

## Constitution Court Judge Conviction of Leader Countryside General Election Dispute Decision

Mariyadi<sup>1\*</sup> Sudarsono<sup>2</sup> Jazim Hamidi<sup>3</sup> Mohammad Ridwan<sup>4</sup>

1. Doctoral Program Student, Faculty of Law, University of Brawijaya, Veteran's Road Malang 65144, East Java, Indonesia
2. Promoter, Doctoral Dissertation Writing Program, Faculty of Law, University of Brawijaya, Veteran's Road Malang 65144, East Java, Indonesia
3. Ko Promoter I, Doctoral Dissertation Writing Program, Faculty of Law, University of Brawijaya, Veteran's Road Malang 65144, East Java, Indonesia
4. Ko Promoter II, Doctoral Dissertation Writing Program, Faculty of Law, University of Brawijaya, Veteran's Road Malang 65144, East Java, Indonesia

\* E-mail of the corresponding author: [marfhuim@yahoo.com](mailto:marfhuim@yahoo.com).

### Abstract

Parameter in forming of judge conviction determined along with fact and event of law which is expressed in court session. Though sometimes law fact which is expressed in court session oppose against formal law procedure, however if law fact which is expressed in court session have given conviction at judge, hence for the shake of justice, formal law can be overruled. Forming of judge conviction in general election lead countryside dispute, is along found by the existence of collision assumption and forgery of evidence appliances like campaign under cover, compilation Draft of Permanent Elector (DPE), invitation distribution which is not optimal, involvement of public servant of civil in winning candidate couple, occupation promises, addition of agriculture farm/ plantation, money political, intimidation, mistake of procedure, forgery of bill of evidences and others. Judge conviction that formed, by interpreting and finding the law.

**Keywords:** conviction of judge, constitution of law court, decision, justice

### 1. Introduction

Judge duty is to give decision in every confronted case to him, specifying things like event of law, contractual terms, law value from behavior, and also parties-legal status in concerned in a case, so that to be able to finish a conflict or dispute by impartial pursuant to applicable law, hence judge have to always be self-supporting and free from influence of other party, especially in taking a decision<sup>1</sup>. In judge decision there must be consideration which orienting at justice of law (legal justice), justice of society and justice of moral<sup>2</sup>. Many problems which triggering disappointment of society, one of them is how judge able to decide cases that invite pros and contra in wide of society. This matter oftentimes happened especially to cases getting attention of wide of society. Might possibly a decision assumed inequitable and assumed loaded with corruption nuance and collusion. in general perception that way just validities, at least there is reason of from society which have almost lose trust of society to jurisdiction institute, caused made known of various bribery case entangling justice government officer especially clerk of court and judge, which this case have entangled one of the clerk of court in constitution court<sup>3</sup>.

There is parameter or indicator able to use to see and feel that decision has fulfilled sense of justice or not. That indicator can be determined in 'consideration of law' used by judge. Consideration of law represent judge argument base in deciding a case. If law argument that are not true and reasonable, hence society or people then can assess that decision not true or inequitable. Therefore, judge decision in judging the case of the parties conviction of judge have to tread on truth value and justice, so that judge do not only giving guarantee of rule of law, but also benefit and justice<sup>4</sup>. Among violation case of law norm and dispute calculation of voting result of general election of regional leader which later on brought and adjudged by constitution law court is general election regional leader case west Beringin town, Dispute voting result of general election lead sub-province of South Bengkulu, dispute result of voting result of general election regional leader of sub-province of Bangli, dispute voting result of general election regional leader town of Jayapura, election case of governor of East Java, which in constitution law court decision win or grant some of application of applicant (Khofifah

<sup>1</sup> Lily Rasyidi dan Ira Thania Rasyidi, basics of philosophy and law theory, Bandung: Citra Aditya Bakti, 2004. p.93

<sup>2</sup> Lilik Mulyadi, friction of perspective and practice from Supreme Court about decision of<sup>2</sup> MKRI. Recording result of interview about judge conviction, between author and A. Sodiki, as vice criminal judge. Jakarta: Law magazine of Varia Peradilan edition number 246 May 2006, p.21.

leader and judge of MKRI. In Jakarta, February, 22, 2011.

