

Transition Of Authority Judicial Institutions Simultaneous National Elections 2024

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Abstract

The decision of the Constitutional Court No. 97/PUU-XI/2013 resulted in changes in the function and authority of the judicial institution that adjudicates Pilkada. The Constitutional Court's decision then gave birth to Article 157 of Law No. 10 of 2016 Amending Law No. 8 of 2015 (Pilkada Law) which contains provisions for the establishment of a special election judicial body that will hear disputes over the results of simultaneous national elections in 2024. However, the establishment of a special election judicial body mandated by the Pilkada Law still faces juridical obstacles if it is linked to Law 48 of 2009 concerning Judicial Power, and laws governing judicial bodies under the auspices of the Supreme Court, especially the general and state administrative courts. Another juridical problem is the Constitutional Court Decision Number 85/PUU-XX/2022 which states that the phrase "until a special judicial body is established" in Article 157 paragraph (3) of the Pilkada Law does not have binding legal force. So that the Constitutional Court's decision can be interpreted as a sign of defining the Constitutional Court as a permanent judicial institution to hear disputes over Pilkada results. This research uses normative research methods as a characteristic of legal research, using statute law approaches, expert opinions. The purpose of this research is to search and find the right norms and have legal arguments in determining the right judicial institution authorized to hear disputes over the results of the 2024 simultaneous regional elections.

Keywords: 2024 Simultaneous Regional Elections, Specialized Judicial Body, Constitutional Court;

INTRODUCTION

Direct regional elections were held for the first time in 2005, after being regulated in Article 56 paragraph (1) of Law Number 32 of 2004 concerning Regional Government (Local Government Law) which states "Regional heads and deputy regional heads are elected in one pair of candidates democratically based on the principles of direct, general, free, secret, honest, and fair". The provision of direct regional elections in the Local Government Law is based on the interpretation of the substance of Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), which states "Governors, Regents, and Mayors as heads of provincial, regency, and municipal governments, respectively, are democratically elected". The phrase "democratically elected" is interpreted as the direct involvement of the people in determining the head of their region.

The involvement of the people in directly electing regional heads has the consequence that the implementation of regional elections must be based on the principles of direct, general, free, secret, honest, and fair (Luber-Jurdil). Furthermore, to ensure that the implementation of Pilkada fulfills the principles of Luber-Jurdil so that it can be trusted by the community (the people), an instrument is made that can adjudicate Pilkada disputes through a judicial institution (court). The judiciary in the Indonesian constitution is placed as an independent and neutral institution in upholding law and justice in accordance with the principles of the rule of law, namely the existence of a free judiciary as a manifestation of the rule of law.

The implementation of the concept of democracy in the administration of the state and government (central and local) should ideally be seen in the management of state resources to meet the needs and interests of the people (public) fairly and equitably. Therefore, leaders of state and government administrators must be able to ensure public legitimacy, so that public commitment continues to color their policies. General elections (elections), including direct regional head elections (Pilkada), are institutions and instruments of democracy in the context of public legitimacy in determining who political actors meet public expectations to become state and government administrators.

Political practices have so far ignored the principle of publicness, so that the ideals of the state in order to equalize the welfare life for citizens are often deviated. Whereas the principle of publicness is inherent in the teachings of democracy, as an effort to reject authoritarianism and totalitarianism which have an impact on the oppression of the weak (the little people). Therefore, elections and regional elections are returned to the principle of publicness and thus their implementation must fulfill the principle of free and fair elections.

The implementation of direct elections must be appreciated as a democratization progress in the life of the nation and state. Although there are still shortcomings in its implementation, Pilkada can at least have a positive impact on the life of democracy at the local level (region). More than that, the life of local democracy will have an impact on the involvement of the people in developing their regions through the determination of local government leaders who are accountable and have integrity.

In order for the implementation of Pilkada to fulfill the principle of free fair election, which in the Pilkada Law is translated as the principle of direct, general, free, secret, honest, and fair (luber-jurdil), the presence of an Pilkada judicial institution is a must. Therefore, it must also be ascertained which judicial institution is appropriate to test or adjudicate Pilkada. In addition, it is equally important that the judiciary can ensure that its position is truly neutral and independent, not easily intervened by certain political forces, including political forces that dominate government and state power. In the history of the existence of judicial institutions in Indonesia, both during the old and new order government regimes, the independence of judicial institutions can be controlled by political forces outside of themselves.

