

Special Election Courts in the Indonesian Constitutional System: An Election Court Construction

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Abstract: This study aims to determine Indonesia's implementation and ideal model of the election court system. This research uses the type of normative legal research. The legal materials used in this research consist of primary, secondary, and tertiary legal materials. The method used in data analysis is qualitative analysis. Based on the description of the results and discussion, it can be concluded that the implementation and ideal model of the election court system in Indonesia, namely, there is a Special Election Court. In this case, settlement is related to the code of ethics fraud of the Election Administrator, administrative election fraud, election process dispute, electoral process disputes in the State Administrative Court, electoral crime, and election result dispute. Based on this conclusion, it is recommended that the Constitutional Court be given the authority to become a constitutional political court, in addition to carrying out the authorities stipulated in Article 24 and Article 24C of the 1945 Constitution. In this case, it handles all fraud and violations of the electoral process, in addition to election criminal violations. Furthermore, it also carried out the transformation of the DKPP as a Special Election Court within the scope of the Constitutional Court.

Keywords: Court Construction, Election Court, Election Fraud, Special Court.

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I. INTRODUCTION

The constitutional system in Indonesia underwent a fundamental change through the rare step of legal reform, which was marked by the amendment of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) four times, namely in 1999, 2000, 2001, and 2002. In principle, the amendments to the 1945 Constitution are necessary and cannot be avoided, especially regarding the substance of the sociopolitical problems of people's lives.¹

One of the fundamental changes from the amendments to the 1945 Constitution is where the people's sovereignty holders no longer position the People's Consultative Assembly as the highest sovereign institution but are equivalent to state institutions whose members are directly elected through general elections.² In this case, including the President, the House of Representatives (DPR), and the Regional Representative Council (DPD) are the implementing institutions of people's sovereignty. Based on Article 22E section (6) of the 1945 Constitution, it regulates that "*further provisions regarding general elections are regulated by law.*"

Another fundamental change from the amendments to the 1945 Constitution is positioning the Supreme Court as no longer the only institution of Judicial Power. In this case, a Constitutional Court has been established within the scope of Judicial Power. Based on Article 24 section (2) of the 1945 Constitution, it regulates that:

"The judicial power is exercised by a Supreme Court with its subordinated judicial bodies within the form of general courts, religious courts, military courts, administrative courts, and by a Constitutional Court."

It is better to explain the terms justice and court first to understand justice. However, Cornelis Van Vollenhoven admits that defining justice is complicated. According to Mr. S. J. FockemaAndreea, the State created the court to examine and resolve legal disputes and their organizer. Meanwhile, according to Dr. W. L. G. Lemaire, court is "*...rechtstoepassing dus ook rechtspraak (court as an implementation of law).*"³ According

¹Abdillah, M. (2013). Hubungan Agama dan Negara dalam Konteks Modernisasi Politik di Era Reformasi. *Ahkam: Jurnal Ilmu Syariah*, 13(2), pp. 247-258.

²Rikardo, O. (2020). Penerapan Kedaulatan Rakyat di dalam Pemilihan Umum di Indonesia Berdasarkan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945. *Jurnal Hukum Sasana*, 6(1), pp. 51-71.

³Sulistiyono, A. & Isharyanto. (2018). *Sistem Peradilan di Indonesia: Dalam Teori dan Praktik*. Jakarta: Kencana Prenada Media Group, p. 1.

to Sudikno Mertokusumo, both opinions are correct but are still considered incomplete.⁴ In this case, the court covers legal disputes, the determination of heirs, the ratification of adopted children, and many other decisions.

As with the court, judicial is also part of the law's implementation. However, the law's implementation does not always happen with the court.⁵ A more satisfying opinion from Mr. J. van Khan is that "*judicial is the work of judges or court bodies.*" According to him, judges and courts are bodies formed by the authorities with clear duties and functions to examine complaints regarding rights (legal) disturbances or lawsuits and give legal decisions.⁶

In the dynamics of elections, various regulations have changed from the first election until the last, held in 2019 based on Law of the Republic of Indonesia Nomor 7 Tahun 2017 tentang General Election (hereinafter referred to as Law No. 7 of 2017). Law No. 7 of 2017 was formed on the history and upheaval that occurred in Indonesia's elections, especially in the enforcement of election law and dispute resolution to realize transparent and fair elections. However, from every law and regulation related to the general election, only after 2004 was the mechanism for the dispute over the general election results regulated. The previous laws and regulations only regulate general election crimes in this case. Laws and regulations after 2004 also correlated with the change in the election mechanism from indirect to direct election. This change in the selection mechanism can increase disputes between participants. Therefore, a judicial mechanism was formed in the election called the dispute over election results. In this case, it is the authority of the Constitutional Court to maintain the principles of the election itself. Based on Article 24C section (1) of the 1945 Constitution, it regulates that:

"The Constitutional Court has the authority to adjudicate at the first and final level whose decision is final to review laws against the Constitution, to adjudicate on authority disputes of state institutions whose authorities are given by the Constitution, to adjudicate on the dissolution of a political party, and to adjudicate on disputes regarding the result of a general election."

