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The Urgency and Reconstruction of Bawaslu's Investigative Authority over Electoral Crimes at the National and Regional Levels

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ABSTRACT

Indonesia's electoral law enforcement system continues to face structural and functional problems, particularly because investigative authority over electoral crimes rests with the Indonesian National Police, while the Election Supervisory Agency (Bawaslu) primarily performs supervisory, detection, and reporting functions through the Integrated Law Enforcement Center (Gakkumdu). In practice, this coordination-based model encounters constraints including limited processing time, differences in institutional interpretation, weak coordination, and uncertainty in case resolution. This study aims to analyze the urgency of granting investigative authority to Bawaslu and to formulate a reconstruction of that authority from the perspectives of constitutional law and electoral law enforcement. The study employs a normative juridical method with statutory and conceptual approaches through an examination of primary and secondary legal materials. The findings indicate that granting investigative authority to Bawaslu has a defensible constitutional and legal basis, particularly in light of popular sovereignty, the distinctive nature of electoral crimes, the *lex specialis* principle, and Bawaslu's status as an independent state institution. From an institutional and effectiveness perspective, such authority could shorten the case-handling chain, improve responsiveness to violations, and strengthen the independence of electoral law enforcement. The authority could be reconstructed through the establishment of a Special Electoral Investigation Unit (UPSP), accompanied by amendments to the Election Law, technical regulations governing investigative procedures, enhanced investigator capacity, and ethical and oversight mechanisms to prevent abuse of authority. Accordingly, strengthening Bawaslu's investigative authority is a strategic step toward building a more effective, expeditious, independent, and accountable electoral law enforcement system.

Keywords: Bawaslu, Electoral Crimes, Investigative Authority, Gakkumdu, Electoral Law Enforcement.

I. Introduction

General elections are democratic instruments that not only facilitate the peaceful transfer of power but also constitute a manifestation of popular sovereignty under Article 1(2) of the 1945 Constitution of the Republic of Indonesia. Within this framework, maintaining elections that are honest, fair, and conducted with integrity is vital to a democratic rule-of-law state. To safeguard electoral quality, mechanisms for monitoring and taking action against electoral violations cannot be neglected (Alaydrus et al., 2023; Jurdi, 2018, p. 5). In

factual terms, investigative authority over electoral crimes in Indonesia currently rests with the Indonesian National Police, as regulated by Law No. 7 of 2017 on General Elections. Under this regulatory framework, Bawaslu, the Police, and the Prosecutor's Office form the Integrated Law Enforcement Center (Gakkumdu) to handle alleged electoral crimes. On the one hand, this tripartite model provides a forum for interinstitutional coordination; on the other, it creates a number of problems. Many electoral crime cases end without legal certainty because of limited processing time, weak coordination among Gakkumdu members, and differences in interpretation among law enforcement institutions (Dango et al., 2025; Hermawan, 2022; Junaidi, 2020).

This condition demonstrates a disparity between the ideal of electoral oversight and the reality of electoral law enforcement. Normatively, however, electoral regulations are intended to ensure elections that are direct, universal, free, confidential, honest, and fair. This commitment requires a legal mechanism that is more effective, expeditious, and independent. Given that electoral violations are closely tied to electoral dynamics and are highly time-sensitive, Bawaslu, as the electoral supervisory institution, should be strengthened with investigative authority. The objective is to ensure that electoral law enforcement is not merely coordinative but substantive, enabling Bawaslu to exercise comprehensive control over the follow-up to alleged electoral crimes (Yonabe et al., 2026). The urgency of granting investigative authority to Bawaslu can be viewed from two aspects. First, institutionally, Bawaslu has an organizational infrastructure extending to the regency/city level, enabling cases to be handled more quickly and closer to the locus delicti of an electoral violation. Second, functionally, as an independent institution responsible for electoral oversight, Bawaslu has a stronger normative focus on ensuring clean elections than general law enforcement institutions, which may at times become entangled in practical political interests (Hasyim & Yasir, 2022; Ramadani & Arifin, 2023).

