

The Formation of Special Electoral Court Institution: Between Democratization of Regional Head Elections and Institutional Issues

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ABSTRACT

The separation between the patterns of resolving election disputes and the separation of institutions for resolving election disputes will ultimately lead to potential legal uncertainty, prolonged settlement, and even dualism of election dispute resolution institutions. Therefore, a more integrative approach is needed in resolving election disputes which includes the idea of forming a special electoral court institution. However, the discourse on the formation of a special electoral court institution requires further discussion regarding the position of the intended special judicial institution, whether it falls within the jurisdiction of the Constitutional Court or the Supreme Court. The research method used in this study is normative legal research with a legislative approach and a case approach. Given the complexity of the law in resolving local election disputes which are separated into process disputes and results disputes, an integrative special judicial body is indeed needed to examine and decide on election disputes, not only limited to election results, but also covering all aspects of the election. Essentially, democratization of regional head elections as previously described also includes reforming local election regulations, including legal means for resolving election disputes that provide legal certainty. In this regard, one option is to establish a special local election court or a special electoral court in general.

Keywords: Special Electoral Court for Local Elections, Democracy, Local Elections, Institutional Issues.

INTRODUCTION

One of the hallmarks of a democratic country is holding general elections to select legislative and executive members at both central and regional levels. The Indonesian Constitution, specifically Article 23E of the 1945 Constitution, serves as the constitutional basis for conducting elections in Indonesia. It stipulates that general elections should take place every five years through direct, public, free, secret, honest, and fair methods. To comply with this article, the General Election Commission (KPU) was created to oversee and execute election procedures.^[1]

The establishment of the KPU is a mandate from the 1945 Constitution and an answer to the development of society's life in implementing a democratic system in elections. The nature and position of the KPU are described in the Constitutional Court Decision No.: 11/PUU/VII/2010, which states that the KPU is national and independent.^[2] In addition to the KPU, there is also the Election Supervisory Body which is also national and independent and has the main task of supervising the implementation of the election process.^[3]

Elections cannot be separated from election disputes. In Indonesia's electoral legal system, election dispute resolution is divided into three categories: election violations, election process disputes, and election results disputes. Election violations are generally categorized into two types. The first type refers to ethical violations committed by election organizers, which are handled and resolved by the Election Organizer Honorary Council (DKPP) upon discovery or reporting. The second type pertains to administrative election violations, which are

resolved by the Election Supervisory Board (Bawaslu) at different levels, starting from the central level down to the provincial and district/city levels.

Election process disputes are disputes that arise between participants in the election or between participants in the election and election organizers. The choice of resolving election disputes is under the authority of the Election Supervisory Board (Bawaslu). Therefore, according to Mirza Satria Buana, the Bawaslu has "twin crowns" authority in terms of supervision, settlement of administrative election violations, and electoral adjudication.^[4] If the decision on resolving election process disputes from the Bawaslu is not accepted, then the next step is to appeal through the State Administration Court (PTUN).^[5] Furthermore, regarding election results disputes, it is under the authority of the Constitutional Court as referred to in Article 24C of the 1945 Constitution. Election results disputes cover disputes from and between the KPU and election participants related to the vote count for election results.^[6]

Based on the mechanism for resolving election disputes which includes election violations, election process disputes, and election results disputes, it can be seen that there are still various processes for resolving election disputes. The institutions for resolving election disputes that cover election violations, election processes, and election results include at least five dispute resolution bodies, namely the Bawaslu, Election Organizer Honorary Council, Supreme Court (State Administration Court or District Court), and the Constitutional Court.^[7]

The separation between the patterns of resolving election disputes and the separation of institutions for resolving election disputes will ultimately lead to potential legal uncertainty, prolonged settlement, and even dualism of election dispute resolution institutions. Therefore, a more integrative approach is needed in resolving election disputes, including the idea of forming a special electoral court institution. However, the discourse on the formation of a special electoral court institution requires further discussion regarding the position of the intended special judicial institution, whether it falls within the jurisdiction of the Constitutional Court or the Supreme Court.

LITERATURE REVIEW

Democratization of Regional Elections

In Greek, the word "democracy" consists of "demos" which means people and "kratia" which means governance. Literally, democracy means government by the people. However, in the technical sense, democracy is a fundamental principle in the governance system where the people are given power. In democracy, the people have an active role in determining the fate of the country and have influence in evaluating policies that affect their lives. Democratization of regional elections refers to efforts to strengthen democratic aspects in the process of electing regional heads (Pilkada).^[8] The main goal is to increase public participation, transparency, accountability, justice, and regulatory reform in organizing the election of regional heads.

