

The Ideal Concept of Special Courts in the Settlement of General Election Disputes (Election)

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Abstract

This study aims to analyze the need for the establishment of a special election judicial institution that has the authority to resolve various classifications of general election problems mentioned in the general election law, namely; election administration violations, election process disputes, election result disputes, and election crimes. Given that each classification is handled by a different or separate institution, this causes the potential for overlapping authority, which can affect the quality of the final decision. Therefore, the formulation of this special election judicial institution is needed to ensure integrity in general elections so that it is maintained and provides certainty and justice in election law for the public. The research method used is normative legal research, which involves collecting legal materials from various sources such as journals, books, and websites to obtain answers to the main problems that have been formulated. The results of this study indicate the need for a special judicial institution, which includes the legal construction of the appointment of judges, as well as guidelines for institutional design and procedural law. With this formulation, the handling of election legal cases can be resolved quickly and simply so as to realize election integrity.

Key: special courts, general elections, election integrity

I. Introduction

General Election (Pemilu) is a celebration of democracy in Indonesia which is held every 5 (five) years. The change of power in a democratic country occurs through elections held peacefully and periodically, taking into account the principles set out in the constitution. The main objective of elections is to create a government that originates from the people, is run by the people, and is in the interests of the people. The principles of democracy are the basis for the formation and enforcement of law. Laws should not be created, established,

interpreted, and enforced arbitrarily based on power alone (Machstaat). Instead, democracy must be regulated based on applicable laws.¹

General elections (Pemilu) are a reflection of the principles stated in Article 1 paragraph (2) and (3) of the 1945 Constitution (UUD 1945) which states that Indonesia is a democratic state based on law. Elections in Indonesia are considered an important element in implementing a democratic system, with the aim of electing leaders who reflect the will of the people. In elections, a person who obtains the most votes is considered the winner of the political contest and is entitled to occupy a leadership position. The implementation of elections must follow important principles, such as direct, general, free, secret, honest, and fair. In addition, elections must also be held by fulfilling the principles of good implementation, such as independent, honest, fair, legal certainty, orderly, open, proportional, professional, accountable, effective, and efficient.

In the election process, there are often disputes or complicated and complex problems in its arrangement and implementation. Some possible causes of such disputes include fraud, mistakes or errors, and election winning strategies that are legally valid but can damage public trust (non-fraudulent actions that violate ethics).²

In every process of general elections (elections), the potential for disputes or violations is very likely to occur in every stage of the election. In every stage of the election, problems continue to emerge even though preventive measures to anticipate them have been taken by the organizers. The motives for each of these problems are fraud,

¹ ASSHIDDIQIE, Jimly. Constitutional Law & Pillars of Democracy. Jakarta: Sinar Grafika, 2011. P. 28.

² Salim, Christopher Surya, and M. Rendi Aridhayandi. "The Urgency of Special Election Courts in Indonesia in the Positive Legal System." *Proceeding Justicia Conference*. Vol. 1. 2022. Pg. 115

errors, then strategies that violate the law, resulting in a loss of public trust and many other motives. Such things arise due to election participants and election organizers themselves. This incident is proven by the rampant problems that occurred in the previous 2019 election with a total of 16,134 administrative violations, 376 violations of the code of ethics, 582 criminal violations, 1,475 other legal violations submitted and found by authorized institutions and 2,578 not included in violations.³In connection with this, the State is responsible for overcoming it.

In the implementation of general elections, various regulations and laws have regulated how to resolve issues that arise, including violations, disputes, and disputes over results. There are five institutions that have the authority to handle these issues, namely Bawaslu, the Supreme Court, the District Court, the Election Organizer Honorary Council (DKPP), the State Administrative Court (PTUN), and the Constitutional Court. The types of election disputes mentioned above are stipulated in Law Number 7 of 2017 concerning general elections. Which can be grouped into 5 (five) categories, namely:

1. administrative election violations, namely violations that include stages, procedures, methods related to election administration outside of election crimes, also include election organizers who are found to have violated the code of ethics for organizing elections.
2. Violation of the code of ethics, namely violations that include the ethics of each election organizing institution, in this case the election supervisory body (Bawaslu) and the general election commission (KPU).
3. Election process disputes, these disputes include disputes that occur between election participants or election participants and election organizers resulting from the issuance of a decision letter from the general election commission.
4. election crimes, namely findings resulting from criminal acts of violations and/or crimes against the provisions contained in Law No. 7 of 2017, namely in the form of money politics, campaign violations and other criminal acts regulated in the Criminal Code (KUHP).
5. Election result disputes, namely disputes between the organizing institution and election

participants regarding the determination of the national election vote acquisition results which can affect the election participants' acquisition of seats.

