

Exploring the Feasibility of a Special Electoral Court to Achieve Electoral Justice

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Abstract

The increasing complexity and quantity of election disputes require a fairer, more transparent, independent, and quality settlement mechanism. Many Indonesian experts expressed support for the establishment of an electoral court because the existing dispute resolution mechanism lacked a sense of justice. Therefore, this study aims to address these problems through normative legal analysis using statutory and conceptual methods. To obtain comparative perspectives and relevant institutional models for the Indonesian context, we conducted a comparative study of electoral court practices in several Latin American countries. The results show that the debate surrounding the establishment of a special electoral court is seen as an initiative to promote fairness in resolving disputes. The Election Court provides legal certainty for justice seekers and eliminates the multi-institutional settlement of violations and conflicts. This is a strategic step to integrate dispute resolution that has been spread across various institutions (General Election Supervisory Agency,

General Election Organizer Honorary Council, and Constitutional Court). The potential for this integration lies in enhancing the credibility of election results and minimizing authority overlap. This article offers integrative design ideas in resolving election disputes. This will ensure that substantial electoral justice is achieved, rather than just procedural justice. Thus, the Election Court is not only a new judicial instrument but also a representation of paradigm transformation in realizing substantial electoral justice in Indonesia.

KEYWORDS *Constitutional Law, Electoral Court, Electoral Justice.*

Introduction

Election violations can be in the form of manipulation of the process,¹ and disputes arising between the parties are resolved by court in several countries.² Based on the 2017 Election Act, disputes and election violations in Indonesia are settled by several institutions, such as the Election Supervisory Agency. The Honorary Council of Election Organizers, the District Court, the State Administrative Court, and Constitutional Court resolve ethical violations, election crimes, legal appeals against election process, and disputes over results, respectively.

The institutions and procedures applied in processing disputes prevent justice seekers from restoring the violated rights. In addition, multi-institutions that resolve violations and conflicts have become ineffective. This is because of the authority to form regulations for resolving violations and disputes. The Election Supervisory Agency issued a Regulation of the Election Supervisory Agency, the Honorary Council of Election Organizers made the Regulation of the Honorary Council of Election Organizers, and the Criminal Procedure Code guided the District Court in resolving criminal acts. In addition, the General Election Commission formed the General Election Commission Regulation in holding election, which has implications for disputes. The

¹ Collins Odote and Karuti Kanyinga, "Election Technology, Disputes, and Political Violence in Kenya," *Journal of Asian and African Studies* 56, no. 3 (May 24, 2021): 560, <https://doi.org/10.1177/0021909620933991>.

² Khabele Matlosa, "Pouring Salt into the Wound: The Crisis of International Election Observation and COVID-19 in Africa," *Journal of Asian and African Studies* 56, no. 8 (December 10, 2021): 1976, <https://doi.org/10.1177/0021909621999402>.

Supreme Court also issued a Supreme Court Regulation to resolve problems by proposing legal remedies.

One of the inefficiencies of the multi-institutional dispute resolution system is the overlapping decisions regarding the same case. The overlapping choices occurred in the case of Oesman Sapta Odang's nomination. Constitutional Court Decision No. 30/PUU-XVI/2018 stated that the recruitment process for prospective Regional Representative Council members included increased requirements, specifically prohibiting political party administrators (functionaries) from nominating themselves as candidates for the council. The Supreme Court Decision No. 65P/HUM/2018 allowed a review of General Election Commission Regulation No. 26 of 2018, stating that Article 60A should not be applied to candidates in the 2019 Regional Representative Council Election who had already followed the election process.³ The Jakarta State Administrative Court, through Decision Number 242/G/SPPU/2018/PTUN. JKT, ordered the General Election Commission to revoke the General Election Commission Decree Number 1130/PL.01.4-Kpt/06/KPU/IX/2018 concerning the Determination of the Permanent List of Individual Candidates for Regional Representative Council Members in the 2019 Election. The three decisions put the General Election Commission in a difficult position. As if having to choose, the General Election Commission is faced with the decisions of the Supreme Court and the State Administrative Court on one side and the decision of the Constitutional Court on the other.

The status quo shows that resolving election violations and disputes is ineffective because many state agencies are included.⁴ The bureaucracy of resolving election disputes has increased, hence the decisions of court overlap others instead of solving problems. There are contradictions in the violations identified by the State Administrative Court in the form of differences in the interpretation of Constitutional Court Decisions. Different interpretations and attitudes towards disputes and inconsistent election violations cause overlapping authority and create a legal vacuum.⁵

³ Andri Rico Manurung et al., "Analisis Yuridis Putusan Hakim Terhadap Pelaku Tindak Pidana Narkotika Di Daerah Hukum Pengadilan Negeri Rantau Prapat," *Locus: Jurnal Konsep Ilmu Hukum* 2, no. 3 (September 29, 2022): 106–15, <https://doi.org/10.56128/jkih.v2i3.27>.

⁴ UU Nurul Huda, *Hukum Partai Politik Dan Pemilu Di Indonesia*, 1st ed. (Bandung: Fokusmedia, 2018).

⁵ Iwan Rois and Ratna Herawat, "Urgensi Pembentukan Peradilan Khusus Pemilu Dalam Rangka Mewujudkan Integritas Pemilu," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 7, no. 2 (2018): 268–269.

The different legal basis for resolving disputes has restricted the scope of procedural authority from the trial stage. This results in a tug-of-war of authority between authorized institutions. The protracted bureaucracy of resolving disputes has caused overlapping decisions and this is the background for Indonesian academics to initiate election court.

The extent an idea can benefit justice seekers should be examined considering the phenomenon of establishing an election court. The election dispute resolution institution is one of the means to enforce election law. The existence and authority of the institution must be based on clear, directed, and measurable rules to achieve election justice. The resolution of election disputes is resolved through a mechanism in accordance with applicable provisions. The existence of multiple institutions in resolving election disputes in Indonesia affects the election process and the effectiveness of the election itself. The large number of institutions and procedures applied in processing disputes means that justice seekers cannot restore their violated rights. In order to realize election justice, a transparent, accountable, and integrated dispute resolution institutional design is needed.

Several research examine the establishment of election court in Indonesia. Therefore, this research analyzes the establishment of a specialized court for regional head election as mandated by Constitutional Court Decision Number 97/PUU-XI/2013.⁶ Research conducted by La Ode Arumahi in 2022, entitled *The Nature of Special Election Courts in the Structure of Indonesian Constitutional Law (A Construction of Election Courts)*. Focusing on initiating a special election court which is a court that specifically regulates the mechanism for resolving process disputes, administrative disputes, and disputes between election participants and organizers. Rayendra Erwin Moeslimin Singajuru, in 2022, conducted a study entitled *Legal Politics of Election Dispute Resolution: Initiating the Establishment of an Election Court in Indonesia*. Focusing on

⁶ Suparto Suparto et al., "Establishment of Electoral Court in Indonesia: Problems and Future Challenges," *Journal of Indonesian Legal Studies* 8, no. 2 (November 5, 2023): 516, <https://doi.org/10.15294/jils.v8i2.72316>. See also Budi Purwanto, Ngabowaji Daniel Nte, and Muhammad Ikbali. "From Silence to Voice: Constitutionalizing Gender Parity and Political Inclusion in Indonesia's Electoral Democracy". *Indonesian Constitutional Studies* 1, no. 1 (2025): 77-100; Muhammad Akbar Purwanto, Justico Adam Nusantara, and Rajesh Joshi. "The Role of Political Parties in Indonesia's Democratic Transition: Strengths, Weaknesses, and Future Directions". *Indonesian Political Transformation* 1, no. 1 (2025): 161-202.

organizing an integrated election dispute resolution institution through a special election court.

