

## Electoral Dispute Resolution in General Elections and Regional Head Elections within the Construction of Electoral Law Development (*Ius Constituendum*)

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### ABSTRACT

This study examines electoral dispute resolution in general elections and regional head elections within the framework of electoral law development (*ius constituendum*) in Indonesia. Using a normative legal research method with statutory, conceptual, and case approaches, the study analyzes the essence of law in ensuring neutrality and impartiality, evaluates legal certainty in dispute resolution mechanisms administered by Bawaslu, Gakkumdu, and the Constitutional Court, and formulates an ideal model for future electoral justice. The findings reveal that although Indonesia has established a comprehensive electoral justice system, institutional fragmentation and overlapping jurisdictions continue to create procedural complexities and legal uncertainty. Therefore, this study proposes an integrated electoral dispute resolution model that strengthens institutional coordination, procedural harmonization, and substantive electoral justice to enhance democratic legitimacy and constitutional governance.

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## **INTRODUCTION**

General elections and regional head elections constitute fundamental instruments for implementing constitutional democracy, providing legitimacy to state institutions through the exercise of popular sovereignty. In a democratic state governed by the rule of law, elections are not merely political procedures for selecting public officials but also mechanisms for realizing constitutional principles such as justice, equality, and legal certainty. Consequently, every stage of the electoral process must be conducted in accordance with the principles of direct, general, free, confidential, honest, and fair elections to ensure the protection of citizens' political rights (Asshiddiqie, 2019).

The development of electoral democracy in Indonesia demonstrates an increasing complexity of disputes arising throughout electoral processes. These disputes encompass administrative violations, electoral criminal offenses, electoral process disputes, and disputes concerning election results. Such complexity is not only attributable to intense political competition but also to the plurality of institutions vested with authority to resolve electoral disputes. This condition frequently results in overlapping jurisdictions and inconsistencies in legal decisions, which may undermine the effectiveness of electoral law enforcement and democratic legitimacy (Norris, 2014).

From the perspective of the rule of law, electoral dispute resolution must be conducted independently, impartially, and with due regard to the protection of citizens' constitutional rights. The existence of institutions such as the Election Supervisory Body (Bawaslu), the Integrated Law Enforcement Center (Gakkumdu), the Administrative Court (PTUN), and the Constitutional Court reflects a system of checks and balances in electoral dispute settlement. Nevertheless, electoral practices in Indonesia continue to reveal several challenges, including inconsistent judicial decisions, overlapping institutional authority, and insufficient coordination among electoral law enforcement bodies (Huda & Mardian, 2021).

The essence of law in electoral dispute resolution is not limited to the creation of legal certainty but also encompasses the realization of substantive justice for all parties involved. Progressive legal theory emphasizes that law should function as an instrument for achieving social justice rather than merely applying legal norms in a rigid and formalistic manner. Within the context of electoral disputes, judges and adjudicatory institutions are expected to interpret and apply legal provisions responsively to democratic developments while maintaining judicial neutrality and independence (Rahardjo, 2009).

Legal certainty represents one of the central concerns in the resolution of electoral disputes. It is essential to ensure equal treatment before the law and equal access to dispute resolution mechanisms for all electoral participants. According to Radbruch's theory of legal certainty, law must provide predictability and protection against arbitrary actions. In practice, however, the existence of multiple forums for electoral dispute resolution in Indonesia often generates procedural uncertainty, which may affect public trust in electoral outcomes and democratic institutions (Radbruch, 2006).

The Constitutional Court plays a strategic role as the guardian of the Constitution in resolving disputes concerning election and regional election results. Through its jurisprudence, the Court has developed the doctrine of structured, systematic, and massive violations (TSM) as a framework for evaluating the integrity of electoral processes. This doctrine signifies that electoral dispute resolution is no longer confined to numerical vote discrepancies but also considers broader dimensions of electoral justice and democratic fairness (Isra, 2020).

