

## Regulatory Reconstruction of Electoral Process Dispute Resolution Based on Justice In Indonesia

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### KEYWORDS

regulatory reconstruction,  
election disputes,  
mediation, adjudication,  
substantive justice,  
transparency

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### ABSTRACT

This study aims to analyze the weaknesses of regulations on election dispute resolution in Indonesia and formulate a more equitable regulatory reconstruction to increase the effectiveness and legal certainty in the election process. Using normative juridical methods and empirical approaches, this study examines the applicable regulations. The results of the study show that the current regulations do not fully reflect the principle of substantive justice, the effectiveness of the electoral dispute resolution system in Indonesia is still constrained by the imbalance between legal structure, legal substance, and legal culture. As a solution, this study recommends the reconstruction of election dispute resolution regulations, including extending the dispute resolution period to 21 working days, strengthening the legal force of mediation results to be binding, ensuring that the execution of adjudication decisions can run well, and applying sanctions for election organizers who do not carry out the decision in a timely manner. The novelty of this study lies in the critical analysis of the weaknesses of nationally applicable regulations as well as the proposed legal reconstruction that emphasizes more on substantive justice in resolving election disputes in Indonesia. With the improvement of regulations, it is hoped that the election dispute resolution system in Indonesia can be more transparent, effective, and fair, thereby increasing public trust in the election process and strengthening the legitimacy of election results in Indonesia.

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### Introduction

Elections are a fundamental element in a democratic system that allows the people to directly elect leaders and representatives (Basuki, 2020). In Indonesia, elections are held based on the principles of direct, public, free, secret, honest, and fair (LUBER JURDIL) as mandated in Article 22E paragraph (1) of the 1945 Constitution and regulated in Law Number 7 of 2017 concerning Elections (Izzaty & Nugraha, 2019). Quality

elections must be able to ensure political representation, fairness in the implementation process, and transparency in every stage.

However, in practice, the implementation of elections in Indonesia is often colored by disputes over the election process, which arise due to decisions or actions of election organizers that are considered detrimental to election participants, both political parties and individual candidates (Rahmatunnisa, 2017). These disputes can be in the form of disputes related to candidacy, permanent voter lists (DPT), campaigns, the use of campaign funds, and other administrative violations (Rahmiz & Yasin, 2021). The resolution of election disputes is a crucial issue because if not resolved properly, it can disrupt the legitimacy of the election results and reduce public trust in democracy.

To resolve election disputes, the Election Supervisory Agency (Bawaslu) is given the authority to handle disputes through two main mechanisms: mediation and adjudication (Fahmi et al., 2020). Mediation aims to find a peaceful solution between the parties to the dispute, while adjudication is a settlement mechanism through a legal decision by Bawaslu (Helmi, 2019). Although regulations have regulated this mechanism, in practice, there are various weaknesses that hinder the effectiveness of resolving electoral disputes in Indonesia.

One of the main weaknesses in the regulation of election dispute resolution lies in the very short time frame, which is a maximum of 12 days (Utang Rosidin, Uu Nurul Huda, 2021). This limited time limit often hampers the overall examination of the case, making it difficult for the authorities to conduct an in-depth analysis of the evidence submitted. As a result, there is a potential for injustice in decision-making due to the limited time available.

In addition, another significant weakness is the weak legal power of the mediation results. This is due to the absence of a clause that explicitly obliges the parties to the dispute to abide by the agreement that has been reached in the mediation process. Without clear sanctions or enforcement mechanisms, agreements obtained through mediation often do not have a strong binding force, so there is a risk of being ignored by one of the parties.

Furthermore, uncertainty in the execution of adjudication decisions is also a crucial problem. Some of the decisions that have been issued by the Election Supervisory Agency (Bawaslu) are not always carried out in a timely manner by the General Election Commission (KPU) and the Independent Election Commission (KIP). This condition has the potential to cause legal uncertainty for election participants, because even though the decision has been issued, its implementation still depends on the will and readiness of the authorities. This shows that there are gaps in regulations that need to be corrected so that the decisions that have been determined can be implemented effectively and fairly.

Election disputes that are not resolved properly can lead to political conflicts, distrust of election results, and reduced public participation in democracy. Therefore, the reconstruction of election dispute resolution regulations is urgently needed to ensure that every dispute can be resolved fairly, transparently, and oriented towards legal certainty.

