

Comparison of Dispute Resolution in General Elections in Indonesia and Thailand

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Abstract

The history of general elections in Indonesia began in 1955 with the implementation of a Proportional Representation system, allowing voters to directly elect candidates or parties. This system underwent modifications over time, including the adoption of an open-list system in 2004. The enactment of Law No. 7 of 2017 subsequently regulated the conduct of general elections in Indonesia, emphasizing principles such as direct, general, free, secret, fair, and honest elections. In Thailand, the history of general elections commenced following the 1932 revolution that ended absolute monarchy. Despite this, Thailand has experienced numerous military coups affecting its political dynamics, notably in 2006 and 2014, sparking debates among opposing political factions. This study employs a normative and legal approach to analyze the dispute resolution systems of general elections in Indonesia, contrasting them with Thailand's specialized commission approach for similar matters. In Indonesia, the resolution of election disputes is governed by Law No. 7 of 2017, with oversight bodies including the General Election Commission and the Election Supervisory Board. Conversely, Thailand's Election Commission of Thailand plays a crucial role in resolving election disputes in accordance with the constitution. Both countries adopt different approaches in handling election disputes; Indonesia relies on judicial bodies such as the Administrative Court and the Supreme Court, whereas Thailand employs the Election Commission of Thailand as a non-judicial institution with broad authority in addressing electoral law violations.

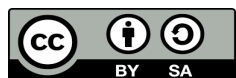
Keywords: Comparison, General Election, Dispute Resolution, Indonesia; Thailand

Abstrak

Sejarah Pemilihan Umum di Indonesia dimulai pada tahun 1955 dengan menggunakan Sistem Proporsional, di mana pemilih dapat memilih calon secara langsung atau partai. Sistem ini mengalami modifikasi dari waktu ke waktu, termasuk penerapan stelsel daftar terbuka pada tahun 2004. Undang-Undang No. 7 Tahun 2017 kemudian mengatur pelaksanaan pemilihan umum dengan prinsip-prinsip seperti langsung, umum, bebas, rahasia, jujur, dan adil. Di Thailand, sejarah pemilihan umum dimulai setelah revolusi tahun 1932 yang mengakhiri monarki absolut. Meskipun demikian, Thailand mengalami banyak kudeta militer yang mempengaruhi dinamika politiknya, termasuk kudeta pada tahun 2006 dan 2014 yang melibatkan perdebatan antara faksi-faksi politik yang berseberangan. Penelitian ini menggunakan pendekatan normatif dan perundang-undangan untuk menganalisis sistem penanganan sengketa pemilihan umum di Indonesia, dibandingkan dengan Thailand yang memiliki pendekatan komisi khusus untuk hal serupa. Penyelesaian sengketa pemilihan umum di Indonesia diatur dalam Undang-Undang No. 7 Tahun 2017, dengan badan penyelesaian termasuk Komisi Pemilihan Umum dan Badan Pengawas Pemilihan umum. Di Thailand, Election Commission of Thailand memiliki peran penting dalam menyelesaikan sengketa pemilihan umum sesuai dengan konstitusi. Kedua negara memiliki pendekatan yang berbeda dalam menangani sengketa pemilihan umum, Indonesia melalui badan peradilan seperti

Pengadilan Tata Usaha Negara dan Mahkamah Agung, sedangkan Thailand melalui Election Commission of Thailand sebagai lembaga non-peradilan yang memiliki kewenangan luas dalam menangani pelanggaran undang-undang pemilihan umum.

Keywords: Komparasi, Pemilihan Umum, Penyelesaian Sengketa, Indonesia; Thailand



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A. INTRODUCTION

Indonesia is the largest democracy in the world, where general elections are held every five years.¹ The constitutional and juridical basis for these elections is Article 22 E of the 1945 Constitution, further regulated by specific laws.² The current law governing general elections is Law Number 7 of 2017, replacing Law Number 3 of 1999 and Law Number 4 of 2000, which were deemed inadequate due to societal demands and developments. According to Article 22 E (2) of the 1945 Constitution, general elections are conducted to elect members of the People's Representative Council, Regional Representative Council, President and Vice President, and Regional Representatives Council.³

General elections are one of the efforts to persuasively influence the people through activities such as rhetoric, public relations, mass communication, lobbying, and more.⁴ While agitation and propaganda are heavily criticized in democratic countries, they are often employed by candidates and politicians as political communicators during election campaigns. Indonesia has conducted several general elections since 1955, including in 1971, 1977-1997, 1999, 2004, 2009, 2014, and 2019.⁵

The conduct of general elections does not always proceed smoothly. Various obstacles may arise during and before elections, which can have wide-ranging impacts if not resolved effectively.⁶ Issues related to dissatisfaction with election outcomes or criminal and administrative violations affecting election results are commonly referred to as electoral disputes.⁷ To ensure that electoral disputes do not disrupt the constitutional system or

¹ Luh Yossi Shuartini Milenia, "Peran Hukum Tata Negara (Studi Kasus Pemilihan Umum di Indonesia)," *Jurnal Media Komunikasi Pendidikan Pancasila dan Kewarganegaraan* 3, no. 2 (2021): 65–76.

² Muhammad Mutawalli, "Legislative Elections: An Overview of Close Proportional System," *PETITA* 8 (2023): 93.

³ Ofis Rikardo, "Penerapan Kedaulatan Rakyat Di Dalam Pemilihan Umum Di Indonesia Berdasarkan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945," *Jurnal Hukum Sasana* 6, no. 1 (2020): 51–71.

