three elections are organized on the principle of implementing popular sovereignty.<sup>15</sup>

Second, the principle of division of functions of state institutions.<sup>16</sup> Each state institution in Indonesia is formed with different functions from one another.<sup>17</sup> State institutions in the executive branch of power function as institutions that run the government, state institutions in the legislative branch of power function as institutions that form laws, while state institutions in the judicial branch of power are formed with function as institutions that will enforce the law so that if there is a violation of the law, the settlement process is through the judiciary or judicial institutions.<sup>18</sup> In terms of resolving disputes over election results in Indonesia, there is unequal treatment of village head elections where the Regent resolves disputes over the results of Pilkades as an executive official. In contrast, disputes over Presidential Elections and Pilkada results are carried out by the Constitutional Court, a judicial institution.<sup>19</sup>

## Method

This current research was doctrinal legal research, also referred to as doctrinal research, because it was based on a literature review. The research approach consisted of a statutory approach, a case approach, and a philosophical approach. Legal materials consisted of primary, secondary, and tertiary legal materials. Primary legal materials consisted of laws and regulations and judicial decisions. Secondary legal materials consisted of books and journals, while tertiary legal materials were legal dictionaries. Legal material collection techniques

<sup>15</sup> Waisol Qoroni dan Indien Winarwati, "Kedaulatan Rakyat Dalam Konteks Demokrasi di Indonesia", *Journal Inicio Legis* 2, 1 (2021): 57-58, <https://doi.org/10.21107/il.v2i1.11079>

<sup>16</sup> Otong Syuhada, "Konsep Trias Politik dan Pelaksanaannya dalam Sistem Ketatanegaraan Indonesia", *Jurnal Surya Kencana Satu: Dinamika Masalah Hukum dan Keadilan* 14, 1 (2023): 119-131, <https://doi.org/10.32493/jdmhkdmdhk.v14i2.34945>

<sup>17</sup> Subhan Sofhian, "Tinjauan Tentang Peran Dan Fungsi Lembaga-Lembaga Negara di Indonesia", *Tatar Pasundan Jurnal Diklat Keagamaan* XII, 33 (2018): 159-168 <http://dx.doi.org/10.38075/tp.v12i33.66>

<sup>18</sup> Rolib Sitorus, "Kedudukan dan Fungsi Yudikatif Sebagai Pemegang Kekuasaan Dalam Sistem Negera Hukum di Indonesia", *Jurnal Law Pro Justitia* III, 1 (2017): 21-42, <https://ejournal-medan.uph.edu/lpj/issue/view/43/86>

<sup>19</sup> Dara Pustaka Sukma dan Itok Dwi Kurniawan, "Pengaruh Kekuasaan Sosial Politik Terhadap Performance Lembaga Yudikatif di Indonesia", *Journal of Rural and Development* 12, 1 (2024): 15-22, <https://jurnal.uns.ac.id/rural-and-development/article/view/84461>

were carried out through inventory and classification. The techniques used in analyzing legal materials were descriptive techniques and prescriptive analysis.<sup>20</sup>

## Result and Discussion

The filling of power in Indonesia is carried out through an election held directly.<sup>21</sup> One of the elections held directly is filling power in the executive branch. The filling of power for the executive branch is carried out directly from the central level to the village level. At the central level, direct elections are held to elect the President/Vice President. At the provincial level, direct elections are held to elect the Governor/Vice Governor. At the regency or city level, elections are held to elect the Regent/Vice Regent or Mayor/Vice Mayor, and at the village level, elections are held to elect the village head.

**Table 1.** Direct Elections in Indonesia

No	Level of Government/Region	Elected	Legal Basis
1	National	President/Vice President	Law 7 of 2017
2	Province	Governor/Deputy Governor	Law 10 of 2016
3	District/City	Regent/Deputy Regent or Mayor/Deputy Mayor	Law 10 of 2016
4	Village	Village Head	Law 6 of 2014

Historically, village head elections were the first elections to use a direct election system. Direct village head elections have been held since the 90s, while the President/Vice President elections have been held since 2004. For regional head elections, both provincial and regency/city, direct elections have only been held since 2005.<sup>22</sup>

<sup>20</sup> Ahmad Siboy, *Aktualisasi Penelitian Hukum*, (Malang: Literasi Nusantara, 2024), p. 19

<sup>21</sup> Fatni Erlina, "Dinamika Sistem Pemilu dan Demokratisasi Partai Politik di Indonesia Pasca Reformasi", *Kosmik Hukum* 23, 1 (2023): 200-220, <http://dx.doi.org/10.30595/kosmikhukum.v23i3.16640>

<sup>22</sup> Tiara Kartika Nabela dan Arfa'I, "Pengaturan Penyelenggaraan Pemilihan Kepala Daerah Serentak Tahun 2024 Berdasarkan Undang Undang Nomor 10 Tahun 2016", *Limbago: Journal of Constitutional Law* 3, 3 (2021): 415-427, <https://doi.org/10.22437/limbago.v3i3.22189>

Filling public positions with the same model (through direct elections) from the national level to the village level has several meanings. First is the unity of the government system.<sup>23</sup> The same model of filling positions through direct elections shows that there is a unified government system between the center, regions, and villages. This is quite good because if there are different models of filling positions in a unitary state system such as the Republic of Indonesia, it will show that there has been a separate government system (dividend government) between the central, regional, and village governments.

