



# Resolution of Local Head Election Disputes: The Urgency of Establishing a Special Court

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## Article Info

Received: 18 September 2024

Revised: 11 November 2024

Accepted: 08 December 2024

## Keywords:

Authority;  
Regional Election;  
Disputes;  
Special Courts.

## Abstract

*In accordance with the Constitutional Court's decision Number 97/PUU-XI/2013, the Constitutional Court is no longer empowered to adjudicate disputes regarding regional election results, as Article 236 C of Law Number 12 of 2008 is deemed inconsistent with the 1945 Constitution of the Republic of Indonesia. In response to the Constitutional Court's ruling, Law Number 8 of 2015 was enacted, which designates a specialised judicial body as the authority for resolving disputes about regional head election results in Article 157. The objective of this study was to determine whether a state institution is suitable for adjudicating disputes regarding the outcomes of regional head elections in the future. This study employed a normative legal research methodology, utilising secondary sources and analysing them through qualitative descriptive techniques. The findings of this analysis indicate that the creation of a specialised judicial entity to adjudicate election result disputes is the optimal resolution to the legal issues that arise. To avoid generating additional issues with the establishment of new state organisations and to enhance efficiency, the body responsible for adjudicating disputes about regional head election outcomes would henceforth be Bawaslu. The present Bawaslu has evolved into an entity tasked with a specific judicial duty, namely adjudicating complaints about regional election results as stipulated in Article 157 of Law Number 10 of 2016 concerning the Election of Governors, Regents, and Mayors.*

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## 1. Introduction

General elections in contemporary democracies play a crucial role in establishing a state and its governing body. Elections serve as a distinct manifestation of democratic principles in action. Should we consider democracy as a system established for and by the populace, it follows that the conduct of elections is entrusted to them. Elections represent a manifestation of sovereignty and serve as the most tangible means through which the populace engages in the governance of the State.<sup>1</sup>

<sup>1</sup> Julie Cupples and Irving Larios, 'Gender, Elections, Terrorism: The Geopolitical Enframing of the 2001 Nicaraguan Elections', *Political Geography*, 24.3 (2005), pp. 317-39, doi:<https://doi.org/10.1016/j.polgeo.2004.10.002>.

The regulations governing elections are outlined in Article 22E of the 1945 Constitution (UUD), as interpreted by the Constitutional Court (MK) in its Decision Number 3/PUU-VII/2009. The Constitutional Court elucidated these provisions in the following manner: a) Elections occur at five-year intervals, b) The commitment to free and fair elections is upheld, c) The objective of elections is to select members of the People's Representative Council (DPR), Regional Representative Council (DPD), Regional People's Representative Council (DPRD), as well as the President and Vice President, d) Political parties and individuals participate in the electoral process, and e) Concerning the organisers of the elections.<sup>2</sup>

The elections following the third amendment to the 1945 Constitution in 2001 were governed by Article 22E, which stipulates that the legislature, comprising the DPR, DPD, and DPRD, along with the President and Vice President, is to be elected directly by the populace. In the context of regional head elections, or *pilkada*, it is noteworthy that the term democratic is selected explicitly in Article 18 paragraph (4) of the 1945 Constitution. By means of a political decision regarding legal interpretation, the lawmakers concur to understand the term "democratic" in Article 18, paragraph (4) of the 1945 Constitution as indicative of a direct election.<sup>3</sup>

Decision of the Constitutional Court Number 072-073/PUU-II/2004. It is within the purview of legislators to ascertain the method by which regional head elections are conducted, whether through direct or indirect means. Jimly Asshiddiqie posits that the term "elected democratically" as articulated in Article 18 paragraph (4) of the 1945 Constitution possesses a degree of flexibility, allowing for the interpretation that elections may occur either directly or via representatives. The stipulations outlined in Article 18, paragraph (4) of the 1945 Constitution will subsequently provide the foundation for conducting direct elections for leadership positions at both the Provincial and Regency/City levels. The *Pilkada* serves as a mechanism for promoting the human rights of citizens. Consequently, for the rights of citizens to be fully actualised, it is incumbent upon the government to facilitate the conduct of elections in alignment with the constitutional mandate (1945 Constitution) that emphasises the protection of citizen rights. Elections must adhere to the principle of popular sovereignty, as articulated in Article 1, paragraph (2) of the 1945 Constitution, which asserts that "sovereignty resides with the people and is exercised in accordance with the

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<sup>2</sup> S I Keethaponcalan, *Electoral Politics in Sri Lanka: Presidential Elections, Manipulation and Democracy*, in *Electoral Politics in Sri Lanka: Presidential Elections, Manipulation and Democracy* (2022), doi:10.4324/9781003304685.

<sup>3</sup> Luthfi Dwi Yoga, 'How to Handle the Administrative Violations in the Election? A Discourse of Characteristic of Bawaslu Verdict', *Journal of Law and Legal Reform*, 3.3 (2022), pp. 349–78, doi:10.15294/jllr.v3i3.55058.

Constitution." <sup>4</sup>

Consequently, every facet of the election process should be entrusted back to the populace for their determination. The regional elections serve to directly and democratically select governors at the provincial level, as well as regents or mayors at the district or city level. The implementation of direct elections for regional heads is perceived as a mechanism to establish a systematic framework that fosters the emergence of qualified candidates for regional leadership. Consequently, it is essential to monitor the execution of the regional head election system closely.<sup>5</sup>

The execution of a well-structured regional election will significantly impact the quality of governance and the effectiveness of democratic principles. Conflicts regarding the outcomes of regional head elections represent one of the numerous challenges that may emerge during the execution of local electoral processes. For instance, when assessing discrepancies in vote acquisitions between the General Election Commission (KPU) and regional election participants, a consistent pattern of potential harm to the democratic process is observed. Currently, there remains a lack of clarity regarding which court is best suited to adjudicate disputes arising from the election results of regional heads, particularly following the Constitutional Court's ruling that excludes general elections from its jurisdiction.<sup>6</sup>