⁴ Galih Puji Mulyono dan Rizl Fatoni, "Demokrasi sebagai wujud nilai-nilai sila keempat Pancasila dalam pemilihan umum daerah di Indonesia," *Citizenship Jurnal Pancasila dan Kewarganegaraan* 7, no. 2 (2020): 97–107.

⁵ Rajis Bancin dan Muhammad Syafii Sitorus, "Kunci Keberhasilan Menyongsong Pemilihan Serentak 2024 Menuju Indonesia Berkemajuan," *Jurnal Bakti Sosial* 2, no. 1 (2023): 1–10.

⁶ Bisariyadi Bisariyadi, Anna Triningsih, dan Meyrinda Rahmawaty, "Komparasi mekanisme penyelesaian sengketa pemilu di beberapa negara penganut paham demokrasi konstitusional," *Jurnal Konstitusi* 9, no. 3 (2012): 531–62.

⁷ Micael Ririhena, "Kewenangan Bawaslu Dalam Penyelesaian Pelanggaran Administrasi Pemilu," *Bacarita Law Journal* 4, no. 2 (2024): 112–21.

governance of a country or region, an effective mechanism for resolving these disputes is crucial, one that can provide fair decisions for all parties involved.⁸

Electoral disputes can be resolved through judicial and non-judicial means. Judicial resolution of electoral disputes can be pursued through three methods: settlement in the Constitutional Court, regular courts, or specialized courts for elections.⁹ Non-judicial resolution of electoral disputes is handled through electoral commissions or other alternative forms.¹⁰ In Indonesia, the enforcement of electoral law is carried out by various institutions depending on the stage of the electoral process.¹¹ For administrative violations during elections, they can be reported to the Election Supervisory Board, the Supreme Court, and the Ethics Council of Election Organizers.¹² The Ethics Council also has the authority to adjudicate violations of ethical codes in the electoral process.¹³ Disputes arising from the electoral process can be processed by the Election Supervisory Board, through adjudication assemblies, or in the Administrative Court. Furthermore, disputes over election results fall under the jurisdiction of the Constitutional Court. Criminal offenses related to elections can be prosecuted by the Election Supervisory Board, police, public prosecutors, District Courts, and High Courts.

These provisions are regulated by Law Number 7 of 2017 concerning general elections.

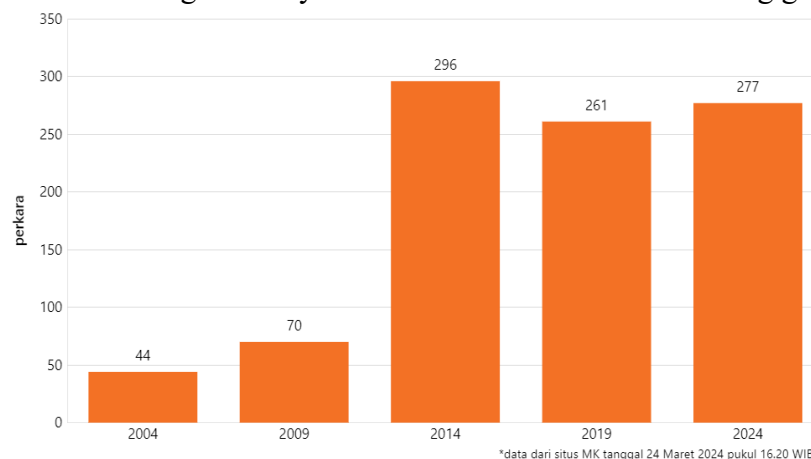


Figure 1 Anomalous traffic of General Election Results Dispute cases registered at the Constitutional Court

Resolving electoral disputes poses its own challenges, as the electoral process involves multiple stages where violations can occur at each step.¹⁴ Challenges in resolving these disputes include time constraints for legal certainty and fairness, differing perspectives among election

⁸ La Senu dkk., “Analisis Kewenangan Adjudikasi Bawaslu dalam Penyelesaian Sengketa Proses Pemilu,” *Halu Oleo Legal Research* 4, no. 2 (2022): 308–21.

⁹ Ahmad Siboy, “Constitutionality of constitutional settlement of disputes for the election of local heads,” *Jurnal Cakrawala Hukum* 13, no. 2 (2022): 117–27.

¹⁰ Anis Mashdurohatun, Erman Suparman, dan I. Gusti Ayu Ketut Rachmi Handayani, “Authority of the Constitutional Court in the Dispute Resolution of Regional Head Elections,” *Lex Publica* 6, no. 1 (2019): 52–60.

¹¹ Syailendra Anantya Prawira, “Election violation and election law enforcement in general election in Indonesia,” *Jurnal Hukum Volkgeist* 4, no. 1 (2019): 25–34.

¹² Dedi Supriyadi, Ende Hasbi Nassaruddin, dan Beni Ahmad Saebani, “Position and Legal Certainty in the Decision of the Honorary Board of Election Organizers (After the Constitutional Court Decision Number 32/PUU-XIX/2021),” *West Science Social and Humanities Studies* 1, no. 06 (2023): 315–24.

¹³ Kausar Jumahir Lesen, Muhtadi Muhtadi, dan Martha Riananda, “The Code of Ethics and Disciplinary Management of Political Parties Member,” *Constitutionale* 3, no. 2 (2022): 161–76.

