ABSTRACT

Objective: This research study examines the legal underpinnings, the institutional framework of the electoral laws, and the jurisprudence developed by the Constitutional Court of Indonesia in resolving electoral disputes. The study aimed to investigate whether the dispute resolution mechanisms in our electoral system are rigid, costly, and inefficient and serve to hinder justice by emphasizing technicalities at the expense of substantive justice. The evidentiary process is essential in excavating facts and searching for truth in trials. The burden of proof is carried by the plaintiff to prove the legality of his or her suit.

Theoretical Framework: Evidentiary law in the settlement of electoral cases in the Constitutional Court uses a model of legal processes in civil law. Evidentiary law is applied to facilitate the speedy settlement of cases and consider the evidence of the parties to the dispute.

Method: The research approach method used in this research is legal normative research. This method helps examine the juridical standards contained in laws and court decisions. Furthermore, library research was conducted to obtain data from primary, secondary, and tertiary legal materials.

Research Implications: According to the conclusions of this study, the improvement of burden-proof procedures will ensure justice and democratic elections in Indonesia. It is hoped that the ideas and issues raised in this paper will help can improve the implementation of burden-proof procedures in the settlement of election disputes at the Constitutional Court of the Republic of Indonesia.

Results and conclusions: The settlement of election disputes depend on how the dependent proves his/her complaints, which should be improved by the Constitutional Court.

Originality/value: Mobilizing the public to actively monitor elections is part of creating a fair-and-democratic election.

Keywords: election dispute, the burden of proof, constitutional court, national election commission, and the principle of fair and honest elections.

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DILEMA DA PROVA DE ENCARGOS DOS LITÍGIOS ELEITORAIS NO TRIBUNAL CONSTITUCIONAL

RESUMO

Objetivo: Este estudo analisa os fundamentos jurídicos, o quadro institucional das leis eleitorais e a jurisprudência desenvolvida pela Corte Constitucional da Indonésia na resolução de disputas eleitorais. O estudo teve como objetivo investigar se os mecanismos de resolução de disputas em nosso sistema eleitoral são rígidos, onerosos e ineficientes e servem para dificultar a justiça ao enfatizar os aspectos técnicos em detrimento da justiça substantiva. O processo comprobatório é essencial para escavar fatos e buscar a verdade em julgamentos. O ônus da prova cabe ao demandante provar a legalidade do seu processo.

Quadro Teórico: A lei probatória na resolução de casos eleitorais no Tribunal Constitucional usa um modelo de processos judiciais no direito civil. A lei probatória é aplicada para facilitar a rápida resolução dos casos e considerar as provas das partes no litígio.

Método: O método de abordagem de pesquisa usado nesta pesquisa é a pesquisa normativa legal. Esse método ajuda a examinar os padrões jurídicos contidos em leis e decisões judiciais. Além disso, a pesquisa da biblioteca foi conduzida para obter dados de materiais legais primários, secundários e terciários.

Implicações da pesquisa: De acordo com as conclusões deste estudo, a melhoria dos procedimentos à prova de ônus garantirá a justiça e eleições democráticas na Indonésia. Espera-se que as ideias e questões levantadas neste documento possam ajudar a melhorar a implementação de procedimentos à prova de ônus na resolução de disputas eleitorais no Tribunal Constitucional da República da Indonésia.

Resultados e conclusões: A resolução de disputas eleitorais depende de como o dependente comprova suas queixas, que devem ser melhoradas pelo Tribunal Constitucional.

Originalidade/valor: Mobilizar o público para acompanhar ativamente as eleições faz parte da criação de eleições justas e democráticas.

Palavras-chave: disputa eleitoral, ônus da prova, tribunal constitucional, comissão eleitoral nacional e o princípio de eleições justas e honestas.

1 INTRODUCTION

Almost all countries today hold elections to select "Heads of Government" and "Members of Parliament" to obtain a constitutional mandate from the people to run the government. The French philosopher Jacque Jean Rousseau described the difficulty of ensuring that the people are the ones who rule (Huda, 2014). Elections are the primary mechanism of and a prerequisite for representative democracy. Obtaining the "people's mandate" requires an honest, fair, and civilized election. A democracy is a system of government in a country whose power is determined by the people either directly or through representatives of the people.

The peaceful transfer of leadership through honest, fair, and accountable elections is an important pillar of modern democracy. The European Commission for Democracy
has designed democratic electoral standards such as "the right of citizens to vote and be elected to bodies of state power" and "guarantees for the realization of voting rights and freedom of participation of the electoral process" (Venice Commission, 2007). Sincere political participation in determining the course of government is a fundamental right of citizens and is usually guaranteed in the constitution of any country that claims to be a democratic state. (Wade and Phillips, 1957). In addition, the eminent constitutional law thinker A.V. Dicey believes that a constitutional guarantee for the political participation of citizens signifies a civilized nation.

