

Implementation of the Contante Justitie Principle of Justice in Local Leaders Election and General Election in Indonesia



Asep Syarifuddin Hidayat, Muhammad Ishar Helmi, Faris Satria Alam

Abstract: *The Settlement of Disputes over local leaders election and general election disputes in Indonesia is currently conducted in several legal institutions . The settlement, among others, was approved by the election supervisory agency (Bawaslu) and the Civil service arbitration tribunal (PTUN). To resolve disputes over the results of the local leaders and the general election conducted by the Constitutional Court. When there is a violation on code of conduct by the election organizer is resolved by The Honorary Council of The General Election Organizer . The settlement of disputes over general election and local leader election leaves an inconsistency if related to Law number 48 of 2009 concerning Judicial Power, which leads to legal uncertainty. This paper uses the normative research method by using an agreement (statute approach) and using a case (case approach). This paper analyzes the implementation of the Contante Justitie Principle to realize legal objectives for justice, certainty and expediency. From these considerations emerged a new statement needed in court to resolve disputes over local leaders election and general election, so that the objective of law that had been aspired to were obtained.*

Keyword (s): *Contante Justitie Principle, Regional Heads Election, and General Election, Electoral Justice.*

I. INTRODUCTION

Honest and fair elections are one of the most important principles in a democracy. It has found that a good legal tool and material can be made to hold elections, institutions that have elections, a people's culture and legal awareness of elections and government governance, and that judicial institutions can resolve election results issue [1]. Such concepts are driven by the constitution of 1945, which asserts that elections are directly, publicly, free, honest, and just. Its interpretation of these principles, not limited to its election performance alone. However, the principle may apply to elective points for the region's (pilkada) elections. The institutions that hold elections and options have two elements inherent in the implementation and also the control power of the administration [2]

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](constitutional court ruling, 2010: 104). Elections performance by election commission and control over elections administration by bawaslu (election control), because holding elections without any control over elections would threaten the direct, general, free, honest, and fair principles of the election [2].

The oversight by bawaslu of the electoral and election administration, could be the oversight of the alleged criminal ACTS by all elements relating to elections administration being completed in the public courts. Therefore, the administrative issue between the participants and the election commission is settled in bawaslu, if the parties do not accept the verdict, then it can be brought before the civil affairs court. Otherwise there is a suspected breach of a general election and region's election code of ethics being filed with the honor council holding an election (DKPP). However, if there is a vote to be settled, in practice and judicial cases, it will be settled before the constitutional court. At the moment, the choice was administered by the constitutional court, until a special judicial body was formed. There are separate general election and region's election disputes, both criminal, administration, and voting disputes, which are currently causing problems. The ineffective of settling the dispute led to a lack of quick and simple principles in the judicial system. This is clearly governed in chapter 2 of verse (4) the justice power act. An example, when the constitutional court dissolves both the PHPU Kada (dispute over regional head election results) Kotawaringin Barat (kobar) which is mk through a verdict of 45/ phpu. D-viii /2010, cancel the KPU Kobar Decree Number 62 / Kpts-KPU-020.435792 / 2010 (the establishment was decided on June 12, 2010) on the results of acquiring the votes of prospective regents and vice regents in the 2010 election of the regent and vice regent.

The constitutional court ruled that sugianto and eko soemarno number 1 as regent and vice regent elected. The petition for the PHPU was submitted by Ujang Iskandar and Bambang Purwanto who were Candidate Number 2, in this case the Court ordered the KPU to designate ujang Iskandar and Bambang Purwanto as elected Regent and Vice Regent [3]. After the KPU's decision was canceled, the Home minister Affairs issued a decree related to the appointment and ratification of Ujang Iskandar and Bambang Purwanto as the elected Regent and Vice Regent of Kobar namely the Minister of Home Affairs Decree Number 131.62-584 of 2011 Regarding Dismissal of Acting Kobar Regent and SK Home Minister (Mendagri) Number 132.62-585 concerning Ratification of the Appointment of Vice Regent of Kobar, but Sugianto and Eko Soemarno who are.