<sup>4</sup> Fatahila, <http://fatahila.blogspot.com/2011/02/putusan-mahkamah-konstitusi-dan.html>

Indarparawansa). Pursuant to section 45<sup>1</sup> article 1 law number 8 on 2011 about change of law number 24 in 2003 about constitution law court mentioned, that 'constitution law court decide the case of pursuant to constitution republic of Indonesia state 1945, according to evidence appliance and conviction of judge'. Hereinafter in clarification of section 45 (1) expressing such with 'conviction of judge' is conviction of judge pursuant to evidence appliance<sup>2</sup>. So also with dropped decision is constitution law court it is true a lot assess have expressed sense of justice, rule of law and benefit. But do not all that law court decision is felt fair, caused by some of applicant, especially which fail, though this decision related to conviction of judge. in law section 45 article 1 constitution law court mention that constitution law court judge the case of pursuant to constitution republic of Indonesia state 1945 as according to evidence appliance and conviction of judge, beside constitution law court decision felt do not implemented, resulting horizontal conflict in areas carrying out general election of regional leader.

## 2. Methodology

This legal research is conduct according to specification had by law science which of course differs from social science and natural science<sup>3</sup>. As legal research<sup>4</sup> and as according to typical character of law science<sup>5</sup> and also problems substance and or law issue which studied in this research, hence approach of problem adapted for research problem. As according to problem of this research, hence its research type is juridical normative. Research method of this law of normative<sup>6</sup> is meant to study to regarding method intention and meaning law about conviction of constitution law court judge in dispute decision general election of regional leader as referred to section 45 article 1 law number 8 in 2011 about change of law number 24 in 2003 about constitution law court and related law and regulation. This researches use statute approach, conceptual approach, philosophy approach<sup>7</sup>, case approach and comparative approach. As research of juridical normative, hence in this research use the source of data of secondary (secondary law materials). Technique of analysis, which used in this research is analysis of juridical qualitative. Technique of analysis of juridical qualitative represents research procedures yielding descriptive data. this matter is based on opinion of Maria S.W. Sumarjan<sup>8</sup> expressing that research of normative law using data of secondary, its research in general have the character of descriptive or descriptive - explorative and also its analysis have qualitatively.

## 3. Result and Discussion

Before discuss a problem about conviction of judge of constitution law court, prior to necessary understand about conviction. About this conviction, according to terminology '*conviction*' is trust which *seriously, certainty, provision*<sup>9</sup> or *conviction*<sup>10</sup> or sure is truly belief, certainty and provision. While conviction according to English is, 'certitude, conviction, and sure'<sup>11</sup>. According to Dudu Duswara: conviction is '*conviction*'. There is some congeniality of conviction. First is interpreted as founding, for example he's a man of strong conviction' (ia adalah seseorang yang kuat pendiriannya). Both, is interpreted as 'provision and certainty', for instance, 'his words carry conviction' (kata-katanya mengandung keyakinan). Third, is interpreted as 'penalization', e.g. his conviction is certain' (penghukuman sudah pasti)<sup>12</sup>. According to TM. Hasbi Assiddieqie, conviction is something that acknowledged pursuant to theorem or investigation, and something that have been assured in order not to can vanish, except coming of other conviction<sup>13</sup>.

Ahmad Hamdan express that conviction is identical with law expanding or experiencing of process of dynamic in the society. Someone become sure to something is also influenced by maximal performance or activity which done by someone<sup>14</sup>. There are three aspects, which need to be paid attention in conviction that is congeniality

<sup>1</sup> In law number 8 in 2011 about change over law number 24 in 2003 about constitution law court is not experience change

<sup>2</sup> Law number 8 in 2011 about change of law number 24 in 2003 about constitution law court

<sup>3</sup> Yohanes Sogar Simamora, principle of contract law in good supplying and service by government, dissertation of doctor program of law science of postgraduate of Airlangga University of Surabaya, 2005, p.4

<sup>4</sup> Peter Mahmud MZ., law research (Predana Media, Jakarta, Desember 2005), p.29-33.

<sup>5</sup> JJ.Brugink, Rechtsreflecties, translate by Arif Sidharta (Bandung: Citra Aditya Bakti, 1995), p.213-218.

<sup>6</sup> Soerjono Soekanto and Sri Mamudji, Role and use of library in law research, Center Jakarta of law documentation of law faculty of Indonesia University, 1979, p.15.

<sup>7</sup> Peter Mahmud Marzuki, law research (Jakarta: Kencana first edition, third print), 2007, p.93

<sup>8</sup> Maria, S.W. Sumardjono, guidance of proposal making of research a basic guidance; (Jakarta: Gramedia Pustakan utama third print, 2001), p.10.