Beyond the urgency of such authority, efforts are also needed to reconstruct Bawaslu's investigative authority over electoral crimes. In a number of democratic countries, it is common for electoral supervisory institutions to perform not only prevention and oversight functions but also direct law enforcement functions, including investigative authority (Lopez, 2020). However, this proposal is not without challenges. Among the critical issues that must be anticipated are the potential abuse of authority and the capacity of Bawaslu's internal human resources (Rangkuty et al., 2025; Sirate, 2025). Based on the foregoing, this article aims to provide a scholarly argument that granting investigative authority to Bawaslu is an important prerequisite for realizing democratic, honest, and integrity-based elections. Using a qualitative approach and a normative juridical method, this study combines conceptual and statutory approaches with data derived from a literature review of primary and secondary legal materials. The discussion focuses on a normative and theoretical analysis of weaknesses in the current electoral law enforcement system and the urgency of investigative authority for Bawaslu, while also proposing a reconstruction of Bawaslu's investigative authority consistent with the principle of due process of law.

II. Research Method

This study employs a normative juridical research method to examine the urgency and reconstruction of investigative authority over electoral crimes by the Election Supervisory Agency (Bawaslu) in Indonesia. Normative juridical research was selected because the study focuses on examining legal norms, statutory provisions, constitutional principles, legal doctrines, and institutional arrangements governing electoral law enforcement. The study uses two primary approaches, namely the statutory approach and the conceptual approach. The statutory approach is used to examine relevant provisions of the 1945 Constitution of the Republic of Indonesia, the Election Law, the Criminal Procedure Code, and other regulations governing electoral crime enforcement and the institutional authority of Bawaslu. The conceptual approach is employed to analyze relevant legal concepts and principles, including popular sovereignty, institutional independence, *lex specialis derogat legi generali*, functional differentiation, *due process of law*, and specialized electoral law enforcement.

The legal materials consist of primary and secondary legal materials. Primary legal materials include constitutional provisions, statutes, regulations, and other relevant legal instruments concerning elections and electoral law enforcement. Secondary legal materials include scholarly books, journal articles, research findings, and academic publications discussing Bawaslu, Gakkumdu, electoral crimes, independent state institutions, and electoral law enforcement. The legal materials were collected through library research and analyzed using qualitative juridical analysis. The analysis was conducted by identifying relevant legal norms, interpreting their relationship with constitutional and institutional principles, comparing the existing legal enforcement framework with the proposed reconstruction, and formulating normative arguments concerning the feasibility of granting limited investigative authority to Bawaslu. The analysis is directed toward developing a legally grounded model of specialized electoral law enforcement that maintains institutional independence, accountability, proportionality, and *due process of law*.

III. Result and Discussion

3.1. Urgency of Granting Bawaslu Investigative Authority over Electoral Crimes

a. Constitutional and Legal Arguments

Law enforcement against electoral crimes in Indonesia is regulated by the Election Law, particularly Article 486, which establishes Gakkumdu as a coordination forum among Bawaslu, the Police, and the Prosecutor's Office. However, investigative authority rests entirely with the Police, while Bawaslu's role is limited to the initial stages of oversight, detection, and reporting of alleged violations. This condition creates an imbalance between the roles of supervisory and law enforcement institutions, thereby limiting the effectiveness of electoral law enforcement (Bawaslu, Police, & Prosecutor's Office, 2020). From a constitutional perspective, the proposal to grant investigative authority to Bawaslu has a strong basis in the principle of popular sovereignty under Articles 1(2) and 22E(1) of the 1945 Constitution of the Republic of Indonesia, which emphasize the importance of elections that are direct, universal, free, confidential, honest, and fair. These provisions are reinforced by the Election Law, which assigns Bawaslu the task of supervising the conduct of elections at all stages and following up on findings and reports of alleged violations. On this basis, the absence of investigative authority can be viewed as inconsistent with the mandate of the Constitution and the Election Law.

From this perspective, granting investigative authority to Bawaslu should not be understood merely as an expansion of powers, but as an effort to align the oversight function with responsibility for electoral law enforcement. Bawaslu, which is mandated to ensure that all electoral stages comply with the law, should possess proportionate legal instruments to follow up on its findings through a stage that enables the effective establishment of criminal liability. Thus, investigative authority can be regarded as a functional instrument for optimizing Bawaslu's supervisory mandate rather than as a stand-alone power outside its principal function. Nevertheless, it must be emphasized that the 1945 Constitution does not explicitly confer investigative authority on Bawaslu (Jamaludin, 2023). Therefore, the constitutional argument for such authority cannot rest on the claim that the Constitution directly requires Bawaslu to act as an investigator. A more appropriate argument is that the Constitution mandates the protection of democratic, honest, and fair elections, while the legislature has discretion to design the institutional structure and law enforcement mechanisms most capable of fulfilling that mandate. Within this framework, granting investigative authority to Bawaslu may be positioned as a legal policy choice that must nevertheless be grounded in independence, accountability, due process of law, and limitations on authority.

