

# Pengaturan ambang batas selisih suara pada penyelesaian perselisihan hasil pilkada dalam menjamin hak konstitusional pemohon di Mahkamah Konstitusi = Stipulation of margin threshold in the dispute settlement on the result of regional heads election in guaranteeing the petitioners constitutional rights in the Constitutional Court

Adam Mulya Bunga Mayang, author

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## Abstrak

Undang-Undang Nomor 10 Tahun 2016 mengamanatkan bahwa penyelesaian perselisihan hasil Pilkada diselesaikan oleh Badan Peradilan Khusus, namun Mahkamah Konstitusi berwenang menyelesaikan perselisihan hasil Pilkada apabila belum terbentuknya badan tersebut. Dalam penyelesaian perselisihan hasil Pilkada terdapat ketentuan ambang batas selisih suara antara pemohon dengan peraih suara terbanyak sebesar 0,5% hingga 2% suara yang ditentukan dari penetapan hasil penghitungan perolehan suara oleh KPU.

Pada dasarnya pembentuk undang-undang mengatur ambang batas selisih suara sebagai bentuk upaya penyederhanaan serta membatasi banyaknya jumlah sengketa yang akan masuk ke lembaga penyelesaian perselisihan hasil Pilkada (Mahkamah Konstitusi). Ketentuan tersebut mengakibatkan tidak terpenuhinya hak konstitusional pemohon, karena berdasarkan desain penegakan hukum Pilkada, Mahkamah Konstitusi hanya melihat terkait perselisihan penetapan perolehan suara yang signifikan, sehingga tidak mempertimbangkan peristiwa lainnya seperti tindak pidana Pilkada apabila ketentuan ambang batas selisih suaranya sudah tidak terpenuhi.

Guna menjamin hak konstitusional pemohon, perlu segera membentuk Badan Peradilan Khusus sebagaimana amanat Undang-Undang Nomor 10 Tahun 2016 serta menghapuskan ketentuan ambang batas selisih suara, selama Badan belum terbentuk maka Mahkamah Konstitusi dalam menyelesaikan perselisihan hasil Pilkada tetap memperhatikan substansi pokok permohonan pemohon tanpa mengesampingkan ambang batas selisih suara.

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Law Number 10 of 2016 mandates the decision on the resolution of the Regional Head Election results by the Special Judiciary Body, but the Constitutional Court authorized the dispute settlement on the result of Regional Heads Election before the Special Judiciary Body formed. In dispute settlement on the result of Regional Heads Election, the margin threshold of the difference votes between the petitioners and the winner of the Regional Heads Election is 0.5% to 2% determined from the decision of the vote result by the General Election Commission.

Basically the legislator stipulation of margin threshold as a form of simplification and to limit the number of disputes that be registered to dispute settlement on the result of Regional Heads Election institution (the Constitutional Court). This stipulation does not guarantee the petitioners constitutional rights, because based on the design of law enforcement in the Regional Head Election, the Constitutional Court only sees the significant dispute over the determination of votes, so that it does not consider other events such as the Regional Head Election criminal offense if the stipulation on the margin threshold is not fulfilled

In order to guarantee the petitioners constitutional rights, the government needs to establish immediately the

Special Judiciary Body mandated by Law Number 10 of 2016 and abolish stipulation of margin threshold in the dispute settlement on the result of Regional Heads Election, as long as the Special Judiciary Body has not been formed, the Constitutional Court in settle disputes on the results of the Regional Head Election still considers the main substance of the petition of the petitioners without prejudice to the margin threshold.