The process of quality elections cannot be separated from the role of political parties. Political parties have a very important position and role in any democratic system (Asshiddiqie, 2009). In the context of political development, it is important to have a solid and adaptable party system so that political parties can absorb and unite all the new social forces that have emerged due to modernization. Political parties must be able to become channels for political participation. The role of political parties can ultimately strengthen the vision of conducting democratic and quality elections.

In the realm of the sovereignty of the people, the people are considered the owners and holders of the highest power of a state (Kusnardi and Ibrahim, 1983). The people determine the order and manner in which government is organized. It is also the people who determine the goals to be achieved by the country and its government. In such a spirit, the founders of the Indonesian state determined that the country be a democracy based on the law, which was emphasized in the provisions in Article 1 paragraph (3) of the 1945 Constitution.

For people's representatives to act on their behalf, the representatives must be selected by the people themselves. The mechanism for doing so is general elections. Elections are a prerequisite for a modern democracy. The people elect certain individuals to represent them so that the people can participate in the administration of state government in the people's representative institution. Elections are also political activities that aim to accommodate the interests or aspirations of the community. General elections are the process of the temporary surrender of the people's political rights to the state's administration (Budiardjo, Jurnal Ilmu Politik Number 10, 1990).

To be honest, fair, and meaningful, elections must be conducted by organizers with integrity, professionalism, and accountability and must be carried out in the most qualified, systematic, legitimate, and accountable manner with the widest possible
participation of the community. Election organizers, government officials, candidates, election supervisors, election monitors, voters, and all relevant parties must behave and act honestly according to laws and regulations. Voters and participants in the general elections are treated equally and must be free from fraudulent or unfair treatment by any party. Elections must be conducted rigorously to ensure healthy and participatory competition and a higher degree of representation, and they must have a clear accountability mechanism.

In modern political science literature, there are several basic characteristics of a democratic political system (Budiardjo, 2008). Among them are: first, the existence of broad and autonomous political participation; democracy requires the flexibility to allow anyone, whether individual or group, to participate in the elections autonomously. Therefore, the first element in a democratic political system is the existence of broad and autonomous political participation.

Second, there is healthy and fair political competition. In the context of democracy, all political forces (political parties) or socio-social forces (interest groups and pressure groups) are recognized for their right to life and given the freedom to compete with each other fairly as a means of channeling people's aspirations, whether in elections or other socio-political competitions. Third, a succession or circulation of power is periodic, managed, and maintained cleanly and transparently, especially through the election process. Fourth, there is effective monitoring, control, and supervision of powers (executive, legislative, judicial, bureaucratic, and military) and the realization of checks and balances mechanisms among state institutions. Fifth, systems, values, and norms are mutually agreed upon among society, the state, and the nation.

Meanwhile, from a substantive aspect, elections adhere to the values and principles of being free, open, honest, fair, competitive and direct, public, free, and secret. An indicator of this substantive aspect is a very qualitative result, so elections are synonymous with the struggle for the political legitimacy of the electorate. Democratic elections are intended to select leaders who gain political legitimacy from the people, and the following five principles must be followed in such elections.

First, free elections mean that all citizens have the right to vote independently and without pressure and/or coercion. Second, the principle of openness means that elections must involve all parties so that their implementation is transparent, accountable, credible, and participatory. Third, the principle of fairness means that voters and election
participants receive the same treatment. *Fourth*, the principle of honesty means that all parties involved in elections must act and behave in a way that promotes the values of truth. *Fifth*, the competitive principle means that elections are free from all forms of political mobilization driven by the offer of money, goods, services, or office or by intimidation, pressure, or coercion that would make help a certain candidate win before all stages of the election end.

2 THEORETICAL FRAMEWORK

An election is a formal decision-making process by which a population chooses an individual to hold public office. Elections have been the usual mechanism by which modern representative democracy has operated since the 5th century. Elections may fill offices in the legislature, sometimes in the executive and judiciary, and for regional and local government. However, Election results may be challenged by a candidate in the election on a complaint that the votes were not correctly adjudicated as valid or invalid or not counted accurately and petitions alleging that a candidate or agent of a candidate committed an electoral offense.

Election disputes certainly fall at the door of the judiciary. The courts do not only study factual materials related to the conduct of elections. But courts should also adopt general principles of impartiality, practicality, and legitimacy for handling electoral disputes. Trust in the entire political system can be eroded if voters do not accept election results and if election-related disputes are not handled effectively and efficiently. Election disputes may raise questions about the integrity of the electoral process. In this sense, all have the same character. The study focused on the burden of proof, which is weighed against this burden. What is the standard of proof, and when the burden of proof shifts, especially in electoral petitions taking insights as discussed in presidential election petitions, the burden of proof relates to the question of whose duty to place evidence before the court. The general rule is that the burden of proof is borne by the plaintiff in a civil case or the prosecutor in a criminal case.

