

**THE VALIDITY OF BAWASLU'S LEGAL DECISIONS
HANDLING ELECTION VIOLATIONS**

Mushafi

Nurul Jadid University, Paiton Probolinggo

Email; cak.mushaf@gmail.com

ABSTRACT: This study will discuss the validity of the Bawaslu's decision on election violations. Because, according to preliminary findings, with the issuance of Law No. 7 of 2017 the position of Bawaslu is stronger. 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. Then how is the validity of the legal decision from the Bawaslu? The method used in this research is in the category of normative legal research with a statute approach and a conceptual approach.

Keywords: *Legislation, Bawalu Decisions, Election Violations*

INTRODUCTION

Elections are a means to accommodate the interests of the community. For this reason, the implementation of elections is carried out in a direct, public, free, confidential, honest and fair manner¹. This is an implementation of the values of the people's sovereignty which is guaranteed by the constitution, namely the 1945 Constitution Article 1 paragraph (2) which reads "Sovereignty is in the hands of the people, and implemented according to the Constitution".

As a means to implement democratic values, elections have legal instruments in their implementation. In addition, to support the implementation of transparent and fair elections, an election supervisory body (Bawaslu) was formed which has the task of supervising the implementation of elections².

The implementation of election supervision by Bawaslu is based on Law No. 7 of 2017 concerning General Elections. Historically, Bawaslu was born from a phenomenon where the public did not believe in the implementation of elections. Therefore, in 1982 an election

¹ Veri Junaidi, *Pelibatan Dan Partisipasi Masyarakat Dalam Pegawasan Pemilu*, (Jakarta Selatan ; Perludem 2013). Hlm 13

² Veri Junaidi *Ibid*

supervisor was formed under the name of the Election Supervisory Committee (Panwaslak Election). Changes occurred again after the reform, namely in 2003 to become the Election Supervisory Committee (Panwaslu)³.

To provide legal certainty to the function of the Panwaslu, Law no. 12 of 2003 concerning the General Election of Members of the People's Representative Council, Regional Representative Council, and Regional People's Representative Council Article 120 paragraph (2)⁴. Then in 2007 there was a change back to the Election Supervisory Body (Bawaslu) but its nature was still ad hoc (temporary). Then institutionally it was changed to a permanent institution based on Law no. 22 of 2007 concerning the Organizing of Elections⁵.

After the birth of Law No. 15 of 2011 the portion of Bawaslu's authority is getting wider. He not only functions as an election supervisor, but can also handle election disputes. The position of Bawaslu is getting stronger legally with the birth of Law no. 7 of 2017 concerning General Elections (Election). In this law, Bawaslu does not only handle election disputes, but can also decide the outcome of election disputes in accordance with Article 95 concerning the Authority of Bawaslu⁶.

Based on the above background, the authors are interested in researching and assessing what is the authority of Bawaslu as an election supervisory agency? and how is the validity of the Bawaslu legal decisions in dealing with election violations?

RESEARCH METHOD

In a study, the method plays an important role in achieving a goal, including the method in a study. The research method in question is ways to carry out research (which includes activities to find, record, formulate, analyze and compile reports) based on scientific facts or symptoms⁷. For this reason, this research plan will use normative legal research with the type of normative legal research and the conceptual approach and statute approach.

DISCUSSION

Some of the Authorities of Bawaslu in the Election Law

With the enactment of Law No. 7 of 2017 makes Bawaslu's position stronger in dealing with election violations. In this Law, Bawaslu in handling election disputes can not only provide

³ Ahmad Jukkari, 2021. *Perkembangan Sistem Pengawasan Pemilu Di Indonesia*, (JPW) Jurnal Politik Walisongo Vol. 3, No 1, 1-20

⁴ Uu Nurul Huda, *Hukum Partai Politik Dan Pemilu Di Indonesia*, (Bandung ; Fokusmedia, 2018), hlm 18

⁵ *Ibid*

⁶ Ahmad Jukkari, *Op.Cit*

⁷ Kholid Narbukoi dan Abu Achmadi, *Metode Penelitian*; memberi bekal Teoritis pada Mahasiswatentang Metode Penelitian serta Di harapkan dapat melaksanakan penelitian dengan langkah- langkah yang benar, (Jakarta:Bumi Aksara, 2008), Cet. 9, 2.

