



The Role of Specialized Judicial Bodies for Regional Head Elections in Election Law Enforcement

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Abstract: The complex problems of electoral justice require the need for comprehensive reconstruction of the justice system. The large number of institutions involved in the process of resolving election cases makes the integration of the electoral justice system very urgent. Moreover, Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Determination of Government Regulations in Lieu of Law Number 2014 concerning the Election of Governors, Regents and Mayors into Law has mandated the formation of a special judicial body. From the description of the problem, the problem is formulated as follows: How will the Special Regional Election Judicial Body be designed in Indonesia in the future? Meanwhile, the method used in this research is a normative legal research method, by examining Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Determination of Government Regulations in Lieu of Law Number 2014 concerning the Election of Governors, Regents and Mayor Becomes Law. The conclusion of this research is as follows: The future design of the Special Judicial Body for Regional Elections in Indonesia refers to the special judicial body specified in Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning Determination of Government Regulations in Lieu of Laws -Law Number 2014 concerning the Election of Governors, Regents and Mayors into Law Article 157 paragraph 1, as well as Article 157 paragraph (1) Law Number 8 of 2015 should be formed and remain under the auspices of the Constitutional Court on a par with other courts. both at the district or city and provincial levels. Apart from that, all regional election disputes, both process disputes and result disputes, are decided by the special Regional Election Judicial Body.

Keywords: Special Judicial Agency, Regional Elections, Elections

1. Introduction

One manifestation of the implementation of popular sovereignty carried out in a democratic system is the election of regional heads or commonly known as Pilkada. Pilkada is part of the general election (Pemilu)(Kodiyat, 2019), (Warouw, 2022) . Elections themselves have the meaning of a political process in constitutional life as a means of appointing the formation of representative institutions that carry out the mandate of the people (Alvian, n.d.), (GINTING, 2024). In accordance with article 1 paragraph 2 of the 1945 Constitution of the Republic of Indonesia, sovereignty is in the hands of the people and is implemented according to the Constitution. This provision provides a very strong foundation that Indonesia is a constitutional democratic country, therefore people's participation in the implementation of government is a general requirement, especially in filling public positions (Rikardo, 2020), (Sodikin, 2014). After reform, the implementation of popular sovereignty (democracy) is not only a manifestation in general elections as stipulated in Article 22 E of the 1945 Constitution of the Republic of Indonesia. However, democracy has been manifested in local political life through political decentralization to autonomous regions. One of the policies of political decentralization is the democratic election of the positions of Governor, Regent and Mayor (Harefa, Siallagan, & Siregar, 2020), (Wardhana, 2018). Related to this, Article 18 paragraph (4) of the 1945

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Constitution of the Republic of Indonesia stipulates that "Governor, Regent and Mayor respectively as heads of provincial, district and city regional governments are elected democratically" (Hadi, 2023). With these provisions regarding being elected democratically, regulations regarding direct regional elections emerged which functioned as a means for the people to participate in implementing regional government. In the process of holding Pilkada, this does not mean that problems will not arise, in holding Pilkada there are always problems that arise from the beginning of the holding until the end of the holding. For example, administrative violations, criminal violations and disputes over vote results in regional elections (Adiluhung, Herawati, & Saraswati, 2017), (Savitri & Wirambra, 2020).

The complex problems of electoral justice require the need for comprehensive reconstruction of the justice system. The large number of institutions involved in the process of resolving election cases makes the integration of the electoral justice system very urgent (Asshiddiqie, 2022), (Riyanti, 2021). Moreover, Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Determination of Government Regulations in Lieu of Law Number 2014 concerning the Election of Governors, Regents and Mayors into Law has mandated the formation of a special judicial body (Nomor, 10AD). Thus, this special judicial body will resolve disputes over regional head election results, in addition to the Constitutional Court as an election dispute resolution institution (Aris, 2022), (Reinenda, 2021). Because regional head elections are included in the General Election or General Election. Therefore, this special judicial body is more relevant if it is part of the Constitutional Court. (Rois & Herawati, 2018), (Putra, 2019). This is so that in the future a special judicial body will act as a body to resolve disputes over regional election results (Wrawan, 2022), (Anindya, 2023). In the future, there will only be two Election Courts, namely the Constitutional Court to resolve disputes over election results, while the Special Judicial Body will resolve disputes over regional election results (Riqiey, 2023), (Pratama, Nurlela, & Sitepu, 2021).

2. Materials and Methods

This research uses a type of normative legal research, namely research carried out by examining the laws and regulations that apply or are applied to a legal problem. So in normative legal research, the object of study is statutory regulatory documents and library materials. These statutory regulations include: Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Determination of Government Regulations in Lieu of Law Number 2014 concerning the Election of Governors, Regents and Mayors into Law. Meanwhile, the data collection technique used is through document and library studies of secondary data in the form of primary, secondary and tertiary legal materials. The analysis used is descriptive.