3 METHOD

Legal research is generally understood as “the process of identifying a law that governs activities in human society” (Cohen and Olson, 1992). Legal research involves using various printed and electronic sources; printed sources include court decisions,
statutes, administrative documents, and scholarly commentaries; electronic sources include computer database materials.

In this study, I conducted normative legal research based on the nature of the problem in focus and data sources (Soekanto and Mamudji, 1985). As noted in the legal literature, this method helps examine the juridical standards contained in laws and court decisions. Furthermore, library research was conducted to obtain data from primary, secondary, and tertiary legal materials such as concepts, statutory methods, and legislation.

Legal literature broadly falls under two categories: (a) primary sources and (b) secondary sources. Primary sources include records of official rules or laws enforced by the state, which may be found in the decisions of appellate courts, the statutes passed by legislators, executive decrees, and the rules and regulations of administrative agencies. In common-law countries such as the United States, judicial decisions form the first major category of primary sources, while in civil-law countries, product legislation is the key primary source.

Secondary materials include treaties, hornbooks, practice manuals, and legal writing in law journals. Secondary sources can help analyze a problem and provide research references to both primary sources and other secondary materials.

4 RESULT AND DISCUSSION
4.1 INDONESIAN ELECTIONS

Democratic elections are the dream of every Indonesian citizen (Akili and Achmad, Journal of Law and Sustainable Development, 2023, v.11, n.4: 5). Elections are said to be run democratically if every Indonesian citizen with the right to vote can indicate his or her choice directly, publicly, freely, confidentially, honestly, and fairly. Each voter exercises his or her right to vote only once, and each vote has the same value. This is often called the principle of one person, one vote.

Thus, elections can be judged to be democratic if they present two aspects simultaneously, namely the procedural aspect and the substantive aspect. From the procedural aspect, there are, among others, election regulations, election organizers, candidates, and voters. The indicator of this procedural aspect is a highly quantitative result, so elections are synonymous with the collection of electoral votes.
This shows the importance of citizen's suffrage to guarantee the human rights of citizens as a democratic ideal. Guarantees and protections of the rights and freedoms of citizens are the main pillars of democracy. By the principle of popular sovereignty, all aspects of elections must be directed by the people. The absence of guarantees on citizens' right to choose their country's leader violates human rights.

The statement "Indonesia is a democratic country," as stated in Article 1 paragraph (2) of the 1945 Constitution, necessarily indicates that the executive institutions and legislatures at the central and regional levels must be elected through general elections (Budhiati, 2020). Elections for the two institutions shall be held directly, freely, confidentially, honestly, and fairly every five years as stipulated in Article 22E of the 1945 Constitution. This democratic model requires a system of political participation that provides opportunities for citizens to participate effectively in the process of making and implementing political decisions.

Elections are held to determine how every aspect of democracy is run, so elections must be conducted in line with the "Principles of Honest and Fair and Dignified Elections" as mandated by Section 22E of the 1945 Constitution. Democracy is a means of allowing people's political participation. The people who are elected form an executive government directly elected by the people and representatives of the people in the people's representative institution or parliament to carry out the mandate of popular sovereignty. It is the representatives of the people who act for and on behalf of the people and who politically determine the order and manner in which the government works, as well as the goals to be achieved in both the long and short term.

Thus, in discussing the relationship between elections and people's sovereignty, one can see that elections are a logical consequence of adhering to the principle of people's sovereignty in the life of the nation and state. The basic principle of democratic state life is that every citizen has the right to actively participate in the political process (Thaib, 1993). This democratic society is an interpretation of the exercise of popular sovereignty. In this case, popular sovereignty is only possible if the people strongly tend toward a participatory political culture (Budiardjo, 2019). Political participation is at the core of democracy. In an ideal democracy, a democratic political system is determined by the level of political participation of its citizens (Asy’ari, 2011). In elections, universal suffrage is important as is one of the fundamental prerequisites for conducting democratic elections.
We can also refer to the Constitutional Court Decision in Case No. 011-017/PUU-I/2003, dated February 24, 2004, which mentions (The Constitutional Court of the Republic of Indonesia, Decision Number 011-017/PUU-I, 2003):

"Considering that the constitutional right of citizens to vote and right to be candidates is a right guaranteed by the constitution, laws, and international conventions, the restriction of deviation, omission, and elimination of such rights is a violation of the human rights of citizens."

In a democratic country, elections are held regularly, and Indonesia conducts general elections every five years. The general government system in Indonesia is somewhat different from that in other countries and has differed from one period to another. Between its independence in 1945 to 2019, Indonesia held 13 parliamentary elections, which did not coincide with the presidential election. From 1945 to 1999, presidential and vice-presidential elections were conducted through elections in the People's Consultative Assembly. The 1955 elections were the first public elections to be successfully democratically implemented and served as guidelines for implementing the next general election. Subsequent general elections were held under the New Order Government in 1971, 1977, 1982, 1987, 1992, and 1997.

