

THE IMPACT OF THE SPECIAL GENERAL ELECTION JUDICIARY ON THE AUTHORITY OF THE CONSTITUTIONAL COURT

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Abstract

This study aims to analyze the establishment of a special general election Judiciary and to analyze if the special Judiciary can take over the constitutional court's authority in handling the electoral disputes without going through changes to Article 24 C of the 1945 Constitution especially paragraph 1. The approach applied to answer the problems and objectives of this research was a normative juridical approach. This study employed several approaches to legal issues including the Statutory Approach, the Conceptual Approach, and the Historical Approach.

The results of this study explain that although it has been mandated in Article 157 paragraph (1-2) of Law Number 10 of 2016 on A Special General Election Judiciary. However, the constitutional court's authority is still well-maintained until the 2024 general elections or amendments to Article 24 C to such an extent that it concerns electoral disputes. The constitutional authority cannot be transferred immediately to the Special Courts according to Articles 156 and 157 of Law Number 10 of 2016 because there is no amendment to Article 24 C. Therefore, the constitutional court's authority is still well-maintained until the special court is regulated by a special law.

Keywords: *General Elections, Special General Election Judiciary, Constitutional Court's Authority.*

Abstrak

Tujuan dari penelitian ini ialah untuk mengkaji pembentukan Badan Peradilan Khusus Pemilu dan menganalisis apakah badan peradilan khusus tersebut dapat mengambil alih kewenangan Mahkamah Konstitusi dalam menangani sengketa pemilu tanpa adanya perubahan terhadap Pasal 24 C UUD 1945 khususnya pada ayat (1). Pendekatan yang digunakan untuk menjawab permasalahan dan tujuan penelitian yakni menggunakan pendekatan yuridis normatif. Penelitian ini menggunakan beberapa pendekatan terhadap masalah hukum antara lain Pendekatan undang-undang, Pendekatan Konseptual, dan Pendekatan Historis.

Hasil penelitian ini menjelaskan bahwa meskipun telah diamanatkan dalam Pasal 157 Undang-Undang Nomor 10 Tahun 2016 khususnya pada ayat (1-2) terkait dengan Kekuasaan Kehakiman Lembaga Peradilan Khusus Pemilu. Namun, Mahkamah Konstitusi masih berwenang hingga pemilu 2024 atau sampai adanya amandemen pada Pasal 24 C UUD 1945 selama masih terkait dengan sengketa pemilu. Kewenangan konstitusional tersebut tidak dapat langsung dialihkan kepada Peradilan Khusus menurut Pasal 156 dan 157 Undang-Undang Nomor 10 Tahun 2016 karena tidak ada perubahan terhadap Pasal 24 C. Oleh karena itu, Mahkamah Konstitusi tetap berwenang sampai badan peradilan khusus tersebut diatur dalam undang-undang khusus.

Kata kunci: *Pemilihan Umum, Badan Peradilan Khusus Pemilu, Kewenangan Mahkamah Konstitusi.*

A. Background

The term “judicial review” was used in the early United States legal practice according to its Supreme Court decision of "Marbury vs Madison" in 1803¹. Although judicial review is not listed in the United States Act, the US Supreme Court made a ruling written by John Marshall², and supported by 4 other Supreme Court Justices stating that courts have the power to overturn laws against the constitution³.

The constitutional court, theoretically, was only introduced by an Austrian legal expert, Hans Kelsen (1881-1973). He argues that constitutional regulation enforcement is successful if an institution except for the legislature can examine, no matter what, a legal product is unconstitutional⁴. Therefore, a special institution is possibly established, for example, the supreme court may play the role of the constitutional court or the supreme court. The special controlling organ can completely abolish unconstitutional laws so that they cannot be applied by other organs. Meanwhile, if an ordinary court has the competence to examine the constitutionality of a law, this is done by refusing to apply it to a concrete case, and other organs are still required.

