



## Model For Resolving Election Violations Through Indonesian Election Body and Constitutional Court

M Syahrul Borman<sup>1\*</sup>, Siti Marwiyah<sup>2</sup>, Vieta Imelda Cornelis<sup>3</sup>, Irwan Lazuardi<sup>4</sup>,  
Phimlikid Kaewhanam<sup>4</sup>

<sup>1,2,3,4</sup> Faculty of Law, Universitas Dr. Soetomo, Surabaya, East Java, 60118, Indonesia

<sup>5</sup> Department of Public Administration, Faculty of Liberal Arts, Kalasin University, Thailand

\* Corresponding author: [m.syahrul.bormansh@unitomo.ac.id](mailto:m.syahrul.bormansh@unitomo.ac.id)

### Article

### Abstract

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*This study formulates a model for resolving disputes over election violations through the Election Supervisory Body and the Constitutional Court in Indonesia. This research analyses juridical and normative theories, policies, and legal decisions, as well as studies of cases of election violations in 2014 and 2019. This research method uses qualitative research with a grounded theory approach and a normative juridical approach. The data sources comprise primary and secondary legal materials. The results of this study show that 1) Problems with violations of the electoral process and disputes over election results have not been resolved properly. 2) The model of resolving violations of the electoral process and disputes over election results is with a settlement model approach through the Application of the Critical Attitude Model of Public Militancy and Law Enforcement Militancy by the Election Supervisory Body and the Constitutional Court.*



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## INTRODUCTION

Elections have significant value in the development of a healthy and dynamic democracy (Wijaya & Nasran, 2021). The 2019 Indonesia's general elections have various polemics, crimes, or violations, various types of irregularities or deviations that hypothesize disputes, fulfilling the elements of violations of election juridical norms such as fraudulent practices, forgery, intimidation, vote inflation, and other types of violations (Ahmad, 2021; Armia, 2015). Indonesia is a democratic country prone to significant fluctuations in the organisation and implementation of general elections (Indra et al., 2023; Saputra et al., 2024). These elections are crucial for realising people's

sovereignty and filling political positions in government (Risky et al, 2023). In a pluralistic society like Indonesia, identity politics is deeply tied to general election contestation, often becoming a boomerang for democracy implementation (Suparto et al., 2023).

General elections can function as a 'two-way street,' involving bottom-up and top-down functions. From a bottom-up perspective, elections are seen as a means for politicians to be called to responsibility and pressured to deliver policies that reflect public opinion (Warjiyati et al., 2022). On the other hand, the bottom-up function in elections involves recruiting politicians, with political parties being the primary means of nominating candidates. In a democratic country, elections are the primary source for recruiting politicians and ensuring the implementation of democracy (Aprilindo et al., 2019). General elections are held in Indonesia and other countries to fill positions at both central and regional levels. These elections, known as general elections for regional heads, result from the decentralisation system (Suparto et al., 2023). The 1945 Constitution of the Republic of Indonesia regulates the election of regional heads, with Governors, Regents, and Mayors elected democratically (Siboy et al., 2024). Regional elections are a way to implement people's sovereignty by directly and democratically electing regional heads every five years (Aprilindo et al., 2019; Warjiyati et al., 2022).

Elections are a means of implementing people's sovereignty, which is held directly, publicly, freely, secretly, honestly, and reasonably to produce a democratic state government based on *Pancasila* and the 1945 Constitution (Djuyandi & Hidayat, 2019; Kelliher, Isra, Daulay, et al., 2019). Under Article 2, paragraph (1) of the 1945 Constitution states that "*Sovereignty is in the hands of the people and is exercised according to the Constitution*". The meaning of sovereignty in the hands of the People is that the people have the sovereignty, responsibility, rights, and obligations to democratically choose leaders who will form a government to take care of and serve all levels of society and supervise the course of government (Chakim, 2019; Mahyudin et al., 2020). Elections have significant value in developing a healthy and dynamic democracy (Aolain, 2018). A healthy democracy must be understood as a process toward a more intelligent, independent, and dignified society In Indonesia (Hamzani, Taufik, Asmarudin, et al., 2021). An election is highly expected to be part of the stages of democratic life and the form of the construction of the state of law, where its implementation should not cause disputes (Djuyandi & Hidayat, 2019; Raden, 2021). However, the fact is that there are still many violations and cases of election disputes in every organizer.

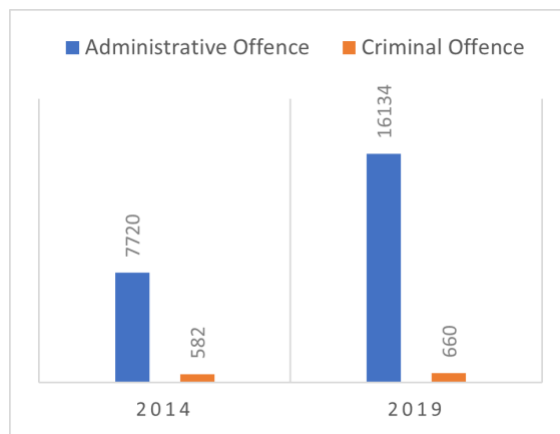


Figure 1. Data on election violations in 2014 and 2019 in Indonesia Sources. (Adams & Asante, 2020)

Figure 1 shows that cases of violations that occurred in Indonesia during the general elections in 2014 and 2019 increased significantly. Cases of administrative misconduct in the 2014 general elections amounted to 7720 cases and increased to 16134 cases in the 2019 elections (Harijanti & Lindsey, 2018). Meanwhile, cases of criminal offences in the 2014 elections amounted to 582 cases, while in 2019, it increased to 660 cases (Adams & Asante, 2020). This increasing number of cases of election violations shows the lack of voter quality has an impact on the quality of Indonesia's democracy