This study employs a qualitative descriptive methodology utilizing a normative legal framework. A conceptual and comparative approach is employed to develop the proposal for creating a specialized judicial institution for general elections. This research necessitates the author to gather the required data in a complex manner. The acquired data is essential for the analytical process, leading to comprehensive research. This type of research fundamentally depends on the researcher's capacity to observe the research object. This pertains to the final results, which can demonstrate their distinctiveness and set them apart from prior research. This study analyzes the data according to the framework established by Miles and Huberman, which outlines three primary stages in the processing of qualitative data: reduction, display (data presentation), and conclusion drawing. During the reduction stage, the researcher categorizes and identifies pertinent and extraneous information, thereby refining the data to concentrate more specifically on the primary issues addressed in the study. Researchers collect data in the form of laws and regulations and scientific articles related to the research topic. In the display stage, the researcher presents data through tables and figures to substantiate the research arguments. In addition, comparisons with other countries allow this research to see the implementation of the theory used. The countries of Mexico, Uruguay, and Costa Rica are compared because they share similar government systems, including presidential and legislative elections, as well as the election of regional heads. The concluding phase involves concluding. Upon presentation of the data, the research problem is elucidated, allowing for the derivation of conclusions that represent the findings of this study. Consequently, conclusions should be drawn in a structured and systematic manner, incorporating discussion and referencing the operational definitions utilized in the research.

In this context, three factors distinguish the results from previous investigations. First, this research focuses on the urgency of establishing special court. Second, the extent to which the idea of an election court benefits justice seekers is examined, specifically substantive justice. Third, a comparative analysis of electoral court is conducted in different countries as a learning material for Indonesia to form electoral court. Therefore, this research is different from previous research and can provide an overview of the special judicial model for general elections in Indonesia.

Electoral Justice System

Electoral injustice constitutes a violation of human rights.⁷ Electoral injustice may result in less electoral competitiveness.⁸ The creation of free, honest, and fair election requires changes, specifically in handling growing complaints. In this context, building electoral justice system that includes a complaint and dispute resolution system and law enforcement is very important.⁹ The system has designed tools and mechanisms to prevent, identify, and correct electoral fraud, as well as impose sanctions on violators.¹⁰

For election results to be seen as valid and genuine, a reliable and trusted electoral justice system is needed. Elections do not equate to democracy; several authoritarian and totalitarian regimes conduct elections that fail to meet

⁷ Isidore Kafui Dorpenyo, "The Fair Fight to Dismantle Voter Suppression: Recognizing Electoral Injustice Through Lived Experiences," *Journal of Business and Technical Communication* 38, no. 1 (January 20, 2024): 4, <https://doi.org/10.1177/10506519231199471>. See also Andi Tenri Sapada, and Mohammad Arif. "Use of Artificial Intelligence in General Elections: Comparison of Indonesian and German Regulations." *Contemporary Issues on Indonesian Social Justice and Legal Reform* 1, no. 1 (2025): 21-40; Peña, Álvaro Sebastián Gallego, Carlos Eduardo Pérez, and Gabriela Jiménez. "The Case of Indigenous Peoples in Latin America: Substantive Justice and the Right to Self-Determination: El Caso de los Pueblos Indígenas en América Latina: Justicia Sustantiva y Derecho a la Autodeterminación". *Crítica de la Justicia Sustantiva* 1, no. 1 (2025): 1-40; Iván Fuentes Delgado, Emiliano César Paredes Montoya, and Salgado Reyes. "Urban Art As Political Resistance: Murals, Memory, and Justice in Public Space: Arte urbano como resistencia política: murales, memoria y justicia en el espacio público". *Revista de Justicia Social en la Sociedad Urbana* 1, no. 2 (2025): 215-238; Souad Ahmed Ezzerouali, Ridwan Arifin, and Sergi Fernandez Alejandro. "The Power of Collective Resistance: Understanding Community-Led Defiance Against State Oppression: El Poder de la Resistencia Colectiva: Comprendiendo la Desobediencia Guiada por la Comunidad Frente a la Opresión Estatal". *Revista De Desobediencia Comunitaria* 1, no. 1 (2025): 55-108; Daffa Irfan Mahendra, "Polarization, Hate Speech, and Democracy: Social Media Discourse During Indonesia's 2019 Elections". *Indonesian Discourse on Communication, Democracy, and Political Movements* 1, no. 2 (2024). <https://doi.org/10.65815/g5g08d64>.

⁸ Jeong-Woo Lee, "Electoral Competition and Government Health Expenditure in Electoral Autocracies: A Pessimistic View," *International Area Studies Review* 25, no. 3 (September 5, 2022): 196, <https://doi.org/10.1177/22338659221112997>.

⁹ Abdul Gaffar Karim and Wegik Prasetyo, *Catatan Para Mantan: Renungan- Renungan Lepas Tentang Lembaga Penyelenggara Pemilu Di Indonesia Pasca Reformasi* (Yogyakarta: IRCiSoD, 2022): 41.

¹⁰ Karim and Prasetyo.

democratic criteria. In these governments, 'electoral justice' is frequently absent or administered in a manner that consolidates the authority of those in power. In governments undergoing democratization, the lack of a reliable electoral justice system can result in political tension, instability, or violence. This is especially true when initial elections are viewed as having been rigged by elites or other influential entities.¹¹

Electoral justice shows that all actions, procedures, and decisions related to the process are in line with regulations or laws including constitution, instruments, international treaties, and various other arrangements. This definition demonstrates that electoral justice comprises two primary elements: (1) ensuring the electoral process adheres to legal and international standards; and (2) providing equitable mechanisms for the restoration of electoral rights when infringed upon.¹² The system is a crucial mechanism in law enforcement that ensures the execution of democratic values by conducting free, fair, and transparent election.¹³ Electoral justice also contains the meaning and mechanism of restoration and protection of rights.

Justice is not interpreted in general but specifically related to election. In essence, election justice includes three aspects, namely prevention, settlement, and alternative resolution of disputes outside the existing mechanism. The settlement of election disputes is divided into two parts, including correction of fraud and punishment for offenders.¹⁴ Electoral justice must ensure that the process is conducted efficiently and equitably. The concept is also a key instrument of the rule of law¹⁵ influenced by socio-cultural conditions, national historical and political backgrounds, institutions, and practices. Therefore, election justice has an administrative and juridical role.¹⁶

¹¹ Oliver Joseph and Frank McLoughlin, *Electoral Justice System Assessment Guide* (Stockholm: International Institute for Democracy and Electoral Assistance, 2019), <https://doi.org/10.31752/idea.2019.21>.

¹² Joseph and McLoughlin.

¹³ Veri Junaidi, Firmansyah Arifin, and Fadli Ramadhanil, *Evaluasi Penegakan Hukum Pemilu 2014* (Jakarta: Yayasan Perludem, 2015): 5.

¹⁴ Rama Halim Nur Azmi, "Urgensi Realisasi Badan Peradilan Pilkada Untuk Menciptakan Sistem Penyelesaian Sengketa Hasil Pilkada Yang Efektif Dan Konstitusional," *Jurnal Adyasta Pemilu* 3, no. 2 (2020): 183-203.

