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# Alternative Resolution Mechanism in Regional Election Disputes

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**Abstract:** This study is motivated by the high intensity of disputes in the implementation of Regional Head Elections (Pilkada) in Indonesia, which frequently generate political conflicts and legal uncertainty. Regulatory changes, particularly through Law Number 10 of 2016, have significantly influenced the enforcement system and dispute resolution mechanisms in Pilkada. This research aims to analyze the model of informal dispute resolution in Pilkada and its role in strengthening the electoral justice system. The study employs a normative juridical method with a descriptive-analytical approach, examining primary, secondary, and tertiary legal materials related to Pilkada dispute resolution. The findings reveal that, in addition to formal judicial mechanisms, there are alternative or informal mechanisms such as unilateral withdrawal, amicable settlement, mediation, and arbitration that function as complementary instruments to the formal system. These mechanisms promote faster and more efficient resolutions while encouraging win–win solutions to prevent political escalation. It is concluded that informal dispute resolution plays a strategic role in reinforcing procedural and substantive justice and in supporting the realization of democratic and fair regional elections.

**Keywords:** Regional Elections, Electoral Disputes, Alternative Dispute Resolution.

## INTRODUCTION

The discourse on resolving election disputes is always an interesting topic to bring up. The reason is, first, factually, the implementation of regional elections in Indonesia is always accompanied by various legal violations involving various interested parties. Second, the enactment of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law has brought about changes in law enforcement and the resolution of regional election disputes, which need to be understood by all parties involved in regional elections, including academics who have studied law. Third, several court decisions and practices in regional elections have influenced law enforcement and dispute resolution, so they need to be reviewed in conjunction with the existing legal framework for regional elections.

Regional head election disputes in Indonesia frequently occur in many regional head elections. While the reasons and motives for these disputes vary, we can see that the parties

involved in the elections still have a weak understanding of the legal provisions. Meanwhile, forms of fraud are also common in each election dispute. This presents a complex challenge for all parties involved in the elections, both from the regulators (the General Elections Commission (KPU) and the Elections Commission (KPUD) and from the players, namely the candidates and their supporting political parties.[1]

In today's era of democracy, which opens up ample space for political participation, society generally demands transparency and fairness in political competition. These democratic principles are not limited to the central government but must also be realized within the structure of regional governments, as stipulated in Article 18 of the 1945 Constitution, which stipulates that regional heads and deputy regional heads are democratically elected. This principle requires public participation in both policy formulation and oversight of regional governance.[2] In this context, the election of regional heads and deputy regional heads is carried out directly with the hope that community participation in the implementation of regional government will be easier to realize.

However, in practice, regional elections do not always run smoothly; instead, disputes arise at almost every stage. There are at least four legal issues associated with regional elections: First, the issue of the code of ethics for election organizers is resolved by the Election Organizer Honorary Council (DKPP).[3] Second, administrative issues are resolved by the General Elections Commission (KPU). Third, disputes over regional election implementation are resolved by the Election Supervisory Body/PTUN. Fourth, disputes over vote count results are resolved by the Constitutional Court.

The judiciary, which is the last line of defense for resolving regional election disputes, must always be required to prioritize decisions that uphold a sense of justice for all parties involved in the election process. Equally important is an effective legal framework for resolving any disputes that may arise.[4] To make this happen, like it or not, the election dispute resolution forum and all the legal provisions within it must be formulated in detail, clearly, comprehensively, and professionally.

Regarding the process of resolving regional election disputes, according to Bagir Manan, there are two important aspects in the success of law enforcement, including in terms of dispute enforcement, namely the procedures for law enforcement and the content or results of law enforcement.[5] The procedures referred to are procedures for realizing justice, because according to Bagir Manan, the goal of realizing justice can only be achieved through fair means.[6] In other words, in the context of resolving regional election disputes, the procedures for resolving disputes must be fair and transparent, and the content and outcome of the trial must also reflect justice for all parties.

