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## Legal and Ethical Debate on Escorts on Public Roads: A Comparative Case Study

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**Abstract:** This research provides an extensive inquiry into the systemic conflict between judicial mandates and administrative finality within the Indonesian electoral justice system. By focusing on the high-profile disqualification and subsequent legal reinstatement of DPD candidate Irman Gusman, this study dissects the implementation of the principle of legal certainty (*asas kepastian hukum*) amidst the rigid progression of election stages. Using a normative-juridical framework, the paper evaluates the Jakarta State Administrative Court's (PTUN Jakarta) findings regarding procedural maladministration and substantive misinterpretations of criminal law by the General Election Commission (KPU). Furthermore, it explores the broader implications of institutional resistance, where the KPU utilized the "non-executable" doctrine to ignore a final and binding court order. The eventual resolution through the Constitutional Court's (MK) intervention, which ordered a province-wide re-vote, serves as a testament to the high cost of administrative disobedience. This study concludes that the lack of synchronization between judicial timelines and logistical calendars creates a "crisis of certainty" that requires urgent legislative reform to ensure that the rule of law (*rechtsstaat*) remains the ultimate arbiter of democratic eligibility.

**Keyword:** Discretion, Escort, Equality Principle, Risk-Based Approach, UU LLAJ

### INTRODUCTION

The stability of a constitutional democracy relies heavily on the predictability and fairness of its legal framework, particularly during the transition of power through general elections (Asshiddiqie, 2007). In Indonesia, the principle of legal certainty is enshrined as a fundamental pillar of state administration, designed to protect citizens from arbitrary government actions. In the context of elections, this certainty is multifaceted: it involves the

regularity of the electoral calendar, the clarity of eligibility criteria, and the finality of dispute resolutions (Rigoni, 2014). However, the 2024 General Election cycle exposed a profound structural tension where these different dimensions of certainty collided (Nursidi et al., 2025). The central problem arises when a judicial body, such as the State Administrative Court (PTUN), issues a ruling to correct an illegal administrative act at a time when the "administrative machine" has already progressed to a stage of perceived irreversibility (Marbun, 2011).

The "Election Justice System" in Indonesia was architected to provide a comprehensive path for resolving grievances, moving from the Election Supervisory Body (Bawaslu) to the PTUN for administrative disputes, and eventually to the Mahkamah Konstitusi (MK) for result-based conflicts. Yet, the case of Drs. H. Irman Gusman, MBA, a prominent DPD candidate from West Sumatra, revealed that this path is fraught with institutional bottlenecks. Despite obtaining a final and binding decision from PTUN Jakarta that declared his disqualification unlawful, the KPU RI chose a path of active resistance, claiming that the advanced stage of ballot printing (Sopian, et al. 2025). and the "five-year waiting period" norm for former convicts rendered the court's order impossible to execute. This situation created a state of legal limbo, where the candidate possessed a judicial right that lacked an administrative remedy, effectively stripping the court's decision of its functional power (Ridwan, 2020).

This research posits that the KPU's refusal to execute PTUN decisions under the guise of logistical "impossibility" represents a dangerous shift toward administrative supremacy over judicial authority (Kurniawan, 2024). By weaponizing the "non-executable" doctrine, an organizer can effectively nullify the judiciary's role as a guardian of electoral integrity. To understand the gravity of this problematika, one must look beyond the technicalities and examine the ethical and constitutional foundations of the *rechtsstaat* (Hadjon, 2007). Through a systematic and intellectual analysis of Decision Number 600/G/SPPU/2023/PTUN.JKT, this paper will trace the evolution of the dispute, evaluate the legal reasoning of the judges, and analyze the subsequent interventions by the DKPP and the MK. Ultimately, this study aims to provide a theoretical and practical framework for reconciling the need for a strict election calendar with the absolute requirement of substantive justice and legal certainty.

## METHOD

This research uses a normative-comparative method with an analytical approach to laws and regulations and a comparison of the implementation of escort practices in other jurisdictions. This research argues that to restore public trust and ensure justice on public roads, the LLAJ Law must be revised to clearly distinguish between functional priorities and status priorities, while increasing the competence and integrity of police officers. So that discretion can be used wisely and professionally, so that escorts can return to their essential functions.