Furthermore, Bawaslu and the Administrative Court serve crucial functions in supervising and reviewing administrative actions undertaken by election management bodies. The adjudication process conducted by Bawaslu and judicial review before the Administrative Court provide legal protection for electoral participants whose political rights may be adversely affected by administrative decisions. Nevertheless, the fragmentation of authority among these institutions remains a significant challenge in establishing an integrated, effective, and coherent electoral dispute resolution system (Mietzner, 2020).

Given these circumstances, a reconstruction of Indonesia's electoral law framework is necessary to establish a more systematic, fair, and legally certain model of electoral dispute resolution. The *ius constituendum* approach is particularly relevant in formulating an ideal future framework through the harmonization of the authorities of Bawaslu, Gakkumdu, the Administrative Court, and the Constitutional Court. Such an approach would contribute not only to formal legal certainty but also to substantive justice and the strengthening of constitutional democracy in Indonesia.

## **THEORETICAL REVIEW**

### ***Electoral Law and Electoral Justice***

Electoral law constitutes a set of legal norms governing the organization, implementation, supervision, and dispute resolution mechanisms of elections in democratic states. Electoral law serves not only as a procedural framework for conducting elections but also as an instrument to safeguard political rights, ensure equal participation, and maintain democratic legitimacy. According to Norris (2014), the integrity of electoral processes depends significantly on the existence of a legal framework capable of guaranteeing transparency, accountability, and fairness throughout all stages of elections. Consequently, electoral law functions as a cornerstone of democratic governance by ensuring that electoral competition is conducted under clear and enforceable legal standards.

The concept of electoral justice refers to the mechanisms established to prevent, investigate, and resolve disputes and violations arising from electoral processes. Electoral justice encompasses both procedural and substantive dimensions, aiming to ensure that electoral outcomes reflect the genuine will of the people while protecting the constitutional rights of participants. According to López-Pintor (2010), an effective electoral justice system requires independent institutions, accessible complaint mechanisms, and enforceable legal remedies. In the Indonesian context, electoral justice is implemented through multiple

institutions, including Bawaslu, Gakkumdu, PTUN, and the Constitutional Court, each possessing distinct jurisdictions in resolving electoral disputes.

### ***The Theory of Rule of Law and Legal Certainty***

The rule of law is a fundamental principle requiring that all governmental actions be conducted in accordance with established legal norms. Dicey (1982) emphasized that the rule of law embodies equality before the law, supremacy of legal norms, and protection of individual rights. In electoral governance, the rule of law ensures that electoral management bodies, political contestants, and state institutions are equally bound by legal regulations. The implementation of rule-of-law principles is essential for preventing arbitrary decisions and maintaining public confidence in democratic institutions.

Legal certainty constitutes a crucial element of the rule of law, particularly in electoral dispute resolution. Radbruch (2006) argued that legal certainty enables individuals to predict legal consequences and protects them from arbitrary exercises of power. Within electoral processes, legal certainty is reflected in clear procedural rules, defined institutional authorities, and consistent judicial decisions. However, overlapping jurisdictions among electoral dispute resolution institutions may generate uncertainty and affect the legitimacy of electoral outcomes. Therefore, strengthening legal certainty remains an essential objective in the development of electoral law.

### ***Neutrality and Impartiality in Electoral Adjudication***

Judicial neutrality and impartiality are indispensable principles in the administration of electoral justice. Neutrality requires adjudicators to remain free from political influence, while impartiality demands that disputes be resolved solely based on legal evidence and applicable law. According to Capeletti (1989), judicial independence is a prerequisite for ensuring fair adjudication and maintaining public trust in legal institutions. In electoral disputes, neutrality is particularly important because decisions often have significant political consequences that may affect democratic stability.

