Roles of justice courts: settlement of general election administrative disputes in Indonesia

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ARTICLE INFO

Keywords:
Case settlement
General election administration
Justice court proceeding

ABSTRACT

Both the management and participants commit administrative violations in the general election. Often, they are not aware that they are breaking regulations. Since the fall of the New Order Era, administrative frauds in the general election are handled by administrative courts through administrative legal proceedings. Administrative violations bring about disadvantages to participants and raise administrative disputes between the two parties. The present article analyses the process of the settlement of administrative disputes in the 2019 general election in Indonesia and the roles of the administrative courts in the process. Data on the examples of cases and causes of disputes are obtained empirically in court verdicts by the High Court of the Republic of Indonesia that have legal standing. The analysis adopts the inductive logic method. This article concludes that the process of the settling of administrative disputes of the general election in Indonesia, as in various other democratic countries, takes the involvement of administrative dispute resolution bodies (ADR). ADR must be completed first before bringing dispute cases to the administrative court. The settlement of the disputes is done by the Constitution Court of the Republic of Indonesia and is regulated by State Law of the Republic of Indonesia Number 7 Year 2017 about the general election.

1. Introduction

Since the fall of the New Order Government in 1998, and the amendment of the 1945 Constitution of the Republic of Indonesia, changes have occurred in the government system in Indonesia. Before the amendment of the 1945 Constitution, the Indonesian general election was conducted only to elect legislative members. In tune with the progress in time and democracy, the general election has been done to elect legislative members and executive leaders both at the national and regional levels. In time, this political undertaking has given rise to new problems in various forms, including general election administrative disputes.

The running of the general election to elect members of the House of Representatives, Senate, President, and Vice President, and Regional House members, is a realization of the people's sovereignty. The general election is expected to elect people's representatives and government that is democratically based on the 1945 Constitution of the Republic of Indonesia. In fact, the running of the election, from start to finish, has produced many problems that must be settled in court. In the 2014 Presidential election, a dispute broke out in the result of the election, which was then settled through the Constitutional Justice Court.

At that time, the case was related to the “noken” technique, a traditional technique of voting in Papua where the chief of a tribe is given the right to represent his whole community. In this system, voting is done conventionally to vote for a certain political party or candidate. This system has become an unceasing debate since the 1999 political reformation as a result of the discrepancy between legal laws and existing traditions. This system is against the Indonesian Election Law that permits one person one vote. In Papua, however, for certain communities, the election is not only an individual's political process but also a social-cultural phenomenon. The adoption of modern laws in many countries is frequently incompatible with the communities' cultural and traditional conditions. For example, the application of American legal laws in the community of the Micronesian archipelago in the Pacific has caused suffering in the local society because there is an inevitable gap between the modern and traditional laws (Pamungkas, 2017).

In Indonesia, the noken system is accepted by the judges of the Constitutional Justice Court to settle the dispute in the results of the 2014 election, although it is against the laws of the Indonesian general election.
as the democratic bases for the running of the election. The general election laws are rules of the game for the contestants underlining all the aspects of the election. Since the general election laws are constructed to increase the quality of the election, they are expected to improve trustability in the election process. On the other hand, unfair practices will tend to decrease trustability and are apt to create conflicts (Mirbahar, 2019).

The Constitutional Justice Court’s role in settling election disputes is mandated by the laws that give the rights to the Court to settle disputes. The Court, established in 2003, has nine judges, each elected for five years for the possibility for a re-assignment for a second period. A three-party decision makes the appointment of the judges of the executive (President), House of Representatives, and High Court (Butt et al., 2016, 2). In its function, Constitutional Justice Court has settled election disputes based on Indonesian legal laws (Butt et al., 2016, 4). In 2019, the Court decided on the dispute charged by Prabowo Subianto-Sandiaga Uno, one of the Presidential candidates, on the results of the 2019 general election.

Other than disputes on election results, Constitutional Justice Court, just like what is done in other countries, also handles other disputes on election processes such as administrative or identity frauds. In Pakistan, for example, administrative frauds related to the integrity of the election bodies are regarded as election fraud that negatively impacts the election (Mirbahar, 2019). In Indonesia, when a problem arises during the initial election process, it can be brought into legal charges through the administrative court. Before this, however, such problems can be brought into the hands of the Election Supervision Body (ESB) of the Honorary Council of the General Election (HCGE). Later on, disputes on the administrative aspects of the election are brought to the state administrative court. When the disputes are related to criminal acts, the right to handle them is in the hands of the criminal court. Since 2008, Constitutional Justice Court has handled disputes on the results of election of regional heads (Kelliker et al., 2019).