Therefore, in the context of issues related to the General Election (Pemilu), the actions taken by legal institutions become important. However, among the classifications of disputes that have been explained in the Election Law, in resolving disputes there are different institutions in handling them. For example, campaign violations and other criminal acts that are brought to the general court. Meanwhile, disputes that arise during the Election process are resolved through the administrative justice system such as the State Administrative Court or the Election Supervisory Body (Bawaslu), while disputes related to Election results are handled by the Constitutional Court (MK). All of which will end up in the judicial jurisdiction.

The large number of disputes or cases related to the Election resolved by various institutions will result in overlapping regulations and disrupt the order of the state and judicial system in Indonesia. In a short time, this can cause judges to tend to prioritize procedural justice over substantive justice. This emphasis is based on the fact that Election law is public law, namely law that specifically regulates the relationship between the state and its people. Therefore, the presence of a judicial body that specifically handles the resolution of election disputes is an urgency that cannot be ignored anymore. The presence of this institution will bring significant benefits in increasing the effectiveness and efficiency of the judicial system in Indonesia when handling election-related disputes in 2024. However, in the formation of this special judicial body, an ideal formulation is needed to maintain the effectiveness and credibility of the Judicial Institution in providing certainty of election law, of course the formation of this special judicial body remains based on the applicable positive legal corridor.

II. Research Methods

The type of research that the author uses is normative legal research or normative legal research that places law as a building of normative systems. The type of data in this normative legal research uses secondary data. Where in this method the author examines data through literature studies, namely journals, books, websites and other intermediary media that are the subject of the author's discussion. In normative legal research, the author compiles research systematically and logically. This means that there is a relationship

³ Bawaslu, "Update of 2019 Election Violation Data as of November 4, 2019," *Bawaslu*, last modified 2019, <https://www.bawaslu.go.id/id/hasil-pengawasan-pemilu/update-data-pelanggaran-pemilu-tahun-2019-4-november-2019>.

between one legal material and another to get a general picture of the research results.

III. Results and Discussion

3.1. The ideal concept of justice special in settlement dispute elections in Indonesia

The idea of the ideal concept of special courts in resolving election disputes was born as a result of the problems that often occur in every dispute process, where Indonesia in its election disputes has 5 (five) classifications of dispute problems that have been regulated in the law, including the types of disputes, violations of election administration, violations of the election code of ethics, election process disputes, election result disputes, and election criminal violations. where in each classification of existing disputes, there are different and fragmented institutions in handling them.⁴

Indonesia as an independent country to organize justice, then in the judicial power the state has the power to form a special court. A special court here is understood as a court that has the authority to examine, review, and then try certain cases that can only be formed and operate under the judicial power of the supreme court based on law.

The formation of a special election court is certainly attached to the supreme court and is part of the judicial power. As the provisions regarding the classification of election problems from administrative violations of the fourth book of elections to the fifth book that regulates criminal violations of elections. this requires the position of judicial power of special election courts at the central, provincial and district/city levels to then accommodate all issues related to election disputes.

The existing special courts have a basis for their specialization which is divided into two, namely: courts whose specialization makes material law their scope, and courts whose specialization is due to the subjects involved. In the election law no. 7 of 2017, the classification of election problems consists of 5 categories. Therefore, a very important issue that must be faced at this time is how to prepare all legal instruments to then be responsive in facing the upcoming election period, in order to

⁴ Iwan Rois and Ratna Herawati, "The Urgency of Establishing a Special Election Court in the Framework of Realizing Election Integrity," *Udayana Master Law Journal*, vol. 7, no. 2 (2018): p. 274.

provide justice to the disputing parties and no one feels disadvantaged in the election process. The formulation of forming a special election court according to the author, as a form of effort to enforce election law and provide legal certainty to voters or parties who feel disadvantaged in the election process.

Based on the existing phenomena and analysis, there are 2 (two) main points that need to be studied further regarding the author's ideas in the formation of this special court, namely the design of the special court institution and the design of the special court procedural law.

A. Legal Construction of the Appointment of Judges for Special Election Courts

The special election court is a special court that is *ad hoc in nature* which is under the auspices of the supreme court in the general judicial environment. The nomenclature of the special court is based on "law number 48 of 2009 concerning judicial power, a special court is a court that has the authority to examine, try and decide certain cases that are formed in one judicial body environment that is under the auspices of the supreme court which is further regulated in law"⁵

Therefore, the judges assigned to this special court are special judges or *ad hoc judges*. However, the thing that must be noted is that the intent of the law is that a special court can only be formed in one judicial body under the Supreme Court. This is relevant when referring to Law No. 48 of 2009 concerning Judicial Power (Judicial Power Law) and is also relevant to Article 8 of Law No. 49 of 2009 concerning the Second Amendment to Law Number 2 of 1986 concerning General Courts which states that:

1) "In the general judicial environment, there may be special courts regulated by law.