Indonesia's experience following over a decade of regional head elections has revealed a complex landscape, particularly in the realm of political law. This complexity is notably evident in the authority to adjudicate disputes concerning election results, which was first transferred from the Supreme Court to the Constitutional Court on 29 October 2008. The Supreme Court is perceived as lacking the capacity to adjudicate cases with objectivity and fairness. While this assumption remains unverified, the resolution of PHPU kada cases in lower courts is susceptible to political influence, which could potentially lead to a deterioration of public trust. Consequently, in light of this extended debate, it is essential to achieve a legal advancement through the concept of prospects concerning the management

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<sup>4</sup> Dian Agung Wicaksono and Ola Anisa Ayutama, 'Initiation of Special Court on the Local Election for Regional Leaders to Face the Simultaneously Election of Governor, Regent, and Mayor in Indonesia', *Jurnal Rechts Vinding*, 4.1 (2015), pp. 157–79, doi:10.33331/rechtsvinding.v4i1.53.

<sup>5</sup> Ken Miichi, 'The Role of Religion and Ethnicity in Jakarta's 2012 Gubernatorial Election', *Journal of Current Southeast Asian Affairs*, 33.1 (2014), pp. 55–83, doi:10.1177/186810341403300104.

<sup>6</sup> M. Guntur Hamzah and Wilma Silalahi, 'Constitutionality of the Former Ex-Convict as Election Participants of Regional Heads', *Proceedings of the 1st Paris Van Java International Seminar on Health, Economics, Social Science and Humanities (PVJ-ISHESSH 2020)*, 535 (2021), pp. 538–44, doi:10.2991/assehr.k.210304.121.

of electoral result disputes to uphold and preserve the integrity of democracy in Indonesia.<sup>7</sup>

The issuance of Law Number 22 of 2007 regarding Election Organisers, followed by the enactment of Law Number 12 of 2008 concerning Regional Government, conferred upon the Constitutional Court the authority to adjudicate disputes related to the outcomes of the General Election for Regional Heads (Pemilukada). Consequently, following the enactment of Law Number 22 of 2007 and Law Number 12 of 2008, the Constitutional Court possesses the authority to address disputes regarding the results of Regional Head General Elections (PHPU), which are both valid and lawful. To eliminate uncertainties, legal ambiguities, and the lack of an institution empowered to adjudicate disputes regarding electoral outcomes, given the absence of relevant legislation, this responsibility remains with the Constitutional Court until a dedicated judicial body is established for this purpose. However, Decision Number 97/PUU-XI/2013 essentially stated that the delegation of authority to the Constitutional Court for resolving disputes regarding regional head election results violated the 1945 Constitution. The assertion is made that the Pilkada MK does not fall within the electoral framework, citing Article 22E paragraph (2) of the 1945 Constitution as a foundational rationale for the ruling of the Constitutional Court.<sup>8</sup>

In accordance with Decision Number 97/PUU-XI/2013, a Government Regulation (PP) was enacted to replace Law Number 1 of 2014, which the DPR later approved as Law Number 1 of 2015. The regulation underwent another revision, resulting in Law Number 8 of 2015. In 2015, the establishment of a specialised judicial body was affirmed, empowered to resolve disputes arising from regional head elections. This unique trial is elucidated prior to the concurrent national elections. Nevertheless, prior to the establishment of a specialised court, the Constitutional Court retains the jurisdiction to resolve disputes concerning post-conflict local election outcomes, as articulated in Article 157 paragraph (3) of Law Number 8 of 2015, which stipulates that "disputes regarding the determination of vote acquisition results from elections are to be examined and adjudicated by the Constitutional Court until the formation of a special judiciary."<sup>9</sup>

The initiative to create a specialised judicial entity for the election of regional leaders is garnering increasing support from various sectors; however, this particular court remains in the developmental phase. It necessitates a judicious approach to implement the strategy

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<sup>7</sup> Yasmin Lurusati and René Torenvlied, 'Does Local Democratization Improve Societal Outcomes? Effects of Mayoral Direct Elections in Indonesia', *Humanities and Social Sciences Communications*, 10.1 (2023), doi:10.1057/s41599-023-02141-8.

<sup>8</sup> Ahmad Siboy, 'The Relationship between DKPP and PTUN Decisions Regarding Ethical Violation by General Election Administrators', *Jurnal Konstitusi*, 19.2 (2022), pp. 624–42.

<sup>9</sup> Arizka Warganegara and Paul Waley, 'Do Ethnic Politics Matter? Reassessing the Role of Ethnicity in Local Elections in Indonesia', *South East Asia Research*, 32.3 (2024), pp. 245 – 262, doi:10.1080/0967828X.2024.2406791.

of creating a specialised court endowed with the authority to resolve disputes arising from the outcomes of the concurrent national regional head elections anticipated for November 2024.<sup>10</sup> Specialised courts designated for adjudicating disputes concerning election outcomes that may be established in Indonesia will likely involve several pertinent judicial institutions alongside a dedicated electoral tribunal. Will it be submitted to the State Administrative High Court (PT TUN), or to the Election Supervisory Body (Bawaslu), or will it continue to be directed to the Constitutional Court (MK), or is there a possibility of establishing a specialised election court? The identification of issues, grounded in the aforementioned context, will focus on determining which state institution is poised to adjudicate disputes arising from the outcomes of future regional head elections.

