

Juridical Review of the Authority of the Constitutional Court in Settlement of General Election Disputes

Rasji¹ Nathalie Cristine Lumban Gaol² Zahra Alsabilah³

Faculty of Law, Universitas Tarumanagara, West Jakarta, Province of DKI Jakarta, Indonesia^{1,2,3}

Email: rasji@fh.untar.ac.id¹ nathalie.205210142@stu.untar.ac.id²
zahra.205210101@stu.untar.ac.id³

Abstract

Indonesia as a democratic country cannot be separated from the voice of the people in running its government. Every Indonesian citizen has the right to vote and be elected as stipulated in Law Number 39 of 1999 concerning Human Rights. As a milestone in the embodiment of the principles of democracy, general elections to elect representatives of the people must be based on the voice of the people. In the general election process, it is not uncommon for errors to occur in determining the results of the vote acquisition results which can lead to a particular conflict. Taking into account the error in determining the results of the vote acquisition or what is commonly referred to as the General Election Result Dispute (PHPU), it is necessary to have a method of settlement that can be carried out by the Constitutional Court. In this case the author examines what is the authority of the Constitutional Court in resolving disputes over the Obtaining of General Election Results (PHPU) and regarding the procedures for resolving disputes over the Obtaining of General Election Results (PHPU) in accordance with existing laws and regulations.

Keywords: General Election (Election), Election Result Dispute (PHPU), Constitutional Court (MK)



This work is licensed under a [Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International License](https://creativecommons.org/licenses/by-nc-sa/4.0/).

INTRODUCTION

Indonesia is a constitutional state as stated in Article 1 point 3 of the 1945 Constitution. As Indonesian citizens, every citizen has rights and obligations in the state, one of which is the right to vote and be elected. This is confirmed in Article 43 paragraph (1) of Law Number 39 of 1999 concerning Human Rights which reads "Every citizen has the right to be elected and vote in general elections based on equal rights through direct, public, free, secret, honest and fair in accordance with statutory provisions. This also applies in accordance with Indonesia's form of government as a democratic country, where in the election of the people's representatives, the head of state and the head of government are directly elected through elections.

General elections are a means for the Indonesian people to participate directly in choosing leaders or people's representatives who will run the government. General elections themselves are regulated in Law Number 7 of 2017 concerning General Elections. Based on Article 1 paragraph (1) of Law Number 7 of 2017 concerning General Elections, "General Elections, hereinafter referred to as Elections, are a means of people's sovereignty to elect members of the People's Representative Council, members of the Regional Representatives Council, President and Vice President, and to elect members Regional People's Representative Council, which is implemented directly, publicly, freely, confidentially, honestly and fairly within the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia."

The first direct general election took place in 2004, namely for the implementation of the election of people's representatives who would sit in the DPR, DPD and DPRD as well as the president and vice president, while for the implementation of the first general election for

regional heads and deputy heads of districts or cities was held in 2005. The district or city level elections were first held in Kutai Kartanegara district, East Kalimantan on June 1, 2005, while the provincial level elections were first held in North Sulawesi on June 20, 2005. After the constitutional changes to the general election system ratified and promulgated on October 15, 2004 which was directly elected by the people, in which the executor of judicial power was given the authority to resolve disputes over the election of DPR members, DPD members, and the president and vice president were given to the Constitutional Court (MK), since then the Constitutional Court move to maintain the quality of elections in accordance with democratic principles and the constitution of the Indonesian state.

The Constitutional Court has the authority to resolve disputes over General Election Results Dispute (PHPU), namely in legislative and presidential elections, this is contained in Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia which contains the duties and powers of the Constitutional Court. Settlement of general election disputes outside of general election results disputes (PHPU), such as administrative and criminal matters, is not the authority of the Constitutional Court, but the authority of the General Election Commission and the police.

Since the granting of authority to resolve election disputes to the Constitutional Court until now, the constitutional court has shown that as a judicial institution through its decisions it has carried out judicial activism to produce active and creative breakthroughs in keeping elections carried out in a democratic manner according to the mandate of the constitution. As an institution that has the authority to resolve election disputes, the Constitutional Court will of course try to provide solutions to every problem and be critical in maintaining the originality of law enforcement so that it is protected from political domination. Through what the author has explained above, the author wants to examine what is the authority of the Constitutional Court in resolving disputes that occur in the general election process so that it can answer how "Juridical Review of the Authority of the Constitutional Court in Settlement of General Election Disputes".

Based on the background described above by the authors, the authors formulate the problem as follows: What are the general election disputes that are the authority of the Constitutional Court? What are the procedures for resolving general election disputes by the Constitutional Court according to existing legal provisions?

