

# THE CONCEPT OF SPECIAL COURTS IN THE SETTLEMENT OF REGIONAL HEAD ELECTION CASES IN INDONESIA

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## Abstract

*A special court for the settlement of regional head election cases needs to be established / held for the settlement of cases for regional head elections and this special court is established before the implementation of regional head elections simultaneously nationally. This special court for regional head elections is nothing new, but something that already exists. Moreover, this special election court has been implemented in Uruguay. The authority of the Election Court in Uruguay appears to be very broad, covering everything related to elections, from the making of the regulations, the implementation, to the settlement of the case. The form and design of the special election court institutions must be adapted to the conditions of the temporary (ad hoc) Indonesian state under the Supreme Court and has the authority to handle all cases that arise in the election process, ranging from administrative cases and election crimes to dispute over results. Regional elections*

**Keywords:** *Special Courts, the Settlement, Regional Head.*

## A. INTRODUCTION

One of the real from of democracy that the local elections that are outlined in Chapter VI of the Local Government Article 18 paragraph (3) and (4) the constitution of the republic of Indonesia Year 1945. Article 18 paragraph (3) states the provincial, Regency and City areas have Regional People's Representative Councils whose members are elected through general elections. Article 18 paragraph (4) states that the Governors, Regents and Mayors respectively as heads of provincial, district and city governments are democratically elected. Election of Governors, Regents and Mayors accordance Article 18 paragraph (4) the constitution of the republic of Indonesia Year 1945 is as democratic.

In its implementation, since the beginning of Independence until now, there have been dynamics in the regional head election system. Starting from the election of regional heads through the Regional People's Representative Council, then direct elections, then regional head elections through the

Regional People's Representative Council, and the latest developments in direct regional head elections. This direct regional head election is also held simultaneously

It is undeniable that every time a regional head election is held, in the end there are parties who win and lose. Experience with the implementation of regional head elections shows that in almost all regions there must be violations and cases against the election results. As is known so far, the settlement of cases resulting from regional head elections is the authority of the Constitutional Court.

In addition to cases of regional head elections, there are also election cases and violations in simultaneous regional head elections. These violations include administrative violations, violations of the code of ethics, and criminal violations. In criminal offenses, the settlement uses special procedural law, which is different from criminal procedural law in general. In the government regulation in lieu of law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors, regarding the settlement of cases

resulting from regional head elections, it is regulated in Article 157, namely in the event of a dispute over the determination of the votes acquired by the Election results, the Election participants may apply for the cancellation of the determination of the results of the calculation. the acquisition of votes by the Provincial General Election Commission and the Regency/City General Election Commission to the High Court appointed by the Supreme Court. The appointment of the High Court by the Supreme Court may mean the High Court where the Province and Regency/City elections are taking place simultaneously.

Then the provisions of Article 157 were amended in Law Number 8 of 2015 concerning Amendments to Law Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Laws. The amendment is that cases of dispute over election results are examined and tried by a special court body. This special judicial body was formed prior to the simultaneous national elections for regional heads. Then as long as the special court body has not been formed, the settlement of cases resulting from regional head elections is carried out by the Constitutional Court. Until now, the special court has not been formed, so that if a case occurs the results of the regional head election will still be carried out by the Constitutional Court.

In order for the implementation of simultaneous regional head elections to take place smoothly, it is necessary to prepare a special court institution that handles cases in regional head elections. If handled by an institution that has been handling regional head election cases, it has been proven that there are many weaknesses. Therefore, based on the above background, the legal issue in this article is how the concept or model of a special court is used to resolve regional head election disputes in Indonesia

## B. RESEARCH RESULT AND DISCUSSION

The discourse on the formation of a Special Court for general elections is motivated by the problems of criminal acts of general election that are currently happening cannot be resolved just like that in the Constitutional Court, because it is not the legal domain of the Constitutional Court but is resolved in the General Court, in this case the District Court, as well as several other institutions. . Seeing the heavy burden of the District Courts in handling criminal and civil cases, a special general election court should be formed under the authority of the Supreme Court of the Republic of Indonesia. The Legal Position of Special Courts for general elections can be established at the Regency/City level specifically for the first level, while for the appeal level, it can be established at the Provincial Capital level.