## 2. Research Method

This research is included in normative juridical research with a statutory approach.<sup>11</sup> The data used is secondary data,<sup>12</sup> namely Law Number 10 of 2016 concerning the Election of Governors, Regents and Mayors and Decision of the Constitutional Court Number 97/PUU-XI/2013 concerning Review of Law Number 12 of 2008 concerning the Second Amendment to the Law Number 32 of 2004 concerning Regional Government and Law Number 48 of 2009 concerning Judicial Powers. Data analysis was carried out in a qualitative descriptive manner.<sup>13</sup>

## 3. Results and Discussion

### Resolution of Local Election Disputes through Administrative Courts: Lessons from Several Countries

The Administrative High Court functions as a component of the Supreme Court, tasked with resolving conflicts that emerge within the realm of State Administration. This includes disputes involving individuals or civil legal entities, as well as State Administrative bodies or officials, at both central and regional tiers. Such adjudications arise from the issuance of State Administrative decisions, encompassing employment-related disputes, and are conducted in accordance with the relevant laws and regulations. The Appellate State Administrative Court

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<sup>10</sup> Muhammad Erfa Redhani, Sri Hastuti Puspitasari, and Ahmad Siboy, 'Postponement of General Elections Due to Emergencies: A Comparative Study of Indonesia, Malaysia, Myanmar, and Cambodia', *LJIH*, 33.1 (2025), pp. 204–23 <<http://www.ejournal.umm.ac.id/index.php/legalitiy>>.

<sup>11</sup> Theresia Anita Christiani, 'Normative and Empirical Research Methods: Their Usefulness and Relevance in the Study of Law as an Object', *Procedia - Social and Behavioral Sciences*, 219 (2016), pp. 201–07, doi:10.1016/j.sbspro.2016.05.006.

<sup>12</sup> Ian Dobinson and Francis Johns, 'Qualitative Legal Research', 1 in *Research Methods for Law*, ed. by Mike McConville and Wing Hong Chui (Edinburgh University Press Ltd., 2007).

<sup>13</sup> Bachtiar Bachtiar, *Metode Penelitian Hukum*, in *Hukum*, ed. by Oksildefa Yanto, no. 1, 1st ed. (UNPAM Press, 2018).

serves as a pivotal entity within the appellate framework, executing judicial authority for individuals pursuing justice in matters of State Administrative disputes. The distinctive power of the State Administrative Court lies in its capacity to resolve cases about administrative decisions (*beschikking*). An administrative decision, in this context, refers to a formal written determination made by a State Administrative body or official. This decision embodies a legal action grounded in statutory regulations—specifically applicable provisions that are concrete, individual, and conclusive, thereby generating legal ramifications for an individual or a civil legal entity.<sup>14</sup>

When considered alongside instances of contention regarding general election outcomes, the Decree (SK) for ascertaining the results of general elections falls within the realm of administrative decisions (*beschikking*), as delineated in Article 1, point 10 of the State Administrative Court Law. This can be attributed to two factors: Firstly, the General Election Commission functions as one of the executive entities among state officials, responsible for issuing decrees (SK) that establish the election outcomes. Secondly, the decree issued by the General Election Commission is specific, distinct, and definitive for the parties involved, carrying legal ramifications for them in the electoral process. Nevertheless, Article 2 of Law Number 5 of 1986 about State Administrative Courts articulates: "Excluded from the definition of State Administrative Decisions as per this Law: .... g. Resolutions of the Election Committee, at both central and regional tiers, concerning the outcomes of general elections." The stipulations outlined in Article 2, letter g, of the Law on the State Administrative Court represent a potential area for modification should there be a desire to confer jurisdiction regarding election results disputes on the State Administrative Court. Nonetheless, there exist instances in which the State Administrative Court has been endowed with the jurisdiction to resolve various State Administrative disputes arising from decisions made by the KPU.<sup>15</sup>

One approach involves delegating administrative dispute authority from the State Administration to Bawaslu, positioning it as the adjudicator for administrative appeal disputes. The Supreme Court has released a letter, Supreme Court Number 34/KMA/HK.01/II/2013, dated 21 February 2013, which recognises Bawaslu's role as a decision-maker in election disputes arising from KPU decisions, thereby positioning Bawaslu as an administrative appeals body. In this context, the function of the State Administrative Court is to provide a mechanism for parties who are dissatisfied with the decision rendered by Bawaslu, acting as an administrative appeals body, to file an appeal with the State Administrative High Court promptly. Fitra Arsil asserts that Bawaslu possesses the authority to function as an administrative appeals institution, empowered to uphold the Law regarding

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<sup>14</sup> Daniel Márquez, 'Mexican Administrative Law Against Corruption: Scope and Future', *Mexican Law Review*, 8.1 (2015), pp. 75–100, doi:10.1016/j.mexlaw.2015.12.004.

<sup>15</sup> Keethaponcalan, *Electoral Politics in Sri Lanka: Presidential Elections, Manipulation and Democracy*.

KPU decision products, which include the determination of candidate pairs, the Final Voter List, and the election process itself. Nevertheless, he asserts that the assessment of vote results constitutes a distinct entity connected to the ultimate conclusion of a democratic procedure. In particular, regarding administrative infractions within the electoral process, Bawaslu serves as an administrative appeals entity, thereby positioning itself as a significant law enforcement body, as conferred by MA Circular Letter 34/KMA/HK.01/II/2013.<sup>16</sup>

The power to adjudicate, akin to that of a specialised election court, may be conferred upon the State Administrative High Court, enabling it to address election disputes concerning the outcomes of concurrent regional head elections. Article 1, point 5 of the State Administrative Court Law delineates the concept of special courts: "Special courts are those endowed with the authority to examine, adjudicate, and render decisions on specific cases, which may only be established within one of the judicial entities under the Supreme Court, as stipulated in the law."<sup>17</sup>

An additional option is to utilize the Election State Administrative Special Assembly, as outlined in Article 472 of the Election Law (Law No. 7 of 2017). The Special Election State Administrative Council possesses the jurisdiction to scrutinise, adjudicate, and resolve disputes arising from the electoral process. This includes instances where political parties or candidates contesting in the election fail to meet KPU verification standards, as well as the authority to determine candidate pairings and to remove names from the final list of candidates. The Election State Administrative Special Panels are composed of special judges who are professional judges serving within the State Administrative High Court. The judge is an individual who has fulfilled the responsibilities of their position for a minimum of three years and possesses a comprehensive understanding of electoral processes. The Supreme Court has promulgated a regulation about the election of the Special Election State Administrative Council, as articulated in MA Regulation Number 4 of 2017, which addresses the role of Special Judges in resolving disputes arising within the election process at the State Administrative Court. Alongside the fulfilment of the dispute resolution process within the judicial system overseen by the Supreme Court, MA Regulation Number 4 of 2017 was promulgated, addressing the Procedures for the Settlement of General Election Administrative Violations at the Supreme Court. Furthermore, MA Regulation Number 5 of 2017 was established, outlining the Procedures for settling disputes related to the general

