

THE EXISTENCE OF THE ELECTION SUPERVISORY AGENCY AS AN INDEPENDENT INSTITUTION IN HANDLING ADMINISTRATIVE VIOLATIONS IN THE ELECTIONS OF GOVERNOR, REGENT AND MAYOR

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ABSTRACT

In the design of the Local Leaders Election Law, the Provincial and Regency/City Election Supervisory Agency are positioned as part of the process for resolving administrative violations, specifically by issuing recommendations. While, the resolvents are the Provincial and the Regency/City General Elections Commission, namely following up on the recommendations of the Provincial and the Regency/City Election Supervisory Agency regarding findings and reports of election violations. In practice, the recommendations given by the Election Supervisory Agency to the General Elections Commission are often ignored, so that the recommendations of the Election Supervisory Agency are often legally meaningless. This affects the existence of Election Supervisory Agency in exercising its authority to handle administrative violations of the Local Leaders Election. The problems studied are: how is the handling of administrative violations in the Election of Governors, Regents and Mayors by the Election Supervisory Agency and how is the existence of the Election Supervisory Agency as an Independent Institution in handling administrative violations in the Election of Governors, Regents and Mayors. This research was normative legal research focusing on the study of laws and regulations governing the handling of administrative violations of the Local Leaders Election using primary, secondary and tertiary legal materials. The results of the study show that Election Supervisory Agency 's authority is limited by the Regional Election Law, which states that the authority to complete the process of handling administrative violations is through a clarification and study process, the results of which are in the form of recommendations to the General Elections Commission and the General Elections Commission is required to follow up by preparing a legal review by paying attention to the fulfilment of the elements of the existence of administrative election violations, which is then held in a plenary meeting to examine and decide on the follow-up actions for the administrative election violations. Therefore, the existence of the Election Supervisory Agency as an independent institution is slightly weakened in the process of organizing Local Leaders Election.

Keywords: Existence, Election Supervisory Agency, Law Enforcement

INTRODUCTION

1. Research Background

The implementation of the Local Leaders Election is carried out by an independent and

permanent national institution, namely the General Election Commission. The long history of the implementation of the Local Leaders Election in Indonesia

provides important lessons on how to ensure that every Local Leaders Election continues to run according to its principles. The Pancasila Legal State is applied in Indonesia, where the concept of the rule of law is emphasized in Article 1 number (3) of the 1945 Constitution of the Republic of Indonesia, which originates from the main ideas of the opening of the 1945 Constitution of the Republic of Indonesia, which places Pancasila as the philosophy of the Indonesian State which has a "dual position" in the national legal system, namely as a legal ideal (*rechtsidee*) which has a constitutive function and a regulatory function and is positioned as a basic norm (*grundnorm*).¹

A clean and democratic Local Leaders Election will produce a clean leader. However, in its implementation, there are still many problems and violations that often occur at the central, provincial and regency/city levels. To overcome these problems, supervision is needed. The Election Supervisory Body was formed, hereinafter referred to as Bawaslu. In the design

of the Local Leaders Election Law, the Provincial and the Regency/City Bawaslu are positioned as part of the process of resolving administrative violations and election disputes, namely issuing *etimo* and decisions. The resolvents are the Provincial and the Regency/City KPU, namely following up on the recommendations and decisions of the Provincial and Regency/City Bawaslu regarding findings and reports of election violations.

In practice, the recommendations given by Bawaslu to KPU are often ignored, so that Bawaslu's recommendations are often legally meaningless. So far, KPU's follow-up can be by the recommendations issued by Bawaslu, but not infrequently the KPU re-examines the related parties whose results can differ from Bawaslu's recommendations. One example of a case that occurred in the *Pilkada* of South Nias Regency year of 2020, the KPU responded to the South Nias Regency Bawaslu Recommendation by conducting a re-examination and concluding that the Candidate Pair reported by

¹I Dewa Gede Atmadja et.all., *Membangun Negara Hukum Yang Bermartabat*, Setara Press, Malang, 2013, p. 115.

