

Election Political Law Dispute Settlement in Indonesia

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Abstract— Normative and theoretical problems related to norms governing disputes in state administrative law, specifically regarding electoral dispute problems empirically, or currently known as election disputes are handled by different judicial institutions, namely State Administrative Courts for KPU administrative decision dispute. Outcome decisions of elections are within the competence of the Constitutional Court, and the general court for dispute over criminal offenses. Also, the Honorary Board of the KPU Organizers as a non-justisia institution for resolving ethical violations and dispute organizers who adjudicate the decisions of the election organizers and their committees (Panwas). Therefore, conceptually normative studies need to be carried out to realize an integrated reconciliation of electoral disputes.

Keywords— State Administrative Law, Election dispute, Administrative courts.

1. BACKGROUND

Normative and theoretical problems related to norms governing disputes in state administrative law, specifically regarding electoral dispute problems empirically, or currently known as election disputes are handled by different judicial institutions, namely State Administrative Court for competency in KPU administrative decisions. Outcome decisions of elections are within the competence of the Constitutional Court and the general court for criminal offense disputes. In addition, an Honorary Board of the KPU Organizers as a non-justisia institution for resolving ethical violations and dispute organizers who adjudicate the decisions of the election organizers and their committees (Panwas). Therefore, conceptually normative studies need to be carried out to realize the integrated reconciliation of electoral disputes in particular.

Elections are a means of popular sovereignty, and as one of the prerequisites of the Democratic State. It would be nice if a special election court be the most important part in guarding the democratic process since electoral special justice is an *ius constituendum* (legal ideal) aiming to protect the constitutional rights of citizens and electoral participants. Besides, to provide legal space to parties who are disadvantaged in organizing elections, to obtain legal certainty in the life of a Democratic State,

as well as efforts to speed up the resolution of disputes or cases during the general election processes.

The idea of a special electoral court is actually one of the most important components in the principles of holding an election including "legal certainty." In the context of legal certainty, election administrators, election supervisors, election observers and election participants must accept the stages of the process, the program, and the time schedule for holding the election. If there are parties who are not satisfied with the work provided by the General Election Commission as the organizer of the election, they can submit their dispute in the Election Special Court.

The results of the general election in the form of a final determination of the results of the vote count followed by the distribution of seats contested, which are officially announced by the election organizing agency often do not satisfy the general election participants, who do not disagreement the general election results to the Constitutional Court. The types of disputes or disputes regarding the results of this general election must be distinguished from disputes arising in campaign activities, or in the technical implementation of voting.

This type of dispute over the results of the general election must also be distinguished from criminal cases related to legal subjects in the holding of the general election. Anyone who is proven guilty of violating criminal law is threatened with a criminal offense and must be held criminally responsible according to the provisions in force in the criminal justice field. For example, A steals a ballot, then it is classified as a violation of criminal law which is tried according to criminal procedure. Whereas B violates the campaign schedule, which is the right of other candidates, then such violations must be administratively resolved by the election management agency responsible for that field.

Likewise, if C submitted a successful application win the case. Sometimes disputes over election results to the court are due to differences of opinion in the results of the calculation between the general election participant and the organizer of the election, either because of deliberate or because of negligence, either because of technical errors or weaknesses that are administrative in the calculation or caused by human factors error. If such differences of opinion result in losses for participants in

the general election, then the disadvantaged election participants can take legal action by submitting a case request to the Constitutional Court. However, in the hearing at the Constitutional Court, C colluded with the officials of the Regional Election Commission (KPUD) by falsifying evidence at the trial that could not be denied by the central Election Commission (KPU) officials in the trial.

In the future, it was proven that the data submitted by the regional KPU was false, so it was entirely a case of falsified crime, which was detrimental to all parties and must be criminally accounted for. However, insofar as the results of the general election which have been decided final and binding by the Constitutional Court in a trial that is open to the public, the issue of the criminal act referred to no longer has anything to do with the results of the general election. Within the Constitutional Court, all parties including especially to the KPU as the election organizing body and other related parties, have been given sufficient and free opportunity to refute or reject the evidence submitted by the party requesting the case. But because it turns out that the evidence in question is indisputable, then the Constitutional Court has decided the dispute over the election results final and binding.

