

# The Effectiveness of the Establishment of a Special Election Court in the Development of National Law in the 2020 Regional Head Elections in the Covid 19 Era in Indonesia

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**Abstract**—Special Election Judiciary Institution is an institution formed to oversee an election dispute court, regional election, etc. The purpose of this study is to test the effectiveness of the establishment of a special election court in the Indonesian constitutional system in the 2020 regional elections in the Covid 19 era. The method used is the normative legal method. The results of this study hope that a special election court is urgently needed to form a constitutional system in Indonesia and ensure legal certainty for regional elections in the COVID-19 era so that election settlements can be carried out effectively and efficiently. The conclusion of this study is that the effectiveness of a special election judicial institution in the state administration system will provide legal certainty in the 2020 regional elections in the covid 19 era.

**Keywords**—effectiveness, judicial institutions, regional head elections

## I. INTRODUCTION

The development of national law is marked by various policies, one of which is to build a democratic system in the field of General Elections. General election is a real actualization of democracy. So it is fitting that the General Elections be held through a mechanism that is honest and fair (Free and Fair Elections) and minimized violations that can hinder the process to achieve the objectives of the General Election [1]. In Indonesia, regulations relating to general elections are often changed in order to find an ideal general election administration system, and in accordance with the wishes of politicians and legislators. These changes are also adjusted to the dynamics of society and input from academics, especially regarding the evaluation of the implementation of the General Election in Indonesia. Currently, the applicable law regarding General Elections is Law Number 7 of 2017 concerning General Elections which is a derivation of the 1945 Constitution of the Republic of Indonesia Article 22E paragraphs (1) to (6) [2]. Which essentially mandates that the

General Elections be held in a direct, general, free, secret, honest and fair manner to elect the President and Vice President, members of the DPR, members of the DPD, and members of the DPRD [3].

In empirical facts, Law Number 7 of 2017 concerning General Elections that is currently in effect has brought significant changes to the system of organizing General Elections in Indonesia, especially in the dispute resolution system [4]. The idea and idea of the need to form a special institution that functions to resolve election disputes has gained legitimacy through the Constitutional Court Decision Number 97/PUU.XI/2013 which mandates the establishment of a Special Court for the Election of Regional Heads to solve various problems and problems encountered when the procedures and mechanisms for resolving election disputes cannot provide legal certainty. In fact, in order to build an effective, accountable and solution-based election law enforcement system during the COVID-19 pandemic, the idea of Election Dispute Resolution through the Special Election Courts Agency is very relevant to be developed. The authority to resolve problems related to General Elections can at least be categorized into six types of cases. These cases include the administration of the General Election, the process of holding the General Election, disputes over the results of the General Election, [5] for criminal acts of the General Election, the code of ethics for organizing the General Election, and other cases related to the General Election. On the one hand, the addition of a new judiciary can result in a more elusive General Election dispute resolution system. But on the other hand, the establishment of the Special Judiciary body can also be used as the right momentum to trigger the unification of judicial institutions that specifically handle General Election cases holistically [6]. Based on the author's observations above, this article will examine how the Effectiveness of the Establishment of a Special Election Court in the Development of National

Law in the 2020 Regional Head Elections in the Covid 19 Era in Indonesia [7].

The importance of previous research in a manuscript or what is called research originality, the authors are interested in discussing several studies including:

- The first research in 2021 regarding the EFFECTIVENESS of FORM A 5 IN BEGINNING VOTER VOTING IN THE CITY OF SEMARANG IN 2019 [8].
- The second study in 2008 was Vote Buying: General Elections, elections can buy votes in a sequential bidding game through binding advance payments and/or campaign promises (platforms) that depend on election results [9].
- Then a third in 2018 An important theory of democratic accountability hinges on how political campaigns influence American candidate choices. We argue that the best estimate of the effect of campaign contacts and advertising on the choice of American candidates in the general election is zero. First, a systematic meta-analysis of 40 field experiments estimated a zero mean effect in elections [10].

## II. RESEARCH METHOD

In conducting this research, the type of research used is legal research, [11] which is a process to find the rule of law, legal principles and legal doctrines in order to answer the legal problems being faced. The approach used in this research, namely, the statutory approach is an approach using legislation and regulations related to the legal issues being discussed [12]. With this approach, it can be done by examining the existing legal rules, namely the 1945 Constitution as a basis the highest source of law and is associated with the rules that exist below it to answer the formulation of the problem [13].

