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The Harmonization of Pancasila Values and the 1945 Constitution in Resolving Modern Electoral Disputes Based on the Principle of Rule of Law

Beatrice Callista Yo¹, Franciscus Wartoyo², Livia Cheryl³, Vanessa Maurent⁴.

¹Universitas Pelita Harapan, 01051240022@student.uph.edu.

²Universitas Pelita Harapan, franciscus.wartoyo@uph.edu.

³Universitas Pelita Harapan, 01051240057@student.uph.edu.

⁴Universitas Pelita Harapan, 01051240020@student.uph.edu.

Corresponding Author: 01051240022@student.uph.edu¹

Abstract: This research aims to analyze the correlation of modern election dispute resolution in a constitutional state in the context of the basic constitution, namely the 1945 Constitution and Pancasila. Using normative qualitative research methods, this research focuses on studying the application of basic state principles in resolving election disputes in Indonesia. The elections held were based on the principles of democracy and popular sovereignty in Article 1 paragraph 3 of the 1945 Constitution which often gave rise to disputes, which ultimately threatened political and legal stability. Therefore, it is important to ensure dispute resolution is in accordance with the values contained in the 1945 Constitution and Pancasila, especially the fourth principle which emphasizes deliberation in representative deliberations. The research results show that harmonization between the values of Pancasila and the principles contained in the 1945 Constitution will result in a crucial role in ensuring fair, transparent and legally valid dispute resolution. Application of principles rule of law in this process can strengthen the legitimacy of election results and increase public trust in the democratic process. With this, the application of these two foundations can maintain political and legal stability in Indonesia, as well as create an electoral system of higher quality and integrity (Constitutional Court, 2023). It is hoped that this research can contribute to strengthening the legal and democratic system in Indonesia.

Keyword: Pancasila, 1945 Constitution, Elections, Rule Of Law.

INTRODUCTION

Article 1 paragraph (3) of the 1945 Constitution states that "Indonesia is a country of law" which means that all exercise of power within the Indonesian State must be based on law or commonly known as the principle rule of law. Thus, Indonesia is a constitutional democratic country based on law (constitutional democratic). And as time progresses, society changes even the principles of rule of law which is known to be dynamic. Thus, Indonesia upholds two

systems of sovereignty, namely people's sovereignty and state rule of law (Taufiqurrahman et al., 2023).

One way to create popular sovereignty in a constitutional state is to hold general elections, in an effort to replace state representatives democratically. General elections must be carried out with quality and integrity in order to promote healthy democracy (Hasna & Mutiara, 2024). Elections have a function as a tool to support democracy or more familiarly known as people's parties where supreme sovereignty is held by the people. As mandated by Pancasila in the fourth principle, namely "The people are led by wisdom in representative deliberation", so that elections are a form of representative democracy which emphasizes people's participation in deliberative election of leaders for the common good.

However, in holding general elections in Indonesia, disputes are an event that is always found, because general elections include elections for the DPR, DPRD, DPD, and President/Vice President simultaneously. Simultaneous general elections are a good effort to save costs, but create a higher risk of disputes. Also, the handling of violations committed during the election has not been implemented effectively. So, there is a need for a review of complaints and resolution of election disputes. The conflicts created in elections take the form of clashes of interest, clashes of opinion, defeats, and much more. So, so many applicants submitted their cases to the Constitutional Court.

It is clearly stated that according to Article 24C paragraph (1) of the 1945 Constitution, "the Constitutional Court has the authority to adjudicate at the first and final level whose decision is final to review laws against the Constitution", so it can be concluded that the Constitutional Court has the function to resolve disputes in a final decision. However, in resolving disputes, there are several basic problems that become obstacles that influence elections, namely:

1. Time constraints, the dispute resolution process takes a long time with limited time, especially when there is an inauguration for those elected.
2. Complex laws, laws that are difficult to understand create overlapping regulations that result in confusion or uncertainty in the resolution process.
3. Costs, applicants who wish to file a dispute must consider the costs and accessibility of dispute resolution, both from legal or administrative costs.
4. Uncertainty, where settlement is often delayed or canceled, which creates public distrust in the legitimacy of the settlement. Where in the 2019 Election, there were 340 cases examined, 122 of which continued to the evidence stage, and only 12 cases were granted.