Second, regional autonomy.<sup>24</sup> The existence of direct elections to fill positions at the regional level in Indonesia also shows the absolute application of regional autonomy. This means that the regions are not only given the widest possible authority in terms of managing their government but also in terms of filling positions. They are also given complete freedom to determine for themselves who will become leaders in their regions. If the filling of the position of the regional head for Provincial, Regency/City regions is not held directly or through appointment by the central government, the principle of regional autonomy submitted to each region does not apply absolutely, considering that when the center appoints the leader at the regional level, each region will automatically not be free in running the wheels at the regional level considering that the central government controls the regional head as a whole.

Third, popular sovereignty.<sup>25</sup> The principle of popular sovereignty is applied from the lowest to the highest level of government. Direct elections that occur from the national level to the smallest government (village) show that the principle of popular sovereignty is fully implemented in Indonesia. It is fully implemented in the sense that filling positions at the national and local levels is carried out with a direct election model. The principle of the implementation of popular sovereignty applied in Indonesia in the election of the President/Vice President has shown that the

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<sup>23</sup> Septi Nur Wijayanti, "Hubungan Antara Pusat dan Daerah Dalam Negara Kesatuan Republik Indonesia Berdasarkan Undang-Undang Nomor 23 Tahun 2014", *Jurnal Media Hukum* 23, 2 (2016): 186-199, <http://dx.doi.org/10.18196/jmh.2016.0079.186-199>

<sup>24</sup> Wasisto Raharjo Jati, "Inkonsistensi Paradigma Otonomi Daerah di Indonesia: Dilema Sentralisasi atau Desentralisasi", *Jurnal Konstitusi* 9, 4 (2012): 746-747, <https://doi.org/10.31078/jk947>

<sup>25</sup> Hendra Nurtjahjo, *Filsafat Demokrasi*, (Jakarta: Bumi Aksara, 2006), p. 32-33

implementation of popular sovereignty in Indonesia is far more advanced than in superpower countries such as the United States. Whereas the United States, which is used as a mecca for world democracy, has not held direct elections for the President/Vice President. In the United States, the President/Vice President election model still uses a representative model called the electoral college.<sup>26</sup>

However, although elections for all levels of power are held directly, there are various differences in the organization of the three elections. Among them: First, the organizing time.<sup>27</sup> At the time of organizing the Presidential/Vice Presidential elections, Regional Head Elections (Governor/Vice Governor, Regent/Vice Regent or Mayor/Vice Mayor elections) are held at separate times. When the President/Vice President elections are held, the regional head elections will not be held simultaneously. Likewise, the Village Head election will not be held when the regional head election is held. The separation of the organizing time between each election can prevent voter confusion about the elected public officials. Admittedly or not, when elections between levels of government are not separated, the potential for election confusion is very large. Voters cannot distinguish between central and regional-level public officials that they will elect, including the candidates that must be elected. The separation of organizing time is also necessary to ensure the effectiveness of organizing time. Suppose the organizing time for all elections is held simultaneously. In that case, it is certainly very ineffective because the voting process, until counting votes at the polling station, takes a long time or more than 24 hours. Hence, it is not comparable to the physical capabilities of the voting committee. Of course, the voting committee cannot work for 24 hours without a break.

Second, the organizing institution.<sup>28</sup> The organizing institutions for the three elections are different from each other. The organizer for the election of the President and Vice President is the General

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<sup>26</sup> Doris Febriyanti dan M. Jerry Pratama, "Perbandingan Sistem Pemilihan Umum Presiden Amerika Serikat Dengan Indonesia", *Jurnal Pemerintahan dan Politik* 2, 1 (2017): 55, <https://doi.org/10.36982/jpg.v2i1.652>

<sup>27</sup> Jauhar Nashrullah, "Tantangan Penyelenggaraan Pemilu dan Pilkada Serentak Nasional 2024 di Empat Provinsi Baru Papua", *LEX Renaissance* 2, 8 (2023): 214-233, <https://doi.org/10.20885/JLR.vol8.iss2.art2>

<sup>28</sup> Wilma Silalahi, "Integritas Dan Profesionalitas Penyelenggara Pemilu Demi Terwujudnya Pemilu Yang Demokratis", *Jurnal Bawaslu Provinsi Kepulauan Riau* 4, 1 (2017): 71-83, <https://mail.journal.bawaslu.go.id/index.php/JBK/article/view/94/153>



Election Commission. This is in accordance with the provisions of Article 22E of the 1945 Constitution of the Republic of Indonesia, which states that a national and independent General Election Commission organizes general elections. Meanwhile, regional elections are organized by the Regional General Election Commission (KPUD) in accordance with its level. Namely, the Regency / City General Election Commission will be responsible for the election of Regent / Deputy Regent and Mayor and Deputy Mayor, and the Provincial General Election Commission will be responsible for the election of Governor and Deputy Governor.

