

# JURIDICAL REVIEW OF ELECTIONS DISPUTE SETTLEMENT IN INDONESIA

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**Citation:** Yamani, Akhmad Zaki., et.al., 2024. Juridical Review Of Elections Dispute Settlement In Indonesia. *Int' Journal of Law, Environment, and Natural Resources (INJURENS)*, 4 (1), 29-40.

**Academic Editor:** Muhammad Hendri Yanova  
Received: 13 December 2023  
Revised: 5 April 2024  
Accepted: 18 April 2024  
Published: 18 April 2024

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**Abstract:** The research on "Juridical Review of Election Dispute Resolution in Indonesia" aims to describe the mechanism of election dispute resolution in Indonesia, and analyze the current weaknesses of election dispute resolution in Indonesia. This is a normative legal research, which examines laws and regulations in an Indonesian legal system that are coherent with written legal values, especially those related to election dispute resolution in Indonesia. The results of the study state that election settlement mechanisms are important to protect the rights of citizens and help determine whether elections are truly a reflection of the will of their citizens, as well as for elections to be considered credible, voters and election contestants must have access to effective election dispute resolution mechanisms. independent, fair, accessible and effective. Weaknesses in the settlement of election disputes that have been carried out so far have not fulfilled a sense of justice because dispute resolution is carried out through the Constitutional Court based on Article 24 C paragraph (1) of the 1945 Constitution, whose authority is then elaborated in Article 10 paragraph (1) of Law (UU) Number 24 2003 concerning the Constitutional Court as amended by Law Number 8 of 2011 (UU MK). Dispute resolution through the Constitutional Court in Jakarta is felt to be very burdensome for election participants because it is not in accordance with the principle of a cheap, fast and efficient trial. Election dispute settlement, which has been carried out for a maximum of 7 (seven) days, begins with the stages of receiving reports, researching, clarifying, conducting studies, and making decisions. The very limited completion time, which is a maximum of 7 (seven) days, can create a sense of injustice for justice seekers, because this short process can lead to haste in the examination which in turn creates a feeling of insecurity.

**Keywords:** Juridical Review; Settlement; Dispute; Election.

## 1. INTRODUCTION

The Unitary State of the Republic of Indonesia as a country adheres to the principle of people's sovereignty as expressly stated in Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia (UUD). It reads "Sovereignty is in the hands of the people and implemented according to the Constitution." Democracy will always place humans as the owners of sovereignty, this is what is known as the principle of popular sovereignty. The principle of popular sovereignty is closely related to the democratic system in Indonesia because the people have always been the main actors in implementing both.

Jimly Asshidiqie, stated that one of the main pillars in the implementation of a democratic system in Indonesia is to channel people's opinions on a regular basis through the general election mechanism (Asshidiqie, 2007, p. 752). General elections or commonly abbreviated as General Elections generally take place with the aim of electing representatives of the people and other public officials so that they can become their representatives in formulating or establishing a policy that will also be useful for the people in general. Article 1 point 1 of Law Number 7 of 2017 concerning General Elections (the Election Law) states that elections are a means of people's sovereignty to elect members of the DPR, members of the DPD, President and Vice President, and to elect members of the DPRD, which are carried out directly, publicly, free, confidential, honest and fair within the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

Furthermore, it was emphasized that global elections are also recognized by the world community, this can be seen from one of the points in the United Nations Report which states that elections that occur in a country (including Indonesia) have a crucial role, one of which is to realize sustainable peace in the midst of society,

"The true measure of an election is whether it engenders broad public confidence in the process and trust in the outcome. An election run honestly and transparently, respecting basic rights, with the effective and neutral support of State institutions and the responsible conduct of participants (leaders, candidates and voters) is most likely to achieve an accepted and peaceful outcome." (United Nations)

This means that the true measure of an election is whether the general election can really generate widespread public trust, both in the context of the implementation process and in the context of confidence in the results. General elections can be said to run honestly and transparently and respect basic rights, if they get effective and neutral support from state institutions and the various parties involved who are responsible for them. Thus, there is a high probability that the general election will be able to achieve results that are well received and conducive in society.