Candidates No. 1, sued the Minister of Domestic Affairs Decree to PTUN [4], and in the end PTUN granted Sugianto and Eko Soemarno's claim to cancel the Decree of the Minister of Domestic Affairs and Iskandar and Bambang Purwanto's Decree. which is the defendant of the intervention, filed an appeal on the PTUN's decision to the Supreme Court, and the results of the Supreme Court's decision still refer to the PTUN's decision [4], which in turn results in such a legal uncertainty regarding the resolution of the election dispute and results in a quick and simple judicial process in the resolution Election and Regional election disputes are slow and protracted.

Therefore, based on the complexity of the settlement Election and Regional Election Disputes now and in the future regarding the separation of Election and Regional Election dispute resolution institutions, Researchers are trying to shed light on current problems and alleviate the potential for ineffectiveness over the resolution of Election and Regional Election disputes in 2024 by presenting the Judicial Body Specifically for the General Election and Regional Election in order to create legal certainty the effectiveness of the implementation of Election and Regional Election in accordance with the mandate of the 1945 Constitution.

II. LITERATURE REVIEW

Initiation of Special Courts for Election of Regional Heads in Facing the Election Simultaneity of Governors, Regents and Mayors in Indonesia by Dian Agung Wicaksono, Ola Anisa Ayutama in *Rechtsvinding Journal* Vol 4, Number 1, April 2015. This paper discusses the urgency of establishing a special election court by comparing Pilkada special courts in various countries and see their relevance so that it can be applied in Indonesia.

Head of Special Court for Regional Head Election Disputes written by Qurrata Ayuni in *Journal of Law and Development* Vol 48 No. 1 of 2018. This paper discusses the follow-up to the decision of the Constitutional Court Number 97 / PUU-XI / 2013 stating that the dispute over the regional head election is not included in the constitutionality authority, namely by establishing a special judicial body which hears the regional head elections.

III. RESEARCH METHODS

This article uses the normative research method. Normative research in this case provides a systematic explanation of the rules governing a particular legal category, analyzing the relationship between regulations explaining the area of difficulty and possibly predicting future development[5]. Research carried out by examining library materials or secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials [6]. The approach used by the authors of some of the approaches above is the legislative approach and case approach. The legislative approach is an approach that is carried out by examining all laws and regulations relating to the legal issues being addressed, such as Law Number 10 Year 2016 Regarding the Second Amendment to the Establishment of Government Regulations in Lieu of Law Number 1 Year 2014 Regarding Election General Governors, Regents and Mayors Become Laws, Law Number 3 Year

2009 Concerning the Supreme Court, Law Number 48 Year 2009 Concerning Judicial Power, Law Number 51 Year 2009 Concerning Second Amendment to Law Number 5 1986 concerning State Administrative Courts, and related constitutional court decisions. A case approach is carried out by examining cases related to the issue at hand that has become a court decision that has permanent legal force [7].

IV. RESULT AND DISCUSSION

Contante Justitie Principle

Some factors that determine that the law collaborates with the wishes of the community and effective are the legal factors materially and formally, law enforcement, factors of facilities and facilities, and the community where the place of law is enforced [8]. Law enforcers themselves are one of them carried out by the judicial authority, which in this case aims to enforce law and justice (Article 24A paragraph (1) of the 1945 Constitution) in the midst of society, because basically law and justice enforcement is an internal structure of the institutional legal system which is inseparable from the values and legal norms in the community [9] (Ningsih, 2017: 64). Therefore law and justice are two things that can not be separated, because it is a building of the expression and ideals of society [10].

One of the judicial processes for law enforcement and justice is the existence of a trial that is carried out simply, quickly, and at a low cost (Article 2 paragraph (4) of Law Number 48 Year 2009) or can be referred to as the principle of contante justice. In the perspective of criminal law, the principle of justice is quickly aimed at avoiding all obstacles that are procedural, so that the achievement of an efficient investigation and investigation activities with a final decision that is relatively short and has permanent legal force [11]. The genus of the principle of quick justice in the lens of criminal law, is derived from the Judicial Power Act which is contextualized as the fulfillment of human rights between perpetrators and victims, the perpetrators need a certainty when the case will be tried, while the victims also need a certainty of criminal acts that experienced [12].

