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Democracy through Election: A Study on the Conflict of Norms in Aceh's Election Process

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Abstract
After the amendment of the 1945 Constitution, Indonesia has adopted a regulatory mechanism of election to implement democracy. But in some some elections, such as happened in Aceh, the regulation has not worked properly. Because the electoral legal system is prepared only for post-election dispute—instead of pre-election dispute. Due to the dynamic interaction between Aceh Autonomy Law and national laws, the case of Aceh provides a good example of a complex election. Conflict occurs because when Aceh Bylaw regulates Aceh local elections national laws reject this idea. Yet, both Aceh's law and national law does not clearly provide the mechanism for handling associated pre-election disputes. This implies that the provincial election cannot be implemented if the two laws do not have a certainty of legal standing.

Keywords: *Pre-Election, Dispute, Provincial Elections, Constitutional Court*

I. INTRODUCTION

Pre-election dispute in this article is defined as a dispute occurring before implementing an election, including election to vote governor or mayor and also a law dispute that will be used for an election. The article will focus discussion on pre-election disputes related to several laws on election. In Aceh-Indonesia, provincial election has been designed to regulate elections at provincial and districts levels to vote for the Governor/Vice position, as well as the Mayor/Vice position. These provincial and district elections have a unique character in Aceh due to its status as an autonomous province.

On one hand, election mechanisms in Indonesian regions must obey national election laws. On the other hands Aceh is a province owning special autonomy that also having authority to legislate their own election bylaws. Therefore, both national level and Aceh level have authorities to legislate election laws. This crucial contradiction creates long debate surrounding on which law covers pre-election dispute. The situation has got worst when political interest among candidates have involved in the dispute.

In more recent years, the Indonesian National Law on Election only regulates post-election disputes, which should be brought before the Indonesian Constitutional Court

(ICC) jurisdiction.[1] Based on this law, there is no legal certainty regarding regulation dispute in the pre-election process. This development occurred after the ICC annulled Article 256 in Act No. 11 of 2006 on the Governing of Aceh.[2] It mentions:

> *Provision that regulates individual candidate in the election of Governor/vice governor, regent/vice regent, mayor/vice mayor as mentioned in Article 67 act (1), is applied and implemented only for the first election since the establishment of this law.*[3]

After the ICC annulled the article, regulation dispute has arisen on both national and provincial levels. The annulment has also greatly increased the chances of candidates coming from an external political party.[4]

In response to the ICC judgment, Aceh Provincial Parliament (known as DPRA)[5] rejected the judgment, assuming it was invalid because this contradicts with the Act of Aceh Governance.[6] The ICC must get a consideration of DPRA before making a judgment. In this context, the DPRA adhered to the Act of Aceh Governance which states:

> *any planned amendments to this act must first undergo consultation by and receive considerations from the DPRA.*[7]

However, the term 'considerations' in the article, with regards to Indonesian common legal terms, does not have a binding or a compulsory meaning. In other words, the ICC possesses a strong constitutional power to decide a judgment—even though the DPRA holds a different opinion. The DPRA must obey and must implement the ICC judgment, instead of arguing or even rejecting.

In the context of Indonesian law, DPRA's opinion seems unjustified because hierarchically the ICC's position is higher than DPRA's position. The ICC judgment has a final binding mechanism that does not require any consideration from other parties, including the DPRA. Thus, the DPRA *must* follow and fully accept the ICC judgment.

Thus, the Election Commission (EC)[8] must rearrange and reschedule all of the election process. To fill legal uncertainty, the EC needs to implement the previous Aceh

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1 Muhammad Siddiq Armia, "Constitutional Courts and Judicial Review: Lesson Learned For Indonesia" (2017) 8:1 J Negara Huk. See also Law 24/2003 on Indonesian Constitutional Court. See also Law 11/2011 on the amendment of Law 24/2003 on Indonesian Constitutional Court

2 The accusation was submitted by three persons, namely Tami Anshar Mohd Nur, Faurizal, Hasbi Baday, dan Zainuddin Salam, assisted by Mukhlis, SH., Safaruddin, S.H., and Marzuki., SH as lawyers. The plaintiffs felt that their constitutional rights have been abolished by Election Commission, because the plaintiffs have not been selected as the provincial election candidate. See also ICC's Judgment No. 35/PUU-VIII/2010.

