



Affirmation and Expansion of the Object and Subject of Disputes Between Election Participants in the Electoral Process

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ABSTRACT

General Elections (Pemilu) serve as a fundamental pillar of modern democratic systems, acting as a primary means for the realization of popular sovereignty. Through elections, citizens are given the opportunity to directly shape the political direction and leadership of the country. However, in practice, elections in Indonesia are often accompanied by various issues, including disputes—not only between participants and election organizers, but also among the participants themselves. Law Number 7 of 2017 concerning General Elections provides clear regulation only for disputes involving decisions made by the General Elections Commission (KPU), yet it fails to explicitly address conflicts between political contestants. This regulatory gap results in a *vacuum of norm* and leads to legal uncertainty on the ground. This study aims to identify who qualifies as the legal subjects and what constitutes the legal objects in disputes between election participants. It also seeks to determine the appropriate legal classification for resolving such disputes: whether they fall under public law or are more suitably handled as matters of private law. Using a normative legal approach—grounded in legal literature and legislative analysis—and a conceptual approach to explore ideal dispute resolution structures within the Indonesian legal framework, this study provides a comprehensive theoretical and normative mapping. The findings suggest that disputes between election participants should be situated within the realm of private law, particularly civil law, since they usually concern unlawful acts committed between equal parties, such as political defamation, breaches of campaign agreements, or reputational damage. This is consistent with the views of Sudikno Mertokusumo, who argued that civil law governs relationships between parties on an equal footing and does not involve direct public authority. Therefore, electoral regulatory reform is needed to ensure legal certainty and provide a fair dispute resolution mechanism, ultimately strengthening democratic legitimacy and promoting ethical political competition.

Keyword: General Election, disputes among participants, private law, vacuum of norm, legal certainty

Introduction

General Elections (Pemilu) stand at the heart of democratic governance, serving as a mechanism through which the people exercise their constitutional sovereignty by selecting representatives and leaders. Elections are expected to reflect the principles of fairness, transparency, and accountability, ensuring that political power is derived from the consent of the governed. However, the reality of electoral practice in Indonesia continues to reveal structural and normative challenges, particularly in relation to disputes that arise not between voters and



organizers, but among the participants themselves—namely, the political parties and candidates competing for power.¹

Field data and observations from previous elections indicate a recurring pattern of inter-participant conflicts, such as accusations of slander, smear campaigns, character defamation, and the violation of informal or even formal agreements between political actors. These conflicts often escalate due to the absence of clear legal mechanisms for resolution, leaving parties without a structured forum to address their grievances.² As a result, these disputes frequently spill into the media or are handled informally, which not only undermines the credibility of the election process but also weakens public trust in democratic institutions.

The existing regulatory framework, namely Law Number 7 of 2017 on General Elections, devotes a significant portion of its content to the regulation of disputes involving the General Elections Commission (KPU), including administrative violations, criminal election offenses, and electoral results. However, there is no explicit mention or procedural guidance on how to resolve disputes that emerge between contestants. This omission creates a regulatory vacuum—what scholars refer to as a *vacuum of norm*—which ultimately contributes to legal uncertainty and uneven enforcement.³ In such an environment, power imbalances can be exploited, and weaker or marginalized candidates may suffer injustice without access to remedies.

Theoretically, these kinds of disputes fit within the domain of private law. According to Sudikno Mertokusumo, civil law governs relationships among equal legal subjects and generally addresses issues such as torts, breaches of contract, and other non-criminal violations that do not involve public authority.⁴ In this light, when a candidate accuses another of defamation or violating a campaign pact, the legal nature of the dispute more closely resembles a private wrong than a public law violation. This interpretation is also supported by comparative legal perspectives, where similar jurisdictions classify political defamation or inter-party misconduct as civil matters handled by general courts.⁵

The implications of this legal ambiguity are profound. In the absence of clear procedural mechanisms, electoral disputes between participants may go unaddressed, or worse, be handled arbitrarily, leading to unequal application of

¹ Bawaslu RI, *Laporan Pengawasan Pemilu 2019* (Jakarta: Bawaslu, 2020), pp. 22–25.

² Ibid., pp. 27–28

³ Peter Mahmud Marzuki, *Penelitian Hukum* [Legal Research] (Jakarta: Kencana, 2005), p. 134.

⁴ Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia* [Indonesian Civil Procedure Law] (Yogyakarta: Liberty, 2008), p. 22.

⁵ Susan Rose-Ackerman and Stephen Reed, *Corruption and Government: Causes, Consequences, and Reform* (Cambridge: Cambridge University Press, 2016), pp. 176–178.

justice. Furthermore, the lack of resolution pathways weakens the ethical foundations of democratic competition, allowing bad faith actors to exploit the system with little accountability.⁶ As Indonesia's democracy matures, it is increasingly essential to ensure not only that electoral laws are enforceable, but that they are inclusive of the many types of disputes that may arise during the process.