3. Results and Discussion

3.1 Design of Electoral Court Institutions in Various Countries

Every country must have an institutional design and the authority of a special electoral judicial body. It would be a good idea to compare before formulating an ideal design that suits the situation and conditions in Indonesia. Some of these countries include: Sri Lanka, Nepal and South Korea. In these three countries, there is a division in handling election disputes between the Supreme Court and the lower courts. In Sri Lanka, presidential election disputes are handled directly by the Supreme Court, while other elections are handled by the appeals court. However, the court's decision can be submitted as legal action to the Supreme Court. There is also the Supreme Court which has formed a special chamber to handle election disputes. Meanwhile, the Supreme Court of Nepal formed the Constituent Assembly Court (Constitutional Court) specifically to handle central parliamentary election disputes.

Meanwhile, in Morocco, Cambodia and Kazakhstan, the state gives the authority to handle all election disputes to an institution like the Constitutional Court. This is very

interesting, because the institution in these three countries is the Constitutional Council, but in handling election disputes it acts as a court whose decisions are final and binding. In other countries, disputes over election results (disputed election) in Australia are resolved through the High Court. In certain cases the High Court can also submit the resolution to the Supreme Court in the particular state where the dispute occurred. In Ukraine, trials regarding the final election results are the authority of the High Administrative Court (HAC) whose decisions are final. However, regarding all decisions and/or actions of the Central Electoral Commission (Ukrainian KPU), they will face trial at the Kyiv Administrative Court of Appeal (KACA). The British Election Court, as regulated in the Representation of the People Act 1983, is formed only when there is a challenge to the election results and ends when there is a court decision, so it is ad hoc in nature. For legislative election disputes, an election court is established at the first level (district court) and a high court if there is an appeal process. Meanwhile, to handle local election disputes, an election court was formed by the district court by appointing experienced advocates as judges without any legal action. Most of the countries that have special electoral courts are in Latin America, such as Mexico (The Electoral Tribunal of the Federal Judiciary), Brazil (The Supreme Electoral Court), Panama (Electoral Tribunal), Guatemala (Electoral Tribunal), Bolivia (Electoral National Court), Uruguay (Electoral Court), Peru (National Jury of Election) and others.

With so many electoral justice institutional models in each country, none of them are exactly the same, both in terms of institutional design and authority. This clearly shows that the design of electoral justice follows the needs and existing legal systems of each country.

3.2 Design of the Special Regional Election Judicial Body in Indonesia

The 1945 NRI Constitution is the highest regulation that provides guidance for lower laws and serves as guidance for state administrators and the wider community. Considering the need for harmonization and unification of election and general election rules into one constitution, a fifth amendment is needed, specifically to Article 18 paragraph 4 Election of Governors, Regents and Mayors, Article 22E and Article 24 concerning judicial power. The fifth amendment to the 1945 NRI Constitution must be interpreted as a process to make the 1945 NRI Constitution a living constitution for Indonesian constitutional practice, changes to current urgent needs, including the regulation of the constitutional system. Indonesia is currently receiving a lot of criticism. The need to codify these two laws into one constitution of the 1945 Constitution is that the election of governors, regents and mayors is a general election because the election of governors, regents and mayors as regulated in Law Number 10 of 2016 has six similarities. as an Election Law. This view is not only because it has the same six aspects as the general election of members of the DPR, DPD and DPD as well as the Law on the General Election of President and Vice President, but also because the election of regional government heads in a Unitary State guarantees the widest possible autonomy for autonomous regions. Provinces, districts and cities that adopt the presidential form of government follow the mechanism for selecting the head of the central government

The importance of the codification of the two laws is to strengthen their existence, the basic norms of which are derived from the 1945 Constitution of the Republic of Indonesia, namely in Article 18 paragraph (4) and Article 22E paragraph (2) which have similar philosophical, democratic models, organizers, and characteristics. regarding the technical order of elections between the presidential election, the election of legislative members and the election, it should be emphasized that the election is a general election, so changes need to be made by providing additional clauses in Chapter VIIIB of the previous General Law. Elections in the 1945 Constitution Article 22E paragraph (2) which reads; "Elections are held to elect members of the People's Representative Council, Regional Representative Council, President and Vice President, and Regional People's Representative Council." Next it was changed to; that general elections are held to elect