A number of cases of political conflict that have occurred in various regions in Indonesia, especially post-regional election conflicts, are clear evidence of the continued need for professional, fair, and dignified legal resolution.

This is crucial given the fact that the regional elections currently taking place in various regions have been plagued by widespread fraud and the neglect of public welfare following direct elections. The implementation of democratic elections in this country often

[1] Firmanzah, *Mengelola Partai Politik: Komunikasi dan Positioning Ideologi Politik di Era Demokrasi*, (Jakarta: Yayasan Pustaka Obor Indonesia, 2011), hlm. 19-20.
[2] Bagir Manan, *Perjalanan Historis Pasal 18 Undang-Undang Dasar 1945, Perumusan dan Undang-Undang Pelaksanaannya*, (Karawang: UNSIKA, 1993), hlm. 47.
[3] Jimly Asshiddiqie: Sosok, Kiprah, dan Pemikiran, (Jakarta: Yayasan Pustaka Obor Indonesia, 2016), hlm. 229
[4] *www.mahkamahkonstitusi.go.id*
[5] Bagir Manan, 2005, ”Penegakan Hukum Yang Berkeadilan”, dalam *Varia Peradilan*, Tahun ke XX, Nomor 241, Ikatan Hakim Indonesia (IKAHI), Jakarta, hlm. 10
[6] *Ibid.*

becomes a platform for power struggles and the vested interests of certain groups.[7] The practice of money politics, black campaigns, buying votes, and fraud in vote counting are the beginning of the inevitable face of direct regional elections.[8]

Discussing the resolution of regional election disputes is very interesting because from here it can be tested whether the establishment of regional election dispute resolution institutions such as Bawaslu to resolve disputes regarding the regional election process, PTUN to resolve disputes regarding the regional election administration, DKPP to resolve violations of the code of ethics of regional election organizers has been able to realize justice and legal certainty or whether there are other alternatives that provide more justice. Based on the background above, the following problem formulation emerges What is the informal model for resolving regional elections

## METHOD

In this research, the author uses descriptive analysis research specifications, namely research that aims to provide a clear picture of the resolution of regional election disputes according to the Indonesian constitutional law system, data is analyzed using primary legal materials, secondary legal materials, and tertiary legal materials.[9] This research is based on normative juridical because with this method, normative rules will be revealed which originate from juridical provisions relating to the resolution of regional election disputes in Indonesia which are reviewed from various main aspects, especially regarding the model for resolving regional election disputes.[10]

## RESULTS AND DISCUSSION

### The Informal Model for Resolving Regional Elections

Democracy was originally an idea about a way of life that emerged as a reaction to the inhumane socio-political realities prevailing in society. This reaction naturally came from idealistic and wise people. They were disturbed and moved by the perceived restrictions and violations of human rights.

There are three ideal values that support democracy as a way of life: freedom, equality, and justice. In reality, these ideals are realized through the embodiment of symbols and the essence of the basic values of democracy, which truly represent or are drawn from the realities of life that are commensurate with those values themselves.[11]

As democracy becomes more global, ideas about it are also evolving. However, these ideas generally center on power within the state. In a democracy, the people own and control power, and that power is exercised in the interests of the people. Abraham Lincoln once said that democracy is government of the people, by the people, and for the people.

A government can be called democratic if it can provide a regular constitutional opportunity for peaceful competition for political power for different groups, without excluding any significant part of the population by force.

General elections are one of the primary means of upholding a democratic political order. They serve as a tool to nourish and perfect democracy. Essentially, they are a means of democracy to establish a system of state power that is fundamentally born from below,

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[7] Janpatar Simamora, "Eksistensi Pilkada dalam Rangka Mewujudkan Pemerintahan Daerah yang Demokratis, Mimbar Hukum Volume 23, Nomor 1, (2011):hlm 231

[8] Dyah Mutiarin, dkk, "Analisis Dampak Positif dan Negatif dalam Pilkada Langsung bagi Kualitas pelayanan Publik di Daerah" (Paper disajikan dalam Forum Ilmiyah Nasional Program Pascasarjana, Universitas Muhamadiyah Yogyakarta, 24 Desember 2011), hlm. 1.