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<sup>16</sup> Yogi Prasetyo, 'The Stringent Support Requirements for Independent Candidates in Regional Elections: A Legal Self-Critique of Indonesian Democracy; [Besarnya Syarat Dukungan Calon Independen Dalam Pilkada: Auto Kritik Hukum Terhadap Demokrasi Indonesia]', *Jurnal Konstitusi*, 21.2 (2024), pp. 226 – 243, doi:10.31078/jk2124.

<sup>17</sup> Taufiq Yuli, Ramalina Ranaivo, and Mikea Manitra, 'The Proposal for the Implementation of Elections in Indonesia : A Framework Based on the Presidential System', *Wacana Hukum*, 29.2 (2023), pp. 181–205, doi:10.33061/wh.v29i2.9815.

election process at the country's Administrative Court.<sup>18</sup>

The researcher posits that the presence of adequately qualified legal instruments possessed by the Supreme Court concerning the Special Electoral State Administrative Council presents an opportunity to confer additional authority for resolving disputes arising from conflicts. Disputes regarding election results often hinge on the inclusion of a threshold for vote differences. This principle, established by the MK precedent during the simultaneous regional elections of 2015 and 2017, has empowered the State Administrative High Court to evaluate cases that warrant further examination. Nevertheless, conversely, the delegation of authority or the establishment of a specialised election court within the State Administrative Court will facilitate avenues for appeals or extraordinary measures to the Supreme Court. There are concerns about the potential influx of cases that may impose additional burdens on the Supreme Court.<sup>19</sup>

The proposition to assign the jurisdiction over election disputes to the State Administrative High Court (PT TUN) has been articulated multiple times by Yusril Ihza Mahendra, who advocates for the inclusion of election disputes within the purview of PT TUN as outlined below: "...the optimal approach for addressing election disputes at the Regency/City level is the Court Local State Administration Agency (PT TUN). The Supreme Court should promptly expand the number of TUN High Courts, which are presently limited to Medan, Jakarta, Semarang, Surabaya, and Makassar. The decision made by the KPUD concerning the recapitulation of election results and the identification of the victorious pair fundamentally constitutes a TUN decision. The decision made by a TUN official indicates that the TUN court possesses the highest level of authority to adjudicate this matter. To expedite the process, one should proceed directly with PT TUN.<sup>20</sup> Nevertheless, PT TUN conducted a hearing akin to that of a court of first instance, rather than engaging in a review of files typical of an appellate examination. The PT TUN has the authority to impose a time constraint on the examination of Election cases, such as a period of 30 working days commencing from the date of case registration. Given the presence of numerous TUN high judges, it is feasible for them to establish various assemblies that extend beyond those akin to the MK. Consequently, the examination of the case can be conducted thoroughly by the panel of judges, without undue haste or the pressure of a time constraint.

Countries that delegate the authority to resolve election disputes to institutions akin to

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<sup>18</sup> Firdaus, Oksimana Darmawan, and Yuliana Primawardani, 'Constructing Human Rights Justiciability in Human Rights Courts in Indonesia', *Proceedings of the 1st International Conference on Law and Human Rights 2020 (ICLHR 2020)*, 549.26 (2021), pp. 112–23, doi:10.2991/assehr.k.210506.017.

<sup>19</sup> Pan Mohamad Faiz, 'The Dissolution of Political Parties in Indonesia: Lessons Learned from the European Court of Human Rights', *Journal of Legal, Ethical and Regulatory Issues*, 22.4 (2019), pp. 1–10.

<sup>20</sup> M Yazid Fathoni and Acasio Fernandez, 'Establishment of Land Court in Indonesia : An Effort to Realise Justice Based on Pancasila', *Journal of Law, Environmental and Justice*, 1.2 (2023), pp. 86–104, doi:10.62264/jlej.v1i2.6.



the Supreme Court include South Korea, Sri Lanka, and Nepal, where a division of responsibilities exists between the Supreme Court and lower courts in managing these disputes. In Korea, the resolution of disputes about central parliamentary and presidential elections is entrusted to the Supreme Court. At the same time, high courts oversee provincial elections, and local courts manage elections for autonomous regions. In Sri Lanka, presidential election disputes are adjudicated directly by the Supreme Court, whereas an appeals court addresses other electoral matters. Nonetheless, the Court's ruling may be presented to the Supreme Court for further consideration. The Supreme Court has established a specialised chamber dedicated to addressing election disputes. For instance, the Supreme Court of Nepal established the Constituent Assembly Court specifically to adjudicate conflicts arising from central parliamentary elections.<sup>21</sup> The institutional framework of electoral justice varies significantly across nations, reflecting distinct approaches in both design and authority. This distinctly illustrates that the structure of the electoral Court is tailored to align with the specific requirements and legal frameworks present in each nation. In developing an institutional framework appropriate for Indonesia, it is prudent to first understand the merits and drawbacks of the election dispute resolution system via the State Administrative High Court.

The merits of the State Administrative High Court are outlined as follows: (1) Contemplating the judicial and administrative dimensions of electoral conflicts and delegating their resolution to the most seasoned State Administrative Court, (2) This approach is economically viable as it eliminates the necessity of establishing a new institution. Alongside its merits, this system also presents certain shortcomings, such as: (1) The potential diminishment of the State Administrative Court's authority if political entities challenge its rulings, (2) The timeliness of decisions may be compromised due to the overwhelming number of cases the Court is tasked with, and (3) The selection of judges at the State Administrative Court, conducted without the involvement of a representative council, may undermine political consensus. Upon reviewing the aforementioned description, it is evident that a flawless dispute resolution system does not exist, given that each method of dispute resolution presents its unique set of merits and drawbacks. It is essential to select a dispute resolution system that aligns with the specific circumstances, prevailing conditions, and legal framework prevailing in Indonesia.

