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Election Supervisory Board as the Constitutional Watchdog: Ensuring Human Rights and Electoral Neutrality in Indonesia

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Abstract:
The integrity of Indonesia's democratic elections depends on the impartial enforcement of electoral laws and the protection of citizens' political rights. The Election Supervisory Board (Bawaslu), although not explicitly established in the Constitution, serves as a key institution mandated by statutory law to oversee electoral neutrality and protect the fairness of electoral processes. Its supervisory mandate intersects with broader constitutional principles and human rights norms, particularly in addressing violations of political neutrality by state officials and safeguarding the right to political participation. This study aims to critically analyze the extent to which Bawaslu incorporates constitutional oversight and human rights considerations into its supervisory practices and how these frameworks influence its effectiveness. Using a normative legal research method with statutory, conceptual, and comparative approaches, the study evaluates national legal instruments, Bawaslu regulations, and selected case studies. Findings indicate that Bawaslu's oversight capacity is constrained by gaps in legal clarity, inconsistent inter-institutional coordination, and the absence of explicit constitutional grounding for its human rights obligations. Strengthening its institutional independence, refining the legal framework, and aligning domestic electoral oversight with international human rights standards are crucial steps for enhancing both electoral integrity and political neutrality. Beyond the Indonesian context, this study contributes to the global discourse on the role of non-constitutional electoral oversight bodies in consolidating democratic governance, offering comparative insights relevant to emerging democracies worldwide.

Keywords:
bawaslu supervision; constitutional oversight; electoral integrity; human rights principles; political neutrality.

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Introduction

General elections are a cornerstone of democratic systems, demanding fair, honest, and interference-free administration.[1] In Indonesia, the implementation of general elections is overseen by the Election Supervisory Board (Bawaslu), which plays a crucial role in maintaining political neutrality and protecting the right to vote.[2] Though not explicitly established in the 1945 Constitution, Bawaslu operates under statutory authority the Elections Law of 2017 (as amended in 2022), to safeguard political neutrality and ensure compliance

[1] Syamsul Wathoni, Luluk Indarinul Mufidah, and Sekolah Tinggi Agama Islam Miftahul Ula Nganjuk, "Analisis Kewenangan Bawaslu Dalam Pengawasan Pemilu: Perspektif Hukum Siyasah," *Islamic Law: Jurnal Siyasah* 9, no. 1 (December 2024): 16–28, https://doi.org/10.53429/ILJS.V9I1.982.
[2] Putu Eva et al., "Sosialisasi Netralitas Tentara Nasional Indonesia, Kepolisian, Dan Aparatur Sipil Negara Dalam Penyelenggaraan Pemilu Tahun 2024 Oleh Badan Pengawas Pemilu Provinsi Bali," *BERNAS: Jurnal Pengabdian Kepada Masyarakat* 5, no. 4 (November 2024): 2720–2719, https://doi.org/10.31949/JB.V5I4.10516.

with democratic principles. Its oversight role bridges two essential frameworks: human rights, which protect the rights to vote and be elected, and constitutional oversight, which ensures electoral processes align with constitutional norms.[3] Both are not merely normative, but also form the basis of legitimacy in election governance. In practice, Bawaslu is required not only to uphold positive law, but also to guarantee substantive justice for all citizens.[4] This task becomes even more complex when there is a discrepancy between technical election regulations and international human rights norms, because such gaps not only create legal uncertainty but also risk eroding public trust, as supervisory boards like Bawaslu must balance strict adherence to domestic law with the broader obligation to protect fundamental democratic rights. Therefore, a study on how Bawaslu carries out its supervisory function with a constitutional and human rights-oriented approach is crucial.

Violations of political neutrality by State Civil Apparatus (*Aparatur Sipil Negara* - ASN) continue to be a highlight in every election. In the 2024 elections, the Bawaslu recorded 1,650 violations of ASN neutrality from the legislative candidate registration period to early 2024.[5] Based on data from the Ministry of State Apparatus and Bureaucratic Reform, 1,106 recommendations regarding violations have been submitted to the State Civil Apparatus Commission (KASN) for follow-up action.[6] These violations include ASN support for specific candidates via social media, direct involvement in campaigns, and the use of state facilities.[7] This fact demonstrates that despite existing regulations, the effectiveness of oversight remains weak in preventing structural bias.[8]

Human rights in the context of elections refer to the individual's right to participate in government through free and fair elections. [9] This includes the rights to vote and to be elected, freedom of expression, and protection from political discrimination.[10] Human rights originate from international conventions such as the International Covenant on Civil and Political Rights (ICCPR), which Indonesia has ratified.[11] At the national level, the guarantee of human rights is enshrined in Article 28A-I of the 1945 Constitution. [12] Therefore, fulfilling political rights is a non-negotiable responsibility of the state, as explicitly mandated in Article 28I paragraph (4) of the 1945 Constitution, which affirms that the protection, advancement, enforcement, and fulfilment of human rights are responsibilities of the state, particularly the government.

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[3] Ahmad Zairudin, "Mekanisme Penetapan Daftar Pemilih Dalam Perspektif Hukum | Zairudin | Legal Studies Journal," *Legal Studies Journal* 1, no. 1 (2021).
[4] Amelia A et al., "Implikasi Putusan MK No. 65/Puu-Xxi/2023 Terhadap Prinsip Keadilan Pemilu Di Indonesia," *Media Hukum Indonesia (MHI)* 3, no. 3 (2025).
[5] Badan Pengawas Pemilu, "Data Penanganan Pelanggaran Se-Indonesia," 2024, https://sigaplapor.bawaslu.go.id/home.
[6] Komisi Aparatur Sipil Negara, "Ratusan ASN Langgar Netralitas Jelang Pemilu, Lebih Sistemik Dan Nekat," Komisi Aparatur Sipil Negara, 2024.
[7] Salma Idris, "Pengaturan Netralitas Aparatur Sipil Negara (ASN) Dalam Pelaksanaan Pemilihan Umum 2024," *J-CEKI : Jurnal Cendekia Ilmiah* 4, no. 1 (December 2024): 914–24, https://doi.org/10.56799/JCEKI.V4I1.6503.
[8] Negara, "Ratusan ASN Langgar Netralitas Jelang Pemilu, Lebih Sistemik Dan Nekat."
[9] Andinia Noffa Safitria et al., "Implementasi Konstitusi Terhadap Perlindungan Hak Asasi Manusia Dalam Prespektif Hukum Tata Negara," *ALADALAH: Jurnal Politik, Sosial, Hukum Dan Humaniora* 2, no. 3 (June 2024): 233–47, https://doi.org/10.59246/aladalah.v2i3.885.
[10] Suyitno Suyitno, Dudik Djaja Sidarta, and Renda Aranggraeni, "Kajian Yuridis Terhadap Pemulihan Hak Politik Mantan Narapidana Dalam Putusan Mahkamah Konstitusi Nomor 4/PUU/VII/2009 Dalam Perlindungan Konstitusi Hak Asasi Manusia," *Hukum Inovatif : Jurnal Ilmu Hukum Sosial Dan Humaniora* 2, no. 1 (2025), https://doi.org/https://doi.org/10.62383/humif.v2i1.1345.
[11] Dewita Nurcahyani, "Hak Asasi Manusia Dalam Perspektif Hukum Internasional Dan Nasional," *Jurnal Ilmu Pendidikan Pancasila, Kewarganegaraan, Dan Hukum* 1, no. 1 (December 2024): 7–13, https://doi.org/10.70134/pakehum.v1i1.210.
[12] I Nengah Sudiarta, "Pengaturan Hak Asasi Manusia Dalam Sistem Hukum Nasional," *IJOLARES : Indonesian Journal of Law Research* 2, no. 1 (March 2024): 25–31, https://doi.org/10.60153/ijolares.v2i1.44.

