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RECONSTRUCTING THE LEGAL POLITICS OF ELECTORAL MANAGEMENT BODIES IN INDONESIA: INSTITUTIONAL INDEPENDENCE, POLITICAL INTERVENTION, AND DEMOCRATIC ACCOUNTABILITY

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ABSTRACT

Electoral management bodies play a fundamental role in ensuring the integrity, credibility, and democratic legitimacy of elections. In Indonesia, however, the institutional arrangements governing electoral management bodies have undergone repeated transformations in response to changes in political regimes, constitutional arrangements, and competing political interests. This article examines the development of the legal politics of electoral management bodies in Indonesia and proposes an institutional reconstruction based on democratic values. Drawing on Lawrence M. Friedman's legal system theory, Robert B. Seidman and William J. Chambliss's theory of law in society, and Philippe Nonet and Philip Selznick's responsive law theory, the study employs a constructivist paradigm and a hermeneutic legal approach. The analysis uses primary and secondary legal materials, institutional documents, historical records, and supporting interviews. The findings demonstrate that changes in electoral management arrangements cannot be understood merely as technical legal adjustments. Rather, they reflect the interaction between legal substance, legal structure, legal culture, and political power across different governmental periods. The study identifies four areas requiring institutional reconstruction: strengthening the regulatory independence of the General Elections Commission (KPU), restructuring regional electoral institutions, securing independent electoral financing, and redesigning electoral supervision and dispute resolution. It proposes strengthening KPU's authority as a self-regulatory institution, financing regional elections through the national budget, expanding citizen-based participatory monitoring, and transforming Bawaslu's institutional role into an independent electoral court. These proposals seek to establish a more coherent institutional framework that safeguards electoral independence while strengthening democratic accountability.
Keywords: Electoral management bodies, Legal politics, Institutional independence.

ABSTRAK

Lembaga penyelenggara pemilu memegang peranan fundamental dalam menjamin integritas, kredibilitas, dan legitimasi demokratis suatu pemilihan umum. Di Indonesia, pengaturan kelembagaan yang menaungi badan-badan penyelenggara pemilu telah mengalami transformasi berulang kali sebagai respons terhadap perubahan rezim politik, tatanan konstitusional, serta kepentingan politik yang saling bersaing. Artikel ini mengkaji perkembangan politik hukum lembaga penyelenggara pemilu di Indonesia dan mengusulkan rekonstruksi kelembagaan yang berlandaskan pada nilai-nilai demokratis. Dengan merujuk pada teori sistem hukum Lawrence M. Friedman, teori hukum dalam masyarakat dari Robert B. Seidman dan William J. Chambliss, serta teori hukum responsif dari Philippe Nonet dan Philip Selznick, studi ini menggunakan paradigma konstruktivis dan pendekatan hukum hermeneutis. Analisis dilakukan dengan memanfaatkan bahan hukum primer dan sekunder, dokumen kelembagaan, catatan sejarah, serta wawancara pendukung. Temuan studi menunjukkan bahwa perubahan dalam pengaturan penyelenggaraan pemilu tidak dapat dipahami sekadar sebagai penyesuaian teknis hukum. Sebaliknya, perubahan tersebut mencerminkan interaksi antara substansi hukum, struktur hukum, budaya hukum, dan kekuasaan politik di berbagai periode pemerintahan. Studi ini mengidentifikasi empat aspek yang

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memerlukan rekonstruksi kelembagaan: penguatan independensi regulatif Komisi Pemilihan Umum (KPU), penataan ulang lembaga penyelenggara pemilu di tingkat daerah, pemastian pendanaan pemilu yang independen, serta perancangan ulang pengawasan pemilu dan penyelesaian sengketa. Artikel ini mengusulkan penguatan wewenang KPU sebagai lembaga yang mampu mengatur dirinya sendiri (self-regulatory), pendanaan pemilihan daerah melalui anggaran nasional, perluasan pengawasan partisipatif berbasis warga, serta transformasi peran kelembagaan Badan Pengawas Pemilihan Umum (Bawaslu) menjadi sebuah pengadilan pemilu yang independen. Usulan-usulan ini ditujukan untuk membangun kerangka kelembagaan yang lebih koheren, yang mampu menjaga independensi pemilu sekaligus memperkuat akuntabilitas demokratis.
Kata kunci: Lembaga penyelenggara pemilu, Politik hukum, Independensi kelembagaan.

INTRODUCTION

Elections constitute a fundamental mechanism through which democratic sovereignty is exercised. Their democratic legitimacy, however, depends not only on the existence of electoral competition or the formal recognition of voting rights but also on the institutional arrangements responsible for organizing, supervising, and ensuring the fairness of the electoral process. Electoral management bodies (EMBs) therefore occupy a strategic position within democratic constitutional systems. The independence of electoral management institutions is particularly important because electoral processes involve competing political interests. Political parties, candidates, government institutions, and other political actors have incentives to influence the rules and implementation of elections. Consequently, electoral institutions must possess sufficient institutional autonomy to perform their functions impartially and in accordance with constitutional and statutory requirements.

