



THE URGENCY OF AN ELECTION JUDICIARY IN INDONESIA: A REVIEW BASED ON LAW NUMBER 7 OF 2017 CONCERNING ELECTIONS

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Abstract.

Background. The idea of establishing a special election judiciary was first proposed during the revision of Law No. 10 of 2008 concerning the Election of Members of the DPR, DPD, and DPRD. Despite the inclusion of a draft for this specialized court by the House of Representatives, the body has not yet been formed. A special election judiciary is a fundamental component for achieving legal certainty within a democratic state founded on Pancasila and the 1945 Constitution of the Republic of Indonesia. As elections are a primary means of exercising popular sovereignty and a prerequisite for democracy, a specialized court is a vital instrument for safeguarding the democratic process. This special court represents an *Ius Constituendum*, an ideal legal aspiration—aimed at protecting the constitutional rights of citizens in a democratic society.

Objective. This research addresses the following problems: How urgent is the establishment of an election judiciary, and what efforts are required for the formation of this specialized court?

Method. This study employs a normative legal research methodology. The approach involves a comprehensive review of statutory regulations, primarily conducting a legal analysis and evaluation of Law No. 7 of 2017 concerning General Elections as the main legal framework. The analysis is also extended to other relevant legal frameworks.

Conclusion. The findings of this research conclude that the establishment of a Special Election Judiciary is urgently needed. To optimize the resolution of election disputes, the creation of a specialized election court is essential. This requires a revision of the current election laws to formally incorporate the proposal for its establishment.

Keywords: Urgency, Election Judiciary, Dispute Resolution, Electoral Law



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INTRODUCTION

The Republic of Indonesia is constitutionally established as a state based on the rule of law (*rechtsstaat*), not on the mere exercise of power (*machtstaat*). This principle is intrinsically linked to the concept of popular sovereignty, which forms the foundation of its democracy. Therefore, Indonesia's governance is framed as a constitutional democracy, where the sovereignty vested in the people is exercised in accordance with the Constitution. This establishes a system of government "of the people, by the people, and for the people," where public participation is primarily realized through general elections.

General elections serve as the primary mechanism for enacting popular sovereignty and are a fundamental prerequisite for a democratic state. To safeguard this process, the establishment of a specialized election judiciary has been proposed as a critical institution. Such a court represents an *ius constituendum*—an ideal legal framework to be established—with the objective of protecting the constitutional rights of citizens throughout the democratic process.

Under the current framework, disputes concerning election results are adjudicated by the Constitutional Court (MK). This system has been in place to provide legal certainty, yet an analysis of historical data reveals significant challenges. For instance, in the 2004 election, the Constitutional Court handled 273 dispute cases, granting 41 (15%) of the petitions. In 2009, the number of cases increased to 627, with only 68 (approximately 10.8%) being granted. This trend continued in the 2014 election, where the Court received 914 cases but only granted 21 petitions (2.3%).

Broadly, electoral disputes in Indonesia can be categorized into three main types: disputes over election results, election-related criminal offenses, and administrative disputes. Based on the prevailing laws, such as Law No. 10 of 2008 and Law No. 12 of 2008, the jurisdiction is divided: the Constitutional Court handles result disputes, the general courts (Pengadilan Negeri) manage criminal offenses, and administrative violations are addressed by the General Elections Commission (KPU) at provincial or district/city levels based on recommendations from the Election Supervisory Body (Bawaslu).

While clear resolution mechanisms exist for result-based and criminal disputes, a significant legal vacuum persists concerning administrative matters. This gap is particularly evident when decisions issued by the KPU adversely affect election participants, leaving them with inadequate legal recourse. The idea to remedy this by forming a special election judiciary was formally proposed during the revision of Law No. 10 of 2008 and was included in the bill

by the House of Representatives. The discourse to establish this court continues, driven by the recognition that existing bodies, including the Constitutional Court, do not have the jurisdiction to resolve all forms of electoral conflict, such as criminal violations.

The proposed structure involves a two-tiered system: a first-instance special election court in each district/city capital and an appellate court at the provincial capital level. This would decentralize electoral justice, ensuring that legal remedies are accessible to citizens outside of Jakarta. The creation of such a judiciary is considered a foundational component for enhancing legal certainty and strengthening democracy under the principles of Pancasila and the 1945 Constitution.