RESEARCH METHODS

In reviewing the application of law enforcement to criminal acts of corruption as it should be in accordance with existing law, the research method is in the form of normative-empirical research to examine and between existing laws and regulations and the facts that actually happened. In this study, it examines using secondary data which consists of primary basic materials in the form of laws and regulations, namely those that focus on the 1945 Republic of Indonesia Law, Law No. 7 of 2017 concerning General Elections, as well as other laws and decisions related to with the author's discussion. In addition, the author also reviews based on secondary basic material which makes several journals and articles as a reference for writers to develop their writing

RESEARCH RESULTS AND DISCUSSION

General election disputes are the authority of the Constitutional Court

The Constitutional Court is an institution tasked with guarding the upholding of democracy in the country of Indonesia, that one of the powers of the Constitutional Court is to resolve election disputes as set forth in article 24C paragraph (1) of the 1945 Republic of

Indonesia Law "The Constitutional Court has the authority to try at the first level and finally, whose decisions are final to review laws against the Constitution, decide on disputes over the authority of state institutions whose powers are granted by the Constitution, decide on the dissolution of political parties, and decide on disputes regarding the results of general elections", Settlement of election disputes as intended in article 24C paragraph (1) leads to legislative general elections and presidential elections, this is reinforced by Article 74 paragraph (2) of Law Number 24 of 2003 concerning the Constitutional Court which states that the application for a dispute over the results of the general election carried out by the KPU are candidates for members of the Regional Representatives Council, presidential and vice-presidential elections, and seats acquired by political parties participating in elections in an area. However, in its implementation, the Constitutional Court does not only resolve election disputes, but also general elections for regional heads at the provincial, district and city levels.

Initially, the settlement of post-conflict local elections was the authority of the Supreme Court, after the issuance of Law Number 12 of 2008 concerning the Second Amendment to Law Number 32 of 2004 concerning Regional Government this authority shifted to the Constitutional Court. This is explained in Article 236C of Law Number 12 of 2008 "Handling disputes over the results of the vote count for regional heads and deputy regional heads by the Supreme Court shall be transferred to the Constitutional Court no later than 18 (eighteen) months after the enactment of this Law". Transfer of authority The post-conflict local election dispute which was originally the authority of the MA was not carried out arbitrarily but on certain grounds and reasons. Some of the things that form the basis and reasons for the transfer of the authority to settle post-conflict local election results disputes are due to:

1. Pilkada is still included in the electoral regime
2. Reflecting on the provisions of Article 24C paragraph (1) of the 1945 Constitution which states that the Constitutional Court is an institution authorized to try at the first and last levels whose decision is final.
3. There is an ever-longer conflict that requires a more capable and authoritative institution
4. Reducing the burden on the Supreme Court

These four things show that the institution with more authority in resolving post-conflict local election result disputes is the Constitutional Court. Based on this, it can be reiterated that what becomes the authority of the Constitutional Court is disputes in the realm of General Election Results Disputes (PHPU), so that matters outside of election results such as administration and crime in elections are not entirely within the Court's authority to resolve them. Election administration violations themselves are explained in Article 460 paragraph (1), which includes violations of procedures, procedures or mechanisms related to the holding of elections at every stage of the election, these violations are the responsibility of Bawaslu. Meanwhile, criminal violations in elections are the responsibility of the Indonesian National Police which are regulated in chapter five of Law Number 7 of 2017, for example providing incorrect information about oneself or others for the purposes of election registration, disrupting or obstructing election campaigns, and making decisions that are benefit or harm the election participants.

Procedures for resolving general election disputes by the Constitutional Court according to existing legal provisions

As already explained, general election disputes that can be resolved by the Constitutional Court are in the form of general election results. The dispute is also commonly known as the General Election Result Dispute (PHPU). The procedures for resolving disputes that occur

between the General Election Commission (KPU) and election participants are regulated in Law Number 7 of 2017 concerning General Elections and Constitutional Court Regulation Number 15 of 2008.