The election is the cornerstone of democracy. So, a free and fair election assures that those who emerge as rulers are the people's elected representatives. The purpose of the general election is of four kinds, namely (Jimly, 2016): to enable the transition of government leadership in an orderly and peaceful manner, to allow the replacement of positions that will represent the interests of the people in representative institutions, to implement the principle of people's sovereignty, and to implement the principle of human rights.

In the reform era, elections were held in 1999 to elect candidates for legislative members, namely the House of Representatives of the Republic of Indonesia, the Regional Representative Council of the Republic of Indonesia, and the Regional Parliament at the provincial and regency/city levels. After the members of parliament are elected, the People's Consultative Assembly of the Republic of Indonesia elects the president and vice-presidential. Starting in the 2004 general election, the people have been able to directly elect the president and vice-presidential as a pair.

As seen throughout Indonesia's political history (Budiardjo, 2008), none of these elections have been held in a vacuum; rather, they are held in an environment that
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determines the outcome of the elections. From the general elections, it can also be seen that there are efforts to find a suitable election system for Indonesia. From the description of how general elections have been conducted thus far, it appears that the way elections are conducted is in line with the dictate of the constitution, namely "honest and fair elections," as mandated in the provisions of Article 22E of the 1945 Act (Hamid, 2006). It can also be seen that there has been an effort to implement elections in an increasingly formal juridical manner in terms of democratic practices with a formal juridical umbrella. So, in the future, the quality of elections will be higher, and there will be stronger guarantees for honest, fair, and civilized elections.

Since the end of Suharto's authoritarian military rule in 1998, Indonesia has fundamentally changed and become more democratic. The reform of the political system has been carried out by, among other things, direct elections for presidential candidates since 2004. On October 6, 1999, during the amendment process of the 1945 Constitution, the Assembly approved the model of the people directly electing the president and vice president. Direct elections demonstrate the spirit of popular sovereignty to elect an honest, fair, and free government in contrast to the strictly controlled and manipulated elections that took place during the New Order regime under Suharto. The People's Consultative Assembly comprises the House of Representatives and Regional Representative Council members. The 1945 Constitution authorizes the Assembly to amend the Constitution.

4.2 THE CONSTITUTIONAL COURT

Discussing the Constitutional Court of Indonesia as part of this paper is necessary. The establishment of the Constitutional Court was the catalyst of the political reforms after the fall of the dictator Suharto, who came to power as the second President of the Republic of Indonesia and rule the country from 1966 on. The establishment of the Constitutional Court was mandated by the amended 1945 Constitution. The Constitutional Court was established under Article 24C of the 1945 Constitution, which was promulgated on November 9, 2001. The original idea behind the establishment of the Constitutional Court was that it was necessary to have a state organ review the constitutionality of the laws. Such an organ of the state would be given the power to examine any laws that contradict the constitution, which is the supreme law of the land, popularly known as judicial review (Wolfe, 1986). Indeed, such an idea appeared during
the discussions preparing for the country’s independence in 1945 (Syahrial, 2006). The country’s founding fathers considered it necessary to include the power to examine laws contrary to the Constitution within the Supreme Court’s jurisdiction. The powers given to the Constitutional Court at that time also include the dissolution of political parties, the examination authority dispute between state institutions, the examination results of the election dispute, and the dismissal of the president or vice president.

The Constitutional Court finally became operational on July 31, 2003, after the Parliament and the government collectively approved Law No. 24 of 2003 concerning the Constitutional Court. On August 13, 2003, President Megawati Sukarnoputri ratified the Constitutional Court Law. Two days later, on August 15, 2003, the president endorsed the nine judges of the constitutional court for the first time, followed by the oath-taking of the judges at the State Palace on August 16, 2003. On October 15, 2003, the Supreme Court submitted all constitutional cases to the Constitutional Court, marking the beginning of the Court activities as one of the branches of the judicial authorities.

Based on Article 24 of the amended 1945 Constitution, judicial power is held by the Supreme Court and its lower tribunal bodies together with the Constitutional Court. The authority of the Constitutional Court is described in more detail by Article 24C of the part (2) of the 1945 Constitution: "The judicial power shall be implemented a by a Supreme Court and judicial bodies underneath it in the form of public courts, religious affairs courts, military Tribunals, and state administrative courts, and by a Constitutional Courts” (Harman, 2013). The Constitutional Court consists of nine judges, three of whom are selected by the government, three by the Supreme Court, and three from the parliament.