Meanwhile, the village head election is organized by a village head election committee. This means that for the village head election, the organizing committee is not as permanent as the organizers of the President/Vice President elections and regional heads and deputy regional heads. Even the organizing body for village head elections is not as complete as the organizers of the elections of the President/Vice President and regional heads. If the organizing body for the Presidential and Regional Head Elections has a supervisory body called the Election Supervisory Body and an ethical enforcement body called the Honorary Council of Election Organizers, then for the Pilkades organizing committee, the two institutions are not formed permanently.

Third, the term of office.<sup>29</sup> The term of office between the positions of President/Vice President, Regent/Vice Regent or Mayor, and village head is different, although the people directly elect both. The term of office of the President and Vice President is five years (1945 Constitution of the Republic of Indonesia) as well as the term of office of the regional head is also 5 years (Regional Head Election Law). Meanwhile, for the village head, the term of office of a village head is 9 years.<sup>30</sup>

Fourth, periodization.<sup>31</sup> The periodization for the three positions that are directly elected in an election is also different. The

<sup>29</sup> Haryo Wijoyo dan Sunny Ummul Firdaus, "Urgensi Pembatasan Masa Jabatan Anggota Legislatif dalam Upaya Pencegahan Penyalahgunaan Kekuasaan", *Res Publica* 6, 1 (2022): 57-79, <https://doi.org/10.20961/respublica.v6i1.48223>

<sup>30</sup> Riza Multazam Luthfy, "Masa Jabatan Kepala Desa Dalam Perspektif Konstitusi", *Masalah-Masalah Hukum* Jilid 48, 4 (2019): 319-330, 10.14710/mmh.48.4.2019.319-330

<sup>31</sup> Alendra Nauval Mufti Rayhan, et.al, "Urgensitas Pembatasan Masa Jabatan Legislatif Perspektif Radbruk Theory", *Siyasah: Jurnal Hukum Tata Negara* 4, 2 (2024): 230- 242, <http://dx.doi.org/10.32332/m8tqsh54>

president and regional heads can serve two terms for the same position. For example, a President who has served for five years as President can run in the next election to serve a second/next term. A President who was elected in the 2014 general election can run again as President in the 2019 general election but cannot run again in the 2024 general election. This term limit is directly regulated by the 1945 Constitution and the Law on General Elections and Regional Head Elections. As for the village head, the term of office is three periods. A village head can hold the position of village head for three periods or eighteen years. For example, a person who was elected as a village head in the 2014 village head election can run again in the 2020 and 2026 village head elections.

Fifth, the nomination requirements. The nomination requirements for each of these elections differ from one another. These differences can be detailed as follows:

- a. Election of President/Vice President. A candidate pair for President/Vice President must be submitted by a political party or a coalition of political parties. This means that a candidate pair for the election can only be submitted by a political party or a coalition of political parties or cannot go through individual channels.<sup>32</sup>
- b. Regional head elections. Regional head elections can be done through two channels, whether the election of governor / deputy governor, regent / deputy regent, or mayor/deputy mayor. Namely, political parties or a combination of parties or individual paths.<sup>33</sup> This means that a regional head candidate pair can participate in the regional head election if it is submitted by a political party or a coalition of political parties with seats in the Regional People's Representative Council (DPRD) in the area concerned. However, candidates for regional head and deputy regional head can also participate in the

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<sup>32</sup> Sukimin, "Pemilihan Presiden Dan Wakil Residen Berdasarkan Undang-Undang Republik Indonesia Nomor 7 Tahun 2017 Tentang Pemilihan Umum", *Jurnal USM Law Review* 3, 1 (2020): 112-134, <http://dx.doi.org/10.26623/julr.v3i1.2284>

<sup>33</sup> Marven A. Kasenda, et.al., "Ajian Yuridis Calon Perseorangan Pada Pemilihan Kepala Daerah di Indonesia Berdasarkan Undang-Undang Nomor 10 Tahun 2016", *Lex Administratum* VIII, 5 (2020): 34-43, <https://ejournal.unsrat.ac.id/v3/index.php/administratum/article/view/31265>

election through individual channels, namely by collecting the amount of support through Identity Cards.<sup>34</sup>

- c. Village head election.<sup>35</sup> The requirements to become a candidate for village head do not require the same requirements as those required as a candidate for the election of President/Vice President or regional head/deputy regional head. A person who wants to run as a candidate for village head does not require political party support and population support in the form of collecting ID cards. A person who wants to run as a candidate for village head only needs to fulfill the normative requirements set out in the laws and regulations.

Sixth, package and non-package systems.<sup>36</sup> The next difference between the three fillings of public positions through direct elections is the package of candidate pairs. In the election of the President/Vice President, Regent/Vice Regent, and Mayor/Vice Mayor, the participation system must be a package. One package is that the presidential candidate must be side by side with the Vice president. Likewise, for regional heads, they must also be with their deputies. As for the election of the village head, it is enough to be alone, namely only the village head candidate.