<sup>9</sup> Dudu Duswara Machnudin, role of law decision in decide a case in court, Varia Peradilan No.251 October 2006, p.51

<sup>10</sup> Conviction, 1. The act or process of ....

<sup>11</sup> Abdullah bin Nuh and Oemar Bakry, dictionary of Arabic-Indonesia-English, Mutiara Jakarta: 1964, p.266.

<sup>12</sup> Op.Cit. Dudu Duswara, p.52

<sup>13</sup> TM. Hasbi Assiddieqie, islam law philosophy, publisher Bulkan bintang Jakarta, 1970, p.104.

<sup>14</sup> Ahmad Hamdan, credibility, conviction, and success, material collection of training of human resource, Yayasan Permata Hati, Malang, June 2, 2011, p.3

aspect, desire aspect (for the practice), and feeling aspect. Congeniality aspect mean human being in front require to understand what believed, then after understanding human being require to practice and after human being practice require to evaluate its feeling, happy or not. of course ought to that happened is obtained by bliss is human being which if human being do not require to revise both antecedent aspect whether have correctness<sup>1</sup>. That conviction related to constitution law court judge authority in judging the case of dispute of general election of regional leader. this constitution law court is one of the judicial power besides supreme court section 24 article 2 chapter of IX UUD 1945 having authority as which mentioned in section 24 C UUD 1945, where article 1 mention authoritative constitution law court judge at last and first level which its decision have the character of final to test law to constitution, broken of dispute of authority state institute which its authority given by constitution, broken of disbandment of political party and broken of dispute about result of general election. Hereinafter article 2 mention constitution law courts is obliged to give decision of opinion of parliament concerning violation assessment by president and or vice president according to constitution<sup>2</sup>. This matter differentiates between verification in mathematics eyeglasses and social science. Verification in mathematics eyeglasses is to show data as support to result to be done by a research which then will yield a fix result or surely. While verification in social science, especially verification in law science used to strengthen argument but result of this verification is relativity. in law, a verification to one event might possibly be assumed by correctness but not yet of course the verification applicable in other case. Even in law science have become *communis opinio* that verification is mean to pass to judge about existence of certain events. Indirectly to judge, because judge have to make event constant, qualifying, then constituting hence target of verification is to judge decision which pursuant those verification. Although that decision have to be objective, but in the case of verification differentiated by between verification in criminal which require the existence of verification and conviction in civil dispute which do not expressly require the existence of conviction<sup>3</sup>. To decide a dispute, absolute case or dispute only based on conviction of judge, hence this matter is very risky because can generate worry that conviction of the judge will have subjective, so that will generate arbitrary action from the judge which exactly do not give sense of justice to all party that have lawsuit. hence appropriately if from proposition told by all the parties which is have dispute to become consideration base to judge so that can reach by an objective decision. In its relation with verification meaning, Subekti have a notion: proving in a case is assuring judge about truth of theory which is told in a dispute<sup>4</sup>. Consideration of law which not true is able to happened because various possibilities: (1) judge don't have enough knowledge of law about case which is handling, (2) judge deliberately to use law theorem which not true or not proper caused by other factor like existence of pressure of certain party, bribe and other factors which influence pertinent judge independency, (3) judge do not have enough time to write down all law argument which is good to be caused too much case which must be finished during too short, (4) lazy judge to increase knowledge and insight, so that have an effect on to quality of decision. This factor represent indirect factor, but enough determine the quality of decision<sup>5</sup>. Activity is done by constitution law court judge is to tread on norm of juridical that arranging it. Judge in face of or finish law case that requested to her/his, do not anything to be checked, if there is not base of juridical commanding or guide him. Norm of juridical arranging is representing stepping determining role done by constitution law court judge; including when constitution law court judge handle its handled case. Every handled case do not get out of the problem of evidence appliances. in section 36 is article 1 mentioned by six kinds of used evidence appliance<sup>6</sup>, that is: (1) article or letter, (2) eyewitness boldness, (3) expert boldness, (4) the parties boldness, (5) guide, (6) other evidence appliance which in the form of said information, to be delivered, to be accepted or kept electronically with optical appliance or that similar to the example of teleconference with eyewitness which far, voice record, electronic data, and others. Verification system in constitution law court event in order to obtaining the truth of material is doing not solely pursuant to mere evidence appliances. This matter as arranged in section 45-constitution law court code. Constitution court decision have the nature of final and fasten, that is as first level decision at the same time also as last level decision, so that searcher of justice do not have other alternative, will or not, like or not have to accept dropped decision<sup>7</sup>. if constitution law court judge decision weight like this or close legal effort of other party (applicant or requested), hence logical if constitution law court judge performance during applying event law, among others at verification phase go to decision, representing form of process that discharge all ability, among others realized in federating or convergence between conviction with checked evidence appliances to bear decision which fair. Rule related to constitution law court decision arranged

<sup>1</sup> Yoedi

<sup>2</sup> MKRI, Act of basic Republic Indonesia state 1945, Secretary general constitution law court, 2009.