[9] Ronny Hanitijo Soemitro, *Metode Penelitian Hukum dan Jurumetri*, Jakarta: Ghalia Indonesia, 2008, hlm.97

[10] Soerjono Soekamto, Pengantar Penelitian Hukum, (cet. Ketiga, (Jakarta: UI Press, 1986), hlm. 9-10.

[11] Arbi Sanit, *Perwakilan Politik Indonesia*, (Yogyakarta: CV. Rajawali, 1985), hlm. 83

according to the will of the people, thus establishing state power that truly radiates downward as an authority in accordance with the wishes of the people, by the people, and according to a system of deliberation and representation.[12]

The Election of Regional Heads and Deputy Regional Heads is an election to directly elect Regional Heads and Deputy Regional Heads in the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia.[13]

Since June 2005, Indonesia has adopted a direct regional head election system. According to Rozali Abdullah, several reasons for the direct election of regional heads and deputy regional heads are:[14]

1. Returning sovereignty to the people

The citizens of the regions are an inseparable part of the Indonesian people as a whole, who also have the right to sovereignty which is their basic right, which right is guaranteed in our constitution, the 1945 Constitution of the Republic of Indonesia. Therefore, the citizens of the regions, based on the sovereignty they have, are given the right to determine the fate of their respective regions, among other things by directly electing the Regional Head.

2. Equal legitimacy between the Regional Head and Deputy Regional Head and the Regional People's Representative Council (DPRD).

Since the legislative elections of April 5, 2004, DPRD members have been directly elected by the people through a proportional representation system with an open candidate list. If the Regional Head and Deputy Regional Head were still elected by the DPRD, rather than directly by the people, the DPRD would have a much higher level of legitimacy than the Regional Head and Deputy Regional Head.

3. Equal position between the Regional Head and regional representatives with the DPRD

Based on Law No. 1 of 2015, which has been amended several times, most recently by Law No. 10 of 2016, regional election participants are candidate pairs proposed by political parties or coalitions of political parties, and can also include independent candidate pairs supported by a number of individuals.

Although direct regional elections have been held in many regions, they have not yet been fully implemented as expected. Their implementation still presents fundamental problems. Direct elections are still dominated by certain elite groups through political oligarchies, making them a pseudo-democratization process.[15]

Public participation is more mobilized. This is similar to the political process, which, as a means of strengthening local democracy, has yet to materialize. Instead, horizontal conflicts leading to anarchy tend to occur frequently, allegedly due to various weaknesses in the implementation regulations and the emergence of various forms of manipulation and fraud.

Within the electoral justice system, it is crucial to develop tools and measures to prevent election disputes. Tools and measures that need to be taken to prevent election disputes can come from both within and outside the electoral justice system. These include:

1. Designing and implementing an appropriate constitutional and legal framework for democracy and representative government, human rights and electoral processes.
2. Participation of major political parties and key sectors of society in designing or reforming the legal framework for elections;

[12] Rusli Karim M, *Perjalanan Partai Politik di Indonesia : Sebuah Potret Pasang Surut*, (Jakarta: CV. Rajawali, 1991), hlm. 120

[13] Pasal 1 ayat 4 Undang-Undang Nomor 22 Tahun 2007

[14] Rozali Abdullah, *pelaksanaan Otonomi Luas dengan Pemilihan Kepala Derah secara Langsung*, PT Raja Grafindo, 2005, hlm 53-55

[15] Silahuddin, dkk., Evaluasi Pelaksanaan Pemilihan Kepala Daerah Langsung, Jakarta: Kementerian Dalam Negeri Republik Indonesia, 2007, hlm. iii.