In Indonesia, various institutions that carry out their functions, duties, and authorities have resolved the chaotic election administration.⁷ However, there are two election disputes in Indonesia, namely procedural disputes and outcome disputes. Procedural disputes occur before the election, such as the technical determination of candidate management, voting, political dowries, and internal party nominations.⁸ The result disputes occur at the election stage, such as money politics, sabotage, conflicts during elections, and the vote recapitulation process carried out by the General Election Commission (KPU) to determine the results of the highest vote of a democracy.⁹

Many legal institutions deal with the two disputes above, such as administrative disputes and election violations resolved by the Election Supervisory Board (Bawaslu) and the State Administrative Court (PTUN). Meanwhile, Bawaslu and the Police are at the forefront as an Integrated Law Enforcement Center (Sentra Gakumdu) to ensure that no election participants violate the provisions and principles of democracy.¹⁰ As for election crimes, they will be resolved in the local State General Court. Meanwhile, ethical violations committed by election organizers will be resolved through the Honorary Council of Election Administrators (DKPP). Finally, the dispute over the election results was transferred to the Constitutional Court.

On the other hand, Judicial Power, judicial jurisdiction, or the scope of the judicial authority must also be understood as an environment of rights, obligations, and responsibilities in a particular area or work environment. Based on Article 1 point 8 of Law of the Republic of Indonesia Number 48 of 2009 on the Judicial Powers (hereinafter referred to as Law No. 48 of 2009), explains that:

"Special Courts are courts that have the authority to examine, hear, and decide on certain cases that can only be established within one of the judicial bodies under the Supreme Court as regulated by law."

At least two factors can distinguish or divide the jurisdiction of the judicial power, namely the level of the court and the environment of judicial power. The first factor would be differentiating jurisdiction between the Supreme Court, the High Court, and the lower courts. The second factor is creating absolute power or authority for each court's environment, called authority attribution.

⁴Suhariyanto, B. (2015). Eksistensi Pembentukan Hukum oleh Hakim dalam Dinamika Politik Legislasi di Indonesia. *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, 4(3), pp. 413-430.

⁵Sulchan, A. (2014). Rekonstruksi Penegakan Hukum terhadap Perkara Pidana Pemilihan Umum Berbasis Nilai Keadilan. *Jurnal Pembaharuan Hukum*, 1(3), pp. 350-359.

⁶Sulistiyono, A. & Isharyanto. (2018). *Op. Cit.*, p. 2.

⁷Simanjuntak, J. (2016). Kemandirian Lembaga Penyelenggara Pemilihan Umum di Indonesia. *Papua Law Journal*, 1(1), pp. 119-141.

⁸Munaf, Y. (2017). Implikasi Pemilihan Kepala Daerah Serentak pada Tahun 2016 dalam Perkembangan Demokrasi di Indonesia. *Asian Journal of Environment, History and Heritage*, 1(1), pp. 189-199.

⁹Nurhasim, M. (2010). Konflik dalam Pilkada Langsung: Studi tentang Penyebab dan Dampak Konflik. *Jurnal Penelitian Politik*, 7(2), pp. 105-117.

¹⁰Ramadhan, M. N. (2019). Evaluasi Penegakan Hukum Pidana Pemilu dalam Penyelenggaraan Pemilu 2019. *Jurnal Adhyasta Pemilu*, 2(2), pp. 115-127.

Due to the uncertainty of the institution authorized to settle disputes over the direct election results, to fill the legal vacuum (*recht vacuum*) as based on Article 157 section (3) of Law of the Republic of Indonesia Number 6 of 2020 on the Enactment of Government Regulation in Lieu of Law Number 2 of 2020 on the Third Amendment to Law Number 1 of 2015 on the Enactment of Government Regulation in Lieu of Law Number 1 of 2014 on the Election of Governor, Regent, and Mayor Into Law Into Law (hereinafter referred to as Law No. 6 of 2020), regulates that “cases of disputes over the determination of votes in the final stage of the election results are examined and tried by the Constitutional Court until a special courts body is established.”

The establishment of a special courts system regarding elections is a constitutional idea that emerged in the struggle to improve the quality of democracy substantially. However, in its formation, a clear legal political direction is needed and a comprehensive study of the mechanisms, procedures, and models of electoral dispute resolution. Various authorized agencies have resolved election disputes with various modes and types according to laws and regulations. However, it is unfortunate because, in practice, legal uncertainty sometimes arises. The parameter that needs to be evaluated in assessing the idea of establishing special courts regarding elections is to measure the degree and importance of elections for Indonesian democracy. More important in this democratic procession is the meaning of elections based on the direct, general, free, secret, honest, and fair principles. Therefore, it must be studied more deeply related to the accuracy in establishing special courts regarding elections.

Based on the above background, this study aims to determine Indonesia’s implementation and ideal model of the election court system.

II. METHOD

This research uses the type of normative legal research. The normative legal research is intended to examine legal norms. Meanwhile, this research approach is a statute approach. This approach is carried out by examining all laws and regulations related to law enforcement against Village fund corruption. The sources of legal materials used in this research consist of:¹¹

1. Primary legal materials, namely binding legal materials. In this case, in the form of laws and regulations, jurisprudence, treaties, and other crucial legal materials.
2. Secondary legal materials, namely materials that explain primary legal materials obtained from library studies. In this case, in the form of literature related to research problems.
3. Tertiary legal materials, namely materials that provide information and explanations about primary legal materials and secondary legal materials. In this case, in the form of legal dictionaries, newspapers, and encyclopedias.