2) In special courts, *ad hoc judges* can be appointed to examine, try and decide cases that require expertise and experience in a particular field and within a certain time period.

3) Provisions regarding the conditions and procedures for the appointment and dismissal as well as allowances for *ad hoc judges* are regulated in statutory regulations."

Referring to the provisions of the article above, after a special court is formed, there is an appointment of judges in this case *ad hoc judges*. The definition of *ad hoc judges* is regulated in "Article 1 number 9 of

⁵ Article 1 number 8 of Law Number 48 of 2009 concerning judicial power (State Gazette of the Republic of Indonesia 2009 number 157).

Law No. 48 of 2009 concerning judicial power which states that

"An ad hoc judge is a temporary judge who has expertise and experience in a particular field to examine, try and decide a case whose appointment is regulated by law."

Then the mechanism for appointing judges and the duties and authorities of *ad hoc judges* are regulated in Article 32 of Law No. 48 of 2009 which states:

1. *"Ad hoc judges can be appointed to special courts to examine, try and decide cases that require expertise and experience in a particular field for a certain period of time."*

2. *"Provisions regarding the conditions and procedures for the appointment and dismissal of ad hoc judges as referred to in paragraph (1) are regulated by law."*

In the explanation of paragraph (1) there is a phrase "certain period" which means temporary in accordance with the provisions of laws and regulations. it can be concluded that the appointment of *ad hoc judges* and the formation of special courts are temporary in nature, because the election is held every 5 (five) years. although temporary, its existence and implementation are very important to realize justice for the entire community. The temporary design is because the election is only held before the election process or regional elections which are held every five (5) years, so the formation of a special court is formed before the election process takes place, namely 6 (six) months before the election stages begin and ends no later than 1 (one) year after the entire series of election implementation is completed.

B. Institutional Design and Procedural Law of Special Election Courts

Considering the mandate of Law No. 7 of 2017 and Law No. 10 of 2016 that the General Election is held simultaneously nationally, the author believes that there needs to be an institutional design and procedural law regarding a special election court. The design of both aims to answer the problems that occur in society regarding the separation of institutions in handling each classification of election problems that have been mentioned in the election law. This design is an important part of the concept of establishing a special election court.

The formulation of the formation of a special election court is very rational and relevant to be implemented, which fundamentally the formulation can be through Law No. 48 of 2009 concerning judicial power regulating the formation of a special court that has the authority to examine, try and decide certain cases. This is regulated in the

provisions of Article 1 number 8 which states that:

"A Special Court is a court that has the authority to examine, try and decide certain cases that can only be established within one of the judicial bodies under the Supreme Court as regulated by law."

The formulation of the formation of this special court remains under one roof of the supreme court's judicial power through the district court. So in the formation of this special judicial body without the need to reconstruct the 1945 Constitution. with law number 48 of 2009 concerning judicial power, it is sufficient to accommodate the formation of a special election judicial body.

Therefore, the special election court must be in the judicial environment under the auspices of the Supreme Court under the judicial authority and not the result of a transformation of any institution other than the judiciary including the Election Supervisory Body (Bawaslu) although basically Bawaslu has a dual function, one of which is to try and decide disputes, but in this construction Bawaslu is not allowed to try election disputes because the task of the Election Supervisory Body (Bawaslu) is very vital, not only controlling the ongoing election but accommodating participatory and active supervision in overseeing and ensuring that the election runs according to its corridor and the creation of a democratic, honest and fair election.⁶

Related to its location according to its territory based on its competence. At the central level, its authority is attached to the Supreme Court, for the provincial level the court in particular is attached to the high court, then for the district/city level the court in particular is attached to the local district court. With such a design, efficiency is achieved in resolving cases or election disputes, considering that cases in each election are relatively numerous and the demands for their resolution as quickly as possible.