Previous studies have examined various aspects of electoral dispute resolution in Indonesia. Rahmatunnisa (2017) highlighted the challenges in election dispute resolution, emphasizing the importance of transparency and fairness in resolving conflicts arising during elections. Similarly, Fahmi et al. (2020) discussed the limitations of the existing electoral dispute mechanisms, particularly focusing on the inefficiency of adjudication and mediation processes in addressing election violations. Both studies underscore the

need for regulatory improvements to ensure more effective and just resolution of electoral disputes in Indonesia.

The urgency of this research is reflected in the increasing frequency of election-related disputes in Indonesia, which jeopardize the legitimacy of electoral outcomes and erode public trust in the democratic process. The current regulatory framework for resolving election disputes has significant weaknesses, particularly in terms of the short time frame for dispute resolution and the lack of binding force in mediation outcomes. These issues highlight the need for a more comprehensive and just regulatory reconstruction to ensure that election disputes are resolved fairly, transparently, and efficiently, thereby reinforcing public confidence in the electoral process and the integrity of the results.

Although previous studies have examined the general effectiveness of electoral dispute resolution mechanisms, there is a lack of research focused on the specific legal and procedural shortcomings of Indonesia's electoral dispute resolution system. Most studies have overlooked the practical challenges of enforcing adjudication decisions and the weak legal force of mediation results. This research aims to fill this gap by critically analyzing the current regulatory framework and proposing a reconstruction that better aligns with the principles of substantive justice, ensuring fair and effective dispute resolution.

The novelty of this study lies in its critical analysis of Indonesia's election dispute resolution regulations and the proposal for a more justice-oriented regulatory reconstruction. Unlike previous studies, this research not only highlights the weaknesses in the existing system but also provides a detailed framework for legal reforms that address these deficiencies. By focusing on enhancing the legal force of mediation results, extending the dispute resolution period, and ensuring the timely execution of adjudication decisions, this study offers new insights into improving the fairness and effectiveness of the electoral dispute resolution system in Indonesia.

The objective of this research is to analyze the current electoral dispute resolution regulations in Indonesia and propose a more equitable legal framework that emphasizes substantive justice. The study aims to identify the key weaknesses in the existing system, such as the short dispute resolution period, weak legal force of mediation, and delayed execution of adjudication decisions. The findings will benefit policymakers, legal practitioners, and electoral authorities by providing actionable recommendations for improving the electoral dispute resolution process. With these improvements, the research hopes to enhance the transparency, accountability, and fairness of Indonesia's electoral system, ultimately strengthening the legitimacy of election results and increasing public trust in the democratic process.

## **Research Methods**

This study uses a normative juridical method with an empirical approach (Sonata, 2014). The normative approach is used to analyze applicable regulations, including Law Number 7 of 2017 concerning Elections, Bawaslu Regulation, and Supreme Court Regulation Number 5 of 2017 concerning Election Dispute Resolution. An empirical approach is carried out through case studies in various regions in Indonesia to see how the implementation of this regulation is in practice. Meanwhile, an empirical approach is used to look at the implementation of regulations in various regions to understand the obstacles faced in the practice of resolving election disputes.

This research also uses a conceptual approach by examining relevant legal theories, such as John Rawls' Theory of Justice, Lawrence M. Friedman's Theory of Legal Systems, and Satjipto Rahardjo's Theory of Legal Protection. Data analysis is carried out in a qualitative normative manner, by reviewing applicable regulations, identifying legal weaknesses in resolving election disputes, and evaluating the effectiveness of the mechanisms that have been implemented. Based on this analysis, this study then formulates a more effective and fair regulatory reconstruction, in order to increase transparency, legal certainty, and the effectiveness of resolving election disputes in Indonesia.

## **Results and Discussions**

### **Regulatory Weaknesses in Resolving Election Disputes in Indonesia**

The settlement of election disputes in Indonesia is currently regulated in Law Number 7 of 2017 concerning Elections, which gives authority to the Election Supervisory Agency (Bawaslu) to handle disputes through mediation and adjudication mechanisms (Erick & Ikhwan, 2022). Although this regulation has provided a legal basis for the resolution of election disputes, in practice, the implementation of the mechanism still faces various obstacles that contribute to legal uncertainty for election participants. Based on the study of applicable regulations and various empirical findings in a number of regions, there are several fundamental weaknesses that hinder the effectiveness of resolving election disputes.