3 See also Law 11/2006 on Aceh Governance.

4 See also Muhammad Thaufan Arifuddin, "Why Political Parties Colonize the Media in Indonesia: An Exploration of Mediatization" (2017) 20:1 J Ilmu Sos Dan Ilmu Polit 16 at 16–33..

5 DPRA = Dewan Perwakilan Rakyat Aceh, is the Aceh Provincial Parliament that legislate bylaw regarding the autonomy status.

6 Serambi Indonesia, "PA: Jangan Utak-atik UUPA", (10 October 2011), online: *Serambi Indones* <http://aceh.tribunnews.com/2011/10/10/pa-jangan-utak-atik-uupa>..

7 Article 269 (3) Law 11/2006 on Aceh Governance.

Bylaw 7/2006 on the Aceh Provincial Election,[9] which is also followed by the Governor of Aceh who held executive power at that time. The EC argue that the election must be implemented as soon as possible by using Bylaw 7/2006. Politically, the Governor's statement can be understood because his position as the incumbent would give more advantages of being an election contestant. However, DPRA defended their argument. The DPRA's members insist on rejecting the ICC judgment, and also suggesting legislating a new bylaw that regulating the Aceh election, because of the contradiction of Bylaw 7/2006 with the Act of Aceh Governance.

The circumstance of pre-election regulation dispute has extended the Aceh election over long periods of time. On one hand, DPRA propose to postpone the election; on the other hands, the EC recommends the election is held immediately. Without legal breakthrough the pre-election dispute is difficult resolve. One recommendation is the meddling of political power from central government—but if this is mishandled by Aceh local authority, political chaos could easily happen at any time.

Pre-election dispute has significantly affected the election process at the Aceh district level. Some district parliaments have postponed election's budget, and reluctant to allocate budget proportionally.[10] The dispute could be wisely prevented if the regulation dispute mechanism has been enacted by the Indonesian central government. The central government must quickly learn from the compelling cases which have occurred in certain Indonesian provinces. The provincial elections have involved several political parties, to achieve political power in provincial level. The election may create an election-based violence, if central government not gives a specific intension. Although religion and indigenous issues have commonly occurred during elective competition, they have not triggered serious conflict. Local political competition can create an effect not only at the provincial level, but also the national level. Central government must take serious concern in preventing pre-election dispute.[11]

In the debate of political science, a provincial election is the legal way to take political power at the local level. It could be argued that provincial elections are a serious exam for persons holding political power, with the result being whether their people extend their political mandate.[12] Thus, provincial election is an execution process for a political leader who cannot satisfy the peoples' expectation. For those want to be a leader at the provincial or district level, the election is the legal way to achieve

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8 In Aceh, the Election Independence Commission is called *Komisi Independen Pemilihan Aceh* (KIP Aceh).

9 See also Qanun 7/2006 on the 2nd amendment of Qanun 2/2004 on Governor/Vice Governor, Mayor/Vice Mayor in Aceh. See also Serambi Indonesia, "KIP: Pilkada Aceh Pakai Qanun Nomor 7/2006", (14 September 2011), online: *Serambi Indones* <http://aceh.tribunnews.com/2011/09/13/kip-pilkada-aceh-pakai-qanun-nomor-72006>.

10 "Dana Distop, Tahapan Pilkada Terganggu", (16 March 2012), online: <http://aceh.tribunnews.com/2011/11/10/dana-distop-tahapan-pilkada-terganggu>.

11 See also International Crisis Group, *Indonesia: Mencegah Kekerasan Dalam Pemilu Kepala Daerah Asia Report N°197* (Jakarta: International Crisis Group, 2010) at 3.