¹⁵ Dian Fitri Sabrina and Brett Inder, "Concentration of Power in Nomination of Presidential Candidates in Indonesia," *Asian Journal of Comparative Politics* 0, no. 0 (September 7, 2023): 382, <https://doi.org/10.1177/20578911231199530>.

¹⁶ Marco Antonio Loschiavo Leme de Barros et al., "Fake News in Brazil's 2018 Presidential Election: A Systems Theory Approach to Judicial and Legal Responses," *Social & Legal*

In designing and implementing a comprehensive and effective election justice system, the three periods in the cycle must be considered, namely pre-election, implementation, and post-election. This consideration is very important since activities in the election process have the potential to cause disputes. Electoral justice system lacking sufficient authority, resources, and tools to handle disputes efficiently and effectively throughout the cycle can disrupt the process and lead to the rejection of the results. As part of electoral justice system, dispute resolution needs to ensure that all actions and decisions taken throughout the cycle follow the mandate of the law. This is necessary, specifically when the mandate is limited to the entire period. Therefore, another permanent and independent body must be appointed to resolve the lawsuit during pre and post-election periods.

The design of electoral system should pay attention to the concept of preventing and settling disputes. The mechanism includes preventive measures and the resolution of formal or informal election problems.

1) *Prevention*

Every electoral justice system needs to establish actions to prevent or avoid the occurrence of disputes as well as create mechanisms to correct irregularities and punish violators. Prevention does not necessarily mean no lawsuits will be filed during the election process. This measure implies encouraging different parties to follow the provisions and regulations through a). a simple, clear, and consistent legal framework, b). a political and civic culture that promotes democratic and law-abiding behaviour, c). Election Organizing Bodies and Members of Dispute Resolution Bodies performing functions independently, professionally, and impartially,¹⁷ d). Guidelines for Election Governance have been mutually agreed upon previously.

An election design sourced from electoral justice system should be developed to a). design and implement the appropriate legal and legislative framework in creating an effective and accessible system b). appoint members of the Election Organizing Body and the Election Dispute Resolution Body at the highest level through consensus by various political forces active in the community, c). build an Election organizing body and dispute settlement

Studies 32, no. 1 (February 18, 2023): 124, <https://doi.org/10.1177/09646639221094152>.

¹⁷ Carolien van Ham and Holly Ann Garnett, "Building Impartial Electoral Management? Institutional Design, Independence and Electoral Integrity," *International Political Science Review* 40, no. 3 (June 22, 2019): 314, <https://doi.org/10.1177/0192512119834573>.

committed to democratic principles and values, d). increase the capacity of the Election Organizing Agency and the Election Dispute Settlement Agency to make decisions transparently, e). facilitate appropriate election training for employees, f). ensure that employees comply with the Election Governance Guidelines, g). increase the inclusivity of gender and minority groups, h). take security measures when receiving, counting, and summing upvotes. To attain these objectives, electoral justice system must incorporate "institutional guarantees" that ensure (1) the autonomy of electoral dispute resolution body, (2) the independence and impartiality of the personnel, and (3) the system of accountability.¹⁸

Above all, the most important factor is the strength of the law in governing elections. State should implement these five key measures: (1) Strengthen laws, requiring timely certification based solely on verified vote totals, with effective enforcement mechanisms. (2) Ensure election disputes, are handled through the state judiciary by establishing clear legal standards for resolution. (3) Develop a comprehensive plan, to provide accurate information about the election process and counter disinformation, starting well before Election Day with sufficient state resources. (4) Enhance election administration, through training, written guidance, and investments in equipment, security, scenario planning, staffing, and supplies. (5) Implement stronger protections, against voter and election worker intimidation, including restrictions on firearms at polling places and privacy safeguards for election officials.¹⁹ However, an election is a complex event that involves far more than just a few people in a limited location. It requires careful attention to every detail. Each aspect must be built on strong, honest cooperation to ensure a fair and transparent process.

2) *Election Dispute Resolution*

Disputes over the electoral process are a natural part of democracy, as the public actively participates in general elections. Understanding these disputes—including their causes, implications, and resolution methods—is crucial for upholding democratic integrity and ensuring that the people's voices are accurately reflected in election results. Different countries have developed

¹⁸ Organization of American States, *Observing Electoral Justice System: A Manual for OAS Electoral Observation Missions* (Washington, D.C.: Organization of American States, 2019): 15, <https://www.oas.org/es/sap/deco/Pubs/Manuales/Observing-Electoral-Justice-Systems-a-Manual-for-OAS-Electoral-Observation--Missions.pdf>.

¹⁹ Alice Clapman, "How States Can Prevent Election Subversion in 2024 and Beyond" (New York, 2023): 3.

various mechanisms to address electoral disputes, aiming to create a process that is transparent, fair, and widely accepted. Therefore, maintaining and strengthening electoral dispute resolution mechanisms is essential to sustaining healthy democracies worldwide.²⁰ The essence of democracy in any society lies in holding free and fair elections. However, election disputes are almost inevitable, and it is often difficult for a candidate to accept defeat if they believe the election was rigged in favor of their opponent.²¹ The election dispute resolution system was formed to ensure the integrity of the process.²² In this context, actions taken in the election process contrary to the law can be cancelled or changed by filing a lawsuit. The resolution system establishes corrective or punitive measures to supervise the process according to the principles outlined in constitution and law. The design is important and needs to be reviewed periodically to ensure election occur freely, fairly, and honestly by applicable regulations.

3) *Alternative Election Dispute Resolution*

The main function of the alternative election dispute resolution mechanism is to support and not replace the formal system. Alternative mechanisms are often considered more informal and include several options, including conciliation, mediation, or arbitration mechanisms. Meanwhile, non-judicial and informal methods have benefited all levels of society, from residents to political and electoral arena.

Conciliation is a dispute resolution process involving a third-party facilitator (conciliator) who plays an active role in proposing and shaping possible solutions for the disputing parties. However, while the conciliator takes the initiative in formulating resolutions, they do not have the authority to make a final decision. Meanwhile, mediation is a dispute resolution process facilitated by a mediator, whose role is primarily passive. The mediator does not impose

²⁰ Raden Yoseph Gembong Rahmadi, Mohamad Firdaus, and Arief Hidayat, "Encouraging Dispute Resolution in the Election Process through Non-Litigation Mechanism," *JOELS: Journal of Election and Leadership* 5, no. 2 (August 31, 2024): 184, <https://doi.org/10.31849/joels.v5i2.22524>.

²¹ Obi Okonkwo, Lawrence C. Ezeudu, and Uchenna Anushiem, "Appraisal of Alternative Electoral Dispute Resolution as a Panacea to Protracted Election Disputes in Nigeria.," *SSRN Electronic Journal* 4, no. 1 (2023): 126, <https://doi.org/10.2139/ssrn.4433987>.