The Indonesian electoral dispute resolution framework emphasizes the importance of neutrality through the institutional independence of Bawaslu, PTUN, and the Constitutional Court. Nevertheless, concerns regarding political pressure and institutional fragmentation continue to emerge during highly contested elections. Studies indicate that public perceptions of judicial impartiality significantly influence the acceptance of electoral outcomes and the overall legitimacy of democratic governance (Ginsburg, 2003). Therefore, strengthening institutional independence remains essential for ensuring credible electoral adjudication.

### ***Electoral Dispute Resolution Institutions in Indonesia***

Indonesia adopts a multi-institutional model of electoral dispute resolution involving administrative, judicial, and quasi-judicial bodies. Bawaslu is responsible for handling electoral process disputes and administrative violations, while Gakkumdu addresses electoral criminal offenses. Meanwhile, PTUN reviews administrative decisions issued by electoral management bodies,

and the Constitutional Court adjudicates disputes concerning election results. This institutional arrangement reflects an effort to provide comprehensive legal remedies for various forms of electoral violations and disputes.

Despite its comprehensiveness, the Indonesian model has been criticized for creating jurisdictional overlaps and procedural complexities. Huda and Mardian (2021) note that the fragmentation of authority often leads to inconsistencies in legal interpretation and enforcement. Furthermore, electoral participants may face difficulties in determining the appropriate forum for dispute resolution. These challenges highlight the need for institutional harmonization and legal reform to establish a more integrated and efficient electoral justice system.

### *Ius Constituendum and the Development of Electoral Law*

*Ius constituendum* refers to the law as it ought to be in the future, focusing on legal reform and normative development. Unlike *ius constitutum*, which concerns existing law, *ius constituendum* emphasizes the formulation of legal frameworks capable of addressing contemporary societal challenges. According to Kelsen (1967), legal development must adapt to changing social and political realities while preserving the coherence of the legal system. In the context of electoral law, the *ius constituendum* approach provides a theoretical basis for reconstructing dispute resolution mechanisms to better achieve justice and legal certainty.

The application of *ius constituendum* in electoral dispute resolution involves harmonizing institutional authorities, simplifying procedural mechanisms, and strengthening legal protections for electoral rights. Comparative experiences from democratic countries demonstrate that integrated electoral justice systems contribute to greater consistency and effectiveness in dispute settlement (IDEA, 2020). Therefore, the development of Indonesia's electoral law should focus on creating a coherent framework capable of balancing legal certainty, substantive justice, and democratic legitimacy.

### **METHODOLOGY**

This study employs a normative legal research method using statutory, conceptual, and case approaches to analyze the existing framework of electoral dispute resolution in Indonesia and formulate an ideal model of electoral law development (*ius constituendum*). The statutory approach examines constitutional and legislative regulations governing electoral dispute resolution, including the authority of Bawaslu, Gakkumdu, the Administrative Court (PTUN), and the Constitutional Court. The conceptual approach is utilized to explore legal theories concerning the rule of law, legal certainty, electoral justice, judicial neutrality, and democratic governance, while the case approach analyzes relevant judicial decisions and electoral dispute practices. Legal materials consist of primary legal sources, including the 1945 Constitution of the Republic of Indonesia, election laws, Constitutional Court decisions, and Administrative Court judgments, as well as secondary legal sources derived from books, journal articles, and scholarly publications. The collected legal materials are analyzed qualitatively through descriptive-analytical and prescriptive methods to

evaluate the effectiveness of the current electoral dispute resolution system and to formulate recommendations for a more integrated, fair, and legally certain electoral justice framework in Indonesia.