The dynamics of determining the judicial institution that hears Pilkada have changed many times, at least back and forth between the Supreme Court and the Constitutional Court. The last regulation that regulates the election results court is contained in Article 157 of the Pilkada Law (Law No. 16 of 2010 Amendment to Law No. 15 of 2008) which reads:

1. Election result disputes shall be examined and adjudicated by a special judicial body;
2. The special judicial body as referred to in paragraph (1) shall be established prior to the implementation of the national simultaneous election", and;
3. Disputes over the determination of the final stage of the Election results shall be examined and adjudicated by the Constitutional Court until the establishment of a special judicial body"

The legal norm of Article 157 of the Pilkada Law (Law No. 16/2010) above can be interpreted as a transitional rule of the authority of the judicial institution that hears disputes over election results, namely the authority in the hands of the Constitutional Court will be transferred to a special judicial body for Pilkada, but unfortunately the provisions regarding the establishment of a special judicial body are not explained how further arrangements. Taufik Firmanto in the conclusion of his research stated that the provision of the establishment of a special judicial body for Pilkada is not enough reason in legal logic and was not born from an academic study.

In the midst of hopes for the immediate establishment of a special judicial body for Pilkada, welcoming the simultaneous national elections in 2024, the Constitutional Court's decision Number 85/PUU-XX/2022 stated that the phrase "until the establishment of a special judicial body" in Article 157 paragraph (3) of the Pilkada Law, does not have binding legal force⁸, so it could be that the Constitutional Court's decision has the impact of defining the Constitutional Court as a permanent judicial institution to hear disputes over Pilkada results with no time limit⁹. However, the next problem is that there is still a view that the Constitutional Court is not constitutionally limited to only having the authority to hear elections, excluding regional elections.

Based on the background description above, the author formulates the problems in this study, as follows, namely whether the juridical problems faced by the legislators in the formation of a special judicial body for simultaneous national elections in 2024 and whether it is necessary to establish the Constitutional Court as a permanent judicial institution to hear disputes over election results.

RESEARCH METHODS

This research is a normative study as a legal research. Analyzing a number of laws and regulations relating to judicial bodies, the implementation of regional elections using the theory of the rule of law and democracy

RESULT AND DISCUSSION

Juridical Problems in the Establishment of a Specialized Election Judicial Body.

The Law on Regional Government (Law No. 32/2004) as the first rule of law to be the basis for the implementation of the first regional elections in 2005 and 2006, authorizes the Supreme Court (MA) as a judicial institution that hears disputes over election results with the provision that disputes over district / city election results are heard by the High Court, while disputes over provincial election results are heard by the Supreme Court. However, based on the experience of adjudicating disputes over election results, the Supreme Court felt burdened by the political tension that accompanied the election judicial process, therefore and on the grounds of the large number of cases it handled, the Supreme Court suggested that the DPR change the provision of authority to hear disputes over election results to the authority of the Constitutional Court (MK).

The House of Representatives (DPR) responded to the Supreme Court's suggestion, in addition, the DPR considered the main idea in the dissenting opinion of three Constitutional Judges in Constitutional Court Decision No. 072-073/PUU-II/2004 which basically stated that Pilkada can be categorized as an election according to Article 22E of the 1945 Constitution of the Republic of Indonesia, so that to determine the institution that adjudicates the results of Pilkada, the DPR amended the Local Government Law (32 Year 20014) with Law no. 12/2008 which inserted Article 236C which states that "The handling of disputes over the results of the vote count for the election of regional heads and deputy regional heads by the Supreme Court is transferred to the Constitutional Court no later than 18 (eighteen) months after this Law is enacted".

Based on the authority granted through the provisions of Article 236C of the Local Government Law (Law No. 32 of 2004 in conjunction with Law No. 12 of 2008) above, the Constitutional Court adjudicated disputes over the results of the elections effective from

November 1, 2008 based on the minutes of the transfer of judicial authority from the Supreme Court to the Constitutional Court on October 29, 2008, so that all disputes over the results of the 2010-2012 elections were heard by the Constitutional Court. However, after that, in 2013 the Constitutional Court suddenly issued Decision Number 97/PUU-XI/2013 which decided that the authority to adjudicate Pilkada was no longer the authority of the Constitutional Court¹². The issuance of the Constitutional Court's decision coincided with the agenda of Commission 2 of the House of Representatives, which was drafting the Pilkada Law into a separate law and separate from the Local Government Law.