Usually, matters relating to the quality of the cause, in the type of dispute over the results of general elections, without strict legal certainty (*rechtszekerheid*), inevitably can arise injustice in all mechanisms of state administration and therefore can cause injustice for all citizens. Of course not all countries have a Constitutional Court or a mechanism to settle disputes over the results of general elections through the Constitutional Court.

2. PROBLEM STATEMENT

Normatively, electoral dispute issues are handled by different judicial institutions, namely the Constitutional Court for dispute over election results decided by the KPU, and the State Administrative Court under the Supreme Court to solve the dispute within KPU decisions in addition to the election results. Besides, the election supervisory agency to oversee violations elections and law enforcement (police) if there are elements of a criminal act whose judicial process involves the general court under the Supreme Court. Violations of the code of conduct for election administrators are resolved through the siding of the Election Organizers' Honorary Council (DKPP). Under these conditions, offered research proposals that examine:

"How is the Reconciliation of Election Dispute Resolution to Realize an Integrated State Administration Court in Indonesia."

The main limitation of the problem or the scope of this study/ research is the statutory regulation governing dispute over decisions by state administration officials and acts of violation of the law that contain elements of electoral events in the context of general elections, namely legislative elections, regional head elections, and presidential elections, as well reconceptualising the concept of justice. Through limiting this problem, it is hoped that there are at least two benefits to be contributed in the assessment / research, namely the theoretical and empirical benefits, can be more focused and in-depth.

3. STUDY OBJECTIVES

A study always stems from curiosity (*nieuwgierigheid*) on an actual problem faced. This research is intended to obtain correct knowledge about the object under study based on a series of steps recognized by the community of peer scientists in an area of expertise (*intersubjectieve*), that is recognized by its scientific nature (*wetenschappelijkheid*), and can be traced back by colleagues who are interested in new things (*nieuw moet zijn*), which is easily traced by other legal scientists.

Research is specifically aimed at developing normative jurisprudence directed at the conceptual formulation of new laws. The activity of developing this concept is observation and data collection in order to separate essential and non-essential legal elements and group them based on the similarity of certain legal concepts. Building concepts in the study of legal science is basically an activity to construct a theory, which will be used to analyze it and understand it. In the activities of constructing this theory, the steps taken are in the form of activities to determine the content of the rule of law, meaning to determine what is the rule of law and formulate the meaning of the rule of law.

It is in this view that what law science puts forward is the science of meanings. Determining the meaning of a legal phenomenon means interpreting the legal phenomenon, such as describing the rule of law and presenting the rule of law, will greatly depend on how a researcher develops his concept from compiling a theory to interpreting the legal phenomenon. If this is the case, a legal science reviewer or legal scientist in his efforts to formulate his theory, must choose from the various meanings of the rule of law that may be contained in the symptoms of the law. So the development or study of legal science is not only in the form of activities

describing how the rule of law can be interpreted, but also determines the choice among various possible alternative meanings of law contained in the rule of law.

4. RESEARCH METHODS

Every science has its own identity, therefore there are always differences. The research methodology applied in science is always adjusted to the science that is the parent. Legal research can be divided into two types, namely Normative / Doctrinal / Literature Law Research; is a legal research that uses secondary data sources and Empirical / Sociological Law Research; is a legal research that uses primary data sources.

4.1 Judicial Normative

Legal scientists to study legal issues have long used normative legal science research. Normative legal science research includes the study of: (a) Principles of law; (b) Legal systematics; (c) Legal synchronization; (d) Comparison of laws; (e) Legal history. The difference between normative legal research and sociological legal research is Normative Legal Research; Emphasis on speculative-normative steps and normative analysis-observation steps; and Sociological Law Research; Gives importance to empirical-quantitative analysis. So that the steps and technical designs of sociological legal research follow the pattern of social sciences research, especially sociological so that it is called (socio-legal research). Therefore, the steps are started from the formulation of the problem and the formulation of hypothetical, through the determination of the sample, measurement of variables, data collection, and design analysis, while the whole process ends with drawing conclusions.