Accordingly, the central question is not merely whether Bawaslu may constitutionally be granted investigative authority, but whether the current institutional design of electoral law enforcement is fully capable of realizing the constitutional mandate to conduct honest and fair elections. If the existing mechanism produces delays, uncertainty, or termination of alleged electoral crime cases because of institutional coordination problems, there are strong grounds for reconstructing the law enforcement design. From this

perspective, granting investigative authority to Bawaslu is one reconstruction alternative that deserves consideration to reduce the gap between the constitutional mandate, the supervisory function, and the effectiveness of electoral law enforcement. Under the principle of *lex specialis derogat legi generali*, the Election Law operates as a special law (*lex specialis*) that may override general provisions of the Criminal Procedure Code (KUHP) insofar as it regulates specific matters. This is supported by Article 284(2) of the Criminal Procedure Code, which allows other legislation to establish specialized investigative mechanisms (Maulana, 2021). Because electoral crimes have distinctive characteristics, including their temporal nature, their close relationship to the protection of electoral integrity, and the need for rapid handling, a different investigative system from that used for ordinary crimes is legally permissible and relevant, including the possibility of granting investigative authority to Bawaslu. Furthermore, applying the *lex specialis* principle to investigations conducted by non-police institutions is not new in Indonesia's legal system. For example, the Corruption Eradication Commission (KPK) was granted investigative authority under Law No. 30 of 2002, as amended by Law No. 19 of 2019, concerning the KPK, even though investigative authority generally rests with the Police under the Criminal Procedure Code. This analogy demonstrates that granting investigative authority to a specialized institution may be legally justified when based on *lex specialis* and intended to strengthen law enforcement effectiveness in a particular field.

b. Institutional Argument

Article 93 of the Election Law states that Bawaslu is national, permanent, and independent. Its Elucidation provides that independence means freedom from the influence of any party in carrying out its duties and authority. In the theory of state institutions, Bawaslu is characterized as an independent regulatory agency/body (Maggetti, 2010; Syawawi, 2020). In this context, Bawaslu's independence is necessary to ensure that electoral oversight is conducted professionally, objectively, and free from intervention by any party (Ramadani, 2020). The Gakkumdu model, which involves Bawaslu, the Police, and the Prosecutor's Office, may instead weaken Bawaslu's independence in electoral law enforcement. This cross-sectoral mechanism is vulnerable to competing interests, particularly because Gakkumdu investigators come from other institutions and retain their status as personnel of their parent institutions, as provided in Article 486(5) of the Election Law, thereby reducing the independence of investigations. In addition, the operational budget burden borne by Bawaslu while the principal investigative and prosecutorial authorities remain with the Police and Prosecutor's Office creates structural and financial asymmetry. Yet Bawaslu has direct access to data and evidence concerning violations in the field, which should constitute a major asset in strengthening electoral law enforcement. Consistent with Mahfud's view, law enforcement effectiveness is determined not only by legal norms but also by institutional capacity and direct access to violations (Mahfud MD, 2011).

According to Asshiddiqie, the formulation of legal norms should consider the functional differentiation of state institutions so that law is not merely normative but also operational within the constitutional system. Granting investigative authority to Bawaslu represents an implementation of functional differentiation because Bawaslu was institutionally established to oversee the conduct of elections. Moreover, current handling of electoral crimes has demonstrated significant weaknesses. Junaidi, for example, concluded that Gakkumdu remains weak in coordination, resulting in overlapping authority among the institutions participating in Gakkumdu (Asshiddiqie, 2006; Junaidi, 2020). This finding supports the argument that Bawaslu should possess independent investigative authority to ensure that electoral law enforcement operates effectively and is trusted by the public (Seac et al., 2023).

