



## Bawaslu's Authority to Resolve Disputes on Elected Candidates Internal to Political Parties in the 2024 Legislative Election

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### Abstract

The open proportional system used in the 2024 Legislative Election with the determination of elected legislative candidates within political parties based on the majority of votes has resulted in disputes over elected candidates within political parties. This research aims to determine the provisions governing procedures for resolving disputes between internal political party candidates and institutions authorized to resolve disputes. The research method used is normative with descriptive analysis looking at Bawaslu's authority in resolving cases based on reports from fellow legislative candidate members within the party. The authority to determine elected candidates as legislative members is in the hands of the KPU/KPUD in stages. Thus, political parties cannot intervene in this authority in any form. The research results found that Bawaslu as the institution responsible for supervising the stages or process of elections as attributed to the Election Law, should be able to handle or resolve disputes between internal legislative candidates of political parties because it is explicitly stated in the academic text of Law no. 7 of 2017 that Bawaslu received and reviewed reports regarding alleged violations of Election Administration Provisions because disputes over elected candidates within political parties were included in the election dispute regime and not the political party dispute regime. The conclusion of this research is that this type of dispute can occur in the election process, especially in the process of determining elected legislative candidates by the KPU, provincial KPU, district/city KPU.

## Introduction

The 2024 General Election for Members of the DPR and DPRD (legislative elections) uses an open proportional system with the determination of elected candidates within political parties based on the majority of votes obtained by candidates for legislative members. The open proportional system of legislative elections as regulated in Law no. 7 of 2017 (Election Law) was recently subjected to a judicial review through the Constitutional Court (MK), because the applicant for a judicial review stated that this system was contrary to Article 22E paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that participants in legislative elections are political parties (institutions), not legislative candidates (personal). The Constitutional Court decided to reject the applicant's request, so that the 2024 legislative elections will continue to use an open proportional system (RI 2022).

Paying close attention to the substance behind the applicant's proposal to change the legislative election system to a closed proportional system, cannot be separated from the provisions for determining elected candidates for legislative members based on the majority of votes (Marriansah et al., 2022). Political parties do not have the authority to determine the candidates for elected legislative members within their party who will sit as legislative members, because

the determination of elected candidates is the authority of the General Election Commission (KPU) in accordance with the provisions of Articles 421 and 422 in conjunction with Article 426 paragraph (3) of the Election Law. At the time of the 2019 General Election, the author once put forward an alternative resolution of disputes regarding the determination of elected candidates within political parties (Pakaya, 2019), because this dispute could occur in the process of determining elected candidates for legislative members as a result of the 2019 election. At that time the author observed that there was still a legal vacuum in The Election Law (UU No. 7 of 2017) relates to resolving disputes over elected candidates within political parties who each claim the most votes. The legal vacuum is related to which institution will handle it, and what kind of procedures.

The 1945 Constitution of the Republic of Indonesia attributively gives authority to the Constitutional Court (MK) to resolve disputes/disputes over election results. The Constitutional Court's authority is limited to resolving disputes between political parties participating in the election which each claim the most votes from the legislative election to obtain legislative seats. Furthermore, disputes between internal political party legislative candidates who have the right to sit in legislative seats are not explicitly stated to be within the authority of the Constitutional Court. The authority of the KPU, Provincial KPU, and Regency/Municipal KPU to determine the elected candidates for legislative members (DPR and DPRD) is declarative (determination) based on the candidate's majority vote acquisition as summarized from the results of voting and vote counting at the polling station (TPS). Thus, to maintain the integrity of the voting and counting of votes at the TPS, strict and consistent supervision is needed by the Election Supervisory Body (Bawaslu) in stages starting from the TPS to the KPU, Provincial KPU and Regency/City KPU levels.

The leaders of political parties who initially nominate legislative members are not given the authority by the Election Law to determine the elected candidates who will represent their parties in legislative seats. Even political parties do not have the authority to determine an interim replacement (PAW) for an elected candidate who dies or resigns. This is what triggered the leadership of the Indonesian Democratic Party of Struggle (PDIP) to submit a request for a judicial review to the Supreme Court regarding Article 54 paragraph (5) and Article 55 paragraph (3) of KPU Regulation no. 3 of 2019 which regulates the voting and counting of votes in the 2019 election and Article 92 letter a of KPU Regulation no. 4 of 2019 which regulates the recapitulation of vote counting and determination of election results (Marriansah, et al., 2022).