In 2014, the House of Representatives passed a new election law, Law No. 22/2014 on the Election of Governors, Regents and Mayors (Pilkada Law). The Election Law did not respond to the issue of a judicial institution authorized to adjudicate election results, but instead changed the regional head election system into an indirect election, where regional heads were only elected by members of the DPRD. Many have protested the Law on Regional Elections, because it has betrayed the mandate of the 1998 Reformation, which was committed to reaffirming democracy as a system in organizing the life of the nation and state, so that democratization must reach the level of local government.

President Soesilo Bambang Yudoyono (SBY) responded to public reactions protesting the undemocratic Pilkada Law. Local democracy, marked by direct regional elections since 2005, was recognized as beginning to consolidate, but was briefly destroyed by the oligarchic Pilkada Law. Therefore, President SBY issued Regulation in Lieu of Law (Perpu) Number 1 of 2014 replacing the Pilkada Law (Law No. 22 of 2014) because it was considered to jeopardize the life of democracy that was growing at the local level. Perpu Number 1 Year 2014 regulates that regional heads are directly elected by the people in their regions.

This Perpu was accepted and enacted by the DPR into Law No. 1 of 2015, in addition to stipulating that regional heads are directly elected by the people in their regions, Law No. 1 of 2015 also regulates the provisions of the authority to adjudicate Pilkada to the Supreme Court. Article 157 paragraph (1) of Law No. 1 of 2015 reads "In the event of a dispute over the determination of the vote acquisition results of the Election, the Election participants may submit a request to cancel the determination of the vote counting results by the Provincial KPU and Regency / city KPU to the High Court appointed by the Supreme Court". However, the provisions of Article 157 of the Election Law have not yet been implemented, the provisions were amended again with Law No. 8 of 2015 so that it reads:

1. Election result disputes shall be examined and adjudicated by a specialized judicial body;
2. The special judicial body as referred to in paragraph (1) shall be established prior to the implementation of the national simultaneous election", and;
3. Disputes over the determination of the vote acquisition of the Election results shall be examined and adjudicated by the Constitutional Court until the establishment of a special judicial body".

The provisions of Article 157 of Law No. 8 of 2015 are further strengthened through the latest amendment to the Election Law, namely Law No. 10 of 2016 by inserting the phrase "final stage" in Article 157 paragraph (3) of Law No. 10 of 2016 amending Law No. 8 of 2015 so that it reads: "The dispute over the determination of the final stage of the election results shall be examined and adjudicated by the Constitutional Court until the establishment of a special judicial body". Looking at the provisions of Article 157 paragraphs (1), (2) and (3) of Law No. 10/2016 in conjunction with Law No. 8/2015, it can be understood that the provisions in a number of

paragraphs are legal norms that are transitional in nature (transition) of institutional authority, between the Constitutional Court and the special judicial body for Pilkada.

When examining Article 157 of the Pilkada Law as a normative reference for the establishment of a special judicial body for simultaneous national elections, it is not as simple as the article sounds. It requires a number of provisions relating to the establishment of a special judicial body according to Law Number 48 of 2009 concerning Judicial Power (Judicial Power Law). In this case, the author cites Article 1 number 8 in conjunction with Article 27 of the Judicial Power Law which reads:

1 point 8;

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

Article 27;

- 1) Special courts may only be established in one of the judicial circles under the Supreme Court as referred to in Article 25.*
- 2) Provisions regarding the establishment of special courts as referred to in paragraph (1) shall be regulated by law.*

Based on the provisions of the Judicial Power Law above, the special judicial body according to Article 157 of the Pilkada Law is formed under the auspices of the Supreme Court. It should be noted that the implementation of simultaneous national elections will be held in 2024, the problem is that Article 157 of the Pilkada Law does not further regulate the procedures for the formation, structure and work procedures of special judicial bodies for elections. If the procedures for the establishment of special judicial bodies for regional elections will refer to the provisions of Article 27 paragraphs (1) and (2) of the Judicial Power Law above, then the procedures for the establishment, structure, and work procedures of special judicial bodies for regional elections must be regulated in a law, whether in the Election Law or laws governing judicial bodies under the auspices of the Supreme Court, such as the General Court Law, the State Administrative Court Law.