Indeed, the Constitutional Court as the guardian of the constitution, should have resolved election disputes through the state foundation. However, in the resolution process it should be better if it is carried out separately according to the type of election dispute. Where it is necessary to know that there are four types of disputes, namely violations, process disputes, result disputes, and election crimes (Erick & Ikhwan, 2022). So there must be a different legal path in resolving disputes. Therefore, based on the background above, it is necessary to map the resolution of election disputes in Indonesia, as well as the discourse on the formation of a special judicial body to handle election disputes based on Pancasila and the 1945 Constitution

METHOD

This research used a normative qualitative research method with a document analysis approach to analyze the application of Pancasila values and the principles contained in the 1945 Constitution in resolving modern election disputes in Indonesia. The data used was in the form of legal documents such as the 1945 Constitution, election regulations, and Constitutional Court decisions regarding election disputes. The research procedure was carried out by collecting and analyzing the contents of documents to identify the relevance of the principles rule of law, Pancasila, and the 1945 Constitution in resolving election disputes. Meanwhile, content analysis techniques were used to examine the relationship between these principles and how

they are applied in the election context, all of this is done to maintain political and legal stability in Indonesia.

RESULTS AND DISCUSSION

Challenges and Prospects of Election Dispute Resolution Mechanisms in Indonesia

Resolving election disputes in Indonesia is very important because disputes and violations often arise during the election process. Changes in the new Election Law changing this dispute resolution mechanism need to be understood by all parties involved. Lawsuits for objections to election results are now regulated in Article 24C paragraph (1) of the 1945 Constitution. The Constitutional Court (MK) has the authority to decide disputes over election results which functions as a control over the performance of the General Election Commission (KPU) and to ensure fairness in elections. The Constitutional Court's final decision greatly influences the final election results in Indonesia.

(Ramlan Surbakti et al., 2021) This proves that the main problem hampering the election process in Indonesia is the resolution of election disputes. Some of the obstacles that occur include, many parties do not clearly understand the basis of election dispute lawsuits. This unclear understanding can result in many cases that should actually be resolved by other institutions, such as Bawaslu, KPU, or criminal courts, instead being brought to the Constitutional Court (MK) or Supreme Court (MA). As a result, many applications do not meet the proper legal requirements and end up with decisions being rejected or not accepted. Apart from that, the large number of election cases submitted also wastes a lot of energy and costs without producing meaningful results, because the majority of applications are not accepted. Even though the right to sue exists, concerns arise because many parties do not really understand what can be sued, and often this is triggered by disappointment over losing. Some people argue that to reduce energy waste and costs, election challenges could be limited, such as by using large deposits or organizing based on certain vote margins. However, what is more important is the awareness of candidates or political parties to respect the victory of other parties and have a better understanding of the meaning of disputes over election results.

Election disputes can be divided into two main types: first, disputes in the election process which usually occur between election participants or between candidates, which have been handled by the election supervisory committee. Second, disputes over election results whose resolution is in accordance with the 1945 Constitution, the Election Law and the Constitutional Court (MK) Law are in the hands of the MK. Apart from that, there are also other disputes that are not regulated in the Law, namely disputes that arise as a result of participants' or candidates' objections to KPU or KPUD decisions that are not regulated in the Law. Problems often arise in elections and local elections, especially related to regulatory deficiencies that need to be corrected in the future. One of the main problems is the decision of election organizers which results in the failure of election participants or presidential candidates and regional heads, which continues to happen to this day.

(Bisariyadi et al., 2012) Election dispute resolution, or Electoral Dispute Resolution (EDR), can be carried out through two main channels, namely formal and informal. Formal channels involve more systematic procedures, such as through courts or special bodies appointed to handle election disputes, while informal channels usually take the form of negotiation efforts. A formal process is very important to ensure that all problems that arise during the implementation of elections can be resolved completely. There are five legal mechanisms applied in resolving election disputes:

Examination by the election management body which can be appealed to a higher body.

- a. Special courts or judges who handle election disputes.
- b. General courts that allow appeals.
- c. Settlement of disputes over election results submitted to constitutional courts.

d. Dispute resolution by the high court, where in Indonesia, election disputes are submitted to the constitutional court.

In Indonesia itself, a fourth mechanism is used, namely the resolution of disputes over election results which are submitted to the constitutional court.

The Constitutional Court (MK) in Indonesia has an important role in resolving election disputes, especially disputes over election results. As the institution with the authority to adjudicate these disputes, the Constitutional Court is tasked with deciding disputes related to vote acquisition and determining election results carried out by the General Election Commission (KPU). This dispute resolution process is carried out through an efficient and fast trial, to ensure that the election results can be immediately ratified and accepted by all relevant parties. This is very important so that the democratic process can run smoothly, and so that every decision taken in the election can be legally accounted for.