Meanwhile, constitutional oversight is a mechanism to ensure that all governmental processes, including elections, are conducted in accordance with constitutional principles and rules. [13] In the Indonesian context, this oversight is carried out by various institutions, including the Constitutional Court of the Republic of Indonesia and the Bawaslu (the Election Supervisory Board) as the technical implementer in the field of elections. Political neutrality refers to the obligation of all state ASN, the Indonesian Military (*Tentara Nasional Indonesia* - TNI), and the Indonesian National Police (*Kepolisian Republik Indonesia* - Polri) to remain impartial in political contests.[14] Bawaslu's oversight, meanwhile, encompasses preventative measures, enforcement, and monitoring of violations.[15] The relationship between these concepts forms the foundation for analyzing Bawaslu's role in safeguarding electoral integrity.

KASN's report indicates that out of the 1,106 recommended cases, only around 700 have been administratively followed up on, while the remainder have yet to receive sanctions or responses from relevant institutions.[16] This indicates a lack of uniformity in inter-agency responses to violations of ASN neutrality. In Sukoharjo Regency, during the 2020 local elections, violations of neutrality occurred as regional bureaucratic elites and state civil apparatus openly supported specific candidates. These actions often went unsanctioned due to weak evidence, kinship ties, and local-level political pressure.[17] This situation reflects the weakness of constitutional functions in ensuring bureaucratic neutrality. Yet, ASN bias directly threatens voters' right to a fair and equal electoral process.

Violations of political rights also occur among vulnerable groups, especially people with disabilities and residents in three special region (remote, underdeveloped, and outermost). More than 15,000 voters with disabilities lacked adequate accessibility at polling stations in the 2024 elections.[18] In Papua, polling stations still lack specialized assistants or election information in disability-friendly formats.[19] Furthermore, uneven logistics distribution caused thousands of residents in three special region (frontier, outermost, and underdeveloped regions) to lose their right to vote due to delays or the non-arrival of election materials.[20] This highlights the need for Bawaslu to expand the scope of its human rights oversight to reach all groups equally. Re-voting also indicate serious systematic violations. Throughout the 2024 elections, Bawaslu recorded 47 recommendations for re-voting in various regions due to administrative and ethical violations, including the involvement of non-neutral election officials.[21] One significant case occurred in Dogiyai Regency, Central Papua, where a re-voting was conducted due to findings of vote manipulation and the direct involvement of ASN in

[13] Ojak Nainggolan, Meli Hertati Gultom, and Nicolaos Manalu, "Analisis Peran Mahkamah Konstitusi Dalam Penyelesaian Sengketa Pemilu: Tinjauan Dari Perspektif Hukum Tata Negara," *Jurnal Syntax Admiration* 6, no. 1 (January 2025): 628–42, https://doi.org/10.46799/jsa.v6i1.2063.
[14] M. Zaenul Muttaqin, Usman Idris, and Ilham Ilham, "Tantangan Implementasi Netralitas PNS (Kajian Kekerasan Simbolik Dalam Pilkada)," *JWP (Jurnal Wacana Politik)* 6, no. 1 (March 5, 2021): 1, https://doi.org/10.24198/jwp.v6i1.32065.
[15] Faradilah Paratama Arif Maulana, Ali Rahman, Muhammad Firmansyah, "Peran Bawaslu Dalam Pengawasan Dan Penindakan Pelanggaran Administrasi Pemilu Melalui Media Sosial: Analisis Yuridis Normatif Di Kabupaten Pinrang," *Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance* 4, no. 1 (2024): 176–89, https://doi.org/https://doi.org/https://doi.org/10.53363/bureau.v4i1.395.
[16] Negara, "Ratusan ASN Langgar Netralitas Jelang Pemilu, Lebih Sistemik Dan Nekat."
[17] Rina Martini Shafrian Adam Suryana, "Pelanggaran Netralitas Aparatur Sipil Negara Dalam Pilkada Kabupaten Sukoharjo Tahun 2020," *Journal of Politic and Government Studies* 14, no. 2 (2020): 918–35.
[18] Cheta Nilawaty P., "Pemilu 2024, Banyak Difabel Tak Dapat Mengakses TPS Dan Kertas Suara Dibatasi ," tempo.co, February 2024.
[19] Yuliana Lantipo, "TPS Tak Ramah Difabel, Pemilih Difabel Netra Mengaku Kesulitan," PT Media Jubi Papua, February 2024.
[20] Muhammad Syafaruddin, "KPU Sebut Wilayah 3T Jadi Fokus Distribusi Logistik Pemilu 2024," Suara Surabaya, February 2024.
[21] Singgih Wiryono and Ardito Ramadhan, "Bawaslu Keluarkan 180 Rekomendasi Pemungutan Suara Ulang Pilkada 2024," PT. Kompas Cyber Media, 2024.

mobilizing crowds.[22] Despite the re-voting, law enforcement against perpetrators remains minimal and protracted. This demonstrates a lack of coordination between the Bawaslu, the Elections Commission (*Komisi Pemilihan Umum* - KPU), and law enforcement agencies in thoroughly addressing violations. Without strengthening oversight institutions and adequate human rights protection, the quality of Indonesian democracy will continue to be questioned.

The existing study addresses elements of political neutrality, constitutional functions, and electoral oversight, but leave notable gaps in integrating human rights principles into Bawaslu's supervisory mandate. Research by Sulistyowati, Prasetyo, and Maharaja in the Law Development Journal examines neutrality from a good governance perspective, but does not explicitly connect it to a constitutional human rights framework.[23] Mahmuda, in the Journal of Law and Humanity Studies, Mahmuda focuses on constitutional interpretation in preventing electoral violations but lacks an analysis of operational oversight by Bawaslu in protecting political rights.[24] Ananingsih, Putrijanti, and Wibawa's research in Contemporary Readings in Law and Social Justice analyzes neutrality violations in the 2024 elections through administrative-legal procedures but overlooks the integration of human rights norms.[25] These studies, while valuable in highlighting administrative and ethical dimensions, primarily view neutrality as a procedural matter rather than a substantive democratic right. None proposes structural innovations within Bawaslu to address the intersection of human rights and constitutional oversight in election supervision. This gap is where the present study positions its contribution, offering a model that bridges statutory authority with rights-based electoral governance. By situating Bawaslu's oversight within international comparative contexts, the research expands its relevance beyond national boundaries.