12 See also S M Omodia, "The 2015 Kogi State Gubernatorial Election and the Crisis of Political Mandate: The Failure of Party Politics" (2016) 3:3 Adv Soc Sci Res J.

peoples' mandate. If successful, the mandate of power could be held throughout a certain period of time.[13]

From background explained above, there are two questions that will be explored in this article, namely; *firstly*, how to resolve the pre-election dispute chiefly clash of regulation? *secondly*, what is the format to prevent the dispute?

The approach used in this article is a normative legal method, concentrating several acts and regulations having connectivity with topic. In normative legal method researcher will seek the specific norm in article or clause that can potentially create a multi-interpretation meaning, then finding the appropriate meaning to reduce conflict of meaning.

II. STRENGTHENING THE ROLE OF THE ADMINISTRATIVE COURT

The Administrative Court (AC) previously had the jurisdiction of election dispute, but after amendment of the 1945 Constitution the jurisdiction switched to the ICC. Thus, all post-election dispute has regulated in ICC's jurisdictions.[14] Therefore, the basic question surrounding this fact is whether the Administrative Court has jurisdiction over election dispute? Did the Administrative Court have jurisdiction over dispute during the election process as well as any pre-election dispute? Some alternative answers to these questions can be explored.

Firstly, even though the Administrative Court does not have jurisdiction over the election result dispute, the AC still has jurisdiction on dispute occurring during the election process. This argument is strongly reasonable because no specific clause or article in the Act Number 9 of 2004 on the Administrative Court elaborates on the dispute occurring during the election process. Foremost, the judge can explore and seek substantive justice which is not clearly stated in an act.

This fact has a strong legal precedence. It can be based on the previous Supreme Court judgment on the election case.[15] The judgment was regarding the process of election that was not a result of election. This case has become the doctrine of the Supreme Court referred by the judge as the legal source.

Secondly, without specific arrangement in the Administrative Court Act, the judges who have strongly concerned with the original text mentioning in the Act, can refuse the case. Their legitimate reason is because the pre-election dispute no longer belongs to the AC's jurisdiction, as owned by the ICC. This reason has also been strengthened by the presence of the Supreme Court regulation, switching provincial election to the

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[13] See also Nur Hidayat Sardini, *Restorasi penyelenggaraan pemilu di Indonesia* (Fajar Media Press, 2011) at 177-178.

[14] See also See also Law No. 24 of 2003 on Constitutional Court. See also Law No. 11 of 2011 on the Amandment of Law No. 24 of 2003 on Constitutional Court. See also Law No. 9 of 2004 on the Second Amandment of Law No. 5 of 1986 on State Administrative Court Article 2.

[15] Mahkamah Agung Republik Indonesia, *Putusan No. 315 K/TUN/2008*. Number 315 K/TUN/2008 on 22 October 2008 between General Election Commission against Partai Republiku Indonesia.

ICC.[16] The regulation indicates that there is no chance for the AC to handle dispute on the process of provincial election. This second option seems that there will be a legal uncertainty on the pre-election dispute, including the provincial election.[17] This argument called the positivist opinion, that judge must fully obey everything stated in an act. In this situation, a positivist judge will reluctant to seek the justice outside of an act. However, the AC has legal position in the Indonesian legal system. The Administrative Court has been designed to resolve a case regarding public interest. Thus, the election case can be categorised as public interest. With this consequence, the AC is the logical state institution to resolve public dispute such as an election dispute.

1. Forming of The Emergency Decree

When facing legal uncertainty as well as legal dispute, it has been common in the Indonesia legal system to form the emergency decree in the situation of exigencies compel.[18] This can also be implemented for the case of pre-election dispute. The forming an emergency decree mechanism is firstly regulated by the President. However, during a year the emergency decree must be approved by DPR (the House of Representative).[19] If they approved, the emergency decree will become an act. However, if the decree is rejected, so it must be annulled—it cannot be proposed for the DPR on the next plenary session period. Therefore, the forming of an emergency decree could be the alternative solution and also ensure legal certainty in particular situations, including the Aceh case. The legislating of emergency decree can prevent a conflict of regulation.