Indonesia provides an important case for understanding the relationship between electoral institutional design and political transformation. Since independence in 1945, the country has experienced several political and constitutional transitions, each accompanied by changes in electoral regulations, electoral systems, institutional structures, and supervisory arrangements. Budhiati (2018) identifies eleven elections conducted since independence and eight changes in electoral legislation between 1953 and 2017. These developments illustrate that electoral governance in Indonesia has evolved alongside the changing character of its political regimes. The transformation of electoral institutions reflects more than administrative reform. It also reveals how political power influences the formation of electoral regulations and the distribution of institutional authority. The independence of electoral management bodies may be recognized constitutionally while simultaneously being constrained through statutory provisions, institutional dependencies, recruitment arrangements, or financial mechanisms.

One important illustration concerns the authority of the General Elections Commission (Komisi Pemilihan Umum or KPU) to formulate technical electoral regulations. Under Law No. 8 of 2015, Article 9(a), KPU was required to consult the House of Representatives (DPR) and the government when preparing electoral regulations, with the consultation decisions characterized as binding. According to Budhiati (2018), this arrangement created potential interference with KPU's institutional independence and its constitutionally recognized authority. The issue demonstrates a fundamental tension in electoral governance: how can democratic accountability be maintained without undermining the autonomy of the institution responsible for administering elections?

A similar institutional dilemma appears in the development of the Election Supervisory Agency (Badan Pengawas Pemilihan Umum or Bawaslu). Its authority has expanded beyond conventional supervision to include quasi-judicial functions in electoral dispute resolution. Although this expansion strengthens the mechanisms of electoral justice, it also raises questions concerning institutional role separation, impartiality, and the concentration of supervisory and adjudicative powers.

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These institutional developments require a broader examination of the legal politics underlying electoral governance in Indonesia. The central argument of this article is that democratic electoral management cannot be achieved solely through the establishment of independent institutions. It also requires a legal and institutional framework that protects those institutions from political intervention, ensures adequate administrative and financial capacity, and establishes clear mechanisms of accountability. Accordingly, this article addresses two research questions: Why has the legal politics governing electoral management bodies in Indonesia continuously changed across different political periods? How should the legal and institutional framework of electoral management bodies be reconstructed to strengthen democratic values, institutional independence, and electoral accountability? This article contributes to the study of electoral governance by examining institutional transformation as a product of interactions between legal structures and political power. It also advances an institutional reconstruction framework that connects electoral independence with administrative effectiveness, financial autonomy, participatory supervision, and electoral justice.

METHOD

This study adopts a constructivist paradigm and a hermeneutic legal approach. The constructivist paradigm is employed to understand electoral governance as a reality shaped by multiple political, legal, and institutional relationships. Institutional arrangements are therefore examined within their historical and political contexts rather than treated as fixed legal structures. The hermeneutic approach is used to interpret constitutional provisions, electoral legislation, legal documents, institutional records, and judicial decisions relevant to the development of electoral management bodies in Indonesia.

The research relies primarily on secondary data, including: Constitutional provisions and electoral legislation, Legislative documents and records of regulatory formation, Institutional regulations and official electoral documents, Judicial decisions concerning electoral institutions, Academic literature on electoral governance, constitutional law, and democratic institutions.

Primary data, particularly interviews with relevant political and electoral stakeholders, are used to support and confirm the documentary findings. The original research also draws on observation, document interpretation, interviews, and the researcher's institutional experience. The analytical process combines historical examination of electoral institutional arrangements with interpretation of the legal and political factors influencing their transformation. Friedman's legal system theory is used to examine changes in legal substance, structure, and culture, while Seidman and Chambliss's framework identifies the interaction between lawmakers, implementing institutions, and regulated actors. Responsive law theory provides the normative basis for evaluating the democratic quality of institutional arrangements.

DISCUSSION

Historical Transformation of Electoral Management Bodies in Indonesia

The development of electoral management bodies in Indonesia reflects the political characteristics of successive governmental periods. Budhiati (2018) identifies significant institutional differences between the Parliamentary Era, the Old Order, the New Order, and the Reformasi period. During the Parliamentary Era, electoral management followed a government-based model involving political party representation. Electoral supervision was largely entrusted to civil society. During the Old Order, particularly following the introduction of Guided Democracy, the institutional and constitutional environment changed significantly. The 1960 election was not held following the Presidential Decree of 5 July 1959, which fundamentally altered the constitutional framework governing elections.