Bawaslu was not proven to have committed election administration violations.²

Based on this, it is urgent for there to be a common perception between the KPU and Bawaslu regarding the phrase 'follow-up' to the results of handling administrative violations of the Election from Bawaslu in the form of recommendations. Referring to the Constitutional Court Decision No. 31/PUU-XVI/2018, the judicial review of Law Number 7 of 2017 concerning General Elections (hereinafter referred to as the Election Law), the Court has previously determined its position on the position of Bawaslu's recommendations with the KPU's Decision. The view from the Court is the validity of Article 286 paragraph (2) of the Election Law is a form of affirmation regarding the distribution of authority of Bawaslu and KPU as the implementing parties of the general election. Looking at the construction of this norm, the KPU's authority to impose administrative sanctions on Candidate Pairs, DPR, DPD,

Provincial DPRD and Regency/City DPRD candidates who violate or carry out money politics needs to be supervised by Bawaslu, namely, it must be based on Bawaslu's recommendations to prevent arbitrary actions by the KPU.

The differences in the technical and substantive provisions of the election between the Election Law and the Local Leaders Election Law and the unrelated provisions of several articles in the Election Law certainly affect the quality of the implementation of the 2024 Simultaneous Regional Elections. This certainly not only causes problems in its implementation but also creates legal uncertainty. Based on the background description above, the researcher explored the Handling of Administrative Violations of Governors, Regents and Mayors by the Election Supervisory Body in Indonesia in this thesis entitled "**The Existence of the Election Supervisory Agency as an Independent Institution in Handling Administrative Violations in the**

²Kompas.id, Retrieved from <https://www.kompas.id/baca/nusantara/2020/12/26/kpu-nias-selatan-tolak-rekomendasi-bawaslu-soal->

[disqualification-petahana](#) on December 19, 2024 at 15.40 WIB.

Election of Governor, Regent and Mayor".

2. Identification of Problems

1. How is the handling of administrative violations in the Election of Governor, Regent and Mayor by the Elections Supervisory Agency?
2. How is the existence of the Election Supervisory Agency as an Independent Institution in handling administrative violations in the Election of Governors, Regents and Mayors?

METHODS

Based on the legal issue regarding the shift in the existence of Bawaslu as an independent institution in handling administrative violations of the Local Leaders Election, the normative research method was used to see the existence of Bawaslu as an independent institution in handling administrative violations of the Local Leaders Election based on the Local Leaders Election Law by using primary, secondary, and tertiary legal materials, as well as with a legislative approach and a conceptual approach.

RESULTS AND DISCUSSION

1. THE HANDLING OF ADMINISTRATIVE

VIOLATIONS IN THE ELECTIONS OF GOVERNOR, REGENT AND MAYOR BY THE ELECTION SUPERVISORY AGENCY

In the design of the election law, Bawaslu is one of the elections organizing institutions that are authorized to supervise the implementation of elections throughout the territory of the Unitary State of the Republic of Indonesia. The presence of the Pilkada Law has confirmed the existence and role of Bawaslu not only to supervise elections but also to act as an institution that has the authority to take action against violations related to the stages of the Pilkada.

The provincial Bawaslu and its subordinate ranks according to level are given the authority to receive reports of violations. Election violation reports are followed up by Bawaslu; Provincial Bawaslu, Regency/City Bawaslu, Sub-district Panwas, PPL, and TPS Supervisors within a maximum of 3 (three) days after the report is received and if necessary, can request additional information from the reporter within a maximum of 2 (two) days. So that, Bawaslu

according to level has time to complete the handling of election administration violations within a maximum of 5 (five) days as regulated in Bawaslu Regulation Number 8 of 2020 concerning Handling of Violations in the Election of Governor and Deputy Governor, Regent and Deputy Regent, and Mayor and Deputy Mayor. Furthermore, the Provincial and/or Regency/City Bawaslu make recommendations based on the results of the study on handling election administration violations and submit them to the Provincial and/or Regency/City KPU for follow-up. The Provincial and/or Regency/City KPU are required to resolve election administration violations based on the recommendations within a maximum of 7 (seven) days from the time the recommendations are received.³