The present writing attempts to analyze the handling of election administrative disputes through the administrative court in Indonesia. Three thematic questions on the topic are asked here forth: (a) What is the process like in the handling of election disputes? (b) What causes disputes; (c) What is the role of the administrative court in handling election disputes?

Analyses are done through literature studies and empirical studies on the Documentation Web and Law Information of the High Court of the Republic of Indonesia concerning stipulations of administrative disputes of the 2019 general election of members of the House of Representatives, Senators, President and Vice President, and Regional House members.

Resolution of Election Disputes through Judicial Institutions: Constitutional Court, Supreme Court, and the State Administrative Court for administrative disputes. Supreme Court is for resolving disputes related to judicial review of the Election Law which is often changed by the executive institution and not established by the legislative institution.

2. Methods

This research is empirical legal research utilizing a legal and case approach. This research examines the laws and regulations related to the issues of the 2019 election, election administration disputes in Indonesia, and legal cases related to election administration disputes in Indonesia. The organs of administrative justice in Indonesia: the first level of justice is conducted by the State Administrative Court, the second level of justice is performed by the State Administrative High Court and the third level of justice is conducted by the Supreme Court of the Republic of Indonesia.

Data were collected by documenting laws and regulations related to the process of resolving disputes over the administration of general elections through the legal directory of the Supreme Court and the network of documentation and legal information of the Supreme Court of the Republic of Indonesia. Data were tracked from the Decision Directory of the Supreme Court of the Republic of Indonesia with random samples. This study investigates the 2019 Election because it is the first time Simultaneous Election in Indonesia, where the President/Vice Presidential Election was held simultaneously with the Legislative Election.

3. Results and discussions

3.1. Indonesian general election

The first Indonesian general election was done in 1955, ten years after the proclamation of independence or during the liberal constitutional democracy under President Soekarno. During the Guided Democracy (1959–1965), still under Soekarno, no general election was known. The second through a seventh general election was done during the New Order Era (1966–1998) under Suharto, the second president of the Republic of Indonesia. Elections during this era have been regarded as unfair. Finally, during the post-Suharto Reformasi Era, four general elections have been done that are designated to be democratic (1999, 2004, 2009, and 2014) with all ensuing problems and disputes (Trihartono and Patriadi, 2016). Since the return to democracy in 1999, Indonesia has introduced an election that directly elects presidents, national parliaments, sub-national parliaments, and regional executives. These elections have been regarded as successful in various perspectives, such as the high rates of voters, low rates of violence, and peaceful transfers of authorities. However, they have also been marked by serious shortcomings in their executions. In the 2009 national election for president and parliament, for example, problems arise in every phase of the event from the registration of voters to the stipulation of results. Millions of qualified voters are deleted from the lists, and thousands of unqualified voters are found in the lists (Hillman, 2011).

The 2014 general election is the fourth election since the fall of the New Order Government in 1998, and the eleventh of the whole series of the Indonesian political history. In general, this is the election that occurs during the third of the four periods of democracy. This event is not free from problems, including that of the results that have been brought to the High Court, as has been explained above. The 2014 general election is joined by 12 national political parties that compete for the votes.

Fourteen political parties join the 2019 general election. In addition to voting members of the House of Representatives, the Senate, and Provincial and Regional Houses, this event is also for electing the President and Vice President. The event takes place on April 17, 2019, the biggest one-day voting in the world, with 185 million registered voters and 800,000 voting booths. Two pairs of the president and vice president candidates are voted indirect voting. Around 300,000 candidates fight for the 29,000 legislative chairs in the national parliament and 34 provinces and more than 500 regional councils and mayoralties (Torququist, 2019). The election for the House of Representatives is joined by 14 political parties listed in Table 1.

The running of the 2019 general election is not free from various problems, either, as all other previous events. Liddle and Mujani (2007) state that much historical evidence shows that leaders and other
authoritative figures have played an important role in forming people’s voices in general elections in Indonesia. Previous opinions are supported by the arguments of (2008) that, after the fall of the New Order Government, regarded as authoritarian (1965–1998), Indonesia has experienced a fast transition towards a form of a democratic election. The present Indonesian political system is marked by general elections that are free and fair and by several national political institutes that function well and also by substantial weaknesses in management practices. This is strengthened by the opinions of Lupu and Riedl (2012) that, in the transition, uncertainties become a feature that forms the new democracy and vigorously develops their dynamics. Indonesia displays all this in three types of uncertainties during the excitement of democracy transition: (a) regime uncertainty, (b) economic uncertainty, and (c) institutional uncertainty. Elite politicians are forced to form new coalitions that are democratic to face economic recovery processes that are hard to predict, the contour of the developing political rules, and even the democratisation of the executives who behave so if there incumbents in the race. In a social cooperation system from generation to the next. Second, the political concept is presented as a display standing independently. Third, the budget, specific instructions, structural obstacles in the implementation of the laws, and supervision through committees, hearing, and investigation (Bingham, 2010).

