

Reconstruction of the Separation of Supervisory and Adjudicative Functions of Bawaslu in Resolving Election Process Disputes

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ARTICLE

ABSTRAK

Article history

Received

Revised

Accepted

Keywords

Election Process Disputes

Bawaslu

Institutional Design

Dispute resolution in the electoral process is an important pillar in the application of electoral law to provide legal protection to participants and ensure that the stages of the election are conducted in a democratic, fair, and legally certain manner. Based on Law Number 7 of 2017, Bawaslu is granted dual authority to conduct supervision and resolve disputes thru mediation and adjudication. However, the dynamics of the 2024 elections show an increase in dispute complexity due to the growing number of participants, technological advancements, and high public demand for transparency, thereby increasing the workload of the institution. The urgency of institutional restructuring is further emphasized by the Constitutional Court Decision Number 104/PUU-XXIII/2025, which radically changes the status of Bawaslu's administrative "recommendations" into "decisions" that are final and legally binding. The implication is that Bawaslu now bears a significant adjudicative burden that demands the conduct of election justice based on due process of law. Without institutional reconstruction thru a clear separation between oversight functions and adjudicative functions, this accumulation of power risks causing institutional fatigue and conflicts of interest that could undermine electoral independence and fairness.

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1. Introduction

Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) asserts that sovereignty is in the hands of the people, who have the right, duty, and responsibility to democratically determine their leaders and representatives who govern, supervise, and serve the society. That sovereignty is realized thru the administration of General Elections (hereinafter

referred to as Elections). More specifically, Regional Head Elections (hereinafter referred to as Pilkada) serve as a medium of democracy for the local population[1].

The implementation of elections in Indonesia is primarily based on Law Number 7 of 2017 concerning General Elections, which was later amended by Law Number 7 of 2023 concerning the Enactment of Government Regulation in Lieu of Law Number 1 of 2022 into Law. This Election Law serves as the foundation for regulating all stages of the election process, including the organizing institutions, election participants, implementation processes, and mechanisms for resolving election disputes [2].

As stated in Article 22E paragraph (1) of the 1945 Constitution, namely: general elections are conducted directly, publicly, freely, secretly, honestly, and fairly every five years. The definitions of each of these electoral principles are as follows: Direct means that general elections must be conducted by casting votes directly and cannot be represented. General means that the general election can be participated in by all citizens who have the right to vote. Free means that voters are free to cast their votes without any coercion from any party or individual. Secret means that the votes cast by the voters are confidential and known only to the voters themselves [3]. The institutional design of democratic elections always requires the enforcement of a fair electoral justice system to guaranty citizens' voting rights and the legitimacy of the election results themselves [4]. In Indonesia, the General Election Supervisory Agency (Bawaslu) plays a very unique and crucial role because it not only acts as the supervisor of the electoral stages but also serves as the institution for upholding electoral justice [5]. The adjudicative authority held by Bawaslu is legally and formally regulated in Articles 466 to 472 of Law Number 7 of 2017 on General Elections. The granting of authority to resolve process disputes is essentially aimed at accelerating the resolution of technically administrative electoral conflicts so as not to disrupt the tight timeline of the electoral stages [6]. However, in its development, the accumulation of supervisory functions and adjudicative functions under one institutional roof has given rise to very serious conceptual issues within the Indonesian constitutional system [7].

The success of the election administration is not only measured by the orderly conduct of the voting process but is also determined by the quality of law enforcement throughout all stages of the election. The enforcement of election law is an important element because every stage of the election process has the potential to cause violations or disputes that can affect the rights of election participants. Disputes in the election process can arise from objections to the decisions of the General Election Commission (KPU), the implementation of election stages, or actions by election organizers that are deemed detrimental to participants. Therefore, the state is obliged to provide a dispute resolution mechanism that can offer legal protection quickly, fairly, and ensure legal certainty for all parties involved in the conduct of the election.

