
**THE ESTABLISHMENT OF SPECIAL JUDICATURE FOR THE
LOCAL GOVERNMENT ELECTION RESULT DISPUTE**

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Abstrak

The election of the local government is conducted democratically and it creates many chaos. The resolution of the election disputes is carried out in Supreme Court from the Local Government. One of the democracy forms is by establishing a general election. The solution in overcoming the election of the regional head which is done in the Constitutional Court creates vagueness which then supports the creation of Special Judicature. This analysis has two problems: (1) why is the Special Judicature needed? (2) What are the rules of Special Judicature to settle the dispute of the local government election. To discuss the problems, the researcher uses the doctrinal research using normative juridical approach with deductive thinking method, positivism paradigm then it is analyzed using perspective descriptive method. The results of this analysis are (1) the reason of the creation of special judicature, whether it is Supreme Court or Constitutional Court has no power in overcoming the problem of regional election; to solve the problem there needs to be a special institution to achieve justice. (2) The rules of special judicature are substantive and structural. Substantive means that it must provide law events, structural means a form of an ad hoc. The ad hoc judge is chosen from ex Constitutional Court judge or academician who is expertise in local autonomy and general regional election law. The special judicature should be located in every province.

Keywords: *General Election, Dispute, Special Judicature, Local*

A. INTRODUCTION

The law is created not only for regulation, but also to achieve the purposes of honor, justice, happiness, and prosperity (Rahardjo, 2003). The nation with democratic law will create a democratic life in every aspect. The consequence of the democratic nation is the constitution supremacy as democracy implementation form (Prasetya, 2012).

The local government is marked by people's participation in filling the position of the consulate. Amien Rais states that the main character of the democratic nation

is the existence of people's participation in making national decision (Suhartono, 2015). According to Asshidiqie (2006), theoretically, the purposes of the general election are:

1. To enable the change of governmental leaderships peacefully and in an orderly manner,
2. To enable the change of officials who will be the people's representative in representative institution,
3. To implement the principle of democracy,
4. To implement the principle of sovereignty of people's rights.

Democracy election can cause multi interpretations, whether it is direct democracy (such as president and vice president election) and indirect democracy (by Assembly at Provincial Level which is implemented before and arranged in Law Number 22 of 1999 concerning Local Government). According to Cahyo (2012), based on the systematic and historic interpretation, the meaning of democracy is direct election.

The implementation of Local Head General Election in Indonesia which does not end well, shows that the implementation of general election causes some problems/cases. Generally, those cases are about: (1) there are some differences in interpreting in the side of law and election results, (2) there are supporters groups which against the result of election which cause protests, (3) the election result is considered imperfect of law, (4) there are issues of money politics, and (5) the decline of election results because the candidate has corruption case (Mashad, 2005).

Moreover, there was the case of North Maluku Governor on July 5, 2001 which was won by the couple of Abdul Gafur and H.M. Yamin Tawari. The day after the election process in the public was established, there was the practice of money politics which was confessed by the member of DPRD I North Maluku from the Fractions of Golkar and PPP which supported and brought up the couple (Fadjar, 2010).

Therefore, Fadjar (2002) emphasizes that Indonesia is now in a paradigmatic transitional period in which it has the willing to leave the old paradigm, yet there is no agreement. To create a democratic government substantively, not only ritually, a general election should fulfill some requirements. According to Ma'ruf (2005), the requirements include:

- (i) A clear and fair rule for all participants,
- (ii) An independent and indiscriminate party which conduct the election in a direct, general, free, secret, honest, and fair manner once every five years,
- (iii) A credible and professional organization or institution which is not influenced by any parties.

From the analysis of the problem, it is important to do further research on the topic.

B. MATERIALS AND METHODS

The research employs a doctrinal study. It is a normative research using a normative juridical approach by a deductive method (Hidayat, 2006). The approach looks at the law as an abstract, logically constructed and systematic rule system until it is ready to implement (Yusriyadi, 2010). A deductive method employs a way of thinking started with a norm or rule.

C. DISCUSSION

The Urgency of the Special Judicature

The special court was established because of the multicultural society and the huge number of society running the democracy through the consultative/representative council. The existence of the representative council did not indicate that the society's aspiration is meaningless, but their aspiration was conveyed through the chosen representative who acts under the name of each functional group of the society. Supportive conditions made the democratic election sustainable. Those conditions were associated with political environment which was organized democratically and institutionally. In this regard, Mackenzie mentioned four conditions for democratic and institutionalized elections to be sustainable, namely (Haris, 1998):

- a. the presence of independent court integrating election rules.
- b. the presence of honest, competent, and administrative institution non-participants to run the election
- c. the presence of an organized political party system to put the leader and policy among the selected alternative policy.
- d. The acceptance of political community to specify rules of structure and restriction in achieving power.