Apart from the MK's role, the KPU also has responsibility for handling disputes related to the technical implementation of elections. The KPU functions as the election organizer who prepares all procedures and vote counting. However, if there is a dispute related to election results or decisions that have a constitutional impact, the dispute will be resolved through a constitutional court process at the MK. In this context, the Constitutional Court functions as a supervisor who maintains the principles of justice, independence and transparency, so that election results can be accepted fairly and legally by the public, as well as preventing potential fraud or violations in the implementation of elections.

(Willa Wahyuni, 2023) Election dispute resolution in Indonesia currently focuses on the role of the Constitutional Court (MK), which has the main authority in resolving disputes over election results. Based on the 1945 Constitution, the Constitutional Court adjudicates election disputes at the first and final levels with final decisions. Election disputes can arise from planning, preparation, stages, to the process of counting the votes from the election results, with violations that occur ranging from administrative to criminal violations. This dispute covers issues such as vote acquisition, determination of election results, and decisions taken by election organizers such as the General Election Commission (KPU). The dispute resolution process aims to ensure that the election results are valid and accepted by all parties, as well as maintaining public trust in the integrity of the election itself.

Alignment of the 1945 Constitution with Pancasila

Harmonization of law in Indonesia was initially introduced by Soepomo, a customary law expert who played a role in the formulation of the 1945 Constitution. He emphasized the importance of combining Eastern ideals with Western legal concepts in a form that suited the structure of Indonesian society. Post-independence, legal harmonization was first regulated in Presidential Instruction Number 15 of 1970, then updated through Presidential Decree Number 188 of 1998, which requires harmonization in the preparation of statutory regulations. However, because it was issued before the amendments to the 1945 Constitution, this regulation requires updating. After the amendment, legal harmonization is regulated in Law Number 10 of 2004, which is clarified through Presidential Regulation Number 61 of 2005 and Presidential Regulation Number 68 of 2005, which regulate the procedures for drafting laws and regulations in Indonesia.

The National Legal Development Agency (BPHN) defines legal harmonization as a scientific process that aims to harmonize written law with various philosophical, sociological, economic and juridical aspects. In its implementation, legal harmonization is carried out through comprehensive studies to prepare draft laws and regulations that are in harmony with the national legal system. This process not only ensures that the regulations designed are in accordance with applicable written law, but also pays attention to the existence of unwritten laws that develop in society. Apart from that, legal harmonization also considers alignment with international agreements and conventions, both bilateral and multilateral, which have been

ratified by the Indonesian government. Thus, legal harmonization is a strategic step in realizing a legal system that is consistent, fair and adaptive to national and international dynamics (Ahmad M Ramli, 2009).

In correlation with resolving disputes over general elections (elections) which are held every five years, harmonization between legislation and the ideology of the Indonesian nation is an important matter. Law Number 12 of 2011 concerning the Formation of Legislative Regulations also confirms that Pancasila is the main basis for the entire legal system in Indonesia. Therefore, every regulation, including the 1945 Constitution, must be based on the values contained in Pancasila.

The history of harmonization between Pancasila and the 1945 Constitution begins with the basic formulation of the state before Indonesian independence. On June 1 1945, Soekarno at the BPUPKI session proposed the basic concept of the state which later became known as Pancasila. After undergoing various discussions and improvements, Pancasila was finally included in the Preamble to the 1945 Constitution and ratified by the PPKI on 18 August 1945. The formulation of Pancasila in the Preamble to the 1945 Constitution is as follows:

- a. The Supreme Godhead.
- b. Just and civilized humanity.
- c. Indonesian Unity.
- d. A nation led by the wisdom of deep wisdom
- e. deliberation/representation.
- f. Social justice for all Indonesian people.

Pancasila functions as the basis of the state philosophy, while the 1945 Constitution is the constitution that regulates the government system. The two are closely related, where Pancasila provides fundamental values, while the 1945 Constitution provides values that function for law and state administration (Nurwardani et al., 2014).

In Indonesia, the holding of elections must be in line with the 1945 Constitution and Law Number 7 of 2017 concerning General Elections, along with its implementing regulations. Specifically for resolving election disputes, it has been regulated in General Election Supervisory Body Regulation Number 9 of 2022 concerning Procedures for Resolving General Election Process Disputes. Compliance with the law also means being in line with Pancasila, which is the highest source of law in Indonesia. Then, if you look at the weighing section in the law, it is clear that the 1945 Constitution is the basis for considering legislation.