This research offers a novel contribution by explicitly integrating human rights principles into the constitutional oversight system implemented by Bawaslu. The approach used is not only juridical-normative but also comparative constitutional, comparing national legal frameworks with international human rights standards. Furthermore, this study proposes the concept of a "constitutional human rights desk" as a new structure within the Bawaslu institution to address violations that impact the right to vote. This recommendation is novel in the existing literature, making it a significant theoretical and practical contribution to the field of election monitoring. Thus, this study adds value to efforts to strengthen substantive democracy and protect the political rights of citizens in Indonesia. This study examines how Bawaslu incorporates human rights and constitutional norms into its oversight mechanisms, assesses the effectiveness of its approach in preventing violations, and proposes reforms to enhance independence and compliance with international standards. The study contributes to global electoral discourse by offering lessons from Indonesia's experience to

[22] Rikson P Tampubolon, "Evaluasi Manajemen Penyelenggaraan Pemilu Serentak Tahun 2019 Dan Implikasinya," *Jurnal Bawaslu Provinsi Kepulauan Riau* 1, no. 1 (December 15, 2019): 104–16, https://doi.org/10.55108/jbk.v1i1.227.
[23] Sulistyowati Sulistyowati et al., "Neutrality of Public Officials in Elections Based on The Perspective of General Principles of Good Governance," *Law Development Journal* 6, no. 3 (October 2024): 344, https://doi.org/10.30659/ldj.6.3.344-357.
[24] Irma Mahmuda, "Constitution in Power Dynamics: An Analysis of the Role and Implications in Indonesia," *Ournal of Law and Humanity Studies* 1, no. 1 (2024).
[25] Sri Wahyu Ananingsih et al., "Violation of Civil Servant (ASN) Neutrality in the 2024 General Elections in Indonesia (From the Perspective of Handling Violations)," *Contemporary Readings in Law and Social Justice* 16, no. 1 (2024): 105–115.

emerging democracies with non-constitutional oversight bodies facing similar governance challenges.

Method

This research aims to analyze how the Election Supervisory Board (*Badan Pengawas Pemilihan Umum* – Bawaslu) integrates the principles of constitutional oversight and human rights in carrying out its supervisory functions related to political neutrality and electoral rights. To achieve this, a normative legal research method is employed, focusing on the study of written legal norms, doctrines, and legal principles rather than empirical behaviour. The approach includes statutory, conceptual, and comparative perspectives: the statutory approach examines key legal instruments such as the Elections Law of 2017 (as amended in 2022), the Human Rights Law of 1999, and the Bawaslu Regulation of 2018; the conceptual approach explores terms like "constitutional oversight," "political neutrality," and "electoral rights" as discussed in legal literature; and the comparative approach reviews practices from electoral bodies in countries such as India and South Africa, which offer relevant human rights-based frameworks for election supervision.

The data in this study consist of secondary data, including primary legal materials such as constitutional provisions, statutory legislation, implementing regulations such as those issued by Bawaslu, and Constitutional Court decisions concerning state civil apparatus' neutrality, as well as secondary legal materials like Bawaslu's annual reports, academic publications, and expert opinions. Reports from independent bodies such as the National Commission on Human Rights (*Komisi Nasional Hak Asasi Manusia* - Komnas HAM), the State Civil Apparatus Commission (*Komisi Aparatur Sipil Negara* – KASN), and Non Govermental Organizations (NGO) like Perkumpulan untuk Pemilu dan Demokrasi - *Perludem*, complement the analysis. Data analysis employs content analysis to assess the support or limitations of existing legal norms in protecting political rights and ensuring neutrality, combined with grammatical, systematic, and teleological interpretation to evaluate the intent and consistency of relevant provisions with constitutional and international human rights principles, including the International Covenant on Civil and Political Rights (ICCPR). The results serve as the basis for normative recommendations aimed at strengthening Bawaslu's supervisory role in maintaining electoral legitimacy.

Discussion

1. The Constitutional Role of Bawaslu in Guaranteeing Citizens' Political Rights

The 2024 simultaneous elections highlighted a classic problem in Indonesia's election monitoring system: the weak protection of citizens' right to vote in practice by the Election Supervisory Board (*Badan Pengawas Pemilihan Umum* – Bawaslu). Bawaslu recorded an increase in public complaints about violations of the right to vote, particularly in the form of unilateral polling station relocation, the removal of voters from the voter list, and intimidation by officials. However, out of more than 2,100 complaints, only 712 complaints were processed

administratively, and most did not result in the restoration of rights for the affected voters.[26] According to the Human Rights Study and Advocacy Institute, this reflects a fundamental flaw in Indonesia's monitoring framework: the absence of human rights protection as a core principle. Instead, monitoring emphasizes technical compliance, logistics, schedules, campaigns, while neglecting constitutional guarantees of electoral justice, resulting in a procedural approach that falls short of substantive democratic standards. A similar pattern was seen in the 2019 elections with the findings of inaccuracies in voter lists, mismanagement of polling station logistics, and intimidation of organizers.[27] Most cases were treated as technical violations without any restoration of voters' rights.[28] This indicates a systemic problem in election monitoring that emphasizes technical compliance over constitutional guarantees of electoral justice. As a result, in both 2019 and 2024 elections, monitoring was procedural and not rights-based, failing to meet substantive democratic standards.

Beyond the administrative violations experienced by the general electorate, marginalized groups such as people with disabilities face systematic barriers to accessing their right to vote. At least 15,217 people with disabilities on the 2024 election voter list did not receive accessibility facilities that meet national or international standards.[29] Many polling stations did not provide assistants, Braille information, or wheelchair access ramps.[30] As a result, thousands of voters from this group were unable to cast their ballots independently.[31] This is not merely a logistical failure, but also a violation of electoral rights guaranteed by the Disabilities Law of 2016.

Indigeneous communities also face similar challenges, such as indigeneous communities in North Kalimantan, Southeast Maluku, and Papua. In these regions, voting practices are often carried out collectively based on customary agreements without ensuring the individual choice of each citizen.[32] The National Commission on Human Rights (*Komisi Nasional Hak Asasi Manusia* - Komnas HAM) notes that this method has the potential to eliminate the freedom of secret voting and can become a tool for social and political control by local elites.[33] In this context, Bawaslu is considered to have failed to conduct election education and supervision that is responsive to customary values while guaranteeing universal principles in elections, such as individuality and the secrecy of the vote. As a result, procedural democracy practices actually reinforce power imbalances in traditional communities.

Meanwhile, citizens in remote and underdeveloped areas, particularly in the Papua face technical and structural obstacles in exercising their right to vote.[34] Many polling stations did not operate on time because election logistics did not arrive on schedule; as a result, some

[26] Didik Suharyanto, "Legal Protection of Citizens' Constitutional Rights in the 2024 Simultaneous Elections," *Jurnal Penelitian Pendidikan Indonesia* 10, no. 2 (2024), https://doi.org/http://dx.doi.org/10.29210/020243761.
[27] Rika Mariska and Heri Kusmanto, "Tata Kelola Logistik Pemilu 2019 Dan Malpraktek Pemilu," *Talenta Conference Series: Local Wisdom, Social, and Arts (LWSA)* 3, no. 2 (October 2020): 36–43, https://doi.org/10.32734/LWSA.V3I3.927.
[28] Muhaemin Muhaemin et al., "Pelanggaran Tindak Pidana Pemilu Dan Strategi Pencegahannya (Studi Kasus Pada Pelaksanaan Pemilu Tahun 2019 Di Kota Bima)," *JIIP - Jurnal Ilmiah Ilmu Pendidikan* 5, no. 6 (June 2022): 1998–2004, https://doi.org/10.54371/JIIP.V5I6.667.
[29] P., "Pemilu 2024, Banyak Difabel Tak Dapat Mengakses TPS Dan Kertas Suara Dibatasi ."
[30] Fabio Maria Lopes Costa, "Tak Ada Alat Bantu Di 2.794 TPS, Hak Pemilih Disabilitas Tercerabut," Kompas.id, February 2024.
[31] Stephanus Arandito, "Banyak Penyandang Disabilitas Belum Terdaftar Sebagai Pemilih Difabel," Kompas, 2024.
[32] Matheus Adadikam et al., *Masyarakat Adat Dan Hak Atas Kebenaran: Volume 2 Panduan Ini Merupakan Bagian Dari Seri AJAR Tentang Keadilan Transisi Di Australia Dan Pasiflk*, 1st ed. (Jakarta: Lembaga Studi dan Advokasi Hak Asasi Manusia, 2022).
[33] Komisi Hak Asasi Manusia, *Pedoman Pemantauan Pemilihan Kepala Daerah (Pilkada) 2015* (Jakarta: Komnas HAM, 2015).
[34] Lantipo, "TPS Tak Ramah Difabel, Pemilih Difabel Netra Mengaku Kesulitan."

voters did not receive ballots at all.[35] A report from the East Nusa Tenggara (NTT) Bawaslu of 2024 shows that in Lembata and Alor Regencies, at least 4,300 voters lost their right to vote due to delays in logistics distribution.[36] This reflects the state's lack of preparedness to guarantee equal access for all citizens, especially those who are geographically marginalized.