Meanwhile the purpose of holding general elections is to realize the governance of the state as mandated by Pancasila as the *grondslag filosofische*, the 1945 Constitution of the Republic of Indonesia, as well as all the aspirations of the nation as contained in the Proclamation of Indonesian Independence on August 17, 1945 in order to achieve perfection in the development of law in Indonesia. Indonesia. As for legal development, it is an integral part that cannot be separated from the existence of National Development, so that if the objectives of legal development can be realized in society, so will the national development.

The Constitutional Court (MK) defines legal development as an effort to achieve national goals in upholding justice and truth, protecting society, and ensuring the establishment of public order in a legal state based on Pancasila and the Indonesian Constitution (Mahkamah Konstitusi, 2008, p. 198). The Constitutional Court (MK) defines legal development as an effort to achieve national goals in upholding justice and truth, protecting society, and ensuring the establishment of public order in a legal state based on Pancasila and the Indonesian Constitution.

So crucial is the role of general elections in state administration in Indonesia that this cannot be spoiled or tainted with things that are contrary to the basis of their implementation, such as the practice of money politics. Unfortunately the practice of money politics or money politics in the implementation of general elections in today's society seems to have become a common practice. Even though in common sense this kind of practice can be a powerful trigger for the community as voters as well as owners of voting rights to easily follow where the money comes from and what the

"giver" wants. Even the facts in society say that money as a resource in money politics tends to be followed and valued more than the intellectual intelligence possessed by candidates, so that this "financial magnet" tends to determine who wins in the general election (Hawing & et.al, Juni 2021, p. 46).

The practice of money politics in holding general elections concretely not only harms the principles of Indonesia as a democratic country, but also completely undermines the principle of popular sovereignty and ignores the ethical and moral content contained in the democratic system itself. This can lead to the tendency to create an unhealthy government and tends to be used by interested parties to exercise destructive power. In addition, the practice of money politics is also very crucial in causing procedural deviations or even general election violations which lead to the emergence of general election disputes.

## **2. METHODS**

This research is normative legal research, using a statutory regulation approach that focuses on primary legal material, namely Law Number 7 of 2017, Amendments to Law Number 8 of 2012 concerning General Elections. The nature of qualitative descriptive analysis. Collection of legal materials through document or library studies, processing of legal materials is carried out by inspection, tagging, reconstruction, and systematization. Analysis of legal materials was carried out qualitatively and comprehensively.

## **3. RESULTS AND DISCUSSION**

### **3.1. Election Dispute Resolution Mechanisms in Indonesia**

In giving sovereignty to the people, the Indonesian constitutional system recognizes the direct election system as stipulated in Article 22E of the 1945 Constitution. This direct election is a manifestation of the sovereignty possessed by the people. Related to this, Miriam Budiarjo<sup>1</sup> stated that elections are a condition sine quanon for a modern democratic state, where through elections citizens temporarily

surrender their political rights, namely the sovereign right to participate in running the country.

Elections are a real form of procedural democracy, although democracy is not the same as elections, elections are one of the most important aspects of democracy which must also be held democratically. Therefore, it is common for countries that call themselves democracies to tradition elections to elect public officials in the legislative and executive fields, both at the central and regional levels. The basic principle of democratic state life is that every citizen has the right to participate actively in the political process. (Thaib & Huda, 1992, p. 13). Elections in the context of the 1945 Constitution are a political process in constitutional life as a means towards the formation of state institutions and the election of state officials as carriers of people's sovereignty.

To realize a truly democratic election, there are several standards that must be used as a reference:

- 1) Elections must provide full opportunity for all political parties to compete freely, honestly and fairly.
- 2) Elections are indeed intended to elect quality representatives of the people who have moral integrity and most importantly these representatives truly reflect the will of the people.
- 3) The implementation of elections must involve all citizens without the slightest discrimination, so that the people really have the belief that they are the embodiment of people's sovereignty.
- 4) Elections are carried out with a set of regulations that support freedom and honesty, so that with laws that give citizens more opportunities for freedom, opportunities towards democratic elections can be achieved.
- 5) Election implementation should take into account the organizer's instruments, because it is very possible that the organizer's interests will disturb the purity of the election.
- 6) On a more philosophical issue, elections should place more emphasis on the manifestation of people's rights, in order to create participation in government.