The guidance was a strong regulation to solve political and legal conflict in society (Mahfud, 2009). The judiciary was indispensable as a means of resolving conflict or as a place to resolve cases. The judiciary should be able to protect, prosper, and educate the life of the nation and the state. Indonesia, as a legal state of Pancasila, also required judicial institutions in order to support or uphold the rule of law (Mujahidin, 2007). Gaffar argued that the judiciary is a function attached to the judicial power that serves to uphold law and justice (Mertokusumo, 2016). The implementation of direct elections was the real implementation of democratic character held on the basis of the equality before the law and equal opportunity principles (Rawls, 1971). This showed that the equality before the law which was reflected from every citizen without exception was entitled to a sense of justice in every process of examining, hearing, and deciding ongoing cases in court based on the principle of justice and every citizen was entitled to legal aid when having legal problem (Sarja, 2016).

The rules of Special Judicature to settle the dispute of the local government election.

The principle of triad politics was also adopted in the 1945 Constitution of the Republic of Indonesia that was the judiciary which was independent and impartial as the characteristics and requirement for the enforcement of state of law. Besides, it was also mentioned in the provisions of Article 24 (1) along with the explanation of article 24 and 25, which stated that: "Article 24 (1): The judicial power shall be independent and shall possess the power to organize the judicature in order to enforce law and justice. The elucidation of article 24 and 25 indicates that the judicial power is an independent power which means that it is apart from the influence of any power. The elaboration above showed that the basic establishment of judicial institution particularly designed for local election disputes was regulated in Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia concerning the judicial power.

The existence of the independent judicial power cannot be separated from state of law since the notion of judicial independence appeared altogether with the idea of democracy and constitutional state following the enlightenment age in the Western world (Mahfud, 1999). Based on the 1945 Constitution of the Republic of Indonesia, Indonesia did not implement triad politics. However, the institutionalization of

various state power unequivocally showed that the frame of the 1945 Constitution of the Republic of Indonesia was heavily influenced by the triad politics. It can be seen in the axis of the shaft of power in Indonesia which was not only three but five equivalent power namely the legislative (People Representative Council and People's Consultative Assembly), the executive (the President), the judiciary (Court of Justice and Constitutional Court), the auditory (Audit Board) and the consultative (the Supreme Advisory Council) (Mahfud, 1999).

In Article 24 paragraph (3) of the 1945 Constitution of the Republic of Indonesia it is stated that other bodies whose functions relate to the judicial authority are regulated in the law. The function of the Special Justice Board was to solve the problems that are specific / certain. Issues arose from the implementation of regional head elections which was a special issue, the specificity of which was due to occur every 5 years so that it must be resolved in an institution that has competence in the field that was in the Special Court. Special courts can only be established in one court environment under the Supreme Court. Further Provisions concerning the establishment of special courts as referred to in paragraph (1), the Law No. 48 of 2009 Article 27 regarding the Juridical Power shall be regulated in law. Implementation of regional head elections was conducted through several stages, the occurrence of disputes or violations was very likely in every stage of the implementation of regional head elections. The possibility could be caused by fraud, mistake, or election-winning strategy that did not violate the law but decreases public trust (non-fraudulent misconduct) (Gaffar, 2013).

Substantially, the arrangement of the Special Court was contained in Article 27 of Law No. 5/1999. 48 of 2009 on Judicial Power and Elucidation of Article 27 of Law no. 48 of 2009 on the judicial authority, Article 1 number 5 and Article 8 of Law no. 49 Year 2009 on Judicial Power, and Article 1 Sub-Article 5 and Article 9A of Law Number 7 Year 1999. 51 of 2009. Provisions on the Special Tribunal as referred to in Article 27 of Law Number 7 Year 1999. 48 Year 2009 on Judicial Power and Elucidation Article 27 of Law no. 48 Year 2009 tentang Judicial Power, Article 1 number 5 and Article 8 of Law no. 49 Year 2009 on Judicial Power, and Article 1 Sub-Article 5 and Article 9A of Law No. 51 of 2009 on Judicial Power concluded that the term used was the Special Court. Special courts may be

established only in one court environment under the Supreme Court, whether in the general, religious, military, or administrative courts of the state.

Therefore, the setting up of a special court of dispute over the election of Regional Head shall be imposed through a Regional Head Election Act or to create a separate rule to regulate it.

D. CONCLUSION

The need to establish a special justice body are as follows: a) to provide justice for the justice seekers, it is necessary to establish a special judicial body for the election of regional head. b) the dispute resolution of local elections become more effective and ensure legal certainty. The meaning of democracy in the election of regional heads is not only the organizers, election participants and the good and intelligent people vote. But the dispute settlement institution is also a decisive factor in the implementation of democracy.

The regulation of the Special Court is a mandate of the 1945 Constitution of the Republic of Indonesia, namely Article 24, in which a special judicial body can be established by the law, it must immediately be in the form of a special judicial body law. The position of a special judicial body under the auspices of the Supreme Court. This is based on Law No.48 of 2009 on Judicial Power. The judge is an ad-hoc judge due to the implementation of the election every 5 (five) years. The nature of her final and binding breakup.the formation of a special court for the dispute over the results of local elections should be established before the establishment of institutions/related bodies. The first to establish should be the law concerning the dispute over local election results under the general courts. The law must contain the democratic values of Pancasila. It should be an institution created by the legal system functions to provide service and implementation on a regular basis.

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