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Table of Contents

Chapter I: Decentralization, Local Governance, and Politics

Ady Muzwardi, Sayed Fauzan Riyadi, Glori Yolanda Yahya	Analysis on Investment Policy Framework through Galang Batang Special Economic Area (SEZ), Bintan Island	2
Pangky Febriantanto	Implementation of Inclusion Sub-District in Yogyakarta City Case Study: Wirobrajan Sub-District	12
Vellayati Hajad	<i>Awak Nanggroe</i> (Ex-Free Aceh Movement) on Construction Sector: Winning the Game?	28
Tunjung Sulaksono, Suswanta, David Efendi	The Flying Doctors: A Collaborative Governance Model in Delivering Public Health Service to the Border Areas	42

Chapter II: Local Governance and Urban Planning

Rossy Lambelanova, Ngadisah	Special Autonomy through Anthropological Approach in Papua Province	61
Muhammad Dwi Nur-faisal, Dyah Mutiarin, Sakir	Accountability of Fund Village Management in Infrastructure Development at Tegalrejo Village, Gendangsari District, Gunung Kidul Regency in 2016	80
Endriana Wahyu Alita, Desiderius Priyo Sudibyo, Rina Herlina Haryanti	The Properness Analysis of New District Formation in Pacitan Regency: Regulation Perspective of Government Regulation Number 17 of 2018 about Sub-District	92
Adibah Dhivani Gusmi	The Effectiveness of <i>Unit Layanan Pengadaan</i> as Assessor of E-Procurement in Central Java	119
Rizky Ananda Putra, Yohana Andeshi Kiyoya	Empowerment of Community Education in Suburban City: Case Study of the Strategy of TAABAH in Empowering the Ledhok Timoho Community, Yogyakarta City	141

Chapter III: Public Policy, Governance Administration, and Justice

Hernawan Adhie Pradi-tyo, Kristina Setyowati, Rino Ardhian Nugroho	The Application of the Principles of Good Governance at the Hospital UNS Surakarta	157
Novi Andayani Praptin-ingsih, Dinda Agustina Putri, Aghitsna Putri Subhiat, Dwi Putri Handayani	Implementation of Communication Programs in Tourism Sectors	166
Nurul S. Fatmawati, Dini Susanti	An Alternative Model of Space Falling Objects Investigation in Indonesia	172
Noni Srijati Kusumawa-ti, Ismi Dwi Astuti Nurhaeni, Rino A. Nugroho	Internationalization in Higher Education: Does Government Support Internationalization?	188
Silvira Yolanda, Novi A. Praptaningsih	Facebook as a Communication Media in by Use of Smart Indonesia Card	200

Chapter IV: Democracy, Election, Political Parties, Conflict, and Religion

Ella Wargadinata	Is This Democracy? Assessing Noken – Traditional Electoral Mechanism in Papua Indonesia	209
Riska Sarofah, Akhmad Habibullah, Erni Zuhriyati	Local Democracy: Improving the Quality of Simultaneous Local Elections in Indonesia	228
Oly Viana Agustine, Anna Triningsih	Dissolution of Political Parties in Keeping Ideology and Security in Indonesia and Germany	239
Mega Hidayati	Rethinking the Case of Blasphemy in Contemporary Indonesia : A Case of Tanjung Balai’s Conflict	255
Hamzah Fansuri	Politicizing the Hybrid City: Locative Media and Shape of Digital Democracy in Indonesia	266
Ridho Al-Hamdi, Eky Prasetya Aryudhi	Examining Muhammadiyah Neutrality in the Practical Politics: The Case of the 2017 Mayoral Election in Yogyakarta Municipality	275
Helmi Pratama Firmansyah, Arum Labik Ijabah	<i>Kiai</i> and Politics: Case Study in Temanggung Political Situation 2018	288
Bambang Eka Cahya Widodo, Titin Purwaningsih	Managing Electoral Disputes, Challenges Toward Electoral Integrity In The Simultaneous Regional Election in Central Java	300

Chapter V: Gender Equality

Safira Hasna Hayzaki, Ismi Dwi Astuti Nurhaeni	Gender Responsive Health Services: A Study on the Fulfillment of Gender Practical and Strategic Need at the Prisons	318
Mouliza K.D Sweinstani	Problem of Women in Indonesian Bureaucracy: An alternative of Weberian Bureaucracy for Substantive Women Representation	332
Anggi Ayu Intan Pramesti, Ismi Dwi Astuti Nurhaeni	Women’s Transformational Leadership in Environment Management : Does Individualized Consideration Exist	346
Dyah Mutiarin, Naoko Kuwuhara, Titin Purwaningsih, Noraida Endut	Changing Family and Challenges of Engendering Government Policy in Japan and ASEAN Member Countries	359
Listiana Asworo	Beyond Orthodoxy Religious Dialogue: Rejuvenation of Interfaith Women Movement in the Case Study of Women between Religious (PAUB) in Malang	376

Chapter VI: Communities, Partnership, and Green Politics

Novi Andayani Praptiningsih, Ami Kusuma Handayani	Implementation of Communication Programs in Tourism Sectors	390
Jariya Koment, Chalermchai Panyadee	Community-based Tourism Promotion Policy and Communities Solidarity in Upper Northern Thailand: Theoretical Perspective	396

Managing Electoral Disputes, Challenges Toward Electoral Integrity in The Simultaneous Regional Election in Central Java

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ABSTRACT

Election disputes are an important part of electoral governance. Good electoral governance and electoral integrity can be achieved if there is an election dispute resolution mechanism that meets the standards of the electoral justice system. There are three aspects of the electoral justice system that must be fulfilled in order for good electoral governance, namely the availability of effective dispute prevention mechanisms, the availability of complaint handling mechanisms, and election complaints which result in effective, corrective, and punitive actions, the availability of cheap, and effective, meaningful, and alternative dispute resolution mechanism. This research explains the three aspects of electoral justice system used in completing disputes over regional elections in districts / cities throughout the province of Central Java. The research method used is qualitative method with in-depth interviews to the perpetrators, especially members of *Bawaslu* and *Panwaslu* who served as election dispute settlement body. Sampling method used is snowball method.