The establishment of a special general election court does require a fairly large investment, but in terms of long-term legal investment, the special general election court will provide legal alternatives in handling general election cases so that it is faster, cheaper and easier and provides legal certainty to all parties. as well as a means for the creation of legal certainty to a democratic state based on Pancasila and the constitution of the republic of Indonesia Year 1945 Year 1945 under the auspices of the Unitary Republic of Indonesia.

In designing the Special Court in Indonesia, it is necessary to have a comparative study with countries that already have a general election court. In this study, as a comparison, the author will suggest Uruguay as a country that has implemented an electoral court.

Uruguay is a small country in Latin America . The country is bordered by Brazil to the north, the Uruguay River to

the west, the estuary of the Río de la Plata (River Plate) to the southwest, with Argentina on the opposite bank of the two, and the South Atlantic Ocean to the southeast. Uruguay is home to about 3, 5 million people, of which 1, 8 million live in the capital city of Montevideo and its metropolitan area. 88% of the population is of European descent. The country is the second smallest in South America and one of the most economically and politically stable. Uruguay's border is north of Rio Grande do Sul, Brazil. To the west lies the Uruguay River and to the southwest lies the mouth of the Rio de la Plata with Argentina, and to the south is the Atlantic Ocean. Uruguay, with an area of approximately 176,000 square kilometers (68,000 sq mi), is the second smallest nation in South America in area after Suriname. *Colonia Del Sacramento*, one of the oldest European settlements in Uruguay, was founded by the Portuguese in 1680.

Montevideo was founded by the Spaniards in the early 18th century as a military fortress. Uruguay won independence in 1811 after a three-way struggle between claims from Spain, Argentina and Brazil. It is a constitutional democracy, the president fulfills the roles of both head of state and head of government. Uruguay is one of the most economical countries in South America, with a high GDP per capita and the 52nd highest quality of life index in the world in 2010, and the highest quality of life/human development in Latin America. According to *Transparency International*, Uruguay is rated as the second lowest-corruption country after Chile in Latin America, although Uruguay far outperforms Chile on a domestic poll of corruption perceptions.

Since 1924, Uruguay is a country that has had a special court to handle election disputes. This shows that Uruguay has long established an electoral court, so it is relevant for Indonesia to use it as a *benchmark* when it will

establish an electoral court. In addition to these reasons, Uruguay also has some similarities in character with Indonesia, namely adopting a multi-party system. The general election mechanism in Uruguay is also stratified according to the region, namely general elections at the state level and general elections at the *departmental* level, Similar to Indonesia which has a general election mechanism at the national level and general elections at the regional level.

Institutionally, the *Electoral Court* in Uruguay stands permanently and consists of an electoral court at the national level called the *Electoral Court* and an electoral court at the regional level called the *Electoral Boards*. Each of the *Electoral Courts* and *Electoral Boards* is assisted by a secretariat Office which specializes in handling administrative matters such as personnel and all matters relating to the financing of the Electoral Court. This secretariat office at the national level is called the *National Electoral Office*, while at the local level it is called the *Departmental Electoral Office*. Due to its subordinate nature between national and Departmental level organizations, the *Electoral Boards* are required to always report their activities to the *Electoral Court*, as well as the *Departmental Electoral Office* are required to report their activities to the *National Electoral Office*.

The powers of the *Electoral Court* as stated in the Uruguayan Constitution cover 3 (three) matters, namely: (a) being responsible for making regulations on elections and supervising their implementation ( *to act in all matters relating to electoral acts or procedures* ); (b) become the center of coordination of all matters related to the general election, including regarding the financing of the general election ( *to exercise directive, disciplinary, advisory, and economic supervision over electoral*

*organs*); and (3) Terminate dispute over the elections (*to render the final decision on all appeals and claims that may Arise and act as judge of the elections to all elective offices, and of Plebiscites and referendums*).

Due to its subordinate nature, the authority of the *Electoral Boards* It is part of the *Electoral Court's* authority which is limited to the regional level. The powers of the general election court in Uruguay appear to be very broad, covering all matters relating to elections, from the formulation of regulations, their implementation, to the resolution of disputes. This then makes the Uruguayan electoral court termed as the fourth branch of the country because it is able to take over the legislative, executive, and judicial functions.