²² Mahrukh Doctor, "What Happens in Brazil Won't Stay in Brazil: The 2022 Brazilian Election," *Political Insight* 13, no. 3 (September 14, 2022): 11, <https://doi.org/10.1177/20419058221127464>.

decisions but instead presents alternative solutions for the parties to consider.²³ In various elections, mediation has been minimally utilized as a tool for resolving disputes in the electoral process. Despite its many theoretical advantages over litigation, mediation remains underused. The preference for litigation in election disputes suggests a lack of trust or interest among participants, as well as the limited effectiveness of Election Supervisors in fully carrying out their role as neutral facilitators. Records in Indonesia show that between the 2014 and 2024 elections, a total of 789 dispute complaints were filed by election participants.²⁴

Furthermore, the term "arbitration" originates from the word arbitrate, which means the authority to resolve disputes wisely and peacefully through an arbitrator. According to Article 1, paragraph (1), arbitration is an out-of-court dispute resolution method based on a written agreement between the disputing parties. It is widely recognized among business professionals as a preferred mechanism for resolving commercial disputes. Arbitration proceedings are conducted by arbitrators who are officially registered with an arbitration court.²⁵

Resolving election disputes through alternative methods (negotiation, mediation, and facilitated dialogue) offers numerous advantages. These include faster resolution, lower costs, greater flexibility, a more amicable process, and access to expert guidance, among others.²⁶ Every country has its approach to resolving election disputes. In the next session, we will discuss how different countries handle electoral dispute resolution.

Based on Law Number 7 of 2017 concerning General Elections, the settlement of election disputes in Indonesia is carried out by multiple institutions, namely the Election Supervisory Agency (Bawaslu), which is authorized to handle administrative violations and disputes in the election process through adjudication, mediation, and conciliation. The Constitutional Court (MK), which has the authority to resolve disputes over election results, and the Honorary Council of Election Organizers (DKPP) handle violations of the election organizers' code of ethics. Meanwhile, violations of election crimes

²³ Rusli Subrata, "Mechanisms of Alternative Dispute Resolution in Conflict and Dispute Resolution in Indonesia," *LITIGASI* 24, no. 1 (April 30, 2023): 151–64, <https://doi.org/10.23969/litigasi.v24i1.7198>.

²⁴ Rahmadi, Firdaus, and Hidayat, "Encouraging Dispute Resolution in the Election Process through Non-Litigation Mechanism."

²⁵ Subrata, "Mechanisms of Alternative Dispute Resolution in Conflict and Dispute Resolution in Indonesia."

²⁶ Okonkwo, Ezeudu, and Anushiem, "Appraisal of Alternative Electoral Dispute Resolution as a Panacea to Protracted Election Disputes in Nigeria."

are resolved through cooperation between the police institution, the prosecutor's office, and the District Court. These institutions resolve election disputes through mechanisms regulated by each institution. So that there is no synchronization and an integrated mechanism, so that it does not provide substantive justice for justice seekers. Therefore, through the establishment of a special election judiciary, it is very relevant to provide legal certainty and justice. We hope that the Special Election Court will establish a more effective and accountable mechanism for resolving election disputes. In this special election court, it is better to prioritize non-formal mechanisms through mediation, conciliation, and negotiation before disputes are resolved through litigation. This mechanism is in line with Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (APS). APS includes various methods such as mediation, conciliation, negotiation, and arbitration. The main objective of APS is to resolve disputes efficiently, maintain beneficial relations between the parties, and produce mutually agreed agreements. In the context of elections, APS can serve to prevent the escalation of political conflicts, accelerate resolution, and strengthen a culture of dialogue in democracy. The special election judiciary and the APS have a complementary relationship. The judicial mechanism provides legal certainty, whereas the APS offers flexibility and quick resolution. In the context of the time-intensive stages of elections, settlement through the APS can be done first at the lower level before proceeding to the formal courts if necessary. The APS mechanism can strengthen the effectiveness of the electoral judiciary by providing space for dialogue and deliberation at the initial level so that conflicts do not always need to be resolved through litigation. For example, Bawaslu has adopted a mediation mechanism in resolving disputes over the election process, as stipulated in Bawaslu Regulation Number 5 of 2019. This step represents formal recognition of the APS as part of the electoral dispute resolution system. The benefits of applying APS in election disputes include: (1) Time and Cost Efficiency. The APS process is relatively faster than adjudication processes in special courts, which often require formal evidence and strict procedures. (2) Maintaining Political Stability. A peaceful and dialogical approach prevents polarization and political tensions that can interfere with the implementation of the election stages. (3) Encouraging Democratic Participation. APS allows the disputing parties to play an active role in finding a common solution, reflecting the values of deliberative democracy. (4) Increasing Public Trust. Transparent and participatory dispute resolution increases the legitimacy of election-organizing institutions.

To strengthen the formation of a special election court, it is necessary to synchronize the characteristics of the civil law system adopted in Indonesia. This will ensure the formation of a special election court that achieves substantive justice. The following provides an overview of the characteristics of the civil law system as shown on Table 1.

TABLE 1. Characteristics of the Civil Law System

Aspects	Characteristics of the Civil Law System (including Indonesia)
Primary sources of law	Laws and regulations implementing them
Position of the electoral judiciary	Formed based on the law, it is administrative/judicial in nature.
The role of the judge	Judges actively seek material truth. Judges are responsible for implementing written norms. Judges are constrained by legal provisions and are regarded as the mouthpiece of the law.
Legal structure and hierarchy	Clear and formal legal hierarchy
Legal certainty	It is higher because the written norm is dominant.

Source: processed from various sources

Electoral Court in Various Countries as a Role Model

Comparative law is a contested idea due to the authoritarian nature oriented towards synthesis results, which leads to the concept of *ius constituendum*. Conducting a comparative analysis of the legal structure of other countries provides insights into the research. The absence of a single standard formula to ensure that the election process runs according to the legal framework has led to various dispute resolution systems. Electoral dispute settlement system enforced in a country is built according to history, socio-political conditions, and legal traditions.

Countries are expected to implement special judiciary to resolve election violations and disputes. Even though an experience of a country is not necessarily suitable for application in another, a comparative method can be conducted to determine the advantages and disadvantages of each system. There are two different variations of the countries that make up Special Electoral

Court, namely (1) the judiciary in the hierarchy of judicial power²⁷ and (2) the electoral justice system with authority or independent electoral management bodies.²⁸ The comparisons of special court in several countries with special judicial institutions for resolving election violations and disputes are provided as follows.

1) *Uruguay*

Uruguay establishment of Special Electoral Court started in 1924 with the Election Law and gained constitutional guarantees through the provisions of the Uruguayan Constitution in 1934. Special electoral judiciary, or *Corte Electoral* cursive, is among the highest institutions, paralleling the President, Parliament, and conventional Judicial Power.²⁹ Therefore, *Corte Electoral* is considered "A fourth branch of Governance."

Corte Electoral is a centralistic institution and only stands in the capital of the country. The Electoral Court comprises nine members selected by both houses of Parliament. Four representatives are appointed from the major political parties through a proportional vote among party members in the legislature. Additionally, five members, who are politically neutral, are chosen by a two-thirds majority vote, grounded in their professional qualifications. However, this institution oversees nineteen permanent election committees known as *Juntas Electorales*, whose duties and authorities are similar to General Election Commission and Indonesian Election Supervisory Agency but supplemented by the authority to investigate and prosecute fraud. The

²⁷ Matthew E.K. Hall, "The January 6th, 2025, Project: Fascist Politics and the Rising Threats to American Democracy," *The ANNALS of the American Academy of Political and Social Science* 708, no. 1 (July 20, 2023): 26, <https://doi.org/10.1177/00027162241234174>; Joao V. S. Ozawa et al., "How Disinformation on WhatsApp Went From Campaign Weapon to Governmental Propaganda in Brazil," *Social Media + Society* 9, no. 1 (January 22, 2023): 3, <https://doi.org/10.1177/20563051231160632>; Carlos Eduardo Santos Pinho, "Development Projects, Models of Capitalism, and Political Regimes in Brazil, 1988–2021," *Latin American Perspectives* 50, no. 1 (January 13, 2023): 90, <https://doi.org/10.1177/0094582X221147595>.