Under the New Order, electoral administration became increasingly controlled by the government. The electoral management structure followed a government model, with government representatives occupying central positions in electoral administration. Electoral supervision was conducted through the internal supervisory mechanism known as Panwaslak, involving elements of the Attorney General's

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Office and civil and military bureaucracy, with final authority resting with the President.

This institutional arrangement reflected the authoritarian characteristics of the political regime. Although electoral regulations provided a formal framework for elections, the independence of electoral administration remained limited. The Reformasi period marked a significant institutional transformation. Before the constitutional amendments, electoral administration followed a mixed model involving government representatives and political parties. Following the constitutional amendments, Indonesia moved toward an independent electoral management model. Under this framework, KPU became responsible for electoral regulation and administration, Bawaslu assumed supervisory functions, and DKPP was established to enforce the ethical standards of electoral organizers.

This institutional division represented an important development in the consolidation of democratic electoral governance. Nevertheless, the transition toward independent electoral institutions did not eliminate all forms of political influence. Instead, political intervention increasingly became an issue within the regulatory and institutional arrangements governing electoral administration. The historical development therefore demonstrates that institutional independence is not achieved simply by changing the organizational model. It requires consistent alignment between legal substance, institutional structure, and democratic legal culture.

Political Intervention and the Independence of KPU

One of the central findings of Budhiati's research concerns the vulnerability of KPU to political intervention through the formation and implementation of electoral legislation. Article 22E(5) of the 1945 Constitution establishes that general elections must be organized by a national, permanent, and independent electoral commission. This constitutional provision provides the foundation for KPU's institutional independence. However, the implementation of this constitutional mandate has encountered regulatory challenges.

A significant example is Article 9(a) of Law No. 8 of 2015, which required KPU to consult with DPR and the government when preparing technical electoral regulations, with the consultation decisions being binding. The Constitutional Court subsequently addressed the relevant provision through Decision No. 92/PUU-XIV/2016. Nevertheless, the consultation requirement continued to create practical difficulties in electoral administration. Budhiati (2018) illustrates this problem through the preparation of regulations for the 2019 elections. KPU Regulation No. 11 of 2017 was adopted on 18 September 2017, while the registration period for political parties participating in the election had been scheduled for 3–16 October 2017 under KPU Regulation No. 7 of 2017. The limited period between regulatory adoption and the beginning of registration illustrates how procedural requirements can affect the operational autonomy and administrative preparedness of electoral institutions.

This case reveals an important distinction between formal independence and substantive independence. Formal independence concerns the constitutional recognition of an institution's autonomous status. Substantive independence concerns its practical ability to exercise authority without inappropriate political interference. The distinction is important because political intervention does not necessarily occur through direct interference in electoral operations. It can also emerge through institutional procedures that constrain decision-making authority. Accordingly, KPU should be understood as an independent constitutional institution with self-regulatory authority within the scope of its constitutional and statutory responsibilities.

Budhiati (2018) proposes replacing the politically oriented consultation mechanism with a legal review mechanism (toetsingsrecht). This would preserve the principle of checks and balances while reducing the possibility that political actors directly determine the technical rules of electoral administration. The broader implication is that institutional independence requires more than constitutional recognition. It requires the protection of regulatory authority from political bargaining and administrative interference.

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Institutional Complexity and the Role of Bawaslu

The development of Bawaslu represents another important dimension of Indonesia's electoral institutional transformation. Originally established to supervise electoral processes, Bawaslu gradually acquired broader authority, including the examination and resolution of electoral process disputes. This institutional strengthening was intended to improve electoral justice and provide mechanisms for addressing violations and administrative disputes. However, the expansion of Bawaslu's authority also raises questions concerning the relationship between supervisory and quasi-judicial functions.

An institution that supervises electoral processes and subsequently adjudicates disputes concerning those processes may face institutional tensions involving impartiality and the separation of functions. Budhiati (2018) argues that the combination of supervisory and quasi-judicial responsibilities creates the potential for institutional conflicts. Recommendations previously issued in a supervisory capacity may affect, or appear to affect, subsequent decisions in dispute-resolution proceedings. The issue is not whether electoral supervision is necessary. Rather, it concerns how supervisory and adjudicative responsibilities should be institutionally organized to guarantee fairness and accountability.

The dissertation proposes a reconstruction in which electoral supervision is returned to society through participatory monitoring, while Bawaslu is transformed into an independent electoral court. Under this proposed arrangement, the electoral court would operate at the national and provincial levels. The provincial institution would examine cases at the first-instance level, while the national institution would function as an appellate court. Cassation for electoral process violations would be assigned to the Supreme Court. The proposal seeks to establish a clearer distinction between electoral monitoring and dispute adjudication. It also reflects the broader principle that electoral justice requires institutional impartiality, transparent procedures, and an effective system of legal remedies.