<sup>3</sup> Ibid.

<sup>4</sup> Wicaksono Wahyu Santoso in [www.ikhnet.com](http://www.ikhnet.com) existence of act plan of digital sign and electronic transaction related to readiness of society as businessman and system law uphold. Access may 12, 2012.

<sup>5</sup> Alfian Yuliasuti. <http://>

<sup>6</sup> Section 36 (1) law number 8 in 2011 about change over act number 24 in 2003 about constitution law court.

<sup>7</sup> Bambang Sutyoso, Op.Cit., p.353.

in section 45 up to 49-constitution law court code. in section 45 mentioned as follows: (1) constitution law court judge the case of pursuant to republic of Indonesia state constitution 1945 as according to evidence appliance and conviction of judge; (2) constitution law court decision granting application have to be relied on at least 2 (two) evidence appliance; (3) constitution law court decision is obliged to load fact which is expressed in conference and consideration of law becoming decision base; (4) decision as referred to sentence (3) taken upon mutual consensus to agree in constitution judge plenary session led by chairman of the meeting; (5) in parley conference, every constitution judge is obliged to submit opinion or consideration written to application; (6) in the case of deliberation, constitution judge plenary session as referred to sentence (4) cannot yield decision, deliberation delayed until next constitution judge plenary session deliberation; (7) in the case of deliberation, plenary session after labored unattainable very seriously circular general consensus, decision taken by major vote; (8) in the case of deliberation, constitution judge plenary session as referred to sentence (7) cannot be taken by major vote, last vote of chairman of the plenary session constitution judge is determine; (9) constitution law court decision can be dropped on that day also or delayed on other day which must be advised to all parties; (10) in the case of decision do not reach by circular general consensus as referred to sentence (7) and sentence (8), opinion of different judge councilor loaded in decision. Provision of section 45 above, mentioning about base, procedure, or mechanism and decision making manner upon mutual consensus to agree in constitution judge session environment. Foundation which utilized by constitution law court in judging the case is republic of Indonesia state constitution 1945 according to evidence appliance and conviction of judge. As constitution organ, this institute is formed to become guard and at the same time interpreter to constitution through its decisions. With this demand, a compulsion if constitution law court judge in solving of case of dispute general election of regional leader faced it, claimed to have ability of adequate science. According to Ahmad Sodiki (constitution law court judge) that a constitution law court judge in judging the case of have to be relied on sense of justice, so that judge in breaking a case have to use to sense of heart, therefore a judge may not think of stomach, but above stomach that is feeling judge conscience. There by if judge wish to decide if not the same opinion hence judge have to make *dissenting opinion*<sup>1</sup>. Constitution law court decision is to look for a justice of substance; hence in searching justice of constitution judge in judging the case of for the shake of justice can remove law parameter so that definition having the character of formal can be disregarded, so that it is possible that its decision will make a splash many<sup>2</sup>. According to Muhammad Alim, that section 236C number law 12 in 2008 change of number law 32 in 2004 about governance of area, arranging authority handling of dispute general election of regional leader supreme court to constitution law court going into effect since October 29, 2008. hereinafter he say that in investigation of case of dispute general election of regional leader in constitution law court, constitution law court judge in judging the case of pursuant to evidence appliance and conviction of judge (section 45 article 1 constitution law court code) with balance point at truth of substantive (truth of material) and constitution law court judge have to be godly to God the one. So that its decision, have to major at justice, rule of law and benefit. Justice do not have to be generalized therefore every case deliberated by oneself (*Ius suum cueque tribuere*) and one eyewitness without supported by other eyewitness or evidence cannot be accepted as by witness or as evidence (*unus testis nullus testi*= one eyewitness is not eyewitness). Then Muhammad Alim cites Allah said are sounding: "and showed with two eyewitness man (between you). If there is not two man, hence (permitted) a man and two women of eyewitness which you accepted (Qur'an, 2: 282). Therefore, judge in checking, judging and deciding have to pay attention dispute in violation of general election of regional leader run structurally, systematic and massif<sup>3</sup>. Mutie Fajar<sup>4</sup> expresses that constitution judge in forming its conviction always pursuant to evidence appliances which rose in event and fact during court session. Therefore, conviction of constitution law court judge in seeing, thinking of, checking and deciding a case very influenced by embraced law theories science background all judge. To judge embracing stream or theories of positivistic primarily always justice of procedural law formal, while to judge following the non positivistic tend to follow justice of material or justice of substantive. Conviction of that judge will emerge at the time of court session, with existence of dissenting opinion and conviction of judge is not self-supporting however also refer to evidence that happened in court session fact<sup>5</sup>. In theory of science approach, solving of case general election of regional leader leader represent constitution law court judge competence test. Start from this theory is idea that decision fallout process done by constitution law court judge must be done systematically and carefulness especially in its bearing with former decisions in order to guarantying consistency of decision of judge. Approach of this science represent a kind of caution that in breaking a case, judge may not solely on the basis of intuition or instinct, but