In Indonesia, a mechanism has been established for adjudicating disputes related to election results, operating as a delegation of authority from the Supreme Court. The Supreme Court confers its authority upon the High Court, which possesses jurisdiction over the relevant province. Consequently, the power to scrutinise the objections presented by the

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<sup>21</sup> Keethaponcalan, *Electoral Politics in Sri Lanka: Presidential Elections, Manipulation and Democracy*; Manuel Hidalgo, 'The 2010 Legislative Elections in Venezuela', *Electoral Studies*, 30.4 (2011), pp. 872–75, doi:<https://doi.org/10.1016/j.electstud.2011.10.002>.

Court derives from the legal delegation of authority, which is further affirmed by Supreme Court Regulation Number 02 of 2005. The question arises: Does the special election judicial body remain integrated within the Supreme Court and its subordinate judicial entities, or has its status changed? As previously noted, the Supreme Court has indeed declined to undertake the additional responsibility of adjudicating disputes concerning the outcomes of regional head elections. One might argue that the State Administrative High Court may not be entirely appropriate for functioning as a special election court. The Supreme Court's rejection may suggest that this authority ought to be situated beyond the Supreme Court and its subordinate judicial entities. The role of the Supreme Court and its affiliated judicial bodies is confined to the enforcement of laws about electoral offences.

### **Special Election Tribunal: Normative Study**

The establishment of a Special Judicial Body to address election disputes is, in essence, a concept that is not particularly novel. Several nations, including Brazil, Germany, Mexico, and the United Kingdom, have established specialised electoral courts. Clearly, the specialised electoral courts in these nations have demonstrated their efficacy in managing election disputes with notable success. The State must formulate legislation that effectively addresses and reconciles the evolving dynamics within society. A proposed solution involves establishing a specialised judicial entity to ensure the equitable execution of concurrent elections, thereby facilitating the resolution of electoral disputes through the pursuit of substantive justice, ultimately aimed at fostering legal certainty within the framework of democratic electoral processes.<sup>22</sup>

The specialised judicial entity created to address electoral disputes represents the most effective resolution to the issue concerning the MK's role as the ultimate adjudicator of regional head election conflicts lacking constitutional validity. This may also direct the attention of the Constitutional Court towards constitutional issues, as the Court fundamentally serves as the Guardian of the Constitution, remaining impervious to external influences in other matters.<sup>23</sup> The resolution of disputes arising from election results through judicial means is mandated by Law Number 8 of 2015. Article 157, as outlined in Law Number 8 of 2015 and subsequently amended by Law 10 of 2016, specifies that disputes concerning election results shall be reviewed and adjudicated by a specialised judicial entity, established prior to the execution of simultaneous national elections. Furthermore, in the absence of the establishment of the special Court, matters concerning disputes related to

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<sup>22</sup> Nyarwi Ahmad, 'SOCALLY MEDIATED POPULIST COMMUNICATION IN INDONESIA'S 2018 GUBERNATORIAL ELECTIONS', *International Journal of Asia-Pacific Studies*, 20.2 (2024), pp. 149 – 187, doi:10.21315/ijaps2024.20.2.6.

<sup>23</sup> Erfa Redhani, Hastuti Puspitasari, and Siboy, 'Postponement of General Elections Due to Emergencies: A Comparative Study of Indonesia, Malaysia, Myanmar, and Cambodia'.

election outcomes continue to be scrutinised and adjudicated by the Constitutional Court.

The special judiciary, as stipulated by Article 157 of Law Number 10 of 2016, lacks a clear contextual framework. The ambiguity surrounding the existence of the special Court in question will inevitably influence research on electoral institutions, encompassing both theoretical frameworks of electoral law and enquiries within the realm of political science. Furthermore, the intended structure and operations of the special courts remain ambiguous. The ongoing discourse surrounding the existence of a specialised judicial body persists, despite the regulatory measures that have been implemented. The establishment of a specialised judicial entity tasked with adjudicating disputes arising from the outcomes of the national simultaneous elections, anticipated for 2027, will require a considerable investment of time in its design and implementation.<sup>24</sup>

In his work, Fritz Edward Siregar elucidates various models of specialised Election Courts that may be implemented within the Indonesian context. The initial entity is the Election Special Judicial Body, which operates under the auspices of the Supreme Court. The legal stipulations regarding the formation of a special court are outlined in Article 1, Number 8, of Law Number 48 of 2009 concerning Judicial Powers. This article articulates that "Special Courts are courts endowed with the authority to examine, hear, and adjudicate specific cases, which may only be established within one of the judicial bodies subordinate to the Supreme Court, as governed by law." Secondly, the appointment of the Special Judicial Body as an Independent Entity. This initiative emerged in response to the Constitutional Court and the Supreme Court's reluctance to accept additional responsibilities and authority. Consequently, the most viable solution was to establish an independent judiciary, positioned equally alongside the two judicial institutions, referred to as the Election Court.<sup>25</sup>

Nevertheless, this phase faced challenges initially in modifying the Constitution (UUD 1945). Amending the Constitution is a complex endeavour that necessitates the appropriate impetus to achieve such a significant alteration. Third, the Election Special Court operates in a semi-trial capacity. This action was implemented through amendments to the Election Law and the Pilkada Law, incorporating provisions that serve as the foundation for establishing and executing the responsibilities of a semi-judicial special election court (quasi-judicial). This step presents a more pragmatic approach, as it merely requires amendments to the pertinent legislation, with precedents observed in various other semi-judicial entities within

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<sup>24</sup> Prasetyo, 'The Stringent Support Requirements for Independent Candidates in Regional Elections: A Legal Self-Critique of Indonesian Democracy; [Besarnya Syarat Dukungan Calon Independen Dalam Pilkada: Auto Kritik Hukum Terhadap Demokrasi Indonesia]'.

