

REVIEW OF THE CONSTITUTIONAL COURT'S DECISION IN THE DISPUTE OVER PHPU DPD 2024 (PERSPECTIVE OF WRONGFUL ACTS IN CIVIL LAW)

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ABSTRACT: *This paper aims to examine the extent of the contribution of the Constitutional Court's decision Number 03-03/PHPU.DPD-XXII/2024 related to the dispute over the PHPU of DPD Members 2024 in relation to strengthening constitutional legitimacy in a country that adheres to a democratic system. The decision of the Constitutional Court Number 03-03/PHPU.DPD- XXII/2024 gives great meaning to the protection and advancement of the constitutional democratic system. The Constitutional Court plays an important role in maintaining and overseeing the course of the constitution, this can be seen from the full authority given to this institution to adjudicate at the first and final levels with final and binding decisions. This paper also analyzes the role of the PTUN as the highest judicial institution where in this decision the PTUN's decision was ignored, which caused the PTUN's position to be questioned due to deviations from the law that occurred. In this analysis, the decision of the Constitutional Court ends various political conflicts including closing all the dynamics of political interpretation of law in society.*

Keywords: *Act Againts The Law Constitutional Court Decision Election Administration Disputes.*

ABSTRAK: Tulisan ini bertujuan untuk mengkaji sejauh mana kontribusi putusan Mahkamah Konstitusi Nomor 03-03/PHPU.DPD-XXII/2024 terkait sengketa PHPU Anggota DPD Tahun 2024 dalam kaitannya dengan penguatan legitimasi konstitusional di negara yang menganut sistem demokrasi. Putusan Mahkamah Konstitusi Nomor 03-03/PHPU.DPD-XXII/2024 memberikan arti besar bagi perlindungan dan pemajuan sistem demokrasi konstitusional. Mahkamah Konstitusi mempunyai peranan penting dalam menjaga dan mengawasi jalannya konstitusi, hal ini terlihat dari kewenangan penuh yang diberikan kepada lembaga ini untuk mengadili pada tingkat pertama dan terakhir dengan putusan yang bersifat final dan mengikat. Tulisan ini juga menganalisis peranan PTUN sebagai lembaga peradilan tertinggi dimana dalam putusan tersebut putusan PTUN diabaikan sehingga menyebabkan kedudukan PTUN dipertanyakan karena adanya

penyimpangan terhadap undang-undang yang terjadi. Dalam analisisnya, putusan Mahkamah Konstitusi mengakhiri berbagai konflik politik termasuk menutup seluruh dinamika penafsiran politik hukum di masyarakat.

Kata Kunci: Bertindak Melawan Hukum Putusan Mahkamah Konstitusi Sengketa Administrasi Pemilu.

INTRODUCTION

Democracy is an idea that becomes a way of life for a benchmark in equalizing rights and obligations equally for all people (Daha,M., 2021). Democracy is the most important component of developed and developing countries. The requirement for a developed democratic country is the holding of elections. Elections are steps made as a forum to realize the goals of democracy. By emphasizing fairness, integrity, and transparency, democracy itself seeks to build a just and successful society.

Democracy is termed as the government of the people, meaning that the highest authority is in the hands of the people where the government in the country is run from the people, by the people, and for the people. In terms of managing the government, representation is needed as that is why the Election system (General Election) was formed as a forum for the community to elect Members of the House of Representatives, Members of the Regional Representatives Council, Members of the Regional Representatives Council and the President and Vice President as representatives to carry out government duties based on Pancasila and the Law. Elections are a tangible manifestation of the implementation of popular sovereignty which constitutionally gives birth to legitimate leaders, therefore elections that belong to the sovereignty of the people must be guarded and protected, it must be guided that the principles of direct, general, free, secret, fair and honest must be fulfilled in its implementation (Pardede,M., 2014).

In the process of seizing and exercising power, it is important to supervise so that the rotation of government runs safely and well (Millah & Dewi, 2021). The core executors for the successful continuity of this election consist of the General Election Commission, the Election Supervisory Board and the Honorary Board of Election Organizers. The implementation of elections is regulated by Law Number 7 of 2017 which regulates elections that function in strengthening a system of government that supports democracy, ensures fair and honest elections, provides legal certainty and prevents replication of electoral arrangements for the

implementation of successful and accurate elections. Any politics carried out in the country must still comply with existing and applicable laws, which means that politics that runs must not at all conflict with applicable laws (Prasetio & Widodo, 2022).