As one of the election organizers, the Election Supervisory Body (Bawaslu) holds a very strategic position in maintaining the integrity of the election administration. Based on Law Number 7 of 2017 concerning General Elections, the Election Supervisory Board (Bawaslu) is granted the authority to prevent, supervise, and take action against administrative violations, as well as resolve electoral process disputes thru mediation and adjudication mechanisms. These powers indicate that Bawaslu not only functions as an oversight body but also performs roles similar to a quasi-judicial body. The granting of such authority was initially intended to ensure that the resolution of electoral process disputes could be carried out quickly and efficiently, thereby not hindering the stages of the election administration, which have strict deadlines [8].

The main issue arises from the role conflict or dualism of Bawaslu's functions, which act as both "supervisory prosecutor" and "deciding judge" in the same case [9]. When Bawaslu finds allegations of violations or disputes thru its supervisory function, and then adjudicates and decides the case thru an

adjudication hearing, this institution has conceptually violated the universal legal principle of *nemo iudex in causa sua*, which asserts that no one should be a judge in their own case [10]. This institutional conflict of interest has the potential to reduce the objectivity and independence of decisions, as well as blur the clear boundaries between the executive-supervisory function and the judicial-adjudicative function [11]. In the lead-up to the upcoming elections, restructuring the institutional framework of election law enforcers has become an urgent agenda to achieve substantive justice without the shadow of abuse of power [12]. Therefore, legal reconstruction through a clear separation between the supervisory function and the adjudicative function within the Election Supervisory Board (Bawaslu) is absolutely necessary to restore the dignity of an accountable electoral judiciary institution.

However, the merging of the supervisory function and the adjudicative function within a single institution raises various issues, particularly concerning the independence of resolving electoral process disputes. In the theory of the rule of law, the functions of oversight and adjudication have different characteristics. The supervisory function aims to ensure that all stages of the election run in accordance with the provisions of the legislation, while the adjudicative function aims to examine and resolve disputes objectively based on facts, evidence, and applicable legal provisions. When both functions are within the same institution, there is a potential conflict of interest because the institution that conducts the supervision also has the authority to examine and decide disputes related to its own supervision results. Although normatively Bawaslu is required to act professionally and impartially, this condition still has the potential to affect public perception of the independence of the decisions produced [13].

The adjudicative authority held by Bawaslu is an important development in the electoral law enforcement system in Indonesia. However, the expansion of these powers must also be accompanied by strengthening the institutional design so that the implementation of quasi-judicial functions continues to adhere to the principles of independence, objectivity, and impartiality. According to him, the institution that performs dispute resolution functions must be in a neutral position so that it can make decisions free from the influence of institutional interests or the interests of certain parties [8].

The transformation of Bawaslu as an institution with adjudicative authority requires a redesign of its institutional framework. The broader the authority held by a state institution, the greater the need to establish internal and external oversight systems to prevent the accumulation of authority that could diminish the quality of state administration. Meanwhile, Kandia emphasized that the election organizers must be built on the principle of checks and balances, which involves a clear division of functions among institutions to create mechanisms for mutual oversight and control in the execution of authority [14].

In addition to the issue of institutional independence, the practice of organizing the 2024 elections also shows that the increasing number of electoral process disputes has made Bawaslu's workload even more complex. Bawaslu is not only required to supervise all stages of the election, but also to examine, adjudicate, and resolve disputes within a relatively short period of time. This condition causes the supervisory function and the adjudicatory function to often run simultaneously, resulting in the effectiveness of the implementation of both functions being less than optimal. The research by Husain, Suparji, and Sadino indicates that this condition requires a comprehensive evaluation of the institutional design of the election organizers so that the dispute resolution system can provide more effective legal protection [15].

The legal politics of electoral dispute resolution in Indonesia still require reform to achieve electoral justice. This is reinforced by research conducted by Suciara et al. which shows that there is still an overlap of authority between the Election Supervisory Board (Bawaslu), the Honorary Council of Election Organizers (DKPP), and the State Administrative Court (PTUN) in resolving electoral disputes. The

overlap not only creates legal uncertainty but also has the potential to reduce the effectiveness of dispute resolution and diminish public trust in the election administration bodies. Based on these various issues, the author believes that the separation of oversight and adjudication functions is an urgent need in the Indonesian electoral legal system. The separation is not intended to diminish.