Against this backdrop, this paper examines the urgency of establishing a specialized election judiciary in Indonesia, analyzing its necessity and potential structure through the lens of Law Number 7 of 2017 concerning General Elections.

LITERATURE REVIEW

Juridical and Philosophical Foundations

The juridical and philosophical foundation for judicial power in Indonesia is anchored in Article 24 of the 1945 Constitution, which mandates an independent judiciary free from external interference. This power is exercised to uphold law and justice based on Pancasila and the Constitution, thereby reinforcing the Indonesian rule of law. Judges, as the core human element of the judiciary, are obligated to safeguard this independence through integrity and impartiality in all legal proceedings, a principle further codified in Article 39(4) of Law No. 48 of 2009.

This principle underpins the proposal for a specialized election judiciary, which could be implemented to address the complex and recurring disputes that arise during elections in Indonesia. Existing institutions are often ill-equipped to handle the specific nature of these conflicts, which fall outside their designated legal domains. Furthermore, the caseload of the general courts in both criminal and civil matters is already substantial. It is therefore proposed that a special election court be established on an *ad hoc* basis under the authority of the Supreme Court, functioning as a *lex specialis* tribunal. This body would require competent judges, drawn from both career and non-career tracks, with expertise in electoral law and administration. Crucially, a distinct procedural law (*Hukum Acara*) would need to be formulated, enabling the court to adjudicate criminal offenses that arise during the electoral process, as defined by the KPU's official timeline, in a manner that is faster, simpler, and more cost-effective than standard court proceedings, while still guaranteeing legal certainty.

The Role of Legal Certainty in a Democracy

A democratic system devoid of legal certainty is susceptible to degenerating into anarchy, which can lead to widespread social distress and civil conflict. As elections are the primary vehicle for popular sovereignty, the primacy of the rule of law is paramount. In this context, a special election judiciary, operating in tandem with the Constitutional Court, would be a vital component in safeguarding the democratic process. It would serve as a cornerstone for one of the key principles of elections: legal certainty.

Legal certainty in this context implies that all electoral stakeholders, including organizers, supervisors, monitors, and participants, accept the legitimacy of the process and its outcomes. Should any party feel aggrieved by the actions or decisions of the General Elections Commission (KPU), the special court would serve as the designated forum for seeking remedy. The most significant impact of such a court would be the provision of a dedicated legal avenue for parties whose rights have been infringed upon during an election, thereby reinforcing the health and stability of the democratic state and enriching Indonesia's constitutional law framework.

Theoretical Framework and Previous Findings

The analysis is guided by theories of law enforcement, justice, and the teleology of law (the purpose of law). Existing research highlights deficiencies in the current system, particularly concerning the performance of the Constitutional Court (MK) in adjudicating disputes from the 2015 simultaneous regional elections. These weaknesses have been attributed to several factors:

1. **Procedural Deadlines:** Strict adherence to filing deadlines at the expense of substantive electoral justice.
2. **Substantive Justice:** The narrow application of statutory thresholds (specifically Article 158), which often disregards evidence of substantive electoral violations.
3. **Inconsistent Rulings:** A lack of consistency across the Court's decisions in similar cases.
4. **Institutional Capacity:** Limitations in the institutional capacity of the Court to manage the volume and complexity of electoral disputes.

In terms of its position within the national judicial system, the proposed Special Election Judiciary would operate under the purview of the Supreme Court. To ensure efficiency and accessibility, these courts would be established at the provincial level, situated in the provincial capitals. It is further proposed that the bench be composed of retired judges from

the Supreme Court or the Constitutional Court who possess specialized expertise and experience in electoral law.

METHODOLOGY

This study is classified as normative juridical research, a form of library-based legal analysis that relies on secondary data. The specific type employed is prescriptive analytical research. This approach involves an in-depth examination of the objectives of law, principles of justice, the validity of legal rules, and the analysis of core legal concepts and norms.

Research Approach

From the various methodologies available in legal scholarship, this research adopts a statutory approach (*statute approach*). This method centers on the critical examination, interpretation, and analysis of legislative regulations to address the research questions at hand.

