

Analysis of Bawaslu's Authority as a Supervisory Institution in Resolving Election Disputes

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ABSTRACT

In enforcing Pilkada violations, the Election Supervisory Agency (Bawaslu) has the authority to supervise and resolve disputes over the electoral and regional election processes. This has been stated in the legislation that Bawaslu is authorized to deal with structured, systematic, and mass administrative violations in the application of law in Indonesia. In its settlement in the Constitutional Court also holds ownership of this authority with regard to disputes over election results that should be able to achieve legal certainty. In Law Number. 7 of 2017 concerning General Election Regulations, Bawaslu's role in monitoring and eradicating money politics is not ideal because it has obstacles that prevent and punish money politics in regional head elections. Bawaslu needs to continue to develop its human resources. The purpose of Bawaslu's establishment is to increase effectiveness as an election supervisory body and supervise the recruitment budget to create honest, fair and election results.

Keywords: Supervisory Body, General Election, Authority, Administrative Violation.

I. Introduction

General elections are a means to realize the sovereignty of the people held directly, openly, freely, secretly, honestly and fairly in the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia. The Indonesian rule of law according to the 1945 Constitution contains nine (9) principles, one of which is the sovereignty of the people or the principle of democracy. This can be seen in the contents of the Preamble of the 1945 Constitution, "Democracy led by wisdom in deliberation / representation" and Article 1A paragraph (2) of the 1945 Constitution, "Sovereignty is in the hands of the people and implemented according to the basic law"¹. According to Dahlan Thaib, in a democratic society, elections are considered a process of peaceful transfer of power, which is carried out periodically in accordance with the principles set out in the constitution. Thus it can be understood that elections are a very important political activity in the process of exercising power in a country with a democratic system. In the implementation of elections, election organizers are needed to create fair elections. The election organizing institution has been regulated in Article 22E paragraph (5) which states that "Elections are held by a general election commission that is national, permanent, and independent". This means that the election organizing body must be free from influence and intervention from any party in carrying out its duties, functions, authorities and obligations. The institution of organizing elections has actually been accommodated in Article 1 number 7 of Law Number 7 Year 2017 concerning General Elections. The article divides the election organizing institutions into three institutions, namely: First, the General Election

Commission (KPU). Second, the Election Supervisory Body (Bawaslu). Third, the Honorary Council of Election Organizers (DKPP) (2).

Bawaslu is one of the state institutions or organs in Indonesia that was formed to oversee or have a supervisory function in the implementation of general elections in Indonesia. The birth of Bawaslu was motivated by public distrust of the results of the implementation of elections which were considered manipulative and fraudulent. Therefore, in the development of the implementation of elections in Indonesia, Bawaslu carried out its function as a supervisory team in the election to minimize the potential for fraud to occur, as well as the urge to realize a more democratic election under the new order regime (surbakti and fitrianto, 2015).

The presence of Law Number 7 Year 2017 has led to several changes contained in this Law, one of which is in the form of changes regarding the regulations on election organizers. The form of change is the granting of authority to the Election Supervisory Body, Provincial Bawaslu, and Regency / City Bawaslu in election administrative violations in the form of receiving, examining, reviewing and deciding election administrative violations³. In this case, Bawaslu functions as a supervisor and is given adjudication authority in the hope that it can work better in managing the election process, especially in resolving process disputes, where Bawaslu's decision is final and legally binding and fair. Bawaslu has the authority to carry out the role of supervision and the task of resolving violations and conflicts that arise in each election implementation in the Bawaslu's working area in the district/city.

The great authority of Bawaslu as a supervisor of the implementation of the Election is an executive function and the authority to decide on the settlement of disputes over the Election process which is identical to the judicial function, will be contradictory when referring to the Trias Politica doctrine that authority / power (executive, legislative, judicial) must be limited to ensure that there is no arbitrariness of power holders in this case state institutions authorized either from the 1945 Constitution of the Republic of Indonesia or regulations. legislation. Therefore, it is important for the author to conduct research on how the implementation of Bawaslu's authority as an Election Supervisory Institution and Deciding the Settlement of Election Process Disputes.

II. Research Method

This research uses normative legal research methods with statutory and conceptual approaches. The legal materials used in this research include laws and regulations, books, legal scientific articles, and online materials that discuss simultaneous elections. The collection of legal materials was carried out using literature techniques. The collected legal materials are then analyzed qualitatively to describe the problem and answer the research objectives.