<sup>25</sup> Gugun El Guyanie, 'Breaking the Indonesian Local Leaders' Problem: A Comparative Analysis of Direct and Indirect Local Leader's Elections in Indonesia and India', *Yustisia*, 14.1 (2025), pp. 23 - 44, doi:10.20961/yustisia.v14i1.86374.

Indonesia.<sup>26</sup>

Consequently, despite the existence of a mandate to create a specialised court for addressing disputes related to election results, the actual developments observed still allow for contemplation of various alternatives concerning the structure of an empowered judiciary. This is essential to reduce the inefficiencies present in the process of resolving election result disputes. The design of election result dispute resolution ought to be crafted with greater simplicity and efficacy in mind. This distinguished Court will subsequently foster optimism among legislators to establish a judiciary endowed with the capacity to adjudicate not only disputes concerning election results but also those that emerge in the administration of elections and electoral processes. Aside from ethical infractions, jurisdiction remains with the General Election Organiser Honorary Council (DKPP). Furthermore, in matters of legal enforcement concerning electoral offences, oversight is retained by the Supreme Court, specifically through the General Courts. The general election results have been subject to disputes, which are to be adjudicated by the Constitutional Court, unless alternative provisions are established by law or through an amendment to Article 24C, paragraph (1), of the 1945 Constitution, thereby potentially placing such matters within the purview of a specialized court.<sup>27</sup>

While the notion of creating a Special Election Court Body is gaining traction among diverse factions, it is viewed that the Special Election Court, in the context of simultaneous elections, represents a legal ideal or *ius constituendum*. Concurrently, it represents a significant legal reform that warrants consideration. Furthermore, the creation of a specialised judicial entity to resolve disputes arising from regional head election results presents several rational implications: (1) it incurs additional expenses due to the necessity of establishing a new court, (2) it may instigate tensions between the electoral management authority and the election court, and (3) there exists a potential risk that partisan biases could influence the appointment of judges to the election court. Concerning the legal framework, the establishment of a specialised judiciary is presently regarded as unproductive, particularly in light of the forthcoming grand election of a democratic party scheduled for 2024, which will occur concurrently across 415 regencies and 93 cities. Consequently, a more thorough examination is warranted concerning the contention surrounding the outcomes of this regional head election, enabling us to identify and employ the most appropriate dispute resolution method in the future.

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<sup>26</sup> Arif Novianto and Anindya Dessi Wulansari, 'Responding to Elite Consolidation: The Anti-Cement-Factory Movement Resisting Oligarchy in an Indonesian Local Election', *Jurnal Ilmu Sosial Dan Ilmu Politik*, 26.3 (2023), pp. 298 – 310, doi:10.22146/jsp.50591.

<sup>27</sup> Risa J. Toha, Dimitar D. Gueorguiev, and Aim Sinpeng, 'The Normalization of Intolerance: The 2019 Presidential Election in Indonesia', *Electoral Studies*, 74.July (2021), p. 102391, doi:10.1016/j.electstud.2021.102391.

## **Election supervisory bodies as dispute resolvers in local elections: lessons from Brazil and Mexico**

The provisions of Law Number 7 of 2017 regarding General Elections outline the responsibilities and powers associated with overseeing, prosecuting infractions, and adjudicating disputes arising within the electoral process. The authority of the Bawaslu is inherently interconnected, signifying that this authority must be concurrently exercised by both the Bawaslu and its staff. During the electoral process in Indonesia, the establishment of the Election Supervisory Body (Bawaslu) was enacted through Law Number 22 of 2007 regarding General Election Organisers. The purview of Bawaslu's oversight pertains to the KPU's adherence as the electoral organiser, ensuring conformity with all stipulations set forth by the Laws and Regulations. This also encompasses the compliance of both election and regional election participants in executing the mandates of the Laws and Regulations throughout the entirety of the electoral process and its administration.<sup>28</sup>

The Bawaslu has undergone a process of incremental fortification throughout its evolution. Following the amendment to the 1945 Constitution, the former Chairman of the Indonesian Bawaslu, Abhan, identified four distinct phases of Laws and Regulations that signified the institutional strengthening of Bawaslu. This legislation requires the creation of a specialised institution that operates independently of the KPU's organisational framework, tasked with overseeing elections. Secondly, pursuant to Law Number 22 of 2007, this legislation establishes the election supervisors at the central level as permanent members of the Election Supervisory Body (Bawaslu). Further reinforcement of this framework occurred following a judicial review, culminating in the Constitutional Court decision Number 11/PUU-VIII/2010, which affirmed that the recruitment of election supervisors is entirely under the jurisdiction of Bawaslu, in contrast to the prior arrangement where recruitment fell under the authority of the KPU. Third, Law Number 15 of 2011 further reinforced the Bawaslu institution by establishing a permanent election supervisory committee at the Provincial level, known as the Provincial Bawaslu. This legislation granted Bawaslu the authority to address election disputes. Fourth, Law Number 7 of 2017 has a significant impact on the Bawaslu institution. Bawaslu is endowed with considerable and noteworthy authority. The election supervisory committee at the district or city level is established as a permanent entity, evolving into the Regency or city Bawaslu. Furthermore, from the perspective of its authoritative role, Bawaslu, as the electoral organiser, possesses three principal powers: the power to supervise, the power to prosecute electoral violations, and

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<sup>28</sup> Warganegara and Waley, 'Do Ethnic Politics Matter? Reassessing the Role of Ethnicity in Local Elections in Indonesia'.

the power to adjudicate. This is what fortifies Bawaslu's position today.<sup>29</sup>