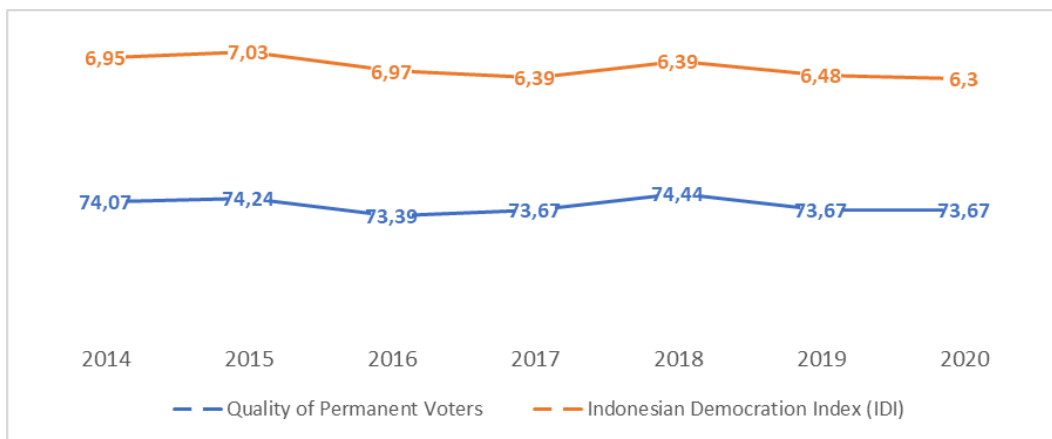


Figure 2. Voter Quality Value and Indonesian Democracy Index for 2014-2020 Source. (Harijanti & Lindsey, 2018; Setyono et al., 2021)

Figure 2 shows the value of voter quality and the Indonesian democracy index, which is volatile yearly. At the general election stage in 2014, it showed that the value of Indonesia's democracy index was relatively high at 6.95 compared to 2019 at only 6.48 (Setyono et al., 2021). Meanwhile, the quality value of permanent voters in 2014 was 74.07 higher than in 2019 at 73.67 (Harijanti & Lindsey, 2018), showing that the high value of voter quality affects the value of the democracy index in Indonesia. Nevertheless, Indonesia's democracy index is still relatively weak compared to other

countries. Indonesia's democracy index ranks 52nd in the world with a value of 6.71, which is relatively weak. Various factors affect the low index of Indonesian democracy, one of which is the quality of voters (Borzyskowski & Saunders, 2022).

Electoral problems in Indonesia, particularly in 2014 and 2019, highlight various aspects that demand particular attention in managing and resolving electoral disputes. The following is a comprehensive explanation of the electoral problems of the two periods and the urgency of the dispute resolution model by The General Election Supervisory Agency (*Badan Pengawas Pemilu*/BAWASLU) and the Constitutional Court (*Mahkamah Konstitusi*/MK).

Table 1. Electoral Problem in 2014 and 2019

Election violations in 2014	Election violations in 2019
Permanent Voter List	Technology and Vote Counting
Vote Rigging and Manipulation	Polarisation of Politics
Election of logistics	Health and Safety of Election Officials
Non-neutrality of Election Organisers	Disputes and Claims of Fraud

Source. (Hafidz et al., 2021)

The erroneous Permanent Voters List caused controversy during the 2014 elections, as many voters either needed to be registered or enrolled more than once. Second, there were several reports of fraud, including money politics, intimidation, and vote count manipulation (Wibisono & Imawan, 2022). Third, there were delays in logistics delivery, such as ballot papers and vote boxes, which disrupted the voting process. The final one is about the non-neutrality of election organisers. There have been reports of election organisers siding with one candidate or party (Appleby & Lynch, 2021; Reekie & Reekie, 2021).

The 2019 Elections, Technology, and Vote Counting are the use of technology information systems in elections, which introduces new challenges, including the possibility of hacking and data manipulation (Febrian, 2021; Hafidz et al., 2021). Second, the 2019 General Election was characterised by sharp political polarisation, which increased the likelihood of social and political confrontation. Third, the Health and Safety of Election workers: Many election workers perished as a result of excessive workloads and poor working conditions. Following the election, numerous parties filed challenges and charges of fraud, necessitating a lengthy and complex legal process (Gerards, 2023).

Several parties, including the MK and BAWASLU, have expressed concern about the urgency of the Election Dispute Resolution Model due to a few current issues (Tröger, 2019). The BAWASLU is tasked with preventing and prosecuting election violations. This includes handling administrative violations, educating voters and election participants with the primary goal of preventing breaches, and providing

preventive supervision, which involves monitoring the election process from start to finish (Appleby & Lynch, 2021; Syawawi, 2020).

The Constitutional Court can settle disputes about election results. It is crucial for three reasons:

1. Settling election-related disputes fairly and transparently.
2. Legitimising the electoral process by making sure that the results are acknowledged and accepted by all parties, upholding social and political stability.
3. Setting precedents by producing rulings that serve as guides for settling election-related disputes in the future.

Election-related issues in 2014 and 2019 highlight the difficulty and complexity of upholding electoral integrity (Tröger, 2019). To guarantee fair, transparent, and accountable elections, an effective and efficient dispute resolution approach is required. The BAWASLU and the Constitutional Court play a critical role in managing and resolving election problems (Febrian, 2021; Rubiyanto & KEBUDAYAAN, 2023). Problems and disputes in the 2014 and 2019 elections demonstrate the presence of a variety of factors and causes threatening electoral integrity (Weghorst, 2022). Oversight capabilities, processes for dealing with violations, independence, due process, accessibility, and public trust are among the gaps in The General Election Supervisory Agency (BAWASLU) and the Constitutional Court's dispute resolution procedures. Addressing these gaps is critical for future improvements to the electoral dispute resolution system, ensuring fair, transparent, and accountable elections (Febrian, 2021; Syawawi, 2020).