This PDIP application was accepted by the Supreme Court as stated in Supreme Court Decision No. 57 P/HUM/2019, but the Supreme Court's decision cannot be executed by the KPU (as the Respondent in this case) because in the Supreme Court's decision it did not order the KPU to implement the decision. Apart from that, according to the KPU, the Supreme Court's decision is contrary to Article 426 paragraph (3) of the Election Law (Viebie 2021). In turn, the PDIP's submission of Harun Masiku as a PAW candidate against Nazarudin as the elected candidate for member of the DPR RI who died in the electoral district (dapil) of South Sumatra I could not be accepted by the KPU because Harun Masiku was not the candidate who received the next most votes after Nazarudin (Dameanti, Mahendra, and Oktivan 2022).

The problem of determining the elected candidate and PAW of the elected candidate for legislative members in the 2024 legislative election allows disputes to arise between candidates within political parties. Moreover, this process allows for intervention by political party leaders who want certain candidates to sit in legislative seats even if that candidate does not get the most votes. In this context, if objections arise from candidates who claim that they have the right to be declared the elected candidate on the grounds that the candidate who received the

most votes is suspected of manipulating the votes in collaboration with election officials at the TPS, then this needs to be resolved.

Disputes between internal political party candidates at the time of determining the elected candidate and/or PAW of the elected candidate could occur in the 2024 legislative election, thus whether Bawaslu has the authority to resolve it or whether it is resolved through the Party Court as the internal judicial institution of political parties (Pakaya & Sampara, 2020). The KPU, Provincial KPU and Regency City KPU which have the authority to determine elected candidates for legislative members (DPR, DPRD) need institutional and regulatory support in following up on disputes between internal political party candidates in determining elected candidates. In this study, it is necessary to discuss the existence of Bawaslu as a supervisory institution for the implementation of elections, whether it can exercise discretion in its authority to examine and decide on legislative election violations, where this type of violation results in disputes between legislative candidates within political parties in the process of determining elected candidates.

## Methods

The method used to discuss the above issues is a normative study which approaches the norms contained in laws and regulations relating to the implementation of elections, as well as from the perspective of democratic election principles.

## Results and Discussion

The 2009 legislative elections were the beginning of the application of a proportional system of open candidate lists with the determination of elected candidates based on the majority of votes obtained. This system was used until the 2019 legislative elections were held, because it was considered quite democratic and provided the power of legitimacy for elected legislative candidates based on how much people trusted them as evidenced by the large number of people who voted for them. In the 2019 legislative elections, the provisions for determining elected candidates and interim replacement (PAW) for elected candidates based on the majority of votes received by the candidate received a "protest" from the PDIP by submitting a judicial review of KPU regulations governing the determination of elected candidates and PAW of elected candidates based on the majority of votes. PDIP considers this to reduce the existence of political parties which should be the rights holders in nominating legislative members and as participants in legislative elections based on the constitution, namely Article 22E paragraph (3) of the 1945 Constitution of the Republic of Indonesia.

Ahead of the 2024 legislative election, the issue of an open proportional system has heated up again after a request for a judicial review to the Constitutional Court (MK) which basically asked to cancel the open proportional system in the Election Law which will be used in the 2024 legislative election. In fact, the issue of judicial review in the Constitutional Court has attracted attention. public after a statement emerged by Denny Indrayana (UGM Professor who has chosen to be an Advocate) saying that there was information from within the Constitutional Court which would decide on the 2024 election system using closed proportionality, this was responded to by Saldi Isra (Deputy Chairman of the Constitutional Court) who stated that Denny's statement Indrayana has harmed the MK, because the fact is that the MK has not yet decided (Constitutional Court 2023).

The Constitutional Court finally decided to reject the applicant's petition requesting to cancel the open proportional system in the 2024 legislative elections. Thus, the 2024 legislative elections will continue to use an open proportional system, the consequence of which is to determine elected legislative candidates based on the majority of votes obtained in their electoral districts. Determining elected candidates using this system allows for disputes

between legislative candidates within political parties in an electoral district, this could be caused by alleged violations by legislative candidates (candidates) who received the most votes.