These research findings are 1) the legal framework governing the mechanism of election dispute resolution has not provided a fair mechanism to guarantee and meets the standards of electoral justice. 2) The affectivity and ability of district/city of *Panwaslu* to become arbitrators in dispute resolution is highly dependent on the personal qualities of each member, such as the level of education, experience, and skills in managing the dispute resolution forums as well as the leadership capacity in the dispute resolutions. 3) Technically, the level of the skills of administrative staff in decisions making is the highest challenge for *Panwaslu* because of the lack quality of administrative training to support the dispute settlement administration. An alternative method of the dispute settlement is not used widely due to inadequate legal framework for the election supervisors.

Keywords: Electoral disputes resolution, electoral justice, local election, electoral integrity, central java.

BACKGROUND

General election is one of the indicators of stability and democratization Dynamics. In Indonesia, there had been held several elections periodically, but it has not been able to form mature democratic values due to an authoritarian political system. General election essentially is a tool of fulfilling democracy of a country and a realization of the principle of popular sovereignty as formulated in Article 1 paragraph (2) of the 1945 Constitution of Republic of Indonesia. According to the Article 1 point 1 of Law Number 10 of 2008 based on the General Election of Members of the House of Representatives, Regional Representative Council and Regional House of Representatives, general election is a mean of implementing popular sovereignty carried out directly, general, freely, confidentially, honestly and fairly in the Unitary State of the Republic of Indonesia based on *Pancasila* and the

1945 Constitution of the Republic of Indonesia (John, 2009)

Regional elections, such as election of the Governor and Deputy Governor, Regent and Deputy Regent, and Mayors and Deputy Mayors are carried out democratically based on people's sovereignty. The legal bases for the Regional Elections are:

1. Law Number 1/2015 concerning: Determination of Government Regulation in Lieu of Law Number 1/2014 concerning the Election of Governors, Regents, and Mayors to Become a Law
2. Law Number 8/2015 Regarding: Amendment to Law Number 1/2015 (KPU RI).

The Amendments of Law No.1/2015 concerning the Determination of *Perpu* No.1/2014 concerning the Election of Governors, Regents, Mayors that has been approved into law by the DPR, mandating the Constitutional Court to handle disputes over Regional Elections. Article 157 paragraph (1) states, "The case of election dispute is examined and tried by a special judicial body". Paragraph (2) states, "Special judicial body, as referred to in paragraph (1), is formed before the implementation of national simultaneous elections". Paragraph (3) states, "The case of dispute in determining the vote results is examined and tried by the Constitutional Court until the establishment of a special judicial body". Paragraph (4) states, "Election participants can submit applications for cancellation of the determination of the vote results by the provincial KPU and Regency / City KPU to the Constitutional Court".

There are several regions that carry out the simultaneous local head elections, but Central Java and East Java are region that have more numbers of regional elections. There are 4 cities and 17 regencies carry out simultaneous regional elections in Central Java, including Semarang City, Surakarta City, Pekalongan City, Magelang City, Rembang Regency, Kebumen, Purbalingga, Boyolali, Blora, Kendal, Sukoharjo, Semarang, Wonosobo, Purworejo, Wonogiri, Klaten, Pemalang, Grobogan, Demak, Sragen, and Pekalongan Regency. Meanwhile, regional elections in East Java were 2 cities and 19 regencies.

The regional elections simultaneously in 2015 need a lot of preparation that organized by KPU and *Bawaslu*. The more regional elections carry out simultaneously, the more problems and obstacles are challenged. According to Liputan 6 article, one of the problems is the process of election dispute resolution. The Constitutional Court (MK) received 25 registrations of disputes in the 2015 regional elections of 88 cases of election dispute over the simultaneous local elections.

Several election disputes occurred in 2015. For example, based on *Suara Merdeka* news, the candidate of Regent and Deputy Regent of Pemalang Regency who is cancelled by General Election Commission as the candidates in this regional election submitted the result dispute election to the Election Supervisory Commission. The letter of application for resolving disputes is KPU Decree of Pemalang Regency number: 85 / Kpts / KPU-Kab.12-29336/2015 concerning the determination of pairs of candidate in the Pemalang election on August 24th, 2015. Pemalang District and Deputy Regent Elections was dated on August 24th, 2015. The Constitutional Court (MK) examined the dispute over the results of regional elections (PHP) from four regencies in East Java. Regarding to *Jawa Pos* news, disputes over the results of the regional elections that were tried were from Malang, Jember, Situbondo and Sumenep Regencies.

As stated in Law No. 1/2015 and Law No. 8/2015, *Bawaslu*, Provincial *Bawaslu*, District / City *Panwaslu*, *Panwascam*, Field Supervisors, and TPS Supervisors are election

administrators. In line with the amendment to the Act, election supervisors have been placed at polling stations. Even TPS Supervisors were given the authority to resolve of the violations occurred at the polling station in the regional election on December 9th. This is one of the efforts to reduce the problems that occur in the implementation of regional elections at TPS.

Currently Election Supervisory Committee (*Panwaslu*) of regencies/ municipalities is given a big authority to resolve findings and reports of disputes over the implementation of regional elections that do not contain elements of criminal acts, both disputes between election participants and KPU and election participants with the other election participants. *Panwaslu* must be able to resolve violations or disputes that occur and no longer have to be resolved at the provincial level. This will further shorten the dispute resolution process and not all of disputes settled by KPU and Constitutional Court. This study discusses the extent of the dispute resolution of the Simultaneous Regional Election in 2015 which was resolved by the Provincial and District / City *Bawaslu* in Central and East Java Provinces.

THEORETICAL FRAMEWORK

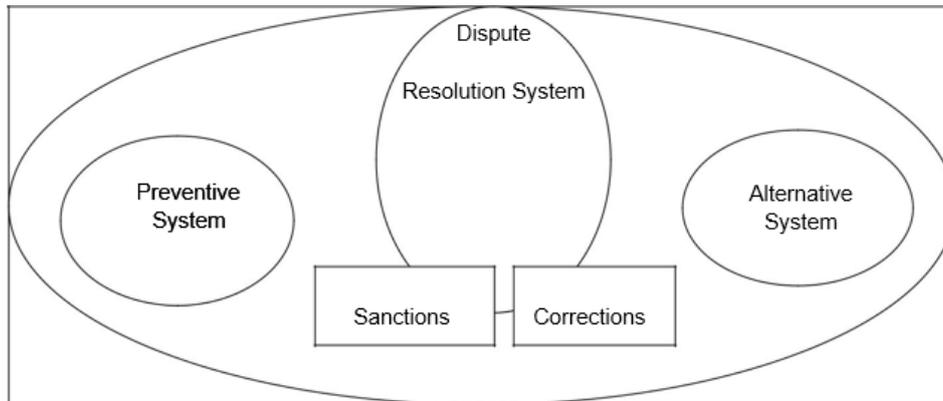
Election is a manifestation of people sovereignty and human rights, especially the right of citizens to participate in government. The International Human Rights Community has identified several aspects of human rights in the election which are an inseparable right of the right to life such as freedom and security and the right to participate in government through the representatives. Elections aim to choose the government and parliaments to realize the right to participate in the government. Disputes had in both the process and also over the results of the general election in the implementation of competitive elections. Disputes are statements of claims or conflicting rights between parties involved in a legal process. Election disputes are complaints (objection statements), protests, claims (conflicting statements), cancellations, and contestations related to the electoral process. In an electoral justice system, effective handling of disputes is an important part to maintain public confidence in the electoral process and its results. According to Kippen (2010), public trust will provide legitimacy for the winner to govern. Trust in the electoral process is absolute point to build, maintain and restore democracy.