3. Development of political culture and civic education, including democratic principles and values and respect for the rule of law and human rights;
4. Development of a pluralistic party system and internal democracy in the political process;
5. Gender and minority inclusivity in government and the political arena;
6. The creation of fair conditions for elections, especially with regard to financing and media access;
7. Developing the role of civil society, including its ability to monitor all stages of the regional election process;
8. Adoption of a code of ethics by the media, civil society, election observers, and political parties;
9. Establishing election organizers who are professional, permanent, impartial/independent, and autonomous;
10. Adoption of appropriate election procedures by the KPU which are made publicly available and consistently followed. [16]

Apart from the external aspects of the regional election justice system, preventing regional election disputes also requires support from within the regional election justice system, including:

1. Design and implement an appropriate constitutional and legal framework for an accessible and effective Election Justice System;
2. Determine the election organizers who are professional, permanent, and impartial/independent.
3. Compliance with the code of ethics by the ranks of Pilkada organizers and other bodies in the PSP system, media, civil society, political observers and political parties;
4. The Pilkada organizers and the PSP body are committed to always upholding the principles and values of democracy, especially independence and neutrality/impartiality.
5. The ability of election organizers to make decisions transparently and disseminate them effectively.
6. Proper election management training for KPU and Bawaslu staff;
7. Adoption of a code of ethics by KPU and Bawaslu staff;
8. Gender and minority inclusivity in the KPU and Bawaslu;
9. Adoption of security measures in terms of receiving, counting and recapitulating the voting results.[17]

As a vital component of the regional election justice system, a comprehensive prevention system is absolutely necessary, as the best dispute resolution mechanism is prevention. Legal gaps or the absence of adequate action can be the source of election disputes.

The election dispute resolution system, which is the core of the election justice system, has two primary functions: corrective and punitive. Corrective action is aimed at addressing election complaints, with the goal of annulling, modifying, or recognizing any irregularities in election procedures, and protecting election rights or restoring and fulfilling violated election rights.

The main areas of objections to the Pilkada in the implementation of the Pilkada include preparation of the voter list, lawsuits against candidates, appointment of organizing bodies and ad hoc committees, intimidation, campaign violations, voting and counting violations, vote tabulation violations.[18]

[16] Electoral Justice : The international IDEA Handbook, hlm 23 - 24.
[17] Electoral Justice : The International IDEA Handbook, hlm. 24
[18] Chad Vickery (ed), *Pedoman Untuk Memahami, Menangani, dan Menyelesaikan Sengketa Pemilu*, (Jakarta: IFES, 2011), hlm 122 – 125

The regional election dispute resolution system also includes a punitive function, namely imposing sanctions on those responsible for election violations and crimes. The punitive function of the regional election dispute resolution system is a series of procedures to ensure that regional election obligations and responsibilities are carried out, and to punish perpetrators or individuals responsible for election crimes or violations. Imposing criminal sanctions on individuals responsible for election violations and crimes requires several prerequisites, including a clear definition of the criminal offense, the sanctions, and the penalties imposed for violations, which must be clearly stated in the law. Second, legal provisions defining an administrative or criminal violation and the appropriate sanctions or penalties must embody the principles of legal certainty and objectivity. Third, provisions establishing sanctions or penalties must be strictly interpreted and applied. The principle of legality requires that no argument by analogy be applied, nor should arguments based on common sense be applied. The use of such arguments would create uncertainty regarding which behavior or negligence is punishable or not.

In addition to the formal regional election dispute resolution system, there are other mechanisms and procedures for handling election disputes. This type of mechanism is generally referred to as an informal or alternative election dispute resolution mechanism. Out-of-court election dispute resolution is nothing new. Communities around the world have long used non-judicial, local, or informal methods to resolve election conflicts and other disputes. Alternative election dispute resolution has been developed, both in terms of its use and institutionalization, worldwide, particularly in post-conflict societies in recent years.