Special Judiciary

Special judiciary in Indonesia is defined as another form of general judiciary that has a hierarchical level. The establishment of special judiciary in Indonesia after the reform era was intended to meet the demands of justice development in society. Several forms of special judiciary in Indonesia that have been established include the Children's Court, Commercial

Court, Industrial Relations Court, Human Rights Court, Corruption Court, and there are several other forms of special judiciary. The idea of establishing special courts is intended for the efficiency of law enforcement processes in certain sectors.^[9] In addition to the forms of special courts previously mentioned, there are also other special judicial institutions known as quasi-judiciary such as the Business Competition Supervisory Commission (KPPU), Indonesian Broadcasting Commission (KPI), Public Information Commission (KIP), and others.^[10]

Election Disputes

Election-related conflicts can be categorized into three main groups: election violations, disputes related to the election process, and disputes about the election results. Election violations involve uncovering ethical breaches committed by organizers of the election, which are resolved by the Election Organizer Honorary Council (DKPP), as well as administrative election violations, which are handled by the Election Supervisory Board (Bawaslu) at central, provincial, and district/city levels. Election process disputes arise between participants in the election or between them and the election organizers, with Bawaslu having the authority to resolve these types of issues. As a result, Bawaslu has what Mirza Satria Buana refers to as "twin crowns" authority for overseeing, settling administrative election violations, and making electoral decisions. If Bawaslu's decision on resolving disputes related to the election process is not accepted, the next step is appealing through the State Administration Court (PTUN).^[12] In addition, disputes related to election results fall under the responsibility of the Constitutional Court as stated in Article 24C of the 1945 Constitution. These disputes involve disagreements between the General Election Commission (KPU) and election participants regarding the tabulation of votes and the declaration of election results.^[13]

METHODS

The method used in this research is normative legal research, which focuses on analyzing existing laws with a normative approach. This approach involves analyzing legislation, jurisprudence, and legal doctrine related to a legal issue.^[14] The legal research method is used to obtain knowledge about whether and how positive legal concepts apply to an event or issue. It then serves in the preparation of legal documents, academic writing, fundamental legal research in discovering principles, theories, or approaches, and legal drafting.^[15] The approach method used in this research is the legislative approach method and case approach method.

RESULTS AND DISCUSSION

Results

Current Regional Head Election Dispute Resolution

The previous discussion has outlined that, the resolution of election disputes is basically divided into three categories of disputes, namely election violations, disputes over the election process and disputes over election results. The following will broadly describe the dispute over regional elections into disputes over the election process and disputes over the results of the regional elections.

1. Election Process Disputes

Election violations in the sense of findings of election violations and / or reports related to ethical violations committed by election organizers. settlement of this violation by the Honorary Board of Election Organizers (DKPP). DKPP is a free and independent body tasked with ensuring ethics and integrity in conducting general elections. In addition, DKPP also has the responsibility to resolve ethical disputes related to violations of the code of ethics for election organizers. DKPP was established based on Law No. 15 of 2011 concerning the Implementation of General Elections. The duties of the DKPP include ensuring that the duties of election organizers are carried out in accordance with the applicable code of ethics, receiving complaints, checking for violations of the election organizer's code of ethics, providing ethical sanctions for these violations, and providing recommendations to election organizers to improve the quality and success of holding elections.

In cases where there are administrative violations in local elections, the Election Supervisory Board (Bawaslu) handles and resolves these issues at different levels, starting from the central level down to the provincial and district/city levels. Disputes related to the electoral process may involve disputes between election participants or between these participants and election organizers. Resolving local election disputes is the responsibility of the General Election Supervisory Board (Bawaslu), which has what Mirza Satria Buana refers to as "twin crowns" authority in terms of overseeing, settling administrative violations of local elections, and making decisions regarding local election outcomes.^[16]

Then if the decision to resolve the dispute of the election process from Bawaslu is not accepted, the data is submitted further through the State Administrative Court (PTUN).^[17] Furthermore, related to disputes over the results of local elections became the authority of the Constitutional Court as referred to in Article 24C of the 1945 Constitution. Disputes over the results of this regional election include disputes between the KPU and regional election participants related to the determination of votes for the results of the regional elections.^[18]