The core problems addressed in this study revolve around two interrelated legal questions. First, who qualifies as the legal subjects and what constitutes the legal objects in disputes that arise between election participants? Second, how should such disputes be classified within the broader legal system – are they more appropriately governed by public law, which deals with the relationship between individuals and the state, or do they fall under the purview of private law, particularly civil law, which governs relations among equal legal entities? These questions are crucial in understanding the normative position of inter-participant disputes in electoral law, especially given the current regulatory vacuum that fails to provide clear guidance or remedies in such cases.

By addressing these issues, this research aims to contribute both theoretically and practically to the development of a more inclusive and coherent legal framework for electoral dispute resolution in Indonesia. It offers a normative argument for recognizing certain election-related disputes particularly those between political candidates or parties as civil in nature and, therefore, subject to private law mechanisms. This perspective not only fills an existing legal gap but also promotes legal certainty, equality before the law, and procedural justice. In doing so, the study supports the broader goal of strengthening democratic institutions by ensuring that electoral competition remains ethical, accountable, and legally regulated.

Research Methodology

This study employs a normative legal research methodology, focusing on the analysis of legal norms, principles, and regulatory gaps within the existing electoral legal framework in Indonesia. Normative legal research is used to examine the law in its written form (*law in books*) and to construct legal arguments regarding how disputes between election participants should be regulated.⁷ This methodology is appropriate for studies that aim to provide conceptual clarity and normative solutions rather than empirical generalizations.

The research utilizes a conceptual and statutory approach. The conceptual approach allows the researcher to explore key legal concepts such as legal subjects,

⁶ Tim Lindsey and Simon Butt, *The Constitution of Indonesia: A Contextual Analysis* (Oxford: Hart Publishing, 2012), p. 214.

⁷ Peter Mahmud Marzuki, *Penelitian Hukum* [Legal Research] (Jakarta: Kencana, 2005), pp. 35–38.

legal objects, and the classification of legal domains (public vs. private law), drawing from authoritative legal doctrines and academic writings. Meanwhile, the statutory approach involves a systematic analysis of relevant legislation, including but not limited to Law Number 7 of 2017 on General Elections, the Indonesian Civil Code (KUHPerdata), and other related electoral regulations.

The primary sources of data consist of official legal documents such as statutes, constitutional provisions, court decisions, and regulations issued by election bodies like the General Elections Commission (KPU) and the Election Supervisory Board (Bawaslu). These are complemented by **secondary sources** including scholarly books, journal articles, and expert commentaries on election law, civil law, and democratic theory.

The data analysis method used in this research is qualitative and prescriptive. Legal materials are interpreted and evaluated to identify regulatory inconsistencies, legal vacuums, and conceptual misalignments. The analysis seeks to develop reasoned arguments and normative proposals that can inform future regulatory reforms. In essence, this research does not seek to measure or quantify phenomena but to construct a coherent legal framework that clarifies the status and resolution mechanism of disputes among election participants.

Results and Discussion

This study reveals several key findings regarding the legal vacuum in the resolution of disputes between election participants in Indonesia, and the appropriate classification of such disputes within the national legal system. The findings are presented in four structured components: the identification of legal subjects, the classification of legal objects, the analysis of applicable legal regimes, and the implications for electoral law reform.

1.1 Legal Subjects in Inter-Participant Disputes

The first finding concerns the identification of who qualifies as a legal subject in disputes that arise during elections. In the Indonesian electoral context, the parties involved in such disputes include individual candidates, political parties, coalitions, campaign teams, and sometimes affiliated volunteers or supporters acting under the party's direction. These entities are all recognized as equal legal subjects under Indonesian civil law, meaning they do not act as extensions of public authority. As such, conflicts between them should not be framed as administrative violations involving the state, but rather as horizontal disputes involving parties of equal standing before the law.⁸ This distinction is crucial because it informs the choice of dispute resolution mechanism.

2. 2 Nature and Classification of Legal Objects

⁸ Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia* (Yogyakarta: Liberty, 2008), pp. 22-23.

The second component addresses the legal objects or the substance of the disputes themselves. Common legal objects in inter-participant disputes include allegations of political defamation, black campaigns, violations of campaign agreements, dissemination of false information, intellectual property violations (such as unauthorized use of campaign materials), and misuse of confidential campaign data. These acts, though politically charged, often result in private harm, such as reputational damage, material loss, or emotional distress.⁹

In legal terms, many of these acts fall within the definition of unlawful acts under Article 1365 of the Indonesian Civil Code, which provides that "every act that violates the law and causes harm to another person obligates the wrongdoer to provide compensation." In the case of violated campaign agreements, the matter can also be treated as *wanprestasi* (breach of contract), regulated under Article 1243 of the Civil Code. This legal basis demonstrates that private law provides sufficient normative tools to resolve such disputes, even if current election regulations do not explicitly state so.