The weak protection of the right to vote by Bawaslu is inseparable from the normative nature of its authority, as outlined in Articles 93 to 103 of the Elections Law of 2017 (as amended in 2022). These provisions state that Bawaslu functions to monitor, receive reports, and recommend the resolution of violations, but it does not have strong executive authority. In practice, Bawaslu can only encourage technical organizers or other parties to make improvements, without being able to guarantee citizens' electoral rights directly. This results in numerous complaints about the right to vote being denied without corrective action or direct redress. Structurally, overlapping authority between Bawaslu and the Elections Commission (*Komisi Pemilihan Umum* - KPU) undermines the effectiveness of monitoring violations of the right to vote. Under Article 14 letter L of the Elections Law of 2017 (as amended in 2022), the KPU is authorized to compile and update the voter list based on the population administration information system. Meanwhile, Article 93 stipulates that Bawaslu only has supervisory authority and may issue recommendations but lacks direct power to correct the list. This regulatory framework leaves Bawaslu without a strong legal basis to compel quick and binding corrections, which weakens the protection of citizens' voting rights. According to Abdul Latif, this purely administrative monitoring system weakens the meaning of monitoring as a mechanism for constitutional protection.[37] Indeed, Article 28D (1) and Article 28I (2) of the 1945 Constitution affirm citizens' right to legal protection and political equality, yet Bawaslu's approach does not systematically enforce these guarantees in practice.

The lack of specific provisions for vulnerability-based monitoring further undermines protection for marginalized groups. The Elections Law of 2017 contains no explicit mandate for Bawaslu to adopt affirmative measures for persons with disabilities, indigenous communities, or remote populations. Related laws, such as the Disability Law of 2016, are not fully integrated into operational aspects of election administration. Moreover, most grassroots supervisors have never received training in human rights–based monitoring, disability rights, or inclusive election principles. This absence of targeted procedures means that vulnerable voters cannot report violations independently, reinforcing the gap between formal equality and actual accessibility.[38] Furthermore, the system for recruiting supervisors in customary and remote areas is also a constraint. Supervisors often come from local elites who are bound by customary norms or are even part of the traditional power structure.[39] This creates a significant conflict of interest and makes supervision part of the local legitimacy system, rather than a tool of democratic control. In Papua, Komnas HAM documented no

[35] Syafaruddin, "KPU Sebut Wilayah 3T Jadi Fokus Distribusi Logistik Pemilu 2024."
[36] Fransiska Mariana Nuka, "KPU Lembata Utamakan Distribusi Logistik Ke Daerah Terjauh," Antara Kantor Berita Indonesia, 2024.
[37] Abdul Latif, Muhammad Dzul Ikram, and Marta Satria Putra, "The Dynamics of Constitutional Law and The Challenges of Democratic Practices in Indonesia," *Advances In Social Humanities Research* 3, no. 3 (March 2025): 186–96, https://doi.org/10.46799/adv.v3i3.357.
[38] M. Syafiie and Despan Heriansyah, "Praktik Dan Hambatan Pemenuhan Hak Pilih Penyandang Disabilitas Mental Dalam Pemilu," *INKLUSI* 11, no. 1 (June 2024): 63–82, https://doi.org/10.14421/ijds.110104.
[39] Dasman Dasman, Said Sampara, and La Ode Husen, "Implementasi Fungsi Komisi Pemilihan Umum Dalam Meningkatkan Partisipasi Pemilih Pada Pemilu 2019 (Pemilihan Umum Legislatif)," *Journal of Lex Generalis* 1, no. 4 (2020), https://doi.org/https://doi.org/10.52103/jlg.v1i4.186.

formal reports despite clear restrictions on individual voting by tribal leaders.[40] Bawaslu's dependence on KPU and Civil Registry Office data further excludes citizens without ID cards or fixed addresses.[41] Without community-based verification or anthropological approaches, entire groups remain invisible in the electoral system.

Conceptually, the right to vote and to be elected is a fundamental right that cannot be restricted under any circumstances (a non-derogable right), as affirmed in Article 25 of the the International Covenant on Civil and Political Rights (ICCPR). Article 25 explicitly guarantees every citizen the right to take part in public affairs, to vote, and to be elected in genuine periodic elections based on universal and equal suffrage. Similarly, the Universal Declaration of Human Rights (UDHR) in Article 21 emphasizes that the authority of government derives from the will of the people, as expressed through periodic and genuine elections. At the national level, the Human Rights Law of 1999 incorporates these principles into Indonesia's legal system by recognizing political rights, including participation in government, as fundamental rights that must be protected and fulfilled by the state.

However, Bawaslu has not yet systematically adopted these human rights frameworks as normative references in its supervisory practice. Instead, its monitoring tends to emphasize compliance with technical electoral procedures. This gap highlights that violations of voting rights are often treated as mere administrative issues rather than human rights violations. A stronger integration of ICCPR, UDHR, and the Human Rights Law of 1999 into Bawaslu's supervisory approach would not only reinforce its legitimacy but also align electoral monitoring with Indonesia's constitutional and international human rights commitments. Bawaslu's approach to resolving disputes and violations of electoral rights remains based on the technical norms of electoral legislation, rather than human rights principles. This limits the scope of substantive interpretation that can guarantee redress and restitution for citizens. Therefore, integrating a human rights approach into the supervisory function is crucial so that electoral rights are not only guaranteed in the text of the constitution but also in the practice of election organization.[42] The right to vote is not merely a civil right, but a part of constitutional and human rights guaranteed by various national and international instruments.[43] In the Indonesian context, Article 28D paragraph (3) and Article 22E paragraph (1) of the 1945 Constitution explicitly state that every citizen has the right to equal opportunity in government.[44] This principle is further elaborated in Article 25 of the ICCPR, which stipulates that every citizen has the right to vote and to be elected in free and periodic

[40] Komisi Hak Asasi Manusia, "Laporan Tahunan Komnas HAM RI 2022 Capaian, Tantangan & Optimisme Melanjutkan Langkah Dalam Pemajuan & Penegakan HAM" (Jakarta, 2023).
[41] Selfi Drawinta Sari, "Pemantauan Pemutakhiran Data Pemilih Pada Pemilihan Umum 2024 Oleh Kpu Provinsi Riau" (Universitas Lancang Kuning, 2024).
[42] Mahyudin Mahyudin et al., "Building Community Participation through Participatory Oversight in the 2024 Simultaneous Elections," *Society : Jurnal Pengabdian Masyarakat* 2, no. 1 (January 2023): 62–68, https://doi.org/10.55824/jpm.v2i1.242.
[43] Zahara Nampewo, Jennifer Heaven Mike, and Jonathan Wolff, "Respecting, Protecting and Fulfilling the Human Right to Health," *International Journal for Equity in Health* 21, no. 1 (December 2022): 1–13, https://doi.org/10.1186/S12939-022-01634-3/METRICS.
[44] Elva Imeldatur Rohmah, "Constitutionality of Regional Head Election Campaigns on Campus Based on Constitutional Court Decision Number 69/PUU-XXII/2024," *Ma'mal: Jurnal Laboratorium Syariah Dan Hukum* 7, no. 1 (February 2025): 87–110, https://doi.org/10.15642/MAL.V7I1.438.

elections.[45] Thus, any violation of access, participation, or freedom in voting should be treated as a violation of the Constitution and human rights.