**Table 2.** Differences and similarities in Indonesian elections

No	Election Type	Similarities	Differences
1	Presidential Election	Direct	Organizing Committee
2	Governor Election	Direct	Juridical Institutions
3	Regent Election	Direct	Organizing Time
4	Village Head Election	Direct	Position Periodization

<sup>34</sup> Ahmad Siboy, "Memaknai Calon Perseorangan dalam Pilkada Tahun 2020", *Duta Masyarakat*, 28 Februari 2020, [https://duta.co/memaknai-calon-perseorangan-dalam-pilkada-tahun-2020/?\\_\\_cf\\_chl\\_tk=b4Qr0Cfn20LFLM03lajaXRQnTiYtCfupbwzMOY0cbo-1742356783-1.0.1.1-ZS9dX.POiLrjpK3lrSo5Ep4jPk6emXT1JD3S52HPi68](https://duta.co/memaknai-calon-perseorangan-dalam-pilkada-tahun-2020/?__cf_chl_tk=b4Qr0Cfn20LFLM03lajaXRQnTiYtCfupbwzMOY0cbo-1742356783-1.0.1.1-ZS9dX.POiLrjpK3lrSo5Ep4jPk6emXT1JD3S52HPi68)

<sup>35</sup> Rovaldo Tune Antu, et.al., "Tinjauan Yuridis Terhadap masa Jabatan Serta Syarat Pendidikan bagi Calon Kepala Desa Menurut UU No. 6/2014", *Jurnal Lex Administratum* XI, 3 (2023) <https://ejournal.unsrat.ac.id/v3/index.php/administratum/article/view/47897>

<sup>36</sup> Rilo Pambudi. S, "Calon Presiden dan Wakil Presiden Independen: Studi Perbandingan dan Tawaran Implementasinya di Indonesia", *PROGRESIF: Jurnal Hukum* XVI, 1 (2022): 86-113, <https://doi.org/10.33019/progresif.v16i1.2653>

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Nomination  
Requirements

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Among the most striking differences between the three fillings of public positions through direct elections is the resolution of disputes over the election results.<sup>37</sup> The dispute over the results in this context is a dispute over the results between the election organizers and the election participants, both for the President/Vice President, Regent/Vice Regent, Mayor/Vice Mayor, and Village Head elections.

Disputes over election results arise because: First, there are election participants who feel that the decision of the election organizer disadvantages them regarding the determination of the vote results. Election participants feel aggrieved because they consider that the election organizer has made a wrong calculation or recapitulation that caused the vote acquisition of the election results to the detriment of the election participants.

Secondly, there are election participants who consider that the candidate pair that obtained the most votes (winner) of the election committed violations so that they obtained significant votes. In fact, committing violations in order to obtain victory is a method that is strictly prohibited in electoral competition. This is in line with the principle stating that a person may not gain victory for an offense committed by him, and another person may not suffer loss for an offense committed by another person (*nemo commonum capere potest de injuria sua propria*).<sup>38</sup>

Third, vote inflation.<sup>39</sup> There are election participants who consider that there has been an inflation of votes in favor of certain candidates, which causes a reduction in the votes obtained by themselves. Vote inflation, in this sense, means that the candidate pairs participating in the election feel that additional votes have been given to certain candidates so that these candidates get more votes than

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<sup>37</sup> Ning Ayunda Chofifi & Eny Kusdarini, "Perkembangan Putusan Mahkamah Konstitusi dalam Menangani Perkara Perselisihan Hasil Pemilihan Umum Presiden", *Jurnal Hukum Ius Quia Iustum* 31, 2 (2024): 408-433, DOI: <https://doi.org/10.20885/iustum.vol31.iss2.art8>

<sup>38</sup> Ahmad Siboy, *Konstruksi Hukum Pilkada: Jalan tengah keadilan prosedural dan substantial dalam penyelesaian perselisihan hasil pemilihan*, (Depok: Rajawali press, 2018). p. 210

<sup>39</sup> Annisa Nur Azzahra, et.al., "Implikasi Konflik Penggelembungan Suara Sirekap Terhadap Demokrasi Yang Jurdil Dalam Pemilu 2024 Perspektif Siyasa Dusturiyah", *Jurnal Unes Law Review* 6, 4 (2024): 11818-11832, <https://doi.org/10.31933/unesrev.v6i4>

they should. Usually, this vote inflation occurs because of cooperation between the election committee and certain candidates.

Fourth, shifts in vote acquisition between candidate pairs. Disputes over election results also occur because it is suspected that there has been a shift in vote acquisition between election participants. In this context, there are election participants who transfer their votes to other candidates. This was done because he (the candidate who transferred his votes) felt that the difference between his votes and other candidates was very significant, so his votes were transferred to other candidates who also obtained a lot of votes that, with the transfer of votes, he would be able to compensate and defeat the candidate who actually obtained the most votes.