¹⁴ Wahyu Prianto La Ode Hermanto, “Analisis Penyelesaian Sengketa Pemilihan Umum Oleh Badan Pengawas Pemilihan Umum Kota Kendari Pada Tahun 2019,” *Jurnal Ilmu Sosial Dan Pendidikan* 2, no. 1 (2024): 20–30.

organizers and law enforcement agencies, potential overlapping decisions, the need for effectiveness and efficiency, and ensuring justice both in substance and procedure.¹⁵

Meanwhile, Thailand is a country with a constitutional monarchy system of government.¹⁶ Embracing democracy within its governmental structure, the King serves as the head of state, exercising legislative power through parliament, executive power through the cabinet, and judicial power through the courts.¹⁷

In handling electoral disputes, Thailand employs the Election Commission of Thailand, empowered by the Thai Constitution to resolve grievances or objections that arise.¹⁸ The grievance handling system in Thailand differs from many other countries, as the Election Commission of Thailand functions as the primary body for addressing objections.¹⁹ This commission is granted extensive authority by law to investigate, handle, and impose significant penalties to punish violations of electoral laws.²⁰

The Election Commission of Thailand is granted extensive authority by law to conduct investigations, handle cases, and impose significant penalties to punish violators of electoral laws, with a strong emphasis historically placed on preventing vote-buying.²¹ Despite its specific authority as a referee and handling cases of electoral violations, the Commission of Thailand cannot handle criminal cases arising from electoral conduct, as these cases are within the jurisdiction of the courts.²²

Based on the discussion and issues presented above, it is evident that dispute resolution institutions for electoral disputes vary across countries. Typically, these disputes are handled by judicial and administrative bodies. Therefore, the focus of this study is to identify the steps that can be taken to compare the electoral dispute resolution institutions of Indonesia and Thailand, as well as the mechanisms for resolving electoral disputes. In this context, comparing Indonesia's and Thailand's electoral dispute resolution institutions is crucial to determine which is more efficient. Consequently, further research will be conducted on the issues outlined. The findings and discussions will be detailed in a thesis proposal entitled "Comparative Analysis of Electoral Dispute Resolution Institutions in Indonesia and Thailand."

¹⁵ Aermadepa Aermadepa, "Penyelesaian Sengketa Proses Pemilu Oleh Bawaslu, Tantangan Dan Masa Depan," *Jurnal Justitia: Jurnal Ilmu Hukum dan Humaniora* 1, no. 2 (2019): 1–14.

¹⁶ Akmal Maulana AR, "Pengaruh Gerakan Mahasiswa Terhadap Upaya Penegakan Demokrasi di Thailand Pada Masa Pemerintahan PM Prayuth Chan-Ocha (2014-2020)" (PhD Thesis, Universitas Islam Indonesia, 2022), <https://dspace.uui.ac.id/handle/123456789/38467>.

¹⁷ Happy Anugraha Putra dan Anwar Noris, "Lembaga Penyelesaian sengketa Pemilu yang ideal di Indonesia," *DIVERSI: Jurnal Hukum* 6, no. 1 (2020): 73–91.

¹⁸ Fahrin Amrullah, *Konsep Ideal Penyelesaian Sengketa Pemilihan umum di Indonesia Yang Berbasis Nilai Keadilan* (ProQuest Dissertations Publishing, 2021).

¹⁹ Indra Pahlevi, "Lembaga penyelenggara pemilihan umum di indonesia: berbagai permasalahannya," *Jurnal Politika Dinamika Masalah Politik Dalam Negeri dan Hubungan Internasional* 2, no. 1 (2016), <https://dprexternal3.dpr.go.id/index.php/politika/article/view/286>.

²⁰ Putra dan Noris, "Lembaga Penyelesaian sengketa Pemilu yang ideal di Indonesia."

²¹ Peter Leyland, "Thailand's constitutional watchdogs: dobermans, bloodhounds or lapdogs," *J. Comp. L.* 2 (2007): 151.

²² Andrew Harding dan Peter Leyland, "The Constitutional Courts of Thailand and Indonesia: Two Case Studies from South East Asia," *J. Comp. L.* 3 (2008): 118.

B. METHOD

This research employs a normative research approach utilizing statutory, historical, and comparative legal approaches.²³ Normative research involves secondary data sources such as legal regulations, books, journals, theses, and others. The technique used for collecting legal materials and literature includes literature review and documentary study. Legal materials, in the form of regulations, are examined normatively and analyzed using historical and comparative approaches.²⁴

C. RESULTS AND DISCUSSIONS

1. History of General Elections in Indonesia and Thailand

Miriam Budiardjo explains that in 1955, Indonesia held its first general election, using a Proportional Representation system. Voters could either directly choose a candidate from a list (a characteristic of the district system), or they could vote for a party, which would then allocate votes to candidates based on their list number.²⁵ Candidates were elected based on the Quotient of the Electors List. In subsequent elections in 1971, 1977, 1982, 1987, 1992, 1997, and 1999, Indonesia continued to use the Proportional Representation system with closed-list proportional representation.²⁶ During this period, voters could only vote for a party, which then allocated votes to candidates based on their position on the list.²⁷

Moving forward to the 2004 general election, Budiardjo describes a shift to a Proportional Representation system with open-list proportional representation. In this system, voters could directly choose their preferred candidates.²⁸ This change allowed candidates listed higher on the ballot to have a better chance of winning because votes cast for the party were attributed to candidates in order of their placement on the list. From a gender perspective, Article 65 of Law No. 12/2003 stipulates that each political party must nominate at least 30% female candidates for the People's Representative Council and Regional Representative Council seats in each electoral district.²⁹

From the historical progression of general elections held in Indonesia over the years, a proportional representation system has been consistently utilized. However, there have been modifications to this proportional system over time, tailored to fit the conditions and circumstances of the governing system at the respective periods.