Article 474 of Law Number 7 of 2017 concerning General Elections states that in disputes over the determination of the vote acquisition results for the national DPR, DPD and DPRD members, the election participants can submit a request for the cancellation of the determination of the vote counting results by the KPU to the Constitutional Court with several provisions, that is:

1. The application is submitted no later than 3 x 24 hours after the announcement of the determination of the results of the election results by the KPU
2. The applicant can correct and complete the application no later than 3 x 24 hours after receipt of the application by the Constitutional Court
3. KPU, Provincial KPU, Regency/Municipal KPU must follow up on the decision of the Constitutional Court

Based on Article 475 of Law Number 7 of 2017 concerning General Elections which states that disputes over the determination of the results of the Presidential and Vice-presidential election can be submitted under the following conditions:

1. Candidate pairs can submit objections to the Constitutional Court within 3 (days) after the determination of the election results is issued by the KPU.
2. The objections raised are only objections to the vote count results which affect the election of candidate pairs and the determination to be re-elected in the general election.
3. The Constitutional Court decides on the objection submitted no later than 14 (fourteen days) after the objection is received by the Constitutional Court.
4. After the Constitutional Court's decision is issued, the KPU is obliged to follow up on the decision.
5. The decision on the results of the vote count by the Constitutional Court is submitted to the MPR, President, KPU, candidate pairs, and political parties or a combination of political parties that nominate the candidate pair

Apart from being contained in Law Number 7 of 2017 concerning General Elections, an explanation regarding procedures regarding the settlement of disputes regarding the determination of the results of the presidential and vice presidential elections, is also contained in the Constitutional Court Regulation Number 4 of 2023 concerning Procedures in Cases of Disputes over the Results of the Presidential Election. and Vice President. The authority of the Constitutional Court in resolving Disputes over Regional Head General Election Results Based on Article 5 of the Constitutional Court Regulation Number 15 of 2008 concerning Guidelines for Procedures in Disputes over Regional Head Election Results, it is stipulated that an application for annulment be submitted to the Constitutional Court after the KPU/KIP determines the results of post-conflict local election calculations no later than 3 (three) days and applications that have passed 3 (three) days cannot be registered. The post-conflict local election decision based on Article 7 paragraph (1) Constitutional Court Regulation Number 15 of 2008 The post-conflict local election decision is pronounced no later than 14 (fourteen) days after the request is recorded in the registration book.

CONCLUSION

Election Result Disputes (PHPU) are disputes between the General Election Commission (KPU) and Election Contestants who dispute the determination of the results of national

election calculations which is the authority and responsibility of the Constitutional Court (MK) to be able to resolve them. Previously, the authority of the Constitutional Court in handling General Election Result Disputes (PHPU) was only limited to legislative and presidential elections. However, since the enactment of Law Number 12 of 2008 concerning the Second Amendment to Law Number 32 of 2004 concerning Regional Government Article 236C the authority to resolve PHPU disputes for regional heads has shifted to the Constitutional Court, which was originally the authority of the Supreme Court (MA). After the existence of this regulation, the Constitutional Court has the right to settle disputes over Regional Head Election Results Disputes. Thus, the current authority of the Constitutional Court is to settle PHPU disputes against the legislature, president, and also regional heads. Through Law Number 7 of 2017 concerning General Elections and more specifically regulated in the Constitutional Court Regulation, namely Constitutional Court Regulation Number 4 of 2023 concerning Procedures in Disputes over the Results of the General Election for the President and Vice President, Constitutional Court Regulation Number 2 of 2023 concerning Procedures in Cases of Disputes over the Results of the General Election for Members of the People's Representative Council and Regional People's Representative Councils, Constitutional Court Regulation Number 3 of 2023 concerning Procedures in Cases of Disputes over the Results of the General Election for Members of the Regional Representatives Council, and Constitutional Court Regulation Number 15 of 2008 concerning Guidelines for Proceedings In Disputes over Regional Head Election Results.

BIBLIOGRAPHY

- Arsil, Fitra. Peran Mahkamah Konstitusi Dalam Penyelesaian Sengketa Pemilu 2009. Jurnal Legislasi Indonesia Volume 6 Nomor 3 September 2009.
- Indonesia, Undang-Undang Negara Republik Indonesia 1945.
- Indonesia, Undang-Undang Nomor 12 Tahun 2008 tentang Perubahan Kedua atas Undang-Undang Nomor 32 Tahun 2004 tentang Pemerintahan Daerah wewenang tersebut beralih kepada Mahkamah Konstitusi, (Lembaran Negara Republik Indonesia Tahun 2008 Nomor 59, Tambahan Lembaran Negara Republik Indonesia Nomor 4844).
- Indonesia, Undang-Undang Nomor 39 Tahun 1999 tentang Hak Asasi Manusia (Lembaran Negara Republik Indonesia Tahun 1999 Nomor 165, Tambahan Lembaran Negara Republik Indonesia Nomor 3886).
- Indonesia, Undang-Undang Nomor 7 Tahun 2017 tentang Pemilihan Umum (Lembaran Negara Republik Indonesia Tahun 2017 Nomor 182, Tambahan Lembaran Negara Republik Indonesia Nomor 6109).
- Komisi Pemilihan Umum. Sejarah Pemilihan Umum. Jakarta, Komisi Pemilihan Umum.