

The Resolution of Legal Disputes Regarding Administrative Violations During the Campaign Stage of Regional Head Elections Based on Law Number 7 of 2017 on General Elections

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ABSTRACT

Regional Head Election is one part of democracy and is a locomotive to carry out the mandate of reform where the people's power reaches to elect their Regional Head. However, the election of regional heads is rife with fraudulent practices, from money politics to disputes over results. So far, the focus of the spotlight on general election violations has been more on criminal sanctions, even though general elections are inseparable from administrative law. Then to what extent is the role of the organizing institution, especially election supervisors, to follow up on violations of the Regional Head Election. The duplication of handling administrative violations by the KPU and Bawaslu also needs to be improved. The KPU regulation, which states that the KPU is the reporter and reported party for alleged administrative violations, sounds strange, although it can be interpreted that this is a consequence of internal supervision at various levels between superiors and subordinates. Based on the description above, what is the action for administrative violations of the General Election, then related to the legal issues discussed in this study, namely how to identify administrative violations at the campaign stage of the Regional Head Election and what are the duties and authorities of the provincial election supervisory body regarding the resolution of administrative violations at the campaign stage of the Regional Head Election. Method The type of research used is normative research, and the data source from primary data is collected through literature studies and based on other legal books.

Keywords: Campaign, Administrative Violations, Regional Head Elections

1. INTRODUCTION

One of the strategic national political policies of the General Election is the implementation of the simultaneous Regional Head and Deputy Regional Head Elections (election simultaneously throughout Indonesia). Not only pursuing the target of simultaneous nominations, campaign dynamics, and inauguration, but also the alignment of dynamics in the regions with the development agenda initiated by the center in order to achieve targets with maximum result. (Bungan Hutapea, 2015:3) Indonesia is one of the countries that adheres to a democratic system in running its government system. One manifestation of democracy is the General Election (Election). The definition of Election according to the provisions of article 1 of Law Number 7 of 2017 concerning

General Elections, namely: “General Elections are a means of people’s sovereignty to elect members of the people’s Representative Council, members of the Regional Representative Council, President, and Vice President, and to elect members of the Regional People’s Representative Council, which are carried out directly, generally, 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.”

Simultaneous regional head and deputy regional head elections are an effort to create local accountability, political equity and local responsiveness. Thus, democratization at the local level is closely relate to the level of participation, and power relations built on the basis of the implementation of the principle of people’s sovereignty. In addition, the results of the regional head and deputy regional head elections must also be able to lead the community to better social, political and economic conditions. (Achmad Arifulloh, 2015:302)

Each region in Indonesia has a regional head who is democratically elected as regulates in article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia which states “Governors, Regents and Mayors as heads of provincial, district and city regional governments are elected democratically”(Muhammad Asfar, 2006:12).

Violations in the election of Regional Heads are divided into four, namely administrative, criminal, code of ethics violations, and election disputes as stipulated in Article 134 paragraph (1) and Article 135 paragraph (1) of the Law on the elections of Regional Head and Deputy Heads, as each reads: Article 134 paragraph (1): “The Provincial Bawaslu, Regency/city Panwas, Sub-district Panwas, PPL, and TPS Supervisors receive reports of election violations at each stage of the election.”

Since the establishment of the Election Supervisory Body with the hope of creating a good general election, it has never been free from violations that continue to occur in every election. Bawaslu is an institution that is given a mandate by Law to resolve election violations, including administrative violations in regional head elections. Since the establishment of the election supervisory body with the hope of creating a good general election, it has never been free from violations that continue to occur in every election. Bawaslu is an institution that is given a mandate by law to resolve election violations, including administrative violations in regional head elections.



2. RESEARCH METHODS

The type of research used by the author in this study is the normative research type. “Normative legal research is also called doctrinal legal research”. (Soerjono Soekanto & Sri Mamudji, 1994:30) Normative research according to Rony Hanitijo Soemitro is “Library legal research, namely research on secondary data”. (Rony Hanitijo, 1990:31) Legal norms are used in normative research to analyze the law. In other words, research is conducted through the study of secondary data and library sources relates to the object of research.

In legal research there are several types of approaches. The autor focuses the research on:

- a. Statue Approach, an approach that examines all laws and regulations related to the problem (legal issue) being faced.
- b. Conceptual approach, an approach that starts from the views and doctrines that develop in legal science. (Fajar, Mutchi, 2009: 185)

3. RESULTS AND DISCUSSION

Identification of Administrative Violations at the Regional Head Election Campaign Stage

General election according to Article 1 number 1 of Law Number 7 of 2017 concerning general elections (Election Law) is a means of people’s sovereignty to elect members of the People’s Representative council, members of the regional representative council, president and vice president, and to elect members of the regional people’s representative council, which is carries out directly, generally, freely, secretly, honestly, and fairly in the unitary state of the Republic of Indonesia base on Pancasila and the 1945 constitution of the Republic of Indonesia. Article 466 of Law Number 7 of 2017 defines process disputes as disputes that occur between election participants and disputes between election participant and election organizers as a result of the issuance of decisions by the general elections commission, decosions by the provincial KPU, and decisions by the Regency/city KPU. So based on this definition, Nurul Huda devides election process disputes into two categories:

- a. Election disputes between election participants as a result of the issuance of decisions by the KPU, Provincial KPU and Regency/City KPU:
- b. Elction disputes between election participants and election organizers as a result of the issuance of the decisions by the KPU, Provincial KPU and Regency/ city KPU.