“*Verfassungsgerichtshof*” or an independent constitutional court is established due to Kelsen's thoughts, the “Kelsenian” model. This idea was put forward when Kelsen was appointed as a member of the Austrian Constitution reformer in 1919-1920 and was accepted in the 1920 constitution. This was the world’s first constitutional court. His thought considers the connection between the integrity of Constitutional supremacy and Parliament supremacy⁵.

However, the existence of the Constitutional Court, in general, is a new phenomenon in terms of state administration. Most of the established democratic law countries do not recognize the institution of the independent constitutional court⁶. Countries that establish their constitutional courts generally experience changes from authoritarian to democratic

¹ Clyde Ray, “John Marshall, Marbury v. Madison, and the Construction of Constitutional Legitimacy,” *Law, Culture and the Humanities* 15, no. 1 (2019): 205.

² Alex Zhang, “The Wealth Tax: Apportionment, Federalism, And Constitutionality,” *Univ. of Pennsylvania Journal of Law And Social Change* 23, no. 4 (2020): 270.

³ Andi Desmon, “Penafsiran Konstitusi Dalam Bingkai Hukum Pancasila,” *Jurnal Cendikia Hukum* 3, no. 2 (Maret 2018): 130.

⁴ Péter Sólyom, “Between Legal Technique and Legal Policy: Remarks on Hans Kelsen’s Constitutional Theory,” *Canadian Journal of Law & Jurisprudence* 30, no. 2 (august 2017): 340.

⁵ I. D. G., Palguna, *Mahkamah Konstitusi Dasar Pemikiran, Kewenangan, Dan Perbandingan Dengan Negara Lain. edited by R. T. Budiarti* (Jakarta: Konstitusi Press (Konpress), 2018).

⁶ Candra Wijaya, & Agus Rasyid, “Penguujian Norma Hukum Ketetapan MPR Nomor XI/MPR/1998 Dalam Hierarki Peraturan Perundang-Undangan,” *Legality: Jurnal Ilmu Hukum* 24, no. 1 (Maret-Agustus 2016): 10.

countries, including Indonesia⁷. Hans Kelsen's idea regarding the review of the law above is in line with Muhammad Yamin's thought in the trial of Preparation for Independence (BPUPK). He suggested that comparing laws can be conducted by the supreme court.

However, Soepomo rejected Yamin's recommendation because 1) the drafted constitutional concept was not the restricted power but rather the check and balance; in addition, 2) the judges can legitimize rules instead of testing rules; 3) the authority of judges to examine laws is contrary to the concept of supremacy of the People's Consultative Assembly, and 4) as a newly independent country, it does not yet have experts on this matter and experience regarding judicial review. Finally, Yamin's idea was not implemented in the 1945 Constitution⁸.

During the Constituent Assembly elected through the 1955 elections, many ideas emerged that the judicial review should be given to the Supreme Court. The idea had strengthened. However, before the constituent assembly succeeded in enacting the Basic Law through a Presidential Decree of July 5th, 1959, the Council was dissolved and the 1945 Constitution reinstated.

The idea of judicial review of the Constitution has gone through a long process. In every discussion of the law on judicial power, the idea always comes up during the discussion of the Bill on the Principal Power of the Judiciary in 1970. However, the accepted idea was the review of statutory regulations under the law by the Supreme Court as outlined in the Act. Law Number 14 of 1970 concerning Judicial Power and Law Number 14 of 1985 concerning the Supreme Court.

During the reform period, with the decree of the people's consultative assembly Number III/MPR/2000, the assembly was authorized to review laws against the constitution. However, this cannot be called a judicial review given that the assembly is not included in the branch of judicial power, instead of a legislative review on the constitutionality of the law. However, until the enactment of this provision, the assembly had never reviewed it because no mechanism would allow examining the constitutionality of the law.

Along with the momentum of the amendments to the Constitution in the reform era, the thought on National Constitutional Court was accepted as a mechanism to control the

⁷ Andi Desmon, "Penafsiran Konstitusi Dalam Bingkai Hukum Pancasila," *Jurnal Cendikia Hukum* 3, no. 2 (Maret 2018): 130.

