



# *The Urgency of Establishing a Special Judicial As An Effective Solution For Resolution of Election Result Disputes*

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**Abstract**— *The general election has become an important event that sheds the democratic values in the existence of a democratic state. In spite of the fact that decisions are an imperative prepare within the support of vote based system, we cannot dodge the plausibility of problems emerging all through the method. From regulatory infringement, infringement of the law, to debate over voting comes about, these challenges can emerge from the starting to the conclusion of the decisions. In this context, the most appropriate method of research is the method of normative or doctrinal law writing, as well as normative jurisprudential research with a reform orientation. This approach involves analysis based on laws and regulations in force in Indonesia, paving the way for a deeper understanding of the topic or legal issues discussed. This uncommon court can too provide a solid flag that appointive infringement or extortion will not be endured, in this manner empowering more tightly observation of the constituent handle. Hence, the foundation of uncommon constituent courts can move forward the quality of popular government in Indonesia by guaranteeing that the votes of the individuals are precisely reflected within the race comes about.*

**Keyword**—*General elections, special courts, electoral disputes.*

## I. INTRODUCTION

Many countries around the world use democratic political systems. There is no denying that the current political norm is democracy. Almost all political systems around the world have a tendency to develop into democracies. Indonesia is a democratic state, which means that the people have the highest power and play a major role in governing the country. [1] The phrase "People's sovereignty" appears at least three times in the constitution. The first appears in the fourth paragraph of the Constitution of the Republic of Indonesia of 1945, which established the independence of the Indonesian nation as a sovereign republic of the people. Furthermore, the fourth Pancasila states that "a country is guided by intelligence and intelligence in representation", and thirdly, Article 1, passage (2) of the Structure of the Republic of Indonesia of 1945 expressed that "Sway is within the hands of the individuals and carried out in agreement with the Protected Law." Concurring to the Structure of the Republic of Indonesia in 1945, Indonesia could be a State based on the law. This too applies when a common decision is held to choose the pioneer and individuals of the Board of State.[2]

Thus, the general election becomes an important event that sheds the democratic values in the existence of a democratic state.[3] The conduct of general elections is not only the implementation of the will of the people to strengthen sovereignty, but also a vital step in determining the representation of people and regions. It points to form a democratic, vigorous government with the complete back of the individuals, all in an exertion to realize national beliefs as cherished within the Constitution of the Republic of Indonesia of 1945. A reasonably held common race prepare isn't as it were the premise, but too a concrete exemplification of the pith of majority rule government that empowers the dynamic support of all citizens in political life.

One of the most important democratic processes in the Indonesian system of government is the election of the head of the district, also known as the pilkada. Pilkada shows the political participation of the public and the stability of government and politics at the regional level. However, like all democratic processes, Pilkada is often

colored with various issues and conflicts, both administrative and election-related. Article 157 of Act No. 10 of 2016 on the Race of Governors, Appointees and Chairmen stipulates that uncommon courts must be built up to bargain with debate of *Pilkada*. This is done because of the importance of a rapid, effective, and fair dispute resolution mechanism to maintain the integrity and credibility of the *Pilkada* process. However, until now, such special courts have not been fully established, raising questions as to whether they will function properly. Due to this special jurisdiction, *Pilkada* disputes continue to be handled by the general judiciary and the Constitutional Court, which is often overwhelmed with many cases to be resolved in a short time. Thus, the dispute settlement process can take a long time and potentially create legal uncertainty and reduce public confidence in the outcome of a dispute. In situations such as this, the establishment of special courts is not only necessary to improve the efficiency and effectiveness of dispute resolution, but also to ensure that any dispute is handled by an agency with special competence and in-depth understanding of the regulations and dynamics of a contest. In the end, it is expected that the special courts will be able to deliver a fairer and more integrated ruling, which will ultimately support the goal of a better constitution.