²³ Ralf Michaels, "The functional method of comparative law," *The Oxford handbook of comparative law* 2 (2006): 345–89.

²⁴ David Tan, "Metode Penelitian Hukum: Mengupas Dan Mengulas Metodologi Dalam Menyelenggarakan Penelitian Hukum," *Nusantara: Jurnal Ilmu Pengetahuan Sosial* 8, no. 8 (2021): 2463–78.

²⁵ Dewanto Wishnu, "Tinjauan Hukum Implementasi Sistem Demokrasi Pancasila Melalui Pemilihan Umum Langsung Di Indonesia" (PhD Thesis, UNIVERSITAS TAMA JAGAKARSA, 2017), <http://digilib.iblam.ac.id/id/eprint/153/1/Tesis%20-%20Dr.%20Wishnu%20Dewanto.pdf>.

²⁶ Mahesa Rannie, "Legal regulations for the general election system in Indonesia from the 1955 election to the concurrent election of 2019," *Nurani: Jurnal Kajian Syari'ah dan Masyarakat* 20, no. 2 (2020): 247–64.

²⁷ Reni Suwarso, "Indonesian democracy: the impact of electoral systems on political parties, 1999–2009" (PhD Thesis, Victoria University, 2016), https://vuir.vu.edu.au/31051/3/SUWARSO%20Reni-thesis_nosignature.pdf.

²⁸ Andrew Ellis, "Indonesia: Transition and Change but Electoral System Continuity," dalam *The Handbook of Electoral System Choice*, ed. oleh Josep M. Colomer (London: Palgrave Macmillan UK, 2004), 497–511, https://doi.org/10.1057/9780230522749_29.

²⁹ Nugraheni Pancaningtyas, "The gender quota, the electoral system and women's representation in Indonesia: case studies of two district parliaments," 2015, <https://core.ac.uk/download/pdf/156712734.pdf>.

In addition, Law Number 7 of 2017 concerning General Elections affirms that "general elections shall be conducted based on the principles of direct, universal, free, secret, fair, and honest voting. In organizing general elections, the election organizers must adhere to these principles and ensure that the process adheres to the principles of: a. independence; b. honesty; c. fairness; d. legal certainty; e. orderliness; f. transparency; g. proportionality; h. professionalism; i. accountability; j. effectiveness; and k. efficiency."

Thailand's democratic transition began in 1932 with a bloody coup. This event, known as the Siamese Revolution, marked a turning point in Thai history.³⁰ It involved a group of military members known as the 'four musketeers' who overthrew King Prajadhipok, ending the absolute monarchy system. Thailand subsequently transitioned into a constitutional monarchy.

This first coup marked the beginning of a long journey towards democracy in Thailand. Since then, the military periodically seized control, leading to several power struggles within the military itself. This continued until 1977.³¹

The student group and civilian parties successfully overthrew the military junta's rule.³² During the parliamentary government at that time, the goal was to build democracy, demonstrated by the enactment of democratic constitutions, legislative elections, and political freedoms. Political suppression by the military-dominated government led to this coup.

The parliamentary government lasted for nearly 12 years. However, the military staged another coup against the civilian government in February 1991. This was triggered by Prime Minister Chatichai's attempts, who had been in power since 1989, to gain more control over the military's power.³³ Since then, Thailand's political situation has remained turbulent, with several military juntas occurring.³⁴

In 2001, Thailand entered another period of democracy under the government of Thaksin Shinawatra and the Thai Rak Thai party³⁵. However, in 2006, the military staged another coup against Thaksin's government. On September 19, 2006, Thaksin Shinawatra, the Prime Minister of Thailand, was ousted by the military junta. Ironically, the coup took place while Thaksin was outside Thailand, attending a United Nations meeting in New York, USA.³⁶ This was not the first military coup in Thailand's history, but it occurred without bloodshed.

After the peaceful coup, the military rulers enacted emergency laws, including restrictions on freedom of assembly. The media came under extensive military scrutiny, with television

³⁰ Arjun Subrahmanyam, "The Unruly Past: History and Historiography of the 1932 Thai Revolution," *Journal of Contemporary Asia* 50, no. 1 (1 Januari 2020), <https://doi.org/10.1080/00472336.2018.1556319>.

³¹ Nicholas Farrelly, "Why Democracy Struggles: Thailand's Elite Coup Culture1," *Australian Journal of International Affairs* 67, no. 3 (Juni 2013): 281–96, <https://doi.org/10.1080/10357718.2013.788123>.

³² Byung-Kook Kim dan Ezra F. Vogel, ed., "Chapter Three. State Building: The Military Junta's Path to Modernity through Administrative Reforms," dalam *The Park Chung Hee Era* (Harvard University Press, 2011), 85–112, <https://doi.org/10.4159/harvard.9780674061064.c3>.

³³ Andrew C. O'Connor, "Why Thailand's military stepped in" (PhD Thesis, Monterey, California. Naval Postgraduate School, 2011), <https://core.ac.uk/download/pdf/36699491.pdf>.

³⁴ Paul Chambers, "Arch-Royalist Autocracy Unlimited: Civil-Military Relations in Contemporary Thailand," dalam *Rights and Security in India, Myanmar, and Thailand*, ed. oleh Chosein Yamahata, Suelo Sudo, dan Takashi Matsugi (Singapore: Springer Singapore, 2020), 193–217, https://doi.org/10.1007/978-981-15-1439-5_11.

³⁵ Kevin Hewison, "Thaksin Shinawatra and the Reshaping of Thai Politics," *Contemporary Politics* 16, no. 2 (Juni 2010): 119–33, <https://doi.org/10.1080/13569771003783810>.