Electoral justice is intended to ensure that all actions, procedures and decisions in the electoral process are law-abiding, and the fulfillment of electoral rights is protected and enforced, so giving people who believe their electoral rights have been violated the ability to make complaints, provided information, and accepted decisions. This definition contains three important concepts in the understanding of electoral justice, first, compliances with the law that are the actions, procedures and decisions of election organizers are required to be subject to legal principles. Second, electoral justice also means protecting the fulfillment of electoral rights. Third, fairness of elections also implies the existence of a guarantee of recovery of electoral rights violated in the process, actions and decisions related to the electoral process.

According to Henriquez (2010), the Election Justice System is a set of actions or mechanisms in a country to ensure and verify that actions, procedures and decisions related to elections comply with its legal framework, and to protect and restore fulfillment of electoral rights. The Electoral Justice System is the core instrument of legal sovereignty and the highest guarantee of adherence to democratic principles in the implementation of free, fair and honest elections. The components that make up the electoral justice system are included prevention systems, dispute resolution systems, and alternative dispute res-

olution systems.

Figure 1. Electoral Justice System



Source: Jesus Orozco-Henriquez (2010)

In an electoral justice system, it is very important to build facilities and actions to prevent electoral disputes. Facilities and actions can come from outside of the electoral justice system and from within the electoral justice system. According to Henriquez (2010, p. 23-24) actions and facilities that come from outside of the electoral justice system are:

1. Designing and implementing the constitutional and legal framework for democracy and representative government, human rights and the electoral process;
2. Participation of political parties and key actor of the society in designing or reforming the elections legal framework;
3. Development of political culture and civic education, including democratic principles and values, and respect the rule of law and human rights;
4. Development of a pluralistic party system and internal democracy in the political process;
5. Inclusiveness of gender and minorities in the government and political arenas;
6. Establishing a fair condition for elections, especially those relating to financing and media access;
7. Developing the role of civil society, including its ability to monitor all stages of the electoral process;
8. Adopting of a code of ethics by the media, civil society, election observers, and political parties;
9. Establishing professional, permanent and impartial / independent, and autonomous election organizers;
10. Adopting of appropriate selection procedures by KPU that are available to the public and carried out consistently;

The prevention of electoral disputes also requires support from the electoral justice system, including:

1. Designing and implementing the constitutional and legal framework for the Election Justice System that is accessible and effective;
2. Establishing professional, permanent and impartial / independent election organizers;
3. The code of ethics is complied by all of election administrators and other bodies in the PSP system, the media, civil society, political observers, and political parties;
4. Election organizers and PSP are committed to upholding the principles and values of democracy, especially independence and neutrality / impartiality;
5. The ability of election organizers to make decisions transparently and socialize them effectively;
6. Appropriate election training for KPU staff and *Bawaslu* staff;
7. The adoption of a code of ethics by KPU and *Bawaslu* staff;
8. Inclusiveness of gender and minorities in the KPU and *Bawaslu*;
9. The adoption of security in receiving, calculating and recapitulating the results of voting;

A comprehensive prevention system is very important as a part of electoral justice system, because the best dispute resolution mechanism is the prevention that disputes never occur. Legal vacuum or lack of adequate action can imply for election disputes.

According to Henriquez (2010, p. 37), the electoral dispute resolution system is the core of the electoral justice system and it has two main functions, corrective and punitive action. Corrective action is intended to deal with electoral complaints and try to cancel or modify/acknowledge in any electoral disputes, and also provide protection of electoral rights or restore and meet electoral rights. According to Vickery (2011, p. 122-125), the main areas of electoral complains include the preparation of voter lists, claims against candidates, the appointment of election management bodies and ad hoc committees, intimidation, campaign violations, violations of voting and counting, violation of vote tabulation and seat allocation.

Based on Henriquez (2010, p. 38), the electoral dispute resolution system also includes a punitive function, namely punishment sanctions for people who responsible for election violations and election crimes. The punitive function of the electoral dispute resolution system is a series of procedures to ensure that the obligations and responsibilities of the election are carried out, punish the perpetrators or persons who responsible for election crimes or election violations. Henriquez (2010.p 42) also stated that there are several prerequisites in imposing sanctions on violations and electoral crimes, namely the clear definition of criminal violations, sanctions and penalties that will be given, and all the requirements covered in the law clearly. Second, the legal provisions that stipulate an administrative violation or criminal violation and appropriate the sanctions or penalties must actualize the principles of legal certainty and objectivity. Third, the provisions that set the sanctions or penalties need to be interpreted and applied strictly. The principles of legality must be based on facts and evidence, not on analogy and just common sense because they will cause legal uncertainty.

Beside a formal electoral dispute settlement system, there is a mechanism and handling of other electoral disputes, namely the settlement of electoral disputes outside the court, called informal electoral disputes or alternative electoral disputes. This mechanism had run well in various communities around the world for a long time. An alternative solution to electoral disputes has been developed, especially in post-conflict societies in recent years.

Alternative dispute resolution has been used widely and effectively in various countries, such as Afghanistan, Mozambique, Malawi, and Democratic Republic of Congo by the determination of functions and authorities to terminate electoral dispute through civilian structures. Ghana and Botswana, which are often regarded as a reference for democracy in Africa, use the relations committee between political parties and other community-based structures to assist the KPU in achieving transparent and credible elections through the resolution of effective handling and conflict mediation. According to Vickery (2011, p. 261-294) and Henriquez (2010, p. 183-187), the main purpose of alternative settlement mechanisms is not to replace formal methods, but it is to support and supplement the lack of design of electoral dispute resolution mechanisms in terms of credibility, cost, crisis political and institutional.