One of the main problems faced in resolving election disputes is the limitation of the settlement period. Applicable regulations stipulate that disputes must be resolved within a maximum of 12 working days. However, this short time limit is often not enough to conduct a thorough examination of the case filed, especially if the dispute involves a lot of evidence and witnesses. As a result, many disputes do not get optimal resolutions, causing dissatisfaction among election participants.

In addition, this time limitation also has an impact on the quality of analysis carried out in the dispute resolution process. In some cases, election organizers have had to work quickly to adjust to tight deadlines, potentially reducing the rigor in assessing the facts and evidence submitted. This condition shows that the dispute resolution period is too short a serious obstacle in ensuring fairness for all parties involved in the election.

In addition to the limited time for resolving disputes, another weakness in the regulation is the weak legal force of mediation results (Anggono, 2020). Mediation is one of the mechanisms applied in resolving election disputes with the aim of reaching a peaceful agreement between the parties to the dispute. However, in the applicable regulations, the results of mediation are not binding, so often the agreement that has been reached is not carried out by one of the parties.

The absence of sanctions for parties who ignore mediation agreements further weakens the effectiveness of this mechanism. In many cases, the parties benefiting from the status quo tend to ignore the outcome of mediation, as there are no firm legal consequences. This causes mediation to become just a formality, without providing a real solution for those seeking justice. Therefore, without stricter regulations to strengthen the binding power of mediation results, this mechanism will continue to face challenges in creating fair and effective dispute resolution.

In addition to mediation, another significant weakness in the regulation of election dispute resolution is uncertainty in the execution of adjudication decisions (Isnain et al., 2022). Adjudication is a dispute resolution mechanism that produces a binding decision,

so it should be carried out by all parties involved. However, in practice, many Bawaslu decisions are not immediately implemented by the General Election Commission (KPU) or the Independent Election Commission (KIP), which is responsible for the implementation of elections.

The result of the non-immediate execution of the adjudication decision is the delay in legal certainty for election participants. Participants who feel disadvantaged in the election hope to get justice through the adjudication mechanism, but when the ruling that has been determined is not implemented, they remain in a situation of uncertainty. This shows that there is a gap between existing regulations and their implementation in the field, which can ultimately reduce the legitimacy of the election dispute settlement system itself.

One of the main causes of the weak execution of adjudication decisions is the absence of firm sanctions for election organizers who ignore the decision. Currently, the regulation has not specifically regulated the legal consequences for parties who do not carry out the adjudication decision, so in many cases, the decisions that have been made by Bawaslu do not have a real impact.

This indecisiveness not only has an impact on election participants involved in disputes, but can also damage public trust in the electoral dispute resolution system in Indonesia. If there is no guarantee that the decisions produced by the competent authorities will be implemented, then the dispute resolution mechanism loses its function as a tool to uphold justice and legal certainty. Therefore, stricter regulatory revisions are needed to ensure that every ruling issued is truly enforceable.

Based on the various weaknesses that have been outlined above, it can be concluded that the existing regulations do not fully reflect the principle of substantive justice. According to John Rawls' Theory of Justice, justice must ensure equal access to legal protection for all parties, including in the context of resolving election disputes. However, with various obstacles in the current regulations, many election participants do not get the same opportunity to seek justice.

For this reason, more comprehensive legal reforms are needed to increase the effectiveness of the election dispute resolution mechanism. This reform can include extending the deadline for resolving disputes, strengthening the binding power of mediation results, and applying strict sanctions for parties who do not carry out adjudication decisions. With clearer and firmer regulatory improvements, it is hoped that the resolution of election disputes can be more transparent, accountable, and fair, so as to increase the legitimacy and integrity of democracy in Indonesia.

### **Reconstruction of Justice-Based Election Dispute Resolution Regulations**

Based on the weaknesses of the regulations that have been identified and the comparison with the election dispute resolution system in other countries, a more comprehensive regulatory reconstruction is needed to increase the effectiveness and fairness of the election dispute resolution process in Indonesia. This change aims to overcome various obstacles that have hindered legal certainty for election participants and increase the credibility of dispute resolution mechanisms. Therefore, this study recommends some fundamental changes in election dispute resolution regulations.

One of the main steps in regulatory reconstruction is to extend the dispute resolution timeframe. Currently, the deadline for resolving disputes is only 12 working days is often not enough to conduct a thorough examination of the evidence and facts submitted. Therefore, the regulations need to be amended so that the dispute resolution period is

extended to 21 working days, so that the examination process can be carried out more comprehensively and in-depth (Pambayun, 2023).