Apart from the violations mentioned earlier, there are also electoral crimes that fall under the jurisdiction of the General Court. Addressing electoral offences is a collaborative effort between Bawaslu, the police, and the Attorney General's Office, who work together through an integrated law enforcement center known as the Gakkumdu Center. This center handles electoral offenses starting at the provincial and district/city levels.^[19]

2. Dispute over Regional Election Results

According to the Constitutional Court's previous decision in No. 72-73/PUU-II/2004, regional elections should be considered as part of the broader electoral process outlined in Article 22E of the 1945 Constitution. The court noted that lawmakers could extend the definition of elections to include direct local elections. Therefore, disputes related to the results of such elections fall under the jurisdiction of the Constitutional Court, as stipulated in Article 24C paragraph (1) of the 1945 Constitution. This ruling means that local elections are now regulated under the electoral regime, and any disputes regarding election outcomes will be processed, tried, and decided by the Constitutional Court.

However, in 2013, the Constitutional Court issued Decision Number 97/PUU-XI/2013, which contradicted its earlier judgment, stating that regional elections should not be considered part of the elections referred to in Article 24 C of the 1945 Constitution. Consequently, the court did not have the authority to adjudicate cases challenging election results. Nonetheless, after the recent judgment in Decision Number 85/PUU-XX/2022, the handling of disputes over the results of regional elections has changed once again. According to this decision, the election regime is an integral part of the broader electoral process, allowing the Constitutional Court to examine and decide on disputes arising from such elections..

Special Election Court

The simultaneous regional election regime began from 2015 to 2020, in 2015 the number of regions that held simultaneous regional elections was 9 Provinces, 224 Regencies and 36 Cities. Then in 2017 regional elections were held simultaneously as many as 7 provinces, 76 regencies and 18 cities. In 2018, 17 provinces, 115 districts and 39 cities were held simultaneously. Finally, in 2020 there were 9 Provinces, 224 Regencies and 37 Cities.^[21] The following is the number of simultaneous regional elections that have been held from 2015 to 2020.

Table. Recapitulation of the Simultaneous Regional Elections from 2015 to 2020

Level	2015	2017	2018	2020
Province	9	7	17	9
Regency	224	76	115	224
City	36	18	39	37

The implementation of simultaneous regional elections in Indonesia led to the establishment of a special election court. This court was established based on the formation of Article 157 in Law Number 1 of 2015, which granted power to the High Court elected by the Supreme Court to resolve disputes related to the outcomes of Governor, Regent, and Mayor Elections. However, after amendments were made to Law Number 8 of 2015, Article 157 stated that a special judicial body would handle such matters. Nevertheless, before the creation of a special judicial body, Article 157 paragraph (3) of Law Number 8 of 2015 stipulates that disputes pertaining to the results of regional elections should be resolved by the Constitutional Court.^[22]

As explained earlier, Indonesia already has several forms of special courts such as special courts for Corruption, Human Rights Courts, Fisheries Courts, Tax Courts and others. The establishment of special courts is regulated in Article 27 of Law No. 48 of 2009 concerning Judicial Power which gives authority to the state to form special courts both within the general judicial environment, religious court environment, military court environment, and state administrative court environment.^[23]

Discussion

The special judicial discourse to handle election disputes in Indonesia aims to increase the validity and transparency of election results. Every election in Indonesia always includes

several cases of disputes, such as voting results, the determination of elected candidates, and the implementation and supervision of the election itself. Currently, the Constitutional Court (MK) is the highest judicial institution that resolves disputes over election results. However, a special judicial discourse that focuses on handling election disputes with the aim of speeding up dispute resolution and ensuring the validity of election results, is also being discussed. This special court is expected to reduce electoral fraud and maintain public confidence in democracy. This special court will also increase the accountability and professionalism of election organizers. Before this special court is carried out, it is necessary to conduct in-depth research and discussion about the mechanism and how it works so that it can have a positive impact on the course of elections in Indonesia.

As a consequence of the simultaneous regional elections in Indonesia which have started since 2015, 2017, 2018 and 2020, in 2024 simultaneous regional elections will be held for all regions of Indonesia with a total of 548 regions with details of 37 provinces, 415 districts, and 98 cities. ^[24] The implementation of local elections with 548 regions was certainly not an easy and very complex thing. One of the problems that will be faced is the number of disputes that will be faced in the implementation of regional elections. Given the authority to examine and adjudicate disputes over the results of the current regional elections in the Constitutional Court, it would be difficult to imagine how 9 constitutional judges would later examine and adjudicate disputes over the results of the regional elections from a total of 548 regions that will hold regional elections. The following describes the number of disputes over the results of the regional elections from 2015 to 2020 that were examined and tried in the Constitutional Court.