The establishment of the Constitutional Court can be seen as an effort to protect the Constitution and the rights of citizens. The Constitutional Court must encourage and ensure that state officials and the public respect and implement the Constitution. The Constitutional Court acts as the sole interpreter of the Constitution, ensuring that the spirit of the Constitution is always alive and influencing the sustainability of the state and society.

In line with the implementation of judicial powers, the Constitutional Court possesses the authority to try a case at the first and final level and has the final power of decision in reviewing laws that contradict the Constitution, determining disputes over the authority of state institutions whose power given by the constitution, mandating the
dissolution of a political party, and resolving disputed general elections” as stated by Article 24C part 1 of the 1945 Constitution.

The Constitutional Court also has duties to “issue decision over an opinion of the House of Representatives concerning alleged violations by the President and/or Vice-President of this Constitution” as stated by Article 24C part 2 of the 1945 Constitution.”

Since its establishment, the Constitutional Court has examined and decided cases of judicial review, authority disputes among state organs, resolved disputed election results of regional heads, and the results of the presidential elections. The impeachment of the president or vice president has not been implemented by the Constitutional Court. The Constitutional Court works based on procedural law stipulated in Law Number 24 of 2003, and the majority rules amended by Law No. 8 of 2011. The Constitutional Court also developed the Constitutional Court Regulation for its proceedings, testing the constitutionality of laws, settling authority disputes among state organs, and resolving disputed election results for the legislative, presidential elections, and regional heads as well.

In examining the disputed election results (Gaffar, 2015), the Constitutional Court may determine that a set of votes must be counted as a whole because of systematic, massive, and structured cheating. Then the court determines whether the election’s winner is the plaintiff or the election is partially invalid, or a new round of voting must be conducted due to fraud among the constituency whose votes were invalidated. Systematic, structured, and mass election fraud can occur before, during, and after voting. These election violations do not occur only during voting, so problems must be traced back to events that occurred before the vote.

In proceedings for disputed election results regarding regional heads at the provincial, district, and city levels, the Constitutional Court will invalidate all votes in areas where systematic, massive, and structured cheating has been uncovered and then determine whether the winner of the election is the plaintiff or whether a new round of voting should be initiated in certain areas where that fraud has been discovered. The Constitutional Court has never presided over disputed presidential election results.

4.3 ELECTION RESULTS IN DISPUTES

Regular change in government through elections provides periodic and peaceful transition of leadership. The point of elections is to allow every citizen to elect their future
leader according to their political beliefs, with periodic elections being one of the pillars of any democratic system. However, formal disputes over election results are common worldwide (Kalavar, 2022). Legal violations in the electoral process hurt the joints of democracy. For example, the German court handled 275 cases challenging the results of the 2017 legislative elections. From 2018 to 2019, the Costa Rican Supreme Election Court adjudicated 738 municipal and national election disputes. The Judicial settlement of electoral disputes has become an important mechanism in many electoral democracies (ACE, 2022). In Indonesia, election disputes generally occur after the announcement of the results. The Constitutional Court has acted as a judicial institution for resolving electoral disputes.

When examining disputes over legislative elections, the Constitutional Court of the Republic of Indonesia can overturn the result due to systematic, massive, and structured fraud. Disputes may arise in the course of electoral competitions. The Constitutional Court, the judicial institution tasked with sorting out electoral controversies, must be independent, impartial, and technically proficient to ensure a constitutional settlement. The Constitutional Court may also invalidate the vote count and order another round of voting if fraud is suspected in a particular constituency or multiple constituencies. Notably, the Constitutional Court requires more time examination of election disputes and provide evidence of election violations than the courts in other countries because of the wide scope of Indonesia's territory.

Violations in the implementation of elections occur because the country's elections have many shortcomings. These shortcomings include too-light sanctions for election violations and weak sanctions for campaign funds regulations in the form of restrictions and the transparency of campaign finances. The weaknesses in the electoral regulations arise because the political parties in parliament do not want to be closely monitored. They do not want any arrangements that make it difficult for political parties and candidates to win. Because of this philosophy, massive and even systematic and structured violations inevitably occur. Political parties participating in elections and presidential and vice-presidential candidates reassurance that sanctions will not harm their campaigns. The Election Supervisory Board is thus powerless to stop election violations due to this tradition of light sanctions. As a result, offenses are brought to the Constitutional Court even though they are not within the court’s jurisdiction. These
conditions then force the Constitutional Court to work hard to find legal reasons to overturn the election results despite slim chances of success.

In judicial proceedings, proof is a trial’s most essential and fundamental aspect. Sufficient time is required for the parties to find and provide proof and for the other party to refute such proof so that truth is eventually obtained. Some use a justice system that takes a long time, such as civil and criminal justice, and some use fast justice system for minor cases (Melcarne, 2021).