Alternative resolution has been widely and effectively used in various countries: Afghanistan, Mozambique, Malawi, and the Democratic Republic of the Congo to handle election disputes by assigning functions and adjudication authority to civilian-based structures. Ghana and Botswana, often considered benchmarks for democracy in Africa, use inter-party relations committees and other community-based structures to assist the Election Commission (KPU) in achieving transparent and credible elections through effective conflict resolution, management, and mediation. The primary purpose of alternative resolution mechanisms is not to replace formal methods, but rather to support and complement them in terms of credibility, cost, political and institutional crises, and deficiencies in the design of election dispute resolution mechanisms.[19]

Alternative mechanisms for resolving regional election disputes include three models: first, unilateral, when the party filing the dispute or complaint voluntarily withdraws their complaint or petition. Second, bilateral or multilateral, through compromises and transactions or peaceful settlements between the disputing parties. Third, third-party intervention, through conciliation, mediation, and arbitration mechanisms. The use of alternative mechanisms does not imply a weakness in the regional election dispute resolution system but rather aims to expedite and reduce the cost of dispute resolution. Formal and informal dispute resolution systems can operate in tandem and complement each other.

Choosing the right model or method for resolving regional election disputes can have a positive impact on political relations between all parties involved in the election. Dispute resolution models must keep pace with the changing times. In developed countries, the "win/lose" or "lose/lose" approach is increasingly being abandoned. In general, there are several methods available, as follows:

[19] Chad Vickery (ed), *Pedoman Untuk Memahami, Menangani, dan Menyelesaikan Sengketa Pemilu,* (Jakarta: IFES, 2011), hal 261 – 294. Dan Electoral Justice : The International IDEA Handbook hlm. 183 -187.

1. Negotiation

A method for finding a resolution to a problem through direct discussion (deliberation) between the disputing parties in a regional election, the outcome of which is mutually acceptable. The outcome of negotiations is a win-win agreement between the parties.

2. Mediation

An effort to resolve regional election disputes involves the involvement of a neutral third party as a mediator. This mediator has no decision-making authority but is solely responsible for assisting the disputing parties in reaching a mutually acceptable resolution (solution/agreement). Like negotiation, mediation results in a win-win outcome.

Mediation, as a dispute resolution process outside the courts, is currently used by courts as a dispute resolution method. The form of dispute resolution through mediation currently practiced is integrated with the judicial process.[20]

Settlement through mediation shortens the time required to resolve a case, lightens the financial and economic burden, and, no less important, reduces the psychological burden that will influence the various attitudes and activities of the parties to the case.[21]

3. Arbitration

A method of resolving regional election disputes outside the courts, based on an arbitration agreement entered into by the parties, and conducted by a selected arbitrator authorized to make a decision. In examining and deciding a dispute, the arbitrator or panel of arbitrators always bases itself on the law, namely the law chosen by the disputing parties (choice of law). However, it is possible for the arbitrators, if desired by the parties, to decide on the basis of justice and fairness.

4. Court

An official state institution authorized to adjudicate regional election disputes, receiving, examining, and deciding cases based on procedural law and applicable statutory provisions. This method takes longer because of the lengthy court process. The outcome of the court decision will only favor one party. In court, the judge will decide the dispute fairly and independently, and declare one party the winner, without any pressure from any party or institution.

## CONCLUSION

Indonesia's regional election (Pilkada) dispute resolution system combines formal judicial mechanisms with informal or alternative approaches. The informal model hrough unilateral withdrawal, negotiated settlement, mediation, or arbitration functions as a complementary mechanism to accelerate resolution, reduce costs, and prevent political escalation. In practice, negotiation and mediation are the most effective approaches because they promote win–win solutions and preserve political relationships among the parties. Therefore, alternative dispute resolution plays an important role in strengthening electoral justice and supporting democratic and fair regional elections.

[20] Bagir Manan, *"Peran Sosok Hakim Agama sebagai Mediator dan Pemutus Perkara serta Kegamangan masyarakat terhadap Keberadaan lembaga Peradilan,"* sambutan Ketua Mahkamah Agung RI. Pada Serah Terima Ketua Pengadilan Tinggi Agama Medan. (22 Agustus 2003), hlm. 4

[21] Bagir Manan, *Mediasi Sebagai Alternative Menyelesaikan Sengketa*, Dalam Majalah Hukum *Varia Peradilan* No. 248 Juli 2006 hlm. 9

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