The technique used in collecting research data is literature study. Literature study, including collecting, reading, and browsing many journals, books, laws and regulations, scientific works, literature from the internet, and other materials. In this case, it is related and can support this research’s preparation.¹² All data that has been collected will then be classified and analyzed to produce conclusions from the materials obtained in accordance with the problems discussed. The method used in data analysis is qualitative analysis, which describes quality data in regular, coherent, logical, non-overlapping, and effective sentences. In this case, to serve as a reference and material for legal considerations to provide solutions on how to establish special courts election bodies.

III. RESULT AND DISCUSSION

A. Implementation of Courts in Elections in Indonesia

Laws and regulations related to election violations and disputes in Indonesia are regulated in two laws, namely Law No. 7 of 2017 and Law No. 6 of 2020. The two laws divide election violations and disputes into six types.

1. Code of Ethics Fraud of the Election Administrator

Based on Article 456 of Law No. 7 of 2017, regulates that “*The code of ethics fraud means ethics fraud by Election Administrator under an oath and/or promise before stints as Election Administrator.*”

From the above provisions, it is clear that the subject or party who can commit and receive sanctions for fraud is the Election Administrator. Thus, participants and independent election monitoring institutions are not subject to the code of ethics fraud of the Election Administrator.

Based on Article 1 point 24 of Law No. 7 of 2017, explains that “*The Honorary Council of Election Administrators, hereinafter abbreviated as DKPP, is the institution in charge of handling the code of ethics fraud of the Election Administrator.*”

¹¹Qamar, N. &Rezah, F. S. (2020). *Metode Penelitian Hukum: Doktrinal dan Non-Doktrinal*. Makassar: CV. Social Politic Genius (SIGn), p. 99.

¹²Harefa, N. S. K., et al. (2020). Dasar Pertimbangan Hakim terhadap Tindak Pidana Korupsi yang Dilakukan oleh Pegawai Negeri Sipil (PNS): Studi Kasus Putusan Pengadilan Negeri Medan Nomor: 73/Pid.Sus-TPK/2018/PN.Mdn. *SIGn Jurnal Hukum*, 2(1), p. 54.

Furthermore, based on Article 457 section (3) of Law No. 7 of 2017, regulates that “*The code of ethics fraud of PPLN, KPPSLN, and Overseas Panwaslu shall be resolved by the DKPP.*”

Based on the above provisions, DKPP has issued regulations, including:

- a. Regulation of Honorary Council of Election Administrators of the Republic of Indonesia Number 2 of 2017 on Code of Ethics and Behavioral Guidelines for Election Administrator;
- b. Regulation of Honorary Council of Election Administrators of the Republic of Indonesia Number 3 of 2017 on Code of Ethics Guidelines for Election Administrator;
- c. Regulation of Honorary Council of Election Administrators of the Republic of Indonesia Number 4 of 2017 on Code of Ethics and Behavioral Guidelines for Honorary Council of Election Administrators.

As for the DKPP Decision, based on Article 458 section (10), section (11), section (12), section (13), and section (14) of Law No. 7 of 2017, regulates that:

(10) DKPP establishes a decision after conducting research and/or verification of the complaint, listening to the defense and testimony of witnesses, and considering other evidence.

(11) The decision of DKPP in the form of sanctions or rehabilitation is taken in the plenary meeting of DKPP.

(12) The sanctions, as referred to in section (11), can be in the form of a written warning, temporary dismissal, or permanent dismissal for the election administrator.

(13) The decision, as referred to in section (10), is final and binding.

(14) Election administrator is required to implement DKPP decisions.

While in Law No. 6 of 2020, only two articles regulate the code of ethics fraud of the Election Administrator. Based on Article 136 of Law No. 6 of 2020 regulates that “*the Code of Ethics Fraud means ethics fraud by Election Administrator under an oath and/or promise before stints as Election Administrator.*”

Based on Article 137 of Law No. 6 of 2020 regulates that:

(1) Code of ethics fraud of the Election Administrator as referred to in Article 136 is resolved by DKPP.

(2) The procedure for settlement of administrative election fraud, as referred to in section (1), is carried out in accordance with the provisions of laws and regulations on election administrators.

2. Administrative Election Fraud

Administrative Election Fraud in Law No. 7 of 2017 are not defined but only emphasize its scope. Based on Article 460 of Law No. 7 of 2017 regulates that:

(1) Administrative Election Fraud includes violations of the guidance, procedure, and mechanism related to the administration of implementing the Election in each stage of the implementation of the Election.

(2) Administrative fraud as referred to in section (1) does not include election crimes and code of ethics fraud.

The subject or perpetrator of administrative election fraud is not mentioned, in contrast to election crimes where the subject or perpetrator is clearly stated. In this case, administrative election fraud is only limited to mentioning the fraud of the subjects or perpetrators. Moreover, the guidance, procedure, and mechanism in each stage of the implementation of the election have a broad meaning. In addition, many guidelines, procedures, and mechanisms are also regulated in Article Law No. 7 of 2017. Not surprisingly, it is not only election contestants, Candidate Pairs, candidates for members of DPR, DPD, DPRD who can become subjects or perpetrators of administrative election fraud. The Election Administrator can also be a subject or a perpetrator. In some cases, administrative election fraud was carried out by KPU commissioners from the center to the regions.