## III. RESULTS AND DISCUSSION

Regional head elections an election that is held in every province and district/city spread across 32 provinces in Indonesia. This is an urgency due to the ongoing pandemic in Indonesia, it is necessary to have a special court to adjudicate every election dispute in Indonesia in order to achieve legal certainty for the Indonesian people [14]. BAWASLU, as well as the Constitutional Court and then the legal structure, namely, regulations governing elections and legal culture, namely, the community as election participants. In principle, the special election court is to make it easier for the public to participate in the 2020 election, due to the Covid-19 pandemic, the urgency of the formation of a special election court today is to welcome the reform of the justice system in the electoral field in particular.

### A. *The Urgency of Establishing a Special Election Court in the 2020 Regional Head Election during the Covid-19 period in Indonesia*

The centralization of a judiciary in the Constitutional Court (MK) resulted in the accumulation of lawsuits and delays in the decision. This resulted in the ineffectiveness of the Constitutional Court in carrying out final decisions [15], according to Law 48 of 2009 concerning Judicial Power, which regulates special courts in which the authority to examine, judge and decide a case. As in Article 01 point 8 states [16]:

"Special Court is a court that has the authority to examine, hear, and decide certain cases which can only be formed in one of the judicial bodies under the Supreme Court which is regulated by law".

Special Courts are generally divided into 2, namely, courts that carry out activities due to material law and courts that are specific to the subjects involved. The special material courts include economic courts, commercial courts, human rights courts, tax courts and fisheries courts. Furthermore, in special courts on the subjects involved, for example in economic criminal cases, the economic court that overshadows it and then bankruptcy cases will be specialized in the commercial court.

If you look at the condition of the 2020 Pilkada which was carried out during the Covid-19 pandemic with increasing cases in Indonesia. The urgency to carry out the division of authority in adjudicating regional election disputes so as not to burden the government, especially the Constitutional Court in deciding every lawsuit that enters and can adjudicate in a transparent and accountable manner, this can be seen in the data on the results of voter participation in the 2020 elections as follows:

NO Governor/Vice Governor Mayor/Deputy Mayor  
Regent/Deputy Regent

1. 69, 67 Percent 69, 04 Percent 77, 52 Percent

National Total = 76.09 Percent

Source: KPU RI

From the data above, it can be seen that public participation is high and has increased from 2015 which was 69.06 percent, so there is a need for vote protection for national voters in the 2020 regional elections today to ensure elections with integrity and a clean and transparent election court.

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### B. *Obstacles and Solutions for KPU, BAWASLU, and MK in resolving regional election disputes in 2020*

In the Constitutional Court's Decision No. 97/PUU-XI/2013 concerning the judicial review of Law No. 12 of 2008

concerning the second amendment to Law no. 32 of 2004 concerning Regional Government and Law no. 48 of 2009 concerning Judicial Powers of the 1945 Constitution of the Republic of Indonesia, the Constitutional Court's Decision states "based on the mandate in Chapter VIIB concerning general elections, Article 22E paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that general elections are held to elect members of the People's Representative Council, Regional Representative Council, the President and Vice President and the Regional People's Representative Council. In this case the election of regional heads is not regulated in the constitution, therefore the regional head elections in 2020 are special in terms of the Constitutional Court's decision [17].

At this time there are 3 institutions that oversee the 2020 elections, namely, the Constitutional Court, KPU and BAWASLU and each institution has special procedures for dealing with disputes and election violations.

#### Case Application No

1 Governor = 8 Governors = 8

2 Regents = 131 Regents = 128

3 Mayors = 15 Mayors = 14

Total 154 150

Source: MK RI

From the data above, the process of election disputes is still ongoing, so it takes a long time to decide on a final lawsuit.

If Bawaslu and KPU often overlap regulations in the regions, it is caused by various policies of KPUD and BAWASLU in recapitulating all requirements and violations of regional election participants. Among them are ethical violations and administrative violations, to avoid these problems and gaps, the solution presented must determine the authority and relevance of the special judiciary for the regional elections and elections in 2024, [18] with legal mechanisms and a clear legal umbrella. This is as stated in Article 467 paragraph (4) which states that "the application for dispute resolution of the election process as referred to in paragraph (2) is aside no later than 3 days from the date of the determination of the decision of the KPU, Provincial KPU, and/or Regency/Municipal KPU. Which is the cause of the dispute."

The solution that the author presents is so that the government can establish a special election court and regional head election so that the KPU will focus on selecting regional head candidates and judicial institutions that will try every election criminal case and the code of ethics for regional head candidates.

#### IV. CONCLUSION

The establishment of a special court in dealing with the 2020 regional election disputes is a necessity and is seen as something very urgent to ensure legal certainty and avoid overlapping authority regulations at the levels of the Constitutional Court (MK), KPU and Bawaslu. For this reason, the solution presented must determine the authority and relevance of the special judiciary for the regional elections and elections in 2024, with a clear legal mechanism and legal umbrella so that the election law enforcement process can run effectively and become a solution in simplifying the election dispute resolution process.

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