Electoral dispute resolution varies across democracies worldwide. According to Hamzani, Taufik, and Khasanah (2021), 50% of these disputes are resolved through the judiciary, while 46% are addressed by Election Supervisory Bodies (EMBs) (Hamzani, Taufik, & Khasanah, 2021). Countries with election dispute resolution through EMBs include Turkey, Thailand, Australia, and Norway (Ahmad, 2021b). Meanwhile, Indonesia and Germany resolve disputes through the courts. In Indonesia, the settlement of election disputes is carried out by the Constitutional Court, which has the authority to handle the resolution of election results. Of course, each country's settlement of electoral disputes is different in its settlement model (Adams & Asante, 2020).

This research focuses on violations of the electoral process resolved by the Election Supervisory Body and violations of the results of the counting of votes resolved by the Constitutional Court (Ruhdiara et al., 2022). Election violations are a problem that affects democratic values in Indonesia. This is because elections significantly value developing a healthy and dynamic democracy (Dinata & Akbar, 2022). Therefore, this research is compelling as it aims to elaborate on the juridical dispute resolution model (based on legal norms) through the Election Supervisory Body and

the Constitutional Court as judicial institutions in Indonesia (Mahyudin et al., 2020; Sani et al., 2021).

Law enforcement personnel who are willing or able to move it are necessary for the application of a legal norm. The aim of law development will not be fulfilled if there are no human law enforcement agents (Suparto et al., 2023). Because law enforcement is carried out by people, not just by the law, success depends on the presence of law enforcement officials. The conduct of law enforcement officials reflects both the good and bad of law enforcement (Sani et al., 2021b). Law enforcement must be professional, proportionate, and able to position the law from abstract to concrete. The law can be perceived as a state product, providing certainty for people's interests and maintaining sovereignty. It can provide benefits to communities and justice seekers by regulating elections and accountability (Von Borzyskowski & Wahman, 2021).

Research on election administrative disputes in Indonesia, such as those involving the Election Supervision Body (ESB), Honorary Council of the General Election (HCGE), and State Administrative Court, is limited (Ahmad, 2021b). The study also examines post-conflict regional elections, their structure, disputes, and the handling of these cases by the Constitutional Court (Al-Fatih & Nur, 2023). The research also discusses legal issues related to jurisdiction over these disputes. Compared to previous studies, there is limited focus on the political direction of Constitutional Court decisions and their responsiveness to regional election problems (Indra et al., 2023; Suparto et al., 2024). Comparing Indonesia and America, despite extensive research, there needs to be more interest in implementing regulations or reviewing legal politics through a judicial review process (Indra et al., 2023b). This highlights the need for further research on these issues.

In the end, Indonesia's state administration structure has seen changes in the system, mechanism, and behaviours of election and post-conflict local election organisers and participants due to the political renewal of election and post-conflict local election law following the Constitutional Court Decision (Ruhdiara et al., 2022). People are aware of the constitutional rights guaranteed by the 1945 Constitution and strive to improve the system through regional head elections to elect ideal figures (Shah, 2021). The dynamics of holding regional head elections aim to resolve injustice and legal uncertainty, but the political system can cause gaps between constitutional interpretation and legislative implementation (Adams & Asante, 2020).

Many regulations, material tests, and public dissatisfaction with the implementation of regional elections are critical issues that are criticised by judicial reviews (Aolain, 2018; Tiplady, 2022). The results of Constitutional Court decisions often make legal products governing regional elections and their amendments increasingly complex, making implementation difficult (Borzyskowski & Saunders, 2022b). Therefore, the urgency of this research is to identify the legal politics that underlie the making of

regulations and changes to the Regional Election Law, enriching scholars' knowledge and serving as a reference for future regional election politics (Katju, 2023).

Several previous studies have been more dominant in discussing election problems and violations and how to anticipate violations in elections (Daxecker et al., 2019; Daxecker & Jung, 2018; Manik et al., 2019; Nadaf, 2020). The number of articles examining electoral violations and dispute resolution options is still quite low due to the complicated procedure for resolving disputes or election violations and the fact that the model for resolving election disputes is not definitive (Borzyskowski & Saunders, 2022). On the other hand, each democracy has a different dispute resolution model carried out by the judiciary and administration. This study analyses dispute resolution models based on peace processes, political power, and civil participation (Raden, 2021; Tiplady, 2022).

This study can provide literary recommendations on dispute resolution models and election violations in Indonesia through the analysis, considering that previous research has not resolved Indonesia's conflict and election violations. This research uses qualitative research methods with a normative approach, using data sources based on primary and secondary legal materials. This research analyses juridical and normative theories, policies, legal decisions, and studies of cases of election violations in 2014 and 2019.

## **METHOD**

This study employs normative research techniques with a grounded theory in its primary and secondary legal data sources (Khairunnisa et al., 2022). In order to construct theories based on existing data, the grounded theory technique is utilised to explain the correlations that emerge through case studies to explain the differences that appear (Vollstedt & Rezat, 2019). In addition, a normative research strategy is used in this study to support the grounded theory analysis (da Silva et al., 2020). This is due to the study's aim, which is to develop a model for settling the 2019 election disputes by establishing theoretical foundations, legal and normative foundations, as well as studies from case studies that are thoroughly examined (Souza et al., 2020).

This study analyses legal and normative theories, laws, and rulings while also studying examples of electoral irregularities from 2014 and 2019. Primary legal resources and secondary legal materials were employed as data sources for this research. The 1945 Constitution of the Indonesian National Republic, the Constitutional Court Law, and the Constitutional Court's rulings on election disputes in 2014 and 2019 are the main legal data sources used. Secondary Legal Materials include 45 reputable international journals from 2014 through 2022. This study also utilises the books on the Constitution, Elections, Election Disputes, Dispute Resolution, State Institutions, Democracy and Human Rights, Constitution, and news articles that are relevant to the research variables between 2014 and 2022.