As for the settlement of administrative election fraud, as based on Article 461 of Law No. 7 of 2017, regulates that:

(1) Bawaslu, Provincial Bawaslu, Regency/Municipal Bawaslu receive, examine, review, and decide Administrative Election Fraud.

(2) Sub-District Panwaslu receives, checks, reviews, and makes recommendations on the results of its review of Administrative Election Fraud to Election Supervisors in stages.

(3) Examination by Bawaslu, Provincial Bawaslu, Regency/Municipal Bawaslu must be carried out openly.

(4) If it is necessary to follow up on the handling of election violations, Bawaslu, Provincial Bawaslu, Regency/Municipal Bawaslu can carry out an investigation.

(5) Bawaslu, Provincial Bawaslu, Regency/Municipal Bawaslu are obligated to decide on the settlement of administrative election fraud no later than 14 (fourteen) working days after the findings and reports are received and registered.

(6) Decisions of Bawaslu, Provincial Bawaslu, Regency/Municipal Bawaslu for settlement of administrative election fraud in the form of:

a. administrative improvements to the procedure, procedures, or mechanisms in accordance with the provisions of laws and regulations;

- b. written strikes;
- c. not included in certain stages of the elections; and
- d. other administrative sanctions in accordance with the provisions of this Law.

Based on Article 463 of Law No. 7 of 2017, regulates that:

(1) In the event of an Administrative Election Fraud as referred to in Article 460, which occurs in a structured, systematic and massive manner, Bawaslu shall receive, examine, and recommend the Administrative Election Fraud within a maximum period 14 (fourteen) working days.

(2) Correction, as referred to in section (1), must be carried out openly and in accordance with the provisions of laws and regulations.

(3) KPU is obligated to follow up on the Bawaslu decision by issuing a KPU decision no later than 3 (three) working days as of the issuance of the Bawaslu decision.

(4) KPU's decision as referred to in section (3) may be in the form of administrative sanctions for disqualifying candidates for members of DPR, DPD, Provincial DPRD, Regency/Municipal DPRD, and Pairs of Candidates for President and Vice President.

(5) Candidates for members of DPR, DPD, Provincial DPRD, Regency/Municipal DPRD, and Candidate Pairs who are subject to administrative sanctions of disqualification as referred to in section (4), may file legal remedies to the Supreme Court within a period of no later than 3 (three) working days since the KPU's decision was made.

(6) The Supreme Court shall decide on administrative election fraud as referred to in paragraph (5) within a maximum period of 14 (fourteen) working days as of the receipt of the case file by the Supreme Court.

(7) In the event that the Supreme Court's decision cancels the KPU's decision as referred to in section (5), KPU is obliged to re-establish as candidates for members of DPR, DPD, Provincial DPRD, Regency/Municipal DPRD, and Pairs of Candidates for President and Vice President.

(8) The decision of the Supreme Court is final and binding.

Meanwhile, the administrative election fraud in Law no. 6 of 2020 has been defined. Based on Article 138 of Law No. 6 of 2020 regulates that:

"Administrative Election Fraud is a violation that includes guidance, procedure, and mechanism related to the administration of implementing the election in each stage of the implementation of the election, excluding election crimes and code of ethics fraud of the Election Administrator."

Based on Article 139 of Law No. 6 of 2020 regulates that:

(1) Provincial Bawaslu and/or Regency/Municipal Panwaslu make recommendations on the results of its review as referred to in Article 134 section (5) regarding administrative election fraud.

(2) Provincial KPU and/or Regency/Municipal KPU are required to follow up on the recommendations of Provincial Bawaslu and/or Regency/Municipal Panwaslu as referred to in section (1).

(3) Provincial KPU and/or Regency/Municipal KPU settle of administrative election fraud based on the recommendation of Provincial Bawaslu and/or Regency/Municipal Panwaslu according to their level.

Based on Article 140 of Law No. 6 of 2020 regulates that:

(1) Provincial KPU and/or Regency/Municipal KPU shall examine and decide on administrative fraud as referred to in Article 139 section (2) no later than 7 (seven) days after the recommendation of Provincial Bawaslu and/or Regency/Municipal Panwaslu is received.

(2) Further provisions regarding the guidance for the settlement of administrative election fraud are regulated in a KPU Regulation.

No KPU Regulation has explicitly been formed to follow up on the above provisions. So that the settlement of administrative election fraud only refers to the KPU Regulations that have existed previously. In this case, Regulation of General Election Commission of the Republic of Indonesia Number 13 of 2014 on Amendment to Regulation of General Election Commission Number 25 of 2013 on Settlement of Administrative Election Fraud.

Furthermore, based on Article 141 of Law No. 6 of 2020 regulates that:

"In the event that the Provincial KPU, Regency/Municipal KPU, PPK, PPS, or election participants do not follow up on the recommendations of Provincial Bawaslu and/or Regency/Municipal Panwas as referred to in Article 139 section (2), Provincial Bawaslu and/or Regency/Municipal Panwas shall give a verbal warning or a written warning."