Table. Recapitulation of Disputes over the Results of the General Election of Regional Heads and Deputy Regional Heads / Cases of Disputes over the Results of the Governor, Regent, and Mayor Elections

Year	In Registration	Sum	Amar Verdict				
			Granted	Reject	Not Accepted	Pull Back	Fall
2016	152	152	3	5	138	6	0
2017	60	60	3	6	51	0	0
2018	72	72	2	6	61	1	2
2021	153	153	20	14	104	7	2

Considering the large number of disputes over election results that are brought to the Constitutional Court and the limited number of constitutional judges, who total only 9 people, it is fitting that the mandate outlined in Article 157 of the Elections Law be implemented through the creation of a special election court. Additionally, the relatively concise nature of procedural law for resolving disputes related to election outcomes in the Constitutional Court supports the need for such a dedicated judicial body.

The establishment of a special regional election court has not yet been carried out, considering that the 2024 simultaneous regional elections will be held on November 27, 2024. However, the discourse on the establishment of a special election court met a new phase after the Constitutional Court through Decision Number 85/PUU-XX/2022 stated that the provisions

of Article 157 paragraph (1), paragraph (2) and paragraph (2) were contrary to the 1945 Constitution and had no binding legal force.

The Constitutional Court's consideration states that Pilkada is part of the election regime, this is different from the previous Constitutional Court decision number 97/PUU-XI/2013 which stated that Pilkada is not included in the election regime so that the Constitutional Court has no authority to adjudicate disputes over election results. Based on the decision of the Constitutional Court Number 97 / PUU-XI / 2013 the framer of the law or DPR together with the Government formed a new norm through Article 158 of Law No. 10 of 2016 which states that disputes over the results of local elections are resolved through special courts, but through the latest Constitutional Court ruling, the norms for the establishment of special elections courts have been declared contrary to the 1945 Constitution and have no binding legal force.

The creation of a special election court raises an institutional issue as to whether this court, as referred to in Article 157 of Law No. 10 of 2016, falls under the judicial jurisdiction of the Supreme Court or the Constitutional Court. Articles 25 and 24 C of the 1945 Constitution limit the exercise of judicial power to only the Supreme Court and the Constitutional Court. Consequently, if the special election court is not considered part of the judicial power of either institution, amending the 1945 Constitution would be necessary to establish its legal basis.

Given the complexity of the law in resolving election disputes which are separated into disputes over the election process and the results of the regional elections, a special judicial body that is integrative in examining and deciding election disputes is needed and is not only bound and limited to the results of the elections but more integrative includes election disputes. Basically, the democratization of local elections as described earlier also includes reform of election regulations, the election regulations also include legal means of resolving election disputes that provide legal certainty, in this case one option is to establish a special election court or a special election court in general.

One example of the establishment of a special judicial institution that handles election disputes or electoral disputes is the Superior Electoral Court (TSE) of Brazil. Brazil's Superior Electoral Court (TSE), the body responsible for the organization and conduct of elections, and has powers in resolving electoral disputes.^[25]

CONCLUSION

The resolution of election disputes can be categorized into three groups: election violations, disputes over the election process, and disputes over election results. Disputes concerning the electoral process are resolved by institutions that handle different forms of election violations. These include the Election Organizer Honor Board (DKPP), which deals with ethical violations committed by election organizers based on findings or reports of such violations. Meanwhile, the Election Supervisory Board (Bawaslu) is responsible for handling administrative violations related to the election process. PTUN is related to legal remedies for Bawaslu's ruling. The General Court is related to electoral crimes. Then in resolving disputes over election results, there are inconsistencies of the Constitutional Court in assessing the authority to examine and adjudicate election disputes. In the 2004 Constitutional Court ruling, the Constitutional Court stated that the settlement of disputes over the results of the regional

elections was the authority of the Constitutional Court, then the 2013 Constitutional Court ruling stated that the regional elections were not part of the elections, therefore the Constitutional Court was not authorized to examine and adjudicate disputes over the results of the elections. Then in 2022 the Constitutional Court stated that the election regime is part of the electoral regime so that the Constitutional Court becomes the examining body and adjudicates disputes over election results, in this decision the Constitutional Court also states that Article 157 of the Elections Law which regulates the establishment of special election institutions is contrary to the 1945 Constitution and has no binding legal force.

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