Administrative laws reflect important values related to the legitimation of agents’ authorities in their relations with the ruler and the ruled on five fundamental values of accountability, efficiency, transparency, participation, and collaboration. Various historical events show how Congress has modified the handling of administrative agents. The executive branch must obey administration (Bingham, 2010). In the US, there is the law for the settlement of administrative disputes (ADR). In Indonesia, settlement of administrative disputes, including those in the general election, besides being handled by the ESB, is also brought to the State Administrative Court (Chapter 470, item 1, State Law Number 7 Year, 2017). The importance of dispute settling by the ADR has been underlined by Dragos and Neamtu (2014) in that administrative disputes, besides being handled through the court, can also be settled by using alternative resolutions in the forms of (a) administrative appeal, (b) mediation, and (c) ombudsman. The administrative appeal has always been regarded as the affordable means for the ADR on the administrative matters and a way to maintain litigation to get out of the justice court. However, in the Indonesian general election system, the objectivity of dispute settling through the administrative mode is still being doubted. Dissatisfaction always occurs in life, including in the change of leaders and other social dynamics. The settlement of disputes by the court has often brought dissatisfaction to the involved parties. Cahill-Ripley (2014) states that transitional justice traditionally ignores economic and social infringements over civil and political rights as the heaviest human-right violations for past vicious practices. Social justice is a term that is fought for, inserted into greatly different political languages. People who are affiliated to the left position believe that it can be supported by the market economy, with very little or no State intervention (McCallery, 2009).

The political concepts of justice are founded on three principle features. First, justice is formed for the basic structure of the society, i.e., the social, economic, and political institutions and how they are compatible in a social cooperation system that guarantees the next. Second, the political concept is presented as a display standing independently. Third, the contents are revealed in certain fundamental ideas seen as a political culture implied in the democratic societal public (Cohen, 1986).

In a case study of China in 1978, a significant change has happened in the characteristics and events of the disputes, conflicts, and social disturbances, and mechanisms in the resolution. Like economic and governmental reformation, the Government has adopted the pragmatic approach to solving the problems since they have tried to satisfy the

| Number | Name                          |
|--------|-------------------------------|
| 1      | Nation Arising Party (PKB)    |
| 2      | Gerindra Party                |
| 3      | Indonesia Democratic Party of Struggle (PDI Perjuangan) |
| 4      | Golongan Karya Party (Golkar) |
| 5      | National Democratic Party (Nasdem) |
| 6      | Garuda Party                  |
| 7      | Berkarya Party                |
| 8      | Justice Welfare Party (PKS)   |
| 9      | Perindo Party                 |
| 10     | United Development Party (PPP) |
| 11     | Indonesia Solidarity Party (PSI) |
| 12     | National Mandate Party (PAN)  |
| 13     | People Conscience Party (Hanura) |
| 14     | Democratic Party              |

Source: Indonesia General Election Commission (KPU).
objectives of justice and wide efficiencies that are often in conflict while maintaining social-political stabilities and fast economic growths (Peer-enboom and Xin, 2011).

3.3. The process of administrative dispute settlement of general election in Indonesia

The scope of general election disputes is broad, covering all the phases in the process of the running if the general election, for which various and different bodies and courts do the settlement. For alleged criminal frauds, the settlement is handled by the general court. Alleged frauds of administration and processes, the settlement is done by the ESB, HCGE, and State Administration Court. Furthermore, disputes in election results are settled by the Constitution High Court.

Dispute settlement by justice bodies in various democratic countries presently involves judicial institutions and raises various questions that are difficult to answer concerning the separation of powers, institutional legitimation, and values that are applied in the settlement processes (Pul, 2017). Just as what happens in the Indonesian general election, there are numerous problems related to the running of the election that is handled by varied institutions.