In addition to its constitutional dimension, the institutional arrangement of Bawaslu also represents an important aspect of public governance. Modern public governance emphasizes accountability, transparency, institutional effectiveness, and the separation of authority to prevent conflicts of interest within public institutions. The integration of supervisory and adjudicative functions within a single institution raises governance challenges related to checks and balances, organizational accountability, and decision-making independence. Therefore, reconstructing Bawaslu's institutional design is not only an issue of electoral law but also a matter of strengthening governance quality in Indonesia's public sector. This study contributes to the discourse on institutional governance by proposing a governance model that enhances accountability, improves public trust, and supports effective public administration in electoral management.

2. Method

The research on the reconstruction of the separation of supervisory and adjudicative functions of the General Election Supervisory Agency (Bawaslu) is designed using the type of normative or doctrinal legal research [16]. The choice of normative research is based on the focus of the study, which relies on the analysis of legal vacuums, regulatory synchronization, and the inconsistency of written positive legal norms governing the authority of the election supervisory agency [10]. The approaches used in examining the legal issues in this research include the statute approach, the conceptual approach, and the analytical approach [17]. The statute approach is concretely applied thru a comprehensive review of Law Number 7 of 2017 on General Elections and its implementing regulations, which underlie the dualism of Bawaslu's institutional functions [9]. Meanwhile, the conceptual and analytical approaches are used to dissect the doctrine of the separation of powers, the principle of *nemo iudex in causa sua*, and the concept of ideal electoral justice [7].

The legal materials used in this normative research are classified into three types: primary, secondary, and tertiary legal materials. Primary legal materials, which serve as the main legally binding foundation, are sourced from the 1945 Constitution of the Republic of Indonesia, Law Number 7 of 2017 on General Elections, and Bawaslu Regulations related to the procedures for resolving process disputes. Secondary legal materials are obtained from relevant scientific literature, including legal textbooks, research results, and legal scientific journals that discuss the restructuring of quasi-judicial electoral institutions. Tertiary legal materials in the form of legal dictionaries and the Indonesian Dictionary (KBBI) are used to provide definitions or technical terms related to the position of supervisory institutions. The technique for collecting legal materials in this research is conducted thru library research, by inventorying, classifying, reviewing, and systematically recording written legal materials. All the legal materials that have been

collected are then analyzed descriptively qualitatively thru legal reasoning using the deductive thinking method. This analysis aims to evaluate the effectiveness of the dualism of oversight and adjudication functions in the current Bawaslu, which will ultimately be used to formulate a new institutional reconstruction model in line with the principle of judicial independence.

3. Results and Discussion

3.1 Implications of the Dualism of Oversight and Adjudication Functions of Bawaslu Today

The existence of Bawaslu as a quasi-judicial institution with the authority to resolve electoral process disputes triggers doctrinal debates regarding its structural effectiveness [18]. Thru the applicable technical regulations, such as Bawaslu Regulation Number 9 of 2022 concerning the Procedures for Resolving Election Process Disputes, Bawaslu is mandated to independently receive, examine, and decide on disputes. On one hand, this model provides quick legal certainty because Bawaslu has a deep technical understanding of the dynamics of the electoral field [19]. However, on the other hand, the merging of these functions triggers an erosion of public trust in the independence of the electoral law enforcement agency [20]. The hierarchical structure of Bawaslu from the central level to the district/city level is forced to perform contradictory functions: the field supervisors become the discoverers of alleged disputes, while the adjudicator panels at the Bawaslu office are tasked with evaluating them impartially [21]. This practice results in the emergence of process dispute decisions that tend to be institutionally biased, where the institution struggles to reject the veracity of legal data produced by its own supervisory organs [22]. Law Number 7 of 2017 grants Bawaslu the authority to conduct supervision as well as resolve electoral process disputes thru mediation and adjudication. The regulation is indeed intended to expedite the resolution of disputes, but in practice, it also raises questions about the independence of the institution because the supervisory function and the adjudicative function are carried out by the same institution.