There are 3 alternative mechanism models for electoral dispute resolution. First, unilateral means if the party submitting the dispute or complaint voluntarily withdraws the complaint / petition that is submitted. Secondly, bilateral or multilateral is through compromises and transactions or peaceful settlement of the parties to the dispute. Third, third party intervention is through conciliation, mediation and arbitration mechanisms. The use of alternative mechanisms does not always mean that there are weaknesses in the electoral dispute resolution system, but rather to accelerate and reduce the costs of dispute resolution. Formal and informal dispute resolution systems can go hand in hand and complement to each other.

According to Vickery (2011, p. 19), the experts on resolving electoral disputes agreed that a good electoral dispute resolution system must fulfill the following elements as follows:

1. There is the right to obtain an election dispute resolution;
2. There is a define of standard of instruments and election procedures clearly
3. There is a case breaker (arbitrator) who has knowledge and impartiality;
4. There is a justice system that facilitates in decision making fluently;
5. There are clear arrangements regarding the evidence and standards for submitting evidences;
6. There is an effective and meaningful resolution system;
7. There is an effective stakeholder education.

RESULT AND DISCUSSION

Free and fair elections are the main principle in all electoral processes. This principle guides the implementation of elections at the lowest level, namely the involvement of

every citizen to choose and be elected, and at the highest level that is to create leaders who are able to fight for the public interest. Therefore, the electoral process is important and interesting for all elements to be involved in it, including the EMB, political parties, NGOs and public. In fact, there are often problems in the electoral process such as the emergence of electoral conflicts called electoral disputes, such as disputes between organizers, organizers with participants or participants with the other participants. However, these are having their own path in the resolution with the principle of electoral justice. The Electoral Justice System, which is used as a perspective to see and even resolve electoral disputes, has three sub-categories, namely the preventive system, the resolution disputes and alternative systems. This sub category that will be used to analyze the resolution of election disputes in several provinces on the island of Java.

Dispute resolution of simultaneous regional election in Central Java Province

a. Preventive

In the electoral justice system, it is very important to build means and measures to prevent electoral disputes, so that appropriate and fast actions are needed in law and implemented by dispute resolution institutions such as *Bawaslu* and district / city of *Panwaslu*. The right and effective actions are the main key to avoid problems that will injure the electoral process. *Bawaslu* and *Panwaslu*, especially *Bawaslu* and *Panwaslu* districts / cities in Central Java have implemented technical measures to support preventive measures. There are three dominant actions had taken, namely the development of political culture, civic education, including the principles of democracy and values and respect for the rule of law and human rights, which is carried out through the provision of information and good socialization to the public to improve understanding of democratic values. These actions aim to improve and internalize public awareness in carrying out democratic values, especially by developing a political culture that is in accordance with the development of democracy itself.

Another effort is improving the role of civil society, so that community not only to involve in the electoral process to vote on ballots, but also to have broad insight about the electoral process. The organizations and groups in the society had been asked together to prevent election problems such as prevention of money politics, violence and other problems to be carried out by involving the role of the community, although there are still shortcomings.

Establishing professional, permanent and impartial / independent election organizers is the most serious effort carried out by election organizers to increase technical knowledge and understanding that supports the creation of the principle of professionalism. They carried out training on dispute resolution as a basic step to *Bawaslu* and *Panwaslu* in Central Java to be able to identify and resolve problems in the election. They improve the willingness to self improvement as an effort to have an adequate knowledge and skills capacity for achieve electoral justice. Prevention efforts are the basis for realizing free and fair elections seriously and creating electoral justice.

b. Dispute resolution system

The electoral dispute resolution system is the core of the electoral justice system that has two main functions, namely Corrective and Punitive. Corrective action is intended to deal with election objections that aim to cancel or modify or acknowledge any deviations that occur. Corrective function done by *Bawaslu* and *Panwaslu* in districts / cities in

Central Java, which is namely in the case in Pemalang district, is where there was a dispute between the organizers (KPU) with the one disqualified candidate. He was disqualified because he did not submit the annual tax statement as a prerequisite for the candidate registration, and then he filed a dispute at the *Panwaslu*. After the Supervisory Committee conducted an inspection; finally *Panwaslu* give him an opportunity to fulfill the requirements needed to complete the nomination. Dispute resolution conducted by the Election Supervisory Committee was held in the Election Supervisory Committee which involved both parties to the dispute. Finally, the dispute can be resolved properly, not until it enters the next level

The problems of election dispute in Pemalang district is caused by not good communication between election organizers and election participants. It is showed in the object of the dispute filed by the applicant that the registration requirements are incomplete. The communication between organizers and participants is important to create a good electoral process and to avoid the election dispute.

Besides the formal electoral dispute resolution system, there is also informal electoral dispute or alternative electoral disputes. The mechanism for resolving disputes outside the court is not new. District Election Supervisory Committee Jepara initiated dispute resolution through mediation in the case of campaign props. This case is able to be resolved through mediation by two opposing parties. These alternative pathways need to be developed with mature consideration, including first, providing regulations to legitimize these actions. A clear legal basis is needed in this simple dispute resolution, so it has a strong position in the both of the parties to the dispute. Second, in alternative dispute resolution must have adequate experience and knowledge, which is influenced by the maturity of understanding in the electoral process, and understanding of the flow of conflict. This can be seen from the diverse background of the District Election Committee of Jepara, namely as journalists, lecturers, and community leaders. Third, strengthening leadership integrity is an important key in the process of resolving this alternative, without integrity, the settlement is not running optimally.

The election dispute resolution by implementing the principle of electoral justice is an important step for the creation of fair elections, including the dispute resolution process. Sharpening the institutional system is carried out along with strengthening human resources. Good understanding and knowledge are reflected in the quality of the Supervisory Committee. The quality of the Election Supervisory Committee is grown through intense, substantive and hierarchical training; and not just a formality. Improving the quality of resources also needs to be done by increasing understanding about the flow of conflict, and having solutions to these conflicts. This quality needs to be owned by *Panwaslu* as an institution that close to the axis of conflict.