Fifth, the involvement of officials.<sup>40</sup> Disputes also occur because election participants suspect partiality from officials or state administrators who use their positions to benefit certain candidates. The involvement is by using the position they have to influence the vote acquisition of the election results, such as by mobilizing the State Civil Apparatus (ASN) or utilizing government programs.

As for the settlement of disputes over election results, there are differences between the settlement of disputes over election results for the President/Vice Presidential Election, Regional Head/Vice Regional Head Election, and Village Head Election. These differences can be described as follows:

- a. Settlement of disputes over the election results of the President/Vice President. For the settlement of disputes over the election results, it is submitted or adjudicated by the Constitutional Court. This provision is regulated in Article 24 C of the 1945 Constitution of the Republic of Indonesia and Law Number 7 of 2017 concerning General Elections, which states that the Constitutional Court is authorized to hear disputes over general election results (including disputes over the results of the election of the President/vice President) with a settlement period of 14 working days with a decision that cannot be appealed.<sup>41</sup>

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<sup>40</sup> M. Fadhlan Irfan Darmawan, "Keterlibatan Aparatur Sipil Negara (ASN) Dalam Politik", *Varia Hukum* 3, 2 (2021): 75–87, <https://doi.org/10.15575/vh.v3i2.5511>

<sup>41</sup> Roli Pebrianto dan Syarif Dahlan, "Analisis Sengketa PHPU Pilpres Tahun 2024 Dalam Perspektif Hukum Progresif (Studi Kasus Putusan MK NO: 1/PHPU.PRES-XXII/2024)", *Jurnal Risalah Kenotariatan* 5, 1 (2024): 84–103, <https://doi.org/10.29303/risalahkenotariatan.v5i1.220>.

- b. Settlement of disputes over regional head election results. The settlement of disputes over regional head elections consisting of the results of the election of Governor / Deputy Governor, Regent / Deputy Regent, and Mayor / Deputy Mayor elections will be adjudicated by the Specialized Judicial Body, and as long as the Specialized Judicial Body has not been established, it will be adjudicated by the Constitutional Court. The settlement period for this election result dispute case is 45 days, with a final and binding decision.<sup>42</sup>
- c. Settlement of disputes over the results of the village head election. For disputes over the results of village head elections that occur between candidates for village heads and the village head election committee, the institution authorized to adjudicate disputes over the results of this election is the Regent. Article 37 of Law 6/2014 states that in the event of a dispute over the results of the village head election, the Regent/Mayor is obliged to resolve the dispute within 30 days. This means that the settlement of disputes over the results of village head elections is not resolved through the judiciary but by the Regent, who is in a position in the executive area. The settlement period for this Pilkades is 30 days from the determination of the vote results of the Village Head election.<sup>43</sup>

## Implications of Differences in the Process of Resolving Disputes over Election Results

The implications of the process of resolving disputes over election results conducted by different institutions certainly reveal several things. First, that the legislator separates the process of resolving disputes over election results into different institutions is a form of misunderstanding of the similar characteristics of disputes over election results. If legislators understood the characteristics of election result disputes between the presidential elections, regional head elections, and village head election, then the process of resolving election result disputes would definitely be implemented in the same

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<sup>42</sup> M. Abid Ulil Albab AF, "Problem Kewenangan Mahkamah Konstitusi Memutus Perselisihan Hasil Pilkada", *Jurnal Hukum & Pembangunan* 48, 3 (2023): 542-555, <https://doi.org/10.21143/jhp.vol48.no3.1745>

<sup>43</sup> Supriyadi A Arief dan Rahmat Teguh Santoso Gobel, "Isu Hak Konstitusional Masyarakat Desa Terhadap Kewenangan Pengawasan Pemilihan Kepala Desa", *Jurnal Konstitusi* 19, 4 (2022): 886-908, <https://doi.org/10.31078/jk1946>

judicial institution. This is because something with similar elements of the offense cannot be different from the institution that resolves it.

Second, Prioritization. When the institution for resolving disputes over election results is separated into three different institutions, it certainly also shows the government's application of the priority system. The prioritization system in the sense that the separation of the election result dispute resolution (PHP) into different institutions also states that the PHP for election type A is higher in position than the PHP for election type B. This prioritization can be seen in the use of several approaches.

a. Legislative approach.

The legislative approach here is to look at the process of resolving disputes over election results in terms of their arrangement in the hierarchical system of laws and regulations in Indonesia. The hierarchy of laws and regulations in Indonesia is organized as follows: 1945 Constitution; Decree of the People's Consultative Assembly; Law/Government Regulation in Lieu of Law; Government Regulation; Presidential Regulation; Provincial Regulation; District/City Regional Regulations.

From the hierarchical arrangement, the highest position of legislation is the 1945 Constitution of the Republic of Indonesia so that what is regulated by the 1945 Constitution of the Republic of Indonesia is fundamental or occupies a priority scale in the life of the nation and state. In terms of the settlement of disputes over election results, only the settlement of disputes over the results of general elections is regulated by the 1945 Constitution of the Republic of Indonesia. Article 24 C states that the Constitutional Court shall hear the settlement of disputes over general election results. From this, it appears that the highest law in Indonesia prioritizes only the settlement of disputes over the results of general elections, especially the election of the President/Vice President. Meanwhile, disputes over the results of regional and village head elections are not regulated by the 1945 Constitution.