## II. LITERATURE REVIEW

### A. *Election*

When talking about a general election, or an election, it's important to give an explanation of the importance of the idea of democracy. In his study, these two things are interrelated and inseparable. Elections are the institutions that create democracy, according to Arbi Sanit. Even Velentino Larcinese says that the rate of election participation is a measure of the quality of democracies. General election, also known as general election, is an essential part of a democratic system. It gives citizens the opportunity to elect their representatives in government, either directly or indirectly. Election and democracy are closely linked because elections are one of the main ways for citizens to participate in the political decision-making process. First and foremost, elections give citizens the opportunity to express their political preferences. Citizens have the opportunity to elect governments that represent their interests and principles by giving their votes. Besides, the election also helps the government become more accountable. In a good democratic system, people who elect leaders must be accountable to their people. Elections are a way for the people to evaluate the performance of the government and decide whether they deserve the trust to continue.[4]

Elections also encourage political pluralism and inclusion in decision-making. Decisions offer assistance construct different social orders and reflect diverse interface by giving a stage for diverse political bunches and parties to compete decently. In spite of the fact that races are the premise of a solid law based framework, it is vital to keep in mind that decisions alone are not sufficient to guarantee a sound popular government. To ensure reasonable and reasonable decisions, an free and straightforward institution is required. Moreover, it is critical to ensure human rights, counting flexibility of supposition and the press, to guarantee that each citizen has an break even with opportunity to take an interest within the political handle.

### B. *Special Electoral Court*

Basically, the idea of establishing special courts for general elections arose because many State institutions were involved in the resolution of electoral disputes, which were deemed to be ineffective and caused legal uncertainty. The main objective is to reduce the number of institutions involved in dispute settlement and ensure that the trial process proceeds quickly, in accordance with the "rapid trial" feature that is important in the settlement of electoral disputes. As regulated by the applicable Law, "Special Courts" are the judicial institutions that have the authority to examine, judge, and deal with certain matters that may be formed within the scope of one of the courts under the Supreme Court. Further Article 27 (1) of the Law on the Power of Justice stipulates that "Special courts may be constituted only in one jurisdiction that is under the supreme court as referred to in Article 25".

The foundation of a specialized legal starts with the assignment of the put where such a legal institution will be built up. Concurring to the definition in Law No. 48 of 2009 on the Control of the Legal, article 1, section 8, a extraordinary court is the court which has ward to look at, judge, and choose on a specific matter which can as it were be constituted beneath the shadow of one of the a few courts that are beneath the Incomparable Court, in understanding with the arrangements of the Law. This arrangement affirms that the uncommon court may be built up as it were beneath the purviews of any of the courts beneath the Tall Court, as portrayed in article 25. Moreover, the rules concerning the foundation of uncommon courts as alluded to in section (1) are laid down by law. This can be depicted in Article 27 para. (2) of Law No. 48 of 2009. These arrangements apply in understanding with the arrangements recorded in Article 1 para. 8, Article 25, Article 27 paras. (1) and para. (2). [5]

### C. *Election dispute settlement system*

Concurring to Article 22E (2) of the Essential Law of the Republic of Indonesia, common decisions are held to choose the President, Vice-Presidents, Individuals of the House, DPD, and other individuals of the committee.

Three groups of individuals take an interest within the common race: the primary is the presidential and bad habit presidential candidate; the moment is the political party that chooses individuals of the House of Agents and the DPRD; and the third is the person candidate who candidates for enrollment within the Territorial Agent Board . The general election is organized by the General Election Commission (KPU), which is supervised by Bawaslu and Panwaslu at the provincial and district/city level. Debate between the organizers and the members of the common race can be settled through lawful procedures within the Sacred Court. "The Protected Tribunal has ward to judge and resolve debate related to the result of common decisions," concurring to Article 24C passage (1) of the Law of the State of the Republic of Indonesia. The administering of the Protected Court is last and official.[6] Article 10 (1) letter d of Act No. 24 of 2003 on the Sacred Court stipulates that the sacred court has purview to judge debate emerging out of common elections.[7] The Sacred Court will look at the quality of the race and the number of votes gotten by the voters as portion of the advancement of the constituent debate.