The Law of the Republic of Indonesia, Number 7 Year 2017 about the General Election, stipulates that disputes of the process of the running of the election are to be taken care of by the Supervisory Body (ESB) and State Administration Court. The Constitution Court handles those of the results of election. When criminal acts alleged to be done in the election process, disputes will be settled by the State Court. Meanwhile, frauds that are alleged to be related to election ethics are to be handled by the honorary council HCGE. After a process by the honorary council (administrative dispute resolution ADR), the case can be brought to the HCGE, and if it is related to implementation ethics, it can be brought to the administrative court.

The process flow of the resolution of administrative disputes of the general election through the administrative courts is stipulated in Chapter 471 of the Number 7 Law Year 2017 specified by Rules of the High Court of the Republic of Indonesia Number 5, Year 2017.

Meanwhile, settlement of the 2019 general election administrative disputes by the High Court (third-grade court) is stipulated by Rules of the High Court Number 4 Year 2017 to follow up Chapter 463 item 5 of the Law Number 7 Year 2017. This stipulation states that candidates of the national and regional Houses, Senators, and Executive Leasers who receive administrative sanctions may appeal to the High Court within 3 (three) workdays after the ruling of the General Election Commission. Chapter 463, item 6 of Law Number 7 Year 2017 stipulates that the High Court makes the ruling on the election disputes within 14 (fourteen) days after the Court takes the case. Chapter 463 item 7 states that in the case of the High Court cancels the ruling of the Election Commission as outlined in item 5, the Election Commission must revalidate the persons as candidates and contestants of the general election. Chapter 463, item 8 of the Law Number 7 Year 2017 states that the High Court ruling is final and binding.

In implementing Chapter 463 of the Law Number 7 Year 2017, the High Court of the Republic of Indonesia issues Rules Number 4 of the High Court Year 2017. Chapter 3 item 1 of this Rule states that appeal is made in written Indonesia Language by its appealor or his/her attorney specifying: identity of the appealor, identity of the appealed, object of dispute, the legal standing of the appealor, the time range of the appeal, reasons for the appeal, matters to be ruled, and attachments of the ruling of the Election Commission and the Supervisory Body (HCGE). The ruling of the HCGE, which is included in the administrative dispute resolution (ADR), must be processed first before posting the appeal (Chapter 471 Law Number 07 Year, 2017). If the Supervisory Body does not resolve the dispute, it can be brought to the High Court. However, the Rules Number 4 Year 2017 of the High Court stipulates that such disputes should be structured, systematic, and massive (TSM). In the Explanations of Chapter 286 item 3 of the Law Number 7 Year 2017, the TSM must be based on three criteria:

1. Structured, acted by government officials and election committee members, either individually or collectively.
2. Systematic, accurately planned and neatly executed
3. Massive, bringing about broad impacts on election results

Furthermore, the Election Law has not specified definitively the criteria of TSM, which has systemic impacts on the vote-getting (Aprilindo et al., 2019). In the history of the general election in Indonesia, this has become one of the efforts in reviewing the rules of the Election Commission that are alleged to have negative impacts on contestants. Such reviews can be proposed through content review rights.

The process of the settlement of administrative disputes of the general election by the High Court of the Republic of Indonesia is contained in Chapter 4 of the Law of the High Court Number 4 Year 2017. It is stipulated that the time allotment for submitting an appeal is no more than 3 (three) days after the Election Commission rules it. Appeal is addressed to the Chairman of the High Court through the Director of Case Processing to be reviewed at the latest 1 (one) day after it is received. After the appeal is considered complete, the appealor pays for the case cost. Subsequently, the case file is given down to the Junior Secretary of the High Court on the same day. The appeal is sent to the appealed to give him/her time to draft a response completed with evidence in the form of the ruling from the Election Commission and Supervisory Body.

Chapter 6 of the Rule of the High Court Number 4 Year 2017 regulates the proving of a case. The Chapter states that judges raise what is to be proved, the load of the evidences, and the pieces of evidences. For the evidence acceptability, there should be at the minimum of 2 (two) evidences according to the judgment of the judges. To test the validity of the verdict, the judges evaluate the aspects of their jurisdiction, procedure, or substances that are structured, systematic, and massive following the rules of law and principles of good governance.

Meanwhile, the process of the court proceeding is stipulated in Chapter 8 of the Rule of the High Court Number 4 Year 2017 stating that the judges should make the ruling no more than 14 (fourteen) days after the Director of Case Processing receives the file. If the appeal does not have enough legal evidence, it is rejected (Chapter 9, Law of the High Court Number 4 Year, 2017).