³⁶ Noah Keone Viernes, "Thai street imaginaries: Bangkok during the Thaksin era (2001–2010)" (PhD Thesis, [Honolulu]:[University of Hawaii at Manoa],[May 2012], 2012), <https://scholarspace.manoa.hawaii.edu/handle/10125/101550>.

broadcasters prohibited from airing viewer opinions. It remains unclear how long these laws will be enforced.

The conflict between the People Alliance for Democracy (PAD) and the People's Power Party (PPP), led by Prime Ministers Samak Sundaravej and Somchai Wongsawat, respectively, was followed by the National United Front of Democracy Against Dictatorship (UDD) and the Democrat Party under Prime Minister Abhisit Vejjajiva. This conflict stemmed from events in 2005-2006, where the PAD protested against the Thai Rak Thai party and Prime Minister Thaksin Shinawatra.³⁷ Supporters of the Alliance for Democracy often wore yellow shirts, symbolizing respect for King Bhumibol Adulyadej, hence referred to as "Yellow Shirts".³⁸ Supporters of the National United Front of Democracy Against Dictatorship wore red shirts, known as "Red Shirts", and were aligned with Prime Minister Thaksin Shinawatra.³⁹

The three-month conflict that engulfed Thailand claimed the lives of 23 people and left 800 others injured. The anti-government movement, led by Sithep Thaugsuban, demanded the resignation of Yingluck Shinawatra, accusing her of being a puppet for her brother Thaksin.⁴⁰ Yingluck, Thaksin's younger sister, refused to step down, leading to the resignation of all opposition parliament members in December 2013.

Currently, Thailand is governed by military junta leader Prayuth Chan-ocha. Prayuth was elected as Prime Minister in a parliamentary session in May 2014, winning more than half of the parliamentary votes as the sole candidate.⁴¹ This outcome was expected, as he had seized power in May 2014, leading military forces to suppress the six-month-long protests.⁴²

General Prayuth outlined a three-phase plan to stabilize Thailand's political dynamics.⁴³ The first phase, lasting three months, focused on reconciliation, followed by a second phase to draft a new constitution and form a cabinet, which took a full year. Only after completing these phases would new elections be held under a fully democratic system acceptable to all parties, with legal aspects modernized.

Prayuth warned that if protests continued, he would have no choice but to deploy troops.⁴⁴ Nearly 6,000 troops and armored vehicles were stationed in Bangkok to deter protests.⁴⁵ Since

³⁷ Ram Jotikut, "A Brief History of Protest Politics in Thailand (2001–2014)," *Political Science and Public Administration Journal* 7, no. 2 (2016): 79–117.

³⁸ Aim Sinpeng, "From the yellow shirts to the whistle rebels: Comparative analysis of the People's Alliance for Democracy (PAD) and the People's Democratic Reform Committee (PDRC)," dalam *Routledge handbook of contemporary Thailand* (Routledge, 2019), 145–55, <https://www.taylorfrancis.com/chapters/edit/10.4324/9781315151328-11/yellow-shirts-whistle-rebels-aim-sinpeng>.

³⁹ Thannapat Jarenpanit, "Love, Anger and Hate of the Red Shirts: The Contestation of Meanings of Politics and Justice," *Thammasat Review* 20, no. 2 (2017): 103–24.

⁴⁰ Jotikut, "A Brief History of Protest Politics in Thailand (2001–2014)."

⁴¹ Jacob I. Ricks, "Thailand's 2019 vote: The general's election," *Pacific Affairs* 92, no. 3 (2019): 443–57.

⁴² Janjira Sombatpoonsiri dan Thammachat Kri-aksorn, "Taking back civic space: Nonviolent protests and pushbacks against autocratic restrictions in Thailand," *Protest* 1, no. 1 (2021): 80–108.

⁴³ Termsak Chalermpananupap, "2023/24 'What's Interesting about the Thai General Election is not Who Wins but What Comes After' by Termsak Chalermpananupap," 2023, <https://www.iseas.edu.sg/category/media/page/352/articles-commentaries/iseas-perspective/page/13/>.

⁴⁴ Edoardo Siani, "Thailand 2019–2021: Military, monarchy, protests," *Asia Maior* 32 (2022): 238–57.

⁴⁵ Khajornsak Sitthi, "Protest, participation and profits: the Redshirt movement in Thailand, 2010–2016" (PhD Thesis, University of Leeds, 2017), 2010–16, <https://etheses.whiterose.ac.uk/19359/>.

then, the country has been managed by the military junta known as the National Council for Peace and Order (NCPO).⁴⁶

The NCPO insisted on its neutrality among opposing political factions. Previously, General Prayuth had promised a return to democracy, with new elections scheduled for October 2015 under a new constitution to be drafted by a special committee.⁴⁷

2. Resolution of Electoral Disputes in Indonesia and Thailand

The term "General Election" in Indonesia is defined as an election held to select members of the People's Representative Council, members of the Regional Representative Council, the President and Vice President, as well as members of the Regional People's Representative Councils. However, materially interpreting general elections in Indonesia also includes direct elections as a form of exercising popular sovereignty, specifically the elections for Regional Heads, comprising Governors, Regents, and Mayors.

To ensure legal consistency, certainty, and the effective and efficient conduct of general elections, the Indonesian government enacted the codification of election laws with the passage of Law No. 7 of 2017 concerning General Elections in August 2017. In Book IV of this law, the following aspects are regulated:

- a. Violations of general elections, which include violations of the ethical codes of election organizers and administrative violations during elections.
- b. Disputes over the election process.
- c. Disputes over election results.