The *Electoral Court* has 9 (nine) members who are elected by members of the 2 (two) chambers of the Uruguayan Parliament. Of these nine people, five are people from non-political parties who were selected *based on professional skills*. To be able to determine the five elected people, voting in parliament must be able to collect at least 2/3 of the total votes of the members. Meanwhile, to determine the remaining four members, the mechanism is carried out through proportional elections by members of the leading political parties in parliament.

Unlike Indonesia. The Indonesian state does not recognize a two-chamber or bi-American system but stands alone. In Indonesia, the legislature is a legislative body that has the authority to make laws and is approved by the president. Indonesia's legislative body is run by the DPR.

The Special Court is a special court that is *ad hoc* under the general court environment at the Supreme Court. The nomenclature of special courts is permitted by Article 1 point 8 of Law Number 48 of 2009 concerning Judicial Power with special court arrangements, namely courts that have the

authority to examine, hear and decide certain cases which can only be formed in one of the court bodies under the jurisdiction of the court. The Supreme Court as regulated by law. Things to note from these settings.

*First*, special courts can only be formed within one of the court bodies under the Supreme Court. Referring to Law Number 48 of 2009 concerning Judicial Powers, the institutional design of a special court must be formed in one of the court environments under the Supreme Court, namely between the general court environment, the religious court environment, the military court environment, or the administrative court environment. Country. Taking into account the complexity of the general elections which will be held simultaneously at the district/city and provincial levels, the general court environment is the most relevant judicial environment as the parent of the special court.

*Second*, a special court must be established in a law. This understanding departs from the phrase "a special court is a court [...] regulated by law". In the statutory science approach, the phrase is *delegate provision* in the *bij de wet gargled rule*, which means that the establishment of a special court is formed through a law that does not have to specifically regulate special courts. The establishment and regulation of special courts can be included in the provisions of the new general election law.

*Third*, this court model is a special court that is *ad hoc* (temporary). Because it is temporary, the judge who will try the regional head election case is also *ad hoc*. The judge is a career judge who has experience in resolving regional head election cases.

*Fourth*, the special court settlement local elections nature *ad hoc*. Why *ad hoc*? Considering that the election of regional heads and deputy regional heads is held once every 5 years, for that to be more effective and efficient, a

special court for the settlement of regional head election cases is formed temporarily.

Regarding the domicile of the special general election court, it will be in accordance with its competence. For example, the special court for the election of regional heads for the election of the Governor will be attached to the High Court at the provincial level, while for the election of the Regent/Mayor the special court for the election of regional heads will be attached to the District Court at the Regency/City level. With this design, the efficiency of case settlement can be achieved, considering that there are relatively many cases of regional head elections with demands for a settlement time as quickly as possible.

Looking at the competence aspect, the special election court is designed to have the authority to handle all disputes that arise in the general election process, ranging from administrative disputes and general election crimes, to disputes over election results. As for the violation of the code of ethics for the organizers of the general election, it will remain the authority of the Honorary Council for the General Election Organizer.

With the existence of this special election court, another thing attached is the revitalization of the role of the General Elections Supervisory Body. The overall competence of the special election courts will involve the role of the election supervisory body, the provincial election supervisory body and the Regency/Municipal Election Supervisory Committee as investigators as well as public prosecutors in criminal cases for regional head elections, so that the existence of special courts for regional head elections will automatically revitalize the role of the Election Supervisory Body.

### C. CONCLUSION

Based on the analysis carried out through the assessment as described in the previous chapters, this article comes to the conclusion that a special court for the settlement of regional head election cases needs to be established/conducted for the settlement of regional head election cases and this special court is formed prior to the implementation of the regional head election. Simultaneously nationally. This special court for the election of regional heads is not something new, but something that already exists. Moreover, the special court for the election of regional heads has been held in Uruguay.

The powers of the general election court in Uruguay appear to be very broad, covering all matters relating to general elections, from the making of regulations, their implementation, to the settlement of cases. The form and institutional design of the special court for the election of regional heads must be adapted to the conditions of the Indonesian state which are temporary (*ad hoc*) under the Supreme Court and have the authority to handle all cases that arise in the process of selecting regional heads, ranging from administrative cases and criminal acts. Regional head elections and disputes over the results of regional head elections.

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