Pancasila itself acts as the philosophical foundation of the state. Pancasila is used as a guideline in regulating the running of government and as a basis for administering the state. The five main principles that are the philosophical foundation for Indonesia include national unity, just and civilized humanity, a deliberative system in democracy, social justice for all people, and divine values based on morals and culture (Parasong, 2023). So that the laws and regulations applicable to the implementation of this election do not overlap, legal harmonization is needed to prevent overlapping.

Elections are actually part of a democratic system which aims to elect regional leaders in order to create good government and reduce welfare disparities between regions. Even though the process of holding elections has been designed in such a way that it is in accordance with the values of Pancasila and the 1945 Constitution, the practice is often far from what has been idealized. There were many conflicts that sparked disputes between candidate supporters. Instead of being an arena for healthy democracy, elections often show tensions that lead to clashes of minds or even physical ones. This incident shows that existing democratic mechanisms not only require preventive laws but also repressive laws.

It can be said that the dynamics of problems that occur in elections can be resolved if we embody Pancasila in the third principle, "Indonesian Unity", which emphasizes the importance of maintaining national unity by taking firm action against provocations, hoaxes and attempts at division during elections. Meanwhile, the fourth principle, "Society Led by Wisdom in

Deliberation/Representation", which emphasizes fair democracy through strict regulations and democratic and fair deliberations. In a repressive legal approach, these two principles are the basis for ensuring that elections are orderly, honest and free from threats that could damage national stability.

Then the 1945 Constitution emphasized the importance of democratic elections and integrity through strict regulations. Article 22E paragraph (1) stipulates that elections must be direct, public, free, secret, honest and fair, so that it becomes the basis for taking firm action against vote manipulation, money politics and various forms of fraud. Meanwhile, Article 24C paragraph (1) gives the Constitutional Court the authority to resolve disputes over election results with final and binding decisions. However, although this regulation allows for the resolution of disputes in the implementation of elections, the biggest challenge is ensuring that enforcement is fair and that nothing deviates from the foundations of the Indonesian state.

There is no need to doubt the harmony between the 1945 Constitution and Pancasila because it has been designed in such a way as to provide a basis for a harmonious and functional nation. This harmonization brings positive hope for Indonesian law enforcement so that it remains on the right path. Therefore, the hope is that with unified legal harmony, election disputes in Indonesia can be resolved brilliantly.

Discourse on establishing a special judicial body for election disputes

Separation of powers is the main principle adopted by the Indonesian government system, in order to prevent overlapping authority and abuse of power. As John Locke said, an English philosopher stated that "There is no liberty unless the judicial power is separated from the legislative and executive powers." Thus, the creation of this special judicial body is able to prevent domination, legal complexity, and increase the accessibility of resolving election disputes.

The discourse on establishing a special judicial body for election disputes has been a hot topic for the past 5 years, but has not been realized on a national scale. It should be remembered that the Constitutional Court's decision is of a nature final And binding, so that the power of the Constitutional Court is so great that no legal action is able to fight it. In addition, there are several controversial decisions which are considered to be violations of the code of ethics and create distrust in the community.

A special regional election judicial body has become an idea to be implemented in the 2024 regional elections, as mandated in Law no. 10 of 2016. The authority of a special judicial body for regional election disputes is given to Bawaslu, both from the governor, regent and mayor, so that the reporting mechanism carried out can be appealed to the central Bawaslu with a decision that is final and binding. With this, Bawaslu is able to avoid the accumulation of cases.

The need for reconstruction of election settlements in Indonesia is based on concerns that too many institutions are involved, creating legal complexity such as Bawaslu, police, prosecutors, PTUN, MA and MK. The election results are handled by the Constitutional Court, while other courts handle criminal, administrative, classification and appeals from the results of the elections and regional elections. However, only the MK is able to adjudicate election disputes with reference to the 1945 Constitution, while cases that are not handled by the MK have jurisdiction that comes from laws that are very easy to revise. With the existence of special courts that have absolute power in handling disputes, violations can be resolved in a coordinated manner (Harun, 2016).

By creating its own special judicial institution, it is able to create the longed-for accessibility where there are only 9 Constitutional Courts in all of Indonesia, within a period of 14 days. Quoting Professor Yusril Ihza Mahendra, he stated that it would be better to resolve election disputes through PTUN rather than MK, because it is more affordable (Darmawan et al., 2024). Therefore, this special judicial body will consist of ad hoc judges, as stated in Article

1 paragraph (6) of Law no. 51 of 2009. The presence of ad hoc judges, who have expertise and experience in resolving election cases, creates certainty for the people.