Looking at the preceding description of the process of the settlement of election disputes in Indonesia, it can be seen how complicated the process is so that contestants often do not want to bring their case to the administrative court. It often happens that those who feel cheated choose to directly bring the case to the Constitution Court like the one happening to the election dispute appealed by Prabowo Subianto-Sandiaga Uno vs. the General Election Commission and Supervisory Body in the 2019 General Election. In fact, the appealing party needs to bring the case to the Supervisory Body first before appealing to the administrative court. As a result, the appeal by the winning team of Prabowo-Sandi does not have the legal standing.

3.4. The cases and causes of the administrative disputes of the 2019 general election in Indonesia

Dispute resolution can be performed out of court, namely through the Election Supervisory Board and the Honorary Board of Election Organizers. Law Number 7 of 2017 on General Elections states that the Election Organizer is an institution that organizes elections consisting of the General Election Commission, Election Supervisory Board, and the Honorary Board of Election Organizers as a unit of Election Organizing functions to elect members of the House of Representatives, Council members Regional Representatives, President and Vice President, and members of the Regional House of Representatives directly by the people (Article 1 paragraph (7).
The Election Supervisory Board’s position is part of the election organizers in resolving election disputes based on the provisions of Law No. 7 of 2017. The Election Supervisory Board is authorized to receive and follow up reports related to alleged violations of the implementation of laws and regulations regarding the Election; examine, review, and decide on violations, election administration; examine, review, and decide money politics; receive, examine, mediate or adjudicate, and decide on the settlement of disputes in the Election process; recommend to the relevant agencies on the supervision results of the neutrality of civil-state apparatus, the neutrality of the Indonesian National Army members, and the neutrality of the Police members of the Republic of Indonesia; take over the duties, authorities, and obligations of the Provincial and the Regency/City Supervisory Board in stages if the Provincial and the City/Regency Supervisory Board are temporarily absent due to sanctions or other consequences in accordance with the provisions of legislation; request information provided to relevant parties in order to prevent and prosecute administrative violations, violations of the code of ethics, alleged criminal conduct of the election, and disputes of the election process; correct the decisions and recommendations of the Provincial and the Regency/City Supervisory Board if matters contradict with the provisions of legislation.

The Election Supervisory Board is obliged to be fair in carrying out duties and authorities; conduct coaching and supervision to the Election Supervisors at all levels; submit reports on the supervision results to the President and the House of Representatives in accordance with the Election stage periodically and/or based on needs.

Article 1 paragraph (24) states, “The Honorary Board of Election Organizers, hereinafter abbreviated as DKPP, is the institution in charge of dealing with violations of the Election Organizer's code of ethics”. Therefore, DKPP is an election organizer who is responsible for dealing with violations of the code of ethics of election organizers. The explanation of DKPP is regulated in detail in Chapter III, Article 155-Article 166. The duties of DKPP are mentioned in Article 156 paragraph (1), namely: receiving complaints and/or reports of alleged violations of the code of ethics committed by the Election Organizer; conducting investigations and verifications, and examining complaints and/or reports of alleged violations of the code of ethics committed by the Election Organizer. Meanwhile, the authority of the DKPP is calling the Election Organizer who is suspected of violating the code of ethics to provide explanations and defences; calling reporters, witnesses, and/or other relevant parties for information, including documents or other evidence; providing sanctions to Election Organizers who are proven to violate the code of ethics; and decide on violations of the code of ethics (Article 159 paragraph (2)). The obligations of DKPP are described in Article 159 paragraph (3), namely: applying the principles of upholding justice, independence, impartiality, and transparency; enforcing the rules or ethical norms applicable to Election Organizers; be neutral, passive, and do not take advantage of cases that arise for personal popularity; and submit the decision to the relevant parties for action.

3.4.2. Election administration dispute case of candidates for members of the Regional House of Representatives between: candidate of senate (Oesman Sapto Odang) vs. the general election commission

The case began with the issuance of the Ruling by the Election Commission Number 26 Year 2018 about the second revision of the Rule of the General Commission Number 14 Year 2018 about individual candidates for the Senate. This rule change brought a disadvantage to one candidate, Oesman Sapto Odang, who then appealed a review to the High Court. The candidate won the case, and the Supervisory Body then ordered the Election Commission to reinstall Oesman Sapto Odang as a Senate candidate. In this verdict, it can be seen that the ruling of the Election Commission Number 14 Year 2018 about Senate candidate is not compatible with a higher ruling of Chapter 5 Article and Chapter 6 item 1 Article I of the State Law Number 12 Year 2011 about the principles of forming legal rules. This shows that the Election Commission has not shown professionalism in forming rules that are against higher laws. In the case, the high judges in the High Court have found that the Commission has issued rules that conflict with a higher legal rule. In addition, the appealer, Oman Sapto Odang, has legal standing in winning the case.