<sup>1</sup> Interview with Achmad Sodiki of vice leader of constitution law court, February 22, 2011.

<sup>2</sup> Ibid.

<sup>3</sup> Interview with Muhammad Alim of constitution law court judge, in room of constitution law court judge, February 23, 2011.

<sup>4</sup> Interview about judge conviction, author with Muktie Fajar, law former and vice leader of constitution law court in his house in Malang, July 7, 2012.

<sup>5</sup> Ibid.

have to equip by law as well as judge science knowledge in face of a case which must be decided. In finishing a case, one of the judge duties is to investigate do contractual terms becoming suing base or application of case really exist or do not. Hence, judge claimed to know the truth of pertinent event objectively through verification. Thereby, verification has to obtain the truth of an event and aim to specify contractual terms between both parties and specify decision pursuant to result of verification, and also to assure judge about raised event or theorems. Conviction of judge in verification of case very related to concept of truth of formal which is embraced in event law. Truth of formal do not require judge decide the case of with its conviction, but enough pursuant to legal and existing evidence appliance. Bambang Sutiyo<sup>1</sup>, that checking and judging a case which position of parties is well-balanced, is true the truth of formal searched by judge and is positive verification system which applied. But in certain cases where position parties uneven at law or there is difference which enough significant, hence judge will cope to in dept exploration and study event more elaborately. Thereby decision expected dropped to later can meet sense of justice. Other opinion told by Elfi Marzuni<sup>2</sup>, if formal evidence has enough proved the truth of an event; hence judge enough base decision at truth of formal. But if both parties, either plaintiff and also sued to raise formal evidence having strength of both of the same strong verification, hence in this case judge not even look for the truth of formal, but also have to find the truth of material. This matter in line with judge duty as mentioned in law of number 48 in 2009 about judicial power, section 5 sentence (1) and (2) saying that judge is obliged to explore, following, and comprehending law values and society sense of justice, and also have to have personality and integrity which is blamable, honest, fair, professional, and experienced in law area. Constitution law court judge in judging the case of do not mere pursuant to truth of formal, but also pursuant to truth of material which truth of this material, really believed by constitution law court judge as a truth. In constitution law court judge own self there is conviction if case handled and will be decided to represent case which has reason of strength with pursuant to raised evidence appliances. Evidence appliance and conviction of judge is represent cumulative condition that must met to its validity or proven of an event in verification. In dropping containing decision grant application, constitution law court which must rely on at least 2 evidence appliances. While such with "conviction of judge" here is conviction of judge pursuant to evidence appliance. Conviction of judge may not emerge sudden, but have to pursuant to evidence appliance<sup>3</sup>. As in other judge decision, constitution law court decision also is obliged to load fact which is expressed in court session and consideration of law becoming decision base. Fact which is expressed in court session can come from applicant, requested, or law power requested or applicant, and judge checking it, enquiring, instructing, and directly or indirectly claim to each party to prove its submitted boldness. Role of that judge in line with free verification (evident free) is coherent in constitution law court judge. Its intention, constitution law court judge is free to determine what is burden of proof, verification burden, and also assessment of evidence appliance pursuant to its conviction of judge is not related to raise evidence appliance the parties and assessment of verification delivered fully to judge. Expressed fact and consideration of law of decision none other than judge reasons as responsibility why he/ she taken decision that way, so that the decision have objective value. Existence of reason in the consideration of law from a decision cause decision has objective value, except that also authority<sup>4</sup>. Constitution judge decision has to be taken upon mutual consensus to agree in constitution judge in plenary session led by chairman of court session. In parley conference, every constitution judge is obliged to submit opinion or consideration written to application. Pursuant to this rule in conference parley of decision making there no judge vote which is abstention. In this case plenary session deliberation of constitution judge cannot yield decision, deliberation delayed until next constitution judge plenary session deliberation. In constitution court decision gone into effect *dissenting opinion* that is enclosing in opinion of different constitution judge, if process intake of decision by constitution law court done by major vote. and also opinion of this different constitution judge require to be enclosed in, so that people can know reason of each constitution judge, and assess integrity level and also the quality of a constitution judge in breaking a case. Constitution law court decision is signed by judge that checking, judging, and deciding and clerk of court. Constitution law court decision obtain legal force remain to since finishing to be said in open plenary session generically. Existence of different judge of opinion, what then this difference remain to be submitted openly, show, that in parley done by constitution law court judge to a case, really run with principle democratize and openness. They recognize difference principle with all its argument. Arguments submitted by each this judge represents other side of conviction expression. Anwar Usman<sup>5</sup> expressing conviction of judge determined along with law fact which is expressed in court session. Even sometimes law fact which is expressed in court session, oppose against law procedure (formal law), but if law fact which is expressed in court session have given