Dispute resolution in the simultaneous regional election in East Java Province

1. Election dispute in Surabaya regional election

Before the simultaneous regional election was officially held in Surabaya 2015, there was a dispute associate with the nomination of Surabaya Mayor and Deputy Mayor Candidates. There almost has a single pair of candidate in the simultaneous regional elections of Surabaya City in 2015. Initially, there were two pairs of candidates who registered to the Surabaya City Election Commission (KPU) to become simultaneous election participants in 2015. The two pairs of candidates are:

1. DR. (HC). Ir. Tri Rismaharini, MT and Whisnu Sakti Buana, ST (Risma-Wisnu), supported by PDIP
2. DR. H. Rasiyo M. Si and Drs. Dhimam Abror, M. Si (Rasiyo-Dhimam Abror), supported by PAN and democrat Party.

In the Decree of KPU the Surabaya City Number 32 / Kpts / KPU-Kota-014.329945 / 2015 concerning with Pairs of Mayors and Deputy Mayors candidates that do not fulfill the Requirements for the Nomination and Candidate Requirements in the Regional Election of Surabaya in 2015, KPU of the Surabaya City stated that the pairs of candidates Rasiyo-Dhimam Abror do not qualify as the pairs of candidates of the Regional Election. The pair of candidate Rasiyo - Dhimam Abror was declared ineligible due to the non-identical between approval letter submitted on 11 August 2015 until 19 August 2015, so it was not verified by the KPU. This evidence is seen in the numbering of letter file and also on stamp duty number that all non identical.

Based on PKPU No. 12 of 2015 Article 42 paragraph (1) letter o, the prospective candidate must submit a photocopy of the Tax Identification Number (NPWP) card on behalf of the candidate, receipt of the submission of Personal Taxpayer Income Tax Annual Notice on behalf of the Candidate, for the last five years periods or since the Candidate will become a taxpayer, and proof that she/he does not have tax arrears from the Tax Service Office (KPP) where the Candidate is registered, as proof of fulfillment of candidacy requirements. Dhimam Abror is only submitted a copy of the NPWP and a receipt for the delivery of SPTPP, and he does not have submitted a letter that he does not have tax arrears from KPP. Based on the results of KPU verification and the Wonocolo Primary Tax Office (KPP) certificate No. SP-2022 / WPJ.11 / KP.07 / 2015 dated 27 August 2015, it was stated that the candidate for vice mayor concerned had never made and submitted a document of proof of tax arrears.

The pairs of candidates Rasiyo-Dhimam Abror and their supporting party was submitted this dispute to the Surabaya City *Panwaslu*. The dispute can be resolved by consensus. Based on the results of the deliberation, it was decided that the KPU reopened the registration of the mayor and deputy mayor of Surabaya, and would-be mayor DR. H. Rasiyo M. Si can re-register his file. However, in the second registration, Rasiyo does not pair with Dhimam Abror, but with a new partner, Lucy Kurniasari.

The case of the Surabaya City election dispute can be resolved well because of several things. First, there is imbalanced competition between the both candidates. Risma-Wisnu is stronger which is supported by the big parties than Rasiyo-Lucy Kurniasari. Many observers see that Risma-Wisnu will become the winner easily. The different name of Lucy in the diplomas certificate and in the candidacy is not disputed by Risma-Wisnu, after Lucy give the proof that the name of Lucy in her certificate is the same person with Lucy's in the candidacy letter, because Risma-Wisnu have a strong confident that they will be elected in this regional election. Risma - Wisnu is more worries on issue of postponing regional elections will because it will cause of political uncertainty. If Rasiyo-Lucy is fired into a pair of candidate in the regional elections, the election will possible to be postponed because of there is only a single candidate.

Although Risma-Wisnu has reported the difference in the spelling of Lucy's name in the Surabaya City Election Supervisory Committee, he later withdrew the lawsuit so that there would not be a single candidate. Theoretically, the action of the Risma-Wisnu can be categorized as a unilateral dispute resolution in which the disputing party with-

draws from the dispute because it considers the issue is not too important to be pursued by law. One indication of the weakness of the pair of Rasiyo-Lucy is in the case of the replacement of the vice Mayor Candidate from Dhimam Abror to Lucy Kurniasari. The pair of Rusiyo-Lucy is like just as a complement in this election and supported by weak coalition. This condition shows that the pair of Risma-Vishnur is so very strong so they do not pursue the settlement of a dispute because it will postpone the regional election. The choice of a unilateral dispute resolution strategy in the form of a claim withdrawal like this is very common to the disputing party if they think that the problem is not too important, or they have more important interests. Another possibility is that the withdrawals the case because they satisfied with the resolution which offered. So they do not demand further resolution of disputes. The victory of candidate Risma-Whisnu as 86.22% showed the absolute dominance of this candidate on Rasiyo-Lucy who was only get 13.78% votes.

2. Mojokerto election dispute

There were three pairs of candidates who participated in the simultaneous regional elections in Mojokerto Regency in 2015. The three candidates are:

- a. Choirun Nisa and Arifudinsyah (Nisa-Arif), whose supported by PKB, PPP, PBB, and Hanura Party
- b. Mustofa Kamal Pasa and Pungkasiadi (Mustofa-Pungkasiadi), whose supported by Golkar Party, PDI-P, Democrat Party, Gerindra Party, Nasdem Party, PAN, and PKS.
- c. Misnan Gatot and Rahma Shofiana, as an independent candidate.

Election Disputes of the regional election of Mojokerto began with the issue of a recommendation letter from the PPP Central Executive Board (Djan Fariz) to support the pair of candidate Nisa-Arif. The other pair of candidate Mustofa-Pungkasiadi claimed that the support letter was false because Djan Fariz had actually been support him before. Then, Mustofa-Pungkasiadi submitted a request to the Mojokerto Election Supervisory Committee to cross out Nisa-Arif. However, the request was rejected by the *Panwaslu* and *Panwaslu* gives an argument that the right to sue was a candidate who did not pass the registration process at the KPU. Mustofa-Pungkasiadi also filed this case to the Surabaya State Administrative Court, but it was also rejected. Then, Mustofa-Pungkasiadi filed an appeal to the Supreme Court. The Supreme Court granted Mustofa-Pungkasiadi's appeal, and issued a case number 539 K / TUN / REGIONAL HEAD ELECTION / 2015 that submitted by Mustofa Kamal Pasa-Pungkasiadi. The Supreme Court canceled the Decision of the KPU of Mojokerto Regency Number 31 / Kpts / KPU. Kab-014.329790 / 2015 expressly, and Letter Number 28 / BA / VIII / 2015 dated 24 August 2015 concerning the determination of pairs of candidate of regents and deputy regents of Mojokerto in 2015. The Supreme Court also ordered KPU Mojokerto to issue a new decree and letter by crossing out Choirun Nisa-Arifudinsjah (Nisa-Arif).