III. Result and Discussion

3.1. Bawaslu's authority under the election law

The enactment of Law No.7/2017 made Bawaslu's position stronger in handling election violations. In this law, Bawaslu in handling election disputes can not only provide recommendations to the KPU but also provide or make decisions that must be implemented by the parties. This means that Bawaslu currently has broader authority in handling election cases such as administrative violations and other violations. In the context of handling election violations, Article 95 Bawaslu has the authority including; a) Examine, review and decide on violations, election administration; b) Examine, review and decide on money politics violations; and c) Receive, examine, mediate or adjudicate, and update the settlement of election process disputes. As a supervisory institution, Bawaslu has a fairly complex authority to function in creating an honest, free and fair election. So Bawaslu is obliged to oversee the election so that there are no interes and horizontal conflicts. In carrying out its functions, Bawaslu takes preventive steps in ensuring elections run according to statutory

regulations. Bawaslu is obliged to do the following; a) Developing standards for the supervision of the Implementation of Elections for Election Supervisors at every level, both national, provincial and regional, b) Preventing and taking action against election violations; and disputes over the election process, c) Supervising the implementation of the stages of the Implementation of the Election, which consists of recapitulating the results of the vote count at all levels and levels; d) Carrying out other duties in accordance with the provisions of laws and regulations. Thus, based on the above explanation, Bawaslu actually has the law to resolve violations of election rules. That is, juridically Bawaslu has the power and legal certainty to work and take action against election violations, both in the aspects of election crimes, election administration and election code of ethics.

Over time, along with election regulations that are constantly updated and refined, in the 2004 elections the authority of Panwaslu increased. The institutional arrangement of Panwaslu is contained in Law No. 12/2003 on the General Election of Members of the House of Representatives, Regional Representatives Council, and Regional People's Representatives Council and also regulated in Law No. 23/2003 on the General Election of the President and Vice President. The Panwaslu from the central, provincial, to district/city levels consisted of elements of the National Police, the Attorney General's Office, higher education, community leaders, and the press as an effort to handle joint election violations, which was a reflection of the 1999 elections. This collaboration between Panwaslu, the Police, and the Prosecutor's Office is in order to create the same frequency related to understanding, perception, and the same standards in handling cases of election violations, which in its development is known as the Integrated Law Enforcement Center (Sentra Gakkumdu). The authority of Panwaslu in Law 12 of 2003 is: a) to supervise all stages of the election; b) to receive reports of violations of election laws and regulations; c) to resolve disputes arising in the implementation of elections; and d) to forward findings and reports that cannot be resolved to the authorized agency. So that the existence of Bawaslu as a supervisory institution as well as part of the prosecution and enforcement of certain violations of election law makes the implementation of elections expected to be more democratic. In addition, the dynamics of Bawaslu's authority in "deciding" or resolving election violations, especially administrative violations and process disputes in the 2019 elections, made Bawaslu dubbed a quasi judicial institution. Thus, in reviewing the development of Bawaslu historically, the supervisory function and quasi judicial function have become a distinctive unity of Bawaslu as an election organizing body in Indonesia. However, what is important to note together is that the addition of Bawaslu's authority will actually cause problems in its implementation. This condition gave birth to a constructive argument that in carrying out the supervisory function while carrying out the function of resolving election disputes, Bawaslu acts as if acting as an investigator (police), prosecutor (prosecutor) and at the same time a judge because it acts as an actor in carrying out the adjudication process (Sulistiyono, 2018). The mixing of authority is very prone to conflicts of interest, abuse of authority and Bawaslu's subjectivity because it plays a dual role as a supervisor and also a Dispute Decider for the Election Process.

3.2. Handling of Election Administration Violations

Election administration violations are violations of the provisions of the Election Law that are not criminal election provisions and other provisions regulated in KPU regulations. The provisions and requirements according to the election law can of course be the provisions and requirements regulated, both in the election law and in KPU decisions that are regulating as the implementing rules of the election law. According to this understanding, the number of administrative violations is of course very large. An example of a provision under the Election Law is: "To be able to exercise the right to vote, a citizen of the Republic of Indonesia must be registered as a voter." With this provision, if someone who is not registered as a voter votes on the day of voting, an administrative violation has occurred. Examples of requirements under the Election Law are: "education requirements, voter age requirements, and so on." Provisions and requirements are also found in many KPU decisions. For example, regarding election campaigns, where there are many administrative violations such as concerning the places where campaign attributes are installed, the