Before providing recommendations to the KPU and its staff, Bawaslu and its staff conduct an initial study to determine the fulfilment of the formal and material requirements of a report of

alleged violations. Next, conduct a study of the alleged violations. In conducting the process of reviewing reports of alleged violations, Bawaslu and its staff can request the presence of the reporter, the reported party, the party suspected of being the perpetrator of the violation witnesses directly to be questioned and the presence of experts to be asked for their opinions. At this stage of the process, the supervisors explore the facts related to the incident of the alleged violation in order to find evidence so that later conclusions can be drawn from the results of the study whether or not there is sufficient evidence of the alleged election violation. If there is evidence of an election administration violation, the Provincial or the Regency/City Bawaslu will submit a recommendation to the Provincial or the Regency/City KPU.⁴

Based on the interview results with the KPU member of Bengkulu Province, Mr. Emex Verzoni, S. E, that explained the resolution of administrative election

³M. Abdul Karim Mustofa, et al., *Dialektika Pengawasan (Pemilu dan Pemilihan) di Indonesia*,

Bawaslu Sleman Regency, Sleman, 2022, pp. 123-124

⁴Ibid, pp. 124-125

violations at the KPU is guided by the General Election Commission Regulation Number 15 of 2024 concerning Procedures for Resolving Administrative Violations of the Election of Governor and Deputy Governor, Regent and Deputy Regent, and Mayor and Deputy Mayor. In terms of resolving administrative election violations, the KPU will follow up on the recommendations of Bawaslu by conducting a legal review to pay attention to the fulfilment of the elements of the existence of Administrative Election Violations. In conducting a legal review, the KPU will be guided by the KPU Decree. After the recommendations are reviewed by Bawaslu, the results of the legal review will be forwarded to the KPU Plenary Meeting. The KPU Plenary Meeting is examined and decided on the follow-up to Administrative Violations. The results of the decision from the KPU Plenary Meeting will be submitted by letter as a form of follow-up from the KPU to the Bawaslu recommendations. In administrative election violations, the reported parties are the KPU ranks themselves, namely the KPU

according to the level up to the KPPS/KPPSLN along with their respective secretariats. Different from Bawaslu, the reporting party is another party outside the ranks of Bawaslu. The resolution of subsequent election administration violations is completed within a maximum of 7 (seven) working days since the recommendation is received.

Furthermore, based on the results of the researcher's analysis, regarding the follow-up to the recommendations, the Bengkulu Provincial KPU only refers to KPU Regulation Number 15 of 2024 concerning Procedures for Resolving Administrative Violations in the Election of Governor and Deputy Governor, Regent and Deputy Regent, and Mayor and Deputy Mayor. Meanwhile, apart from the KPU Regulation, the Bengkulu Provincial KPU must also refer to the KPU Decree regarding guidelines for conducting legal reviews; however, the KPU Decree has not been issued until the follow-up. Thus, the Bengkulu Provincial KPU in examining and deciding on the recommendations from the Bengkulu Provincial Bawaslu is

directly forwarded to the Plenary Meeting. Meanwhile, ideally, a legal review needs to be carried out first so that what is decided in the Plenary Meeting is the result of the legal review that has been carried out.

Based on the description above, it can be seen Bawaslu and KPU can resolve that election administration violations. Specifically in resolving election administration violations originating from Bawaslu's recommendations, the limits of Bawaslu's authority to carry out the process of handling election administration violations up to issuing recommendations, while further resolution is carried out by the KPU. The Election Law provides authority in resolving election administration violations not only to Bawaslu but also to the KPU, it means that there are two institutions that both have the authority to resolve election administration violations. In addition, KPU Regulation Number 15 of 2024 in Article 18 letter b, it provides an opportunity for the KPU to carry out a mechanism for resolving election administration violations by reviewing the results

of handling violations that have been carried out by Bawaslu.

 This is where the potential for problems in resolving election administration violations begins, especially in resolving election administration violations by the KPU originating from Bawaslu's recommendations.

In practice, when following up on Bawaslu's recommendations, if the KPU only re-examines the data or documents as recommended by Bawaslu and then immediately makes a decision, then of course it will not cause problems. This means that the KPU makes a decision according to the contents of Bawaslu's recommendations and then immediately carries out the execution in the form of imposing sanctions on parties who commit administrative violations.