In addition, this extension of the period will also provide a wider space for the parties to the dispute to prepare arguments and evidence more carefully. Thus, the resulting decisions are not only fairer and more objective, but also able to reflect stronger legal certainty for election participants.

In addition to extending the dispute resolution period, it is also important to affirm the legal force of mediation results. Currently, one of the weaknesses in resolving election disputes is the absence of provisions that require the disputing parties to comply with the results of mediation. As a result, many of the agreements that have been reached in mediation are not executed consistently.

To address this issue, regulations must provide that the outcome of mediation is binding on the parties to the dispute. Thus, if one of the parties reneges on the agreement that has been made, it can be subject to appropriate sanctions. This provision will not only strengthen the effectiveness of the mediation mechanism, but also prevent the potential abuse of the mediation process as an effort to delay or thwart substantive dispute resolution.

In addition to strengthening the legal strength of mediation results, another effort that must be made is to increase the certainty of the execution of adjudication decisions. Currently, one of the main obstacles in resolving election disputes is the slow execution of the adjudication decision that has been issued by Bawaslu (Madda et al., 2022; Yulianto, 2022). In some cases, the General Election Commission (KPU) or the Independent Election Commission (KIP) does not immediately implement the decisions that have been set, thus creating legal uncertainty for election participants.

Therefore, a stricter supervision mechanism is needed for the KPU and KIP to ensure that adjudication decisions are carried out within the specified time. This mechanism can be in the form of direct supervision by independent institutions, the implementation of a periodic evaluation system, and the provision of administrative sanctions for election organizing institutions that do not implement decisions in a timely manner. With a stronger supervision system, the adjudication process will become more effective in ensuring fairness for all parties involved in the election.

To ensure that every decision resulting in dispute resolution has strong coercive force, regulations must also provide for sanctions for election organizers who do not comply with the ruling. Currently, the absence of firm sanctions for election organizers who ignore the decisions of Bawaslu or the Supreme Court is one of the main factors that hinder the effectiveness of dispute resolution.

Therefore, regulations must stipulate administrative and criminal sanctions for election organizers who deliberately do not carry out the decisions that have been set. Administrative sanctions can be in the form of removal from office or postponement of promotion for responsible officials, while criminal sanctions can be applied in the form of fines or imprisonment for serious violations. With clearer sanctions provisions, it is hoped that election organizers will be more responsible in carrying out the decisions that have been set, so that they can strengthen legal certainty in each stage of the election. (Razak, 2023)

Improvements in the legal structure will ensure that dispute resolution mechanisms are more transparent and accountable. Meanwhile, the improvement of legal substance will create clearer and more effective rules in regulating the dispute resolution process. Furthermore, strengthening a legal culture that emphasizes the principle of justice will

encourage all parties to comply with the regulations that have been set, so that the mechanism for resolving election disputes can run more fairly and effectively.

With the reconstruction of regulations that are more in favor of the principle of substantive justice, it is hoped that the process of resolving election disputes in Indonesia can run more transparently, accountably, and provide better legal certainty for all election participants. This will not only increase public trust in the electoral system, but also strengthen the foundation of democracy based on the principles of justice and legal certainty.

## **Conclusion**

Resolving election disputes is crucial for ensuring fairness and transparency in Indonesia's democratic process. Despite being regulated in Law Number 7 of 2017 concerning Elections, the dispute resolution mechanisms carried out by Bawaslu through mediation and adjudication face significant challenges. Research has revealed several weaknesses in the current regulations, including an overly short dispute resolution period, weak legal force of mediation results, uncertainty in the execution of adjudication decisions, and the absence of sanctions for election organizers who fail to implement decisions correctly. These issues indicate that the election dispute settlement system does not fully fulfill the principle of substantive justice, as outlined in John Rawls' Theory of Justice, which emphasizes equal access to justice for all parties involved. Additionally, Lawrence M. Friedman's Legal System Theory highlights the imbalance between legal structure, legal substance, and legal culture, hindering the effective implementation of regulations. Recommendations for improving this system include extending the dispute resolution period to 21 working days, making mediation results binding, ensuring proper execution of adjudication decisions, and applying sanctions for election organizers who fail to act promptly. If these changes are made, Indonesia's election dispute resolution system will be better oriented toward substantive justice, improving election transparency, legal certainty, and public trust in the electoral process.

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