3.4.3. Legislative Election administration dispute case between: national leader board of the justice and Unity Party vs. the general election commission

The case began with the issuance of the Ruling of the Election Commission Number 58/PL.01.1-Kpt/03/KPU/II/2018 on 17 February 2018 on the instigation of the political parties as contestants of the 2019 general election. The Justice and Unity Party failed the verification. They appealed the case to the State Administrative Court. However, before that, they first brought the case to the election supervisory board. The Board, however, rejected their appeal because they did not have enough evidence and expert judgment to support their appeal. Subsequently, the general Commission rejected the appeal that the Justice and Unity Party could not satisfy the 1:1000 criterion for the inhabitants of a region and the incomplete functionaries in the management of the party. The party posed their argumentation that the general Commission, besides using the principles of direct, general, free, secret, honest, and fair in running the election, the Commission must also satisfy the principles of independent, honest, fair, legal-based, orderly, open, proportional, professional; accountable, effective, and efficient. The State Administrative Court gave its verdict Number 56/G/SPPU/2018/PTUN-JKT.

3.4.4. Regional Legislative Election administration dispute case between candidate of Regional House member jumanto of Probolinggo Regency vs. the general election commission

The case surfaced at the time of the issuance of the Ruling of the Election Commission Number 20 Year 2018 about the candidate of Members of Representatives of the provincial and regional levels. The ruling brought a disadvantage to Jumanto, a regional candidate of Probolinggo Regency, East Java, who once received a sentence in a corruption case without revoking his rights to be active in political events of voting or being voted in an election. At the time of the candidate, he had been set free by a letter of statement from the Minister of Law and Human Rights to be back and active in society. However, the ruling of the Election Commission barred him from being a candidate for a member of the Regional House of Representatives. He argued that he was part of the Indonesian people and that he had the constitutional rights to implement people’s sovereignty. Moreover, the ruling conflicted with the State Law Number 7 Year 2017 about the general election, the State Law Number 12 Year 2011 about the forming of legal rules, and the State Law Number 12 Year 1995 about socialization. Therefore, it can be concluded that, in issuing their Ruling Number 20 Year 2018 about the candidate of Members of Representatives of the provincial and regional levels, the general election commission was not accurate so that it brought an
advantage to an individual which then was sued though the state administrative court.

Looking at the preceding discussion, it can be seen that the scope of general election disputes is broad and occurs mostly because of fraud in the election that are difficult to prove, as stated by Wing-Yat Yu (2011). It can also be seen that mistakes or fraud can be found in the general election's rules or laws. This can be pointed out after the rules or laws are tested against higher rules or laws, they violate the general principles of good governance which simultaneously becomes a tool for judges of administrative courts in evaluating in the court proceedings (Chapter 53 item 2 State Law RI Number 5 Year, 1986 about State Administrative Court jo State Law RI Number 9 Year, 2004 about Revision of State Law RI Number No. 5 Year, 1986).

3.4.5. Role of the administrative court in settlement of administrative disputes

The State Administrative Court conducts the administrative court in Indonesia as one judicial milieu. There are four judicial settings in Indonesia: the general court, the religious court, the military court, and the administrative court. These four justice environments are under the umbrella of the High Court. Based on Chapter 24 of the 1945 Constitution of the Republic of Indonesia, there is the Constitution Court, the one to settle disputes of the general election. This Chapter reads: The Constitution Court has the authority to give legal decision in the first and final grade that is final to test state laws against the Constitution, settle disputes of powers among state institutions whose authorities are given by the Constitution, dissolve political parties, and settle disputes of general election results.

The administrative judicial environment came to existence in Indonesia in 1991. This administrative judicial setting is established to settle disputes between the government and citizens as a result of actions that violate the citizens' rights. The purposes of the administrative court are first, to give protection to the rights of the individual citizens; and secondly, protect the citizens' rights based on common causes against individuals who live in the communities (Amarini and Hidayah, 2019). The administrative justice environment consists of three State Administrative Court layers as the first grade, High State Administrative Court as the second grade, and the High Court as the third grade (Chapter 4 State Law Number 5 Year, 1986).