However, recently there is unclear meaning of the term 'exigencies compel' stated in the 1945 Constitution, which allows the formation of an emergency decree. The status of this decree is subjectively assessed by the President as the leader of the state. Whereas the objectivity of the decree belongs to the DPR's authority—whether refusing or accepting the decree to be an act. Therefore, the role of the emergency decree in Indonesia's legal system remains a controversial debate, particularly the forming process and its establishment. One of the controversial points exists within the interpretation of 'exigencies compel' as asserted in the 1945 Constitution.[20]

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[16] Mahkamah Agung Republik Indonesia, *Surat Edaran Nomor 08A Tahun 2008 tentang Pengalihan wewenang Mengadili Sengketa Pemilukada*. The adjudication of the Encyclical of the Supreme Court of Republic of Indonesia Number 08A of 2008 on the Switched Jurisdiction on the court of Provincial Election Dispute.

[17] Mahkamah Agung Republik Indonesia, *Surat Edaran Nomor 7 Tahun 2010* Petunjuk Teknis *Sengketa Mengenai Pemilihan Umum Kepala Daerah (PILKADA).* Consequently, the Supreme Court established the Encyclical number 7 of 2010 on the Technical Guidance of the dispute of the Provincial Election.

[18] In the Republic of Indonesia, emergency act is called Peraturan Pemerintah Pengganti Undang-Undang (PERPU)

[19] DPR = Dewan Perwakilan Rakyat (House of Representative)

[20] Muhammad Siddiq, "Kegentingan Memaksa Atau Kepentingan Penguasa (Analisis Terhadap Pembentukan Peraturan Pemerintah Pengganti Undang-Undang (PERPPU))" (2014) 48:1, online: <http://asy-syirah.uin-suka.com/index.php/AS/article/view/87>.

The terms of the 'exigencies compel' could be subject to various interpretations by the President. And so, the essential meaning of the term 'exigencies compel' tends to be unclear. In fact, the term 'exigencies compel' has clearly been interpreted as:

the autocrat's authority in the certain circumstance of the period.

With this consequence, the President has the authority and the power to impose whether the state is in the emergency circumstance, or not.

Even though the 'exigencies compel' is subjectively the main reason for imposing an emergency decree, the reason considered by President to impose the emergency decree must also be logical. This logical reason must be clearly mentioned in the consideration of the emergency decree. In addition, the forming process of the decree should be gradually improved, most importantly the processes of establishment and annulment.

The ICC has analyzed certain cases.[21] The emergency decree created by the president describes that the interpretation of 'exigencies compel' based on the cruciality of the situation, requesting legal certainty. The Tsunami disaster in 2004 showed a clear example of a crucial situation, can be categorized as exigencies compel. At this time, the president was required to respond quickly the situation by creating the emergency decree.[22] The decree was undoubtedly accepted by the DPR because of the very real emergency.[23]

However, not all of emergency decrees have been associated with a real emergency situation. Those decrees are namely the Emergency Decree No. 1 of 1999 on the Human Right; the Emergency Decree No. 1 of 2002 on the Terrorism; the Emergency Decree of 2009 on the Ad Interim of the Corruption Eradication Commission; and so forth. Those decrees have not indicated the emergency situation at that time. There was no apparent danger situation as explained in the Act Number 23 of 1959 on the Danger Circumstance.[24]

For a temporary period, the forming of an emergency act is the right decision but could not work in the longer term. This is because the legal certainty of the decree is not fix. It needs to await the DPR as the final state organ to either accept or reject the decree before becoming an act. Regarding the pre-election dispute in the Aceh case, the DPR could preventatively accepted it as an emergency situation when considering within the context of the manmade disaster that previously occurred in Aceh. The decree could then create a new legal base to end the conflict of regulation in the Aceh election situation.