<sup>1</sup> Bambang Sutiyo. Law of civil agenda and its development in Indonesia (Yogyakarta, Gama Media, 1997), p.154.

<sup>2</sup> Ibid.

<sup>3</sup> Bambang Sutiyo, agenda law of constitution law court of Republic Indonesia, Bandung: Citra Aditya Bakti, p.120.

<sup>4</sup> Sudikno Mertokusumo, Op.Cit. p.186.

<sup>5</sup> Anwar Usman, Written Answer through Email over 13 (thirteen) questions of researcher about judge conviction, March 9, 2012, p.1-2.

conviction to judge, hence for the shake of justice, formal law can be overruled. For example is decision general election of regional leader of province east Java. in the consideration its law, judge committee emphatically say that: "because in nature as jurisdiction of constitution, law court may not let orders justice of procedural (procedural justice) put in the stocks and overrule justice of substantive (substantive justice), because law facts as have real represent violation of constitution, specially section 18 sentence (4) UUD 1945 obliging election of regional leader done democratically, and do not impinge general election grounds having the nature of is direct, public, free, secret, fair and honest as which is determined in section 22E sentence (1) UUD 1945. One principle law and embraced justice universally express that "may not anyone be profited violation and deviation by done it own and may not anyone may be harmed by violation and deviation done by others (*nullus/ nemo commodum capere potest de injuria sua propria*). Basically judge decision is a statement made by judge, as functionary given by authority, hence, said in court session and aim to terminate or finish a dispute or case between the parties<sup>1</sup>. This judge decision is expected can give rule of law, which from this certainty will bear fruit at its form of justice to at law parties. While this certainty is borne through process test of conviction of judge which tip at decision dropped. There no certainty without preceded by drop of judge decision. So decision dropped by constitution law court judge, hence among applicant or requested, have got justice, though attitude to this justice different each other. Judge decision of constitution law court must be considering all aspect that nature of juridical, philosophies, and sociologies, so that justice those want to reach, to be creating, and responsibility in judge decision is justice that oriented at law justice (legal justice), moral justice, and social justice<sup>2</sup>. Ahmad Sodiki<sup>3</sup> telling law court decision is to look for a justice of substantive, hence exhaustively constitution judge in judging the case of for the shake of justice is also remove law parameter, so that definition having the nature of formal is overruled, its decision might be will become attention of most society. That way also if law do not mention clearly hence judge can find its law (*rechtvindig*). therefore judge decision besides looked into from facet of juridical also have to study from facet of sociologies and also its philosophy, for example elector in general election of regional leader have no resident sign card, hence law court remain to obliged to accept and check such case, even law court in official inquiry for the shake of is efficient of time can be conducted by together. Legal justice only got and law, exactly at one particular condition, will generate injustice to society, because written law which is created have certain saleable capacity which in a moment the saleable capacity will die, because law created by its justice element advocate society, however after enact a law, along with change of values justice of society, as a result at law its justice element will lose.