3.3 Classification Under Private Law

The third finding affirms that disputes between election participants – when examined based on their legal structure and the nature of harm caused – belong under the regime of private law, especially civil law. According to Sudikno Mertokusumo, private law governs legal relationships among subjects who are legally equal and whose rights and obligations arise from private interests, not public authority.¹⁰ Applying this perspective, political disputes over statements, campaign behavior, or broken agreements between candidates should be resolved using civil court procedures – not administrative complaints or criminal prosecutions, unless clear criminal elements are involved (e.g., hate speech, incitement, or fraud).

This approach also aligns with comparative legal practices. In countries like Germany and the United Kingdom, civil litigation is a recognized path for addressing political defamation or contractual breaches between political parties or candidates.¹¹ In such systems, these disputes are not left to electoral bodies, but rather adjudicated by general courts, which offer formal legal remedies including damages, retractions, or injunctive relief. These examples highlight the importance of distinguishing between election *administration* (which involves KPU and Bawaslu) and election *participation* (which involves interactions among contestants).

⁹ Bawaslu RI, *Laporan Pelanggaran dan Sengketa Pemilu 2019* (Jakarta: Bawaslu, 2020), pp. 28-35.

¹⁰ Sudikno Mertokusumo, *Hukum dan Penemuan Hukum* (Yogyakarta: Liberty, 2006), pp. 48-50.

¹¹ Keith Ewing and Samuel Issacharoff, *Party Funding and Campaign Financing in International Perspective* (Oxford: Hart Publishing, 2006), pp. 88-90.

4.4 Urgency of Legal Reform and Implications for Electoral Justice

The final and perhaps most significant finding of this research is the urgent need for legal reform to clarify and regulate the status of inter-participant disputes. The absence of a clear mechanism to resolve such disputes in Indonesia not only creates confusion and delays, but also threatens the integrity of the democratic process. Without proper legal channels, many disputes remain unresolved, escalate in the media, or are manipulated for political gain—often with no consequences for bad-faith actors.¹²

Legal certainty (*kepastian hukum*) is a core principle of justice, particularly in democratic contests where fairness and equality are essential. By recognizing inter-participant disputes as part of the private law domain, and by establishing specific procedural rules for resolving them—possibly through specialized electoral chambers in civil courts—Indonesia can strengthen both the legitimacy of its elections and the ethical standards of its political competition.

Conclusion

This research concludes that disputes between election participants—such as candidates and political parties—are currently not adequately addressed within Indonesia's electoral legal framework. The existing laws, particularly Law Number 7 of 2017 on General Elections, do not provide specific provisions for handling inter-participant conflicts, resulting in a *vacuum of norm* and legal uncertainty in practice.

In response to the first research problem, this study finds that the legal subjects in such disputes are equal private actors, including individual candidates, political parties, campaign teams, and coalitions. The legal objects involved typically include political defamation, breaches of campaign agreements, reputational damage, and other forms of harm that are personal and non-institutional in nature.

Regarding the second problem, this research affirms that these types of disputes are more appropriately classified under private law, particularly civil law, rather than public or administrative law. Because these conflicts occur between legally equal parties and do not involve the exercise of public authority, they should be resolved through civil court procedures, such as claims for unlawful acts (*perbuatan melawan hukum*) or breach of agreement (*wanprestasi*), based on the Indonesian Civil Code.

In light of these findings, the study calls for electoral legal reform that explicitly recognizes and regulates inter-participant disputes through clear procedural mechanisms. Doing so would enhance legal certainty, protect the rights of political actors, and promote ethical and fair competition in Indonesia's democratic processes.

¹² Tim Lindsey, *Indonesia: Law and Society* (Sydney: Federation Press, 2008), pp. 340–342.

Suggestions

To address the legal gap in resolving disputes between election participants, it is essential for lawmakers to revise Law Number 7 of 2017 by explicitly regulating inter-participant conflicts and providing clear procedures for civil resolution. The judiciary should also consider establishing specialized electoral chambers within civil courts to handle such cases more effectively. In addition, the General Elections Commission (KPU) and Election Supervisory Board (Bawaslu) should issue guidelines that recognize the role of civil law in these disputes and support coordination with the courts. Political parties and candidates must also be educated on the legal risks of unethical campaign practices and adhere to a stricter code of conduct. Lastly, further research is needed to explore how similar legal systems handle these disputes, in order to develop a more just and responsive electoral legal framework in Indonesia.

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