Sources of Legal Materials

The legal materials utilized in this study are categorized into three distinct types:

1. **Primary Legal Materials:** These are binding legal instruments that hold primary authority. For this research, they consist of:
 - Law No. 7 of 2017 concerning General Elections.
 - Law No. 8 of 2010.
2. **Secondary Legal Materials:** These sources provide explanation, interpretation, and analysis of the primary materials. They include academic books, scholarly journals, and other published works relevant to the thesis topic.
3. **Tertiary Legal Materials:** These materials serve to guide and clarify the primary and secondary sources. Examples include legal dictionaries, encyclopedias, and indexes.

Data Collection Techniques

The data and legal materials for this study were gathered using the following techniques:

1. **Library Research:** As the primary technique consistent with the normative juridical method, an extensive library and documentary review was conducted. This involved the systematic collection and analysis of legislation, including but not limited to Law No. 10 of 2008, and other relevant legal documents.
2. **Interview:** While the research is fundamentally normative, the documentary analysis was supplemented by a targeted interview. This interview was conducted with officials from the General Elections Commission (KPU) of Cirebon City to obtain specific contextual information and data related to the statistics on election result disputes

(PHPU).

RESULTS AND DISCUSSION

This section analyzes the urgency and the complex challenges surrounding the establishment of a specialized election judiciary in Indonesia. It integrates statistical data, legal analysis, and perspectives from key institutional stakeholders and experts.

The Imperative for a Specialized Election Judiciary

The urgency for establishing a specialized election judiciary is underscored by the systemic challenges within the current dispute resolution framework. Historically, the Constitutional Court (MK) has been the primary venue for adjudicating disputes over election results. However, data reveals a troubling trend: while the number of cases filed has dramatically increased, the proportion of successful petitions has sharply declined.

- In 2004, the Court adjudicated 273 cases and granted 41 petitions (15%).
- By 2009, the caseload grew to 627, with only 68 petitions granted (10.8%).
- In the 2014 election, the Court was inundated with 914 cases, of which only 21 were granted (2.3%).

This data suggests an institution under significant strain and a legal process with diminishing efficacy for electoral contestants seeking justice. The idea of a specialized court is not novel; it was first formally proposed during the 2008 revision of the election law. More importantly, Article 157(1) of Law No. 8 of 2015 concerning Regional Elections (UU Pilkada) explicitly mandates that disputes over election results are to be examined and adjudicated by a "special judicial body."

Despite this legal mandate, the body has yet to be formed. As one former MK justice noted, the discussion around its formation only gains traction when an election is imminent, fading without resolution afterward. This sentiment is echoed by election organizers, such as the Chairman of the Cirebon City KPU, who stated in an interview that a specialized judiciary is essential for realizing a professional and high-integrity electoral process whose results can be universally accepted.

Institutional Deadlock and Competing Perspectives

The primary obstacle to the formation of this court is a significant disagreement between the legislative and judicial branches regarding responsibility for its establishment.

The House of Representatives (DPR), as articulated by the Deputy Chair of Commission II, believes the legal foundation is already sufficient. From their perspective, the

mandate exists in the Pilkada Law, and the onus is now on the **Supreme Court (MA)** to prepare the necessary infrastructure, including appointing judges, clerks, and administrative staff.

Conversely, the **Supreme Court** refutes this interpretation. A spokesperson for the MA clarified that the judiciary cannot unilaterally create a new court system without a specific and direct legislative command. Citing the precedents of the Fisheries Court and the Anti-Corruption Court, the spokesperson emphasized that their establishment was explicitly mandated by their respective enabling laws, which were passed by the DPR and the government. Without such a law for an election court, the MA considers the concept to be mere discourse (*wacana*) and lacks the legal authority to act.

This institutional deadlock is a product of political compromise, as explained by Veri Junaidi of the Constitution and Democracy (Kode) Initiative. The idea for a separate body emerged when both the MK and the MA were reluctant to take on the burden of regional election disputes. Junaidi argues that the government and DPR must now resolve this ambiguity by passing a specific law. This legislation would need to address critical design questions, including:

1. Institutional Placement: Whether the court should operate under the Supreme Court (alongside general, administrative, and religious courts) or the Constitutional Court.
2. Functional Design: The precise scope of its jurisdiction and whether its decisions at the first instance are final or subject to appeal.