Based on the problems examined by researchers, the normative legal research method, normative legal research methods, or library legal research methods are methods or methods used in legal research conducted by examining existing library materials.

This study uses a normative juridical approach in the form of approach to the case of election disputes / legal research in concreto. The normative juridical approach method in this case is an approach where the law is conceptualized as the principles of law. In this approach, law is not merely conceptualized as the norm, but also as a product that is realized through a judicial process from case to case, which is often called "law in concreto" which will then be drawn to a legal principle. The collection of judges' decisions that end this type of case is called *jurisprudentie* in Dutch and judge made laws in the legal traditions in countries that adhere to the common law system. The research specification is descriptive and analytical prescriptive to discover new

legal principles that can enrich futuristic studies on what should be regulated in government regulations regarding discretion of government administration officials which are not mere empty dreams but principles the ideal law must be able to be applied therefore it is prescriptive.

5. DISCUSSION

5.1 Election Political Law

In the perspective of jurisprudence, this study is directed at the study of normative jurisprudence, a process of reasoning and legal reasoning that rests on the rules of thinking known in logic. The use of logic in jurisprudence contains characteristics relating to the nature of law, legal sources, and types of law. So in the study of normative jurisprudence, these three problems must receive serious attention, because if a researcher or legal reviewer does not pay attention he will be able to the results of the study.

In legal reasoning, problems that arise with the use of logic if dealing with the nature of the law will raise the issue of norms, because the general nature as a norm is a code of conduct. In the life of the community the code of conduct is not only law, but there are also other norms such as moral norms, religious norms, moral norms, and so on, so whether moral norms are also norms of behavior that can be enforced legally. This is a typical study in the study or study of normative jurisprudence.

Election dispute resolution is one of four sub-studies in elections, namely sub-studies of voting behavior, sub-studies of political "marketing" conducted by candidates or parties, sub-studies of methods general election in the form of procedures and mechanisms for converting people's votes into chairs and sub-studies of the process of organizing general elections (electoral management or management for electoral processes). The electoral law formation process has been completed although of course it still opens the possibility of testing to the Constitutional Court (MK). Now we have started the electoral process area. To realize democratic elections, in general the biggest problem faced is in the electoral process area.

According to the Office for Democratic Institutions and Human Rights, there are nine components related to the electoral process, namely the administration of the electoral district, election administration, suffrage rights and voter registration, citizenship education and voter information (civic education and voter information); candidates, political parties and campaign funding (candidates, political parties, and campaign spending), media access and protection of freedom of speech and expression in campaigns (media access and protection of freedom of speech and expression in electoral

campaigns), balloting, election observation (election observation), and resolution of election disputes (resolution of election disputes).

In all stages of the implementation of elections, there is a very open dispute, both caused by fraud (fraud), mistakes (mistakes) that can reduce public confidence (non-fraudulent misconduct). Therefore, when the election stage has begun, of course not only the election organizers and election participants must make preparations, but also the judiciary that is authorized to examine and decide election disputes, including law enforcement officials involved in it.

This is also based on the development of the judicial function which is not always only to give a decision on a dispute, but the court's decision can also form the principles and legal provisions that must be implemented in the administration of elections. The role of the judiciary is not only to resolve ordinary disputes but also to ensure the implementation of election principles so that they can be saved from attempts of abuse and violations of the electoral system.

The implementation of the 2014 elections has been stipulated by Law Number 8 of 2012 concerning General Elections of Members of DPR, DPD, and DPRD. In this law the provisions governing dispute resolution and violations are regulated more clearly and involve three judicial institutions, namely the general court, the state administrative court, and the Constitutional Court. In addition, the Election Law also gives Bawaslu greater authority to resolve certain disputes.