In addition to the use of Article 27 of the Judicial Power Law in the establishment of special election judicial bodies, there are also obstacles that need to be anticipated in the statement contained in the Elucidation of Article 27 paragraph (1) of the Judicial Power Law which outlines a number of types of special courts established, including children's courts, commercial courts, human rights courts, corruption courts, industrial relations courts, and fisheries courts within the general judicial environment, as well as tax courts within the state administrative judicial environment. So it needs to be ensured that the special judicial bodies of the elections are included in the general judicial environment or the state administrative judiciary.

The description of the Elucidation of Article 27 of the Judicial Power Law above does not mention which special election court will be established within the judicial system (general court or state administrative court). Although there is an opinion that the Explanation section of a norm in the law is not binding, it is at least necessary to consider the provisions of the Explanation of Article 27 of the Judicial Power Law, considering that the establishment of a special election judicial body must be regulated by law. In particular, it explains whether the special election judicial body that will be established will be in the general or state administrative judicial environment.

If a special judicial body for Pilkada is formed within the state administrative court, it is also necessary to examine the provisions of Article 2 letter g of Law No. 9 of 2004 amending

Law No. 5 of 1986 concerning State Administrative Courts (UU PTUN) which states that the KPU's decision both at the center and in the regions regarding the results of the general election is not included in the definition of State Administrative Decisions (KTUN). If the KPU's decision in the regions (KPUD) regarding the results of the elections is interpreted as the provisions of Article 2 letter g of the PTUN Law above, then there is no other choice but to establish a special judicial body for the elections in the general judicial environment.

The author argues that the establishment of a special judicial body for Pilkada is more appropriate to be formed within the state administrative court, because it will be in line with the provisions in the Pilkada Law which authorizes the State Administrative Court (PTUN) to adjudicate the KPUD's decision on the determination of candidate pairs for regional head and deputy regional head to become Pilkada participants. The KPUD decision is categorized as a State Administrative Decision (KTUN) which is concrete, individual, final and has legal consequences. Therefore, the KPUD's decision on the election results, both the vote acquisition of candidate pairs, and/or the determination of elected candidate pairs should be categorized as KTUN which is the object of state administrative disputes.

So the normative problems faced by the government related to the establishment of a special judicial body for Pilkada, can be identified, among others; 1) The establishment of a special election judicial body must be by a law and or in a law regarding the procedures for the establishment, structure, and work procedures of a special election judicial body; 2) if it is formed into a special court, it must be determined that it is formed in the general judicial environment or the state administrative court; 3) the procedure for recruiting ad hoc judges for special election judiciary must consider the competence of judges who understand political processes such as elections and or elections.

The alternative defines the Constitutional Court as a permanent institution to adjudicate simultaneous elections.

The establishment of the Constitutional Court (MK), which is a new and separate judicial institution or separate from the Supreme Court (MA), is an effort to realize the Indonesian state as a democratic constitutional democracy. The presence of the Constitutional Court changed the paradigm of Indonesian state administration after the amendment of the 1945 Constitution which was intended to strengthen the democratic rule of law system. The Constitutional Court is a judicial institution that is expected to play a maximum role in ensuring that the process of governance and state administration runs based on the principles of law and democracy. A democratic rule of law must guarantee public access (the people) to constitutional norms so that the people participate in realizing the goals of the nation and state.

Pilkada, which is held with a direct election system involving the people directly determining their leaders in the regions as an implementation of the meaning of Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia, must be ensured to take place in accordance with the norms of law and democracy. The experience of organizing the Pilkada still has violations of the principles of law and democracy, especially the "buying and selling of votes" and the use of power by incumbent candidates. Thus, the Pilkada Court must still exist, and the court must be credible and trustworthy. Frans Magnis Suseno once said that "vote buying" and or "buying and selling candidacy support" which is often said to be money politics is the biggest danger and threat to the democratic process in Indonesia after the 1998 Reformation.

So far, disputes over Pilkada results have been tested and adjudicated by the Constitutional Court, which can be said to be quite effective. The Constitutional Court has exercised this authority since the amendment of Law No. 32 of 2004 which was amended by Law No. 12 of 2008 (Local Government Law). Based on Article 236C of Law No. 12 of 2008, the Constitutional Court is authorized to hear disputes over the results of Pilkada until now. Even the

latest legal regulation regarding the implementation of Pilkada, namely Article 157 paragraph (3) of the Pilkada Law (Law No. 10/2016), still gives the authority to adjudicate Pilkada to the Constitutional Court, although the government has been asked to immediately establish a special judicial body for Pilkada that will adjudicate simultaneous national elections in 2024.