c. Efficiency and Effectiveness Arguments

A coordination-based model such as Gakkumdu creates various practical problems, particularly concerning the effectiveness and efficiency of electoral case handling. Kusnadi and Wibowo (2020), for example, found that nearly 40% of electoral violation cases failed to advance to the investigation stage because Gakkumdu members held different views regarding the elements of the offense and the sufficiency of evidence. The 2019 Election also demonstrated weaknesses in the system. Bawaslu received 15,052 reports

of violations, including 348 electoral crime cases. However, most of these cases did not reach prosecution because investigations were protracted or impeded by internal Gakkumdu coordination (Bawaslu, 2019; Kusnadi & Wibowo, 2020). A similar phenomenon occurred during the 2024 Election, when Bawaslu recorded 1,023 findings and reports, 39 of which involved alleged electoral crimes. Of these cases, only some proceeded to the investigation stage, while the remainder were discontinued because of insufficient evidence or procedural obstacles (Bawaslu, 2024; Polri Lampung, 2024).

The foregoing facts reinforce the need to reconstruct Bawaslu's investigative authority so that electoral law enforcement becomes faster, measurable, and just. First, Bawaslu has an institutional infrastructure extending to the regency/city level, enabling it to handle violations more quickly. This structure is reflected in Bawaslu's regional organizational units and the establishment of supervisory committees at the subdistrict level. This places Bawaslu in a unique position, with a broad local network that provides geographic and administrative access close to the location of alleged violations (Hasyim & Yasir, 2022). Accordingly, Bawaslu has greater potential to conduct rapid oversight and initial clarification than a system in which the entire process depends on other authorities. This has been demonstrated in case studies of Gakkumdu in Yogyakarta and Lhokseumawe (Daeli et al., 2024).

In addition, handling electoral crimes requires speed and an understanding of local electoral contexts. Granting direct investigative authority to Bawaslu would therefore shorten the bureaucratic chain and increase accountability. Dependence on reporting mechanisms through the Police often consumes time and creates a risk of evidence being lost, whereas Bawaslu at the regency/city level, supported by Panwaslu and PPL, can immediately conduct clarification, documentation, and case chronology development. As a result, legal proceedings would become more efficient and handling costs could decline (Irawan et al., 2025; Waruwu et al., 2025). Conceptually, investigative authority for Bawaslu constitutes a strategic step toward good electoral governance, namely electoral governance that is rapid, transparent, accountable, and capable of ensuring substantive justice (Schedler, 2019).

3.2. Reconstruction of Bawaslu's Investigative Authority over Electoral Crimes

Theoretically, granting investigative authority to Bawaslu can be situated within the framework of strengthening an independent electoral management body (IEMB), particularly the idea that electoral management and supervisory institutions need adequate investigative capacity to safeguard the integrity of the electoral process. International IDEA emphasizes that the independence of electoral management bodies concerns not only freedom from political interference but also institutional capacity to carry out their mandates effectively and independently. In this context, investigative authority is an instrument that can strengthen an electoral institution's ability to identify and address violations that may undermine electoral integrity (International IDEA, 2021; Ramadani & Buana, 2020). In Indonesia, this need is relevant because Bawaslu has been positioned as the institution mandated to supervise all stages of elections. Bawaslu is closest to the occurrence of alleged violations because it directly performs oversight in the field, receives public reports, conducts preliminary inquiries, and identifies suspected violations. However, when an allegation contains elements of a criminal offense, investigative authority does not rest with Bawaslu. This creates a separation between the institution that discovers an alleged violation and the institution empowered to investigate it.

On that basis, reconstruction of authority is not intended to transform Bawaslu into a general law enforcement agency that assumes all Police functions. Rather, it seeks to establish specialized electoral law enforcement authority. Bawaslu's authority should be limited *ratione materiae*, meaning that it should apply only to crimes directly related to the conduct of elections. With this limitation, Bawaslu could function as a specialized electoral investigator, while the Police would continue to exercise investigative authority over ordinary crimes outside the scope of electoral crimes. Thus, reconstructing Bawaslu's investigative authority is not merely a matter of transferring authority from the Police to Bawaslu. It is an effort to redesign the electoral law enforcement system so that oversight and law enforcement are continuous while preserving the

principles of independence, professionalism, due process of law, and accountability. Within this framework, Bawaslu could evolve from an institution predominantly responsible for oversight into a specialized electoral law enforcement institution with limited, measurable, and accountable investigative authority. Based on this framework, the reconstruction of investigative authority can be undertaken through the following strategic measures:

a. Institutional Reform through the Establishment of a Special Electoral Investigation Unit (UPSP)