Regarding the follow-up to the election supervisor's recommendations, it is regulated that its form includes activities to re-examine data or documents as recommended by Bawaslu according to their level. In addition, receive, examine, and review input from various parties for completeness and clarity regarding administrative election fraud reports. Thus, when Bawaslu's recommendations have been re-examined, the KPU's obligation to follow up on Bawaslu's recommendations is considered to have been carried out.

3. Election Process Dispute

Based on Article 466 of Law No. 7 of 2017, regulates that:

“The election process dispute covers dispute among - Election Contestant and dispute between Election Contestant and Election Administrators due to the issuance of the KPU decision, Provincial KPU decision, and Regency/Municipal KPU decision.”

As for the handling of the petition dispute resolution of the election process, as based on Article 467 of Law No. 7 of 2017, regulates that:

(1) Bawaslu, Provincial Bawaslu, and Regency/Municipal Bawaslu receiving a petition for dispute resolution of the election process due to the issuance of the KPU decision, Provincial KPU decision, and Regency/Municipal KPU decision.

(2) Petition for dispute resolution of the election process as referred to in section (1) is conveyed by candidates for Election Contestants and/or Election Contestants.

(3) The petition for dispute resolution of the election process as referred to in section (2) is conveyed in writing and at least contains:

a. Petitioner’s name and address;

b. Respondent party; and

c. KPU decision, Provincial KPU decision, and Regency/Municipal KPU decision became the cause of the dispute.

(4) Petition for dispute resolution of the election process as referred to in section (2) is filed for a maximum of 3 (three) workdays as of the date of KPU decision, Provincial KPU decision, and Regency/Municipal KPU decision which is because of the dispute.

Meanwhile, the dispute resolution of the election process in Bawaslu, as based on Article 468 of Law No. 7 of 2017, regulates that:

(1) Bawaslu, Provincial Bawaslu, Regency/Municipal Bawaslu have the authority to settle the election process dispute.

(2) Bawaslu, Provincial Bawaslu, Regency/Municipal Bawaslu examine and decide an election process dispute not later than 12 (twelve) workdays as receiving the petition.

(3) Bawaslu, Provincial Bawaslu, Regency/Municipal Bawaslu shall conduct a dispute resolution of the election process through the following stages:

a. receive and review the petition for dispute resolution of the election process; and

b. bring together the disputing parties to reach an agreement through mediation or deliberation and consensus.

(4) In the event that no agreement is reached between the disputing parties as referred to in section (3) point b, Bawaslu, Provincial Bawaslu, Regency/City Bawaslu shall settle the election process dispute through adjudication.

Furthermore, based on Article 469 of Law No. 7 of 2017, regulates that:

(1) The decision of Bawaslu regarding the dispute resolution of the election process is a decision that is final and binding, except for the decision on the election process dispute relating to:

a. verification of the Election Contesting Political Parties;

b. determination of the permanent list of candidates for members of DPR, DPD, Provincial DPRD, and Regency/Municipal DPRD; and

c. determination of the Candidate Pair.

(2) In the event that the dispute resolution of the election process as referred to in section (1) point a, point b, and point c carried out by Bawaslu is not accepted by the parties, the parties may submit legal remedies to the state administrative court.

(3) The entire process of making Bawaslu decisions must be carried out through an open and accountable process.

(4) Further provisions regarding procedures for dispute resolution of the election process are regulated in the Bawaslu Regulations.

Meanwhile, the dispute based on Article 142 of Law No. 6 of 2020 regulates that the election dispute covers:

a. dispute among - Election Contestant; and

b. dispute between Election Contestant and Election Administrators due to the issuance of the KPU decision, Provincial KPU decision, and Regency/Municipal KPU decision.

Furthermore, based on Article 143 of Law No. 6 of 2020 regulates that:

(1) Provincial Bawaslu and Regency/Municipal Panwaslu have the authority to settle the dispute as referred to in Article 142.

(2) Provincial Bawaslu and Regency/Municipal Panwaslu examine and decide an election dispute not later than 12 (twelve) workdays as receiving the reports or findings.

(3) Provincial Bawaslu and Regency/Municipal Panwaslu shall conduct a dispute resolution through the following stages:

- a. receive and review the reports or findings; and
- b. bring together the disputing parties to reach an agreement through deliberation and consensus.

Based on Article 144 of Law No. 6 of 2020 regulates that:

- (1) Provincial Bawaslu Decisions and Regency/Municipal Panwaslu Decisions regarding the election dispute resolution is a decision that is final and binding.
- (2) The entire process of making Provincial Bawaslu Decisions and Regency/Municipal Panwaslu Decisions must be carried out through a transparent and accountable process.
- (3) Further provisions regarding procedures for dispute resolution are regulated based on the Bawaslu Regulations.