The evidentiary process in the Constitutional Court relates to its procedural law. The Procedural Law of the Constitutional Court provides for enforcing laws prescribed by the country’s material law. In cases of disputed election results, each party is given the opportunity to prove its assertion. The heaviest burden of proof lies on the plaintiff, who must prove the argument behind his or her suit. One of the principles is that the burden of proof lies with the plaintiff, and the evidence presented must be extremely clear. However, the constitutional court may summon a provincial, district, and/or municipal election commission representative to testify at the hearing to provide further proof.

The principle of the rapid trial is commonly known as the principle of the speedy trial. In resolving disputes over election results, the Constitutional Court uses the principle of speedy trial. The speedy trial principle has many pros and cons for various opposing parties. This is because plaintiffs have very little time to prove fraud. Article 475, paragraph 3 of Law Number 7 of 2017 concerning general elections states that the Constitutional Court, as the institution authorized to handle such cases, is given 14 days to resolve result disputes. It is considered very hard to prove fraud in such a short time, particularly violations that have been spread across Indonesia.

As stated by Article 36 paragraph (1) of Law No. 24 of 2003, written text is a primary source of evidence. Examples of such written evidence are documents concerning the calculation of votes and supplement documents about the administrative duties of the candidates’ spouses. It is the primary source of evidence that must and foremost be proven. Consequently, when primary sources of evidence cannot be proven, the judges will not consider other types of evidence, such as electronic evidence.

In addition to submitting written documents, the parties can also summon witnesses and experts to testify at the trial. Due to time limitations, judges began limiting the number of witnesses to be heard at trial. Judges select the witnesses so that there is no repetition of the testimony of other witnesses. The parties must first submit a list of
witnesses to the bailiff before the witnesses are presented in the trial. Since the 2014 election dispute, the court has limited the number of witnesses to only three. This was done as an effort to screen the witnesses and provide a preliminary assessment of the relevance of each witness’s statements to the case being examined.

This limitation on the number of witnesses has generated a dilemma for the Constitutional Court. On the one hand, the Constitutional Court is required to settle election cases quickly, but on the other hand, the testimony of important witnesses should be heard. Many witnesses will prolong the trial, which will not provide significant and relevant information. However, witness testimony is important in obtaining information about possible election violations.

In general, there are several evidentiary theories related to the burden of proof in the judicial process, including affirmative theory, rights theory, objective legal theory, propriety theory, and encumbrance theory based on the relevant rules. The affirmative theory states that the burden of proof is on the party making the accusation, not the defending party (negative proof). Negative proof must be avoided because it is viewed as unfair based on the assumption that in law, specific evidence is given against a right or event, not against the absence of a right or event (Siahaan, 2012).

The evidence submitted to the Constitutional Court, whether provided by the plaintiff or the defendant and/or related parties, must be legally acquired. Evidence obtained illegally cannot be considered by constitutional judges. Therefore, every plaintiff or other party that submits evidence to a constitutional judge must know how to obtain evidence legally. Evidence from the plaintiff is usually shared in a preliminary hearing.

Electronic evidence is often used in court to work within the limited time frame allocated for each Constitutional Court session. The use of teleconference media and the electronic filing of cases can help parties to disputes proving a lawsuit. Electronic evidence can be submitted as "sound recordings and image recordings," such as cellphone conversations and video recordings during campaigns.

The following are some of the problems that are often raised as arguments in lawsuits in examining disputed election results for president, regents, mayors, or parliamentary members, namely:

1). There were errors in vote counting by the Election Commission;
2). There was fraud in the voters’ list, election logistics, or the commission’s digital security system;
3). Non-listed voters were counted;
4). The Election Commission -engineered fraud allowing people to vote more than once;
5). Money politics were at play in various areas that contributed to the winner’s victory;
6). The election commission destroyed evidence by opening ballot boxes.

Based on direct presidential elections held from 2004 to 2019 (Elvan and Al-Muqorrobin, Indonesian Comparative Law Review, Vol. 3, Number 1, 2020), it seems that election violations and fraud by presidential candidates and officials are common. Some countries have succeeded in minimizing election fraud by using e-voting mechanisms. The United States, Austria, and Switzerland already use e-voting machines at polling stations. Estonia and France use internet voting.

Election violations and election fraud can create public confidence crisis in elections. The issue also ignites political tensions and social unrest. Therefore, it is urgent to reform Indonesia's electoral system by following technological developments. Organizing elections by e-voting is one possible answer.

One crucial issue in resolving disputes over election results is proof. There is a legal argument that whoever accuses must prove that accusation. In the context of disputes over the presidential election results, the dispute resolution process is regulated in Law Number 7 of 2017 concerning General Elections and Constitutional Court Regulation No. 4 of 2018 concerning Procedures for Disputing the Results of the Presidential and Vice-Presidential Elections.

Under these regulations, plaintiffs face obstacles in the process of disputing presidential election results, starting with the registration of the case. The Constitutional Court gives only three days after the determination by the National Election Commission to register the dispute, which requires collecting evidence.