The settlement of disputes over the results of regional head elections and village head elections is regulated by a type of legislation that ranks third in the hierarchy of laws and regulations. Namely, it is only regulated through laws. Article 157 of Law 10/2016 for regional head election and Article 37 of Law 6/2014 for Village Head Election.

The regulatory approach can be used as a measuring tool for prioritizing the settlement of disputes regarding results because the

hierarchical regulatory approach also shows its legal strength. Suppose it is directly regulated in the 1945 Constitution of the Republic of Indonesia. In that case, the legal basis or regulation becomes stronger because changing the provisions in the 1945 Constitution of the Republic of Indonesia can only be achieved through changes by the MPR. This is different from arrangements that are only regulated by law, which can only be achieved through changes in the Council of Representatives and judicial review of laws.<sup>44</sup>

b. Institutional hierarchy and scope approach.

The institutional scope here is an approach using the perspective of the position of the institution authorized to resolve disputes over election results. With this approach, the type of PHP that occupies the priority scale and vice versa will be known.

The dispute over the results of the election of the President and Vice President is an election in which the dispute over the election results is adjudicated directly by a high State institution, namely the Constitutional Court. As the institutional structure of the post-reform Indonesian State, the Constitutional Court is a high State institution that has an equal position with the Supreme Court, the House of Representatives, the Regional Representatives Council, the People's Consultative Assembly.<sup>45</sup>

The settlement of disputes over election results for lower election regimes will be set aside considering that the priority is the settlement of disputes over election results at the national level (President/Vice President elections) so that after the regulation of the institution that will adjudicate disputes over election results that are national in nature has been clear, it will be adjudicated by which institution, so the settlement of disputes over the results of regional head elections is considered less important. The evidence is that the institution that will resolve disputes over election results for the smallest level elections (village head elections) has not been regulated until now. The settlement of disputes over the results of village head elections is stated to be resolved by the Regent. The Regent's resolution of disputes over election results strongly suggests that the resolution of

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<sup>44</sup> Sirajuddin, S., et.al., (2021). "Urgensi Pemisahan Penyelenggaraan Pemilihan Umum Serentak Nasional dan Lokal". *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 4, 2 (2021): 233–247. <https://doi.org/10.24090/volksgeist.v4i2.5224>

<sup>45</sup> Ahmad Rayhan dan Qotrun Nida, "Hierarki Lembaga Negara Di Indonesia", *Sultan Jurisprudence: Jurnal Riset Ilmu Hukum* 1, 1 (2021): 67-78, <http://dx.doi.org/10.51825/sjp.v1i1.11373>.



disputes over village election results is not a priority scale and is not even considered important. Another evidence that the resolution of disputes over the results of the village head election is highly sidelined is the choice of the institution that is authorized to resolve disputes over election results was based on the provisions of Article 37 of the Village Law. The institution chosen is the Regent. The resolution of disputes over election results by the Regent is certainly not a process for resolving disputes over the results of the Village Head election. This is because the Regent is not a dispute resolution institution. The Regent is a power that carries out the function of implementing the law or running the wheels of government.

Meanwhile, the settlement of disputes over the results of the village head election is a law enforcement process whose function is in the judiciary. In the settlement of disputes over the results of village head elections, there is no procedural law and how the parties to the dispute are tried. At the same time, the settlement by the Regent of the dispute over the results of the village head election is certainly not a legal settlement but a political one, considering that the Regent's position is a political position, not a legal position such as a judge.

c. Legal Protection.<sup>46</sup>

Legal protection in terms of disputes over election results is that the parties who feel aggrieved by the decision of the election organizer get a space for protection or their rights can be safeguarded by providing opportunities for the parties to the dispute to file legal remedies into a judicial institution in order to regain their rights and or prove allegations of violations that affect the vote acquisition of election results. The implementation of the Presidential Elections, Regional Head Elections and Village Head Election, which are both carried out directly and have similar elements that affect the occurrence of disputes over election results, must automatically provide legal protection to all election participants in the Presidential Elections, Regional Head Elections, and Village Head Election to sue the organizers. However, the priority scale for providing legal protection in terms of resolving disputes over election results is only given to participants in the Presidential and Vice-Presidential elections regional head elections and not to participants in village head

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<sup>46</sup> Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Di Indonesia: Sebuah Studi Tentang Prinsip-Prinsipnya, Penanganannya Oleh Pengadilan Dalam Lingkungan Pengadilan Umum Dan Pembentukan Peradilan Administrasi*, (Surabaya: PT Bina Ilmu, 1987), p.