2. Judicial Review to The Supreme Court

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[21] Decree of The Constitutional Court of Republic of Indonesia (Putusan Mahkamah Konstitusi) No. 003/PUU/2005.

[22] Government Regulation Substituting a Law No. 2 of 2007 on Aceh and Nias Post-Tsunami Legal Settlement.

[23] Law No. 48 of 2007 on Aceh and Nias Post-Tsunami Legal Settlement.

[24] Jimly Asshiddiqie, *Hukum tata negara darurat* (Rajawali Pers, 2007).

Whilst the ICC has jurisdiction to review an act against the Constitution, the Supreme Court also has jurisdiction to review all the regulations below the acts.[25] Both the ICC and the Supreme Court have the same jurisdiction to review the law, but the respective categories are very different. It follows that the Election Commission regulations can also be reviewed by the Supreme Court, including the Election Commission who are responsible for arranging Aceh election as well as the election bylaw.[26] This process has given the lawmaker the opportunity to defend and to answer lawmaker's view, and the opportunity to sustain the act under reviewed.[27]

Technically, the claim for the judicial review is applied in the period of 180 days, since the regulation comes into effect on the date of enactment.[28] The Supreme Court's judgment relating to the annulment of a regulation can be referred as the legal source. It can be implemented as the regulation under the act. However, annulled regulations no longer have a legal binding power. The annulled regulations must be registered in the State Gazette of the Republic of Indonesia, no later than 30 days from the judgment date.[29]

The application process of the regulation review can be applied personally or can be delegated. It is directly submitted to the Supreme Court in the Indonesian language.[30] The application of the judicial review can be made only by the parties, assuming their rights have been lost after the establishment of the regulation. Those parties are, namely Indonesian citizens individually; the unity of the indigenous people, as long as they are living appropriately with the people's development, and on the principle of the Unitary State of the Republic of Indonesia, regulated in the act; or body corporate or body private corporate.[31]

Furthermore, the detail of the application process on the judicial review in the Supreme Court is regulated in the Supreme Court Decree Number 1 of 2004 on the Rights of Judicial Review, using the terminology the Application of Objection. The claim of the rights of judicial review can be applied to the Supreme Court by two methods which are directly to the Supreme Court and through the legal territory of the provincial court where the defendant is domicile.

The process of examining the regulation under an act to the Supreme Court has both advantages and disadvantages. The advantages are that a justice seeker could experience the legal certainty of a concrete act in relation to a regulation dispute. However, a disadvantage lies in terms of the time-consuming waiting for the dispute to conclude. It is for that reason that each disputed party will think twice over the bylaw election—whether continuing or postponing to the Supreme Court level.

However, not all of regulations under the act can be reviewed through the judicial review mechanism in the Supreme Court. If the regulations related to the act have been

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[25] See also Law No. 12 of 2011 on the Formation of Legislation Article 8 (1).
[26] Mahkamah Agung, Peraturan Mahkamah Agung tentang Hak Uji Materiil, Perma No.1 Tahun 2004.
[27] Imam Soebechi, *Judicial review perda pajak dan retribusi daerah* (Sinar Grafika, 2012) at 99.
[28] Soebechi, *supra* note 27.
[29] Ibid., Act 31 (4), (5).
[30] Law No. 3 of 2009 on the Second Amandment of Law No. 14 of 1985 on Supreme Court Article 31A (1).
[31] Ibid., (2).

reviewed by the ICC, the applicant must postpone the claim until the ICC judgment.[32] This requirement aims to prevent regulation clash as well as ensuring legal certainty. With this policy, the Supreme Court will not review a regulation that might be annulled or invalidated by the ICC in the future.

3. Forming Election Court

Forming a specific court for election has become a topic of interest when discussing the election problem. It is understandable because the rising intensity of election dispute has become unbearable by the ordinary court. Thus, a special court for election issues is expected to provide justice for the election participants. It is strangulating inside the election dishonesty: the manipulation of vote numbers, administrative violations, violence in election, pre-election dispute and so forth.