## RESULTS

### *The Essence of Law in Neutral and Impartial Electoral Dispute Resolution in Indonesia*

Table 1. Principles of Law Applied by Electoral Dispute Resolution Institutions in Indonesia

<b>Institution</b>	<b>Main Authority</b>	<b>Principle of Neutrality</b>	<b>Principle of Impartiality</b>	<b>Contribution to Electoral Justice</b>
Bawaslu	Electoral process disputes and administrative violations	Independent supervision of electoral stages	Equal treatment of electoral contestants	Preventive and corrective justice
Gakkumdu	Investigation and prosecution of electoral crimes	Coordination among Bawaslu, Police, and Prosecutors	Evidence-based criminal enforcement	Criminal accountability
Administrative Court (PTUN)	Review of electoral administrative decisions	Judicial independence	Objective review of administrative actions	Protection of political rights
Constitutional Court	Resolution of election result disputes	Constitutional neutrality	Constitutional adjudication based on legal facts	Substantive electoral justice

**Source:** Compiled by the author based on Election Law No. 7 of 2017, Constitutional Court jurisprudence, and International IDEA (2020).

The findings indicate that Indonesia adopts a multi-institutional electoral justice model in which different institutions exercise distinct yet complementary functions. The principle of neutrality is reflected in the independence of each institution from direct political intervention, while impartiality is implemented through procedural safeguards ensuring equal treatment before the law. Nevertheless, institutional fragmentation often creates divergent legal interpretations and procedural inconsistencies. The Constitutional Court has increasingly emphasized substantive justice by considering structured, systematic, and massive (TSM) violations rather than focusing solely on vote margins. Consequently, the effectiveness of electoral dispute resolution depends not only on legal norms but also on institutional coordination and judicial professionalism. These findings support the argument that electoral justice

requires a balance between procedural legality and substantive fairness (Norris, 2014; Isra, 2020).

***Legal Certainty in Electoral Dispute Resolution by Bawaslu, Gakkumdu, and the Constitutional Court***

Table 2. Assessment of Legal Certainty within Electoral Dispute Resolution Mechanisms

<b>Indicator of Legal Certainty</b>	<b>Bawaslu</b>	<b>Gakkumdu</b>	<b>Constitutional Court</b>
Clear legal basis	High	High	High
Procedural certainty	Moderate	Moderate	High
Consistency of decisions	Moderate	Moderate	High
Enforcement effectiveness	Moderate	Moderate	High
Public trust	Moderate	Moderate	High

Source: Adapted from Radbruch (2006), IDEA (2020), and Constitutional Court Reports.

The results reveal that legal certainty is most strongly represented within the Constitutional Court due to its final and binding decisions. By contrast, Bawaslu and Gakkumdu face challenges related to procedural complexity, evidentiary standards, and coordination among institutions. Although election laws provide a comprehensive legal framework, overlapping jurisdictions occasionally generate uncertainty regarding the appropriate forum for dispute resolution. The Constitutional Court has contributed significantly to strengthening legal certainty through the development of jurisprudence on electoral integrity and constitutional rights protection. However, procedural overlaps between administrative, criminal, and constitutional mechanisms remain a persistent issue that may affect public confidence in the electoral justice system. Therefore, institutional harmonization is necessary to improve predictability and consistency in electoral dispute resolution (Radbruch, 2006; Huda & Mardian, 2021).

***An Ideal Model of Electoral Dispute Resolution Based on Ius Constituendum***

The proposed model demonstrates the necessity of establishing an integrated electoral dispute resolution system that minimizes jurisdictional overlap and strengthens coordination among institutions. Under this model, Bawaslu serves as the primary gateway for all electoral complaints, categorizing disputes according to their legal nature before referring them to the appropriate institution. Such integration would simplify procedural mechanisms, reduce conflicting decisions, and enhance legal certainty. Furthermore, the Constitutional Court would remain the ultimate adjudicatory institution responsible for safeguarding constitutional principles and ensuring substantive electoral justice. Comparative experiences from democratic countries suggest that integrated electoral justice systems improve efficiency, transparency, and public trust. Therefore, the reconstruction of Indonesia's electoral law through the *ius constituendum* approach should prioritize institutional harmonization, procedural simplification, and the strengthening of constitutional oversight mechanisms (International IDEA, 2020; López-Pintor, 2010).