Based on Supreme Court decision, KPU Mojokerto crossed out Choirun Nisa-Arifudinsjah (Nisa-Arif) as the pair of candidate this regional election. Then, Choirun Nisa-Arifudinsjah (Nisa-Arif) sued the KPU Mojokerto to the Election Organizer Honorary Council (DKPP), but their case rejected by DKPP with decision of DKPP Number 90 / DKPP-PKE-IV / 2015 which stated that the decision of KPU Mojokerto to crossed out Nisa-Arif is a right decision. In the other side, DKPP give a hard cautioning to the commissioners and members of the KPU Mojokerto.

Mustafa Kamal Pasha and Choirun Nisa were originally the pair of incumbent Re-

gent and Deputy Regent of Mojokerto, and become competitors in the election with different pairs of candidates. Local election dispute in Mojokerto is a unique and interesting case because it requires a more in-depth analysis. The incumbent competition is a strong competition because both parties have the strong resources and are supported by strong political parties, and both sides know the weakness of each candidate. Mustafa Kamal Pasha-Pungkasiadi was supported by major parties such as Golkar, PDIP, Demokrat, Gerindra, Nasdem, PAN and PKS, while Choirun Nisa-Arifudiansyah was supported by PKB, PPP, PBB and Hanura. The dual management of PPP between the Romahurmuzy and Djan Faridz was a source of problems in the regional election dispute in Mojokerto.

KPU Regulation No. 9/2015 concerning Nomination of the Election of Governor and Deputy Governor, the Regent and Deputy Regent and/or Mayor and Deputy Mayor Article 34, 35 and 36 essentially instruct the Provincial and Regency / City KPU to accept the pair of candidate that supported by the political parties which is in the internal conflict as long as the disputing party supports the same candidate. In the case of electoral disputes in Mojokerto Choirun Nisa-Arifudiansyah was supported by a coalition of PKB, PPP, PBB and Hanura and all of them have 14 seats in the parliament. The minimum support requirements for carrying out candidates in the regional head elections of Mojokerto Regency are 10 seats. The PKB, PPP, PBB and Hanura coalitions actually have 14 seats because PKB donated 5 seats, PPP also 5 seats, Hanura and PBB each have 2 seats. If PPP support is declared invalid in favor of Choirun Nisa then Choirun Nisa-Arifudiansyah is only supported by 9 seats in the DPRD so that it is lacking support to be declared as a valid candidate of regents-deputy regents in Mojokerto Regency 2015 regional elections.

The opportunity to hamper the candidacy of Nisa-Arif is open because of the internal conflict of PPP; there are two camps that claim each other as legitimate administrators namely Romahurmuzy and Djan Faridz. Based on KPU regulations regarding the nomination in the 2015 simultaneous regional head elections, the regulation of KPU No. 9/2015, the nomination of Nisa-Arif who is supported by PPP will fulfill the requirements if they get the letter of recommendation of the PPP DPP from both parties. On the other hand, Mustofa-Pungkasiadi actually does not need PPP to support because they have more than enough supporting political parties. Nisa-Arif's position as the main competitor has a problem because they claim that they are supported by the both side of the administrator PPP, but Djan Faridz gives his recommendation to Mustofa-Pungkasiadi. The existence of two administrators of PPP recommendations raises the issue about which the recommendations are correct. The factual verification process carried out by the KPU to the supporting political parties to the pairs of candidates shows a doubt about the support of the Nisa-Arif. Without the recommendation of Djan Faridz, Nisa-Arif could not be a pair of candidate in this election, but it is not a problem for Mustofa-Pungkasiadi, because without PPP support, this candidate still meets the requirements. The General Election Commission takes strategic decisions which according to them are relatively safe namely ratifying the nomination of the two candidates, so that the regional head election of Mojokerto Regency is followed by 3 candidate pairs. The decision of the General Election Commission of Mojokerto District Number 31/KPTS./KPUKAB-MOJOKERTO 014.329790 / 2015 regarding the Determination of Candidates for the Pair of Regent and Deputy Regent of Mojokerto becomes Participants in the Election of Mojokerto's 2015 Regents and Deputies 2015, dated on 24 August 2015 Regarding the Determination of the Candidate Pair of Regent and Deputy Regent of Mojokerto in the Election of the Regent and Deputy Regent of Mojokerto in 2015, issued by Mustofa-Pungkasiadi.

The Mojokerto Regency Election Supervisory Committee accepted the dispute ap-

plication submitted by Mustafa-Pungkasiadi and registered with No. 01 / PS / PWS-KAB / MJK / VIII / 2015. *Panwaslu* of Mojokerto examined this dispute and examined witnesses and evidence presented by the parties, the KPU, pairs of Mustafa-Pungkasiadi and Nisa-Arif. Based on the Law No. 1 of 2015, Mokokerto District Election Supervisory Committee has 14 days to resolve the dispute.

The Mojokerto District Election Supervisory Committee's decision was read on August 31st, 2015 basically rejected the lawsuit filed by Mustafa-Pungkasiadi because the applicant was not in qualification as the party who had the 'legal standing' as the applicant for the dispute. Based on the fatwa of the Supreme Court of the Republic of Indonesia Number 115 / Tuaka.TUN/V/2015 number 4 stated "That as stipulated in Article 142 of Law No. 1 of 2015 juncto Act No. 8 of 2015, the pairs of candidate who have registered with the KPU, Provincial KPU and Regency / City KPU but they are not determined as Election Participants, have Legal Standing to submit disputes to the Provincial *Bawaslu*, and Regency / City of *Panwaslu* because of disputes between Participants Elections with Election Organizers as referred to in article 142 a quo.

Based on the Supreme Court's *Fatwa* Number 115/Tuaka. TUN/V/2015, the Supervisory Committee of Mojokerto Regency stated that the petitioners' claim could not be accepted because the applicant did not fulfill the qualifications because both of the applicant and the related parties were determined as the candidates. The petition is more as a reflection of efforts to hamper and tackle of Nissa Arif.