Financial Autonomy and the Independence of Electoral Institutions

Institutional independence cannot be separated from financial autonomy. Budhiati (2018) identifies electoral financing, particularly regional election financing, as an important factor affecting the independence of electoral management institutions. Under the arrangements examined in the dissertation, regional election financing was derived from regional government budgets (APBD).

This arrangement created potential institutional dependencies because the allocation and approval of regional election funds involved regional executives and legislative institutions. The problem becomes particularly significant when regional heads seeking re-election or their political supporters have interests in the electoral process. The regional executive possesses budgetary authority, while DPRD exercises budgetary functions. Electoral institutions, meanwhile, require sufficient financial resources to carry out their responsibilities independently. Consequently, dependence on regional budgetary approval may expose electoral institutions to political and administrative pressures.

The dissertation therefore proposes that the financing of regional elections should be transferred from APBD to the national budget (APBN). This recommendation is intended to reduce the influence of regional political interests over electoral administration and create more consistent financing arrangements. The broader institutional implication is that financial independence constitutes an essential dimension of electoral independence. Without adequate and predictable financing, even constitutionally independent institutions may experience practical limitations in carrying out their responsibilities.

Participatory Supervision and Democratic Accountability

Another central issue concerns the relationship between institutional supervision and public participation. Budhiati (2018) argues that democratic elections do not necessarily require a permanent supervisory institution at every administrative level. Instead, electoral supervision may be organized through participatory mechanisms involving citizens and civil society organizations. This perspective emphasizes that electoral integrity is not exclusively the responsibility of formal state institutions.

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Citizens and civil society organizations also play important roles in identifying, reporting, and preventing electoral violations. The proposed participatory model would provide accredited community organizations with opportunities to undertake electoral monitoring activities. State support could be provided through dedicated funding arrangements, while citizens would receive broader access to reporting mechanisms.

Such an approach seeks to strengthen public ownership of electoral processes. Nevertheless, participatory supervision should not be interpreted as the elimination of institutional responsibility. Rather, it requires a clear institutional division between monitoring, investigation, adjudication, and enforcement. The proposed transformation of Bawaslu into an electoral court would complement this model by providing an independent institutional mechanism for resolving electoral disputes. The combination of citizen-based monitoring and independent adjudication offers an alternative framework for strengthening democratic accountability.

Institutional Reconstruction: Toward a Democratic Electoral Governance Framework

Based on the historical and institutional analysis, the reconstruction of electoral management bodies should address four interconnected dimensions. First, strengthening KPU's regulatory independence. KPU should possess the authority to formulate technical electoral regulations within its constitutional mandate without being subjected to binding political consultations. Mechanisms of judicial review should provide legal oversight while preserving institutional autonomy. Second, restructuring regional electoral institutions. The organizational structure of provincial and regency/municipal KPU institutions should be adjusted to electoral needs, institutional effectiveness, and administrative capacity. The dissertation proposes a distinction between the timing of electoral commissioners' appointments and the continuity of the permanent administrative secretariat. Third, establishing independent electoral financing. Regional election financing should be provided through APBN arrangements to reduce the potential influence of regional political interests over electoral administration.

Fourth, separating electoral supervision from adjudication. Participatory monitoring should be strengthened through citizen and civil society involvement, while Bawaslu should be transformed into an independent electoral court. These four dimensions should be understood as mutually reinforcing institutional reforms rather than isolated policy recommendations. The reconstruction framework can be summarized as follows: The proposed framework reflects a broader understanding of democratic electoral governance. Institutional independence, legal certainty, public participation, and electoral justice must operate as an integrated system.

CONCLUSION

The transformation of electoral management bodies in Indonesia demonstrates that electoral institutional arrangements are closely connected to political developments and the changing balance of power across governmental periods. The historical evolution from government-based electoral administration toward independent electoral institutions reflects an important democratic transition. However, the institutional transformation has not completely eliminated political intervention. Such intervention may continue through legislative procedures, administrative arrangements, recruitment mechanisms, and financial dependencies.

Using Friedman's legal system theory, the analysis demonstrates that electoral governance is shaped by the interaction of legal substance, legal structure, and legal culture. Seidman and Chambliss's framework further explains how political interests influence the formation and implementation of electoral legislation. Responsive law theory establishes the normative foundation for institutional reconstruction based on democratic participation, justice, and public accountability. This article identifies four principal dimensions of institutional reconstruction: strengthening KPU's regulatory independence, restructuring regional electoral institutions, ensuring independent electoral financing, and

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redesigning electoral supervision and dispute resolution.

The central argument is that democratic electoral governance requires a coherent institutional framework in which independence is supported by legal guarantees, administrative capacity, financial autonomy, and effective accountability mechanisms. Ultimately, the quality of democracy cannot be measured solely by the frequency of elections or the existence of electoral institutions. It must also be assessed through the capacity of those institutions to exercise their constitutional responsibilities independently, impartially, and responsively to the democratic aspirations of citizens.

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