



CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA

CONSTITUTIONAL COURT REGULATION

NUMBER: 04/PMK/2004

ON

**GUIDELINES FOR THE HEARING OF
DISPUTE ON ELECTION RESULT**

CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA

- Considering :
- a. whereas, one of the jurisdictions of the Constitutional Court is to decide on dispute on election result;
 - b. Whereas, the Constitutional Court can further regulate necessary matters for the expedition of its duties and jurisdictions;
 - c. Whereas, for the expedition and orderliness in executing its jurisdictions as referred to in sub-paragraphs a and b, a guideline for examining disputes on election results needs to be regulated;
 - d. Whereas, in accordance with the considerations as stipulated in sub-paragraphs a, b, and c, a Constitutional Court Regulation on guidelines for the hearing of disputes on election result needs to be determined.

- Bearing in mind :
1. Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia;
 2. Article 104 and Article 134 Law Number 12 of 2003 on General Election of Members of People's Representative Council, Regional Representative Council and Regional People's Representative Council (State Gazette of the Republic of Indonesia year 2003 Number 37, State Gazette Supplemental of the Republic of Indonesia Number 4277);
 3. Article 68 and Article 85 Law Number 23 Of 2003 on Presidential and Vice Presidential Election (State Gazette of the Republic of Indonesia year 2003 Number 93, State Gazette Supplemental of the Republic of Indonesia Number 4311);
 4. Article 10 paragraph (1), Article 28 to Article 49, Article 74 to Article 79, and Article 86 Law Number 24 Of 2003 on Constitutional Court (State Gazette of the Republic of Indonesia year 2003 Number 98, State Gazette Supplemental of the Republic of Indonesia Number 4316);

Attending to : Result of the Plenary Session of the Constitutional Court on 18 February 2004

H A S D E C I D E D

To enact : REGULATION OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA ON GUIDELINES FOR THE HEARING OF DISPUTES ON ELECTION RESULT.

CHAPTER I
GENERAL PROVISIONS

Article 1

In this regulation, those which are meant by:

1. President is the President of the Republic of Indonesia.
2. Vice President is the Vice President of the Republic of Indonesia.
3. Constitutional Court is the Constitutional Court of the Republic of Indonesia.
4. DPR is the People's Representative Council of the Republic of Indonesia.
5. DPD is the Regional Representative Council of the Republic of Indonesia.
6. DPRD is the Provincial and Regency/City People's Representative Council.
7. General Elections, hereinafter referred to as Elections, are the Elections of member of DPR, DPD, and DPRD, as well as Presidential and Vice Presidential elections.
8. KPU is the National Election Commission, as the institution in charge and administrator of the Elections
9. Election Districts are election districts for the election of DPR, Provincial and Regency/City DPRD members

Article 2

Adjudication of election disputes shall be prompt and straightforward in nature.

CHAPTER II
APPLICANTS AND LITIGATION MATERIAL

Article 3

Persons eligible as Complainants are:

- a. Individual Indonesia citizens participating in the Elections as candidate for the DPD;

- b. Presidential and Vice Presidential election participant candidate pairs; or
- c. Political parties participating in the Elections.

Article 4

Subject of complaints the determination of election result issued by KPU nationally which affects:

- a. The election of DPD candidate members;
- b. Determination of Presidential and Vice Presidential candidate pairs to be selected for the second phase of Presidential and Vice Presidential candidate pair, and the election of Presidential and Vice Presidential candidate pairs;
- c. Seat allocation of a political party participating in the Election in an election district.

CHAPTER III

PROCEDURE FOR SUBMITTING COMPLAINTS

Article 5

- (1) A complaint can only be submitted within no later than 3 x 24 (three times twenty-four) hours since the KPU nationally announces its determination on the result of the Elections.
- (2) A complaint is submitted in writing in Bahasa Indonesia by the complainant or his/her proxy to the Constitutional Court in 12 (twelve) copies after being signed by :
 - a. participating DPD candidate or his/her attorney;
 - b. participating Presidential and Vice Presidential candidate pairs or their attorney; or
 - c. General Chairperson and Secretary General or persons having other titles of a similar position at the central administration or other names of similar nature of a political party or their attorney.
- (3) Submission of complaints by DPD candidates can be effected via facsimile or e-mail, provided that the original request as referred to in (2) shall be

received by the Constitutional Court within 3 (three) days after the expiration of the prescribed period for submission.

(4) A complaint shall contain at least:

a. Complainants identity, including :

- Name
- Date and Place of Birth/Age
- Religion
- Occupation
- Nationality
- Address
- Telephone Number
- Facsimile Number
- Cellular Phone Number
- E-mail name

as attached with valid evidences, among others : photocopy of identity card (*KTP*), prove of registration as voters, prove of registration as election participant.

b. a clear description of:

- 1) the [allegedly] erroneous vote count as announced by the KPU and the asserted correct vote count according to the Complainant;
- 2) request to annul the vote count result as announced by the KPU and determination of the correct vote count as asserted by the Complainant.

(5) Submission of complaint must be accompanied with evidence substantiating his/her complaint, including evidential documents, such as: certificate of vote count result, certificate of vote count recapitulation result of each counting stage, or other documents made in 12 (twelve) copies with 1 (one) copy being affixed with sufficient duty stamps and validated. If the complainant intends to present witnesses and/or expert testimonials, a list of such witnesses and their curriculum vitae must be attached to the complaint form.