The number of cases related to the results of elections submitted to the Constitutional Court is closely related to the quality of elections implementation in terms of quantity and quality metrics. The number of cases handled by constitutional judges certainly affects the length of time it takes to examine, adjudicate, and decide cases. The more claims that are filed, the more time it takes to resolve cases, and the quality issue
mean that the substance of the claim in each affects the efforts needed for the Constitutional Court to resolve the case (The Association of Constitutional Law Professors, 2010). This constraint relates to the evidence, witnesses, and arguments the petitioner uses to prove his or her suit.

Article 78, letter B of Law Number 24 of 2003 determines the deadline for pronouncing decisions on disputed election results. The constitutional judges have fourteen working days from when the application is recorded in the Constitutional Case Registration Book (Purbolaksono, 2014).

In evidentiary law, the panel of judges must pay close attention to the plaintiff's arguments in election disputes. The plaintiffs tend to use more misconduct than vote counting errors. This will certainly cause problems. The evidentiary process for proving an offense must be quick, as the time limit for resolving the case is narrow.

As a characteristic of election dispute cases, the evidentiary process primarily follows civil procedural law. If the plaintiff claims that there was an error in counting votes, he or she must include evidence in the form of documents on the results of vote counting at each level of the election, starting from the level of polling stations in each village to the decision of the Election Commission. Following the principle of hearing the parties (Audi et alterem et partem), the Constitutional Court also allows the Election Commission to respond to the plaintiff's allegations. As the election organizer, the commission may present evidence of vote counting documents in those filed with the court by the plaintiff. The documentary evidence from both sides becomes material for the Constitutional Court to cross-examine. If there are any discrepancies or vagueness in the parties' evidence, the panel of judges will ask the parties for clarity in the trial.

Regarding election law, the court is limited to resolving disputes over election results. The court cannot examine structured, systematic, and mass misconduct or fraud allegations (Gaffar, 2013). A structured violation is an offense committed by government officials or political parties at any level from one of the candidates' spouses. Systematic fraud is defined as the instigation of a well-designed system. Meanwhile, massive fraud is carried out in a large and comprehensive area in all districts.

Electoral disputes of an administrative nature do not arrive at the Constitutional Court if the Supervisory Election Body processes the violations from the beginning of the elections (Zulfa, 2013). Election violations continued to occur due to too lenient sanctions for violations of the law, as sanctions are limited to an administrative fine of
six months of incarceration. Because of these light sanctions, candidates are not afraid of committing election violations intentionally or unintentionally. Reports of election violations have also become very limited due to the lightness of sanctions. Similarly, even reported election violations are unlikely to result in justice. Of the thousands of offenses reported during the studied period, very few were brought to trial, resulting in sanctions. A mild sanction does not deter a candidate from committing an offense. Due to the absence of severe sanctions, such violations are not brought to the Constitutional Court because they are beyond the court's jurisdiction.

The following describes the obstacles in resolving disputes over the results of the presidential election in the Constitutional Court. The first obstacle comes from the court itself, whether it can provide sufficient judgment in an election dispute. For example, in 2013-2015, nearly a thousand cases were submitted for decision within the fourteen days window. Due to the limited time given by the law to the Constitutional Court to resolve such disputes, the high number of cases submitted made it difficult to obtain definitive verdicts (Santoso, 2006). Electoral disputes are complex, particularly when there are numerous demands for resolution in such a brief period.

As the time allocated for filing the cases is only three days, the burden of proof of the plaintiff bears the burden of proof errors in the results. The evidence of vote-making errors refers to the evidence of letters. Evidence of vote-counting error must be written. The evidence is found in the minutes and recapitulation of the counting of votes according to the regional level of the election, starting from the provincial, district, and city levels to the polling stations. Indonesia's territory is divided into 34 provinces, 416 districts, and 98 major cities. The term district is used to refer to rural areas. A city is used to refer to a metropolitan area.

The plaintiff must be able to prove the violation through a ballot of millions of votes. Given these evidentiary constraints, presenting valid evidence of count irregularities is almost impossible. The first reason for this is that it is very difficult for the plaintiff to present complete evidence to match the data of the election organizers. Moreover, the time the plaintiff has is relatively short, considering that the alleged violations may occur in far-flung areas.

The second reason is that it is not easy to prove the existence of election fraud in the form of structured, systematic, and mass actions. It is difficult to measure what kinds of significant actions, such as structured cheating, systematic, and mass cheating. The
condition must be proven significant, and if a policy is considered to politicize the government bureaucracy, it is difficult to gauge whether the violation is significant for the vote.

The third reason is the short period of time that the Constitutional Court has to issue a ruling, only fourteen working days from the time the application is recorded in the constitutional case registration book. With such an evidentiary design, it is very difficult for a panel of constitutional judges to produce a verdict that meets the ideals of justice.