Moral justice and social justice is applied by judge, with statement that: "judge have to explore law values which live in society" (vide) section 5 article (1) law number 48 in 2009, which if meant exhaustively this matter have come into discussion about moral justice and social justice. In fact execution of duty and authority a judge done in framework uphold justice and truth, by holding on to law, justice values and law in society. In judge own self of conduct trust so that law and regulation applied real correctly and is fair, and if applying of law and regulation will generate injustice, hence judge is obliged to tread on at moral justice and overrule law and regulation or law (legal justice). Good law is law matching with law which, live in society which it is of course according to also or represent reflecting of values going into effect in society. Meant justice here, non justice of procedural (formal) however justice of substantive matching with judge conscience. A.Muktie Fajar telling justice of substantive is material justice which is consider against philosophy value, juridical and sociologies, thereby judge in verdict dispute general election of regional leader have to see the condition of law expanding and live in society<sup>4</sup>. Judge do not only claimed is clever, smart in using its ratio but judge also has to listen carefully of events law that happened. so that judge in finding justice of substantive by seeing as objective as possible case which on trial, smart judge not even, clever but judge also use to feel conscience. Thereby subjectivities conviction of judge of considers objectivities in its fair decision, benefit, and rule of law, so that its decision can be accepted by society. In an analyses manner, justice according to concept of Daniel S. Lev, using term of procedural and substantive, while Schuyt use material and formal term. Justice of procedural (formal), its component relates to style a law system, like *rule of law* or law nation of *rechtsstaat*. As for component justice of substantive (material) concerning what is nowadays named by social rights and also mark settlement of politics, economic in society. Justice conception takes root from condition of wanted society, justice concept which is on its reality still in the form of ideas which is more abstraction difficult to comprehend. Will be easier to comprehend the existence of is injustice in society<sup>5</sup>. During the time many party claim judges in Indonesia more is standing up for materialization of justice of substantive (material), than justice of mere procedural (formal). But that acceptable

<sup>1</sup> Sudikno Mertokusumo, Event law of civil of Indonesia (Liberty, Yogyakarta), p.175.

<sup>2</sup> Supreme Court of RI, guidance of judge behavior (Code of Conduct), ethic code of judge and related short paper, (Pusdiklat MA RI, Jakarta, 2006), p.2.

<sup>3</sup> Ahmad Sodiki, result of interview recording about judge conviction between author with Ahmad Sodiki, March, 24 2011.

<sup>4</sup> A. Muktie Fajar. Result of interview about judge conviction, author with A.Muktie Fajar, judge former and vice of constitution law court of Republic of Indonesia, February 22, 2010.

<sup>5</sup> Mulyana W. Kusumah. Law, justice and human right, a critic comprehend, alumni, Bandung, 1981. p.53.

demand is true theoretically than is practical, because bringing complicated law problem. Justice of procedural (formal) is justice which relate at law sound of an-sich. As long as form law sound, tired by justice formally. Whether materially, that is justice really fair felt morally and benefaction (virtue) for many party, all enforcer of justice of procedural (formal) do not care. They are all enforcer of justice of that procedural (formal), usually pertained clan of positivistic<sup>1</sup>. To clan of positivistic, decisions of law able to deduct logically from regulations which have there is in advance without require to subject to the target of social, benefaction, and also moralities. Inequitable after all and the limited existing law sound. Law is command of law and from there rule of law can be upheld<sup>2</sup>.

View of those positivistic opposed by circle which is view that benefaction principle and moralities must have to be considered also in measuring law validity. Follower of law is principled that law have to express moralities. In consequence, law leaving principles of moralities, even oppose against moralities, may or not adhere based on a moral rights<sup>3</sup>. Indonesia is nation that embracing civil law system, basing system building law at law. As result all judge is executor of law, is not law maker (law), as done all judge in England embracing system of common law (habit). But all judge in Indonesia can do invention of law through its decisions, although that way there is order which must adhere, that is all judge may not bump law and regulation philosophy and content which have exist. By normative, justice is included in this matter of constitution law court is place to get justice. That is according its name 'justice' and from irah-irah judge decision becoming its gate. According to that irah-irah, in finishing case, judge do not work 'for the shake of law' or 'for the shake of law', but 'for the shake of justice pursuant to God the one'. Phrase 'pursuant to God the one' becoming symbol that judge work to represent God the one. That phrase also becomes guarantee that judge in finishing case will work honestly, cleanness, and fair because he/ she is the name God<sup>4</sup>. Justice decision is statement of said judge at open court generically to finish or terminate a case. Decision can be dropped after session of the court finish and by at law party have nothing like which wish to be told. Justice decision represent a very expected by at law parties, because with justice decision at law party expect rule of law in case which they face. to give really creating justice decision of rule of law and express justice, judge executing jurisdiction have to really knowing to case which in fact and regulation of law arranging it to be applied, regulation of written in law regulation of unwritten law and also regulation<sup>5</sup>.