The Indonesian state is called a state of law, this statement is supported by the 1945 Constitution Article 1 paragraph (3) which reads “Indonesia is a state of law”. That's why the government in Indonesia must run everything under the control of the law. Law is a system that is made by containing regulations about norms and sanctions to regulate human life in achieving order, justice, and inhibiting inequality between rights and obligations. Law enforcement is one of the efforts in realizing justice, starting from monitoring the implementation of the law, and if there is a violation, law enforcement also plays a role in restoring it again (Akbar,M.K., 2021). The law provides responsibility with legal certainty in society and the state must guarantee the community in getting protection and equal treatment before the law.

But in reality this is not the case, political determination and arrogance have handicapped the review of the law. The beauty of arguments, ideal legal theories and heroic sentences learned in the legal space does not touch a good practical space because it has been reduced by political opportunism. The nonsense rhetoric about the rule of law that is often expressed by politicians is just a contradictory gimmick. Election activities are conventional media in rotating the transfer of authority. If observed from one piece of evidence in reality in the context of the 2024 elections that have been held, many have given a bad record in the history of elections in Indonesia, about how the influence of power for one pair of candidates, the participation of ministers to contribute to the campaign, information about the problematic recapitulation counting mechanism and allegations of scandals involving state officials to the misuse of social assistance. This fact shows that the situation and conditions of political law are not good, because the benefits of certain individuals and groups are prioritized over the interests of the common people.

The limits of opportunities for abuse of authority in the constitution are ignored, many are violated and interpreted according to the wishes of those who control. People's suspicions regarding alleged election fraud are not baseless speculation. Not a few people find information related to alleged violations in the elections and reports from the public about alleged violations and fraud in the elections. The phenomenon of making and changing laws to enact new rules that benefit one party or a particular group in gaining political power as well as building

arbitrary political dynasties is a critical issue in the implementation and realization of Pancasila law and the 1945 Constitution, which in fact has a high position. This makes a bad view of the law that loses in the face of bad ruling elements and strengthens the assumption that the law is the right thing to do that the law, which should be the direction of the state in building an advanced and good government, is actually designed to justify the negative actions of the ruling regime. Therefore, electoral integrity is needed as a major component in the implementation of the electoral system, because there is no electoral integrity, it will trigger the delegitimization of the elected government later and political instability will arise (Rahmatunnisa, M., 2017).

The formulation and creation of basic law are both aimed at realizing justice for the entire community. Law discovery means the activity of finding the law on an event/problem to be given a juridical settlement by a judge. Meanwhile, law formation itself covers a wide range because it is more towards forming a legal system. Legal discovery is certainly to find the law on a matter that was not previously regulated in order to assist in determining the judge's verdict (Algra and Van, 1991). For this reason, the provisions made should not be arbitrary, general policy as a reference for state administration, for this reason, policies are made and formed very well. This study examines the parties involved and how their involvement is seen from the perspective of a democratic state that causes deviations from the legal position carried out in the Constitutional Court Decision Number 03-03/PHPU.DPD-XXII/2024 which eventually led to disputes over election administration.

RESEARCH METHODS

This section utilizes a qualitative approach through the use of a literature review to provide a comprehensive overview of the topic under study by collecting and analyzing articles from various sources. The data collection techniques in this paper are literature studies and case studies. This method allows researchers to analyze the unlawful acts that occur in the decision of the Constitutional Court Number 03-03/PHPU.DPD-XXII/2024 Related to the Election Administration Dispute. This is done to see the legal gap that occurs as a result of these actions.

RESULTS AND DISCUSSION

The Constitutional Court's Rationale for Decision Making Legal Dimensions of Administrative Offenses.

The term administration comes from Latin, namely *administrare*, which means any written information that is arranged systematically with the aim of obtaining an overview in its entirety and in relation to one another (Triwulan, T., 2016). In his book Topo Santoso et al, argues that in open political competition, politicians mobilize all their respective strengths to win elections by doing various methods, which do not rule out the possibility that the methods used are unhealthy because they ignore the existence of norms and regulations until they are trapped in fraud (Topo Santoso et al, 2006). Election violations are divided into several types, namely administrative violations, criminal violations, and violations in the code of ethics by election organizers. And in practice in the field, there are often and many election administration violations.