⁸ Elli Ruslina, "Makna Pasal 33 Undang-Undang Dasar 1945 Dalam Pembangunan Hukum Ekonomi Indonesia," *Kultura: Jurnal Ilmu Hukum, Sosial, dan Humaniora* 2, no. 1 (Januari 2024): 140.

implementation of the Basic Law. In addition, the establishment of the constitutional courts was also driven by several reasons: 1) As a consequence of a democratic-based state or a democratic rule of law. A democratic decision does not constantly fit the constitutional provision. Therefore, an institution is authorized to examine the constitutionality of laws; 2) The 1945 Constitution adopted a system of separation of powers based on the principle of checks and balances. The increasing number of state institutions and provisions have led to more potential disputes among state institutions. Meanwhile, there is a paradigm shift from the people's consultative assembly supremacy to the constitution supremacy, so that there is no longer the highest state institution with the highest authority to settle disputes among state institutions.

Therefore, a separate institution is needed to resolve the dispute; and 3) a real case occurred in Indonesia, namely the impeachment of President Abdurrahman Wahid from his presidency by the consultative assembly at the 2001 Special Session, which inspired the thought to find a way out of the legal mechanism used in the process of dismissing the President or Vice President not solely based on political reasons or political institutions. This is also a consequence of efforts to purify the presidential system. For this reason, it is necessary for a legal institution to first assess the legal violations which enable the dismissal of a President or a Vice President⁹.

The establishment of the constitutional court can be conducted if the People's Representative Council (DPR) and the national government talked about the constitutional court's bill. The DPR proposal was finally accepted by the government after deliberation and ratified in the DPR's plenary session on August 13th, 2003. The constitutional court's rule was promulgated by the Indonesian President, Megawati Soekarno Putri, according to Law Number 24 of 2003 on the constitutional court contained in Indonesia's State Gazette of 2003 Number 98, and an additional Sheet Number 4316.

At that time, Indonesia was the 78th country to establish a constitutional court. August 13, 2003, is the date for the stipulation and ratification of Law Number 24 of 2003, it was agreed as the birthday of the national constitutional court. It is successfully achieved by the state during the four amendments of the national constitution. After successfully carrying out constitutional changes, the following step is the implementation of the 1945 constitution.

Substantially, the 1945 constitution has undergone fundamental changes from the First

⁹ Reza Syawawi, "Pengaturan Pemberhentian Presiden Dalam Masa Jabatan Menurut UUD 1945 (Studi Komparatif Sebelum Dan Sesudah Perubahan)," *Jurnal Konstitusi* 7, no. 6 (Desember 2010): 59.

Amendment in 1999 to the Fourth Amendment in 2002. The number of changes has increasingly shown Indonesia's democracy when compared to before constitutional reform. Indonesia's state institution system is also influenced by the transformation which is quite difficult to answer through traditional thinking. The construction of the national Constitution adopts several conceptions.

Some important things are related to the ideals of democracy and democracy. The state respects democracy or believes the national sovereignty. The general public is the supreme authority. National sovereignty is regulated based on the constitutional democracy mechanism. Thus, the basis of national democracy and legal supremacy is enforced simultaneously. For this reason, the national constitution adheres to the notion that the state is "*democratise rechtsstaat*" or a democratic state of law and a law-based democratic legal state ¹⁰.

The fundamental essence of the constitutional amendment is the existing constitutional court responsible for addressing special administrative cases. Thus, the national constitution is well preserved because democratic principles are upheld. The existing constitutional court is important to preserve the strong government and to improve the previous state administration system. Other than the supreme court, another judicial power actor includes the constitutional court as referred to the national constitution (Article 24, paragraphs 1-2). On the other hand, the constitutional court conforms to the common ground of independent judicial power and no other institutional controls thus upholding justice and law. The constitutional court is authorized to enforce the basis of checks and balances which places all state institutions in an equal position so that there is a balance in the state administration. Therefore, the existing constitutional court is principally significant for the improvement of state institution conduct.