The term "General Election" in Indonesia is interpreted as an election conducted to choose members of the People's Representative Council, members of the Regional Representative Council, the President and Vice President, as well as members of the Regional People's Representative Councils directly by the people. The election process is governed by the principles of direct, general, free, secret, fair, and honest elections, as stipulated in Law No. 7 of 2017 concerning General Elections.

The Election Commission is the national, permanent, and independent institution responsible for conducting general elections. The Election Supervisory Body oversees the election process across the entire territory of the Republic of Indonesia. Together with the Election Organizer Ethics Council, these entities form a unified function in the organization of elections.

Violations of the election organizer's code of ethics involve breaches of the ethical standards sworn or promised by election organizers before assuming their duties. The Election Organizer Ethics Council is tasked with investigating and adjudicating complaints and/or reports of alleged violations of the election organizer's code of ethics by the Election Commission and the Election Supervisory Body.

Administrative violations during elections encompass breaches of procedures, methods, or mechanisms related to the administration of elections at every stage of the election process, excluding election crimes and violations of the election organizer's code of ethics. Such

⁴⁶ Panuwat Panduprasert, "Legitimacy and military rule in today's Thailand," *Kyoto Review of Southeast Asia* 20 (2017), <https://kyotoreview.org/yav/legitimacy-military-rule-thailand/>.

⁴⁷ Daljit Singh dan Malcolm Cook, ed., "Thailand in 2018: Military Dictatorship under Royal Command," dalam *Southeast Asian Affairs 2019* (ISEAS Publishing, 2019), 327–40, <https://doi.org/10.1355/9789814843164-021>.

violations of the Election Commission's regulations during any stage of the election process constitute administrative violations. Unlike previous laws where the Election Commission resolved administrative violations, Law No. 7 of 2017 designates the Election Supervisory Body to handle administrative violations.

The Election Supervisory Body must resolve administrative violations within 14 (fourteen) working days upon receiving and registering findings and reports. Consequently, the Election Commission loses its authority to settle any disputes arising during the election process. Instead, the Election Commission is mandated to enforce the decisions of the Election Supervisory Body within 3 (three) working days from the date the decisions are announced.

Decisions made by the Election Commission may entail administrative sanctions such as the cancellation of candidates for the People's Representative Council, Regional Representative Council, President, Vice President, and Regional People's Representative Council. Candidates affected by administrative cancellation may appeal to the Supreme Court within 3 (three) working days from the date the Election Commission's decision is determined. The Supreme Court must render its decision within 14 (fourteen) working days from the date the case file is received, and its decision is final and binding.

Disputes arising from the electoral process refer to conflicts between electoral participants and disputes between electoral participants and the Election Organizer resulting from decisions made by the Election Commission, Provincial Election Commission, and District/City Election Commission. These electoral disputes are adjudicated by the Election Supervisory Body. The Election Supervisory Body is required to receive and resolve electoral disputes within a maximum period of 12 (twelve) working days from the date of receiving the petition.

Decisions made by the Election Supervisory Body are final and binding, except for decisions regarding electoral disputes related to the verification of political party participants, the establishment of the final list of candidates for the People's Representative Council, Regional Representative Council, President and Vice President, and Regional People's Representative Council, and the establishment of Candidate Pairs. If the parties involved do not accept the decision of the Election Supervisory Body on these matters, they may file a legal appeal to the State Administrative Court within 5 (five) working days from the date the decision of the Election Supervisory Body is announced.

The State Administrative Court reviews and adjudicates on these appeals within a maximum period of 21 (twenty-one) working days from the date the complete lawsuit is filed. The court's decision is final and binding and cannot be further appealed. The Election Commission must implement the court's decision within 3 (three) working days.

Reports of alleged electoral crimes are forwarded by the Election Supervisory Body, Provincial Election Supervisory Body, District/City Election Supervisory Body, and/or District Election Supervisory Committee to the Indonesian National Police within 24 hours from the time these bodies determine that the action or conduct in question is suspected to be an electoral crime. Suspected electoral crimes are declared by these bodies after coordinating with the Indonesian National Police and the Attorney General's Office within the Integrated Law Enforcement Center.

Investigators, upon finding sufficient preliminary evidence of electoral crimes during their investigations, submit their findings and case files to the criminal investigators within 24

hours. The Indonesian National Police criminal investigators, upon completing their investigation, submit their investigation results and case files to the public prosecutor within 14 (fourteen) days from the date they receive the report and can proceed without the presence of the suspect. Cases involving electoral crimes are examined, prosecuted, and adjudicated by the District Court.

In Indonesia, the Constitutional Court (Mahkamah Konstitusi) plays a crucial role in resolving disputes related to the national election results. If there is a dispute between the General Election Commission (Komisi Pemilihan Umum) and electoral participants regarding the determination of the national election vote count results, electoral participants can file a petition to annul the decision on the vote count by the General Election Commission with the Constitutional Court. This petition must be filed within 3 x 24 (three times twenty-four) hours from the announcement of the national election vote count results by the General Election Commission.

The authority of the Constitutional Court in handling these disputes is further regulated under Constitutional Court Regulation No. 1 of 2014 concerning Guidelines for Proceedings in Disputes over the Election of Members of the People's Representative Council, Regional Representative Council, President and Vice President, and Regional People's Representative Council. The General Election Commission, Provincial Election Commission, and District/City Election Commission are obligated to follow the decisions of the Constitutional Court.