The ideas surrounding the formation of a special election court are widely supported by election observers, academics, legislators, and so forth.[33] A specific court for election should be established at the provincial level that has a specific room for appeal in the Supreme Court for the final level. The court could be designed to have jurisdiction to decide the whole issues of election cases—excluding the general election which is clearly regulated by the ICC jurisdiction. Furthermore, according to research conducted by CETRO, there are several reasons for the importance of establishing a special court for election, namely a legal uncertainty in the law over a certain electoral law issue; the low capacity of the conventional courts to resolve the problems of electoral law; limited time in completing the election law issues consolidation of the legal issues in election into a court. [34]

These reasons have been a frequent occurrence in Indonesian elections. The existence of ordinary courts has concentrated on cases relating to ordinary cases particularly criminal, private and public cases. Therefore, the judges in ordinary courts are not well-trained in handling election cases. Those judges must consequently be upgraded in handling election cases, including pre-election dispute. However, the main problem of forming an election court is the specific act clearly regulating the practical procedure on handling a case. The current election act has specifically not arranged the election court. It has delegated its jurisdiction to the ordinary court and ICC. Consequently, the bill on the election court must be legislated as soon as possible.

Therefore, lots of work must be done to form a specific election court, such as amending the Constitution of 1945, educating people and so forth. The consequence of

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[32] See also Law No. 24 of 2003 on Constitutional Court. See also Law No. 11 of 2011 on the Amandment of Law No. 24 of 2003 on Constitutional Court.

[33] Widodo Ekatjahjana, "Menggagas Peradilan Partai Politik Dan Pemilu Dalam Sistem Ketatanegaraan Indonesia" (2009) 2:1 J Konstitusi.

[34] Hadar Gumay et al, *Laporan Kajian Undang-Undang Pemilu: Sebuah Rekomendasi Terhadap Revisi UU No. 10/2008 tentang Pemilu Anggota DPR, DPR Provinsi, Kabupaten/Kota dan DPD* (Jakarta: CETRO, 2011) at 79.

this option is increasing the government budget for the law enforcement sector along with the forming of a new court.

This argument has simultaneously discussed amongst the jurists, whether forming a specific election court or simply attaching an election court as an ad hoc court onto the ordinary court could save government budget.[35] Though, dissenting argument is normal from an academic perspective, the essence here is the fulfilment of election justice by due process of the law mechanism. With this process, law enforcement through judicial mechanisms is put forward.

III. SEEKING LEGAL NORM

The ICC remains a judicial institution referred to by justice seekers. To date, the ICC has no hesitation to invalidate an existing act which contradicts the constitution, and then create a new legal norm on certain matters.[36] So, seeking a new legal norm through the ICC, as a judicial institution, is one of an optional solution to gain legal certainty. Since 2010, through its judgments, the ICC has created several legal norms regarding Aceh elections, which can be seen in the following table.

Table 1: ICC Judgment on the Aceh Election Since 2010

No	Judgment	Norms	Case
1	35/PUU-VIII/2010	An opportunity for independent candidates to follow local Election.	Testing Law No. 11 of 2006 on the Government of Aceh.
2	108/PHPU.D-IX/2011	Strengthening individual candidates and ordering KIP Aceh to continue stages of local Election.	Dispute of the local election stages but the verdict code is the result of controversial Election Results (PHPU). In other words, the Constitutional Court made a decision outside its authority.
3	6/SKLN-IX/2011	Recalling the petition on the State Agency Dispute Authority.	Aceh house of representatives cancellation of suing the Central Election Commission.
4	1/SKLN-X/2012	Reopening the candidate registration for Governor and Vice Governor, the Regent and Vice Regent, Mayor and Vice Mayor, in a span of seven days.	The verdict was considered illogical and detrimental as it is impossible for KIP Aceh to verify and process steps for the other candidates in only 7 (seven) days.