In the context of realizing electoral justice, this election administration violation must be addressed immediately to minimize its occurrence. In the Election Law, what is categorized as an unlawful act is an act that causes a voter's vote to become invalid in the count or causes certain election participants to have their votes reduced (Saputra, A. D., 2020). In maintaining security and order during the process of organizing elections, the government established the following Bawaslu (Election Supervisory Body) which acts as a community police in overseeing the course of elections from irregularities that may occur with the presumption of violating people's rights as well as violating applicable regulations. One of the authorities of election supervisors in handling elections is explained in Article 94 paragraph (2) of Law No. 7 of 2017, namely Bawaslu will determine allegations of election administration violations, determine matters that become violations of the code of ethics, and suspected criminal acts that occur during the election process which later in the final stage are also tasked with resolving election administration disputes whose legal product is a decision. Election process disputes are divided into two categories, namely election disputes between election participants and election disputes between election participants and election organizers themselves (Polii, C. M., 2021).

If we return to the discussion of elections, the only institution that functions as the main figure of the election organizer is called the Election Management Commission (KPU) and which of course participates in realizing elections in a good and healthy democracy. Then what

happens if the main figure implementing the election actually commits irregularities to the election?

About the Dispute over the Election Results of DPD Members Subject Matter of The Petition.

Regarding the arguments, the applicant argues about the contradiction regarding KPU decision Number 360 of 2024 concerning the determination of national election results in the 2024 elections by putting forward the following arguments:

KPU refuses to include the determination of DPD candidates in the DCT if there are five reasons, namely if the requirements are not fulfilled by the candidate according to responses from the community; the candidate dies; the candidate resigns; the candidate is found to have committed fraud; and the absence of a statement letter.

In the petition, the object of dispute is the results of the valid vote acquisition of DPD 2024 candidates for West Sumatera region without including the applicant's name in the decision list even though it has passed the requirements as set. KPU as the respondent initially stated that the applicant's status has not been eligible for nomination because there are incomplete files regarding the applicant's status as a former prisoner, after being completed, the applicant's status was declared eligible. The Respondent then issued a decision regarding the determination of the applicant's name into the list of provisional candidates for DPD members in the attachment a quo. But not long after the decision was suddenly withdrawn with a new determination with the statement that the applicant was again determined in an ineligible status with a sign that the applicant's name was removed from the list of candidates.

The respondent's actions caused the applicant to lose her right to be elected. In relation to the decision, the respondent included a reason that was considered unreasonable and just nonsense by the applicant, which was that the reason was because of the public response that had come in, even though no clarification was made by the respondent to the applicant until the ten-day deadline and no minutes were issued regarding it.

This states that the respondent has violated the provisions contained in Law No. 7 of 2017 as well as PKPU 10 of 2022 which in short states that if there is a public response that enters it must be immediately reported to the KPU for a maximum of 10 days and a request for clarification must be made to the relevant parties and the results of the clarification will be set out in the minutes. Other reasons were also presented by the respondent, such as that the

applicant had not passed the five-year gap regarding the requirement of having been convicted of the applicant's corruption case based on the Supreme Court decision a quo. But the action taken was considered deviating from the law because according to the Supreme Court's PK No. 67 PK/Pid.Sus/2019 which explained that the applicant was only given a withdrawal of political rights with a period of three years which the applicant was already prepared to fulfill and therefore no longer had the right to participate in the politics of voting and being elected in elections.

The Existence of Bawaslu's Role

The presence of Bawaslu in the election system plays a role in overseeing and ensuring the course of democracy in Indonesia. Frid in his book entitled "THE LEGAL DIMENSION OF VIOLATIONS OF ELECTION ADMINISTRATION" (Siregar, F. E., 2020), examines three things that are challenges for Bawaslu in guarding democracy, namely elections in the true definition are no longer called people's parties but merely become an arena for spreading hatred to the public through social media. Then another challenge is the large number of money politics to win election contests. And the last challenge is the role of Bawaslu, which of course is feared to disrupt the integrity of the actual election organizers. In theory, since the discovery of alleged election violations, Bawaslu must immediately take action starting from receiving reports, then analyzing the reports, then conducting studies as well as assessments to then decide the results rationally and objectively (Lefteuw,dkk, 2022).

In the Constitutional Court decision under discussion, the applicant had taken administrative action (SPPU) to Bawaslu, but Bawaslu instead issued a decision whose core content rejected the applicant's request. This is considered to damage the existence of Bawaslu's function in overcoming violations of the code of ethics committed by the KPU. In fact, Bawaslu should make recommendations to follow up on the findings of reports / allegations of election administration violations instead of ignoring them (Nasir, I., 2020).