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 dealing with election violations, Bawaslu based on Law no. 7 of 2017 concerning General Elections (Election) Article 95 has the authority including⁸; a) Examine, review, and decide on violations of election administration; b) Examine, review, and decide on money politics violations; and c) Receiving, examining, mediating or adjudicating, and adjudicating the resolution of disputes in the election process.

As a supervisory agency, Bawaslu has a fairly complex authority to function in creating an honest, free and fair election. So that Bawaslu is obliged to guard the election process so that there are no conflicts of interest and horizontal conflicts. In carrying out its functions, Bawaslu takes preventive steps to ensure that elections run according to the laws and regulations.

In carrying out its duties, Bawaslu is obliged to do the following things; a) Develop standard procedures for supervising the implementation of elections for election supervisors at every level; b) Perform prevention and prosecution of election violations; and disputes over the election process/; c) Supervise the implementation of the stages of the Election Organizing, which consists of a recapitulation of the results of the counting of votes at all levels and levels; d) Carry out other duties in accordance with the provisions of the legislation.

Thus, based on the explanation above, Bawaslu actually has a law to resolve violations of election rules. This means that, legally, Bawaslu has the power and legal certainty to work and take action against election violations, both in the criminal aspects of elections, election administration and the election code of ethics.

Types of Election Violations

As mentioned above, Law Number 7 of 2017 concerning General Elections (hereinafter referred to as the Election Law) is the main legal basis for dealing repressively with violations of General Elections (Election). The provisions of Article 455 paragraph (1) and Article 476, stipulate that election violations include⁹: violations of the code of ethics, administrative violations, election crimes, as well as violations of other laws and regulations that are not election violations, are not election disputes and are not election crimes.

In resolving these election violations, Bawaslu has a dominant position in handling prosecutions for election violations as stipulated in the provisions of Article 95 letters a, b, and c of the Election Law. Bawaslu has the authority to receive and follow up on reports relating to alleged violations of the implementation of laws and regulations governing elections,

⁸ Undang – Undang No. 7 Tahun 2017 tentang Pemilihan Umum (Pemilu) Pasal 95

⁹ Ratna Dewi Pettalolo, *Penanganan Penindakan Pelanggaran Pemilu Oleh Bawaslu Berdasarkan Undang-Undang Nomor 7 Tahun 2017 Tentang Pemilihan Umum*, (Jakarta: Bawaslu RI, 2019), hlm 31

examine, review and decide on election administration violations, examine, review, and decide on money politics violations¹⁰.

In the context of handling prosecution of election violations, several important aspects in the process of handling violations include: 1. The authority of Bawaslu, 2. Reports of election violations, 3. Handling of election administrative violations, 4. Handling of violations of election crimes.

To find out what problems may arise during the election process, based on Law Number 7 of 2017 including;

- a. Administrative violations. Article 460 of Law No. 7 of 2017 concerning General Elections explains that administrative violations include violations of procedures, procedures, or mechanisms related to the administration of the implementation of elections at every stage of the election administration. These administrative violations are examined, reviewed and decided by Bawaslu, Provincial Bawaslu, Regency/City Bawaslu. The examination is carried out openly. The KPU's decision must be followed up by the KPU no later than 3 working days from the date the decision was read out.
- b. Violation of the code of ethics. The handling of violations of the code of ethics for election organizers is carried out by the DKPP. In practice, DKPP issues DKPP regulations whose settlement model conforms to Law No. 7 of 2017 where DKPP only examines and decides on violations of the code of ethics committed by permanent election organizers.
- c. Third, election crimes. In Law No. 7 of 2017 regulates at least 77 forms of actions that can be categorized as election crimes. The number of criminal provisions shows that Law No. 7 of 2017 prioritizes the politics of criminal law (over criminalization). The concept of criminal sanctions in Law No. 7 of 2017 is only in the form of maximum punishment. By applying cumulative punishment in the form of imprisonment and fines. The absence of a minimum criminal arrangement provides flexibility for judges to decide the minimum sentence.
- d. Other violations of law related to the implementation of elections/regional head elections (Pilkada). In practice, the violation that often occurs is the neutrality of the state civil apparatus (ASN)..