4. Electoral Process Disputes in the State Administrative Court

As discussed previously, electoral process disputes in the State Administrative Court are still related to electoral process disputes. If the decisions of Bawaslu, Provincial Bawaslu, and Regency/City Bawaslu are not accepted by the parties, then the parties may submit legal remedies to the State Administrative Court. Based on Article 470 of Law No. 7 of 2017, regulates that:

- (1) Electoral process disputes through the State Administrative Court include disputes arising in the field of electoral state administration between candidates for DPR, DPD, Provincial DPRD, Regency/Municipal DPRD, or political parties as candidates for Election Contestants, or prospective Candidate Pairs with KPU, KPU Province, and Regency/City KPU due to the issuance of the KPU decision, Provincial KPU decision, and Regency/Municipal KPU decision.
- (2) Electoral process disputes, as referred to in section (1), are disputes that arise between:
 - a. KPU and the Political Parties as candidates for Election Contestants that do not pass the verification due to the issuance of the KPU decision due to the issuance of the KPU decision regarding the determination of the Election Contesting Political Parties as referred to in Article 173;
 - b. KPU and Candidate Pairs that do not pass the verification due to the issuance of the KPU decision regarding the Stipulation of Candidate Pairs as referred to in Article 235; and
 - c. KPU, Provincial KPU, and Regency/Municipal KPU with candidates for members of DPR, DPD, Provincial DPRD, and Regency/Municipal DPRD that are crossed out from the list of permanent candidates due to the issuance of the KPU decision on Stipulation of the Permanent Candidate List as referred to in Article 256 and Article 266.

Furthermore, based on Article 471 of Law No. 7 of 2017, regulates that:

- (1) The filing of a lawsuit over the electoral state administrative dispute as referred to in Article 470 to the State Administrative Court, shall be made after the administrative efforts at Bawaslu as referred to in Article 467, Article 468, and Article 469 section (2) have been used.
- (2) The filing of a lawsuit over the election state administrative dispute as referred to in section (1) is carried out no later than 5 (five) working days after the Bawaslu decision is readout.
- (3) In the event that the filing of the lawsuit as referred to in section (1) is incomplete, the plaintiff may correct and complete the lawsuit no later than 3 (three) working days from the receipt of the lawsuit by the State Administrative Court.
- (4) If within the time referred to in section (2) the plaintiff has not completed the lawsuit, the judge will give a decision that the lawsuit cannot be accepted.
- (5) The decision, as referred to in section (4), cannot be taken legal action.
- (6) The state administrative court examines and decides on the lawsuit as referred to in section (1) no later than 21 (twenty-one) working days after the lawsuit is declared complete.
- (7) The decision of the State Administrative Court, as referred to in section (6), is final and binding, and no other legal remedy can be taken.
- (8) KPU is obliged to follow up on the decision of the State Administrative Court as referred to in section (6) no later than 3 (three) working days.

From the above provisions, we can understand that there are two disputes related to state administration: the dispute resolution of the election process in the State Administrative and the electoral state administrative dispute. On the other hand, the Supreme Court has also established Regulation of the Supreme Court of the Republic of Indonesia Number 5 of 2017 on Procedures for Dispute Resolution of Election Process in the State Administrative Court.

5. Electoral Crime

Although in Law No. 7 of 2017 does not define Election Crimes. However, the definition is contained in Article 145 of Law No. 6 of 2020, regulates that “*Electoral Crime is a fraud or crime against the Election provisions as regulated in this Law.*”

According to Topo Santoso and Ida Budhiarti, that:¹³

“*An election crime can be defined as any action/deed (active/passive) that violates the provisions in the stages of organizing an election threatened with criminal sanctions based on the Election Law.*”

The procedures for handling election crimes, as based on Article 476 of Law No. 7 of 2017, regulates that:

(1) Reports on alleged election crimes are forwarded by Bawaslu, Provincial Bawaslu, Regency/City Bawaslu, and/or Sub-district Panwaslu to the State Police of the Republic of Indonesia no later than 1 x 24 (one time twenty-four) hours since Bawaslu, Provincial Bawaslu, Regency Bawaslu/City, and/or Sub-district Panwaslu declare that the alleged act or actions constitute election crimes.

(2) Actions or actions suspected of being election crimes as referred to in section (1) are declared by Bawaslu, Provincial Bawaslu, Regency/City Bawaslu, and/or Sub-district Panwaslu after coordinating with the Indonesian National Police and the Attorney General’s Office of the Republic of Indonesia in Gakkumdu.

(3) The report on alleged election crimes as referred to in section (1) is conveyed in writing and at least contains:

- a. Petitioner’s name and address;
- b. Respondent’s party;
- c. the time and place of the incident; and
- d. incident description.

Based on Article 480 of Law No. 7 of 2017, regulates that:

(1) Investigators of the State Police of the Republic of Indonesia shall submit the results of their investigations along with case files to the public prosecutor no later than 14 (fourteen) days from receipt of the report and may be carried out in the absence of the suspect.

(2) In the event that the results of the investigation are incomplete, within a maximum period of 3 (three) days, the public prosecutor shall return the case file to the Investigator of the State Police of the Republic of Indonesia accompanied by instructions on what must be done to complete it.

(3) Investigators of the State Police of the Republic of Indonesia within a maximum period of 3 (three) days from the date of receipt of the dossier as referred to in section (2) must have returned the dossier of the case to the public prosecutor.

(4) The public prosecutor delegates the case files as referred to in section (1) and section (3) to the district court no later than 5 (five) days after receiving the case dossier and can be carried out without the presence of the suspect.

6. Election Result Dispute

Election result dispute have been regulated in Article 24C section (1) of the 1945 Constitution, as previously mentioned. As for based on Article 473 of Law No. 7 of 2017, regulates that:

(1) Election result dispute includes disputes between KPU and Election Contestants regarding the determination of the national election results.