### III. METHODS

According to Peter Mahmud Marzuki, research is basically an attempt to understand and respond to a legal topic or problem by studying doctrines and legal regulations. In this situation, normative jurisprudence with a reform orientation and approach to normative or doctrinal law writing is the most appropriate approach. This method involves an analysis of applicable Indonesian laws and regulations, which allows a better understanding of the subject or legal issue being discussed.[8] The legal path that becomes a major policy in this context involves several key legal instruments. Among them are the Protected Law of the Republic of Indonesia of 1945, the Law No. 48 of 2009 on the legal, the Act No. 8 of 2011 correcting the Act no. 24 of 2003 on the sacred court, and the Law no. 7 of 2017 on the common race. His advocates, auxiliary lawful fabric within the shape of related writing from diaries and web articles will be profitable assets that will be analyzed by the creator in this dialog.

### IV. RESULT AND DISCUSSION

#### A. *Urgent establishment of special electoral courts*

Common decision, moreover known as decision, could be a form of people's sway and may be a prerequisite for a majority rule state. As a result, the Special Electoral Court is vital to preserving democracy. This court is a rule of law, or *ius constituendum*, which aims to protect the constitutional rights of citizens and voters. In addition, the court provides a legal route for the parties injured during the electoral process to obtain legal certainty in a democratic society. In expansion, the Extraordinary Discretionary Court has the specialist to speed up the settlement of cases or debate that emerge amid the appointive prepare. [9] Uncommon courts are courts that have the specialist to look at, judge, and choose on certain cases. These courts can as it were be constituted in a legal framework which is administered by the law and is beneath the supervision of the Preeminent Court. Election-specific courts can serve as important measures to ensure justice, in providing legal instruments related to elections and the dispute settlement process related to election results. The aim is to protect the right to vote of citizens in accordance with the constitution and as an attempt to protect human rights. The uncommon constituent court was set up to resolve different clashes and contrasts of conclusion related to the common decision, extending from the presidential decision, administrative, to the decision of the head of the locale, counting the settlement of debate over the dualism of political parties. [10]

These special electoral courts have been established consistently to resolve various conflicts and disputes related to general elections, including the election of presidents, legislatures, and heads of districts, as well as to settle disputes relating to the dualism of political parties. It also creates an integrated and dedicated justice system to safeguard democratic sovereignty. To begin with, the uncommon constituent court must choose whether to be beneath the locale of the Preeminent Court or gotten to be an autonomous legal. On the off chance that they are beneath the ward of the Incomparable Court, they can be set within the State Court or the Tall Court. Other than, the rules of the appear must be built up. This law must be based on the law of the Protected Court which has demonstrated to be effective over the a long time. The Extraordinary Constituent Courts at the central and common levels may apply the Protected Court Directions No. 17 of 2007 on the Procedural Guidelines in Debate within the Comes about of the Common Decision of the President and Vice-President. The Protected Tribunal Control No. 16 of 2009 on Procedures in Debate within the Result of Common Races of Individuals of the People's Committee, the Territorial Chamber of Agents, and the Council of People' s Agent is another elective. In expansion, you'll be able utilize the Preeminent Court Direction No. 4 of 2017 on the Strategy for Completion of Authoritative Infringement of the Common Decision of the Tall Court.[11]

First, it is necessary to decide whether the special courts for elections will be under the Supreme Court or formed as a separate judicial body. If they are under the Supreme Court, they can be merged with the State Court or High Court. The rules of the show must also be established. In establishing the law of the event, may refer to the rules of procedure that have been used by the Constitutional Court. Between 2005 and 2013, two legal bodies had specialist to resolve debate over the result of the interpretation: the Incomparable Court and exchanged its powers to the sacred court. With respect to the Sacred Court (CJ), in understanding with Article 24C passages (1) and (2)

of UUD 1945, the specialist of the CJ is explicitly directed and constrained as it were to judging debate emerging out of races . These restricted provisions shall not be interpreted or supplemented, except through equivalent rules. According to Prof. Bagir Manan, based on the teaching of interpretation and the teachings of the constitution, the addition of powers of the MK should be regulated in the Basic Law. This also applies to the decision of MK No. 97/PPU-XI/2013, Article 236C para. (1) No. 12 of 2008, and Article 29 para. 1 letter e Act No. 48 of 2009, which regulates the granting of additional powers to the Constitutional Court in a manner contrary to the Basical Law.[12]