The first court involved in conducting elections is a district court that has the authority to examine, hear, and decide on election crimes within 7 days after the case file is transferred. The trial for the examination of election crime cases is carried out by a special panel consisting of special judges who are career judges at the district court and the high court that is specifically determined through the decision of the Chief Justice. The new judicial mechanism established by Law Number 8 of 2012 is Election State Administrative Dispute, namely disputes arising in the field of electoral state administration between candidates for DPR, DPD, Provincial / Regency / City DPRD, or political parties for election participants and KPU, Provincial / Regency / City KPU as a result of the issuance of KPU, Provincial / Regency / City KPU decisions.

This dispute can arise between the KPU and the political parties that are candidates for the election who did not pass the verification as a result of the issuance of the

KPU's decision on the determination of the political parties participating in the election, or the dispute between the KPU, Provincial / Regency / City KPU and candidates for DPR, DPD, Provincial / Regency / DPRD / city and district was dropped from the list of permanent candidates as a result of the issuance of the KPU's decision regarding the establishment of a permanent candidate list.

PTUN in examining, adjudicating, and resolving disputes over election state administration based on article 270 of Law Number 8 Year 2012 forms a special panel consisting of special judges who are career judges within the state administrative high court and the Supreme Court which is determined by a decision of the Supreme Court. The next court involved in organizing the elections is the Constitutional Court, namely examining, adjudicating and adjudicating disputes over election results as disputes between the KPU and election participants regarding the determination of national election results that could affect the acquisition of seats for election participants. Regarding the authority of the Constitutional Court, it is necessary to pay attention to the decision of the Constitutional Court Number 062 / PHPU-B-II / 2004 which states that the Court is a judicial institution at the first and last level regarding disputes over election results. So that the court in the Court is indeed related to quantitative and qualitative matters, that is, in addition to resolving disputes related to the significant number of results of the election, the court also adjudicates the constitutionality of the election.

Considering the importance of the role of the judiciary in resolving various types of disputes and violations, of course the initial stages of the election that have been carried out by the KPU must be immediately followed by preparations for the judiciary to accept election cases. It is not impossible since the initial stage, for example verification of political parties participating in the election, there has been a state administration dispute or violation of election crimes. Preparations that must be made include the preparation of a special assembly that handles election cases.

Definitely, to provide a special panel of judges a recruitment process from career judges is needed in order to be able to carry out their duties, not only to resolve disputes and violations, but even more important is to maintain integrity to realize democratic elections. The 2014 election was truly an implementation of a democratic state based on law.

Procedural democracy in the form of elections has several functions, including as a means of selecting

public officials, as a means of accountability for public officials, as a suggestion for political education for the people to achieve this function through the holding of democratic elections. The characteristics of democratic elections include: General voting rights, active and passive voting rights granted to adult citizens without discrimination. Equal votes between the number of voters and the number of seats in parliament means the availability of a significant choice for example about the number of candidates who are certainly more than one. Freedom of people's nomination is free to nominate representatives of the people to be elected.

Equal campaign rights mean each party participating in the election has the same rights in the campaign. It can be seen that all political parties have the same quota between one another. Freedom to vote, in this case the people get guaranteed freedom to choose their representatives without coercion and threats, and honesty in vote counting and the existence of periodic or periodic elections.

Elections are a means of popular sovereignty, and as one of the prerequisites of the Democratic State. It would be nice if a special election court be the most important part in guarding the democratic process since electoral special justice is an *ius constituendum* (legal ideal) aiming to protect the constitutional rights of citizens and electoral participants. Besides, to provide legal space to parties who are disadvantaged in organizing elections, to obtain legal certainty in the life of a Democratic State, as well as efforts to speed up the resolution of disputes or cases during the general election processes.

Second, by establishing special election court at the first level of regency / city capital and an election-specific high court at the appeal level domiciled in the provincial capital, justice seekers from outside Java do not need to flock to the capital city of Jakarta, but enough in the regency / city and provincial capitals which will make electoral special courts more effective and efficient in solving election cases.

Third, the formation of an election-specific court does require substantial investment, but judging by long-term legal investment, the electoral special court will provide legal alternatives in handling election cases so that it is faster, cheaper and easier and provides legal certainty to all parties.

Election-specific court is one of the basic components of the creation of legal certainty towards a democratic state based on Pancasila and the 1945 Constitution under the auspices of the Unitary State of the Republic of Indonesia.