Currently, there is an increasing dialogue regarding the establishment of a specialized electoral court within the Indonesian electoral framework. Bawaslu faces a pivotal question: Is it feasible for Bawaslu to assume the role of an election court? Positioning Bawaslu as a prospective institution poised for transformation in this capacity. Nevertheless, this discussion presents both merits and drawbacks, as some benefits and challenges arise when the Bawaslu is reconstituted as a specialised electoral tribunal. The initiative to convert Bawaslu into an independent special judicial entity is intricately connected to the comparative framework observed in Latin American nations, particularly Brazil and Mexico. Brazil and Mexico established independent special election courts that operate outside the framework of their current judicial systems. Brazil establishes the Superior Electoral Tribunal (TSE). In the interim, Mexico established the Electoral Tribunal of the Federal Judiciary (TEPJF). The primary advantage of establishing this autonomous special court lies in its capacity to safeguard the existing judicial structures, including the Supreme Court and its subordinate entities, as well as the Constitutional Court, from encroaching upon political affairs.<sup>30</sup>

Within the Indonesian framework, both the Constitutional Court and the Supreme Court have acknowledged this reality, as evidenced by their resolute stance against assuming additional responsibilities related to adjudicating disputes arising from regional head election outcomes. Consequently, the selection of an independent specialised judicial entity emerges as the most optimal solution. This unique trial incorporates a model of choice. Initially, it is imperative to establish a specialised judiciary that operates alongside the Supreme Court and the Constitutional Court in Mexico and Brazil, necessitating logical amendments to the 1945 Constitution. Alternatively, this could evolve into a semi-judicial entity where logical outcomes are implemented through modifications in the legal framework. Numerous analogous institutional frameworks have indeed been instituted in Indonesia, such as the formation of the Consumer Dispute Settlement Agency (BPSK) and the Central Information Commission (KIP).<sup>31</sup>

Some contend that numerous scientific studies conducted by experts in electoral law support the view that, in accordance with the application of law in Indonesia, the institution

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<sup>29</sup> Ahmad, 'SOCIALLY MEDIATED POPULIST COMMUNICATION IN INDONESIA'S 2018 GUBERNATORIAL ELECTIONS'; Prasetyo, 'The Stringent Support Requirements for Independent Candidates in Regional Elections: A Legal Self-Critique of Indonesian Democracy; [Besarnya Syarat Dukungan Calon Independen Dalam Pilkada: Auto Kritik Hukum Terhadap Demokrasi Indonesia]'.  
<sup>30</sup> Hidalgo, 'The 2010 Legislative Elections in Venezuela'; Chris Marsden, Trisha Meyer, and Ian Brown, 'Platform Values and Democratic Elections: How Can the Law Regulate Digital Disinformation?', *Computer Law and Security Review*, 36 (2020), p. 105373, doi:10.1016/j.clsr.2019.105373.

<sup>31</sup> Titon Slamet Kurnia, 'Mahkamah Konstitusi Sebagai Election Court: Refleksi Teoretis', *Refleksi Hukum: Jurnal Ilmu Hukum*, 3.1 (2019), pp. 33-48, doi:10.24246/jrh.2018.v3.i1.p33-48.

responsible for resolving disputes regarding regional head election results functions as a judicial entity, as previously outlined. Thus, delegating the authority to receive, examine, and adjudicate disputes regarding election results to Bawaslu is misguided. This is primarily because Bawaslu does not operate as a judicial entity; it lacks the characteristics of law enforcement bodies such as the police or prosecutors. Consequently, in instances of electoral violations or crimes, Bawaslu is limited to reporting and offering recommendations without the capacity to enforce legal action. Bawaslu functions as a non-structural state institution, as indicated by data from the state ministry responsible for the utilisation of state apparatus and bureaucratic reform.<sup>32</sup>

The establishment of Bawaslu positions it as an entity tasked primarily with overseeing the conduct of elections and electoral processes. This is undoubtedly rational, as elections conducted without a free and independent monitoring mechanism and environment will inevitably devolve into a battleground rife with deceit. Building upon this comprehension, it is essential to regard election supervision as a fundamental requirement of every election, whether at the national or local level, within each region participating in the electoral process. The establishment of Bawaslu is anticipated to facilitate the effective execution of the various phases of the General Election. According to Law Number 10 of 2016, Article 157, Paragraph 1, the establishment of a special judicial body raises concerns regarding the appropriateness of assigning this special judicial authority to Bawaslu. The establishment of an independent special election court presents a more rational and pertinent approach than transforming Bawaslu into a judicial entity. Bawaslu serves as the appropriate authority for overseeing electoral processes. Conversely, some contend that Bawaslu represents an exemplary institution that could be transformed into a specialised judicial entity for the resolution of electoral disputes. The merits of this proposition include the potential for expedited processes and reduced financial burdens.<sup>33</sup>

Opting for the perspective that the previously mentioned election special judicial body operates independently of the Supreme Court, the most logical decision is to assign this function and authority to Bawaslu and Provincial Bawaslu. Several of the subsequent reasons may serve as a foundation for this. Initially, since the enactment of Law Number 8 of 2012, the legislative body has conferred upon Bawaslu the jurisdiction to adjudicate electoral disputes, encompassing matters related to state administration of elections. Furthermore, both Bawaslu and Provincial Bawaslu have been established as enduring

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<sup>32</sup> Nicolae Stef, Sami Ben Jabeur, and Robert F. Scherer, 'Time to Resolve Insolvency and Political Elections', *International Review of Law and Economics*, 72, September (2022), p. 106104, doi:10.1016/j.irle.2022.106104.