Those are some types of election violations that often occur in every election. The four types of violations are processed and resolved by the election supervisory agency. Institutionally, based on Article 1 number 7 of the Law. In the General Election, the Election Supervisory Body (Bawaslu) is positioned as one of the election organizers in addition to the General Election Commission (KPU) and the Election Organizing Honorary Council (DKPP), and according to the provisions of Article 1 number 17 of the Election Law, Bawaslu is an election management agency that oversees the implementation of elections. throughout the territory of the Unitary State of the Republic of Indonesia (NKRI).

¹⁰ *Ibid*

Legal Reasoning Against Bawaslu Decisions Against Election Violations

Settlement of legal violations that arise in the implementation of elections, whether violations, disputes or disputes over results normatively has been regulated in various laws and regulations. There are at least 5 institutions that have the authority to resolve election problems (violations, disputes and disputes), namely Bawaslu, Supreme Court, District Court, Election Organizer Honorary Council (DKPP), State Administrative Court (PTUN), Constitutional Court¹¹.

The mechanism for resolving election disputes by the Bawaslu of the State Administrative Court (PTUN) to the legal effort of cassation to the Supreme Court, has resulted in the dispute resolution mechanism for determining election participants being long and multi-layered. The large number of judicial institutions that have the authority to resolve election problems certainly makes it ineffective considering that every judicial institution has a large settlement time, it is necessary to establish a judicial institution that resolves all election cases, especially election disputes and violations.

The settlement of administrative violations is completed by Bawaslu through deliberation based on the principle of speedy and free of charge¹². Article 73 of Law no. 15 of 2011 concerning Election Organizers, the task of Bawaslu is to oversee the implementation of elections in the context of preventing and taking action against violations for the realization of democratic elections.

The settlement of election violations in question are violations that occur in a systematic, structured and massive (STM) manner. Systematic violations are planned (by design) not incidental. Structured violations are violations committed by structural officers, both government officials and election organizers, so they are not individual. Massive violations are violations that are widespread (massive), not sporadic.

The STM violation, which is essentially that the violation was planned or designed from the start (whether by the state, election organizers or election participants), is carried out by the state structural apparatus/election organizers, and is widespread, which really destroys the joints of elections that are "luber and fair."¹³

Bawaslu's position as an election dispute resolution is further strengthened by Law Number 10 of 2016 which states that Bawaslu's decisions are binding. However, Bawaslu is not the only

¹¹ Nofi Sri Utami, *Problematika Pola Penyelesaian Persoalan Pemilu (Pelanggaran & Sengketa) Yang Terpisah Pisah*, Call For Paper Evaluasi Pemilu Serentak 2019 Bidang Evaluasi Aspek Hukum Pemilu www.Journal.kpu.go.id

¹² Pasal 2 Ayat (2) Peraturan Bawaslu No.15 Tahun 2017 tentang Penyelesaian sengketa Pemilihan Gubernur, Bupati dan Wakil Walikota

¹³ Mukthie Fadjar. *Pemilu perselisihan hasil Pemilu dan Demokrasi (membangun Pemilu legislatif, Presiden, dan Kepala Daerah & penyelesaian perselisihan hasil Pemilu secara demokratis)*. (Malang: Setara Press. 2013). hlm 117

institution authorized to resolve election disputes, which often creates legal uncertainty. The next strengthening of the authority of Bawaslu is enshrined in Law Number 7 of 2017. One of the reinforcements is that the findings of Bawaslu are no longer in the form of recommendations, but have become decisions, meaning that Bawaslu currently has the authority to decide on administrative violations so that the findings of election supervisors are not only recommendations but can also provide legal decisions that must be implemented by the parties.

This can be seen in Article 95 of Law Number 7 of 2017 which states that Bawaslu has the authority to receive and follow up on reports relating to alleged violations of the implementation of elections. Bawaslu is also authorized to examine, review, and decide on violations of both election administration violations and money politics violations. Then in disputes over the election process, Bawaslu has the authority to receive, examine, mediate or adjudicate, and decide on the settlements proposed by election participants.

CONCLUSION

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

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