²⁸ Toby S James et al., "Electoral Management and the Organisational Determinants of Electoral Integrity: Introduction," *International Political Science Review* 40, no. 3 (June 5, 2019): 297, <https://doi.org/10.1177/0192512119828206>.

²⁹ Giovanni Agostinis and Carlos Closa, "Democracies' Support for Illiberal Regimes through Sovereignty-Protective Regional Institutions: The Case of UNASUR's Electoral Accompaniment Missions," *European Journal of International Relations* 28, no. 2 (June 30, 2022): 433, <https://doi.org/10.1177/13540661221084871>.

composition of *Corte Electoral* judges and Commissioner *Juntas Electorales* is interesting as a merger between representatives of political parties and independent academics. Additionally, *Corte Electoral* has nine judges with legal and political backgrounds. Independent legal academics and representatives of political parties with the most votes mechanism elect five and four individuals, respectively. A total of nineteen *Juntas Electorales* have five commissioners selected from an open process.

The experience of Uruguay is very relevant to Indonesia because the countries have a tradition of a presidential political system with multiparty. In addition, the separation of *Corte Electoral* from conventional judicial power institutions is due to the lack of trust in handling cases.

Special judicial design practiced can inspire the formation of electoral court in Indonesia. In the context of multiparty presidential system, government system can affect the dynamics of constitution. The implementation of simultaneous election through multiparty strengthens the presidential system and automatically jeopardizes the election process and results.³⁰

The permanent electoral committee known as *the Juntas Electorales* can be used as a reference for forming special judiciary. Considering institutional structure, judges are recruited through an open selection based on the composition of representatives of academics and political parties. The existence of an open selection meets the principle of transparency accessible to all parties. This principle should be applied in Indonesia to maintain the independence of special judicial judges. However, the use of political party representatives as special judicial institutions is unsuitable for Indonesia. This is because of the inclusion in election violations or dispute lawsuits, creating a conflict of interest when judges belong to the same political party.

2) *Mexico*

Mexico with special electoral judicial institution within the scope of the Supreme Court can be used as a reference for forming special judiciary. This judicial institution handles all disputes and violations in the administration of

³⁰ Amalinda Savirani et al., "Floating Liberals: Female Politicians, Progressive Politics, and PSI in the 2019 Indonesian Election," *Journal of Current Southeast Asian Affairs* 40, no. 1 (April 3, 2021): 123, <https://doi.org/10.1177/1868103421989084>.

election at the federal and state levels.³¹ The institution under the Supreme Court³² divides the jurisdiction into 1 High Court domiciled in the capital city of Mexico City, and 5 District Court spread across several states.

Electoral Court is called the Tribunal Electoral del Poder Judicial de la Federación (TEPJF). The TEPJF is authorized to resolve election disputes in a final and binding manner. Court has two rooms, namely the High and Regional Room. The High Chamber is a permanent organ in the capital responsible for examining and adjudicating challenges related to the Election of the president, governor, head of the federal district government, as well as House of Representatives and Senators elected through the principle of proportional representation.

The Regional Chamber is a permanent body located in each state to examine and adjudicate matters relating to representatives and senators, as well as the election of local deputies and members of the Federal District Representative Assembly, public office in the city council, head of the political administration body located in the Federal District, several civil servants, and decisions issued by the State Election Board.

The presentation of special election court in Mexico is used as a reference for conducting a comparative analysis in Indonesia. The TEPJF consists of the high and lower chambers with final and binding decisions. The high chamber in the capital city is special judicial institution with the authority to resolve disputes over the election of Governors, Senators, and district representatives adjusted to the conditions of Indonesia. The high chamber is at the center and possesses the authority to solve problems related to presidential, House of Representatives, and Senate election. Additionally, the election of regional heads is more appropriate when completed in the lower room. The lower chambers can solve problems related to the Election of the Regional House of Representatives and heads.

³¹ Reyna Hernández-Tubert, "The Mexican Social Unconscious—Part II: Politics and Group Analysis," *Group Analysis* 56, no. 2 (June 25, 2023): 223, <https://doi.org/10.1177/05333164211013970>.

³² Héctor Eduardo Muro de Lara, "Human Rights and Social Law in Mexico: Case Study of Workers of the Electoral Court Of The Judicial Branch Of The Federation," *Revista Latinoamericana de Derecho Social* 38 (February 16, 2024): 136, <https://doi.org/10.22201/ij.24487899e.2024.38.18938>.

3) *Costa Rica*

Costa Rica has similarities with Latin American countries due to the practice of democracy and the limits of presidential power.³³ The typology of voting is very similar to Indonesia and a multiparty presidential system has been adopted. Following the similarity of the variables, the comparison between Indonesia and Costa Rica is interrelated. However, constitutional system of Costa Rica is different from Indonesia. Special Electoral Judiciary is known as *the Tribunal Supremo de Elecciones* (TSE) and is a respected state institution.

The objective of the TSE is to orchestrate and adjudicate transparent and reliable electoral processes that foster democratic coexistence while offering civil registry and identification services to the residents of Costa Rica. Article 9 of the Costa Rican Constitution gives the TSE the task of ensuring the resolution of electoral disputes against legislative and executive election. Under the philosophical context, the TSE aims to mediate a transparent and reliable election process. The TSE, with its 32 regional offices distributed throughout the country and its direct oversight of numerous additional offices, stands as the paramount authority in matters pertaining to electoral and administrative affairs.

Costa Rican constitution grants the authority to break away from the classic scheme of monopoly of jurisdictional functions under the judicial branch. TSE is a permanent institution and the judges must meet the same requirements as those in Supreme Court. TSE judges serve six-year terms through election based on the professional and academic achievements of the candidates. Structurally, TSE consists of nine chief judges with six alternates selected by the Supreme Court of Justice. In practice, the decision of the institution is final and binding, hence cannot be appealed to ensure legal certainty in the short election period.

Based on the presentation, special judiciary in Costa Rica is a permanent institution whose composition of judges comes from academics and the level of professionalism has been measured through selection. The decision is final and binding since there is no appeal in maintaining legal certainty. Special election court, as a permanent institution, will strengthen the position in Indonesia. The selected judges come from academics whose professionalism has been tested in several conditions. Therefore, neutrality, independence, and the capacity for insight in mastering issues related to election can be considered.

³³ Radek Buben and Karel Kouba, "Democracy and Institutional Change in Times of Crises in Latin America," *Journal of Politics in Latin America* 16, no. 1 (April 18, 2024): 94, <https://doi.org/10.1177/1866802X241226986>.