Table 3. Reconstruction of Electoral Law Development (Ius Constituendum)

Existing Condition (Ius Constitutum)	Proposed Reform (Ius Constituendum)	Expected Outcome
Fragmented institutional authority	Integrated electoral justice system	Greater legal certainty
Overlapping jurisdiction	Clear division of authority	Reduced procedural conflicts
Different procedural standards	Unified procedural framework	Consistent adjudication
Limited institutional coordination	Digital and institutional integration	Efficient dispute resolution
Emphasis on procedural legality	Balance between legality and substantive justice	Fairer electoral outcomes

Source: Author's Analysis.

The reconstruction proposed in this study highlights the need to move from a fragmented electoral dispute resolution framework toward an integrated model based on constitutional justice principles. The findings suggest that legal certainty and substantive justice can be achieved more effectively when institutions operate within a coherent and coordinated framework. Such reform would strengthen the legitimacy of electoral outcomes, enhance public confidence in democratic institutions, and support the long-term development of Indonesia's electoral law. Ultimately, the *ius constituendum* approach provides a normative foundation for modernizing electoral dispute resolution in accordance with democratic values, constitutional principles, and international standards of electoral integrity.

## DISCUSSION

### *The Essence of Law in Neutral and Impartial Electoral Dispute Resolution in Indonesia*

The findings demonstrate that the essence of law in electoral dispute resolution is fundamentally directed toward ensuring neutrality, impartiality, and the protection of constitutional rights. Electoral justice institutions in Indonesia, namely Bawaslu, Gakkumdu, the Administrative Court (PTUN), and the Constitutional Court, are designed to function independently from political influence and to adjudicate disputes based on legal norms and evidence. This institutional arrangement reflects the principle of the rule of law, which requires that all electoral participants receive equal treatment before the law. According to Dicey (1982), the rule of law is characterized by legal supremacy and equality before the law, both of which are essential in maintaining democratic legitimacy during electoral contests. The existence of specialized electoral dispute mechanisms further indicates the state's commitment to protecting citizens' political rights and ensuring democratic accountability.

However, the implementation of neutrality and impartiality remains challenged by political polarization and institutional fragmentation. In practice, electoral disputes often involve competing interpretations of legal provisions,

creating tensions between procedural legality and substantive justice. The Constitutional Court has attempted to address this issue by adopting a broader interpretation of electoral justice through its doctrine of structured, systematic, and massive (TSM) violations. This approach reflects the notion that electoral adjudication should not merely focus on procedural compliance but also consider the overall integrity of democratic processes. Therefore, the findings suggest that the essence of law in electoral dispute resolution lies in balancing legal certainty, constitutional protection, and substantive justice to preserve public trust in democratic institutions (Isra, 2020; Norris, 2014).

### ***Legal Certainty in Electoral Dispute Resolution by Bawaslu, Gakkumdu, and the Constitutional Court***

The results indicate that legal certainty remains a central objective of electoral dispute resolution in Indonesia. Legal certainty is manifested through clearly defined legal procedures, statutory regulations, and institutional competencies governing electoral disputes. Bawaslu, Gakkumdu, and the Constitutional Court each operate under specific legal mandates established by electoral legislation. The Constitutional Court demonstrates the highest level of legal certainty because its decisions are final and binding, thereby providing definitive resolutions to electoral disputes. According to Radbruch (2006), legal certainty is essential because it enables individuals and institutions to predict legal consequences and prevents arbitrary exercises of power. In the electoral context, legal certainty contributes significantly to the legitimacy and acceptance of electoral outcomes.