5.2 Election Dispute

Election dispute of law Number 8 of 2012 concerning elections stipulates that the holding of elections as a political event cannot be separated from law enforcement issues. There are so many provisions in general election laws that regulate election crimes whose enforcement must be based on ordinary criminal procedural law mechanisms. The problem is can the nuanced election crimes be resolved quickly the settlement is based on procedural law under normal circumstances, or the extent of applicable laws and regulations such as the Criminal Code.

Election result disputes are disputes between the general election commission and election participants regarding the determination of national election results that can affect the acquisition of seats for election participants, which can only be submitted for cancellation to the constitutional court, not later than 3x24 hours from the announcement. While disputes / disputes originating from KPU decisions other than election results are submitted to the Administrative Court under the Supreme Court. If there are violations committed by election participants, they are submitted to the supervisory committee or to the police officers by observing the object of the violation if they are suspected of having committed a crime.

The criminal act of general election based on the provisions of law number 8 of 2012, is defined as a violation of the electoral criminal provisions stipulated in this law, the settlement of which is through the courts of the general court, while administrative violations are resolved through the KPU and the election supervisory body and the apparatus underneath it. In the context of regulating criminal acts, in fact the Election Law is a special law (*lex specialis*) because it regulates the criminal acts regulated in the Election Law. In general, the Criminal Code (*lex generalis*) has also arranged it in articles 148 to 153 of the Criminal Code.

Regarding election criminal acts, it can be seen from the criminalization of almost all acts / actions in each stage of the election implementation which impedes the implementation of elections. Even though the implementation of the prosecution of election criminal cases basically uses the Criminal Procedure Code / KUHAP (*lex generalis*), the Election Law also determines the mechanism / law of its own event (*lex specialis*). Considering that all settlement related to the election including law enforcement requires a quick resolve, so that organizing elections as a form of implementing democracy can be carried out democratically and cleanly.

Law number 8 of 2012 concerning elections categorizes which are criminal acts. This is related to the fine of imprisonment. In addition, criminal provisions eliminate minimum penalties in order to provide the principle of legal certainty and make it easier for judges to make decisions.

Law number 8 of 2012 explicitly has a spirit to strengthen the role and function of the Election Oversight Body (Bawaslu), as similar things have been done through Law No. 15 of 2011 concerning the holding of elections. Eight election supervisors (including Bawaslu, Provincial Bawaslu, Regency / City Panwaslu, District Panwaslu, Field Election Supervisors, and Overseas Election Supervisors) receive reports of election violations at each stage of election administration. Regarding the time of report submission, there were changes to the regulations in the new election law. If previously it was stipulated that the election violation report was submitted no later than 3 days after the election violation occurred, now the reporting deadline was extended in duration to the election violation report submitted no later than 7 days after the election violation was discovered and / or discovered.

The period of handling election violation reports by the ranks of election supervisors has not changed, remains the same as the 2009 elections, namely election observers are obliged to follow up on the report no later than 3 days after the report is received. However, in the event that an election supervisor needs additional information from the reporter, the follow-up to handling the election violation report shall be done no later than 5 days after the report is received. After the election supervisor receives and reviews the incoming violation report, the election supervisor will categorize the violation report into several classifications, namely:

1. Violations of the code of conduct for election administrators are forwarded to the Election Organizer Honorary Board (DKPP). Previous violations of the code of conduct were not regulated in the old election law.
2. Election administration violations are forwarded to the KPU, Provincial KPU, or Regency / City KPU.
3. Election disputes are resolved by Bawaslu. In the old election law, the electoral dispute issue was not regulated as a legal problem whose resolution specifically became the authority of the Bawaslu.
4. Election criminal acts are forwarded to the Indonesian National Police (Polri).

In addition, related to election law issues, in Law no. 8 of 2012 also known as: (a) Dispute of Election State Administration, and (b) Dispute over Election Results

Violation of the Code of Conduct of Election by Law No. 8 of 2012 is interpreted as a violation of the ethics of election administrators who are guided by oaths and / or promises before carrying out their duties as election administrators. The procedure for resolving violations of the code of conduct of election administrators is carried out in accordance with the provisions contained in Law No. 15 of 2011 concerning election organizers. The regulation and definition of violations in election administration are more concrete in Law No. 8 of 2012 compared to the previous arrangement.