elections. If in the Presidential and Vice-Presidential elections and regional head elections, election participants who feel aggrieved by the organizer's decision can file a dispute over the election results to the Constitutional Court, then for village head election participants there is no room to be able to file a case to any judicial institution. The settlement of disputes over the results of village head elections is resolved unilaterally by the Regent. The absence of legal protection space for participants in the village head election shows that the smaller the scope of the election of public officials, the less important the resolution of problems arising/contained therein, especially problems related to disputes over election results. In fact, if you want to study carefully and deeply, it is precisely the problems in the elections at the lowest level that should be prioritized because it is the elections at the lowest level that require an appropriate resolution process and the provision of strong legal protection for election participants who feel disadvantaged by the decision of the organizing committee. This is because if the participants of the village head election who feel aggrieved do not get a legal protection space in the form of an opportunity to submit a dispute over the election results to the judicial institution, the potential for physical conflict is very wide open. This happens because the mass of voters from the election participants who feel aggrieved by the organizer's decision is in a very small area (close) to the candidate who is declared the winner. The proximity of the mass of voters between the disadvantaged candidate and the one who won the Village Head election will certainly make emotions and political tension even hotter so that physical conflict cannot be avoided.

The result of overriding the settlement of disputes over the results of village head elections, because it is considered a very small scope, is certainly not in accordance with legal logic. Legal logic firmly makes the law a means of preventing conflict through a fair and legally certain legal process. Such a legal process is given not on the basis of how many parties are harmed but based on the commitment that every individual citizen gets legal guarantees and protection within the jurisdiction of the unitary Republic of Indonesia (Article 28 D of the 1945 Constitution of the Republic of Indonesia).

Third, the principle of simple justice.<sup>47</sup> One of the principles that absolutely applies in resolving problems in judicial institutions is the principle that the judiciary must be based on the principle or simple judicial process. A simple judicial process means that the people easily understand the judicial process, especially by the parties to the dispute.<sup>48</sup> In the case of resolving disputes over election results, the simple judicial process is not reflected at all. This is because when the process of resolving disputes over election results is separated into various institutions, it will cause the parties to the dispute to experience various confusions, including:

a. Institutions.

When the institution that adjudicates disputes over election results is different for each type of election (Presidential elections, regional head elections, and Village Head Election), it certainly confuses the parties and the public about which institution is authorized to adjudicate disputes over election results. Confusion related to the institution that adjudicates disputes over election results can be exemplified by where a dispute over election results should be filed. For example, it is related to disputes over the results of regional head elections. The Supreme Court first heard the settlement of disputes over the results of regional head elections then since 2008,<sup>49</sup> the case of disputes over election results was heard by the Constitutional Court and in its decision number 97/PUU-V/2013 the Constitutional Court stated that it did not have the authority to hear disputes over the results of regional head elections. Based on the Constitutional Court's decision, the authority to dispute the results of the regional head elections was handed over to the Specialized Judicial Body. In 2022, the authority to hear disputes over election results was returned to the Constitutional Court. The shifting of institutions that adjudicate disputes over election results certainly causes confusion for parties who want to file a dispute over the results of regional head elections.

Confusion also occurs when disputes over the results of village head elections are resolved. In terms of resolving disputes over the results of the village head election, there is no judicial institution

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<sup>47</sup> Tubagus Muhammad Nasarudin, "Implementasi Asas Peradilan Sederhana, Cepat, Adil, Mudah, dan Murah Dalam Peradilan Administrasi", *Jurnal Hukum Malabiyati* 5, 2 (2024): 65-69, <https://doi.org/10.33024/jhm.v5i2.18149>

<sup>48</sup> Article 2 paragraph (4) of Law Number 48 of 2009 concerning Judicial Power

<sup>49</sup> Article 263 C of Law Number 32 of 2004 concerning Regional Government

specifically authorized to adjudicate disputes over the results of the village head election, so that what is sued by participants who feel aggrieved over the results of the village head election is the Regent's decision on the appointment of the village head, not the dispute over the results of the village head election. Village Head Election participants who challenged the Regent's decision on the dispute over the results of the village head election hoped that challenging the Regent's decision on the appointment of the village head would automatically cancel the election results. In fact, when a Village Head Election participant challenges the Regent's decision on the appointment of the village head, it does not necessarily resolve the dispute over the results of the village head election. This is because when the Regent issues a decision on the appointment of a person as a Village Head, the Regent's decision is only becshiking or a decision issued as an administrative or administrative official of the state. This means that the Regent's decision only contains the appointment of a person as a village head, not about the results of the election, so that even though the court decision decides that the Regent must revoke his decision on the appointment of the Village head, this does not automatically change the vote acquisition of the Village head election results or automatically require a re-vote or vote count. Moreover, the lawsuit over the Regent's decision on the appointment of the Village Head was filed and adjudicated by the State Administrative Court where the State Administrative Court does not adjudicate disputes over the results of the Village Head election but rather the procedural aspects of the issuance of the Regent's decision on the appointment of the Village Head.