prohibition of bringing children under 7 years old or the prohibition of cross-region convoys, in terms of resolving election crimes, the law provides rules or mechanisms ranging from reporting, investigation, prosecution, to trial, at least the time limit is determined, and the resolution of election crimes which also provides rules regarding time limits, even the stages of dispute resolution. In contrast, for administrative violations, the Election Law only states that reports that constitute administrative violations are submitted to the KPU. So it is not clear how the KPU resolves these administrative violations and how long the KPU can resolve them. Election administrative violations are forwarded to the KPU, Provincial KPU, and Regency / City KPU at their level no later than 1 (one) day after being decided by the Election Supervisor. The forwarding of the report is accompanied by a copy of the reporter's report and the results of the study of the report. Some examples of election administration violations are as follows: installation of props for campaign participants, such as posters, flags, banners, and others installed carelessly.

The law prohibits the installation of props in places of worship, places of education, government office environments; KPU regulations prohibit the placement of campaign props on main or protocol roads and expressways or toll roads. Communities or convoys heading to and leaving the campaign locations of general meetings and limited meetings are not notified in advance to the police so they do not have the opportunity to organize convoy travel. In addition, convoy participants often went off the path set by the committee. General meeting campaigns were conducted beyond the specified time. Campaigns crossing electoral district boundaries. Changes in the type of campaign, in this case the KPU and election participants have determined that certain political parties conduct a limited campaign in a certain place, but in practice the limited campaign turns into a general meeting campaign which in the end is also followed by the community.

Article 460 paragraph (l) of the Election Law stipulates that administrative violations of elections include violations of procedures, procedures, or mechanisms related to the administration of the implementation of elections in each stage of the implementation of elections. This provision distinguishes the nature of violations, namely violations regarding procedures, procedures and mechanisms, and the object of violation is the "administration" of the implementation of elections, so that administrative violations of elections consist of three types of violations: violations of the 'procedures' of the administration of the implementation of elections, violations of the 'procedures' of the administration of the implementation of elections, and violations of the 'mechanism' of the administration of the implementation of elections.

The legislators did not formulate the legal criteria either in the body or in the article-by-article explanation. This is confusing because it is difficult to distinguish at the practical level of organizing elections. If it is related to the concept of universally applicable law, administrative violations are basically related to violations of the rules and principles of procedural law and thus violations of procedures and mechanisms are included as a form of violation of legal procedures. Election administrative violations are violations of administrative procedures for the implementation of elections, which is correct, but excessive or redundant plus procedures and mechanisms. The object of Election administrative violations concerns the 'administration' of the implementation of elections in each stage of the Election. There is no clarity regarding the definition of administration in the provision.

The term administration is found in the phrase 'Government administration formulated in the provisions of Article 1 number 1 of the Law. AP and has the following meaning: "Government Administration is the procedure in making decisions and/or actions by government bodies and/or officials". On the basis of these provisions, the definition of administrative violations of election implementation includes two things, namely: Article 461 paragraph (3) of the Election Law stipulates that the examination by Bawaslu must be carried out openly. Conceptually and in judicial institutional practices, an open examination of administrative violations of elections concerns aspects of the examination procedure. The procedure for examining administrative violations in an open manner means that the examination is carried out by all members of Bawaslu against the parties (complainant/inventor and reported party) which can be attended or witnessed by citizens. On this basis, an open examination means that the examination and decision on alleged administrative violations is carried out through a trial. Election administrative violation examination hearing

is conducted in 2 (two) stages. The first stage is a 'preliminary examination' to determine the fulfillment of the formal and material requirements of a report as well as regarding the reporting time and Bawaslu's authority to examine and decide on a report or findings of the Provincial Bawaslu. If in the preliminary examination a report has fulfilled all the requirements, then an examination hearing is held in the second stage. If in the preliminary examination there is a report that does not meet one of the requirements of the report, it will be decided that the report will not be accepted, so that the 'preliminary examination' forum is a means of deciding whether a report is accepted or not accepted. The second stage is a hearing on the examination of the main report or the findings of the examination of the main report. In conducting the examination hearing, the Head of Bawaslu is active in examining and proving the reporter's report and the reported answer. The parties (the reporter and the reported party) are given the space and opportunity to submit reports and answer reports and submit evidence for the reporter and the reported party. After examining the report and carrying out the evidentiary process in the hearing on the main examination of the report, the Chairman of Bawaslu will finally issue and read out the verdict on the submitted report. Broadly speaking, there are types of Bawaslu's verdicts, namely no proven administrative violations or proven administrative violations. If the verdict of the Head of Bawaslu states that an administrative violation has occurred, it is followed by administrative sanctions.