4) *Brazil*

Brazil has the Supreme Electoral Court, responsible for ensuring fair and transparent election.³⁴ The Superior Electoral Court (TSE), as the apex institution within the Electoral Justice framework, is pivotal in the development and implementation of Brazilian democracy. The primary authorities are delineated by the Federal Constitution and the Electoral Code. The institution is known for publishing credible election data³⁵ because the Brazilian Supreme Electoral Court provides data from all candidates.³⁶ This court is the highest institution in the Brazilian electoral justice system³⁷ and has branches in every state.³⁸ The Court is comprised of three Supreme Court justices, two Superior Court of Justice justices, and two distinguished members of the legal profession—attorneys possessing remarkable legal acumen and insight—totaling seven ministers in all. Each minister is appointed for a duration of two years, and following two successive terms, they become ineligible for reelection. The objective of the rotation of judges within the Electoral Court is to maintain the impartiality of the courts, thereby ensuring the fairness of elections. Additionally, Supreme Electoral Court is different from the voting institution.³⁹

In a more expansive context, Brazil's electoral process pertains to the systematic stages of elections, which additionally include a concise interval following the electoral events. The organisation is conducted by the Electoral

³⁴ Rafael Rubio and Vitor de Andrade Monteiro, "Preserving Trust in Democracy: The Brazilian Superior Electoral Court's Quest to Tackle Disinformation in Election," *South African Journal of International Affairs* 30, no. 3 (July 3, 2023): 498, <https://doi.org/10.1080/10220461.2023.2274860>.

³⁵ Andrew Janusz, "Race and Resources in Brazilian Mayoral Election," *Political Research Quarterly* 75, no. 3 (September 22, 2022): 849, <https://doi.org/10.1177/10659129211032279>.

³⁶ Peter G. Johannessen, "Linkage Switches in Local Election: Evidence From the Workers' Party in Brazil," *Comparative Political Studies* 53, no. 1 (January 30, 2020): 112, <https://doi.org/10.1177/0010414019843567>.

³⁷ Eleandra Maria Prigol Meneghini et al., "Alone as a Drop, Together as an Ocean: Corporate Political Activity in Cooperatives," *Journal of General Management* 0, no. 0 (January 4, 2024): 5, <https://doi.org/10.1177/03063070231225600>.

³⁸ Daniel W. Gingerich and Danilo Medeiros, "Vote Secrecy With Diverse Voters," *Comparative Political Studies* 53, no. 3–4 (March 7, 2020): 568, <https://doi.org/10.1177/0010414019859040>.

³⁹ Renato Russo, Ioana Literat, and Paulo Blikstein, "Weaponizing John 8:32: The Complex Interconnections Between Religion and Politics on Brazilian Twitter," *Social Media + Society* 9, no. 4 (October 25, 2023): 3, <https://doi.org/10.1177/20563051231220328>.

Court (EC) across municipal, state, and federal tiers. At the federal level, the Electoral Commission is represented by the Superior Electoral Court (TSE), which is situated in Brasília and serves as its paramount authority. Within every state of the Federation and the Federal District, one can find a Regional Electoral Court (TRE), accompanied by judges and electoral boards.

Court has the authority to decide election violations⁴⁰ at the candidacy stage⁴¹ and money politics during the campaign.⁴² In addition, the institution also has campaign donation data for election contestants,⁴³ receiving complaints about the spread of fake news against contestants.⁴⁴ The Brazilian Supreme Court was also able to suspend the release of a documentary film that attacked the integrity of electoral system, spreading disinformation and favoring the candidacy of Jair Bolsonaro.⁴⁵ The institution has the authority to issue rules for implementing election.⁴⁶

⁴⁰ Marco Bastos and Raquel Recuero, "The Insurrectionist Playbook: Jair Bolsonaro and the National Congress of Brazil," *Social Media + Society* 9, no. 4 (October 30, 2023): 2, <https://doi.org/10.1177/20563051231211881>.

⁴¹ Caio Gontijo and Leonardo Ramos, "Caesarism, Populism, and the 2018 Election in Brazil," *Capital & Class* 44, no. 4 (December 13, 2020): 626, <https://doi.org/10.1177/0309816819884670>.

⁴² Wagner Pralon Mancuso et al., "Money in Electoral Campaigns: The Relationship between Money and Politics as a Cause of the Judicialization of Electoral Processes in Brazil," *Social Sciences* 12, no. 656 (November 27, 2023): 5, <https://doi.org/10.3390/socsci12120656>.

⁴³ Belén Fernández Milmanda, "Harvesting Influence: Agrarian Elites and Democracy in Brazil," *Politics & Society* 51, no. 1 (March 9, 2023): 138, <https://doi.org/10.1177/00323292221094882>.

⁴⁴ Gabriel Pereira, Iago Bueno Bojczuk Camargo, and Lisa Parks, "WhatsApp Disruptions in Brazil: A Content Analysis of User and News Media Responses, 2015–2018," *Global Media and Communication* 18, no. 1 (April 23, 2022): 129, <https://doi.org/10.1177/17427665211038530>; Felipe Bonow Soares and Raquel Recuero, "Hashtag Wars: Political Disinformation and Discursive Struggles on Twitter Conversations During the 2018 Brazilian Presidential Campaign," *Social Media + Society* 7, no. 2 (April 12, 2021): 1, <https://doi.org/10.1177/20563051211009073>.

⁴⁵ Débora Salles et al., "The Far-Right Smokescreen: Environmental Conspiracy and Culture Wars on Brazilian YouTube," *Social Media + Society* 9, no. 3 (July 30, 2023): 2, <https://doi.org/10.1177/20563051231196876>.

⁴⁶ Mariana Borges Martins da Silva and Malu A. C. Gatto, "Stigmatized Campaign Practices and the Gendered Dynamics of Electoral Viability," *Journal of Politics in Latin America* 13, no. 3 (December 16, 2021): 377, <https://doi.org/10.1177/1866802X211058739>.

The creation of an Election Justice School in Brazil, aimed at offering continuous education, updates, and specialisation for Election Justice judges and those keen on Election Law, could serve as an exemplary framework for Indonesia in the formation of a dedicated election court. It is posited that the provision of training to the judges of the special election court prior to the execution of their responsibilities and powers will facilitate the delivery of justice for the involved parties. The Brazilian Supreme Electoral Court can be a role model for establishing electoral court in Indonesia. This is because the authority is comprehensive and able to decide all election violations, such as fake news that occurs in election.⁴⁷ The creation of an Election Justice School in Brazil, aimed at offering continuous training, updates, and specialisation for Election Justice judges and those interested in Election Law, could serve as a valuable reference for Indonesia in the formation of a specialised election court. It is posited that the special election court judges, having undergone requisite training prior to the execution of their responsibilities and powers, will ensure that justice is duly administered for the involved parties. Additionally, Indonesia is in the developing democracy phase⁴⁸ since the existence of a one-stop integrated institution in resolving election problems impacts electoral justice. The Brazilian Supreme Electoral Court also increases the transparency of campaign funds.⁴⁹

The countries of Mexico, Uruguay, and Costa Rica are compared because they share similar government systems, including presidential and legislative elections, as well as the election of regional heads. To make it easier, it will be presented in the form of a table as follows:

⁴⁷ Taberez Ahmed Neyazi et al., "Who Gets Exposed to Political Misinformation in a Hybrid Media Environment? The Case of the 2019 Indonesian Election," *Social Media + Society* 8, no. 3 (July 20, 2022): 11, <https://doi.org/10.1177/20563051221122792>.

⁴⁸ Nyarwi Ahmad and Eriyanto Eriyanto, "Professional Political Pollsters as a Liberal Democratic Epistemic Community: Revisiting Transformations of Indonesian Political Pollsters in the Last Decade of the Soeharto and Post-Soeharto Eras," *Asian Journal of Comparative Politics* 8, no. 1 (March 13, 2023): 142, <https://doi.org/10.1177/20578911221129790>.