Election administration violations are defined as violations which cover procedures, procedures, and mechanisms relating to the administration of the implementation of elections in each stage of the election administration outside of election crimes and violations of the electoral code of conduct. The settlement of election administration violations is carried out by KPU, Provincial KPU, Regency / City KPU based on Bawaslu's recommendations, no later than 7 days after the recommendation is received. Whereas election disputes are interpreted as disputes that occur between election participants and election participant disputes and election organizers as a result of the issuance of KPU, Provincial KPU, Regency / City KPU decisions.

Election dispute resolution is synchronized with Law No. 15 of 2011, which was completed by the Election Supervisory Body no later than 12 days from receipt of the report or findings (article 258). Further provisions regarding the procedure for resolving election disputes are ordered to be regulated in Bawaslu regulations (Article 259 paragraph 5)

Bawaslu's decision regarding the resolution of election disputes is the final and binding decision, except for the decision on election disputes relating to verification of the participating political parties and the list of permanent candidates for members of DPR, DPD, Provincial DPRD, and Regency / City DPRD. Related to election disputes related to the verification of political parties participating in the election and the list of permanent candidates for members of the DPR, DPD, Provincial DPRD, and Regency / City DPRD, if it cannot be resolved by Bawaslu, parties who feel disadvantaged in their interests can file written claims to State Administrative High Court (PTTUN).

UU no. 8 of 2012 replaced all terminology of election criminal violations that existed in the old election law with new, more consistent terminology, namely election crime. The time frame for electoral crime settlement is also regulated in such a way that it does not interfere with the stages of the next election. Regarding the

handling of election crimes, the new Election Law also regulates the formation of an Integrated Law Enforcement Center (Sentra Gakkumdu) with the aim of equalizing the understanding and pattern of election crime handling between Bawaslu, the Indonesian National Police, and the Attorney General's Office of the Republic of Indonesia. Further provisions regarding the Gakkumdu Center will be regulated based on mutual agreement between the Head of the Indonesian National Police, the Attorney General of the Republic of Indonesia, and the Chairperson of Bawaslu. Decisions of public officials include three things declaratory (explain), constitutive (cause legal consequences) or condemnatoir (containing the punishment).

Just like the previous election law, related to the completion of election criminal acts, Law no. 8 of 2012 again ordered the formation of a Special Assembly in the District Court in examining, hearing, and deciding election crime cases. The Special Assembly consists of special judges who are career judges at the District Court and the High Court specifically assigned to examine, bring to justice, and decide cases of election crime.

Special judges must fulfill the requirements to carry out their duties as judges for a minimum of 3 years, except in a court no judges whose term of service has reached 3 years. In addition to having to master knowledge about elections, special judges during examining, adjudicating, and deciding election criminal acts are exempted from their duties to examine, hear, and decide on other cases. Further provisions regarding this special judge will be regulated by a Supreme Court Regulation (article 266).

5.3 Judicial Authority of MA and MK

The legal basis for the implementation of the 2014 legislative elections is guided by Law Number 8 of 2012 concerning the general election of members of the DPR, DPD and DPRD. In this law the provisions governing dispute resolution and violations are regulated more clearly and involve three judicial institutions, namely the general court, the state administrative court, and the Constitutional Court. In addition, the Election Law also gives Bawaslu greater authority to resolve certain disputes.

Reviewing the competence of the constitutional court judges in examining and passing off the offense and types of pelicis set forth in: article 24C paragraph 1, article 22E paragraphs 3 and 4 and article 6A of the 1945 Constitution; article 68 paragraph 1 and 2 of Law No.23 / 2003; article 134 jo article 104 of Law no. 12/2003; and article 74 of the 2003 MK Law, that the results of the election of members of the House of Representatives

(DPR), the Regional Representative Council (DPD), the Regional People's Representative Council (DPRD) and the pair of candidates for president - vice president are examined by the MK, at the first and last level, and the decision is final (Article 24C paragraph 1 jo Article 22E paragraph 2 of the 1945 Constitution).