The conceptual approach to election supervision needs to begin with the correct framework of basic theory, rather than just the applicable norms. This means that supervision by Bawaslu should not only refer to formal provisions such as schedules and procedures, but should also evaluate how the election process guarantees the fulfilment of citizens' constitutional rights.[46] If people with disabilities cannot vote freely due to a lack of accessibility facilities, or if indigenous people cannot vote individually due to community pressure, then this is a violation of individual political rights. Unfortunately, this substantive approach is still absent in Bawaslu's supervisory work system. In modern electoral law literature, the right to vote is considered a gateway right to all other rights in a democratic system.[47] Without a guaranteed right to vote, there is no legitimate political representation, rendering the government illegitimate. Violations of the right to vote for minority groups are not only discriminatory but also a denial of the very principle of democratic legitimacy. Therefore, election oversight concerning marginalized groups should be framed as a constitutional obligation, not merely an administrative initiative.

The Election Commission of India (ECI) has clear constitutional authority under Article 324 of the Indian Constitution, serving as an electoral management body with full authority to conduct, regulate, and supervise elections. Unlike Indonesia, where the KPU organizes elections and Bawaslu supervises them, the ECI integrates both functions. In protecting voting rights, the ECI can issue corrective orders to local election bodies, freeze voter lists, and order re-polling in cases of systemic violations. For instance, in the 2019 elections the ECI annulled results in 11 districts due to intimidation and manipulation of voter data.[48] The ECI's strength lies in its reactive and responsive oversight mechanism, aided by the digitalization of the reporting process, such as through the cVIGIL application.[49] The public can submit reports of violations in real-time, and the ECI can immediately verify and act. This model demonstrates how a supervisory board can play a strategic role as a guardian of voters' constitutional rights.

The Electoral Commission of South Africa (IEC) was established under Section 190 of the South African Constitution, with an explicit mandate to "promote conditions for free and fair elections." One advantage of the IEC is its integration with the administrative justice system, where the IEC directly processes complaints about voting rights, which can result in the annulment of results in specific areas. Furthermore, the IEC also collaborates with the Human Rights Commission of South Africa (SAHRC) to audit the conduct of elections from a human rights perspective.[50] The IEC is involved in advocating for marginalized voters,

[45] Emmanuel Saffa Abdulai, "International and Regional Legal Instruments on Elections," in *Electoral Politics, Laws and Ethnicity in Africa* (Cham: Palgrave Macmillan, 2023), 15–34, https://doi.org/10.1007/978-3-031-34136-6_2.
[46] I Made Kartika, I Wayan Wiryawan, and Adelia Paulina Pareira, "The Role of the Bali Election Supervisory Body (Bawaslu) in the 2020 Simultaneous Elections," *International Journal of Education and Social Science Studies* 1, no. 1 (November 30, 2024): 20–27, https://doi.org/10.60153/ijesss.v1i1.82.
[47] Nur Rohim Yunus, "Hak Konstitusional Warga Negara Dalam Beragama," *Jurnal Bawaslu Provinsi Kepulauan Riau* 1, no. 1 (June 14, 2018): 188–201, https://doi.org/10.15408/adalah.v1i1.8198.
[48] Shakaib Aleem Arshad et al., "The Role of Electoral Laws in Promoting Good Governance and Ensuring True Democracy," *The Critical Review of Social Sciences Studies* 3, no. 1 (March 2025): 3727–43, https://doi.org/10.59075/1c284450.
[49] Election Comission of India, "CVIGIL Citizen App," Election Comission of India, 2024.
[50] Tseliso Thipanyane, "Strengthening Constitutional Democracy: Progress and Challenges of the South African Human Rights Commission and Public Protector," *New York Law School Law Review* 60, no. 16 (2015).

including ethnic minorities and people with disabilities, by providing mechanisms for special voting and supporting facilities.[51] The IEC's success demonstrates that human rights-based election monitoring can be achieved through inter-agency collaboration and a legal framework that prioritizes the right to vote. A key lesson for Indonesia is that constitutional oversight is not only a legal matter, but also a social and ethical one. The ECI has prioritized the voting rights of vulnerable groups in election administration. Through Systematic Voter's Education and Electoral Participation (SVEEP), the ECI conducts education and facilitation programs for voters with disabilities, the elderly, and those in remote areas, using a multilingual and multicultural approach.[52] Furthermore, the ECI has also developed inclusive infrastructure such as mobile polling units and Braille forms.[53] In the 2024 Indian elections, the ECI reported that voters with disabilities in urban areas were able to exercise their right to vote independently, a highly progressive achievement.[54]

Meanwhile, the IEC stands out with its integrated inclusive democracy program within the national election system. One of its key breakthroughs is the provision of a home voting system for individuals with severe disabilities and residents in remote areas.[55] In addition, the IEC developed a Human Rights Electoral Training module for all election staff and monitors, ensuring that human rights principles become integral to the organizational values.[56] This comparison reveals that election supervisory boards in India and South Africa not only perform formal duties but also act as protectors of political rights with constitutional and moral mandates. Both the ECI and IEC recognize that democracy will not be fair if some citizens are systematically marginalized from participation. This demonstrates that successful electoral oversight reaches the most vulnerable groups in society, not just preventing fraud between elites.

The lack of a constitutional mechanism for restoring voting rights renders Indonesian democracy vulnerable to procedural manipulation. When violations of voting rights are not taken seriously, public trust in elections diminishes, and the delegitimization of election results becomes a real threat. A democracy that does not protect the voice of the people is not a just democracy, but rather electoral engineering in a formalistic guise. Socially, Bawaslu's inability to guarantee citizens' political rights leads to voter apathy, especially among young people and voters in peripheral areas. Research by Dila Novita and Iin Fahmi Mursalina shows that 57% of millennial voters do not believe their votes will be recognized if there are violations in the voter list or political mobilization by officials. In the long term, this poses a danger to the sustainability of political participation and the quality of electoral democracy.[57]

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[51] Naphtaly Sekamogeng and Chinwendum Blossom Egbude, "Votes, Voices and Views," *Journal of African Elections* 23, no. 2 (2024): 150–66, https://doi.org/10.20940/JAE/2024/v23i2a.
[52] Lungowe Maria Mundia, "An Assessment of Voter Education Programme Conducted by the Electorol Commision of Zambia(ECZ) and the Civil Society in Lusaka" (University of Zambia, 2015).
[53] Mundia.
[54] Mundia.
[55] Sekamogeng and Egbude, "Votes, Voices and Views," 2024.
[56] Naphtaly Sekamogeng and Chinwendum Blossom Egbude, "Votes, Voices and Views," *Journal of African Elections* 23, no. 2 (2024).
[57] Dila Novita and Iin Fahmi Mursalina, "The Election Supervisory Body's Strategy in Implementing Participatory Oversight by Involving Millennial Voter in the 2024 Election," in *Digital Technology Disruption in Social Sciences, Higher Education, and Engineering in the Context of Human Existence and Role in the Future*, vol. 4 (Bandung: The Fourth International Conference on Innovations Social Sciences Education and Engineering, 2024), 063–063.