Departing from the adoption of the principle of speedy justice as regulated in criminal law sourced from a concept of human rights, the principle of speedy justice in general also aims to do so. The context of other judiciary, whether civil, administrative, or related to the General Election and Regional Election, is also based on legal certainty which is the duty of the state in implementing it (Article 28 D paragraph (1) Juncto Article 28 I paragraph (4) of the 1945 Constitution) . In the context of the General Election and Local Election, there are people sovereignty entrusted through the Election and Election to elect legislative and executive candidates as part of democracy. When a dispute occurs whether it is criminal, administrative or even if the difference in votes is obtained, the principle of a quick and simple trial is a necessity in order to create legal certainty in the substantive process of the General Election and Local Election, because the General Election and the Regional Head Election are well organized, is the beginning of democratic incarnation. the substantive.



Current Election and Election Dispute Settlement Mechanisms

The mechanism for resolving problems both in the General Election and the Regional Head Election, in the Statutory Regulations does not have a significant difference, namely regarding the criminal acts of the General Election and Regional Election, submitted to the District Court and can be appealed to the High Court, and the decision of the High Court is binding and not more remedies have been taken. In the settlement of administrative disputes both in the General Election and the Regional Head Election, it is settled first in Bawaslu, if administrative efforts have been resolved and want to submit legal remedies, then the matter is submitted to the State Administrative High Court and the decision is binding and no other remedies are taken. For disputes over voting results, the General Election is submitted to the Constitutional Court (See Article 24 C paragraph (1) of the 1945 Constitution). However, if the election is resolved by the Special Election Judicial Body.

The separation of election and election dispute resolution institutions has an impact on the emergence of legal uncertainty from different court decisions so that the dispute resolution process is dissolved. As mentioned earlier, the Constitutional Court in 2010 decided the West Kotawaringin PHPU case, which in this case canceled the KPU decision containing Sugianto and Eko Soemarno's nomination as candidates for regency of Kotawaringin Barat number 1 [13]. Decision of the Constitutional Court finally set Ujang Iskandar and Bambang Purwanto who are candidates for regent number 2 and canceled the determination of Sugianto and Eko Soemarno as candidates for regents of Kotawaringin Barat which are sequence number 1 [2].

For this matter, the Minister of Home Affairs, in this matter taking care of matters in the field of domestic government, followed up on the Decision of the Constitutional Court by issuing Minister of Home Affairs Decree No. 131.62-584 of 2011 concerning Dismissal of Acting Kobar Regent and Ratification of the Regent's Appointment of Kobar in 2011 and Decree of the Home Minister Affairs Number 132.62-585 concerning Ratification of the Vice regent's appointment of Kobar which stipulates Ujang Iskandar and Bambang Purwanto as the elected Regent and Vice Regent. Sugianto and Eko Soemarno who were canceled by the Constitutional Court through their Decisions, eventually sued the two Ministry of Home Affairs Decrees to the State Administrative Court, and PTUN with their Decisions, finally canceled the two Decree of the Ministry of Home Affairs, then Ujang Iskandar and Bambang Purwanto who were defendants of the intervention finally filed an appeal to the State Administrative Court The Supreme Court and the Supreme Court precisely through its decision strengthen the decision of the State Administrative Court [14]. Regardless of the problems or polemics that exist over the problems of prospective regents and vice regents of West Kotawaringin, if viewed in terms of existing dispute resolution, the submission to the Administrative Court after the Constitutional Court's Decision is due to the separation of a Pilkada dispute resolution. The separation of the settlement opened the opportunity for Sugianto and Eko Soemarno in this case to propose a judicial process for the stipulation of the HomenMinistry Affairs decree which was the

determination of Ujang Iskandar as regent and Bambang Purwanto as Vice regent as a follow up after the Constitutional Court ruling. The State Administrative Court whose competence is to conduct a TUN (State Administration) decision which in this case also includes the Ministry of Home Affairs Decree, cannot refuse because it is an area of absolute competence. The PTUN in the case received a request for such a Decree of the Home Ministry Affairs is valid because the Ministry of Home Affairs Decree is the object of PTUN dispute.

In the conception of a quick and simple judicial principle, it is defined as a judicial process that is not too convoluted and interpreted as a strategic way to establish a judicial institution as an institution that can guarantee the manifestation of justice in law enforcement quickly by justice seekers [15]. However, the occurrence of two different judicial institutions' decisions namely the Supreme Court and the Constitutional Court, precisely obscure the essence of justice, certainty and benefit itself which is the purpose of the law itself [16]. Therefore, the resolution of an election and local election dispute should require a special body which in this case a special judicial body both Election and Regional Election which is ad hoc considering the General Election and Local Election will be held simultaneously in 2024, in order to create a legal certainty that ends in a justice and expediency in the holding of elections and local elections.