Regarding the resolution of election disputes in Indonesia, it can be concluded that there are several highest decision-making bodies distinguished by the type of dispute in the electoral process. For violations of the code of ethics by electoral organizers, the highest decision-making body is the Honorary Council of Election Organizers. For administrative violations and electoral disputes (excluding decisions by the General Election Commission on the verification of political party participants and the final list of candidates for legislative bodies and presidential elections), the highest decision-making body is the Election Supervisory Board. In the case of electoral disputes concerning decisions by the General Election Commission on the verification of political party participants and the final list of candidates for legislative bodies and presidential elections, the highest decision-making body is the administrative court, specifically the State Administrative Court. For criminal offenses, the highest decision-making body is the general court, specifically the District Court. In the case of disputes over election results, the highest decision-making body is the Constitutional Court.

Thailand serves as another example of a country that resolves disputes through non-judicial institutions despite being a monarchy.⁴⁸ Thailand has adopted a democratic system of government, and its electoral body is known as the Election Commission of Thailand (ECT).⁴⁹ The ECT is mandated by the Thai Constitution to handle complaints and objections related to elections.⁵⁰

⁴⁸ Björn Dressel, "Governance, Courts and Politics in Asia," *Journal of Contemporary Asia* 44, no. 2 (3 April 2014): 259–78, <https://doi.org/10.1080/00472336.2013.870827>.

⁴⁹ Takeshi Kawanaka, "The stakes of politics and electoral administration: a comparative study of Southeast Asian democracies," *IDE Discussion Paper* 536 (2015), https://ir.ide.go.jp/record/37643/files/IDP000536_001.pdf.

⁵⁰ Peter Leyland, "Constitutional Design in Thailand: the Management of Electoral Process in an Emergent Democracy," *The Journal of Parliamentary and Political Law* 4, no. 2 (2010): 299–321.

As a commission responsible for ensuring that elections in the Kingdom of Thailand are legitimate and in accordance with the constitution, the Election Commission of Thailand has broad powers granted by law. These powers include investigation, handling, and imposing penalties for violations of electoral laws. However, criminal offenses fall under the jurisdiction of the courts.

Thus, both Indonesia and Thailand have established frameworks to ensure the integrity and legality of their respective electoral processes, each utilizing distinct institutional mechanisms to address various types of electoral disputes.

In Thailand, electoral disputes are resolved through two main channels:

- a. Non-Judicial Channel:
 - 1) Handled by the Election Commission of Thailand (ECT).
 - 2) Parties aggrieved by the results of elections may file a complaint with the ECT within a specified timeframe.
 - 3) The ECT will examine the complaint and conduct investigations if necessary.
 - 4) The ECT may summon witnesses, experts, and relevant parties involved in the dispute.
 - 5) The ECT will issue a decision on the complaint.
 - 6) The ECT's decision can:
 - a) Accept the complaint and annul election results in specific areas.
 - b) Reject the complaint and affirm the election results.
 - c) Order a re-vote in specific areas.
- b. Judicial Channel:
 - 1) Handled by the Constitutional Court of Thailand.
 - 2) Parties dissatisfied with the ECT's decision may appeal to the Constitutional Court.
 - 3) The Constitutional Court will adjudicate the appeal and issue a final and binding decision.

In addition to these main channels, Thailand also employs a system of yellow and red cards to address electoral violations:

- a. Yellow card: Issued to candidates or their teams for minor violations.
- b. Red card: Issued to candidates or their teams for serious violations.
- c. Recipients of a red card are disqualified from the current election and barred from running in future elections.

The Election Commission of Thailand and the Constitutional Court have the authority to impose sanctions on parties found guilty of electoral violations, including warnings, fines, revocation of voting rights, or even criminal penalties.

3. The Role of the Constitutional Court in Electoral Disputes in Indonesia and Thailand

In Indonesia, the Constitutional Court's role has been institutionalized under Article 24C paragraph (1) of the 1945 Constitution, which specifies that the Constitutional Court has four constitutionally entrusted powers and one constitutional obligation. This provision is further reinforced by Article 10 paragraphs (1)(a) through (d) of Law Number 24 of 2003 concerning the Constitutional Court. The four powers of the Constitutional Court are:

- a. Reviewing laws against the 1945 Constitution;
- b. Adjudicating disputes over state institution authorities conferred by the 1945 Constitution;
- c. Deciding on the dissolution of political parties;
- d. Resolving disputes regarding election results.

Meanwhile, based on Article 7 paragraphs (1) through (5) and Article 24C paragraph (2) of the 1945 Constitution, reiterated in Article 10 paragraph (2) of Law Number 24 of 2003, the constitutional obligation of the Constitutional Court is to render decisions on the opinion of the People's Consultative Assembly that the President and/or Vice President has committed a legal violation, or a disgraceful act, or does not meet the qualifications as President and/or Vice President as stipulated in the 1945 Constitution.

Since the reform era, direct involvement of the people in elections necessitates mechanisms for resolving disputes. The Constitutional Court has the authority to decide Election Disputes in order to ensure clean and democratic elections. From 2004 to date, a total of 2,173 cases have been accepted by the Constitutional Court. The highest number of Election Dispute cases received by the Constitutional Court occurred during the 2014 elections, with 902 applications for Election Disputes.

As stipulated in Law Number 32 of 2004 concerning Regional Governments, Article 106 paragraph (1) before amendment stated: "Objections to the determination of the election results of regional heads and deputy regional heads can only be submitted by the candidate pair to the Supreme Court within 3 (three) days after the determination of the election results of regional heads and deputy regional heads." Furthermore, the submission of disputes regarding the election results of Regional Heads and Deputy Regional Heads is elaborated in Article 3 of the same Law, which states: "The objection submission to the Supreme Court as referred to in paragraph (1) shall be submitted to the high court for regional head and deputy regional head elections of provinces and to the district court for regional head and deputy regional head elections of regencies/cities."