## RESULTS AND DISCUSSION

### Constitutional Court as a Settlement of Electoral Disputes

In several decisions, The Constitutional Court has been instrumental in making legal breakthroughs by altering laws by adding or deleting words (Warjiyati et al., 2022). Three methods of rule-breaking are employed: 1) using spiritual intelligence to overcome legal adversity, encouraging a shift away from outdated methods; 2) focusing on a deeper meaning in law implementation, encouraging all law enforcement to question their conscience about the law's profound meaning; and 3) involving vulnerable groups in law enforcement (Asrun, 2023). Justice seekers may consider a law's normative, sociological, and constitutional aspects. All constitutionality-related issues are resolved exclusively through the courts in countries with constitutional courts (Tushnet, 2021). However, legal breakthroughs often occur when the court handles cases outside its authority. This approach encourages a more inclusive and practical approach to addressing legal issues (Huda, 2019).

The Constitutional Court's legal breakthroughs are influenced by the intentions of constitutional judges and the public response to rule-breaking decisions (Al-Fatih & Nur, 2023). For example, the Court's Decision No. 46/PUU-XIV/2016 expanded the meaning of adultery in the Criminal Code, leading to public acceptance. Judicial activism allows judges to make decisions based on personal or political considerations. It is a philosophy where judges allow their personal views on public policy to guide their choices. This philosophy is believed to lead to constitutional violations and disregard of precedent (Marwiyah et al., 2022). Judicial activism, rooted in English legal tradition, began with *Madison v. Marbury* in 1803. It emphasised equity and natural rights, demonstrating separation of powers and balance (Siregar, 2023).

The public expects The BAWASLU to be a reliable partner in implementing democratic elections, and The BAWASLU must make fundamental changes to its supervisory system (Hafidz et al., 2021; Syawawi, 2020). The system should have a standard format in the election monitoring process, with a double-standard pattern of supervision as both an implementer and a direct supervisor (Appleby & Lynch, 2021). The BAWASLU should also provide adequate coaching supervision in cases like money politics or political dowries (Budhiati, 2020). The mechanism for handling violations should be simplified, making it easier for reporters to submit reports and supervisory members to handle violations. Strengthening the capacity and human resources of election supervisors is also essential (Gerards, 2023). The relationship between the civil society movement and the election monitoring movement should be strengthened, with participation from civil society and monitoring organisations. The Jargon "Together with the People to Supervise Elections, Together with The BAWASLU to Enforce Election Law" encourages community involvement in upholding election law and achieving electoral justice (Purba, 2021; Syawawi, 2020).



Majoritarianism refers to the judicial process's negation of democratic policies, while Interpretative Stability, Interpretative Fidelity, Substance/Democratic Process Distinction, Specificity of Policy, and Availability of an Alternate Policymaker all examine the impact of court decisions on democratic political outcomes (Aprilindo et al., 2019; Djuyandi & Hidayat, 2019; Jackson et al., 2022). The Constitutional Court, a key institution in Indonesia, is a crucial player in implementing judicial activism, known as virtue jurisprudence (Marwiyah et al., 2022). The approach, combining implications, minoritarian, remedial, and internationalism, is a crucial aspect of a country's legal system, emphasising unwritten rights and protecting unintentional freedoms (Huda, 2019b).

The minoritarian principle emphasises the special attention given to minority groups when the democratic process is negatively impacted by the majority, particularly when it violates the principle of equal protection (Hamzani, Taufik, Asmarudin, et al., 2021; Shah, 2021). The remedial principle allows the court to restore the rights of individuals or groups that are considered unfair, while the internationalism principle considers developments in international law (Al-Fatih & Nur, 2023). In some instances, the Constitutional Court is encouraged to carry out judicial activism, as the country's legal system is multi-faceted, based on Pancasila and the 1945 Constitution. This approach provides a strong rationale for the Constitutional Court's implementation of judicial activism (Warjiyati et al., 2022).

Normatively, elections are expected to be held in accordance with orderly, safe, peaceful, and high public awareness in the involvement of exercising their voting rights (Nadaf, 2020). However, the fact is that the implementation of elections does not have to be in accordance with juridical norms. Many elections were found not to be in accordance with legal norms, and political practices were exhibited that met the elements of fraud, manipulative data, and vote inflation (Setyono et al., 2021). Normatively, violations that occur in the holding of elections involve several categories.

1) Violation of the Code of Conduct;

Article 251 of Law Number 8 of 2012 concerning the General Election of Members of the People's Representative Council (*Dewan Perwakilan Rakyat-DPR*), Regional Representative Council (*Dewan Perwakilan Daerah-DPD*), and Regional Representative Council (*Dewan Perwakilan Daerah-DPRD*) states “*Violation of the code of ethics for election organizers is a violation of the ethics of election organizers guided by oaths and/or promises before carrying out their duties as election organizers.*”

2) Election Administration violations.

Article 253 of Law No. 8 of 2012 states “*Violations of election administration are violations that include procedures, procedures, and mechanisms related to the administration of implementation. Elections in every stage of the implementation of elections outside the criminal acts of elections and violations of the code of ethics of election organizers.*”

### 3) Election Disputes.

Article 257 of Law No. 8 of 2012 states *“Election Disputes that occur between election participants and disputes between election participants and election organizers as a result of the issuance of decisions of the Election Commission (Komisi Pemilihan Umum-KPU), Provincial Election Commission (KPU), and Regency/City Election Commission (KPU).”*

### 4) Electoral Offences;

Article 260 of Law No. 8 of 2012 states *“Election crime is a criminal offense of violation and/or crime against the provisions of the election crime as stipulated in this Law.”*

### 5) Election TUN Disputes.

Article 268 of Law No. 8 of 2012 states.