[35] "Bawaslu Perlu Jadi Ajudikasi", *Sindo News* (2 May 2012), online: <http://www.sindonews.com/read/2012/01/27/435/564378/bawaslu-perlu-jadi-ajudikasi>.

[36] Matthias Baier, *Social and Legal Norms: Towards a Socio-legal Understanding of Normativity* (London: Routledge, 2013) at 10–20.

5	1/SKLN-X/2012	Determining Aceh local election on April 9, 2012.	The decision has a cooling effect over the situation in Aceh as the precise date for the election was set.
6	18/PHPU.D-X/2012	Determining the result of local election in Simeulue regency.	
7	19/PHPU.D-X/2012	Refusing the petition lawsuit of local election in Simeulu district.	
8	22/PHPU.D-X/2012	Refusing all the proposal from the applicants.	Applicant requested that the results of Election on 9 April 2012, to be cancelled because there was a systematic violation of terror and intimidation.

Note, four judgments in the above table are indicated as pre-election dispute instead of post-election dispute, namely: No. 108/PHPU.D-IX/2011, No. 6/SKLN-IX/2011, and No. 1/SKLN-X/2012. These judgements have been judged before elections have taken place. A rather strange judgment is No. 108/PHPU.D-IX/2011, where the code PHPU, which should be used for election results, has been used for pre-election disputes stages.

In this circumstance, the ICC has broadly expanded its jurisdiction to not only judging post-election dispute, but also pre-election disputes. Responding to this fact, Jimly states that in the first period the ICC does not have authority to handle pre-elections disputes. However, an increasing demand to solve pre-election disputes has resulted in the ICC slightly expanding its jurisdictions.[37] But, if the ICC still expands its jurisdiction to solve pre-election dispute, it is too risky. If the ICC fails to fulfil its duty then the ICC has harmed human rights, political rights, and also electoral justice.[38]

IV. CONCLUSION

So far, Indonesia does not have a clear mechanism in place to handle pre-election disputes. The currently established system is a temporary system that delegates to several state organs such as the Election Commission, the Ministry of Home Affairs and

[37] Jimly Asshiddiqie was the former of ICC president. Jimly Asshiddiqie, <http://www.jimly.com/tanyajawab?page=20>, accessed 18 April 2012.

[38] For comparation see also Lydia Nkansah, "Electoral Justice Under Ghana's Fourth Republic" (2016) SSRN Electron J. See also Al Khanif, "Protecting the Rights of Religious Minorities in the Framework of International Human Rights Law and Islamic Law" (2013) 7:2 J Glob Strateg at 197-211. See also Werner F Menski, "Human Rights in Southeast Asia" (2017) 1:2 J South East Asian Hum Rights at 109-127.

the Constitutional Court. Based on function and role, the Election Commission does not possess a significant mechanism to prevent and to resolve pre-election disputes. Similarly, the Ministry of Internal Affairs only possesses a political approach delegated from the President, and with this political approach, the disputes will be resolved by a top-down forceful mechanism, instead of justice and democracy.

For the time being, the Constitutional Court is the only state organ with the system of due process of law, having a mechanism to resolve the disputes by fair trial. However, it must be noted that the Constitutional Court has been overload by cases with tight deadlines, which will potentially produce a poor judgment. Therefore, Indonesia must have a specific mechanism to resolve pre-election dispute through a judicial approach instead of a political approach. With a judicial approach all parties involved in the disputes will have the opportunity to protect their political rights. The judicial approach can create an electoral justice. This approach could be implemented through a specific court, or the existing courts operating at this time could be modified.

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Law No. 9 of 2004 on the Second Amandment of Law No. 5 of 1986 on State Administrative Court Article 2 (Undang-Undang Nomor 9 Tahun 2004 Tentang Perubahan Atas Undang-Undang Nomor 5 Tahun 1986 Tentang Peradilan Tata Usaha Negara, Pasal.2.)

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