The constitutional power (original constitutional power) of the Court is further regulated in Law No. 24/2003 concerning the Constitutional Court. On the other hand, in the event that the results of democratic elections (Article 18 paragraph 4 of the 1945 Constitution) are problematic, the authority of the Supreme Court to resolve them is not determined by the constitution. Article 24A paragraph 1 of the 1945 Constitution states: The Supreme Court has the authority to adjudicate at the cassation level, examine the statutory regulations under the law against the law, and have other powers granted by law. Article 106 of Law Number 32/2004 concerning regional government gives the Supreme Court the authority to examine and decide on objections to the determination of the results of the vote count affecting the election of candidate pairs (Article 106).

In this context, the Supreme Court ordered the South Sulawesi Provincial KPU to repeat the election of governors in four districts in South Sulawesi (Supreme Court Decision No. 02P / KPUD / 2007 12/12/2007). Is it true that the majority of Supreme Court justices understand the object of dispute (objectum litis) which is their authority.

Some objects of dispute over election results which are under the authority of the Supreme Court are based on several things, as follows: First, criminal acts related to elections are under the authority of the criminal justice system (police, prosecutors, general courts). These crimes can be in the form of falsifying voter identities and voter lists, theft of ballot papers and ballot boxes, or violations of campaign rules, including if carried out by candidates and holding elections.

Reporters are voters, election observers, and election participants, to be forwarded by the supervisory committee (Panwas) to the investigator. Second, it is not a deviation of the voting process (at the TPS).

Voting deviations become the authority of the election organizer, in the events that: (1) the ballot box opening is not in accordance with the procedures, (2) the ballot is invalid because it is given a certain mark by the officer, (3) the use of voting rights more than once, (4) the officer damages the ballot, and (5) more than an unregistered voter can vote (Article 104).

This deviation requires re-voting in problematic polling stations and becomes the authority of the election organizer. Third, it is not an error in counting procedures. Article 103 of the Regional Government Law stipulates as follows. Counting at polling stations is closed, in a place where the lighting is poor, witnesses cannot clearly witness the count, votes are counted elsewhere, inconsistency in determining valid and invalid ballots. Handling this problem becomes the authority of the election organizer to recount the recapitulation of ballot boxes deemed problematic.

Thus, the object of the Supreme Court's authority is an objection to the election results, which are determined by the election organizer, and the objection will affect the final election results (Article 106 of the Regional Government Law). The objection to the election results will be in the form of a request for cancellation of the vote count determination by the Election Commission, accompanied by a correction to the results of the count.

The losing and objecting pair must be able to correct the votes above the difference set by the election organizer with the support of evidence. Thus, the trial of the election results is a special law (*lex specialis*), in this case the electoral law and in particular, the electoral disputes. Requesting the Supreme Court to decide as fairly as possible refers to the context of the object of the dispute, the authority of the court and the type of decision.

Determination of election results can be disputed to the court in the event that there is a difference in the calculation of which the correction of the votes (before the court) will affect the selection of the candidate pair. The decision in this dispute is a declarator and is limited to determine the applicant as the winner based on the results of the examination before the court hearing or reject the request and confirm the winner that has been determined by the election organizer.

But the Supreme Court ruling in advance ordered the elections to be repeated in four districts in South Sulawesi. This means that the entire process, including the voting and its calculations, is considered problematic in all the local polling stations that have accumulated in the Regency / City and possibly the Provincial KPU. The Supreme Court refused to cancel the election results of the South Sulawesi KPU election version. The Supreme Court ruling shows that the panel of judges could not determine the material truth about the objections of the petitioners who were defeated in the South Sulawesi election. However, in the name of material truth, the Supreme Court ordered a repeat of the elections in four districts. That is, the court rejected the material truth

submitted by the applicant (losing candidate), but instead ordered "the creation of a new material truth." The Supreme Court ruling has entered the political sphere, namely returning the problem to the election process.