#### B. *Special courts to resolve electoral disputes*

Common races are the substance of the sway of the individuals and are one of the basic conditions of a law based state. Hence, the presence of the Uncommon Constituent Court is pivotal inining the equitable handle. This extraordinary court is an ius constituendum which points to ensure the protected rights of citizens and voters. Besides, the court gives the legitimate opportunity for the casualties of the race to pick up legitimate certainty within the life of a equitable nation. With the nearness of the Uncommon Appointive Court, the settlement of debate or cases emerging amid the common race prepare can take put faster. The Special Constituent Court, within the setting of Indonesia, is the legal that has purview to bargain with appointive debate. This court may allude to the Race Supervisory Body which serves as a administrator and judge in cases of discretionary infringement, as well as the Sacred Court which is mindful for managing with appointive debate.[13]

A equitable framework without clear lawful rules can make chaos. This chaos can cause enduring to the individuals and indeed trigger a respectful war. In this manner, in a majority rule government, it is critical to have a run the show of law that gives certainty to all those included. Common races are a implies for the individuals to choose their choices, and in a majority rule state, the standards of law must be upheld. It's no issue in the event that there's a uncommon court to supervise the common decision handle. It's critical to keep the equitable handle running easily. Of the 262 PHPU applications in 2019, there's one PHPU application by the President and Bad habit President, and 261 authoritative PHPU (DPR, DPD, and DPRD, counting DPRA/DPRK). In the interim, the number of PHPU demands by 2024, to date, is 273 demands, comprising of two PPHUs by the president and Vice-President, 259 applications for PHPU individuals of the DPR / DPRD (counting DPRA) and 12 applications for PPHUs individuals of DPD.[14]

In order to deal with many electoral disputes brought before the Constitutional Court, a special Electoral Court should be formed. These disputes can be resolved through a specialized judicial body or a non-judicial body that specialises in dealing with electoral disputes. Several countries that have implemented this special judicial institution have shown an example. Brazil, the Latin American country with the second largest population after the United States, has implemented a special judicial system to deal with electoral disputes. The Constitution and the Election Act clearly show that this system is considered one of the most effective in the world. The High Court of Elections, also known as the SEC, consists of seven judges secretly elected and appointed by the president. In this case, the SEC is based in the country's capital and has jurisdiction throughout Brazil. The high judges of the Government Preeminent Court and the Decision Corregidor Court choose the Chairman and Agent Chairperson of the SEC. The judges must serve for two a long time and cannot serve for more than two sequential terms to keep the constituent court non-political. Since its establishment in 1932, the SEC has extensive authority covering everything about political parties and elections.

As the highest institution in Brazil's electoral jurisdiction, the agency is responsible for approving the registration of political parties and presidential and vice presidential candidates, resolving the conflict of competence between regional electoral courts, dealing with disputes over election results, receiving appeals from the regional electoral court, confirming the division of the country's territory into electoral districts, responding to questions from political parties related to election issues, and ensuring that the list of registered candidates is correct.[15] In spite of the fact that the choice of the Protected Court (CC) has endorsed the foundation of a extraordinary court to bargain with common race debate, so distant the court has not been shaped. The settlement of the race debate remains to be dealt with by the MK. It reflects the wrangle about in legitimate legislative issues, given the direness of the foundation of a extraordinary discretionary court . We as a society need to be sceptical and critical of the creation of a new institution, given that it takes a lot of time, funds, and resources. However, we have to consider the importance of disregarding the complexity of resolving electoral disputes that often create uncertainty, as well as prioritizing the improvement of the substance of democracy in the country. It depicts our dilemma in choosing between trying to solve complex problems and improving the quality of democracy.[16]

## V. CONCLUSION

An pressing step in managing with the challenges of the complexity and affectability of the majority rule handle in Indonesia is the foundation of a uncommon court to resolve the debate over the race of the head of the area. It is expected that a judiciary that focuses on the settlement of Pilkada disputes will increase the efficiency, fairness, and public confidence in the integrity of the election results. Moreover, it will reduce the burden on existing judiciaries and ensure that disputes are resolved quickly, transparently, and professionally, in accordance with the

principles of sound democracy. The establishment of special courts could be an important milestone in strengthening the legal and democratic system in Indonesia if properly implemented and well coordinated, providing a more stable and accountable electoral process for the heads of district for all the parties involved.

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