The Existence of the Role of the Administrative Court

The position of the Administrative Court, which is one of the executors of judicial power, is an independent court with the Supreme Court at its peak as the highest state court (Simajuntak, E., 2018). The birth of PTUN is to provide protection for the rights of people who are disturbed or cheated. According to Prajudi Armosudirdjo, the establishment of state

administrative courts in order to promote and maintain the stability of state administration in accordance with the correct law in function and efficiency (Admosudirdjo, 1981). A Sources of State Administrative law include law, state administrative practice, jurisprudence, and the opinions of legal experts. The law expressly states that the decision of the State Administrative Court is final and binding and no other legal remedies can be taken. Meanwhile, in the decision related to this PHPU, the applicant has filed a SPPU lawsuit to the State Administrative Court and for the lawsuit, the State Administrative Court ruled with the following stipulations, namely stating that the KPU's decision on the list of permanent candidates for DPD members in the 2024 Election is void because there is no applicant's name listed and ordered the respondent to revoke the decision. The PTUN also ordered the respondent to immediately revoke the decision. The PTUN also ordered the respondent to issue a new decision on the determination of the applicant as a permanent candidate for DPD member but unfortunately it was all ignored by the respondent. Whereas this matter has been regulated by the Act in which the KPU is obliged to follow up on the decision of the PTUN. So based on these arguments, the respondent should implement the decision of the Jakarta State Administrative Court. Moreover, after the issuance of the PTUN decision, the respondent also received an order from Bawaslu RI, which contained a firm warning and ordered the respondent to fulfill the PTUN decision.

But in the end, even though the chairman of the PTUN had issued an order for execution, it was still opposed. This is evidence of how the respondent violated the code of ethics of election organizers.

About the Authority of the Constitutional Court Related to PHPU

A country with a democracy must have a proper and strong foundation to produce a good and sustainable democracy. The state must hold on to a constitution firmly to guard against dangers that might occur from within or from outside. So, MK RI comes with a mission that builds Indonesian constitutionalism and habits of constitutional awareness (Fadjar, 2019). The nature of constitutionalism requires the implementation of a legal method characterized by constitutionality in examining legal products in the form of laws and regulations (Yasin, R., 2014). The authority to examine the law, adjudicate at the first and final level with a final decision, as well as decide on the dissolution of political parties and disputes over election results is the full authority of the Constitutional Court.

The conclusion is that there is absolutely no other legal remedy to be taken because it is basically obliged to carry out whatever has become the Constitutional Court's decision (Prang, A. J., 2011). The Constitutional Court promotes and guarantees the constitution to be upheld in its responsible implementation.

CONCLUSIONS AND RECOMMENDATIONS

Unlawful acts in the context of civil law are acts that cause harm to others, this is regulated in Article 1365 of the Civil Code. In the Constitutional Court Decision Number 03-03/PHPU.DPD- XXII/2024, it was legally stated that the respondent had committed unlawful acts that caused harm to the applicant both in terms of material and immaterial. As a result of his actions, the applicant even lost his right to be elected because he was not included in the list of permanent candidates for DPD members. In the assessment, the respondent is stated to show an attitude of opposition and indifference about the order in the decision that has been imposed by the PTUN and has an attitude that is very intolerable when the PTUN conducts a proper *aanmaning* where at the initial summons to appear before the chairman of the PTUN, the respondent is not present. Then in the second summons, the respondent fulfilled the summons but was not polite and professional because he ordered the staff of the Secretariat General of KPU RI to represent him in the face. The respondent's attitude in ignoring the PTUN's decision *a quo* was given a strong warning by DKPP. The respondent as one of the election organizers does not deserve such behavior. The complainants must obey the decision of the PTUN as one of the legal bodies that has full authority to hear and decide the results of the election dispute. The respondent's attitude is not justified by ethics and law which is proven to violate the code of ethics and code of conduct for election organizers. Such an attitude, according to the Constitutional Court, is an attitude of ignoring the law and the law and even has a negative effect on the establishment of the honor of the judicial body and the principles of democracy as well as popular sovereignty and has a negative effect on the public's perception of the underestimation of the position and authority of the Administrative Court in making a decision. Violation of one's political rights cannot be underestimated. The Constitutional Court in its decision firmly rejected the respondent's exception, the applicant's submission deadline, the existence of law, and the applicant's application which was said to be unclear or ambiguous and in its decision the Constitutional Court granted the applicant's application in its entirety.

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