As mentioned above, the existing constitutional court is the achievement fought by the nation during the constitutional reform. Article 24 C, 1st paragraph of the 3rd constitutional amendment confirms that the constitutional court is empowered to judge administrative cases and its ultimate conclusions enable to review the national constitution, to adjudicate the institutional authority disputes, to adjudicate the political party suspension, and to adjudicate the electoral disputes.

The provisions of Article 24 C, deciding on the electoral disputes (presidential election, legislative election, and regent or mayor voters) and presidential impeachment are

¹⁰ Fauzi Iswari, "Aplikasi Konsep Negara Hukum Dan Demokrasi Dalam Pembentukan Undang-Undang Di Indonesia," *Jurnal Cendikia Hukum* 6, no. 1 (September 2020): 134.

the constitutional court's authorities. In addition, the constitutional court is highly expected by the community to improve law enforcement. Until then the constitutional courts fulfill public expectations through a clean judicial process and decisions.

Concerning this principle of justice, the constitutional court is consistent with prioritizing Substantive Justice, justice based on material truths rather than formal procedural truths. In other words, what is formally and procedurally correct can be blamed if it is materially and substantially unfair. On the other hand, what is formally and procedurally wrong can be justified if it is materially and substantively fair¹¹. For 17 years, the constitutional court has consistently guarded the constitution and democracy by emphasizing the need for substantive justice to avoid the emergence of decisions that ignore the sense of justice¹². These legal breakthroughs need to be carried out to continuously excite law enforcement and to stimulate academic discourse on constitutional law studies throughout Indonesia Universities.

In addition, the constitutional court is well known by the public as a law enforcement and democratic institution with its various legal breakthroughs in its decisions, especially the election results disputes. For example, one of the legal breakthroughs is the dispute of the 2021 Boven Digoel Election which decided to disqualify the pair Yusak Yaluwo and Yakob Weremba from the 2020 Boven Digoel Pilkada contestation. The constitutional court considered that it did not meet the nomination requirements so the court canceled the results of the Boven Digoel Election. In fact, in the petition, the applicant did not ask for the disqualification of the pair, but the court ruled in the ultra petita beyond what was requested. This proves that the constitutional court is consistent with prioritizing substantive justice. However, the various legal breakthroughs were contrary to the improvements to the election management institutions (KPU and Bawaslu), and somehow their management continued to decline.

If only these election administration institutions have not demonstrated their responsible role, then it is very possible for a special general election Judiciary that reviews the electoral disputes before the national simultaneous elections. Therefore, according to the author, people still count on the constitutional court to improve national law enforcement, so that its authority is institutionally preserved.

¹¹ A. Ahsin Thohari, "Mahkamah Konstitusi Dan Pengokohan Demokrasi Konstitusional Di Indonesia." *Jurnal Legislasi Indonesia* 6, no. 3 (September 2009): 97.

¹² Josua Satria Collins, & Pan Mohamad Faiz, "Penambahan Kewenangan Constitutional Question Di Mahkamah Konstitusi Sebagai Upaya Untuk Melindungi Hak-Hak Konstitusional Warga Negara," *Jurnal Konstitusi* 15, no. 4 (Desember 2018): 688.

In this regard, it is necessary to strengthen the constitutional court's authority¹³, especially in maintaining a sustainable democracy. Therefore, the preserved authority is aimed to enforce law and justice as the supreme court (MA) or other state institutions can enforce the practices of national sovereignty.

B. Research Methods

The approach applied to answer the problems and objectives of this research was a normative juridical approach. The purpose of this research was problem-solution research on the analysis of simultaneous elections and the establishment of a special general election Judiciary that enables decisions in the 2024 and 2027 electoral disputes and affects the constitutional court's authority. The type of data in this study was secondary data consisting of legal materials; primary, secondary, and tertiary legal materials. The primary legal materials comprise the 1945 Constitution (UUD 1945) and its amendments, Law Number 24 of 2003 as amended by Law Number 7 of 2020 on the third amendment to Law Number 24 of 2003 on the constitutional court, Law Number 10 of 2016 on the Second Amendment to Law Number 1 of 2015 on the Government Regulation provision as amended by Law Number 1 of 2014 on the election of mayors, regents, and governors.