Institutionally, a model that could be developed is the establishment of a Special Electoral Investigation Unit (UPSP) within Bawaslu, organized hierarchically at the national, provincial, and regency/city levels. This approach is based on the territorial division of power as follows:

- 1) National Bawaslu: responsible for formulating national investigation policy, supervising major cases, and coordinating with the Prosecutor's Office regarding case referrals;
- 2) Provincial Bawaslu: responsible for investigating cases that cross regency/city boundaries and supervising investigations of alleged electoral crimes conducted by Regency/City Bawaslu; and
- 3) Regency/City Bawaslu: responsible for preliminary investigations and evidence collection at the local level.

This model would allow investigations to be conducted rapidly and responsively in response to violations occurring in the field, without waiting for action by the Police. Bawaslu investigators should have legal status equivalent to Police investigators as provided under the Criminal Procedure Code, while their authority would be limited to crimes directly related to elections. Internationally, this concept may draw on the model of the Commission on Elections (COMELEC) in the Philippines, which has quasi-judicial authority to supervise and legally address electoral violations. In Malaysia, the Malaysian Anti-Corruption Commission (SPRM) can directly investigate violations related to electoral corruption. These institutional models position electoral oversight bodies not merely as administrative supervisors but as institutions with substantial legal capacity for electoral law enforcement (Ab Rahman et al., 2022; De Vera, 2021).

b. Functional Reformulation through Revision of the Election Law and Its Derivative Regulations

Transferring investigative authority from the Police to Bawaslu requires legal-formal and technical stages. The legal-formal stage includes amending the Election Law to add a provision explicitly granting investigative authority to Bawaslu. Such a provision could state: "Bawaslu is authorized to conduct inquiries and investigations into electoral crimes directly related to the implementation of electoral stages." The next step would be the issuance of a Government Regulation governing the organizational structure of investigators, working mechanisms, and coordination with the Prosecutor's Office. Transitional technical measures could include establishing a national transition team consisting of Bawaslu, the Police, the Prosecutor's Office, and the Ministry of Administrative and Bureaucratic Reform to regulate personnel transfers and adjustments to the Gakkumdu working system. This transition model could be implemented gradually through pilot projects in several provinces before nationwide adoption. To ensure accountability, Bawaslu could also establish an Electoral Investigator Ethics Committee (KEPP) responsible for overseeing investigator integrity and assessing alleged abuses of authority during investigations. This process should also emphasize independent capacity building for Bawaslu personnel through intensive training conducted by law enforcement agencies such as the Police and Prosecutor's Office. Training should cover in-depth knowledge of the Criminal Procedure Code, standard operating procedures for investigations, investigative techniques, and the principles of lawful law enforcement.

IV. Conclusion

Based on the juridical, constitutional, and institutional analysis, Indonesia's electoral crime enforcement system continues to face structural and functional problems. The Gakkumdu model established under the Election Law has not yet been able to guarantee the independence, effectiveness, and speed of law enforcement. Consistent with the constitutional mandate and the principle of *lex specialis derogat legi generali*, granting investigative authority to Bawaslu is legally defensible. In terms of efficiency, effectiveness, and institutional reach, investigations conducted by Bawaslu could also be more optimal because Bawaslu has infrastructure extending to the local level and greater proximity to the locus of the crime, consistent with its position as an independent state institution that ideally performs oversight and investigation independently. In practice, such independence is difficult to achieve as long as investigative authority remains with the Police. Accordingly, it is recommended that the government reconstruct Bawaslu's investigative authority through two principal approaches: institutional reform and functional reformulation. Institutional reform should be undertaken by establishing a Special Electoral Investigation Unit (UPSP) under Bawaslu as an institutional solution consistent with the theory of functional differentiation. Functional reformulation should involve transferring investigative authority over electoral crimes from the Police to Bawaslu through amendments to the Election Law and its implementing technical regulations.

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