Disputes between internal political party legislative candidates in an electoral district are normatively not clearly regulated in the Election Law, even though violations of election principles can occur in the arena of competition and contestation between internal party legislative candidates. This competition and contestation between internal party legislative candidates is an effort to obtain as much vote support as possible so that they will be appointed as the elected candidates in the future. The problem is that the Election Law does not regulate the resolution of disputes between internal party legislative candidates in determining elected candidates for legislative members, thus legislative candidates (candidates for members of the DPR/DPRD) do not have legal standing to object to the results of legislative elections. Even though DPR/DPRD legislative candidates do not have legal standing to submit objections to election violations, the substance of the objections submitted could be a violation of election principles, so Bawaslu, as an institution given the authority to handle election violations, should respond to objections to these violations.

If violations committed by legislative candidates that harm other legislative candidates within political parties in an electoral district cannot be resolved, then there is a very open opportunity for violations of election principles which in turn have an impact on public distrust, especially supporters of legislative candidates who are harmed by the election organizers and the election results. This is a challenge for election organizers, especially Bawaslu, which should ensure that elections take place according to election principles.

Considering that Bawaslu's existence as an election supervisory institution has been active in the history of election management since the 1999 election, suddenly in 2011 this election supervisory institution was almost eliminated as an election management institution when Commission 2 of the DPR RI was discussing the Election Management Bill. However, after Commission 2 of the DPR RI received an explanation from the chairman of Bawaslu RI, Nurhidayat (2022), that the election supervisory institution was very necessary and even needed to be strengthened institutionally and in its authority and budget support (Nurhidayat, 2022), the DPR RI decided that Bawaslu as an election supervisory institution should still maintain its existence and even be given strengthening its authority, especially the adjudication authority which has executorial power in handling process disputes (Sofian 2022).

In the context of handling violations committed by legislative candidates which result in disputes between internal political party legislative candidates, the presence of Bawaslu is necessary, in order to provide legal certainty for the public, especially legislative candidates who feel they have participated in legislative election contestations and competitions in accordance with election principles. Bawaslu needs to demonstrate its existence in realizing the integrity of election implementation in terms of preventing and taking action against election violations in a comprehensive (not partial) manner. Even though disputes between internal political party legislative candidates leading up to the determination of the elected candidates as described above are not explicitly mentioned in the Election Law, this does not mean that these disputes will not occur. The possibility of a dispute like this occurring as a result of the determination of an elected candidate to become a member of the legislature (DPR/DPRD) is based on the majority of votes cast by the candidate, while it is possible that the legislative candidate relied on by the party does not receive the majority of votes and cannot be determined as an elected candidate to become a member of the legislature. Conditions like this sometimes trigger disputes between internal party legislative candidates because the party

leadership wants the candidate, they rely on to be made or appointed as an elected candidate to become a member of the legislature.

The authority to determine elected candidates as legislative members is in the hands of the KPU/KPUD in stages. Thus, political parties cannot intervene in this authority in any form. Therefore, what is happening is that there are efforts to make the mainstay legislative candidate the candidate who gets the most votes. These efforts can be carried out before or after the voting and counting of votes at the polling station, which sometimes uses methods that violate election principles. Bawaslu must pay close attention to potential election violations like this so that they can prevent and/or follow up if reports or findings of violations of this type arise. Apart from that, what is most important is handling this type of violation if it is reported after the voting and counting of votes or at the time the legislative candidates are elected as members of the legislature. The author once again raises this issue, because of the experience in the 2009 and 2014 elections that disputes between internal political party legislative candidates had occurred. It is hoped that Bawaslu will need to think in stages from the central to the regional level about how to handle election violations which result in disputes between internal political party legislative candidates.

### Conclusion

The determination of elected candidates for legislative members in the 2024 elections will be based on the legislative candidates' majority of votes obtained as a consequence of the proportional system of open candidate lists in accordance with the Election Law (UU No. 7 of 2017). In this way, contestation (competition) to obtain as many votes as possible from voters does not only occur between political parties, but competition also occurs between internal legislative candidates of political parties in their electoral districts. As a result, potential violations in the election process could be committed by legislative candidates, which in turn would harm fellow internal party legislative candidates. Bawaslu as the institution responsible for supervising the stages or process of elections as attributed by the Election Law, should be able to handle or resolve disputes between legislative candidates within political parties. This type of dispute can occur in the election process, especially in the process of determining elected legislative candidates by the KPU, provincial KPU, district/city KPU, therefore Bawaslu in stages (central, provincial and district/city) has the authority to handle or resolve it as an effort realizing election integrity.

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