The implementation of periodic elections indicates that the country is a democratic country which is marked by the replacement of leadership from the national to regional levels by involving the public to exercise their right to vote to elect leaders. In reality, the regional election process does not run smoothly with election disputes.

The emergence of disputes in the Mojokerto Regency Regional Head Election, for example, makes it necessary to carry out dispute resolution so that the Regional Head Election runs according to the Election principles. Election disputes are classified into several types, such as disputes between organizers, organizers and participants or election participants and participants. However, with the events that have emerged, they have their own path, which is called the election justice system.

Election Justice is a system that is used as a perspective to find out, see and even resolve election disputes that occur. The categories used in the perspective of election justice as a system are the basis for resolving disputes in the Mojokerto District Election, namely prevention, election dispute resolution systems, and alternative election dispute resolution.

Disputes are statements of conflicting claims or rights between parties involved in a legal proceeding. Election disputes are complaints (statements of objection), protests, claims (contradictory statements), cancellations, and contestations related to the election process. In an election justice system, effective dispute handling is an important part of maintaining public confidence in the election process and its results.

Election disputes that arise are divided into three periods according to the election cycle itself, namely pre-election, election and post-election. In terms of the authority of election disputes, settlement in a judicial institution, especially the Constitutional Court, cannot be separated from historical factors. The Constitutional Court of the Republic of Indonesia, for example, has this authority which cannot be separated from the poor record of the implementation of the Indonesian elections, the election results are not fought for in a legal settlement so that the results of the elections are often in doubt.

As it is known that the main stages of the election have the potential to give rise to disputes or violations. This potential is caused by fraud, mistakes, and election winning strategies that do not violate the law but reduce public trust (non-fraudulent misconduct). (Gaffar, 2013). For this reason, rules have been formed to serve as guidelines for resolving legal issues that arise in elections.

Based on existing laws, election law issues in Indonesia can be grouped into six categories such as:

- 1) Election administration violations, namely violations that include procedures, procedures and mechanisms related to the administration of election implementation at every stage of the election implementation other than election crime and violation of the code of ethics of election organizers; (Santoso & et.al., 2006)
- 2) Election crimes, namely not criminal offenses and/or crimes against the provisions of election crimes as stipulated in this law;
- 3) Election disputes, namely disputes between election participants and disputes between election participants and election organizers resulting from the issuance of decisions by the KPU, Provincial KPU, and Regency/Municipal KPU;
- 4) Election state administration disputes, namely disputes that arise in the field of election state administration between candidates for members of DPR, DPD, Provincial DPRD, Regency/Municipal DPRD, or political parties candidate for Election Contestants and KPU, Provincial KPU, and Regency/City KPU as a result of the issuance of KPU, Provincial KPU, and Regency/Municipal KPU decisions;
- 5) Violation of the election organizers' code of ethics, namely violations of the ethics of election organizers based on oaths and/or promises before carrying out their duties as election organizers;
- 6) Election result disputes, namely disputes between the KPU and Election contestants regarding the determination of the national election result vote acquisition which may affect the election contestant's seat acquisition.

Regarding the various legal issues above, a resolution mechanism is also regulated. Where, every existing legal issue has its own mechanism with the involvement of different settlement agencies:

*First*, election administration violations are handled by the KPU, Provincial KPU and Regency/Municipal KPU. Administrative violations can take the form of violations of education requirements or voter age requirements, violations of posting campaign attributes, prohibition on bringing children under 7 years of age or prohibition on cross-regional convoys.

*Second*, the settlement of election crimes is carried out by involving election supervisors, the police, prosecutors and courts in a settlement system similar to the criminal justice system.

*Third*, election disputes are disputes that occur between election participants. Where, this dispute was resolved by Bawaslu and its staff. In Article 73 paragraph (4) letter c it is emphasized that Bawaslu has the authority to resolve election disputes.

*fourth*, Election State Administrative disputes arise for two reasons:

- 1) issuance of a KPU Decree regarding the determination of Election Contesting Political Parties.
- 2) crossed out from the final list of candidates as a result of the issuance of a KPU Decree regarding the determination of the final list of candidates.