*Election administrative disputes are disputes that arise in the field of election administration between candidates for members of the People's Representative Council (Dewan Perwakilan Rakyat-DPR), Regional Representative Council (Dewan Perwakilan Daerah-DPD), Provincial Regional Representative Council (Dewan Perwakilan Daerah-DPRD), regency/city DPRD, or political parties of candidates for Election Participants with the Election Commission (Komisi Pemilihan Umum-KPU), Provincial KPU, and Regency/City KPU because of the issuance of decisions of the KPU, Provincial KPU, and Regency/City KPU.*

### 6) Disputed Election Results (Persiliban Hasil Pemilihan Umum-PHPU);

Article 271, paragraph (1) of Law No. 8 of 2012 states *“Disputes over election results are disputes between the Election Commission (Komisi Pemilihan Umum-KPU) and Election Participants regarding the determination of the results of elections nationally.”*

Considering that the implementation of elections is not as adapted, the state prepares an institutional mechanism for resolving election disputes as an effort to provide protection for the rights of citizens who are violated and as an effort to provide trust and satisfaction to the public in the Electoral Institution as a democratic institution and legitimise a strong and trusted government (Setyono et al., 2021; Von Borzyskowski & Wahman, 2021). The proverb *“Evil causis evil vallacy,”* suggests that negative events can result from and cause other negative events. This is evident when the conduct of an election appears flawed or deficient ((Anom et al., 2022). Such shortcomings have detrimental effects both juridically and politically. In Indonesia, elections are anticipated to be integral to democratic life and the formation of a legal state, ideally conducted without disputes. However, election disputes frequently arise in every election cycle (Harijanti & Lindsey, 2018; Kelliher, Isra, Daulay, et al., 2019).

Elections are a means of implementing people's sovereignty, which is held directly, publicly, freely, secretly, honestly and fairly in order to produce a democratic state government based on *Pancasila* and the 1945 Constitution (Ruhdiara et al., 2022). Article 2, paragraph (1) of the 1945 Constitution states, *“Sovereignty is in the hands of the people and is exercised according to the Constitution”*. The phrase *“sovereignty in the hands of the People”* refers to the notion that the people have the power, duty, and obligation to democratically select the leaders who will constitute a government, care for and serve all spheres of society, and monitor the conduct of that government. Parliament

serves as the institution that carries out the people's sovereignty (Firmanto et al., 2021; Hamzani, Taufik, Asmarudin, et al., 2021).

The Constitutional Court judges and The General Election Supervisory Agency (BAWASLU) commissioners in Indonesia face issues of independence and integrity due to recruitment sources with direct interests in the court's decisions (Anwar, 2019). The process for determining MK judges, as stipulated in the 1945 Constitution, is open to political commitments and pressure from institutions (Purba, 2021; Rahmawati & Nugraha, 2023). The Constitutional Court's short trial process, coupled with government interference in election results, compromises its independence and integrity. This situation affects decisions related to state power and allows the law to be used as a political tool (Khurshid, 2020).

Article 475, paragraph (1) of Law 7 of 2017 Election Law states *"In the event of a dispute over the determination of the vote acquisition results of the Presidential and Vice-Presidential Elections, the Candidate Pair may file an objection to the Constitutional Court within a maximum period of 3 (three) days after the determination of the results of the Presidential and Vice-Presidential Elections by the KPU"*. Article 475, paragraph (3) of Law 7 of 2017 Election Law states *"The Constitutional Court decides disputes arising from objections as referred to in paragraphs (1) and (2) no later than 14 (fourteen) days from the receipt of the objection application by the Constitutional Court"*.

On June 27, 2018, 17 provinces, 115 districts, and 39 cities held simultaneous elections, with a potential voter population of 160,756,143, four times higher than the 2017 Regional Election, indicating an increased potential for violations (Armia, 2015b; Kelliher, Isra, Yuliandri, et al., 2019). Meanwhile, the Election Supervisory Body is releasing aspects of insecurity in the 2018 Election Insecurity Index, including the integrity and professionalism of the organisers, contestation, participation, neutrality of the State Civil Apparatus, Money Politics, Security, Identity Politics, and social media (Dinata & Akbar, 2022).

For example, Article 135 paragraph (1) of Law 1/2015 jo. Law 8/2015 jo. Law 10/2016 concerning the Election of Governors, Regents, and Mayors, specifies violations that can be reported. These include breaches of the code of conduct by election organisers, violations of election administration, election disputes, and criminal acts. Each of these types of violations has a different substance and handling procedures (Firmanto et al., 2021; Hamzani, Taufik, Asmarudin, et al., 2021). Therefore, in order to play a role in supervising the implementation of regional elections, the public must know and understand the types of election violations (Samararatne, 2021).

In 2019, quite a lot of cases were handled or decided by the Regency/City Supervisory Committee, especially in North Sulawesi Province. Of the total 6,649 reports and findings that came in, there were 4,759 cases of administrative violations, and 548 others were criminal violations of the General Elections (Setyono et al., 2021). In addition, the Election Supervisory Body also processed 107 violations of the code

of conduct for election organisers. Meanwhile, 105 violations are still being processed and have not been categorised, and there are various cases of election administration violations that have occurred in other areas (Raden, 2021; Tushnet, 2021).

Some disputes related to allegations of violations of election juridical norms show that there are stages of the justice process with various types of violations. There must always be demands for the completion process, one of whose themes relates to law enforcement (Hamzani, Taufik, Asmarudin, et al., 2021). These disputes often involve subjects accused of legal or ethical violations, reflecting the complex nature of elections, which engage multiple parties with varied interests (Adams & Asante, 2020; Tushnet, 2021).