Bawaslu's inability to guarantee the electoral rights of marginalized groups has broad implications for the delegitimization of democracy. When citizens from groups with disabilities, indigenous communities, or remote areas feel their voices are not valued, trust in elections decreases drastically.[58] This is reflected in the high rate of passive abstention in three special region (remote, underdeveloped, and outermost) and indigenous communities, which, according to LSI (2024) survey, reached 17.9%.[59] This kind of abstention is not a political expression, but a silent protest against an unjust system. Furthermore, inequality in access to voting also affects political representation in parliament and local government.[60] Marginalized groups often lack adequate representation, which means their aspirations are not adequately accommodated in public policy.[61] In the long term, this perpetuates the cycle of social exclusion and structural injustice. Without correction through a fair and affirmative oversight system, elections will only reinforce the status quo that is biased towards dominant groups.

Socially, discrimination in elections exacerbates inequality between regions and cultural identities.[62] When voters in Jakarta can easily cast their vote, residents in Lanny Jaya or Alor have to travel 12 km to reach a polling station (TPS), the principle of equality in elections has been violated. Elections should not depend on geography, disability, or customary status, but guarantee equal access and political choices.[63] Another implication is the increased potential for social conflict in indigenous areas when election pressure is exerted through tribal chiefs or customary leaders without the protection of individual rights.[64] For Bawaslu itself, failure to guarantee the electoral rights of marginalized citizens will also impact institutional legitimacy.[65] The institution will be perceived as only operating in easily accessible areas and primarily serving political elites or large parties. However, as a constitutional supervisory board, Bawaslu should stand in the midst of society and be able to hear the voices of the most vulnerable groups.[66] Without structural reform, Bawaslu's role will be reduced to a "procedural supervisor," rather than a "guardian of electoral justice." Failure to protect the electoral rights of marginalized groups is an indicator of the weakness of constitutional supremacy in Indonesian democratic practice.[67] The constitution guarantees, but the implementers are absent. Elections take place, but not all citizens are eligible to participate.

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[58] Ihaab Syed et al., "Designing Accessible Elections: Recommendations from Disability Voting Rights Advocates," *Https://Home.Liebertpub.Com/Elj* 21, no. 1 (March 2022): 60–83, https://doi.org/10.1089/ELJ.2020.0677.

[59] Vitorio Mantalean and Novianti Setuningsih, "Survei LSI: Tingkat Keyakinan Masyarakat Pemilu 2024 Jurdil Turun Drastis Sepekan Sejak Pencoblosan," Kompas.com, February 2024.

[60] Øyvind Søraas Skorge, "Mobilizing the Underrepresented: Electoral Systems and Gender Inequality in Political Participation," *American Journal of Political Science* 67, no. 3 (July 2023): 538–52, https://doi.org/10.1111/AJPS.12654.

[61] Sonya C. Faber et al., "Lions at the Gate: How Weaponization of Policy Prevents People of Colour From Becoming Professional Psychologists in Canada," *Canadian Psychology* 64, no. 4 (March 2023): 335–54, https://doi.org/10.1037/CAP0000352.

[62] Helena Octavianne et al., "Identity Politics and Polarization in Contemporary Muslim Countries: The Impact of Elections, Social Media, and Global Dynamics," *MILRev: Metro Islamic Law Review* 3, no. 2 (December 2024): 263–86, https://doi.org/10.32332/MILREV.V3I2.9909.

[63] Ketut Sukewati Lanang Putra Perbawa, Paul Atagamen Aidonojie, and Benjamin Okorie Ajah, "Disability and Electoral Justice for Inclusive Participation," *Journal of Sustainable Development and Regulatory Issues (JSDERI)* 3, no. 2 (June 2025): 221–46, https://doi.org/10.53955/JSDERI.V3I2.93.

[64] Pan Mohamad Faiz et al., "Big Man, Bag or Ballot Box? Upholding Legal Pluralism through Noken as a Traditional System of Voting in Elections in Papua, Indonesia," *Legal Pluralism and Critical Social Analysis* 55, no. 3 (2023): 339–65, https://doi.org/10.1080/27706869.2023.2274167.

[65] Etik Sri Lestari, Femmy Silaswati Faried, and Aziz Zaelani, "Assessing the Effectiveness of Sukoharjo Bawaslu in Electoral Oversight Amid Institutional Constraints," *JIHK* 7, no. 1 (June 2025): 480–98, https://doi.org/10.46924/JIHK.V7I1.310.

[66] Nawang Mega Arum, "Analysis of Election Monitor Participation In Governance By Bawaslu In The Implementation of Elections," *Asian Journal of Social and Humanities* 2, no. 11 (August 2024): 2739–58, https://doi.org/10.59888/AJOSH.V2I11.363.

[67] Mei Susanto et al., "Constitutional Repair through Opposition Reform: Designing the Right of the Opposition and Incentive Systems to Counter Democratic Deterioration in Indonesia," *Jambura Law Review* 7, no. 2 (July 2025): 583–632, https://doi.org/10.33756/JLR.V7I2.29349.

This is an irony in the world's third-largest democracy. Therefore, electoral oversight reform must be oriented towards achieving substantive justice, not just administrative compliance.

To make election oversight an instrument for protecting constitutional rights, three main steps are needed. First, a comprehensive regulatory reform of the existing electoral legal framework is necessary, particularly regarding Law Number 7 of 2017 concerning Elections and Bawaslu regulations related to oversight. This revision must include an explicit mandate for Bawaslu to carry out its supervisory function in the context of protecting human rights. Adjustments to KPU regulations are also necessary to ensure that the rights of persons with disabilities, indigenous peoples, and residents in remote, outlying, and disadvantaged areas are effectively protected in practice. New regulations must also grant Bawaslu direct corrective powers over violations that affect electoral rights, including the power to order corrections to the voter list (DPT), the provision of accessible polling stations, or even re-polling. Additionally, there needs to be integration between the Election Law and Law No. 8 of 2016 concerning Persons with Disabilities, as well as other human rights provisions, to ensure inter-institutional synergy.

Second, an institutional solution can be implemented by establishing a special functional unit within Bawaslu, such as a "Constitutional and Human Rights Election Desk," tasked with addressing substantive violations of political rights. This unit can work across sectors with the National Commission on Human Rights (Komnas HAM), the National Disability Commission, and civil society organizations such as Perludem and ELSAM. Additionally, mandatory training on electoral human rights needs to be implemented for all election supervisors, from the national level to the polling station level. To reach areas with difficult access, Bawaslu also needs to develop a digital oversight system based on direct reporting from the public (similar to the cVIGIL application in India), with a disability-friendly and multilingual interface. These steps aim to build an inclusive, responsive, and electoral justice-oriented institutional capacity.