Systemic Flaws in the Current Legal Framework: The Case of Article 158

A critical issue demonstrating the need for reform is the admissibility threshold for election disputes stipulated in Article 158 of Law No. 10 of 2016. This provision mandates that a case can only be heard by the Constitutional Court if the vote margin between contestants is below a specific percentage, which varies by population size. For example:

- For provinces with over 12 million people, the margin must be 0.5% or less.
- For districts/cities with up to 250,000 people, the margin is 2% or less.

The juridical implication of this article is that a vast number of petitions are dismissed by the MK for failing to meet this procedural threshold, regardless of the substantive merit of the claims (e.g., allegations of widespread, structured, and systematic fraud). This approach prioritizes rigid, calculative formalism over substantive electoral justice, effectively denying a path to legal remedy for many contestants. This research recommends that this provision be fundamentally reformed to prioritize justice and fairness in future simultaneous elections.

The Proposed Model and Path Forward

The proposed solution is the formation of a two-tiered specialized election judiciary operating as an *ad hoc, lex specialis* court system under the authority of the Supreme Court. This would involve:

1. First-Instance Courts: Established in district/city capitals.
2. Appellate Courts: Established in provincial capitals.

This decentralized structure would significantly improve access to justice for contestants outside of Jakarta. The benefits of such a system are threefold:

1. Specialized Jurisdiction: It can handle a wider range of electoral disputes beyond the MK's narrow focus on final results.
2. Efficiency: Despite initial investment, it will provide faster, simpler, and more cost-effective justice.
3. Legal Certainty: It will serve as a foundational component for creating legal certainty and strengthening Indonesia's democracy under Pancasila and the 1945 Constitution.

Achieving this requires a concerted effort from all key stakeholders:

- The DPR must take the legislative initiative to amend Law No. 7 of 2017, providing a clear and unambiguous legal basis for the new court.
- The Government must actively support this legislative process.
- Election Organizers (KPU, Bawaslu) must continue to professionalize their operations.
- Civil Society must continue to advocate for the necessity of this judicial reform.

Ultimately, the goal is to create a judicial body capable of swiftly and justly resolving electoral disputes to uphold the integrity of the democratic process. Its procedural framework could be modeled on existing specialized procedures, such as those outlined in Supreme Court Regulation No. 4 of 2017 on the Settlement of Administrative Election Violations.

CONCLUSION

Based on the analysis presented in this study, the following conclusions can be drawn:

1. The establishment of a specialized election judiciary is an urgent necessity to address the persistent and complex disputes that arise during general elections in Indonesia. The creation of this judicial body is critical for expediting and simplifying the resolution of electoral cases. This perspective is supported by key electoral stakeholders, including the Chairman of the Cirebon City KPU, who affirms that a specialized court is essential for fostering a professional, high-integrity electoral process that produces widely accepted and legitimate outcomes.

2. The formation of this specialized judiciary requires a collaborative, multi-stakeholder effort. This includes:
 - The House of Representatives (DPR-RI): As the legislative body, the DPR must proactively amend Law No. 7 of 2017 concerning General Elections to provide a clear and robust legal framework for the new institution's authority and operations.
 - The Government: The executive branch must actively support this initiative by encouraging the DPR to prioritize the legislative amendment and by facilitating communication among all relevant stakeholders.
 - Election Organizers: Electoral management bodies must be prepared to adapt their systems and procedures to the new dispute resolution mechanism.
 - Civil Society: The public must advocate for this reform by articulating the need for a specialized election court as a fundamental component of a professional and integral democratic process.

RECOMMENDATIONS

In light of the findings, this study offers the following recommendations:

1. It is imperative that election organizers and other relevant bodies conduct further studies and lend their official support to the formation of a specialized judicial body for election dispute resolution. This effort is vital for creating an electoral system that is not only democratic and efficient but also fundamentally just.
2. The establishment of the specialized election judiciary should be completed before the next simultaneous general elections are held. This requires the House of Representatives (DPR) to promptly initiate the process of amending the current Election Law to formally institutionalize this new court.

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