Research by Rahman, Asmara, and Kaharudin also shows that the effectiveness of Bawaslu's authority is greatly influenced by the quality of the adjudication function's implementation. According to them, broad authority will not result in quality dispute resolution if it is not supported by an institutional system capable of ensuring the independence of decision-makers. In other words, the success of dispute resolution is not only determined by the applicable legal norms but also by an institutional design that avoids potential conflicts of interest.

This view is in line with Kandia's research, which explains that election organizers must be built based on the principle of checks and balances. The division of functions between institutions is necessary to prevent the concentration of authority in a single institution. In the context of resolving electoral process disputes, this principle can be realized thru the separation of oversight and adjudication functions, so that

the institution deciding the disputes is truly in a neutral and independent position. Thus, the quality of the decisions will be more objective and able to increase public trust in the conduct of elections. In addition, Awaluddin, Subhan, and Erham explain that the legal politics of electoral dispute resolution in Indonesia still require reform to achieve electoral justice. According to them, the current system still shows fragmentation of authority, which causes the dispute resolution process to be not fully effective. Institutional reform is important so that the dispute resolution mechanism is not only quick but also provides legal certainty and protection of the constitutional rights of election participants. These findings are supported by Suciara et al., who state that there is still an overlap of authority between Bawaslu, DKPP, and PTUN in several types of electoral disputes. The overlap causes the resolution of disputes to become less efficient and has the potential to result in differing decisions. Therefore, the reorganization of authority thru the separation of oversight functions and adjudicative functions becomes one of the solutions that can be considered to improve the effectiveness of the electoral law enforcement system.

3.2 Justice Model of Function Separation Reconstruction to Ensure Electoral Justice

According to Yulianto, the conduct of the 2024 General Election shows that electoral process disputes are becoming more complex compared to previous elections. The complexity is influenced by the increasing number of election participants, the development of information technology, the rise in administrative violations, and the growing public demand for transparency in the conduct of elections. These conditions result in an increasing workload for Bawaslu as they have to simultaneously perform the functions of supervision, prevention, enforcement, mediation, and adjudication. According to Yulianto, this situation indicates the need for an evaluation of the institutional design for dispute resolution so that each function can be carried out optimally without compromising the quality of election law enforcement.

This opinion is reinforced by Husain, Suparji, and Sadino, who state that the biggest challenge for Bawaslu in the 2024 Election is not only the increasing number of disputes but also the limited time for their resolution. On one hand, the Election Supervisory Board (Bawaslu) must ensure that all stages of the election proceed according to schedule, while on the other hand, the institution must also deliver decisions that uphold the principles of justice and legal certainty. This situation shows that the more authority Bawaslu holds, the greater the demands for the professionalism and independence of the institution.

Furthermore, Nurul Huda assesses that the system for resolving electoral process disputes in Indonesia still faces the issue of dualism in authority. Certain disputes are resolved thru the Election Supervisory Board (Bawaslu), but under certain conditions, they can still be submitted to the Administrative Court. Models like this have the potential to create differences in legal interpretation, prolong the dispute resolution process, and even create legal uncertainty for election participants. Therefore, it is necessary to reorganize the distribution of authority among institutions to prevent overlapping in the execution of

dispute resolution functions. In order to address the inherent flaws in the structure of Bawaslu, legal reconstruction (*ius constituendum*) must be directed toward the institutional separation of powers in law enforcement functions [23].

The ideal model offered is to purify Bawaslu back to its main mission, namely as a pure supervisory and investigative institution (electoral ombudsman) [24]. Meanwhile, the adjudication functions for process disputes and administrative disputes are permanently transferred to an independent special election court or a special administrative chamber specifically established to resolve electoral disputes [25]. This reconstruction aligns with the concept of an independent judiciary to maintain the absolute neutrality of the adjudicator [26]. Thru this separation, the Bawaslu institution focuses on optimizing prevention, tactical supervision, and prosecution of alleged violations, while electoral justice in examining dispute cases is upheld by election judges who have no psychological or structural ties to field supervision activities [27]. This separate structure will ensure the establishment of a system of checks and balances and enhance the quality of democratic legitimacy of elections in Indonesia [28].