## RESULTS AND DISCUSSION

### Implementation of Legal Certainty Amidst Rigid Electoral Timelines

The first research problem concerns the friction between the theoretical mandate of legal certainty and the practical exigencies of an ongoing election. In Indonesian administrative law, legal certainty implies that once a court issues a final and binding (*inkracht*) decision, that decision becomes the new legal reality that the state must uphold (Mertokusumo (2003). However, in the electoral realm, the KPU operates on a "static certainty" model, where the completion of one stage (such as the DCS) and the transition to the next (the DCT) is viewed as a "closed door." When a PTUN ruling orders the KPU to reopen that door for instance, by adding a candidate to a list that has already been sent to the printers the KPU often perceives this as a threat to the "certainty" of the election schedule. This creates a fundamental misunderstanding of the principle: true legal certainty is not merely about adherence to a

timeline; it is about ensuring that the timeline itself is grounded in lawful and valid administrative acts (Otto, 2003).

The KPU's reliance on the "non-executable" doctrine in the 2024 election represents a significant implementation failure of the *erga omnes* nature of PTUN decisions. An *erga omnes* ruling in administrative law is one that is binding not only on the immediate parties but on all state institutions, precisely because it addresses the validity of a public norm or act. By declaring a decision non-executable due to logistical constraints, the KPU effectively asserts that administrative convenience is a superior legal value to judicial finality. This creates a state of "unpredictability," which is the antithesis of legal certainty. Potential candidates and the electorate are left in a position where the rules of the game can be corrected by a court, but the organizers can ignore those corrections by simply citing the "speed" of their internal processes. This dynamic suggests that Indonesia's electoral justice system is currently suffering from a lack of coercive integration, where the administrative branch is permitted to "veto" the judicial branch through inaction.

Furthermore, the implementation of certainty is hampered by the "war of decisions" between different judicial levels. The KPU argued that they were caught between a PTUN order (which favored the individual candidate) and broader norms from the Supreme Court and Constitutional Court (which emphasized restrictions on former convicts). Instead of seeking a harmonious interpretation or following the specific order of the court that had direct jurisdiction over the administrative dispute, the KPU chose to perform its own "judicial review" of the PTUN's reasoning. This act of self-help by an administrative body is a grave violation of the separation of powers. Legal certainty can only be restored if the Election Law is amended to clarify that in cases of specific administrative grievances, the order of the competent court (PTUN) must be followed immediately, and any perceived normative conflicts must be resolved through higher-level judicial mechanisms, not administrative defiance.

### **Analysis of Procedural and Substantive Findings in Decision No. 600/G/SPPU/2023/PTUN.JKT**

The second sub-topic addresses the specific legal errors that led PTUN Jakarta to annul the KPU's disqualification of Irman Gusman. From a procedural perspective, the Majelis Hakim identified a classic case of maladministration (Manan, 2004). The court found that the KPU had systematically bypassed the *due process of law* requirements explicitly laid out in its own regulations (Indrati, 2007). According to Article 180 of PKPU Number 10 of 2022, the KPU was under a strict mandate to conduct a formal clarification process if they intended to change a candidate's status from "Eligible" in the DCS to "Ineligible" in the DCT based on new feedback. The trial revealed that the KPU never summoned Gusman, never presented the evidence for his disqualification, and never allowed him to provide a rebuttal. Instead, the KPU unilaterally altered his status in the SILON database and published the DCT without a valid minutes-of-clarification (*berita acara*). The court emphasized that a decision made in such a procedural vacuum is inherently "un-cautious" and violates the principle of transparency, making it voidable under the rules of the *rechtsstaat* (Abdullah, 2005).

On the substantive side, the PTUN judges delved into the complex intersection of criminal law thresholds and administrative eligibility. The KPU had disqualified Gusman by applying a blanket interpretation of the "five-year waiting period" for former convicts, based on their reading of MK Decision No. 12/PUU-XXI/2023. However, the PTUN Jakarta provided a rigorous analysis of the specific criminal article under which Gusman was convicted. Gusman was found guilty under Article 11 of the Anti-Corruption Law, which carries a penalty range of one to five years. The court argued that this does not fall into the category of crimes "punishable by five years or more" in the same way that more severe offenses do. In criminal legal logic, "up to five years" is a different gradated threshold than "five years and above." By

failing to make this distinction, the KPU misapplied the constitutional norm to a situation where it did not legally apply, thereby committing a "manifest error in law" (*kekeliruan nyata*).

Moreover, the court invoked the principle of *lex specialis* to protect the candidate's restored political rights. Gusman's specific Peninjauan Kembali (PK) verdict from the Supreme Court had already imposed a three-year revocation of his right to be elected, a period he had already completed by the time of his registration. The PTUN judges reasoned that when a specific judicial sentence has already defined the limits of a person's punishment and that person has fully served those limits, an administrative body cannot use a general regulation to extend that punishment by another five years. To do so would be a form of "administrative double jeopardy," extending a judicial penalty without the authority of a judge. This substantive analysis highlights the court's commitment to protecting fundamental human rights against the encroachment of administrative overreach, reaffirming that the law must be applied kasuistically based on specific legal facts, not through broad and harmful generalizations.