Apart from a number of cases that have befallen and tested the integrity of the Constitutional Court in exercising its authority to adjudicate Pilkada, in the author's opinion, the public still has confidence in the Constitutional Court to handle disputes over Pilkada results. The last experience of the Constitutional Court to hear disputes over the results of the 2020 Pilkada, and these duties and authorities can be carried out effectively. So that the same thing is also the burden of the special Pilkada judicial body that will later be formed in accordance with Article 157 of the Pilkada Law whether it can effectively handle disputes over the results of the 2024 simultaneous Pilkada as played by the Constitutional Court. This public expectation requires in-depth study during the transition period of the authority to adjudicate the 2024 simultaneous elections, which will be transferred to a special judicial body for Pilkada in accordance with Article 157 paragraph (2) of the Pilkada Law.

The transition of authority to adjudicate Pilkada from the Constitutional Court to a special judicial body for Pilkada has been and is in sight. The government must immediately take a stand, whether to immediately carry out the process of establishing a special judicial body for Pilkada, or continue to use the provisions of Article 157 paragraph (3) of the Pilkada Law which gives the Constitutional Court the authority to adjudicate simultaneous national elections in 2024 because the special judicial body for Pilkada has not been formed. The juridical problem faced by the government to form a special judicial body for Pilkada is anticipated by the issuance of Constitutional Court Decision Number 85/PUU-XX/2022 which states that the phrase "until the establishment of a special judicial body" in Article 157 paragraph (3) of the Pilkada Law does not have binding legal force.

It must be pondered and thoughtfully considered that Pilkada is part of the democratic process consolidated through the constitution. The constitutional message in Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia provides a strong signal that the succession of government leadership in the regions must be ensured to fulfill the principles of democracy. Although it is a local (regional) democratic process in terms of the implementation of regional elections, the regulation is part of the Regional Government (Pemda) regime, but the principle of electoral democracy based on free and fair requires the escort of a strong, independent and integrated judiciary.

The polarization of the opinion that Pilkada is part of the Local Government regime or the Election regime has previously escalated in the dialectic and dynamics of Indonesian politics, leading to Constitutional Court Decision Number 072-073/PUU-II/2004¹⁹ as a result of judicial review of the Local Government Law (Law 32 of 2004) which decided that Pilkada is a local government regime, so it cannot be categorized as an election as referred to in Article 22E of the 1945 Constitution. The Constitutional Court's decision certainly strengthens the understanding that Pilkada is not an election regime, so disputes over Pilkada results do not fall under the authority of the Constitutional Court. However, when the House of Representatives of the Republic of Indonesia made a decision through an amendment to the Local Government Law (Law 32 of 2004 in conjunction with Law 12 of 2018) that the election court's authority was transferred from the Supreme Court to the Constitutional Court.

According to the author, if the government still has difficulties in designing a special judicial body for Pilkada as mandated by Article 157 of the Pilkada Law, it is necessary to reconsider the dissenting opinion of three constitutional judges in the Constitutional Court Decision Number 072-073/PUU-II/2004, which basically requires that Pilkada can be classified

substantively as an election according to Article 22E of the 1945 Constitution. There is even a study that if the momentum for amending the 1945 Constitution of the NRI is open again, one of the things that needs to be regulated is that the authority to adjudicate Pilkada is given to the Constitutional Court²⁰, of course with a note to make a number of improvements to the procedural law of the Constitutional Court regarding the handling of disputes over Pilkada results.

CONCLUSION

The establishment of a special judicial body for Pilkada is still faced with a number of juridical problems, especially facing a number of provisions in related laws, such as the Judicial Power Law and the Administrative Court Law.

The existence of the Constitutional Court, which has been handling disputes over Pilkada results, is still relevant to be maintained in handling the 2024 national simultaneous elections. The government is currently anticipated by the Constitutional Court's decision Number 85/PUU-XX/2022, in dealing with juridical problems amidst the urgency to immediately establish a special judicial body for the 2024 simultaneous national elections.

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