### **Law Enforcement Idealism on Election Dispute Resolution Models**

Alternative dispute resolution is a method that prioritises the suitability of the parties' will, resulting in comprehensive decisions based on their wishes (Daud, 2020a). This differs from conventional dispute resolution, which often relies on third parties like law enforcement or judges, which often prioritise formality and legal certainty. A dispute is a discrepancy between parties' will, leading to conflict and potentially disrupting their interests (Prawiraharja, 2023; Suparto et al., 2023). To resolve disputes, dispute resolution is often carried out through litigation involving law enforcement agencies like police, prosecutors, and courts. However, there is an antinomy in the implementation of litigation dispute resolution (Suparto et al., 2023). In contrast, alternative dispute resolution aims to arrange regular disputes through litigation.

Law enforcement is a series of activities aimed at concretising legal values in societal problems (Höglund & Jarstad, 2011). Understanding law enforcement involves recognising the application of values in society. In everyday people, law enforcement and implementation are often associated with the implementation of favourable legal rules in society (Donahue, 2023). This understanding of law enforcement is consistent with applying positive law, which is the practice of laws and regulations in social life. The focus is on the application of favourable legal rules, regardless of whether they are good or violate legal principles. Law enforcement is different from law enforcement, as it is oriented towards the "value" of the law, not just judging the law (Edwards III, 2023; Raden, 2021).

Law enforcement requires understanding and applying existing legal values to the realities of society. This requires high reasoning and the soul and nature of humanity (Prawira, 2019). Law enforcement is a humane legal orientation, as humans usually carry it out. The proper application of the law does not require a value orientation, but the focus is on the rules that can be applied (Muntoha, 2009). The development of technology and information has significantly impacted the practice of law. The digitalization era has caused a paradigm shift in legal practice, with the law becoming active and prioritising preventive legal character over repressive nature. This

shift in law enforcement is a humane effort and highlights the importance of understanding and applying values in law enforcement (Hamzani, Taufik, Asmarudin, et al., 2021; Tambe, 2024).

In the digital era, law enforcement practices must align with anticipatory efforts to avoid disputes. Despite advancements in technology and information, the value-oriented nature of law enforcement remains unchanged. Values guide people to behave properly and appropriately, preserving their essence as human beings (Khairunnisa et al., 2023). Law enforcement, aimed at reviving the human spirit, is relevant to progressive law, as stated by Satjipto Rahardjo. Rahardjo, a legal thinker with a sociological perspective, sees social-society reality as a field that must be integrated with theoretical and practical aspects of law (Faisal, 2023). Sociological jurisprudence, a philosophy in law that prioritises sociological aspects, distinguishes it from social thought that studies law or the sociology of law (Herlindah & Darmawan, 2022). There are three main differences between sociological jurisprudence and sociology of law.

First, Sociological jurisprudence is a field of law that examines social-societal realities that influence it, contrasting with the sociology of law, which is rooted in social science studies (Prawira, 2019). Sociological jurisprudence views law as a value-based norm, focusing on the development of law within social-societal realities (Herlindah & Darmawan, 2022). This differs from the sociology of law, which views law as a written rule by the state, viewing it as a social product. This distinction highlights the importance of understanding social-societal realities in shaping law. Third, Sociological jurisprudence, a branch of legal science, uses perspectives from other disciplines to study legal issues, but it still maintains the identity of legal science as a solution to the problems (Raden, 2021; Tushnet, 2021). Unlike the sociology of law, which is rooted in social science, the sociology of law provides a description of social reality. Satjipto Rahardjo, a thinker of sociological jurisprudence, believes in progressive law as an intellectual anxiety related to the "tattered" reality of post-reform law enforcement. He believes that the law seems to have lost its master, with no clear direction for its work (Faisal, 2023b). The law, like a lost traveller, lacks a compass to guide its way, making it a complex and evolving field.

On the other hand, prominent figures in law enforcement proposed progressive law as a solution to the unstable legal reality of the Indonesian nation. Progressive law is a compass that guides Indonesian Law to serve humanity and humans, not the other way around. It assumes that law is a continuous process, not absolute or anti-criticism (Herlindah & Darmawan, 2022). Progressive law encourages viewing the law as part of a social reality that can change at any time, promoting continuous improvement and change (Daud, 2020b). The law should not be rigid or frozen in societal reality but rather constantly moving and changing, following human dynamics. While progressive law does not negate legal certainty, it also agrees with it, as it is a fundamental value of law. However, legal certainty can be revised if it is not aligned with developments and

existing humanitarian realities (Prawira, 2019). In summary, progressive law offers a more flexible and adaptable approach to the Indonesian legal system, ensuring that it serves humanity and adapts to the changing social and societal realities (Hall, 2020; Shah, 2021).

Law enforcement in Indonesia is facing a chaotic legal landscape, prompting Satjipto Rahardjo to propose progressive law as an alternative (Harun, 2019). Progressive law serves as a guiding principle for Indonesian law, emphasising that the law should serve humanity rather than the other way around. It recognises that law is an ongoing, dynamic process that is open to criticism and not fixed. Progressive law encourages the perspective that law is an integral part of social reality, capable of evolving and improving over time (Herlindah & Darmawan, 2022). The law should not be rigid or frozen in viewing social-societal reality but rather constantly moving and changing, following human dynamics (Marwiyah et al., 2022). While progressive law does not negate legal certainty, it must be understood that it also agrees with legal certainty. However, legal certainty can be revised if it is not aligned with developments and existing humanitarian realities (Parman, 2021). In summary, progressive law offers a more flexible and adaptable approach to Indonesian Law, ensuring that it serves humanity and adapts to the changing social and societal realities.