members of the People's Representative Council, Regional Representative Council, President and Vice President, and Regional People's Representative Council as well as to elect the Governor, Regent and Mayor." Meanwhile, to respect the specialties of a region and traditional unity as regulated in Article 18B, Article 22E was added, which was originally added by 6 paragraphs to become 2 paragraphs from Article 18B. In full, the amended content of Article 22E is; 1) General elections are held directly, publicly, freely, secretly, honestly and fairly every five years; 2) General elections are held to elect members of the People's Representative Council, Regional Representative Council, President and Vice President and Regional People's Representative Council as well as elect the Governor, Regent and Mayor; 3) Participants in the general election to elect members of the People's Representative Council and members of the Regional People's Representative Council are political parties; 4) Participants in the general election to elect members of the Regional Representative Council; 5) General elections are held by a national, permanent and independent general election commission; 6) The State recognizes and respects regional government units that are special or regulated by law; 7) The State recognizes and respects the unity of customary law communities and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia as regulated in law; 8) Further provisions regarding general elections are regulated by law. The need to amend Article 24C paragraph (1) of the 1945 Constitution in order to "decide on the dissolution of political parties and resolve disputes over general election results"; in the amendment to establish the authority of the Constitutional Court in relation to "deciding on the dissolution of political parties and resolving disputes over general election results"; added to the Amendment Article, namely Article 24D with the sound of legal norms. "The Election Court has the authority to adjudicate at the first and final level whose decisions are final and binding to decide disputes regarding the results of general elections and the dissolution of political parties"; By granting this authority to the Special Court, the Constitutional Court will be free from political interests, thereby providing flexible space for the Constitutional Court to focus on protecting the constitution. Establishing a new state institution is not easy, especially when it comes to an institution that is independent and has an institutionally equal position to the Supreme Court and the Constitutional Court. Establishing any institution is most deferred to the mission of establishing that institution which will carry out the objectives of the constitution. The design of a special judicial institution with the authority to resolve election disputes is of course based on the constitution, considering that the various types of special courts that currently exist, including the State Administrative Court, District Court and Constitutional Court, are not yet capable. to effectively resolve sectarian issues, due to judicial design.

In the 1945 NRI Constitution, we only recognize two judicial bodies, namely the Supreme Court and the Constitutional Court. The Supreme Court has the authority to hear at the cassation level, examine statutory regulations under the law against the law, and has other authorities granted by law. Meanwhile, the Constitutional Court has the authority to adjudicate at the first and last level whose decisions are final to review laws against the Constitution, decide disputes over the authority of state institutions whose authority is granted by the Constitution, decide on the dissolution of political parties and decide disputes regarding the results of general elections. . Considering the mandate of Law Number 10 of 2016 article 157 paragraph 1, namely the establishment of a special judicial body, it is not appropriate to give this special judicial authority to Bawaslu. The independent formation of a special judiciary for elections is more logical and relevant than making Bawaslu a judicial institution. Bawaslu is right to be the institution that supervises elections and even needs to be made to be able to also act as an investigator and prosecutor of election crimes. Of course, this involves assigning investigators from the police and prosecutors from the prosecutor's office to be assigned to

Bawaslu at certain times, just like investigators and prosecutors at the Corruption Eradication Commission. Thus, the proposal to eliminate the *gakumdu* center found a bright spot, because investigators from the police and prosecutors from the prosecutor's office became one part of Bawaslu.

Due to the lack of clarity regarding the institution authorized to resolve regional election results disputes as regulated in Article 157 of Law Number 8 of 2015, to fill the legal vacuum (*recht vacuum*), Article 157 paragraph (3) of Law Number 8 of 2015 determines that the Constitutional Court is given the authority to resolve disputes over regional election results until a special judicial body is formed which has the competence to resolve disputes over regional election results. This provision is indeed stipulated in dictum number 2 of the Constitutional Court decision Number 97/PUU-XI/2013 which determines that: "The Constitutional Court still has the authority to adjudicate disputes over the results of general regional head elections as long as there is no law regulating this matter." The legal norms contained in dictum number 2 of the Constitutional Court decision Number 97/PUU-XI/2013 and Article 157 paragraph (3) of Law no. 8 of 2015 has several very basic deficiencies, because it contradicts dictum number 1 of the Constitutional Court decision Number 97/PUU-XI/2013. Dictum number 1 of the Constitutional Court decision Number 97/PUU-XI/2013 determines that the norms of Article 236C of Law Number 12 of 2008 and the norms of Article 29 paragraph (1) letter e of Law Number 48 of 2008 are contrary to the 1945 Constitution of the Republic of Indonesia and are not has binding legal force, so that the Constitutional Court no longer has the authority to resolve disputes over direct regional election results. In this regard, it would be illogical if Article 175 paragraph (3) of Law Number 8 of 2015 gave the authority to the Constitutional Court to resolve disputes over direct regional election results. Even though this is made possible by dictum number 2 of Constitutional Court decision Number 97/PUU-XI/2013, legislators should understand that this dictum is temporary. Therefore, the law should specify the competent judicial institution. If you wait until a special judicial body is formed, then the Constitutional Court's authority granted through Article 157 paragraph (3) of Law Number 8 of 2015 will not be temporary, because it will take until 2027. This does not provide legal certainty in constitutional practice, especially in implementation of regional government in Indonesia.