Meanwhile, the South Sulawesi KPU will undergo a review (PK) of the decision (it is not yet known, whether the applicant will advance the PK as well). The legislators should be firm in their position that the Supreme Court's verdict on disputes over the results of the elections is final and binding, although they can be handed over to the high court.

The provisions and explanations of the Regional Government Law make the first trial not final (Article 106 paragraph (6) and (7) of the Regional Government Law) so that a PK can be requested. According to the Regional Government Law and MA practices in the case of the Depok City Election in 2005, the resolution of disputes over the results of the elections is neither *lex specialis* (special law) nor *lex posterior* (more recent than the revised results of the MA Law and the Judicial Power Act in 2004). As a result, the court's decision is neither final nor binding so that the PK can be requested. The objective of obtaining legal certainty over the resolution of local election disputes is not achieved when the judge compromises his authority.

The Constitutional Court's decision in the settlement of disputes over election results is constitutive which has legal consequences, removes and creates new rights. The judge's decision can cancel the victory of the candidate determined by the KPU and set another candidate as the winner. This is clearly different from the decision of the declarer which is only asserting about the matter requested by the applicant and does not create a new situation. Such is the case in the application for the determination as an heir or the application for the determination as the foster child guardian, which only legalizes legally, but does not change the factual circumstances.

In addition, the decision of the Constitutional Court in the resolution of disputes over election results is final, there is no legal remedy whatsoever. If in a civil law a case decision causes a loss to a third party, then he can defend his rights, then there is no legal protection for the injured party.

In essence, the determination of election results by the KPU is KTUN. Election cases have the character of disputes as the State Administration (TUN) case. But it is expressly excluded in Article 2 letter g of Law Number 5 of 1986 concerning PTUN. So disputes over

election results cannot be submitted to the Administrative Court but to the Court. In every TUN dispute, there are always plaintiffs and defendants. Even if there is an outside party of interest, they can intervene, both as plaintiffs and intervenors.

To guarantee the realization of justice, the election results dispute court should be conducted as in the TUN Court. The demand for objection to the election results is in the form of a lawsuit (*contentiosa*) not a request (*voluntary*). This becomes significant in the examination in the Court of the Constitutional Court.

This shows that the KPU's position became clear, that is, the KPU was the defendant who was subsequently responsible for defending his decision. So there is no more confusion that has been happening all this time. That is, on one hand the KPU announced its decision but in court it could actually be a witness who tried to undermine his decision.

6. CONCLUSION

From the results of the analysis in this study as described, the following conclusions can be drawn:

- a. Election trials that have been held to date have not been systematically regulated and not yet integrated, in fact in the framework of upholding democracy, the results of vote counting nationally determined by the KPU were canceled by the Constitutional Court, because they were deemed to have constitutional violations which harmed election participants. While for disputes other than election results, it is decided by the Administrative Court under the Supreme Court. While violations of the code of ethics were carried out by the Election Organizer Honor Council (DKPP), criminal violations were committed by the General Courts of the District Courts.
- b. The competence of the Constitutional Court is within the *judex juris* court, while the election dispute is included in the realm of *judex factie* because it needs rearrangement in realizing electoral justice, which is carried out in an integrated manner within a Supreme Court. Judicial institution is specifically for *judex factie* justice, while for the competence of the Supreme Court to test the legislation transferred to the Constitutional Court as a special *judex* judicial court.

7. RECOMMENDATIONS

Based on the above explanation, the following recommendations are offered:

- a. Following up on the constitutional mandate of Article 22 E of the 1945 Constitution it is necessary to establish an electoral court under the scope of the Supreme Court that has the competence of the authority to adjudicate hearings. Election justice is an integration / unification of authority from the Administrative Court, MK, District Court and DKPP.
- b. Criminal violations in election cases are not tried in a district court, because of violations, criminal crimes in politics are more heavily motivated by political backgrounds, so they are less permanent if they are included in general courts.
- c. Election courts are domiciled in each province, if they are not satisfied with the decision in the electoral court, they can submit it to the Supreme Court.

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