(2) Disputes over the determination of vote acquisition results from the election of members of DPR, DPD, and DPRD on a national basis include disputes over the determination of vote acquisition which may affect the acquisition of seats for Election Contestants.

(3) Disputes over the determination of the results of the Presidential and Vice-Presidential Elections nationally include disputes over the determination of vote acquisitions that may affect the determination of the results of the Presidential and Vice-Presidential Elections.

As for the procedure for resolving disputes over election results, as based on Article 474 of Law No. 7 of 2017, regulates that:

(1) In the event of a dispute over the determination of the results of the election for members of the DPR, DPD, and DPRD nationally, the Election Contestants for members of the DPR, DPD, and DPRD may apply for the cancellation of the determination of the results of the counting of votes acquired by the KPU to the Constitutional Court.

(2) Election contestants for members of DPR, DPD, and DPRD shall submit an application to the Constitutional Court as referred to in section (1) no later than 3 x 24 (three times twenty-four) hours after the announcement of the determination of the votes acquired by the Election results for members of DPR, DPD, and DPRD nationally by the KPU.

¹³Santoso, T. & Budhiarti, I. (2019). *Pemilu di Indonesia: Kelembagaan, Pelaksanaan, dan Pengawasan*. Jakarta: Sinar Grafika, p. 283.

(3) In the event that the application as referred to in section (2) is incomplete, the applicant may correct and complete the application no later than 3 x 24 (three times twenty-four) hours from the receipt of the application by the Constitutional Court.

(4) KPU, Provincial KPU, and Regency/Municipal KPU are obliged to follow up on the decision of the Constitutional Court.

Based on Article 475 of Law No. 7 of 2017, regulates that:

(1) In the event of a dispute over the determination of the Presidential and Vice-Presidential Election results, the Candidate Pairs may file an objection to the Constitutional Court within 3 (three) days after the KPU has determined results of the Presidential and Vice-Presidential Election.

(2) The objections as referred to in section (1) are only to the results of the vote count that affect the determination of the election of a Candidate Pair or the determination to be re-elected in the Presidential and Vice-Presidential Election.

(3) The Constitutional Court shall decide on disputes arising from the objections as referred to in section (1) and section (2) no later than 14 (fourteen) days from the receipt of the petition for objection by the Constitutional Court.

(4) KPU is obliged to follow up on the decision of the Constitutional Court.

(5) The Constitutional Court shall deliver the decision on the results of the vote count to:

- a. People's Consultative Assembly;
- b. President;
- c. KPU;
- d. Candidate Pair; and
- e. Political Party or Association of Political Parties that nominate candidates.

B. The Ideal Election Court System in Indonesia

Based on experience in handling fraud and election disputes in Indonesia and several countries, the *iusconstitutum* or law that was formed and is currently in effect. In this case, the electoral justice system in Indonesia is still not as ideal as the *ius constituendum* or the aspired law. Even the electoral justice system based on the *iusconstituendum* has not yet been made in a draft law.

The process of democratization through elections in Indonesia is and will continue due to the implementation of popular sovereignty guarded by legal emphasis as mandated by the constitution. The implementation of election law enforcement is always evaluated from statutory arrangements as a legal umbrella for the implementation of elections.

In connection with the above, in line with the end of the 2019 General Election, Bawaslu, as one of the essential organs in the field of election law enforcement, held a comprehensive evaluation as part of the implementation of the mandate given by the Election Law to evaluate the results of election supervision. In general, this evaluative study encourages several new ideas to improve aspects of the electoral justice system in Indonesia. The proposed improvements include:¹⁴

1. Legal politics in preparing the design of the electoral law enforcement system needs to be directed at:
 - a. optimizing administrative corrections to the consequences arising from violations of election law in order to restore the rights of election participants and the public and restore the integrity of the election process and results;
 - b. optimizing the emergence of a deterrent effect; and
 - c. encourage the emergence of a simple, fast, and low-cost electoral law enforcement system.
2. It is encouraging the prioritization of the administrative sanction approach in the enforcement of election law to restore the rights of election participants and the public and increase the deterrent effect for violators. The form of sanctions is directed at punishments that reduce the rights of election participants in following certain stages, eliminate the right to participate in the election, the right to be designated as an elected candidate, and even the right to participate in the next election.
3. The prioritization of this administrative sanction approach does not mean eliminating the provisions on criminal threats but rather simplifying criminal provisions and enforcing the procedural law under the KUHAP regime. Thus, the process of enforcing criminal law in elections no longer needs to be limited by tight deadlines.
4. It is encouraging that every criminal threat related to the election is linked to administrative sanctions to increase the deterrent effect on the perpetrators.
5. We are encouraging the unification of the electoral justice system under the authority of only one institution and eliminating the competence of other judicial institutions to examine and decide cases related

¹⁴Minan, A. (Ed.) (2019). *Serial Evaluasi Penyelenggaraan Pemilu Serentak 2019: Perihal Penegakan Hukum*. Jakarta: Badan Pengawas Pemilihan Umum Republik Indonesia, pp. 18-19.

to the election. Of course, the judicial system referred to here is outside the settlement of disputes over election results as regulated in the 1945 Constitution.