CHAPTER IV

CASE REGISTRATION AND COURT SCHEDULING

Article 6

- (1) The fulfillment of requirements and completeness of incoming complaints shall be verified by the Clerk of the Constitutional Court.
- (2) A complete and valid complaint shall be recorded in Constitutional Case Register, whereas incomplete and invalid complaints shall be returned to the Complainant to be amended within 1 x 24 (one times twenty-four) hours.
- (3) If the requirements for the complaints as referred to in paragraph (2) has not been met, the Clerk shall issue a deed stating that the complaint has not been registered in the Constitutional Case Register and notify the same to the Complainant.
- (4) The Clerk of the Constitutional Court shall submit the complaint recorded in the Constitutional Case Register to the KPU no later than 3 (three) business days following such registration together with request for written statement by the KPU accompanied by evidence pertaining to the vote counting result being disputed.
- (5) The written statement as referred to in paragraph (4) must be received by the Clerk of the Constitutional Court by no later than one day prior to the court hearing.
- (6) The Constitutional Court shall determine the first day of court hearing within no later than 3 (three) working days for disputes on Presidential and Vice Presidential election result and no later than 7 (seven) working days for disputes on DPR, DPD and DPRD election result, after the application is recorded in the Constitutional Case Register.
- (7) Notice on the date of court hearing as referred to in paragraph (6) must be received by the Complainant and the National Elections Commission (KPU) by no later than 3 (three) days prior to the commencement of court hearing.
- (8) Notice as referred to in paragraph (7) may be delivered via court bailiff, letter, telephone, and facsimile.

CHAPTER V

PRELIMINARY HEARING

Article 7

- (1) Preliminary hearing shall be conducted by a panel of Judges consisting of at least 3 (three) constitutional judges in a session open to the public.
- (2) In the preliminary hearing, the Panel of Judges examines the completeness and clarity of complaint material as referred to in Article 5 paragraph (4), and shall advise the Complainant complete and/or amend the complaint.
- (3) A Complainant must complete and/or amend his/her complaint within no later than 3 x 24 (three times twenty-four) hours in the case of disputes on DPR, DPD and DPRD election result and 1 x 24 (one times twenty-four) hours for disputes on Presidential and Vice Presidential election result.
- (4) In the event that the Complainant fails complete and/or amend his/her application within the time period stipulated in paragraph (3), the Panel of Judges shall propose to the Court Deliberation Session to have the application dismissed.

CHAPTER VI COURT HEARING

Article 8

- (1) Court hearing shall be conducted in the Constitutional Court Panel/Plenary Session which shall be open to public.
- (2) The hearing as referred to in paragraph (1) shall be conducted forthwith following the preliminary hearing in the event the complaint is complete.
- (3) The court hearing as referred to in paragraph (1) shall include matters on:
 - a. jurisdictional competence of the Constitutional Court, namely the determination of election result announced nationally by the KPU as referred to in Article 4;
 - b. legal standing of the Complainant as referred to in Article 3;
 - c. merit of the complaint, as referred to in Article 5 paragraph (4) point b;
 - d. statement from the KPU;
 - e. evidences.

CHAPTER VII
COURT DELIBERATION SESSION

Article 9

- (1) Court Deliberation Session shall be held to obtain a decision after the hearing is deemed to be sufficient.
- (2) Court Deliberation Session shall be a closed session held by the Court's Judges Plenary Session attended by at least 7 (seven) Constitutional Judges.
- (3) Court Deliberation Session shall hear the report of the Panel of Judges presiding over the case and written consideration or opinions of the Constitutional Judges.
- (4) Decision making in the Court Deliberation Session shall be conducted by amicable discussion for a consensus.
- (5) In the event the amicable discussion a referred to in paragraph (4) fails to reach a consensus, a decision shall be made through a majority vote.
- (6) In the event that majority vote cannot be reached in the Constitutional Court Deliberation Session as referred to in paragraph (5), the final vote cast by the Chairperson of the Constitutional Court Deliberation Session shall be the deciding vote.

CHAPTER VIII
DECISION

Article 10

- (1) Decisions made during the Court Deliberation Session shall be read in the Constitutional Judges Plenary Session which is open to public.
- (2) A Constitutional Court Decision on complaints with regard to Presidential and Vice Presidential election result shall be made within no later than 14 (fourteen) working days from the registration of the complaint in the Constitutional Case Register.

- (3) A Constitutional Court decision on complaints with regard to election result shall be made within no later than 30 (thirty) working days from the registration of the complaint in the Constitutional Case Register.
- (4) The sentencing of the Constitutional Court decision may declare that:
 - a. Complaint is dismissed in the event that the Complainant and/or his/her complaint is does not meet the necessary requirements;
 - b. Complaint is granted in the event that the complaint has legal grounds and further declare as annulled the vote count result as announced by the KPU and determine the correct vote count result;
 - c. Complaint is denied in the event that it laces legal grounds.
- (5) Constitutional Court decisions on Presidential and Vice Presidential election result shall be submitted to:
 - a. People's Consultative Council;
 - b. President/Government;
 - d. KPU;
 - e. Political parties or coalition of Political Parties nominating the candidates;
 - f. Candidate Pairs
- (6) Constitutional Court decisions on DPR, DPD and DPRD member election result shall be submitted to the President, the Complainants and KPU.
- (7) Constitutional Court decisions on election result dispute are final.

CHAPTER IX
CONCLUDING PROVISIONS

Article 11

This regulation is effective as of the enactment thereof.

Enacted in : Jakarta

On : 4 March 2004

Constitutional Court of the Republic of Indonesia
Chairperson,

Prof. Dr. Jimly Asshiddiqie, S.H.