Progressive law is a teaching of humanity and justice, emphasising that it is not just a rule made by the state but a philosophy that considers the value and philosophical dimensions of the law (Pai et al., 2023; Tambe, 2024). It views humans as regulators, controllers, and preservers, often referred to as caliphs, who must be fair to fellow humans, living creatures, the environment, and the universe. Progressive law seeks to view the law as a reflection of the value of justice in society, requiring it to concretise the idea of justice that develops in society. The concept of progressive law also has dual aspects: behaviour and rules (Raden, 2021; Samararatne, 2021). It emphasises the duality between rules and behaviour, viewing law as the complexity between rules and behaviour. This approach challenges legal positivism, which views law only as a rule-oriented system, as it emphasises the importance of understanding both rules and behaviour. Progressive law aims to concretise the idea of justice that develops in society (Indra et al., 2023)

Progressive law is a legal approach that views law holistically as a rule and behaviour, focusing on the spiritual and profound meaning of the law rather than just black-and-white regulations (Harahap et al., 2019). This approach seeks to explore the moral context in law, which is the "heart" of the law. Progressive law also seeks to bring justice to society by rejecting the notion that the law is fast and structured and rejecting specific characteristics when analysing the law. It believes that the law must be freed from elements that can hinder its development, such as a single view of the law (Wahid, 2021). The law in which values radiate must always be explored based on the values that develop in society. Progressive law seeks to present a holistic,

comprehensive, and responsive legal paradigm, ensuring that the law is always reactive to the times. In the context of law enforcement, progressive law enforcement implies that law enforcement does not only rely on intellectual intelligence but also spiritual intelligence (Herlindah & Darmawan, 2022).

Law enforcement is a crucial aspect of the legal system, requiring a combination of determination, empathy, dedication, and commitment to the nation's suffering. Progressive law enforcement, as described by Mahfud MD, requires officers to perform "Caesar" operations when formal legal aspects are held hostage (Umagapi, 2020). This approach aims to become a "spirit" for law enforcers in Indonesia, prioritising alternative dispute resolution and recognising justice in social-societal reality (Marwiyah et al., 2022b). Progressive law prioritises substance over formal procedures, emphasising the nature and character of the law that is constantly evolving (Sihidi et al., 2020). It also emphasises humanitarian attitudes, dares to act unconventionally, and prioritises spiritual considerations over intellectual ones. In essence, progressive law enforcement is a spirit that aims to provide justice in various settings, fostering a more inclusive and effective legal system (Asrun, 2023).

In its implementation, the community does not need to worry or hesitate to report the types of potential violations, especially during elections, which is the first step in building a critical attitude model of public militancy (Clarke, 2019). According to the Law concerning Witness and Victim Protection, it is confirmed that those who testify as witnesses, victims, or whistleblowers cannot be sued in either a criminal or civil proceeding because of their reports or testimony (Böhm et al., 2021). Thus, the public's engagement in oversight as voters can at least help to reduce the large number of infractions in the conduct of elections.

In constructing the quality of the democratic party and its law enforcement, this need for the participation of society becomes "absolute". Without the assistance of the general population, it would be impossible for the election organizers to carry out their plans in line with the standards that govern them. Accordingly, it seems reasonable that Soerjono Soekanto (2019), a legal sociologist, would consider society as one of the components of law enforcement (Jackson et al., 2022; Kennedy & Suhendarto, 2020). This demonstrates that the community's position is crucial in preventing the creation of election disputes that appear during the settlement process since the community is "the subject of democracy that determines in principle and legality."

The second is the aggressiveness of the Election Supervisory Body's law enforcement (Djuyandi & Hidayat, 2019). It is obvious that the General Election Supervisory Agency of the Republic of Indonesia Number 18 of 2017 concerning Procedures for Resolving Disputes for the Election Process and Regulation of the Election Supervisory Agency of the Republic of Indonesia Number 18 of 2018 concerning Amendments regulate the scope and dispute resolution mechanism of the electoral process in the Election Supervisory Body.

Regarding the object of the dispute (*objectum litis*), the Per Election Supervisory Body on Procedures for Resolving Electoral Process Disputes specifies additional rules. This document deviates from the interpretation of Article 466 of the Election Law, qualifying that dispute over the electoral process arise because of (Chakim, 2019; Piazza, 2021) the rights of election participants who are directly harmed by the actions of other election participants as a result of those actions. The provisions of Article 4 paragraph (2) of the Election Supervisory Body regarding Procedures for Dispute Resolution of the Election Process defines the format and nature of the subject matter of disputes in the election process as follows: "The decision of the *Election Commission (Komisi Pemilihan Umum-KPU)*, the decision of the Provincial KPU, or the decision of the Regency/City KPU as referred to in paragraph (1) is in the form of a decree and/or minutes." Article 4A paragraph (1) and Articles 12 paragraph (3) and (4) of the Per Election Supervisory Body concerning Procedures for Dispute Resolution of the Electoral Process specify the limitations and exceptions to *Election Commission (Komisi Pemilihan Umum-KPU)* decisions, Provincial KPU decisions, and Regency/City KPU decisions that cannot be used as objects of disputes.

For instance, the laws on the implementation of government specify that the Election Supervisory Body is the entity responsible for overseeing the holding of elections. However, the community, as the owners of the right to vote, also has to be involved as supervisors in the execution of the regional elections in an attempt to preserve the quality of such elections because reporting election breaches from voters, election monitors, and election participants (candidates' spouses) is the responsibility of both the Provincial Electoral Management Bodies, District/City supervisory committee, Field Election Supervisors, and polling station supervisors (Chakim, 2019; Vollstedt & Rezat, 2019).

That viewpoint, at least, is consistent with many other ideas. A prominent lawyer known for his valiant attitude toward justice, and law enforcement once remarked, "Even though the ship will be sunk, maintain law and justice." In whatever circumstance or setting, sustaining the rule of law and the rule of justice are essential. When a political climate is present or about to emerge, it must not be disturbed by any outside force. No authority from anywhere or for any reason should be able to undermine the legitimacy of the law's application.