Verdict dropped by judge represent important part in any jurisdiction system implementation. Even if this justice decision (judge) is dropped by constitution law court judges, hence this decision very is determining of someone chance or a group of other importance and people which advocated it, because constitution law court judge decision has the nature of final and fastens. With decision qualification like this, constitution law court judge claimed do not anything can drop decision, but passing a correctness process having the nature of excruciatingly. According to Anwar Usman, conviction of judge have value having the nature of law, which conviction of the judge poured in a opinion of law becoming base consideration of law in decision a case. But sometimes might possibly a conviction of judge which oppose against other judge majority and poured in a opinion differ (*dissenting opinion*) to become a value which in line with idea and understanding of public, till finally can form a new value even a new regulation which is have estuary to become a value which is guidance to society.

#### 4. Conclusion

Conviction of judge represents the single base to bearing of a decision in constitution law court, after seeing to analyze, qualifying, and constitution to evidence appliance. Conviction of judge in constitution law court decision in handling of case of dispute of general election of regional leader born from steps process start from raising of application, antecedent meeting, conference repair of application, inspection of conference loading inspection to evidence appliances as section vide 36 UUMK. Conviction of this judge is determined along with law fact which is expressed in court session. Although sometimes law fact which is expressed in court session is oppose against law procedure (formal law) but if law fact which is expressed in court session have given conviction to judge, hence for the shake of justice of formal law can be overruled.

#### References

- Nuh, A., & Bakry, O. (1964). *Kamus arab Indonesia–inggris*. Jakarta : Mutiara.  
Sutiyoso, B. (1997). *Hukum Acara Perdata dan Perkembangannya di Indonesia*. Yogyakarta: Gama Media.  
Garner, B.A. (2004). *Blak's Law Dictionary*. America: Thomson-west.  
Brugink, J.J. (1995). *Rechtsreflecties (alih bahasa Arif Sidharta)*. Bandung: Citra Aditya Bakti.  
Rasyidi, I.T. & Rasyidi, L. (2004). *Dasar-dasar Filsafat dan Teori Hukum*. Bandung: Citra Aditya Bakti.

<sup>1</sup> Prija Djatmika. Problem to uphold substantive justice, daily of Jawa Pos, Wednesday, December 10, 2008, p.4

<sup>2</sup> Ibid

<sup>3</sup> Ibid

<sup>4</sup> Alfiah Yuliasuti. Judge conviction in decide a case reviewed from law sociologies aspect.

<sup>5</sup> Ibid.

- Sumardjono. (2001). *Pedoman pembuatan usulan penelitian sebuah panduan Dasar* (Cetakan ketiga). Jakarta: Gramedia.
- Mahkamah Agung RI. (2006). *Pedoman Perilaku Hakim (Code Of Conduct), Kode Etik Hakim dan Makalah Berkaitan*. Jakarta : Pusdiklat MA RI.
- Kusumah, M.W. (1981). *Hukum, Keadilan dan Hak Asasi Manusia, Suatu Pemahaman Kritis*. Bandung: Alumni.
- Mahmud, P. (2005). *Penelitian Hukum*. Jakarta: Predana Media.
- Mahmud, P. (2007). *Penelitian Hukum* (Edisi pertama). Jakarta: Kencana.
- Adi, R. (2004). *Metode Penelitian Sosial dan hukum*. Jakarta: Granit.
- Mamudji, S. & Soekanto, S. (1979). *Peranan dan Penggunaan Perpustakaan di dalam Penelitian Hukum*. Jakarta: Pusat Dokumentasi hukum Fakultas Hukum Univesitas Indonesia.
- Soekanto, S. (1986). *Pengantar Penelitian Hukum*. Jakarta: UI Press.
- Mertokusumo, S. (1970). *Hukum Acara Perdata Indonesia*. Yogyakarta: Liberty.
- Assiddieqie, H. (1970). *Filsafat Hukum Islam*. Jakarta: Bulkan Bintang.
- Simamora, Y.S. (2005). *Prinsip Hukum Kontrak dalam Pengadaan barang dan jasa oleh pemerintah..* Surabaya: Universitas Airlangga.