The resolution of electoral process disputes is an integral part of the electoral law enforcement system. The existence of dispute resolution mechanisms aims to provide legal protection to election participants while ensuring that every stage of the election proceeds in accordance with the principles of democracy, legal certainty, and justice. Therefore, the institution that carries out the dispute resolution function must be able to act independently so that the decisions produced not only have legal force but also gain legitimacy from the public.

Based on various opinions, the author believes that the separation of oversight and adjudication functions is an urgent need in the electoral dispute resolution system in Indonesia. The separation is not intended to reduce the authority of Bawaslu, but rather to strengthen the independence of the institution performing adjudicative functions. With a clearer division of functions, each institution can carry out its duties according to its authority, making the resolution of electoral process disputes more objective, transparent, legally certain, and capable of increasing public trust in the election results.

3.3 Implications for Public Governance and Institutional Accountability

The proposed separation of supervisory and adjudicative functions contributes to improving public governance by strengthening institutional accountability and organizational transparency. From a governance perspective, separating incompatible functions minimizes conflicts of interest, enhances checks and balances, and improves decision-making legitimacy. Furthermore, clearer institutional arrangements enable more effective public administration through better allocation of responsibilities, improved organizational performance, and increased public confidence in electoral institutions. Consequently, institutional reconstruction should not merely be viewed as legal reform but also as governance reform that promotes good governance principles within public institutions.

4. Conclusion

Based on the discussion that has been presented, it can be concluded that the regulation of Bawaslu's authority, which includes both supervisory and adjudicative functions, still raises various issues in the practice of resolving electoral process disputes. Although the merging of these two functions is intended to create a faster and more efficient dispute resolution, this condition actually has the potential to raise doubts about the independence and objectivity of the institution in carrying out its adjudicative function. Moreover, the increasing complexity of election stages and the rising number of disputes have resulted in a heavier workload for Bawaslu, necessitating a comprehensive evaluation of the effectiveness of each authority's implementation.

The separation of supervisory functions and adjudicative functions is not an attempt to reduce the role or authority of Bawaslu, but rather a form of institutional design improvement so that each function can be carried out more professionally, independently, and accountably. The separation of adjudication functions is deemed necessary to refocus oversight and maintain the independence of the institution. Institutional reconstruction is advised to focus on the establishment of an autonomous Special Adjudication Council under Bawaslu to ensure effectiveness and legal certainty. From the perspective of public governance, the proposed institutional reconstruction contributes to strengthening accountability, transparency, and organizational effectiveness within public institutions. The separation of supervisory and adjudicative functions reflects the implementation of good governance principles by reducing institutional conflicts of interest and improving public trust in electoral administration. Therefore, this reconstruction provides both legal and governance value for enhancing Indonesia's democratic institutions.

Therefore, it is necessary to renew the regulations regarding the resolution of electoral process disputes as part of the reform of the electoral legal system in Indonesia. The reorganization of authority among institutions is expected to strengthen the principle of checks and balances, minimize the potential for conflicts of interest, and increase public trust in the electoral dispute resolution process. Thus, the electoral dispute resolution system in the future is expected not only to provide legal certainty but also to truly reflect the principles of independence, justice, and constitutional democracy, which are the main objectives of conducting elections in Indonesia.

Acknowledgment

The authors express their gratitude to all parties who have provided support, input, and facilities during the research and preparation of this article. Appreciation is also extended to the authors' home institution for providing academic support, enabling the successful completion of this research.

Declarations

Author Contribution

All authors actively contributed to the conceptualization of the research, data collection and analysis, manuscript preparation, revision process, and approval of the final manuscript for publication.

Funding Statement

This research did not receive any specific funding from government agencies, commercial entities, or non-profit organizations.

Conflict of Interest

The authors declare that there are no conflicts of interest in the research or publication of this article.

Additional Information

There is no additional information that needs to be disclosed in this research.

Data and Software Availability Statement

The data supporting the findings of this research is available from the corresponding author and can be provided upon reasonable request. This research does not use specialized software or public datasets that require storage in online repositories.

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