The effectiveness of special justice is reflected in Brazil and the Philippines, with different judicial mechanisms. Brazil uses an independent court, consisting of senior judges from the country's judiciary. This is supported by the 1988 Brazilian Constitution, in an effort to create healthy elections. With the mechanism offered, namely holding a court position for 2 terms and not being able to submit an appeal to another court. However, the superior electoral tribunal's decision can be overridden by "contrary to the Constitution and those denying habeas corpus or writs of mandamus". And it should be noted that the regional election courts are located in each state capital, which creates accessibility for the ad hoc courts themselves, namely electoral boards as a judicial body and election management itself (Ambarini, 2017).

Meanwhile, a special court from Indonesia's neighboring country, namely the Philippines, has a model of special institutions and commissions capable of adjudicating election disputes. The General Election Commission (comelec), in the Philippines has more responsibilities than the KPU in Indonesia. The Comelec itself was formed as a mandate from the 1940 Amendment to the Philippine Constitution. The Comelec has judicial and administrative powers in elections and is of course an independent state commission. The Comelec was formed neutrally from political interests, thereby creating orderly simultaneous elections. In contrast to Brazil, the Philippine Comelec is able to involve the Supreme Court in special authority to resolve election cases at the President and Vice President level. And besides that, the comelec has the power to open a preliminary investigation, in prosecuting fraud thereby creating definite laws and adjudicating (Taufiqurrahman et al., 2023).

If you draw a common thread between Brazil, the Philippines and Indonesia, it is that all three are countries that adhere to the rule of law principle, where the basic constitution is the benchmark for forming institutions and regulations. So this discourse is supported by the constitutional basis of Article 22E paragraph (1) of the 1945 Constitution as mandated in "General elections are carried out directly, publicly, freely, secretly, honestly and fairly every five years". So, in order to create honest and fair elections, there should be stages of resolution that are easily accessible and democratic. As well as realizing the fifth principle of Pancasila, namely "Social Justice for All Indonesian People".

However, when this discourse is realized, what will be the position of this special court in Indonesia? Certainly, certainty can be created if this special election court is an independent institution, and in Indonesian law, dispute resolution outside of court is generally implemented as based on Law no. 30 of 1999. Thus, dispute resolution can be carried out by semi-judicial institutions, which supervise election disputes (Harun, 2016).

This semi-judicial institution can be implemented by Bawaslu. Currently Law no. 7 of 2017 concerning general elections, states that Bawaslu has the authority to supervise the implementation of elections and regional elections. However, its authority is still too limited, so institutions often do not carry out their functions optimally. Bawaslu is only allowed to report cases, and not investigate election violations. So, in order to increase effectiveness, Bawaslu should be changed from a supervisory agency to a law enforcement agency.

CONCLUSION

The resolution of election disputes in Indonesia is still not optimal in practice, which results in formal legal ambiguity for the community. Not a few election dispute lawsuits are filed without a clear understanding, which actually causes cases that should be handled by other institutions to be brought to the Constitutional Court or Supreme Court. As a result, many applications do not meet the requirements and are ultimately rejected, wasting time and money without significant results. Oftentimes, lawsuits arise out of disappointment, not because of strong legal reasons. To overcome this, fundamental enforcement is needed both for society and for the government and law enforcers themselves. In Indonesia itself, the law must be based

on the 1945 Constitution, which means it must also be in harmony with the values of Pancasila as the philosophical foundation of Indonesia.

Legal harmony with Pancasila and the 1945 Constitution is the main factor in ensuring fair and democratic elections, including in resolving disputes that may arise. Compliance with applicable regulations helps prevent regulatory conflicts and maintain the credibility of elections. The values of unity and deliberation in Pancasila play a role in reducing potential divisions, while strict rules ensure that the election process takes place in a transparent and fair manner. With effective law enforcement, democracy in Indonesia can be maintained in accordance with the basic principles of the state. In response to the issue of election disputes involving many parties who are not actually involved, the discourse of establishing a special judicial body for election disputes has emerged which continues to develop as a solution to the legal complexity involving many institutions. Brazil and the Philippines themselves have implemented special judicial systems that are more effective to ensure fair and transparent elections. In Indonesia, dispute resolution mechanisms really need to be strengthened, one of which is by optimizing the role of Bawaslu as election law enforcers. After considering in depth what is mandated by Pancasila and the 1945 Constitution, this step can reduce the burden on the Constitutional Court, ensure justice, and realize elections that are democratic and in line with Pancasila values.

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