Another problem is that the Fatwa of the Supreme Court does not have legal force that binds and imposes compliance. Fatwa is a legal opinion that is not binding on the parties. Even though Fatwa is issued by the Supreme Court as the highest legal authority, the nature of the fatwa is only a legal opinion and not a legal decision that has the force to be obeyed. Thus, the decision of *Panwaslu* and *Bawaslu* based on the Supreme Court fatwa is potentially not obeyed and rejected by the disputes parties.

Mustafa-Pungkasiadi did not accept the decision of Mojokerto District *Panwaslu* and took the legal remedies by filing an appeal against the Mojokerto *Panwaslu*'s decision to the State Administrative High Court. The Surabaya State Administrative High Court, which examined and ruled on the appeal filed by Mustafa-Pungkasiadi candidate pair, also agreed with the Mojokerto District Election Committee's decision, stating that the applicant was not in the qualification to submit a dispute application because the applicant was not included in the candidate pair that was not determined by the KPU, in accordance with the Supreme Court fatwa.

Then, Mustafa - Pungkasiadi appealed to the Supreme Court about the Surabaya PTTUN decision. What is interesting is that the Supreme Court decided to grant the request of Mustafa-Pungkasiadi and ordered the KPU to cross out and disqualify Nisa-Arif because they did not meet the requirements. The Supreme Court decision changed the political map in the election of the district of Mokokerto because one of the strongest pairs of candidate in the regional head election was declared ineligible to continue the contest in the Mojokerto district election in 2015.

The KPU of Mojokerto Regency carries out the decision of the Supreme Court that is final and binding and there is no other legal effort to fight. The General Election Commission of Mojokerto Regency issued a decision Number 61/Kpts/KPU.Kab-014.329790/2015 dated on November 14th, 2015 concerning Amendment to the Decision of General Election Commission of Mojokerto Regency number 31/Kpts. Deputy Regent

Participants in the Election of the Mojokerto Regent and Deputy Regent in 2015 and News Letter Number 47/BA/XI/2015 concerning the plenary Meeting to follow up the Supreme Court Decision number 539 K/TUN/REGIONAL HEAD ELECTION/2015 dated 3 November 2015. KPU Decree No. 61/Kpts/KPU.Kab-014329790/2015 dated on 14 November 2015 excludes the pair of candidate Nisa-Arif in the Mojokerto Regional Election in 2015.

Nisa-Arif did not stop trying even though the Supreme Court decision was final and binding and there were no other legal remedies. This couple submitted a request for a dispute to the *Panwaslu* of Mojokerto Regency on the decision of the KPU of Mojokerto Regency. 61/Kpts/KPU.Kab-014329790/2015, but it was rejected by the Mojokerto Regency *Panwaslu* because the KPU's decision No. 61 is taken as a follow up to the Supreme Court's decision that has permanent legal force. The pairs of candidate Nisa and Arif who have been crossed out of the nomination of the district head of Mokokerto have taken a new step by reporting both the KPU and the *Panwaslu* of Mojokerto Regency to the DKPP. DKPP who examined this case decided that there was no violation of the code of ethics and recovered the good name of the reported party. Finally, the election of the head of the Mojokerto Regency was only followed by 2 pairs of candidates.

The length of the dispute resolution process, the number of legal remedies available in handling dispute, as well as the number of institutions involved, on the one hand provides an opportunity for parties to file electoral disputes to obtain legal justice. On the other hand, a long process and unclear decisions lead to the high cost of legal proceed. The long process and appeal that are more than once show the length to achieve 'justice'. Many pathways to get electoral justice reflect the length of the bureaucracy that should be simplified in the process of resolving disputes.

On the other hand, the root of the problem of candidacy disputes in Mojokerto is excessive accommodation to the conflicting political parties. The accommodation to the conflicting political parties in the KPU regulation makes a trouble to the lower level election organizers. Verification to the support of the conflicting parties is difficult, so it must be the concern of the KPU. *Bawaslu* and the Supreme Court often have a different understanding about the legal standing of the petitioners in the dispute simultaneous regional elections. Although the MA fatwa does not have binding legal force, the unclear of the boundary of legal standing often confusing even for the legal experts themselves. The different understanding of the MA's fatwa explanation also raises a controversy.

3. Banyuwangi election dispute

East Java *Bawaslu* received various reports related to the implementation of regional head elections simultaneously from several regions. The most cases are in Banyuwangi Regency, which are six cases. First, it is related to the pair of candidate, Sumantri Soedomo and Sigit Wahyu Widodo nominated by the Golkar Party and Hanura Party, where they submit the recommendation only in a scan document, and then verified by the Banyuwangi KPU and *Panwas*

Based on the reports from the public, there are allegations of cheating on both pairs of candidates, and this has been reviewed by *Bawaslu*. This case turns out not to be a form of election violation but a general crime. The case f the DPD Golkar Decree (SK) of the candidate Sumantri had been followed up, and a report from the public, namely the allegation to the Head of the Banyuwangi KPU who was conducting hearings, currently still under review. Likewise, the report on the recommendation of Sumantri's candidate is

still in the process.

The pair of candidate Abdullah Azwar Anas-Yusuf Widiatmoko become the winner and get 88.96 % votes, and Sumantri Soedomo-Sigit Wahyu Widodo get 11.03 percent votes. During the recapitulation process, one of the witnesses from Sumantri Soedomo-Sigit Wahyu Widodo left the plenary meeting because he felt that the vote count was not neutral. However, until the results of the vote counting were announced, there was no claim on the results of the Banyuwangi regional head election in the Constitutional Court.

Analysis of election dispute resolution in East Java

There are 3 cases of Disputes in the simultaneous regional elections in East Java, namely in Banyuwangi Regency, Mojokerto Regency, and Surabaya City. Regional election disputes in Mojokerto and Surabaya City are more unique and interesting, with different types of dispute. Election disputes in Mojokerto Regency were quite complex and involved many parties, while the election dispute in Surabaya City tended to be lighter and quickly could resolved without harming any parties. The root of the problem in the regional election dispute in the two regions is different, in Mojokerto related to PPP support recommendation to the two different pairs of candidate, while in Surabaya City, the problem is related to the full name of one candidate.