3.3. Resolution of Election Administration Violations

Regulations on the resolution of election administrative violations are part of administrative law enforcement, there are two doctrines that are always seen as tools for administrative law enforcement. First, supervision both to ensure whether a government organ has complied with and based on the provisions of laws and regulations and to supervise the implementation of decisions that place obligations on a person or legal entity. Second, the application of sanctioning authority. Supervision is a preventive step, while imposing sanctions is a repressive step to enforce decisions. In the context of supervision, it is known that supervision is carried out before a decision is issued (a priori), and supervision is carried out after the issuance of a government decision (posteriori). IDEA International asserts that the fairness of an election can be achieved if the electoral means and mechanisms contain three elements, namely the prevention of electoral disputes, the resolution of electoral disputes, and alternative dispute resolution outside the existing mechanism. In the context of general elections in Indonesia, the 2017 Election Law has contained several provisions on the mechanism for resolving administrative violations. One that is apparent is that violations are not solely resolved based on reports from observers or members of the public, but also findings. Findings are the result of active monitoring, while reports are alleged violations reported by parties who have legal standing to report.

The mechanism for resolving election administration violations can generally be divided into pre-trial preparation, trial, and post-decision. The pre-trial stage includes the occurrence of the violation event, preparation of the reporter to prepare his/her identity, and evidence, and reporting the alleged violation to the election supervisory body according to the level. The trial stage relates to the structure of the trial such as the panel of examiners and trial assistants, the preliminary examination including the examination of the validity of the complainant and his/her report, supporting evidence up to the reading of the decision. The post-decision stage is part of the mechanism that contains the reporter's corrections, follow-up to the decision by the General Election Commission or other institutions, and other possible legal remedies.

The resolution of electoral administrative offenses recognizes two procedural laws of examination, namely the ordinary examination and the expedited examination. A speedy examination is carried out some time after the occurrence of the violation at the scene by considering feasibility and security. In essence, the violation must be resolved as soon as possible. The limit as soon as possible in the context of resolving administrative violations through fast procedural law according to Perbawaslu 8/2018 is no later than two days from the time the report is received. Election supervisors can recommend to the KPU at each level to temporarily stop activities until the verdict on the alleged administrative violation. In connection with the

procedural justice mechanism in resolving administrative violations by Bawaslu, IDEA International introduces electoral justice as a factor that must exist in every democratic electoral system. Electoral justice contains characteristics, namely, first, there is a guarantee that every action, procedure and decision related to elections is in accordance with statutory regulations; second, there is protection and restoration of citizens' voting rights; and third, there is a guarantee for citizens who want to file complaints that they can complain, have the right to take part in the trial, and get a decision on public complaints.

IV. Conclusion

General elections are mandatory in Indonesia because they are a means by which people choose their leaders for the welfare of the people, nation and state. The organization of this election has been regulated in legislation, namely Law Number 7 of 2017 concerning General Elections. This law contains all the rules for the administration of general elections and there are also rules made by the Election Supervisory Agency which are always updated as the times develop according to the circumstances in this country. Every provision has been clearly stated and every administrative activity in general elections should be carried out based on existing laws and regulations in order to realize a fair election, the law does not list the types of administrative violations. However, it has been explained that every thing that violates the provisions in the law outside of criminal provisions is classified as a form of administrative offense. Every provision of this election has been explained in the law along with regulations from the KPU. The settlement of this administrative violation is also regulated in the Election Law and Bawaslu regulations, and every administrative violation found by Bawaslu must be submitted and will be followed up by the General Election Commission as the Election Organizer.

Based on the explanation above, it can be concluded that Bawaslu's legal decision in the election dispute is legally valid. This is based on Bawaslu's authority since the birth of Law No.7 of 2017 concerning Elections Article 95 which states that Bawaslu is authorized to receive and follow up reports relating to alleged violations of the implementation of elections. Bawaslu is also authorized to examine, review, and decide on violations, both election administration violations and money politics violations. Then in the election process dispute, Bawaslu is authorized to receive, examine, mediate or adjudicate, and decide on the settlement submitted by election participants.

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