In the running of its function, the Administrative Court handles administrative disputes in general elections after the ADR has processed cases through the Supervisory Body. In doing their jobs, the judges examine, evaluate, evaluate, and give a verdict to administrative disputes under the ruling of Chapter 53, item 2 State Law Number 5 Year 1986 jo State Law Number 9 Year 2004. In this Chapter, it is stated that the argument for appealing to the Court is that the case is against the existing laws and the principles of good governance. The judges are to examine whether or not the case is against the law to sentence the verdict. This also refers to the ruling of Chapter item 2 (Explanatory Notes Chapter 53, item 2 State Law Number 5 Year, 1986).

Subsequently, the administrative law's role in settling election disputes is to examine whether or not the Election Commission and Supervisory Body violate the rules in running their jobs. Rules of Chapter 53 direct the judges' examination and evaluation, item 2 State Law Number 5 Year 1986 jo State Law Number 9 Year 2004 about administrative justice court. It means that verdicts are based on whether the Election Commission and Supervisory Body are against this law or the general principles of good governance. Therefore, the administrative court's role is to examine, evaluate, and decide whether the Election Commission and Supervisory Body act against the law. This is based on the contention that governmental bodies must be democratic in the running of their functions. As has been stated by (Hegre and Nygård, 2015), the set of regulations by which political leaders are recruited, and country citizens vote is not the only one determining factor for “good governance.” Potentially, (a) the quality of the bureaucrats, (b) level of political corruption, and (c) compatibility of the economic policies influence the capabilities of the government to prevent conflicts, violence, and legal problems.

Resolving election disputes in Indonesia and in some countries is a complicated matter. Many institutions and bodies are involved in resolving electoral disputes. The settlement of election disputes is carried out through the Constitutional Court of the Republic of Indonesia. In addition, the criminal election violation is resolved through the general court through the criminal court. The election administration disputes are resolved through the state administrative court after performing administrative appeals submitted to the election supervisory body and the Honorary Board of Election Organizers to investigate the indications of ethical violations committed by election organizers. In addition, the regulation for the implementation of the Election (i.e. Law No 7 of 2017 on Elections) is often changed and or revised before the implementation of general elections by election agencies that harm election participants so that it was settled through the judiciary on suspicion of election fraud. In regard to this, Liddle and Mujani (2007) state that much historical evidence shows that leaders and other authorities have played an important role in shaping the people's voice in democratic and undemocratic elections in Indonesia. Added to this, Ufen (2008) states that after the authoritarian New Order (1965/66–98) under President Suharto, Indonesia experienced a rapid transition to a democratic election. Indonesia's political system is now characterized by free and fair general elections and a series of well-functioning political centers, but it has substantial governance weaknesses.

Indonesia has held many elections since its independence. The first general election in Indonesia was held in 1955, 10 years after the country declared its independence in an era called liberal or constitutional democracy (1949–1958). Elections did not exist in the era of Guided Democracy (1959–1965) when Sukarno, the first President of the Republic of Indonesia, ruled. The second to seventh elections were held under Suharto, the second president of the Republic of Indonesia, and his regime was called the New Order (1966–1998), but all elections were considered unfair. Finally, in the Reforma era or the post-Suharto era (May 1998 to present), Indonesia has held several general elections that were considered democratic, in 1999, 2004, 2009, and 2014 (Trihartono and Patriardi, 2016). The last election was held in 2019. However, Liddle and Mujani (2007) state that much historical evidence shows that leaders and other authorities have played an important role in shaping the people's voice in democratic and undemocratic elections in Indonesia. Ufen (2008) notes that after the authoritarian New Order (1965/66–98) under President Suharto, Indonesia experienced a rapid transition to a democratic election. Indonesia's political system is now characterized by free and fair general elections and a series of well-functioning political centers, but it has substantial governance weaknesses.

Lupu and Riedl (2012) argue that in the introduction of specific problems, uncertainty becomes a defining feature of new and evolving democracies shaping their dynamics in a powerful way. Indonesia exhibited all three types of political uncertainty during the turmoil of the democratic transition: (a) regime uncertainty, (b) regime uncertainty, and (c) institutional uncertainty. Elite politicians are forced to build new democratic coalitions to face the difficult process of economic recovery, the evolving contours of political rules and even the fate of democracy itself (Slater and Simmons, 2013). A central issue that often occurs during general elections is party unrest. Today, ideology is believed to have lost much of its relevance in structuring electoral competition in Indonesia. Contemporary research says that it is a process of “dealignment” of emerging stream affiliation in Indonesian democracy (Ufen, 2008) and the causal factors are support for political leaders, evaluation of government performance and stronger protection of selective behavior rather than identity or ideology (Aspinall and Berenschot, 2019; Liddle and Mujani, 2007).