2. THE EXISTENCE OF THE ELECTION SUPERVISORY AGENCY AS AN INDEPENDENT INSTITUTION IN HANDLING ADMINISTRATIVE VIOLATIONS IN THE ELECTIONS OF GOVERNOR, REGENT AND MAYOR

The existence and role of Bawaslu in the implementation of

Local Leaders Election have been strictly regulated. Referring to the formulation of Article 1 number 10 of Law Number 8 of 2015, it is clear that although Bawaslu is an election organizing institution tasked with supervising the implementation of elections throughout the territory of the Unitary State of the Republic of Indonesia as referred to in the Election Law, Law Number 8 of 2015 delegates the task and authority to supervise the implementation of Local Leaders Election. This can be seen in the phrase "given the task and authority to supervise the implementation of elections".⁵

The characteristics of auxiliary state organs are very important to ensure the establishment of democracy because the functions they have can be misused by the government to maintain its power. Therefore, auxiliary state organs are institutions that are ideally independent in the sense of being free from interference from any branch of power, and therefore are outside the realm of executive,

legislative, and judicial powers. However, at the same time, the auxiliary state agency has functions and characters that are a combination of the three.⁶

Referring to the authority of Bawaslu in the Election/ Local Leaders Election as regulated in the Local Leaders Election Law makes Bawaslu weak in enforcing the law. This is because the function of handling administrative violations whose legal product only provides recommendations to the KPU for follow-up. In terms of submitting recommendations to the KPU, Bawaslu can only carry out a clarification mechanism and study of the alleged administrative violations. Where the results of the recommendations will be followed up by the KPU by conducting a legal review and the results of the legal review will be forwarded to the Plenary Meeting to decide whether or not there are administrative violations against the recommendations submitted by Bawaslu.

Etymologically, recommendations come from the

⁵Fritz Edward Siregar, *Dimensi Pelanggaran Administrasi Pemilu*, Publisher Konstitusi Press (Kompres), Jakarta, 2020, p. 23

⁶Ibid, p. 6

English word "recommendation", which itself comes from the Latin word "recommendatio" which means "delivery". In the context of language, recommendations refer to the act of giving advice, suggestions, or support for something or someone. However, the shift in the meaning of recommendations such as shifting the meaning from the beginning being said as suggestions to binding. This can be seen in the old ASN Law 5 of 2014 (which has been revoked) stating that the ASN Commission Recommendation is binding. Likewise, the General Election Law or the Local Leaders Election Law introduces the word recommendation. In addition, the concept of Independence in the Election Supervisory Institution is none other than so that the implementation of the Election achieves true justice. Regarding this, measuring justice in implementation is a necessity. Article 22 E paragraphs (1) of the 1945 Constitution of the Republic of Indonesia states that general elections are held directly, generally, freely, secretly, honestly and fairly every five years. According to these provisions, "fair"

is one of the principles of organizing elections and elections. Therefore, Khairul Fahmi said that this principle must inspire the election system.

CLOSING

1. Conclusion

The conclusions obtained in this study are as follows:

1. The handling of administrative violations in the election regime and the Local Leaders Election regime has a very significant difference where, in the election regime, Bawaslu is given the task and authority to complete the process of handling administrative violations through an adjudication process, the result of which is a decision that must be implemented by the KPU. While in the regional election regime, Bawaslu's authority is limited by the Regional Election Law, where the authority to complete the process of handling administrative violations through a clarification and study process, the result of

which is a recommendation to the KPU and the KPU is obliged to follow up on the recommendation with prepare a legal review by paying attention to the fulfilment of the elements of an administrative election violation, which is then held at a plenary meeting to examine and decide on follow-up actions for the administrative election violation.

2. The existence of Bawaslu as an independent institution has slightly weakened in the process of organizing the Election of Governor and Deputy Governor, Regent and Deputy Regent, and Mayor and Deputy Mayor (Pilkada) because it is influenced by Bawaslu's authority in carrying out the process of handling administrative violations is considered not yet able to provide legal certainty because the final point/final process in resolving administrative violations in the Pilkada lies with the KPU as regulated in KPU

Regulation Number 15 of 2024 concerning Procedures for Resolving Administrative Violations in the Election of Governor and Deputy Governor, Regent and Deputy Regent, and Mayor and Deputy Mayor.

2. Suggestion

- a. The need to revise the Local Leaders Election Law is related to the resolution of administrative violations of the Local Leaders Election.
- b. There is a need for a common perception between Bawaslu and KPU regarding the regulations governing the authority to resolve administrative violations in Local Leaders Election.

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