⁴⁹ I Gede Sthitaprajna Virananda, Teguh Dartanto, and Bintang Dara Wijaya, "Does Money Matter for Electability? Lesson Learned From the 2014 Legislative Election in Indonesia," *SAGE Open* 11, no. 4 (October 23, 2021): 2, <https://doi.org/10.1177/21582440211054492>.

TABLE 2. Comparative Aspects

Country	Governance structure	Election Implementation	Characteristics of the Election-specific Judiciary
Mexico	• Form of the State of the Union • Presidential system of government • Multiparty system	• Presidential Election • Election of members of the bicameral legislature (Upper House and Lower House) • Election of Governor in the state • Election of state legislators (local Congress)	• institution Special Courts Election within the scope of the power of the Supreme Court is called (Tribunal Electoral del Poder Judicial de la Federación (TEPJF)) • TEPJF Permanent institution • The verdict is final • TEPJF has two rooms, namely the High Room and the Regional Room • The authority of the upper chamber resolves disputes for the election of President, Governor, Head of Federal District Government, as well as the House of Representatives and Senators • The regional chamber is in the state its authority to resolve state election disputes for representatives and senators; the election of local deputies and members of the Federal District Representative Assembly; election to public office on the City Council; the election of the head of the political administrative body located in the Federal District; the selection of several civil servants; and actions and decisions

Country	Governance structure	Election Implementation	Characteristics of the Election-specific Judiciary
			issued by the State Board of Elections. • Congressional Decree on September 16, 2024, election of judges
Uruguay	• Form of a unitary state • Presidential System of Government • Multiparty system	• At the national level, the Presidential Election • Legislative Elections (General Assembly) • Department selection • Municipal elections.	• Special judicial institutions called the Electoral Court • Permanent institutions are on par with the President, Parliament, and conventional Judicial Powers. • The Electoral Court is a centralized institution and only stands in the country's capital. • This institution oversees 19 (Nineteen) election committees permanently named <i>Electoral Boards</i> • Recruitment of judges through open selection based on a composition between representatives of academics and political parties
Costa Rica	• Form of a unitary state • Presidential system of government • Multiparty system	• Presidential Election • Legislative elections	• Special Judicial Institution for Elections in Costa Rica called the Supreme Electoral Tribunal (TSE) • TSE is a permanent institution • The composition of the judges comes from academics whose professionalism has been measured through selection

Country	Governance structure	Election Implementation	Characteristics of the Election-specific Judiciary
			The nature of the verdict is final and binding

Sources: Processed from various sources.

The Urgency of Electoral Court in Realizing Electoral Justice in Indonesia

The problem faced by the Indonesian state is related to electoral justice system. This includes the number of institutions that solve election law problems, such as Constitutional Court, the Police, the State Administrative Court, the Election Supervisory Agency, the Honorary Council of Election Organizers, and the Prosecutor's Office. There is still a limited special trial for Regional Election because comprehensive procedural law guidelines do not limit the scope of authority for the trial stage process. The existence of delegation of provisions in making regulations in each institution causes the legal basis for dispute resolution and violations not to be integrated. Furthermore, the number of institutions and mechanisms used to resolve disputes makes justice seekers unable to recover rights. There are also differences in interpreting disputes and election violations between institutions.

The idea of special election court is relevant to be considered because legal remedies are unable to meet the sense of justice. Special election court are meant to address any disputes and breaches at every stage of the election.⁵⁰ For example, the multiple layers of election legal efforts are counterproductive to the stages. Legal remedies are separate in several judicial environments and are challenged by the implementation of the 2024 simultaneous election. This is because the stages of the election process and regional election are carried out simultaneously in the same year. Meanwhile, realizing fair election is difficult when the judicial mechanism is used as the current positive law.

The discourse on the establishment of special election court can be considered an initiative to strengthen justice in resolving electoral disputes. The effectiveness and success depend on the design, implementation, and ability to address existing challenges. Therefore, legal experts, practitioners, and other

⁵⁰ Irvan Mawardi and Muhamad Jufri, *Keadilan Pemilu: Politik Uang, Antara Tindak Pidana Dan Pelanggaran Administrasi* (Jakarta: Penerbit Pustaka Ilmu, 2021): 7.

stakeholders need in-depth discussions to comprehensively evaluate the potential benefits and risks of establishing special election court.

The urgency of building a judicial system based on legal protection and justice is relevant and considered to realize electoral justice. The existence of violations of the election stages is an important reason for the establishment of court.⁵¹ Establishing special court is also motivated by the many types of disputes or cases resolved in various institutions, making the regulations overlap and causing disorder in constitutional and judicial systems. In addition, the settlement of disputes is given a very short time for resolution even though the proof and application of the law are difficult. Therefore, judges are expected to prioritize procedural justice rather than substantial under a short period. This is based on the use of election law to regulate the relationship between the state and the people.

The discourse on the establishment of special election court is considered an initiative to strengthen justice in resolving election disputes. The establishment of special election court as a solution to fulfill justice in the settlement of disputes is an interesting idea and potentially increases the effectiveness and efficiency of the resolution process. This requires significant resources, including time, money, and humans. Additionally, there are challenges in designing an effective framework and integrating the concept with the existing legal system. In this context, special electoral court is vulnerable to the risk of politicization and external pressure, affecting independence and objectivity. Meanwhile, special judiciary does not duplicate the functions of existing institutions without providing significant added value. Special justice must be integrated with the existing legal system, and electoral institutions such as the General Election Commission and the Election Supervisory Board should ensure effective synergy and coordination. Public trust must also be maintained through participation and supervision of special election court. The judicial bodies are responsible for resolving electoral conflicts and ensuring resolution according to the law. This shift is an effort to keep the settlement criteria from being arbitrarily set since there is no political negotiation. The conditions occur when the election dispute resolution system is entrusted to the legislature or political organization. Members of the election organizing body are appointed in a manner similar to judges or provided working conditions comparable to those of high-ranking judicial officials.

⁵¹ Ignacio Siles et al., "Populism, Religion, and Social Media in Central America," *The International Journal of Press/Politics* 28, no. 1 (January 19, 2023): 153, <https://doi.org/10.1177/19401612211032884>.

The establishment of special election judicial institution requires in-depth consideration of various institutional, legal, and procedural aspects in initiating court based on four indicators, namely the placement of the judicial institution within or outside the judiciary, the centralization or regional distribution of special judicial institutions, the permanency or ad hoc nature, and the finality or appealability of the decisions.

The design of a special court that has been practiced in Uruguay can inspire the formation of a special election court in Indonesia. When viewed from the use of a presidential system with multiple parties, the implementation of a government system can affect the dynamics of a country's constitutional system. The implementation of simultaneous elections through multiple parties will strengthen the presidential system. And by itself, it will affect the process and results of the election itself.

The permanent election committee called Juntas Electorales in Uruguay can be used as a reference for the special court to be formed. Moreover, seen from its institutional structure, the recruitment of judges through open selection is based on the composition between academic representatives and political parties. The existence of open selection fulfills the principle of transparency that must be accessible to all parties and is very appropriate to be applied in Indonesia to maintain the independence of special court judges. However, according to the author, if political party representatives are used as special court institutions, it is not appropriate to be applied in Indonesia. Because political parties are one of the parties involved in violations or election disputes, it will cause a conflict of interest if the judges who try come from the same political party.