The Indonesian government should perform election activities and resolve election disputes in a good and fair manner. With regard to this, Swyngedouw (2005) defines government as ordering government outside of the state (but often with the explicit inclusion of parts of the state apparatus), organized as a network of private horizontal associations (markets), civil society (usually NGOs) and state actors (Copus,
The concept of ‘government’ has become a key keyword throughout the social and political sciences (Kooiman, 2003). Historically, the government is synonymous with politics, the people, and the rulers. As Foucault said in his lecture on government, the typical modern art developed by the government was in Europe in the sixteenth and seventeenth centuries (Lemke, 2015). Foucault questioned ‘how to govern oneself, how to be governed, how to govern others, by whom the means through which it is done (Delanty and Mota, 2017).’ Delanty and Mota (2017) then says that over two decades, the rise and spread of global discourses on governance have changed theories and practices of government from policy production to societies and populations, beyond the institutional and spatial boundaries of the modern state-society constellation. The fundamental shift was not only in ideology and what Foucault and his followers called political technology, but most significantly in the social ontology of government. Thus, this transformation changes the discursive space with which we have become accustomed to asking and answering questions about what it means to rule and regulate legally.

The government refers to a condition in which the governed engage in political control to the extent that they are not outside of it, but the means through which it is done (Delanty and Mota, 2017). Delanty and Mota (2017) add that this can be seen as a system of governance and at the same time a mode of knowledge in which political subjects are formed. Studies such as Hegre (2001), Fearon and Laitin (2003), and Cederman et al. (2010) focus on the extent to which institutions of government are formally democratically elected leaders are supposed to best address grievances. The rules governing how political leaders are recruited and how citizens participate in the selection of voters, however, are not the only relevant determining factors of “good governance.” Potentially (a) the quality of bureaucratic apparatus, (b) the level of political corruption, and (c) the appropriateness of economic policies chosen by political leaders affect the ability of governments to prevent conflict, violence, and state problems (Hegre and Nygård, 2015).

4. Conclusion

The process of the settling of administrative disputes of the general election in Indonesia, as in various other democratic countries, takes the involvement of administrative dispute resolution bodies (ADR). ADR must be completed first before bringing dispute cases to the administrative court. The settlement of the disputes is done by the Constitution Court of the Republic of Indonesia and is regulated by State Law of the Republic of Indonesia Number 7 Year 2017 about the general election.

There are various forms of election disputes that are appealed to the administrative courts. They are, among others, administrative violations by candidates who still hold a state position when registering regarded as committing violation that is structured, systematic, and massive (TSM). Another violation involves the formation of regulations by the election commission against the general principles in the making of good laws. Another violation involves the running of the election by functionaries who are not professional in maintaining the basic principles of the election of independent, honest, just, having legal standing, orderly, open, accountable, effective, and efficient.

The role of the administrative court in settling election disputes is that of examining, evaluating, and giving the verdict whether or not the Commission of the general election violates the law. This function is endorsed by the ruling of Chapter 53, item 2 of State Law of the Republic of Indonesia Number 5 Year 1986 jo State Law Number 9 Year 2004. The judgment is based on whether or not the election commission has violated the law or general principles of good governance.

The suggestion offered by the authors to deal with election dispute resolution in Indonesia is that the Indonesian government needs to establish separate institutions/courts to resolve election disputes objectively because currently many institutions involve in resolving election disputes in Indonesia. Established institutions should be credible and subject to the principles of good governance in resolving election disputes in Indonesia in order to gain the trust of the entire Indonesian community and the international world.

Declaration

Author contribution statement

Eny Kusdarini: Conceived and designed the experiments; Performed the experiments; Analyzed and interpreted the data; Contributed reagents, materials, analysis tools or data; Wrote the paper.

Anang Priyanto: Performed the experiments; Analyzed and interpreted the data; Contributed reagents, materials, analysis tools or data; Wrote the paper.

Sri Hartini; Suripno: Analyzed and interpreted the data; Contributed reagents, materials, analysis tools or data; Wrote the paper.

Funding statement

This research did not receive any specific grant from funding agencies in the public, commercial, or not-for-profit sectors.

Data availability statement

Data included in article supp. material/referenced in article.

Declaration of interest’s statement

The authors declare no conflict of interest.

Additional information

No additional information is available for this paper.

Laws and regulation

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