However, in its development, the authority to settle disputes over the election of Regional Heads and Deputy Regional Heads has shifted to the Constitutional Court since the issuance of Law Number 12 of 2008 concerning the Second Amendment to Law Number 32 of 2004 concerning Regional Governments. This is explained in Article 236C which states: "The handling of disputes over vote count results of regional head and deputy regional head elections by the Supreme Court is transferred to the Constitutional Court no later than 18 (eighteen) months after this Law is enacted." In performing its duties to settle election disputes, the Constitutional Court operates under the guidelines set forth in Constitutional Court Regulation No. 15/PMK/2008 concerning Procedures for Resolving Election Disputes.

In Indonesia, the Constitutional Court exercises its authority to resolve election disputes through a mechanism known as speedy trial, as stipulated in Constitutional Court Regulation No. 15 of 2008. This regulation mandates that the adjudication of local election disputes (Pemilihan umumkada) is conducted swiftly and, serving as both the first and final instance where decisions are binding and conclusive. The speedy trial mechanism, as mandated by law, requires the Constitutional Court to resolve disputes within 14 working days through a formal

judicial process. During these expedited proceedings, constitutional judges are tasked with evaluating all evidence presented, which is crucial as it forms the basis for the court's rulings.

The Constitutional Court categorizes violations based on their severity: systematic, structured, and massive violations versus sporadic violations. This categorization empowers the Constitutional Court as the singular institution capable of deciding cases involving local election results for Regional Heads and Deputy Regional Heads. In some cases, the Constitutional Court has demonstrated its authority by directly assigning rights to one candidate pair if another candidate pair is convincingly proven to have committed violations.

The decisions issued by the Constitutional Court, as the final and binding rulings often spark public debate. Some segments of society criticize these decisions for allegedly diverging from legislative frameworks, prompting demands from both the public and practitioners for the court to thoroughly examine, adjudicate, and decide on disputes. Consequently, resolving these controversies stands as an ongoing challenge for the Constitutional Court.

In Thailand, the Constitutional Court's role in election disputes is specifically mandated to ensure fairness and integrity throughout the electoral process.⁵¹ Its primary functions include:

- a. Adjudicating election disputes: The Constitutional Court accepts petitions from various parties such as candidates, political parties, or voters alleging election violations or irregularities. It investigates and adjudicates these disputes, issuing legally binding decisions.
- b. Interpreting election laws: The Constitutional Court interprets election laws to ensure their compliance with the Constitution. These interpretations serve as guidelines for election organizers and participating political parties.
- c. Resolving disputes between Election Commissions: The Constitutional Court can settle disputes between Election Commissions if they cannot be resolved through mutual agreement. Its decisions are final and binding on all parties involved.
- d. Overseeing the electoral process: The Constitutional Court has the authority to monitor the entire electoral process, making recommendations to election organizers to ensure fairness and honesty.
- e. Dissolving political parties: The Constitutional Court can decide on petitions for the dissolution of political parties submitted by the Election Commission. It may dissolve a political party if it is found to have committed serious violations of the Constitution or election laws.

The Constitutional Court's authority to handle election disputes in Thailand is derived from the 1997 Constitution. Article 210 of the Constitution establishes the Constitutional Court as an independent constitutional court responsible for adjudicating election disputes, interpreting election laws, and resolving conflicts between Election Commissions.

D. CONCLUSION

General elections are one of the means to persuasively influence the populace (without coercion) through activities such as rhetoric, public relations, mass communication, lobbying, and related efforts. Despite the condemnation of agitation and propaganda in democratic nations, these techniques are widely used by candidates and politicians as political

⁵¹ Khemthong Tonsakulrungruang, "The Constitutional Court of Thailand: From Activism to Arbitrariness," *Constitutional courts in Asia: A comparative perspective*, 2018, 184–213.

communicators during election campaigns. The electoral process itself does not always proceed smoothly. Various obstacles during the conduct of elections, both during and before the actual voting process, present challenges that can have significant repercussions if not promptly addressed. Electoral disputes can be resolved through both non-judicial and judicial means. The mechanism for resolving disputes in Indonesia is governed by Law No. 7 of 2017 and involves different institutions depending on the stage of the electoral process. For administrative violations of electoral laws, reports can be filed with the Election Supervisory Agency, the Supreme Court, and the Electoral Organizer Honorary Council. The Electoral Organizer Honorary Council also has the authority to adjudicate violations of ethical codes during the electoral process. Furthermore, disputes over the electoral process can be processed through the Election Supervisory Agency, adjudication forums, or the Administrative Court. In Thailand, the Election Commission of Thailand (ECT), empowered by the Thai Constitution, handles complaints and objections related to elections. Thailand's handling of objections differs from many other countries, as the Election Commission of Thailand functions as the primary body for addressing objections. By law, the ECT is granted extensive authority for investigation, handling, and imposing severe penalties to punish violations of electoral laws. Decisions issued by the Constitutional Courts of Indonesia and Thailand serve as final and binding rulings. One notable difference is the number of institutions involved in resolving electoral disputes in Indonesia, depending on the stages that must be navigated by aggrieved parties. Conversely, in Thailand, the commission ensures that elections conducted in the Kingdom are lawful and in accordance with the constitution. The authority granted by law to the Election Commission of Thailand enables this institution to wield extensive powers, including investigation, handling, and imposing penalties for violations of electoral laws.

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