In accordance with the provisions of Law Number 8 of 2012, it is limitedly determined that the objects included in the election state administration dispute are only the two matters referred to. In a sense, only KPU, Provincial KPU and Regency/Municipal KPU decisions relating to the determination of election contesting political parties and the establishment of the final list of candidates can be submitted as a dispute through the lawsuit/request mechanism for the settlement of election state administration disputes, and the settlement will be carried out by Bawaslu and PT TUN.

*Fifth*, disputes over election results between the KPU and election participants regarding the *determination* of the vote acquisition of election results nationally which can affect the seats acquired by election participants. This election result dispute is the domain of the Constitutional Court to resolve based on the constitutional mandate given by Article 24C paragraph (1) of the Third Amendment of the 1945 Constitution. The election result dispute itself is a dispute between the KPU and election contestants regarding the determination of the vote acquisition of the election results, in the sense that if there is an error in the the results of the vote count conducted by the KPU, Election participants can submit a request to the Constitutional Court.

### 3.2. Weaknesses of Election Dispute Resolution in Indonesia

Election disputes arise due to disputes between election participants or between participants and election organizers. Therefore election dispute settlement is also regulated in the 1945 Indonesian Constitution, namely in Article 24 C paragraph (1), whose authority is spelled out in Article 10 paragraph (1) of the Constitutional Court Law Number 24 of 2003 as amended by the Constitutional Court Law Number 8 of 2003. 2011 and Article 29 paragraph (1) letter d of the Law on Judicial Powers Number 48 of 2009. Meanwhile, elections in their development have a broader meaning, which results in the expansion of the types of election disputes examined and decided by the Constitutional Court.

Election disputes are issues that have implications for the implementation of democracy in Indonesia. Election dispute cases both related to criminal and administrative violations that have occurred so far have been resolved through a judicial mechanism, namely the Constitutional Court. This creates dissatisfaction with the parties when other bodies that are not judicial institutions take part in handling this problem, even though cases including election disputes are legal cases, which should be resolved through a legal court mechanism.

Elections are basically a manifestation of the constitutional mandate, namely Article 1 paragraph (1) of the 1945 Constitution which explicitly states that sovereignty is in the hands of the people and implemented according to the constitution. Elections aim to elect candidates for legislative members and pairs of candidates for chief executive, which is a mechanism for changing power which in Indonesian constitutional practice is carried out in a five-year cycle. Elections held to elect candidates for legislative members (DPR, DPRD and DPD) as well as to elect pairs of candidates for chief executive (President and Vice President as well as regional heads (Governor and Deputy Governor, Regent and Deputy Regent, Mayor and Deputy Mayor) have directly become an integral part in the development of democracy in Indonesia.

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The implementation of direct elections or regional elections can lead to disputes, one of which is the dispute over the direct results, even this problem will be much more massive. Because of this, disputes over election results or local elections must be resolved in accordance with the law (due process of law) and by the competent authority.

So far, the election dispute settlement system has resulted in ambiguity, overlapping, and out of sync in legal settlements related to general elections and local elections. Therefore, in order to improve and reorganize election and regional election law enforcement, it is very necessary to have a special judicial concept related to election and regional election dispute resolution, or at least an integrated judiciary that handles election violations, be it criminal violations, administrative violations and state administration disputes. In addition, Bawaslu and its staff also need to be given more authority in law enforcement in the sense that Bawaslu and its staff are given the authority to impose administrative sanctions and it is necessary to have police officers and prosecutors with special duties as election supervisors in order to carry out investigations, investigations and prosecution of cases of election violations.

#### **4. CONCLUSIONS**

Election settlement mechanisms are important to protect citizens' rights and help determine whether elections are truly a reflection of the will of its citizens, as well as for elections to be considered credible, voters and election contestants must have access to election dispute resolution mechanisms that are independent, fair, easily accessible and effective.

Weaknesses in the settlement of election disputes that have been carried out so far have not fulfilled a sense of justice. The settlement is carried out through the Constitutional Court based on Article 24 C paragraph (1) of the 1945 Constitution which is felt to be very burdensome for election participants because it is not in accordance with the principles of a cheap, fast and efficient judiciary.

## 5. SUGGESTION

It is necessary to proportionally strengthen and place election institutions in charge of holding elections.

Election organizers, the Supreme Court, the Attorney General's Office, the Police, the People's Legislative Assembly and the Government are advised to formulate and establish regulations for the Election Special Courts.

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