Based on the analysis, the regional election dispute resolution in both regions has fulfilled the elements of a good electoral dispute resolution system. There is the explanation as follows:

1. The right to get an elections dispute resolution

The first element is related to the right to get an election dispute resolution. The Election Supervisory Committee (*Panwas*) with supervision from the Election Supervisory Body (*Bawaslu*) of East Java receives a lawsuit from parties who feel aggrieved and resolves the dispute. It means that there is a right to get a dispute resolution for each party. At the lowest level, namely at the *Panwas* level, the Mojokerto District Supervisory Committee received a lawsuit related to the dual support letter from PPP Djan Fariz. The candidate pair Mustofa Pungkasiadi sued the PPP support recommendation to the pair of candidate Nisa-Arif and asked the Election Supervisory Committee to give a recommendation to the KPU of Mojokerto Regency to cross-out Nisa-Arif from the list of Mojokerto District election candidates. The election disputes in the city of Surabaya are similar to this case where the plaintiffs and defendants have the same rights to get an elections dispute resolution.

2. There are clear elections standards and procedures

Elections dispute resolution in East Java has been based on election standards and procedures that have legal force, namely the Regional Head Election Law Number 8 of 2015. The Regional Head Election Law Article 142 confirms that there are two kinds of ways to resolve disputes namely disputes on election results and not elections result. These two types of disputes have different resolution procedures. *Panwas* in Mojokerto Regency and KPU Mojokerto have followed the existing standards and procedures because the Mojokerto electoral dispute which is not a dispute over election results has been settled in accordance with the regional head election law article 142 as a legal standing.

In accordance with the mandate of the Regional Head Election Law, the dispute was settled at the lowest level. If the resolution in the lowest level is not satisfy, the dispute

can be submitted to the higher legal institutions, namely the State Administrative Court (PTUN) and the Supreme Court. In the case of Mojokerto election dispute, the decision of the Supervisory Committee was sued to the Administrative Court. Finally, the PTUN issued a decision that confirming the decision of the *Panwas* and the KPU of Mojokerto. However, the plaintiff is not satisfied and filed a lawsuit to the Supreme Court which was then followed up with a Supreme Court regulation that urging the KPU to cross out the pair of candidate Nisa-Arif. Hence, the electoral dispute resolution system in East Java, especially in Mojokerto and Surabaya, has had and followed clear standards and procedures. In a dispute in the City of Surabaya, the consensus was reached without adjudication.

3. There is a case breaker (arbitrator) who has knowledge and impartial

In Mojokerto Regency election disputes, there is an impartial and knowledgeable arbitrator or case breaker, from the lowest level, namely the Supervisory Committee of Mojokerto Regency to the higher level *Bawaslu* Province. The Mojokerto Regency Supervisory Committee became the case breaker for the plaintiff to the Mojokerto KPU and the pair of candidate Nisa-Arif. The *Panwas* in the Mojokerto election dispute were neutral and had good knowledge because they were able to follow the dispute resolution standards and procedures in accordance with the existing rules. The position of *Bawaslu* in East Java Province is as a supervisor of the *Panwas* of Mojokerto Regency, as well as in the case of Surabaya City elections dispute resolution system. *Bawaslu* of East Java gives recommendations and inputs to the arbitrator and that there are three alternatives resolution dispute without court.

4. The existence of a judicial system for achieve decisions

This fourth element is related to the previous elements closely. There are two types of dispute resolution conducted by *Panwas* namely decisions based on studies and decisions through adjudication. The Mojokerto Supervisory Committee makes a decision by review, and rejected the claim from the applicant. However, the decision of the Supervisory Committee cannot be accepted by the plaintiff, and then it is submitted to the justice system to the State Administrative Court. The plaintiff was still not satisfied with the PTUN's decision, and he filed a lawsuit to the Supreme Court. It shows that there has been a justice system to achieve the best decisions in dispute resolution system in Mojokerto.

5. There are a clear regulation of the burden of proof and standards for submitting evidence

The burden of proof and standards for submitting evidence is need to be strengthened, because the mechanism for calling witnesses to a dispute resolution still based on the Criminal Procedure Code. On the other hand, the Supervisory Committee does not have a specific verification standard yet. As a result, there are different decisions amongst the Supreme Court, the Administrative Court and the Supervisory Committee decisions.

6. The existence of an effective and meaningful resolution system

Election dispute resolution in Mojokerto regency is an effort to resolve disputes effectively and meaningful for many parties. Dispute resolution is carried out effectively by following existing procedures, so that there are no problems or new claims as a result of procedural negligence. The result of the Supreme Court's decision which was not in line with the decision of the *Panwas* and PTUN provided evidence that the resolution mechanism had not resulted an integrated decision yet, so there is need an improvement in the judicial system for resolving electoral disputes. In the Surabaya case, consensus delibera-

tions were one of the efforts to resolve election disputes.

7. The existence of effective stakeholder education

Stakeholder education in the resolution of electoral disputes is very important because there are many rules from the bills to the technical guidelines, so *Panwas*, *Bawaslu* members, KPU members as well as the judiciary, must have good legal knowledge or education. Conflict resolution is also an experience that parties need to have in resolving electoral disputes. However, some members of *Panwas* in East Java were not have a legal education background so they need a technical guidance which was not easy to implement.

However, in the electoral disputes resolution in Mojokerto and Surabaya showed that the *Panwas*, KPU, and *Bawaslu* have sufficient knowledge to understand the existing legal standing, so the decisions issued do not deviate from the regulations. They have good capabilities because they are able to interpret and implement advice from the Election Supervisory Body and able to resolve disputes without the court.

CONCLUSION

The conclusion of the analysis above as follows:

- a. There were some weaknesses in the elections dispute resolution system in the simultaneous regional elections, including the length of the structure of dispute resolution mechanisms and the large number of ways in dispute resolution, it is necessary to simplify the procedures to save the costs.
- b. There were unclear tools and standard of dispute resolution procedures causing debate in resolving the electoral dispute. It is necessary to regulate the tools and standard of dispute resolution clearly and effectively.
- c. The standardization of evidence needs to be corrected, especially in term with the counterfeit information or criminal elements. The liability of criminal cases needs to be agreed upon and becomes the general norm that applies in the dispute resolution body.
- d. The members of the dispute resolution body need to be improved in their capacity of understanding of important issues and training materials
- e. Improving stakeholder education is needed, especially the main stakeholders, namely political parties and candidates to reduce the potential election disputes in the future. An alternative dispute resolution system needs to be considered in line with the increasing number of election disputes handled by *Bawaslu* members. Legal regulation is needed to protect *Panwaslu* members and *Bawaslu* to use alternative mechanisms, especially from threats reported to DKPP.

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