After four amendments to the 1945 Constitution from 1999 to 2002, motivated by the desire to create a democratic government, the Indonesian state administration system has undergone several fundamental changes. One of these changes is the establishment of the Constitutional Court as a judicial institution established to maintain the implementation of constitutional values in the administration of state life. Thus, currently, judicial power in Indonesia is carried out by two institutions, namely the Supreme Court and the Constitutional Court.

As an institution formed to protect the constitution, the Constitutional Court is not only authorized to examine the constitutionality of a law, as Katherine Glenn Bass and Sujit Choudry said, that the Constitutional Court generally has other powers which include:¹⁵

“Disputes over the constitution’s provisions often involve the most sensitive political issues facing a country, including reviewing the country’s electoral law and election, the powers of the various branches of government, and other questions.”

Based on the authority of the Constitutional Court as according to Article 24C of the 1945 Constitution of the Republic of Indonesia, the Constitutional Court is given the authority related to political and state administration issues. The Constitutional Court is the only high state institution authorized by the 1945 Constitution of the Republic of Indonesia to decide disputes over election results. Election results are the output of one of the stages in the election, namely the stages of voting and counting votes which are a series of the previous stages. Holding an election is an integral part of the inseparable stages. Therefore, the Constitutional Court is a court that has the authority to examine, hear, and decide on election fraud and disputes.

Settlement of election results disputes at the beginning of the establishment of the Constitutional Court, the first-period constitutional judges (2003-2008) resolved election results disputes by consistently interpreting the doctrine of election results disputes as disputes *“number of votes obtained by general election participants.”* Within that period, all incoming cases were decided directly, without any interim decision in recounting votes, let alone re-voting. So at that time, the term Constitutional Court emerged as *“the Calculator Court.”*¹⁶

However, when the Constitutional Court issued the Constitutional Court Decision Number 41/PHPU.D-VI/2008 regarding the East Java Regional Head Election, the Constitutional Court expanded the meaning of dispute over the election results. In this case, if there is a structured, systematic, and massive violation that significantly affects the election results, then the violation can be processed by the Constitutional Court. This means that the violations that can affect the results are not in the narrow sense of counting votes but are related to various violations that occur both in the calculations and in the process that can affect the election results. One of the legal considerations used by the Constitutional Court in issuing this interpretation is that the Constitutional Court must not allow the rules of procedural justice to override substantive justice because the legal facts in the case are a violation of the constitution. For example, Article 18 section (4) of the 1945 Constitution regulates that *“Governors, Regents, and Mayors, respectively, as heads of the local government of the provinces, regencies, and municipalities, are elected democratically.”* Furthermore, based on Article 22E section (1) of the 1945 Constitution, it regulates that *“General elections are conducted in a direct, public, free, secret, honest, and fair manner once every five years.”*

The progressive interpretation of the Constitutional Court is still used today in dealing with disputes over election results and disputes over election results. The potential for fraud and disputes to significantly affect the election results in the electoral process often occurs. Hence, the Constitutional Court decides to carry out a vote or a recount of votes. Whether we realize it or not, in many cases, based on this interpretation, the Constitutional Court decides on disputes regarding the results and decides on fraud that occurred in the election process. So that the Constitutional Court seems to reduce the authority of Bawaslu as an institution authorized to decide disputes in the election process. Although the Bawaslu decision is called final and binding, it is still ignored because it is considered not as strong as the judiciary’s decision, namely the Constitutional Court.

It is necessary to reconstruct the judicial institutions authorized to resolve fraud, process disputes, outcome disputes, and other election and election legal issues. The aim is to simplify the systems and institutions involved in resolving electoral law issues. In that context, the mandate to form a special election court should be followed up within a comprehensive framework of thinking. In a sense, this special court must be designed as an election court with authority to resolve all election disputes, except that criminal election cases remain within the judiciary’s jurisdiction under the Supreme Court.

Thus, there will only be two courts involved in deciding election cases. *First*, the Constitutional Court is tasked with resolving fraud and disputes over the election process and results. *Second*, the Supreme Court is tasked with resolving criminal election cases. Therefore, to not create new problems with the addition of one

¹⁵Satrio, A. (2015). Kewenangan Mahkamah Konstitusi Memutus Perselisihan Hasil Pemilu sebagai Bentuk Judicialization of Politics. *Jurnal Konstitusi*, 12(1), p. 119.

¹⁶Silalahi, W. (2019). *Desain Penyelesaian Sengketa Pemilu Serentak*. Jakarta: PT. Raja Grafindo Persada, p. 315.

more institution in resolving election legal issues, it is better if DKPP is designated as a Special Election Judiciary Body under the Constitutional Court.

IV. CONCLUSIONS AND SUGGESTIONS

Based on the description of the results and discussion, it can be concluded that the implementation and ideal model of the election court system in Indonesia, namely, there is a Special Election Court. In this case, settlement is related to the code of ethics fraud of the Election Administrator, administrative election fraud, election process dispute, electoral process disputes in the State Administrative Court, electoral crime, and election result dispute. Based on this conclusion, it is recommended that the Constitutional Court be given the authority to become a constitutional political court, in addition to carrying out the authorities stipulated in Article 24 and Article 24C of the 1945 Constitution. In this case, it handles all fraud and violations of the electoral process, in addition to election criminal violations. Furthermore, it also carried out the transformation of the DKPP as a Special Election Court within the scope of the Constitutional Court.

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