Based on the presentation of the special election court in Mexico, it can be used as a reference in conducting a comparative study of the formation of a special election court in Indonesia. The formation of the Tribunal Electoral del Poder Judicial de la Federación (TEPJF) consisting of an upper chamber and a lower chamber and having a final and binding decision is very appropriate if applied in Indonesia. The upper chamber located in the capital as a special judicial institution that has the authority to resolve presidential and vice presidential election disputes as well as disputes over the election of Governors, Senators and District Representatives can be adjusted to the election conditions in Indonesia. The author is of the view that the upper chamber is located in the center which has the authority to resolve problems related to the presidential, the house of representatives, and the house of regional representatives elections. Meanwhile, for the election of regional heads, it would be more appropriate if

it were resolved in the lower chamber. The lower chamber located in the Province can resolve problems related to the election of the regional house of representatives and regional heads.

Costa Rica's special court called the Tribunal Supremo de Elecciones (TSE) is a permanent institution whose judges are composed of academics whose professionalism has been measured through selection. The decision is final and binding, so there is no appeal to maintain legal certainty. It would be wise if the design of the special court in Indonesia referred to the special court in Costa Rica. The special election court as a permanent institution will strengthen the position of the special court in the judicial system in Indonesia. In addition, the judges who are selected come from academics who have been tested for professionalism and are very appropriate to the conditions in Indonesia. So that their neutrality and independence as well as their insight capacity in mastering issues related to the election can be accounted for.

The electoral justice school held in Brazil can also be used as an idea for the formation of a special election court in Indonesia. Prospective judges who will become special court judges are required to take the training so that it will produce judges who are trained in the skills and potential to realize electoral justice.

Based on the description above, there must be a codification of election arrangements as a legal umbrella in the settlement of cases. The regulations related to election are not enforced because the law must be positioned as a *lex specialis*. Therefore, the enforcement of the election law on establishing special court is special.

The mechanism for resolving disputes can be applied in special election court by paying attention to alternative resolutions. In addition, the former special court aims to realize independence, integrity, and justice to meet the values of Pancasila. This can be achieved by every state administrator playing a role in the revitalization of Pancasila by operationalizing the values in every action and decision. The compatibility between social reality, state actions, as well as laws and regulations is also impacted by value. Mukti Arto asserts that a judicial system founded on legal protection would be established and grounded on the principles of Constitution and Pancasila.⁵²

The establishment of special court requires good human resources, specifically in finding a judge with an understanding of the law, a proven track

⁵² Mukti Arto, *Penemuan Hukum Islam Demi Mewujudkan Keadilan: Membangun Sistem Peradilan Berbasis Perlindungan Hukum Dan Keadilan* (Yogyakarta: Pustaka Pelajar, 2017): 3.

record, and a strong knowledge of election matters. In this context, human resources can unravel the tangled threads in the matter of disputes. Since the challenges faced when making decisions are immense, an individual for a judge in special court must possess strong integrity and self-mastery. Additionally, the candidate is expected to invest significant resources in the election process and use all methods to contest unfavorable outcomes.

This research initiated the idea of establishing a special judicial institution to resolve election disputes. Due to the numerous problems in resolving election disputes, outlined in the previous chapter, the author believes that establishing a special judicial system to resolve election disputes and violations in Indonesia would be highly appropriate. The most commonly implemented system for resolving election disputes entrusts the final resolution of these disputes to general courts, which are part of the judicial branch. If election disputes are resolved by a special judicial body, the outcome would have the following advantages: (1) A special judicial body would enhance legitimacy by basing election-related decisions on the law, thereby ensuring justice, legal certainty, and political stability. (2) Preventing abuse of power by the majority in the legislature, thus ensuring the rights of minorities. (3) The recognition of election disputes as legal issues, despite their political implications, necessitates their resolution in accordance with the constitution and laws. (4) Decisions made are of higher quality and timelier. (5) Focusing political power on the selection process for members of the special election court, thereby ensuring the independence and impartiality of its members. This study recommends establishing a special election court within the administrative courts under the Supreme Court, spread across all provinces, regencies, and cities. We discuss the strengths and weaknesses of each institution, whether permanent or ad hoc, as this will naturally influence the nature of its decisions. The establishment of a special election court is in accordance with Article 1, point 8, of the Judicial Powers Law. This provision provides the legal opportunity for the establishment of a special election court under the Supreme Court. Referring to this article, it would be more appropriate for this special court to be established within the administrative courts, given that these courts are intended to resolve administrative violations, violations of the code of ethics for election organizers, and dispute resolution regarding the election process. Given the nature of criminal offenses, criminal election violations require cooperation with the police and prosecutors during trials. However, a clear legal framework must be established regarding the resolution of election violations and disputes, particularly criminal election offenses, as these involve law enforcement officers,

who should be certified in understanding and resolving election issues. This will avoid conflicts of interest among these law enforcement officers. In this study, the formation of a special court is not intended for election result disputes, which are within the authority of the Constitutional Court to resolve. The characteristics of the special election judiciary are as explained on Table 3.

TABLE 3. Characteristics of the Special Election in Indonesia

Aspects	Characteristics of Special Election Courts
Legal basis	Formed based on the law (<i>lex specialis</i>) that governs the holding of elections
Authority	Handle certain election-related cases: violations, process disputes, or election results.
Nature of the institution	It can be permanent (permanent) or ad hoc (formed during elections).
Purpose	Ensuring electoral justice, maintaining the legitimacy of election results, and preventing political conflicts.

Source: processed from various sources

Based on the Table 3, it can be concluded that bringing a special election court within the framework of the civil law system emphasizes formal legality and legal certainty. The advantages of the civil law system for electoral justice include ensuring legal certainty and predictability because it is based on clear written legal norms, avoiding the subjectivity of judges in interpreting election results or processes, and ensuring legal certainty. However, the formal legal process can hinder quick access to justice, and adapting to changes in the law is necessary. Therefore, to effectively maintain the integrity of elections and democracy, as well as achieve substantive justice, this system needs to be accompanied by fast and transparent procedures, judges who understand the electoral political context, integration of clear regulatory substances, and coordination between relevant institutions.

Conclusion

The urgency of establishing a special election court is an effort to realize substantial electoral justice. Conceptually and institutionally, the special election court is closely related to being an independent, permanent, and competent judicial institution for handling election disputes. Electoral justice does not only depend on normative regulations and administrative mechanisms but also on the existence of judicial institutions that can ensure swift,

transparent, accountable, and independent enforcement of election laws. Comparative studies of the electoral court model in Uruguay, Mexico, Costa Rica, and Brazil show that the establishment of a special judicial body that is permanent and autonomous can strengthen the integrity of elections and increase public confidence in the results. In the Indonesian context, such an institutional design is relevant to overcome the fragmentation of authority between the Constitutional Court, the Supreme Court, and the Election Supervisory Board, which has been ineffective in resolving election disputes. The establishment of a special election court has important implications for strengthening the institutional structure of democracy and the rule of law in Indonesia. Strategic Steps are needed, such as: (1) The legal basis and institutional legitimacy need to be strengthened through the revision of the Election Law and the Judicial Power Law, which explicitly regulate the establishment and authority of the special election court. (2) An integrated institutional design should be formulated, which includes organizational structures, tiered judicial mechanisms, and clear relationships with other judicial institutions to prevent overlapping jurisdictions. (3) We aim to enhance the capacity and professionalism of judges by providing them with training that focuses on election law expertise, judicial ethics, and the management of electoral disputes. (4) Increase public participation and transparency by involving academics, civil society, and election monitoring institutions in the process of formulating and evaluating the performance of these institutions.

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