Given that the problem studied was a new development in the state system administration after the establishment of the constitutional court, this research also required primary data. The primary data was necessary for explaining the importance of a special general election Judiciary in the handling of election disputes in 2024-2027 according to Article 157 paragraph (1-2) of Law Number 10 of 2016.

The current study employed several approaches. First, the Statutory Approach is necessarily utilized in normative research because of various legal rules. For this reason, researchers must consider the law as a closed system with comprehensive, inclusive, and systematic characteristics¹⁴. Second, the conceptual approach is employed to analyze the concepts relevant to this research, for example, the concept of constitutional rights, rule of law, etc., so that the results are expected to be more

¹³ Kemenkumham, "Laporan Akhir Pengkajian Hukum Tentang Hubungan Lembaga Negara Pasca Amandemen UUD 1945". https://bphn.go.id/data/documents/hub._antar_lembaga_negara_stlh_amandemen_uud45.pdf (accessed 31 October 2022).

¹⁴ P Ishwara Bhat, "Comparative Method of Legal Research: Nature, Process And Potentiality." *Journal of the Indian Law Institute* 57, no. 2 (April-June 2015): 930.

accurate¹⁵. Third, the Historical Approach referred to the legislative history and was required to find out the formulation of a positive legal norm, including the influential factors¹⁶.

C. Results and Discussions

1. The constitutional court's authority for the handling of electoral disputes

As an actor of judicial power, the constitutional court is the function of the judiciary to enforce law and justice. However, its function is different from the Supreme Court's. According to its constitutional supremacy, the measure of justice and law enforcement is reflected not only in the primary norms, but also in the constitutional morals and rules; human rights protection, citizens' constitutional rights protection, and democracy.

According to Law Number 24 of 2003 in the constitutional court, the court is responsible for deciding special constitutional cases. In addition, the existing constitutional court also improves the previous constitutional experience because of the contrasting principles of the constitution¹⁷.

The constitutional authorities comprise examining and deciding special cases based on constitutional considerations. In essence, every decision is a constitutional interpretation. The purposes of the constitutional court comprise; to review and preserve the national constitution, protect citizens' constitutional rights, protect human rights, and protect democracy.

The constitutional court's authority is regulated in Article 24 C paragraphs (1-2) of the 1945 Constitution, which is formulated as powers and obligations. Such powers include; reviewing laws that ignore the constitution, deciding disputes over the institutional authority; deciding the suspension of political parties, and deciding electoral disputes¹⁸.

Meanwhile, one of the obligations is reviewing the DPR's thoughts on violations committed by both president and vice president; serious offense, bribery, corruption, the betrayal of the state, and criteria unfit for a president or a Vice President.

¹⁵, Urbanus Ura Weruin, "Logika, Penalaran, dan Argumentasi Hukum," *Jurnal Konstitusi* 14, no. 2 (Juni 2017): 390.

¹⁶ Rabindra Pathak, *Historical Approach to Legal Research* (Mumbai: Satyam Law International, 2019), 35.

¹⁷ Irene Angelita Rugian, "Prinsip Proporsionalitas Dalam Putusan Mahkamah Konstitusi (Studi Perbandingan Di Indonesia Dan Jerman)," *Jurnal Konstitusi* 18, 2 (Juni 2021): 470.

¹⁸ Ni'matul Huda, & P. Sri Hastuti, "Peran dan Fungsi Mahkamah Konstitusi dalam Pembangunan Politik Hukum Pemerintahan Daerah," *Jurnal Hukum Ius Quia Iustum* 3, no. 19 (Juli 2012): 360.

The purposes conform to the constitutional court, responsible for examining and deciding cases of the citizens' constitutional rights. The constitutional court is not responsible for deciding cases of constitutional complaints about the aspiration to uphold the teachings of a democratic rule by expanding its jurisdiction like other countries¹⁹, thereby opening access to the public, creating novel unwritten constitutional rights through the discovery of new legal norms, and actively promoting and developing Pancasila democracy. Thus, the constitutional court is not only limited to those responsibilities but also the responsibility to protect the citizens' constitutional rights²⁰.