It is a human obligation to uphold the law in all circumstances, including the democratic party (elections) and regional head elections (Pemilihan Kepala Daerah-PILKADA). A representative of the state is whoever is given the legal authority to enforce it; therefore, when that authority is disregarded, many important national and state interests suffer. The goal of the legislation is to control harmonious social interactions. As social beings, humans will constantly engage in interactions with one another. Individual and group interests will be present throughout this contact, which



can occasionally lead to disagreements. However, interactions can have advantages via advancing knowledge and other types of information.

Legal standards, are a tool used by society to regulate how members of the community behave when they interact. When "directing behaviour" is described here, we naturally wonder, "directing where"? There is a priority in society itself where the norm guides how people behave (Firmanto et al., 2021). We can view that standard as a reflection of the will of society since society chooses these tendencies. By deciding between acceptable and unfair conduct, which later becomes the standard in that culture, the community carries out its desire to control how its members behave (Sani et al., 2021). The legal standard is thus a prerequisite for verdicts. It turns out that indicators based on legal norms that have "included" election disputes in public knowledge are still not handled in accordance with the legal accountability system for concluding elections. If the public assumes that there is no real accountability or law enforcement as a juridical responsibility, it makes sense. Elections are another type of criminal law violation that clearly indicates a criminal act.

The process of attempting to develop or put into practice legal standards as a code of behaviour in traffic or legal interactions in the lives of society and the state is known as law enforcement (Hamzani, Taufik, Asmarudin, et al., 2021). When regarded from the perspective of the subject, law enforcement can be carried out by a wide range of people and can also be seen as an attempt to uphold the law that involves all legal parties in all legal relationships (Wijaya & Nasran, 2021). Anyone who upholds normative principles or acts or refrains from acting in accordance with the standards of the applicable rule of law is either upholding or enforcing the rule of law. In the restricted sense, law enforcement is solely described as an attempt made by certain law enforcement personnel to guarantee and secure the existence of the law, with the option to use force if required (Hall, 2020; Raden, 2021).

According to (Kelliher, Isra, Yuliandri, et al., 2019) the purpose of law enforcement can also be understood in terms of its intended outcome, namely the law. The notion here has both a wide and a specific meaning. Law enforcement, in a wide sense, also refers to the principles of justice that underpin it, as well as those that permeate society (Letsa, 2024). However, in a limited sense, law enforcement only refers to the legal, documented enforcement of laws. As a result, while translating "law enforcement" into Indonesian, the term "law enforcement" is used broadly, and the term "enforcement" is used more specifically (Umagapi, 2020).

The differences between "the rule of law" and "the rule of just law," as well as between "the rule of law and not of man" and "the rule by law," which refers to "the control of man by law," reflect the formality of the written rule of law and the breadth of justice value of its content. In addition to having the legal meaning of ruling by law, the phrase "the rule of law" also refers to the ideals of fairness that it upholds. The "rule of just law" is applied as a result. "The rule of law and not of man" refers to the

notion that a modern legal state is, in essence, controlled by law rather than by individuals (Fauziyah & Parsa, 2020; Hamzani, Taufik, & Khasanah, 2021; Kelliher, Isra, Daulay, et al., 2019). The phrase "the rule by law", on the other hand, refers to a kind of governance where the law is only used as a weapon of power. If this is done, that is, if the law is used as a tool of power, it will be challenging to establish legal responsibility for electoral problems in the present. The electoral justice system offers justice, but it is either a pipe dream or practically unattainable. The Election Supervisory Body becomes a culmination under such circumstances, just like any other institution.

Only requiring justice is the primary aim of the law, and its substance is decided by an ethical understanding of what is considered just and unjust. The way or method of "betraying" law and justice is truly evocative of this philosopher's critique (Lubis & Ramadhan, 2019). When laws like juridical culpability are not upheld as they ought to be, the person responsible for upholding them in general or in the context of their customs is more drawn into the "busyness" of upholding their discourse than upholding them.

According to this perspective, when confronted with various incidents or activities that fall under the category of acts or objects of dispute, law enforcement would consider the execution of elections in Indonesia as one of the crucial factors (Ansori, 2019). If the criminal justice system is not or has not been implemented idealistically, objectively, evenly, and fairly, constitutional democracy is nothing more than an illusion (Wang et al., 2022). This indicates that democratic party elections are still merely a regular pastime for politicians who are more obsessed about passing their own "laws" than helpful policies.

## CONCLUSION

In Indonesia, elections are expected to be part of democratic life. However, the scenario of electoral disagreements persists in every implementation. The election supervisory body discloses the components of vulnerability in the Election Vulnerability Index, including the integrity and professionalism of the organisers, contestation, participation, neutrality of the State Civil Apparatus, Money Politics, Security, Identity Politics, and social media. The idealistic concept of electoral dispute resolution sometimes hinders dispute resolution. However, the public need not be nervous or intimidated to report election violations. Community involvement is "absolute" in defining democratic party formation and law enforcement. The Election Dispute Settlement Process is further regulated in the Regulation of the Election Supervisory Body concerning Procedures for Settlement of Disputes.

Article 466 of the Election Law states that election disputes are caused by the decisions of the General Election Commission both at the central and regional levels. Applying legal principles in the regulation of general elections or regional head elections is a human task. Whoever has the legal responsibility to enforce it is the state's

representative. Law enforcement is an effort to develop or implement the rule of law as a traffic guide or legal interaction in the life of society and the state. It can also be seen as a law enforcement activity that involves all legal subjects in every legal relationship. The term 'rule of law and not man' emphasises that the law, not the people, rules the modern rule of law. Under such conditions, electoral justice is impossible. Law enforcement is one of the main factors faced by law enforcers when faced with various events or activities that fall into the category of actions or objects of dispute. If criminal law enforcement is not optimal, objective, equitable, and fair, constitutional democracy will never be achieved.

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