### **Implications of Institutional Resistance and the Constitutional Restoration via Re-Vote (PSU)**

The third problem explores the consequences of the KPU's defiance and the subsequent attempt to mend the system. Juridically, the KPU's refusal to execute the PTUN decision created a "rupture" in the rule of law (Kelsen, 1967). It proved that a final judicial order in Indonesia could be rendered meaningless by an administrative agency's claim of "logistical finality." This has profound implications for the legitimacy of the entire election; if an organizer can choose which court orders to follow and which to ignore, the election is no longer "honest and fair" as mandated by Article 22E of the 1945 Constitution. Ethically, this defiance led to a severe reprimand from the DKPP (Decision No. 16-PKE-DKPP/I/2024), which issued a "Severe Warning" to the KPU commissioners. The DKPP rightly identified that the KPU's actions showed a lack of integrity and a failure to respect the dignity of the judicial process. By issuing a press release rejecting the court order only two hours after it was read, the KPU exhibited a level of administrative arrogance that is incompatible with the duties of a neutral election organizer.

The constitutional crisis created by this resistance necessitated the intervention of the Mahkamah Konstitusi as the "last guardian" of democracy. In Case No. 03-03/PHPU.DPD-XXII/2024, the MK delivered a historic and sharp critique of the KPU's "systemic disobedience." The MK ruled that the KPU's failure to execute the PTUN decision was a "grave violation of the principle of the rule of law" and a direct theft of the people's right to choose their representatives. The MK recognized that once the PTUN had declared Gusman's disqualification illegal, every subsequent action of the KPU including the February 14 voting process became constitutionally tainted. To rectify this, the MK took the unprecedented and radical step of annulling the results of the DPD election for the entire province of West Sumatra and ordering a total Re-Vote (PSU) with Gusman's name restored to the ballot.

The implementation of the PSU in West Sumatra serves as both a remedy and a warning. While it successfully restored Gusman's constitutional right as evidenced by him securing the fourth-highest vote count and a seat in the DPD it did so at an enormous cost to the state. The energy, time, and billions of rupiah spent on the re-vote were the direct result of the KPU's initial failure to obey the PTUN. This case proves that "administrative efficiency" is a hollow goal if it leads to "substantive injustice" that must later be corrected through even more expensive means. The PSU mandate reaffirmed that the power of the high courts will ultimately override administrative recalcitrance, but it also highlighted a massive gap in the system: why must a candidate wait for a post-election PHPU to get the justice that was already granted to them by a PTUN months earlier? The lesson is clear: for legal certainty to exist, judicial

corrections must be "self-executing" or backed by automatic sanctions that make administrative resistance an impossible option for organizers.

## CONCLUSION

The legal saga of Irman Gusman and PTUN Jakarta Decision No. 600/G/SPPU/2023/PTUN.JKT serves as a profound reflection on the fragility of the rule of law within Indonesia's electoral architecture. This study has demonstrated that the principle of legal certainty is often held hostage by a rigid administrative culture that prioritizes the "sanctity of the schedule" over the "sanctity of the law." The KPU's use of the "non-executable" doctrine to bypass a final and binding judicial order was not merely a technical error, but a significant form of maladministration and an ethical breach that undermined the institutional dignity of the judiciary. The PTUN's findings revealing both procedural shortcuts and substantive misinterpretations of criminal law thresholds underscore the vital role of the courts in protecting constitutional rights against bureaucratic overreach.

While the eventual intervention of the Mahkamah Konstitusi and the resulting Re-Vote (PSU) successfully restored substantive justice for the candidate and the electorate, the process highlighted a systemic inefficiency. The high social and financial costs of a province-wide re-vote are the "price" of administrative disobedience. To prevent such a crisis from recurring, Indonesia must move toward a more integrated electoral justice system. This requires legislative reforms that synchronize judicial timelines with logistical stages, ensuring that all disputes are resolved before the "point of no return" in ballot printing. Furthermore, the introduction of automatic enforcement mechanisms and stringent penal sanctions for organizers who ignore court orders is essential to ensure that legal certainty is dynamic, just, and absolute. Ultimately, the legitimacy of an election rests not on its speed, but on the certainty that every stage has been conducted in full compliance with the law and the final mandates of the judiciary (Muchsán, 1981).

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