Based on the position of the judicial area of this special judicial body, the special court has the competence to handle general election disputes according to the classification of general election problems, namely regarding administrative disputes, election crimes, to disputes over election results. The stages in handling it according to the author are:

First, administrative disputes:

⁶ Ratnia Solihah, Arry Bainus, and Iding Rosyidin, "The Importance of Participatory Supervision in Monitoring General Elections with Integrity and Democracy," *Jurnal Wacana Politik* vol. 3, no. 1 (2018): pp. 14–15.

administrative violations committed by election participants that include procedures, procedures, or mechanisms that are detrimental to other election participants, can be examined and investigated by Bawaslu and the *ad hoc bodies* under its auspices, in the resolution process, Bawaslu in its efforts, asks election participants to make administrative improvements that they have violated based on laws and regulations, then when ignored Bawaslu has the right to issue a written warning, finally when the written warning is ignored by the election participant, Bawaslu follows up with a special court to provide legal certainty for the violations committed, which then the results of the special court's decision are followed up by the KPU by issuing a decision letter as a result of the violations committed,

Second, violation of the code of ethics: findings of violations of the code of ethics committed by the Election Organizing Institution can be reported to the Election Organizing Honorary Council (DKPP) through the regional inspection team (TPD) spread across each province, district/city. Complaints or findings received by the DKPP are examined and identified by the DKPP, which then all legal certainty and justice can be resolved in the special election court body. by providing legal rights to the related parties.

Third, process disputes: disputes that occur between election participants or disputes that occur between organizers and election participants due to the issuance of a KPU decision, can submit a request to Bawaslu to then be studied and bring together the disputing parties to carry out a mediation process or consensus based on statutory regulations, if in the mediation process with Bawaslu, no clarity is obtained for the aggrieved party, then election participants are given the right to take legal action in a special election court in order to expect legal certainty and justice.

Fourth, election criminal violations: criminal acts that occur during the series of elections, it can be suspected that violations related to criminal acts often occur during the series of elections, for example, money politics or bribery between election participants and election organizers. Matters related to criminal acts are reported to the election supervisory body (Bawaslu) for examination, investigation before prosecution is carried out in a special court. In this case, the role of Bawaslu is very vital and important, because Bawaslu plays a role not only in investigating and examining but Bawaslu also plays a role as a public prosecutor. Although these provisions are very different from the criminal justice system, they are designed considering the special nature of criminal

acts and their judicial bodies. After going through these stages with sufficient and strong evidence, the criminal case can be submitted for examination in a special election court.

Fifth, disputes over the results that have been determined by the general election commission (KPU) can be submitted to a special court according to their level. This can be submitted by prospective pairs who feel that the decision letter issued by the general election commission (KPU) contains an inappropriate vote difference so that have an influence on the decision. Therefore, candidate pairs who feel disadvantaged can request an annulment of the determination of the vote results by taking legal action to a special court based on their region. The entire process of resolving disputes and voting results disputes must take into account the speed of time in order to provide legal certainty for the parties and ensure that justice is not harmed to the parties. So the period between the report and the reading of the decision by the panel of judges must have a certain period, at least 60 days after the report is received.

The basis for litigation in a special election court can use "Constitutional Court Regulation Number 17 of 2007 concerning Guidelines for Litigation in Disputes over the Results of the Presidential and Vice Presidential Elections, and can also use "Constitutional Court Regulation Number 16 of 2009 concerning Guidelines for Litigation in Disputes over the Results of the Presidential and Vice Presidential Elections." General Members of the People's Representative Council, Regional Representative Council, and Regional People's Representative Council, and also use "Supreme Court Regulation Number 4 of 2017 concerning Procedures for Resolving Administrative Violations of the Supreme Court General Election and the Criminal Procedure Code which regulates the procedures for resolving administrative violations of the Supreme Court General Election." criminal acts"

The realization of the idea of establishing a special election court requires the reconstruction of election law by strengthening the position of the special election court and delegating all authority to the special election court in resolving election disputes.

3.2. Duties and Authorities court Special Election

The institutional design and procedural law that the author has offered are intended to realize the construction of a fair and honest special election court that aims to answer all the complexities of election problems. Special election courts do not only carry out judicial functions alone. However, a strong bargaining position is needed to maintain the

integrity of elections in the electoral order. This is a form of concretization of all aspects of law enforcement that should be applied. This special election court should be the beginning and end of election law enforcement.⁷

Thus, the authority to resolve cases/disputes regarding general elections (elections) is centralized and specialized in the procedural law of general election courts, which accommodate legal issues related to general elections in Indonesia that occur during the process until after the election. The form of special courts that became the author's idea is a fusion of several institutions that have the authority to resolve general election (election) issues, this is a positive legal construction that is currently in effect. So that in order to realize effective and efficient legal handling, an institutional structure construction is needed. The special election court body contains several court chambers, including a chamber for disputes over the general election process, then a chamber regarding disputes over election results and finally a criminal chamber for general elections, the case variables include administrative violations, codes of ethics and others according to laws and regulations.

