



# Alternative Dispute Resolution in Elections



## Practitioner Brief

APRIL 2023

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While formal dispute resolution processes in elections are vital to upholding the rule of law, the introduction of **alternative dispute resolution (ADR)** mechanisms may be beneficial, particularly in fragile and post-conflict states or new democracies where disputes must be resolved quickly to avoid violence or where there is very low trust in the judiciary. The case studies in this report demonstrate that ADR mechanisms, if designed and implemented effectively, can ensure more accessible and timely resolutions than formal mechanisms at a lower cost. The use of mediation or conciliation for certain types of pre-election disputes can lead to greater community

engagement (including of non-traditional actors), promote accessibility, mitigate impunity for electoral violations, and reduce burdens on the courts and the election management body (EMB).

Our research also highlights that a well-designed and trained ADR body can enhance the role of women and provide a culturally appropriate mechanism for dispute resolution, while preventing and defusing tensions.

This report also highlights the potential risks and challenges to ADR, particularly in contexts where the legal framework, mandate, and procedures are unclear. Inadequate training of ADR practitioners can result in mediators behaving in a partisan manner or failing to guard against power imbalances or human rights abuses, which can further increase tensions or erode trust. Finally, a lack of stakeholder awareness on how to access ADR mechanisms may leave the public with the perception that there is no avenue for justice in some communities.

Due to the informal nature of ADR mechanisms, EMBs have rarely collected data on the type and number of disputes handled through ADR, creating a challenge for research and a missed opportunity to draw on lessons learned, promote successful initiatives, and build trust in the EMBs' capacity to address legitimate disputes. This practitioner brief attempts to remedy the lack of information on the use of ADR in elections and presents a series of case studies to highlight lessons from diverse country experiences. This paper also proposes recommendations to improve the design and implementation of ADR in elections.



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## Foreword

Electoral justice aims to protect and restore citizens' rights and provide opportunities for citizens whose rights have been violated to file complaints, present their cases to be heard, and obtain a decision. To achieve electoral justice, an electoral management body or election supervisory body can use alternative dispute resolution (ADR) mechanisms or electoral dispute resolution (EDR) mechanisms. Whichever form is taken, it has the purpose of providing for an effective remedy, independence, impartiality, and timely action, which are crucial to maintaining the credibility of the election process as noted in the 2011 International Foundation for Electoral Systems (IFES) *Guidelines on Understanding, Adjudicating, and Resolving Disputes in Elections*.

In the Indonesian context, all election disputes arising before the announcement of the final vote result by the election commission are under the authority of Bawaslu, a supervisory election body, and the use of ADR is expressly stipulated therein. Provisions in the law clearly define the role of the district court, administrative court, election commission, and Bawaslu. Bawaslu seeks to promote the concept of restorative justice, in which the parties' collective participation is based on consensus and focuses on efforts to improve the recovery of the losses suffered by the aggrieved persons. While ADR was used only in an informal manner at first, the 2017 Electoral Law marked an important evolution by defining electoral disputes, and it gave Bawaslu the authority to mediate over pre-election disputes. Bawaslu further defined the ADR process in its regulations which provided for the mediation process from submission of the dispute to settlement. Bawaslu also conducted an extensive training program for all its officials. In Indonesia, ADR has been a means to empower Bawaslu's supervisory board as an arbiter and adjudicator.

I welcome this Practitioner Guide, developed by IFES, regarding the use of ADR in elections. The election process is a long journey, and issues that arise at each stage of the process can cause the election cycle to be hampered or derailed. ADR can function adequately if the electoral law clearly states the mandates and powers of the ADR body, which can initiate mediation or conciliation and define the process and the object of the dispute in question. If this is not confirmed in regulation, then confusion could arise among the EDR actors responsible for handling allegations of criminal offenses and administrative violations, for instance. Moreover, without proper training and adequate rules, inconsistency, and procedural errors in the conduct of the ADR process in various regions can jeopardize the fairness of the process and the trust of the public.

ADR in the electoral process is not something new in Indonesia and has contributed to the efficiency of Bawaslu as a supervisory body in elections. However, this Practitioner Guide reveals that efforts to strengthen the practice of ADR in the electoral process are still needed. And, while implementation from one country to another differs, this guide provides recommendations for election administrators to improve these mediation or conciliation processes. This Practitioner Guide, I believe, can contribute to raising the importance of introducing or strengthening the use of ADR in the electoral process. And, as this publication shows, we can all benefit from other countries' positive experiences or challenges so we can all do better as election officials or election supervisory authorities in resolving election disputes.

**Fritz Edward Siregar, PhD** (*Indonesia Bawaslu, Former Commissioner*)