The plan to transfer the authority (to settle election result disputes) to the special judiciary, certainly causes debate among constitutional law experts. Given that the provisions of Article 24 C and Article 10 of Law Number 24 of 2003 only authorize the constitutional court to settle electoral disputes and grammatically and intently are general elections according to Article 22 E paragraph (2) of the 1945 Constitution. Therefore, many experts state that the direct transfer to the constitutional court is unconstitutional. However, some other experts also confirm that the transfer is constitutional and is very important for the Indonesian state administration system.

Despite the academic debate, the constitutional court is still responsible for the settlement according to Article 236 C of Law Number 12 of 2008. On the other hand, Law Number 48 of 2009 also regulates the responsibility to decide election result disputes. Thus, the constitutional court is first responsible for the settlement of the East Java local election according to Law Number 41/PHPU/D/VI/2008.

2. General Elections and the Establishment of a Special general election Judiciary

The government's legal political policy to reorganize simultaneous regional head elections in Indonesia found its end when the DPR and Government ratify amendments to Law Number 1 of 2015 on the Regional Head Elections (Pilkada) which transforms into Law Number 8 of 2015 with several revisions. The new law stipulates that the Pilkada will be held directly and simultaneously and now has undergone refinement with seven stages of implementation²¹. The first took place on December the 9th, 2015 for regional heads whose term ended in 2015 and the first half

¹⁹ Mei Susanto, "Kedudukan dan Fungsi Pembukaan Undang-Undang Dasar 1945: Pembelajaran Dari Tren Global," *Jurnal Legislasi Indonesia* 18, no. 2 (Juni 2021): 200.

²⁰ Achmad Edi Subiyanto, "Perlindungan Hak Konstitusional Melalui Pengaduan Konstitusional," *Jurnal Konstitusi* 8, no. 5 (Oktober 2011): 730.

²¹ Tjahjo Kumolo, *Politik Hukum Pilkada Serentak* (Jakarta: Expose, 2015), 8.

of 2016. The second took place in February 2017 or precisely on February the 15th, 2017 for regional heads whose term ended in the second semester of 2016 and 2017. The third took place in June 2018 for regional heads whose terms ended in June 2018 and 2019. The fourth took place in 2020 for regional heads whose term ended in December 2015. The fifth takes place in 2022 for regional heads whose term ended in February 2018. The sixth will take place in 2023 for regional heads whose term ended in 2018. The 2024-2027 elections will take place simultaneously in all provinces, regencies, and cities in Indonesia, henceforth, they will be rescheduled every five years.

The implementation of the simultaneous election system, both the 2015 regional head elections and the 2019 legislative and presidential elections is a good reason for consolidating future Indonesia's electoral system policies. The policy consolidation is necessarily regulated according to the purpose of the Pancasila democracy which is more efficient and effective in creating a strong, effective, accountable, and integral government system. In particular, the consolidation will also promote a more credible Indonesian democracy, which is not only based on democratic principles but also has integrity because of the effective rule of ethics and rule standards of electoral ethics²². Therefore, integrity requires the awareness of all parties to submit to legal and ethical principles. To begin with, we must prioritize the integrity of the election administration to improve the quality of democracy. In addition, the constitutional court also determines the progress and retreat of the national democracy.

On February the 26th, 2020, the constitutional court issued provision Number 55/PUU-XVII/2019, which confirms, that several alternative general elections models are even constitutional according to the national Constitution (Mahkamah Konstitusi 2020): 1) Simultaneous-general elections of DPR, DPD, the President and Vice President, and the DPRD; 2) Simultaneous-general elections of DPR, DPD, mayor or regent, governor, and president and vice president; 3) simultaneous-general elections of DPD, DPR, DPRD, Mayor or regent, Governor, and President and Vice President; 4) Simultaneous-general elections of, DPD, DPR, and the Regency DPRD, mayors or regent, Governors, and President and Vice President; 5) simultaneous general elections of DPD, DPR, provincial and regency DPRD, mayor or regent, governors, and president or vice president; and 6) other alternatives if only to maintain the

²² Syarifuddin Jurdi, "Komisi Pemilihan Umum (KPU) dan Penguatan Institusi: Dari Kooptasi Rejim, Kemandirian Dan Penguatan Etik Penyelenggara," *Jurnal KPU* (2019): 1–15.

essence of the general election.