For special election court chambers, they can use previous institutions as a basic reference in their procedural law practices, for example, chambers that handle general election result disputes can act as protectors of democracy as has been done by the Constitutional Court so far, by paying attention to the principles of implementing honest, fair, secret, and free elections so that the paradigm that emerges does not say that this court is only a calculator-like calculator. However, the stigma of a protector of democracy must be echoed in order to maintain the integrity of the judiciary. Not only about vote disputes alone but the quality and how far the constitutionality of general elections is applied, this can be an important parameter for adjudicating existing disputes. If there is evidence of a TSM (structured, systematic and massive) violation, the panel of judges has the right to decide to re-vote in its verdict.⁸

⁷ RAMLAN SURBAKTI, Transformation of Bawaslu and Public Participation in Election Supervision, *Partnership for Indonesian Governance Reform*, 2015. P. 37

⁸ L. Maulidin, "Analysis of the Constitutional Court Decision in Resolving Regional Election Result Disputes Reviewed from the Perspective of Progressive Legal Theory (Study of the Constitutional Court Decision on the East Java Regional Head Election Result Dispute and the

In deciding a case, the special election court must pay attention to two things as types of justice that must be applied by the court, namely formal justice and material justice. For example, in the context of an election result dispute, formal justice must pay attention to the ballot papers as authentic and absolute evidence. While material justice is based on the statements and arguments of the witnesses by trying to examine more deeply the testimony by connecting the events that occurred in order to create the quality of the material evidence and be used as a consideration for the panel of judges in deciding and trying the case. All existing evidence has become the main material for the judge to strengthen the judge's belief in embodying material justice in his decision.

So it can be said that the evidentiary system practiced in the general election procedural law is a negative evidentiary system, like the system used in handling criminal law in Indonesia. According to expert Andi Hamzah, the negative evidentiary system is an evidence based on positive law or statute. Coupled with the judge's considerations based on the belief of the panel of judges on the evidence that has been provided. Evidence accompanied by the testimony of the parties as a force so as to support the belief of the panel of judges in deciding the case, this is a negative evidentiary system.⁹

In addition to these aspects, there are other aspects that need attention, namely public services related to administrative services for handling election cases. These aspects need to pay attention to the principles of fast, simple and low-cost justice as one of the efforts to manifest good governance.¹⁰ In this case, of course, it requires bargaining from each employee's personnel with reliability and honesty and integrity to avoid administrative deviations. The administration system must be integrated with each room in the special election court.

The realization of the idea of establishing a special election court requires a revision of the election law by delegating the authority related to handling election disputes by several previous

Constitutional Court Decision in the Dispute Case," *Jurnal Konstitusi*, vol. 4, no. 1, 2011. Pp. 74-75

⁹ Andi Hamzah, *Implementation of Criminal Justice Based on Theory and Practice*, Publisher PT Rineka Cipta, Jakarta, 1994, p.307

¹⁰ winly A. Wangoi, "

"SIMPLE, QUICK AND LOW COST TRIAL PRINCIPLES IN SETTLEMENT OF CRIMINAL CASES ACCORDING TO THE KUHAP," *Jurnal Lex Privatum* vol. 4, no. 7 (2016): 39.

institutions to a special election court. Also, by including the position of the special election court along with its functions and authorities.

IV. Conclusion

The ideal concept of a special judicial institution is a concept that is needed in the formulation of the formation of an election court, considering the many types of election disputes in Indonesia consisting of 5 (five) types of disputes, where in each dispute process, there are different institutions in handling it so that it can affect the effectiveness of providing legal certainty to the community. In the concept offered by the author, this special judicial institution is located in every region, from the central, provincial, to district/city levels throughout Indonesia. The design and arrangement of special judicial institutions begins with the stage of appointing judges, then the position of the institution, to the procedural law of the special judicial institution.

The basis for the formulation of the appointment of judges, institutional design to the procedural law. can refer to Law No. 48 of 2009 concerning judicial power as the basis for the formation of a special election court, then the stages of handling election disputes by a special election court can refer to "Constitutional Court Regulation Number 17 of 2007 concerning Guidelines for Proceedings in Disputes over the Results of the Presidential and Vice Presidential Elections, Constitutional Court Regulation Number 16 of 2009 concerning Guidelines for Proceedings in Disputes over the Results of the General Elections of Members of the People's Representative Council, Regional Representative Council, and Regional People's Representative Council, Supreme Court Regulation Number 4 of 2017 concerning Procedures for Resolving Administrative Violations of the Supreme Court General Election and the criminal procedure code governing the procedures for resolving criminal acts" as the basis for the formation of special election procedural law.

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