Despite these legal foundations, several obstacles continue to affect the realization of legal certainty. Jurisdictional overlaps between administrative, criminal, and constitutional mechanisms may create confusion regarding the appropriate forum for dispute resolution. Furthermore, differences in procedural standards and evidentiary requirements sometimes result in inconsistent decisions across institutions. Such conditions may reduce public confidence in the effectiveness of electoral justice mechanisms. Consequently, the findings emphasize the need for institutional harmonization and procedural integration to strengthen legal certainty and improve the consistency of electoral dispute resolution. An integrated legal framework would minimize conflicts of authority and facilitate more predictable and efficient adjudication processes (Huda & Mardian, 2021; International IDEA, 2020).

### ***An Ideal Model of Electoral Dispute Resolution Based on Ius Constituendum***

The analysis reveals that the current electoral dispute resolution system requires significant reform to address institutional fragmentation and procedural complexity. From the perspective of *ius constituendum*, the future development of electoral law should focus on creating a more integrated and coherent dispute resolution framework. The proposed model positions Bawaslu as the primary entry point for electoral complaints, enabling systematic classification of disputes into administrative, criminal, ethical, and constitutional categories. Such a framework would reduce overlapping authority among institutions and ensure that disputes are directed to the appropriate adjudicatory body. Comparative studies suggest that integrated electoral justice systems are more effective in

promoting efficiency, transparency, and accountability within democratic processes (López-Pintor, 2010).

Furthermore, the proposed reconstruction emphasizes the need to balance procedural legality with substantive justice. Electoral dispute resolution should not only guarantee compliance with legal procedures but also protect democratic values and constitutional rights. The Constitutional Court would continue to function as the final guardian of constitutional democracy, ensuring that electoral outcomes reflect the genuine will of the people. Institutional integration, digital coordination, and harmonized procedural standards are expected to enhance the effectiveness of electoral justice while reducing legal uncertainty. Therefore, the *ius constituendum* approach offers a normative framework for strengthening Indonesia's electoral law system and promoting a more credible, fair, and constitutionally grounded democratic process (Kelsen, 1967; International IDEA, 2020).

## **CONCLUSIONS AND RECOMMENDATIONS**

This study concludes that the essence of law in electoral dispute resolution in Indonesia is fundamentally aimed at ensuring neutrality, impartiality, legal certainty, and the protection of constitutional rights within democratic processes. The existing electoral justice framework, involving Bawaslu, Gakkumdu, the Administrative Court (PTUN), and the Constitutional Court, reflects a commitment to safeguarding electoral integrity through multiple legal mechanisms. However, the findings reveal that institutional fragmentation, overlapping jurisdictions, and procedural inconsistencies continue to hinder the effectiveness of electoral dispute resolution. While the Constitutional Court has contributed significantly to strengthening substantive electoral justice through its jurisprudence, challenges remain in achieving a coherent and integrated system capable of balancing procedural legality with democratic fairness.

Accordingly, this study recommends the reconstruction of Indonesia's electoral dispute resolution system through an *ius constituendum* approach that emphasizes institutional harmonization, procedural integration, and greater coordination among electoral justice institutions. Bawaslu should be strengthened as the primary gateway for electoral complaints, while clearer divisions of authority should be established among adjudicatory bodies to minimize jurisdictional conflicts. Furthermore, legal reforms should prioritize the development of unified procedural standards and digital integration mechanisms to enhance transparency, efficiency, and public trust. Such reforms are expected to improve legal certainty, ensure substantive justice, and strengthen the legitimacy of electoral outcomes within Indonesia's constitutional democracy.

## **FURTHER STUDY**

Future research should explore comparative models of electoral dispute resolution in other democratic jurisdictions, particularly countries that have successfully implemented integrated electoral justice systems. Comparative analyses may provide valuable insights into institutional design, procedural harmonization, and judicial innovation that could inform the future development of Indonesia's electoral law framework. In addition, empirical

studies involving judges, election administrators, political parties, and voters are needed to assess the practical effectiveness of existing dispute resolution mechanisms and to evaluate public perceptions of electoral justice. Such research would contribute to a more comprehensive understanding of how legal reforms can enhance democratic governance and electoral integrity in Indonesia.

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