Given the opportunity to carry out the general elections, the legislators deserve to decide the alternative models. However, the legislators should look at several reasons: 1) the selection of models is carried out with the involvement of all parties who have an interest in organizing general elections; 2) the selection is carried out earlier to pretend the effective model; (3) the legislators carefully consider all practical implications to encourage fairness of implementation; 4) the selection must allow the simplicity for voters to exercise their right to vote, and 5) the model is not frequently changing to ensure the consistent implementation of the election.

Based on the court's statement, the legislators need to consider several reasons if only to maintain the essence of the general election. If it is related to Law Number 10 of 2016, Law Number 1 of 2015, and Law Number 1 of 2014, particularly in Article 157 paragraph (1-2) states that the electoral disputes are adjudicated by a special general election Judiciary before simultaneously general elections so that the problem or even debate is related to the discourse of a special court which serves to handle the disputes before the simultaneous general elections in 2024 and 2027. Of course, it requires a special law that regulates the task and judicial power of special courts (Indonesia 1945). Therefore, the government and DPR must deal with the issues quickly to confirm the constitutional authorities between the constitutional court and the Special general election Judiciary in the 2024 general election.

Article 1 paragraph (8) and Article 27 paragraph (1) of Law Number 48 of 2009 stipulates the special court's authority to adjudicate particular disputes which are only established by a judicial board under the Supreme Court. The provision allows legislators to establish a special general election Judiciary to resolve general election disputes. The dispute settlement board for the regional election must be established under the existing four judicial boards. Therefore, the board specified in Article 15 of Law Number 8 of 2015 should be established through the state administrative judiciary, whereas the electoral disputes are administrative disputes that evaluate the validity of election organizers' decisions related to the election results. If a Special general election Judiciary could be established, this would perhaps reduce the burden on the Constitutional Court.

However, if the constitutional court is still authorized to settle electoral disputes, the provisions of Article 22 E paragraph (2) and Article 24 C paragraph (1) should first be amended. This means that the terminology of "Pilkada" must be first equated

with election terminology. However, such changes should be carried out through the procedure for amending the 1945 Constitution according to Article 37 (formal amendment). The constitutional court is still specialized to be the electoral dispute resolution, even though it is temporary but the constitutional court has the handling experience. Aspects of potential academics and practitioners attached to the judges of the constitutional court ²³ and the fast judicial process can be a guarantee to handle the settlement, moreover, this election will be carried out simultaneously, thus requiring capable judges.

D. Conclusions and Recommendations

Based on the description above, it can be concluded that: first, Article 157 of Law Number 10 of 2016 confirms that electoral disputes are adjudicated by a special general election Judiciary established before the general elections. However, the constitutional court's authority is still well-maintained to handle electoral disputes until the 2024 general election or an amendment to Article 24 C paragraph (1) of the 1945 Constitution, as long as it concerns electoral disputes. Second, the transfer of the constitutional authority in handling electoral disputes in 2024 cannot be carried out immediately by the Special Judiciary according to Articles 156 and 157 of Law Number 10 of 2016 because there is no amendment to Article 24 C of the 1945 Constitution, especially in paragraph (1). Thus, the constitutional court's authority is still well-maintained to handle electoral disputes until the special general election Judiciary is legalized according to a special law that regulates the position, duties, functions, and authorities of the special general election judiciary which examines, judges and decides electoral disputes.

²³ Wantu, *et al.*, "Proses Seleksi Hakim Konstitusi: Problematika Dan Model Ke Depan," *Jurnal Konstitusi* 18, no. 2 (Juni 2021): 250.

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