Although in the Constitutional Court decision Number 97/PUU-XI/2013 it was determined that the Constitutional Court no longer has the authority to resolve disputes over regional election results, because Article 236 C of Law Number 12 of 2008 and the norms of Article 29 paragraph (1) letter e of the Law Number 48 of 2008 is contrary to Article 22E paragraph (2) and Article 24C paragraph (1). The Constitutional Court's main reason in its decision is that the *Pilkada* is not an election regime, therefore equating the *Pilkada* with the General Election is contrary to the principle of *lex superior derogate legi inferiori*. The Constitutional Court is of the opinion that based on Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia, it is determined that the Constitutional Court is only given limitative authority to resolve disputes over election results, where election terminology has been determined in a limitative manner in Article 22E paragraph (2) of the 1945 Constitution of the Republic of Indonesia. Therefore, the provisions of the Law which give authority to the Constitutional Court to resolve disputes over regional election results are contrary to the 1945 Constitution of the Republic of Indonesia. If the Constitutional Court is still given the authority to resolve disputes over regional election results, then changes should first be made to the provisions of Article 22E paragraph (2) and Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia. This means that the *Pilkada* terminology must first be equated with the Election terminology. However, these changes should be carried out through procedures for amending the 1945 NRI Constitution which are regulated in Article 37 of the 1945 NRI Constitution (formal amendment). The Constitutional Court still has the specialty to be proposed as an institution for resolving regional elec-

tion disputes (disputes), even though it is temporary, because the Constitutional Court is experienced in handling them. Aspects of the strength of academics and practitioners who form the background of Constitutional Court judges and the fast judicial process that has been able to be implemented by the Constitutional Court, can be used as a guarantee to handle regional election dispute resolution directly, especially since this time the regional elections will be held simultaneously, so they require capable judges to handle them. . Apart from the existence of the Constitutional Court, one other institution that has long been mandated or given a special place by law is the "Special Judicial Agency". It is true that this body is not directly referred to juridically (based on Law Number 48 of 2009) to handle direct regional election disputes, but it can be formed to be a juridical solution to certain juridical problems in society, including direct regional elections. Article 1 number 8 of Law Number 48 of 2009 determines that "A Special Court is a court that has the authority to examine, try and decide on certain cases which can only be formed within one of the judicial bodies under the Supreme Court as regulated in law. invite." Furthermore, Article 27 paragraph (1) of Law Number 48 of 2009 determines that "Special courts can only be formed in one of the judicial environments under the Supreme Court as intended in Article 25". Law Number 48 of 2009 gives law makers the authority to form special judicial bodies, including special judicial bodies that have the authority to resolve disputes over regional election results. A special judicial body for resolving regional election disputes must be formed under the 4 (four) existing judicial bodies. Therefore, the special judicial body specified in Article 157 paragraph (1) of Law Number 8 of 2015 should be established under the auspices of the Constitutional Court on a par with other courts at the district or city and provincial levels. Apart from that, all disputes, both process disputes and regional election results disputes, are decided by the Regional Election Judicial Body. If a Special Judicial Body can be formed, of course by studying the paradigm and system for resolving regional election disputes that have been handled by the Constitutional Court, then perhaps this will be the best solution to "reduce" the burden on the Constitutional Court, whose ideals are focused on handling constitutional problems that fall under its authority. and the obligations of the Constitutional Court (Article 23 C paragraphs (1) and (2).

4. Conclusion

Based on the description of the discussion above, it can be concluded as follows: 1) With the many institutional models of electoral justice in each country, of course none of them are exactly the same, both in relation to institutional design and authority. This clearly shows that the design of electoral justice follows the needs and existing legal systems of each country; 2) The design of the Special Judicial Body for Regional Elections in Indonesia in the future refers to the special judicial body specified in Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning Determination of Government Regulations in Lieu of Law Number 2014 concerning Elections Governors, Regents and Mayors become Laws Article 157 paragraph 1, as well as Article 157 paragraph (1) of Law Number 8 of 2015 should be formed permanently under the auspices of the Constitutional Court which is equivalent to other courts at the district or city level and Province. Apart from that, all regional election disputes, both process disputes and result disputes, are decided by the special Regional Election Judicial Body.

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