Ideas of The Ad Hoc Election Court

One way to strengthen the building of a state system that is able to realize the ideals of justice is located in the problem of the quality of legal and judicial institutions in accordance with the times, where the judicial structure in this country requires structured and well-structured consolidation of the existence of various forms special justice [17]. The establishment of a special judiciary is a form of legal politics and legal reality in Indonesia. The establishment of a special judiciary is also an effort to deal with the limitations of existing judicial bodies by renewing its structure with the ultimate goal of opening access to justice for the community [18]. Therefore, it is a necessity when wanting to realize one of the ideals of justice that exists in the General Election and Regional Election, which in this case departs from the existing problems, the formation of an Election Special Court is a necessity. The conception that will be proposed in the formation of a Special Election Judicial Body and Regional Election under one roof is to accommodate Elections and Regional Elections which will be held simultaneously in 2024. The formation of this body is to be held as a Judiciary Body, meaning that the body or institution does not belong to the Special Court as appropriate The Special Court of Corruption, the Special Court of Commerce, and others currently under the Supreme Court judiciary, but the new Judiciary Body under the Supreme Court are like the General Courts, State Administrative Courts, Religious Courts, and Military Courts (Article 24 paragraph (2) The 1945 Constitution), the reason for this institution being placed under the Supreme Court and being the same judicial body as the existing judicial body is because the absolute competence regarding the General Election and Regional Head.

Election is the competency of this Special Judiciary, whether criminal, administrative disputes or results disputes vote, so that the dispute resolution process does not experience different decisions, as if they were placed separately by different institutions on the current election and regional election dispute resolution.

In connection with the filling of judges who will fill the judicial body, there are five (5) career judges, and four (4) non-career people. Regarding the filling of judges, especially non-career, the conditions of integrity and capability are important components. Integrity is measured by the impeccable and fair personality in carrying out the previous profession, both those from the legal profession or from academics. While the capacity component also cannot be eliminated [19], for non-career judges must master the Election, Pilkada and state administration, this is done so that there is a public trust in the judge himself who is filled objectively. The recruitment mechanism will be carried out openly and accountably for career judges within the Supreme Court and non-career in the community. The recruitment mechanism is carried out by the Supreme Court by selecting career and non-career judges along with the Judicial Commission.

Regarding the Decision, in the Criminal dispute the matter is settled in the first instance and can be continued with an appeal to the Supreme Court, regarding administrative disputes concerning the nature of the final and binding decision and no other remedies, and in the dispute over the result of the vote, the nature of the decision is binding and final (final and binding). Concerning administrative disputes and the difference between the binding and final voting results due to not creating a protracted case handling that creates a legal uncertainty in the Implementation of Elections and Regional Elections and also to prevent any other legal remedies that can be done.

However, new problems have arisen in the formation of electoral justice, in accordance with the mandate of Law Number 10 of 2016 concerning Pilkada which must form a new judicial body other than the Religious Courts, State Courts, State Administrative Courts and Military Courts. This is caused in the constitution clearly in Article 24 paragraph (2) of the 1945 Constitution states, "Judicial power is exercised by a Supreme Court and the judiciary below it within the general court, religious court, military court, administrative court the state, and by a Constitutional Court".

The formation of a new judicial body means that it must return amending the 1945 Constitution of the Republic of Indonesia [20]. Amending the Constitution was difficult to do because when speaking amendments also relate to politics in parliament. Therefore, to accommodate the application of the justitie contantie principle, it is most likely to form an Ad Hoc court which is inserted into one of the existing judicial bodies.

V. CONCLUSION

Settlement Election and Regional Election disputes must be resolved in a special judicial body, bearing in mind that the Election and Regional Election will be carried out simultaneously in 2024. So that the urgency of a Special Election Judicial Body is a necessity in order to create a legal

certainty and the process of resolving Election and Regional Election disputes quickly and simply. Establishment of a judicial body in this case takes the form of a special court under the existing judicial bodies. Considering the judicial body has been determined limitatively by the 1945 Constitution, it is therefore necessary to amend the Constitution. However, amending the constitution is not easy to do, depending on the political will of the parliament. Therefore, the most possible way is to make an ad hoc court located under an established judicial body.

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