Third, as part of a long-term approach, Bawaslu must build an oversight paradigm that is not only neutral and legal-formal, but also active, affirmative, and constitutional. In this case, the indicators of successful oversight should be expanded, to include not only the number of violations prosecuted, but also the number of electoral rights restored and vulnerable groups successfully protected. In addition, international collaboration with institutions such as the Election Commission of India (ECI) and the Electoral Commission of South Africa (ECSA) can accelerate the adoption of global best practices. By building a values-based and justice-oriented oversight system, Bawaslu will be better able to maintain the integrity of elections and simultaneously strengthen substantive democracy that reaches all segments of society.

2. Political Neutrality Violations and the Ineffectiveness of Bawaslu Oversight

In the 2024 elections, the Election Supervisory Board (*Badan Pengawas Pemilihan Umum* – Bawaslu) recorded 1,650 alleged cases of the State Civil Apparatus (*Aparatur Sipil Negara* - ASN) eutrality violations, a significant increase from the 990 cases recorded in the 2019

elections.[68] These violations included participation in campaign activities, public endorsements of candidates, and misuse of state facilities for political purposes. For example, in Palopo, South Sulawesi, Bawaslu found 11 state civil apparatus involved in partisan activities, such as openly declaring support for mayoral candidates, attending campaign events in uniform, and using government facilities for political meetings.[69] Similarly, in Batam, the Head of Sei Pelunggut Village was proven to have violated ASN neutrality by attending and participating in a regional election campaign.[70] According to), the State Civil Apparatus Commission (*Komisi Aparatur Sipil Negara* – KASN) report, out of a total of 1,106 recommendations submitted by Bawaslu, only 721 recommendations were followed up administratively.[71]

From a legal perspective, this reflects the weak implementation of the principle of neutrality as enshrined in Article 2 in conjunction with Article 9 of the State Civil Aparatus of 2023, which affirms that ASN must be free from political influence. In the context of elections, the principle of neutrality is reinforced by Article 280 of the Elections Law of 2017 (as amended in 2022) and Bawaslu Regulation of 2018, which empowers Bawaslu to supervise the involvement of ASN. Unfortunately, Bawaslu's position is only recommendatory. This makes the process of enforcing ethics and law ineffective, as it depends on the willingness of the supervisory personnel. In some cases, such as in Palopo and Batam, sanctions were imposed only after prolonged delays and public pressure. This structural limitation weakens the deterrent effect of Bawaslu's oversight, often resulting in repeated violations in subsequent elections.

The concept of "political neutrality" in the modern constitutional legal system is the heart of a democratic bureaucracy.[72] When ASN take sides, it distorts the principle of equal electoral competition.[73] In a conceptual approach, neutrality is not merely the absence of overt political support, but also freedom from structural political pressure.[74] In the Indonesian context, a culture of patronage reinforces power relations, making ASN tools of political power. Bureaucratic neutrality is a crucial bridge between procedural and substantive elections, guaranteeing voters' right to choose freely.

Legally, the lack of strong sanctions from Bawaslu creates a gap between legal norms and enforcement mechanisms.[75] Constitutional Court Decision No. 41/PUU-XII/2014 in its ruling, the Court declared that the prohibition against ASN involvement in practical political activities is constitutional, as it aims to safeguard professionalism, integrity, and public trust in the bureaucracy. The Court further emphasized that ASN neutrality is a manifestation of the principle of *equality before the law* and the right to fair public services for all citizens, as

[68] Badan Pengawas Pemilu, "Data Penanganan Pelanggaran Se-Indonesia."
[69] Amran Amir and Sari Hardiyanto, "11 Abdi Negara Di Palopo Langgar Netralitas ASN, Apa Saja Pelanggarannya?," Kompas.com, September 2024.
[70] Partahi Fernando Wilbert Sirait, "Lurah Sei Pelunggut Batam Terbukti Langgar Netralitas ASN Di Pilkada," Kompas.com, October 2024.
[71] Negara, "Ratusan ASN Langgar Netralitas Jelang Pemilu, Lebih Sistemik Dan Nekat."
[72] Budi Setiyono, *Birokrasi Dalam Perspektif Politik Dan Administrasi*, ed. Irwan Kurniawan and Juftazani Ikhnathon, 2nd ed. (Bandung: Penerbit Nuansa Cendekia, 2016).
[73] Achmad Fachrudin, *Oligarki Demokrasi & Konglomerasi Media Massa*, ed. Fachmi Hidayat (Jakarta: Pustaka Literasindo, 2022).
[74] M. Faishal Aminuddin and Wahyu Prasetyawan, *PASANG SURUT DEMOKRASI: Refleksi Politik Indonesia 1999-2019*, ed. Malik Ruslan (Depok: Pustaka LP3ES, 2020).
[75] Firdaus Arifin et al., "Institutional Configuration and Competence of the Special Judiciary for Regional Election Disputes: A Comparative Study and Prospects for Implementation," *Jambura Law Review* 7, no. 2 (July 2025): 493–520, https://doi.org/10.33756/JLR.V7I2.30949.

guaranteed under Article 28D(1) of the 1945 Constitution.[76] This decision strengthens the legal basis for Bawaslu and the KASN to take action against violations of ASN neutrality, while also serving as a benchmark for assessing governmental policies or actions that may infringe upon this principle. Consequently, the ruling affirms that the supervision of ASN neutrality is not merely an administrative matter, but an integral component of protecting citizens' constitutional rights.

India implements a Model Code of Conduct (MCC) as a binding and directly enforceable election supervisory mechanism by the Election Commission of India (ECI). The MCC contains explicit prohibitions, including bans on political statements by government officials, restrictions on the transfer or rotation of officials without ECI approval, and moratoria on announcing populist policies ahead of elections. Anchored in Article 324 of the Indian Constitution, the ECI possesses direct executive authority to enforce the MCC without awaiting legislative intervention, enabling swift and decisive action.[77] In practice, this authority allows the ECI to order the immediate suspension of civil servants, postpone public programs, or even disqualify candidates involved in violations.[78]

In the 2024 Indian elections, the ECI addressed more than 16 violations of the MCC and issued formal warnings to 89 senior government officials.[79] Crucially, the ECI operates a real-time, technology-driven public complaint platform (*VIGIL app*), enabling citizens to report breaches with GPS-tagged and time-stamped evidence. This combination of legal authority, institutional independence, and digital transparency has positioned the ECI among the most effective election commissions globally.[80] From a comparative perspective, the Indian model illustrates that neutrality enforcement becomes credible only when supported by a progressive legal framework, empowered supervisory authority, and citizen-driven technological monitoring. In contrast, Bawaslu's recommendatory status under Indonesian law limits its enforcement capacity, leading to a dependency on other agencies for sanction implementation.[81] Therefore, adopting certain elements of the MCC, particularly the integration of binding enforcement powers with citizen-reporting technology, could substantially strengthen Bawaslu's ability to uphold political neutrality in Indonesia.