A lack of understanding of election results will make it more difficult for the constitutional court to adjudicate, examine, and resolve disputes. Plaintiffs will also need help considering solid evidence to win a case. All evidence must correlate with the lawsuit's arguments (Handoyo and Ngabiyanto, 2013). Due to the inability to prove the lawsuit's arguments, the court may reject all complaints. In other words, the plaintiff may not support the charges with strong evidence if the case is unclear and has insufficient details. The legal team may fail to convince the panel of justices that there has been structured, systematic, and mass fraud. Even if some violations in several voting stations would require a revote, the court may determine that a revote would not change the overall ranking of the candidates based on the total votes.

The Constitutional Court will assess all the parties' statements, written evidence, and witnesses at the trial to ensure justice. The Constitutional Court adjudicates the disputed election results quantitatively and provides an honest and fair assessment of how the elections are conducted (Harun, Jurnal Konstitusi, Vol. 13, Number 1, 2016).

Regarding additional voters and special voting procedures that the Election Commission has created for people who are not registered to vote but wanted to vote on election day, the court ruled that these instruments are only transitional. They will be used strictly until the country's civil administration system has improved. However, the court has indicated directions for improving the quality of future elections. The court has also noted the need for the Election Monitoring Body to be meticulous in recommending to the Election Commission. The court said the monitoring body should improve its monitoring system to ensure the recommendations are implemented.

In examining disputes over the results of the presidential elections in 2014 and 2019, the Constitutional Court affirmed that the authority to investigate violations of a structured, systematic, and mass nature lies with the Election Supervisory Agency. According to Article 24c paragraph 1 of the 1945 Constitution, the Constitutional Court
has the power only to adjudicate disputes over the election results, not investigate administrative violations of a structured, systematic, and mass nature. The Constitutional Court can adjudicate structured, systematic, and mass violations if the Supervisory Election Body never processes a report from a plaintiff. Structured, systematic, and mass election fraud can involve money politics, government officials or civil servants, or criminal events. Violations like this can invalidate election results if they significantly affect electoral votes. However, there are also electoral offenses of an insignificant nature that affect the election results. Such violations are sporadic, partial, and individual and involve bribes that are not proven to affect voters' choices (Surbakti, 2011).

In the presidential elections held in 2009 and 2014, the legal team of presidential candidate Prabowo Subianto claimed that there was election fraud and violations. Presidential candidate Jokowi Widodo defeated Subianto in both elections. The petitioner's argument was examined by a panel of judges but was not proven, so the suit was rejected. The plaintiffs postulated that election violations occurred in a structured, systematic, and massive manner in almost all parts of Indonesia. However, Subianto failed to prove the allegations due to time limitations on proving that there were mass election violations.

5 CONCLUSIONS AND SUGGESTIONS

Indonesia's vast territory, large population spread throughout the country, and national complexity require professional and trustworthy election organizers who can provide transparency in the election. Therefore, efforts must be made to further improve the planning, implementation, supervision, and evaluation of election processes. One recommendation is to design a direct elections system that is appropriate for a country as large as Indonesia. There is a need to be a dispute resolution process that promises more fairness than at present. All election records must be examined to improve the quality of elections in the future.

The Constitutional Court uses evidentiary law in election dispute cases by referring to the case examination process modeled in civil procedural law. Therefore, the evidence in the form of letters or vote-counting documents is the main reference for proving the parties' arguments. The examination of election disputes is not entirely a matter of vote count disparities because plaintiffs have also made election process claims
even though there is very little possibility of convincing the panel of judges, as was the case in the dispute over the 2014 and 2019 presidential elections. However, the evidentiary system in the Constitutional Court does not rely solely on the evidence of the written text but examines the combination of evidence from written text and the conviction of the judges. The Constitutional Court considers the evidence submitted to the trial by considering the connection and mutual support between one piece of evidence and another.

Based on the experience with presidential election disputes in 2014 and 2019, it seems that the parties will continue to use the pretext of vote fraud and violations of the electoral process before making claims about voting at polling stations. Disputes about cheating and manipulating candidates and the issues of election officials seem incessant. As a comparison, some other democratic states have implemented electronic voting (e-voting), which minimizes such issues. Learning from previous elections in Indonesia, the lack of public trust in how the election is run resulted in political tension and social unrest. Therefore, a new system must be developed to re-reform the Indonesian election system following technological advances. E-voting seems the only answer for this reform to be possible.

To improve the fair settlement of cases, the Constitutional Court must consider the limits on the number of witnesses in the trial. The Constitutional Court needs to be more flexible in the number of witnesses allowed to identify facts more effectively during trials. However, the parties to the case must provide relevant witnesses to the arguments put forward. The improvement and development of evidentiary law should be on the agenda in the future.
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