<sup>33</sup> Wicaksono and Ayutama, 'Initiation of Special Court on the Local Election for Regional Leaders to Face the Simultaneously Election of Governor, Regent, and Mayor in Indonesia'; Svitlana Chernykh, *The Dilemma of Compliance: Political Parties and Post-Election Disputes*, in *The Dilemma of Compliance: Political Parties and Post-Election Disputes* (2024), doi:10.3998/mpub.11976215.

entities in accordance with Law Number 15 of 2011, which pertains to Election Organisers. Moreover, while the foundational purpose of the Bawaslu institution was to supervise the electoral process, the powers to resolve disputes, as delineated by Law Number 10 of 2008 and Law Number 8 of 2012, have endowed Bawaslu with substantial expertise in dispute resolution, addressing conflicts between participants as well as between participants and organisers during the electoral cycles of 2009 and 2014, in addition to managing post-conflict local elections from 2008 to 2015.<sup>34</sup>

In accordance with this mandate, Bawaslu, in executing its role as a specialised electoral court, may concurrently function as a passive overseer (Report). Concerning the resolution of electoral disputes in gubernatorial and deputy gubernatorial elections, this responsibility lies with the Central Election Commission (Bawaslu). In contrast, for the elections of the Regent/Deputy Regent and Mayor/Deputy Mayor, the Provincial Bawaslu holds the authority to resolve these matters. Concerning the resolution rendered by the Bawaslu, encompassing both central and Provincial levels as a specialized tribunal for the adjudication of electoral disputes, it is intended to function as the inaugural and conclusive court, with its determinations deemed final and binding. The final decision is now binding, and no additional legal recourse is available. Decisions that are final and binding are designed to be self-executing.<sup>35</sup>

Furthermore, the Bawaslu is structured to encompass three distinct assemblies: one dedicated to addressing violations in election administration, another focused on disputes arising from the electoral process, and a third assembly tasked with resolving disputes concerning election results. The composition of judges at the Bawaslu will include three judges from the career judiciary and two ad hoc judges, selected from individuals with expertise in electoral law, either from academic backgrounds or legal practice. This aims to offer a viewpoint that enhances the calibre of decision-making in the adjudication of election cases or disputes.<sup>36</sup>

The oversight of the electoral process and its execution can indeed be adjusted. The oversight function of the election authority has, in a sense, shifted from being the primary responsibility of Bawaslu and its personnel to a more reactive role, primarily focused on

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<sup>34</sup> Toha, Gueorguiev, and Sinpeng, 'The Normalization of Intolerance: The 2019 Presidential Election in Indonesia'; Miichi, 'The Role of Religion and Ethnicity in Jakarta's 2012 Gubernatorial Election'.

<sup>35</sup> Howard P Lehman, 'Deepening Democracy?: Demarcation, Traditional Authorities, and Municipal Elections in South Africa', *The Social Science Journal*, 44.2 (2007), pp. 301–17, doi:<https://doi.org/10.1016/j.soscij.2007.03.013>; Leigh Anenson, 'For Whom the Bell Tolls: Judicial Selection by Election in Latin America', *Southwestern Journal of Law and Trade in the Americas*, 4.2 (1997), pp. 261–300.

<sup>36</sup> Holly Ann Garnett and Toby S James, 'Electoral Backsliding? Democratic Divergence and Trajectories in the Quality of Elections Worldwide', *Electoral Studies*, 86 (2023), p. 102696, doi:<https://doi.org/10.1016/j.electstud.2023.102696>; Hamzah and Silalahi, 'Constitutionality of the Former Ex-Convict as Election Participants of Regional Heads'.



addressing reports of violations or fraud that arise during elections. In this regard, the oversight of electoral processes needs to transform into a collaborative endeavour among all stakeholders involved, encompassing the broader community as well. Upon contemplating European society, one observes the absence of an electoral oversight entity akin to Indonesia's Badan Pemeriksaan Keuangan (BPK). Their cultural disposition and preparedness for democratic governance are regarded positively. Nonetheless, in Indonesia, the presence of the Election Supervisory Body (Bawaslu) remains essential for the prevention and prosecution of electoral infractions.<sup>37</sup>

Consequently, the responsibility of overseeing elections by Bawaslu and its personnel is executed in a relatively passive manner. The supervisory role of Bawaslu and its affiliates can be perceived as primarily reactive, relying on reports from the public or participants concerning electoral infractions. Given that the active tasks previously undertaken by Bawaslu and its personnel are no longer necessary, it is now imperative to foster a culture of participatory oversight of elections within the community.

#### 4. Conclusion

The establishment of a specialised court to adjudicate disputes about Pilkada results is undetermined, and the law does not specify the jurisdiction in which it will operate. The establishment of a new special court will require significant financial investment, substantial resources, and a considerable amount of time. Consequently, the optimal answer for dispute resolution institutions about the outcomes of future regional head elections is to enhance the capabilities of existing organisations. Multiple alternative state entities may be empowered to adjudicate complaints about the outcomes of regional head elections, including the State Administrative High Court, the Special Election Court, and the Election Supervisory Body (Bawaslu). According to the analysis results, Bawaslu is the most suitable governmental entity to address disputes regarding regional election outcomes. Enhancing Bawaslu as an autonomous entity that operates as both an electoral overseer and a specialised judicial body will yield greater efficiency and effectiveness. The Central Bawaslu is responsible for resolving complaints about the election results of the Governor and Deputy Governor, whilst the Provincial Bawaslu handles problems related to the election of the Regent/Deputy Regent and Mayor/Deputy Mayor. The Bawaslu's judgment establishes both Central and Provincial courts as specialized courts for resolving election issues, functioning as the court of first and last resort, with its rulings being final and binding. The final decision is binding, and no other legal remedies are available. Bawaslu possesses a semi-judicial character and

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<sup>37</sup> Lurusati and Torenvlied, 'Does Local Democratization Improve Societal Outcomes? Effects of Mayoral Direct Elections in Indonesia'; Siboy, 'The Relationship between DKPP and PTUN Decisions Regarding Ethical Violation by General Election Administrators'.

will subsequently assume a dual role: initially as a passive supervisory entity and subsequently as an adjudicator. The lawmakers, specifically the DPR and the President, must promptly designate the state institutions responsible for adjudicating disputes about the outcomes of regional head elections, as the date for the simultaneous regional head elections in 2024 approaches. Furthermore, all legislation about regional head elections must be promptly amended—particularly the legislation governing the election of governors, regents, and mayors.

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