South Africa, through its Electoral Commission of South Africa (IEC), implements a rights-based enforcement approach, integrating the right to vote as part of the supervisory body's constitutional mandate.[82] Anchored in the *Electoral Act No. 73 of 1998* and Section 19 of the South African Constitution, the IEC possesses the legal authority to impose

[76] Akhwan Nadzirin, Retno Mawarini Sukmariningsih, and Mashari Mashari, "Does the State Civil Apparatus Violate Neutrality During Elections?," *Journal of Sustainable Development and Regulatory Issues (JSDERI)* 3, no. 2 (July 22, 2025): 400–433, https://doi.org/10.53955/jsderi.v3i2.112.
[77] Amit Ahuja and Susan Ostermann, "The Election Commission of India: Guardian of Democracy," *Springer Natrure Link*, 2020.
[78] Vaishali Yadav, "From Chaos to Control: The Riveting Evolution of Political Party Regulations," *Jus Corpus Law Journal*, 2024, 756–88, https://doi.org/https://doi-ds.org/doilink/06.2024-32656553/juscorpuslawjournal/v4/i3/756788.
[79] The Wire, "Unequal Watch: ECI Issued 16 Notices Over MCC Violations. BJP Received Just 3.," The Wire, 2024.
[80] The Wire, "Concerned Over Technology Affecting Electoral Outcomes: Civil Society Outfits to ECI," The Wire, 2024.
[81] Faridhatun Nikmah, "Legal Challenges and Enforcement Strategies: Bawaslu's Role in Addressing Election Violations in Indonesia's 2024 Simultaneous Elections," *El-Aqwal : Journal of Sharia and Comparative Law* 3, no. 2 (November 2024): 109–26, https://doi.org/10.24090/EL-AQWAL.V3I2.12588.
[82] Sithembile Mbete and Vasu Reddy, "Reconsidering South Africa's Electoral System: What Are the Alternatives?," in *Ethics, Politics, Inequality* (Lynne Rienner Publishers, 2022), 29–53, https://doi.org/10.1515/9780796926142-007.

administrative sanctions on institutions or individuals that obstruct electoral freedom.[83] A distinctive feature of this system is the *electoral justice mechanism* that allows voters to lodge complaints directly with the IEC without initiating judicial proceedings, thereby reducing procedural barriers and ensuring timely resolution of rights violations.[84] This mechanism reflects a substantive recognition of voting rights not merely as a procedural entitlement, but as an enforceable constitutional guarantee.

The IEC of South Africa also positions the neutrality of public officials as part of the constitutional principles guaranteed in Section 19 of the South African Constitution.[85] In fact, the IEC of South Africa has an internal investigative unit that can access public office records and budgets to substantively evaluate violations.[86] Notably, during the 2019 elections, the IEC halted 17 government programs found to distort electoral competition, an assertive intervention rarely observed in jurisdictions with weaker oversight bodies.[87] This experience demonstrates that human rights-based and constitutionally grounded election monitoring yields tangible results when supported by broad investigative powers, accessible remedies for citizens, and institutional independence. Compared to Bawaslu in Indonesia, whose role remains largely recommendatory, the South African model offers a paradigm where supervisory boards can act decisively without reliance on external enforcement agencies. Incorporating elements such as direct-access complaint mechanisms and statutory investigative authority could significantly enhance Bawaslu's capacity to protect political neutrality and electoral rights within Indonesia's constitutional framework.

From a comparative perspective, both the MCC in India and the IEC in South Africa recognize neutrality as an integral element of electoral justice and constitutional democracy. This comparison shows that the Bawaslu (Indonesian Election Supervisory Board) needs to move from a procedural to a substantive approach based on the protection of citizens' political rights. The General Elections Law (2017, amendment 2023) and the Bawaslu Regulation (2018) need to be revised so that the Bawaslu can have powers similar to the ECI and the IEC of South Africa, especially regarding direct sanctions and rights restoration. Furthermore, the establishment of a constitutional human rights desk within the Bawaslu could be a strategic step in addressing neutrality violations within a human rights framework.

Conceptually, integrating the principles of constitutional oversight and human rights will encourage the Bawaslu to become not only a regulator but also a guardian of democratic ethics. This reform will also fill the gap in the role that administrative law enforcement institutions have not been playing. If left unchecked, neutrality violations will become increasingly institutionalized and impact the legitimacy of elections. Therefore, it is important for Indonesia to learn from democratic countries with progressive electoral oversight

[83] Mcebisi Ndletyana, "The IEC and the 2014 Elections: A Mark of Institutional Maturity?," *Journal of African Elections* 14, no. 1 (June 1, 2015): 171–87, https://doi.org/10.20940/JAE/2015/v14i1a9.
[84] Nicholas Matatu, *Protecting Electoral Integrity: The Case of South Africa* (International Institute for Democracy and Electoral Assistance (International IDEA), 2023), https://doi.org/10.31752/idea.23.88.
[85] Molefinyana Solomon Phera, "The Status of the Public Protector Within the Governance Framework in South Africa" (University of the Free State, 2019).
[86] Victoria Graham, "The Quality of South Africa's Electoral Accountability 1994 – 2014 : Freedom, Flaws and Food Parcels," *Journal of Comparative Politics* 7, no. 2 (2014): 52–72.
[87] Naledi Modise, "An Exercise in Electoral Integrity: Reviewing the Role of the IEC in the 2024 National and Provincial Elections," *Politikon*, April 2025, 1–16, https://doi.org/10.1080/02589346.2025.2488566.

approaches so that citizens' right to vote is not only guaranteed on paper but also protected in practice.

As a comprehensive solution to the weakness in monitoring political neutrality, a regulatory reformulation is needed that grants the Bawaslu the authority to directly impose administrative sanctions on the ASN found to be in violation, through revisions to the Elections Law of 2017 (as amended in 2022) and the State Civil Apparatus Law of 2014. In addition, a special human rights-based functional unit, such as a Constitutional Human Rights Desk, should be established within the Bawaslu to investigate neutrality violations in the context of political rights protection. The implementation of rapid reporting technology, such as India's cVIGIL application, should also be adopted to accelerate responses to violations in the field. On the other hand, regular training on neutrality and constitutional ethics should be mandatory for all state civil apparatus and village officials to foster normative awareness from an early stage. With a combination of strengthening regulations, institutions, technology, and legal education, the Bawaslu will be able to carry out a more substantive, progressive, and human rights-based supervisory function.

Conclusion

This research concludes that the Election Supervisory Board (*Badan Pengawas Pemilihan Umum* – Bawaslu) supervisory function in Indonesia has not fully integrated the principles of constitutional oversight and human rights in guaranteeing political neutrality and electoral rights, especially for marginalized groups such as people with disabilities, indigenous communities, and residents in remote areas. The applicable legal framework, specifically the Elections Law of 2017 (as amended in 2022) and several Bawaslu Regulations, still provides powers that are procedural and reactive, thus not substantively strong enough to comprehensively protect citizens' right to vote. The lack of direct sanctioning powers and the minimal human rights-based approach cause the supervisory function to be predominantly administrative and not oriented towards electoral justice. These findings indicate that legal, institutional, and conceptual obstacles overlap in shaping election governance that is not yet fully substantively democratic. This study emphasizes that without an affirmative and constitutionally-based approach, election oversight risks becoming legalistic but normatively weak.

Based on this conclusion, this research recommends legal and institutional reforms that explicitly incorporate human rights protection into Bawaslu's mandate, including the establishment of a Constitutional and Human Rights Election Desk, training based on electoral inclusion, and the development of an inclusive digital monitoring system. These recommendations aim to make Bawaslu more proactive and protective, especially towards vulnerable voter groups. However, the authors acknowledge limitations in this research, which lies in the juridical-normative approach that has not been accompanied by in-depth field data, particularly regarding variations in election oversight in different regions. Further research is suggested to use a mixed-methods approach, including participatory observation

and field interviews, so that local dynamics in election oversight can be studied more contextually and strengthen the validity of the recommendations offered.

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