Based on the above conditions, the election participants who won the lawsuit regarding the Regent's decree on the appointment of the Village Head will be confused about why the vote results determined by the Village Head election organizing committee are not automatically canceled when there is a PTUN decision on the cancellation of the appointment of the Village Head. The public certainly cannot distinguish between administrative decisions and material decisions on a matter. Administrative decisions are certainly only related to procedures, not to the material aspects or substance of the problem in the dispute over the results of the Village head election.

b. Procedural law.<sup>50</sup>

The procedural laws in terms of settlement between the Presidential Election, Regional Head Election, and Village Head Election are different. The separation of judicial institutions in resolving disputes election results certainly also makes the procedural law of settlement not simple and complicated and results in public confusion. In this case, it can be mapped on the procedural law in each settlement of disputes over election results in Indonesia. In the case of disputes over election results between the elections of the President/Vice President, Regional Head Election and Village Head Election, there are differences in procedural laws that are difficult to understand because they contradict each other. In the case of the settlement of disputes over the election results of the President/Vice President, all election participants who feel aggrieved by the decision of the General Election Commission (KPU) regarding the determination of the vote acquisition results of the President/Vice President can file a dispute case directly to the Constitutional Court (MK) and the Constitutional Court will immediately hear it. However, for the case of disputes over the results of regional head elections, although both were heard by the Constitutional Court (before the establishment of the Specialized Judicial Body), the Constitutional Court did not immediately hear the case of disputes over election results submitted by Regional Head Election participants if the difference in votes between the candidate pair who filed the case and the candidate pair who obtained the most votes had a difference of more than 0.5-2%. This means that there are different standards in terms of the procedural law for resolving disputes over the results of the President/Vice Presidential election and disputes over the results of regional head elections even though they are tried by the same judicial institution. Where for the settlement of disputes over the election results of the President/Vice President, there is no threshold for the difference in votes for the parties who want to file a dispute over the election results, while for the parties in the case of disputes over the election results, the threshold for the difference in votes is applied.

In this case, an example can be taken in the case of the election of the village head of Mojoduwur, Ngetos District, Nganjuk Regency.

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<sup>50</sup> Ahmad Siboy, *Integrasi Lembaga Peradilan Pilkada*, (Depok, Rajawali Press, 2021), p. 268

In this village head election, there were four pairs of candidates with votes: 1) Muhajir, received 564 votes; 2) Shintia Mitra Dewi, S.Pd., received 509 votes; 3) Sihat Raharjo (Plaintiff), obtained 833: 4) Jumali, received 833 votes (The Government of the Republic of Indonesia, 2019). The vote share between Sihat Raharjo and Jumali was the same. Regarding the vote acquisition, Sihat Raharjo raised an objection because he felt that the election committee did not understand the rules and was siding with one of the candidates. Sihat Rarjo's objection was ignored by the village head election committee. The Village Head Election Committee continues the process of selecting the Village Head to the Village Requirements Board and the Village Requirements Board reports the results of the village head election to the Regent of Nganjuk and the Regent of Ngajuk issues a decision Number: 188/270/K/411.012/2019 Regarding the Ratification and Appointment of the Head of Mojoduwur Village, Ngetos District, Nganjuk Regency for the 2019 2025 term of office dated February 15 2019 in the name of: Jumali. The Regent's decision was issued without first resolving the vote dispute between Sihat Rahrjo and Jumali. So, due to the Nganjuk Regent's decision, Sihat Raharjo felt aggrieved and tried to take legal action.

The procedural law for the settlement of disputes over election results is also increasingly confusing when it is associated with the settlement of disputes over the results of village head elections, where in village head elections, there is no procedural law regulating whom the parties can submit PHP (subjectum letis) and how the judicial process is. In the Village Law (Law No. 6/2014), which is the basis for resolving disputes over the results of village head elections, there are no rules governing the procedural law or mechanism for resolving disputes over Village Head Election results by the Regent. This means that the Regent can make a decision without consulting or summoning the parties. The decision of the Regent in terms of disputes over the results of the village head election seems to be the subjective authority of the Regent.

## Conclusion

Direct elections are a form of exercising popular sovereignty to elect the President, Regional Head and Village Head. The three types of elections have similar characteristics to each other. However, the three types of elections differ in the dispute resolution process. The settlement of disputes over the results of the Presidential Election and

the settlement of disputes over the results of regional head elections to the judicial institutions. Namely, the Constitutional Court for the Presidential Election and the Specialized Justice Agency for regional head elections. Meanwhile, the executive or the Regent settled disputes over the results of village head elections. The design of the separation of the settlement of disputes over the results shows that: First, the legislators do not have an understanding of the characteristics of election result disputes. Second, when the institution for resolving disputes over election results is separated into three different institutions, it also shows that the legal politics pursued by the government is still discriminatory because it seems to prioritize the resolution of disputes over the results of the Presidential Elections and Regional Head Elections and set aside the process of resolving disputes over the results of Village Head Election. Third, the principle of simple justice is neglected. One of the principles that applies absolutely in resolving problems in the judiciary is the principle that justice must be based on the principle or simple judicial process. The separation of the settlement of election results in Indonesia has proven unable to realize a simple judicial process, considering that the settlement pattern makes it confusing and difficult for people to understand the institution's competencies of each judicial institution in resolving disputes over election results.

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