Law Number 7 of 2017 concerning general elections also strengthens the authority of Bawaslu. This institution is no longer merely a recommendation provider, but at an executer or



case decider. This is in accordance with the provisions of Article 461 Paragraph 1 of Law number 7 of 2017, where Bawaslu, provincial/provincial Bawaslu have the authority to receive, examine, review, and decide on election administration violations. However, along with the high dynamic in society, on the other hand, existing regulations have not been able to accommodate these high dynamics, including the increasingly “sophisticated” modes and forms of violations and unhealthy general election competition, especially the use of black campaigns, negative campaigns and “investigation of rules” of general election violations that have the potential to cause various general election violations. Election administration violations are violations of the provisions of the election law which are not criminal provisions of elections and of other provisions regulated in KPU regulations. The provisions and requirements according to the election law can of course be provisions and requirements that are regulated, both in the election law and in KPU decisions that are regulatory in nature as implementing regulations of the election law. With provisions like this, if there are people who are not registered as voters who vote on election day, it means that an administrative violation has occurred. (Ryan Mawardi, 2009:4)

Duties and Authorities of the Provincial Bawaslu Regarding the Resolution of Administrative Violations During the Regional Head Election Campaign Stage

Judging from the changes in the electoral law until the issuance of Perpu Number 1 of 2014 concerning the election of governors, regents, and mayors. This Perpu was then enacted by Law Number 1 of 2015 concerning the Stipulation of Government Regulation in Law of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into law. Although there are changes to the Pilkada Law, normatively, it does not change the status and authority of the Election Supervisor substantially and tends to be the same as the previous institution. Historically, the presence of Bawaslu is expected to encourage and strengthen community participatory supervision by providing strengthening in the form of regulations, budgets, human resources, facilities and infrastructure, and authority, which can make supervision sharper so that it can reveal legal facts and can be followed up in accordance with existing mechanisms. The mouth of it all is that it can provide a deterrent effect in an effort to reduce the potential for violations in accordance with Bawaslu's goal of upholding electoral justice. The independence of authority is also felt in the handling of violations committed by Bawaslu. In all post-reform regulations, this institution has experienced strengthening of authority, both in terms of supervision and prosecution of violations and regulations.



This can be seen in the independence of handling violations in Law Number 22 of 2007 concerning the General Election Organizer. These types of violations, if seen from their history, depend on the regulations made by the legislators, both by the DPR and by Bawaslu itself, which issued technical regulations, namely Bawaslu Regulations (Perbawaslu). As is the case in Law Number 22 of 2007 concerning General Election Organizers, which oversees the implementation of Pilkada, in 2007 and in 2008. Along with the enactment of this law, the official name of the elections changed to the general elections of regional heads and deputy regional heads.

In carrying out its duties in handling violations, Bawaslu has the following authorities: First, Bawaslu has the authority to receive reports of alleged violations of the implementation of laws and regulations relating to elections. The second authority is to receive reports of alleged election administration violations, review the reports and findings, and recommend them to the competent authorities. Through the review process, Bawaslu can conclude whether the alleged violation is indeed a violation or only an administrative violation that is not included in the category of criminal violations. The addition of Bawaslu's authority and function will become a *ius constituendum* and will replace the *ius constitutum*, and this will lead to an improvement in the law enforcement system for regional head elections that has been in effect in Indonesia. Given that the function of law is as a tool to regulate and direct society, a manifestation of the role of law as "a tool of social engineering," this opens up a great opportunity for dynamic legal change to take place.

The next authority is to resolve election disputes. Election disputes are disputes that occur between election participants and disputes between election participants and organizers as a result of the issuance of KPU, Provincial KPU, and Regency/City KPU decisions. Bawaslu's decision on the election dispute is final and binding. Furthermore, the Provincial Bawaslu also has the authority to oversee the implementation of follow-up recommendations on handling violations. One of the standards related to elections is the guarantee of the right to vote equally for every citizen. (Thoha, 2016: 56) Constitutional or statutory recognition of the right to vote is common to democratic countries. In this regard, the legal framework for elections must be able to ensure that all citizens who meet the requirements are guaranteed the right to vote universally and fairly and have the right to participate in elections without discrimination.



4. CONSLUTION

Forms of administrative violations that occur in the implementation of regional elections, namely administrative violations at the stage of updating and compiling voter lists, administrative violations at the campaign stage, administrative violations at the stage of forming the Sub-District Election Committee (PPK), Voting Committee (PPS), and Voting Organizing Group (KPPS), and administrative violations at the voting stage. given the strengthening of authority in handling violations in the elections as well as the elimination of the Criminal Article in light of sanctions. Changes must be made to regulations related to criminal violations and prioritize administrative sanctions. This is important because the purpose of the election is to produce leaders and minimize violations by increasing supervision. In addition, the practice of handling administrative violations of the election received a large proportion of the total number of findings and reports. This is evidence that the public and election participants believe that Bawaslu can be a trusted institution to become an election dispute resolution.

Suggestion

1. The need to establish the function of the check and balance principle between the election organizing institutions, in this case Bawaslu and KPU, which is formulated through legislation to avoid abuse of power in adjudicating a violation.
2. Bawaslu is expected to be more active in conducting supervision, seeing that the administrative violations handled are only ordinary administrative violations. Administrative violations that are structured, systematic, and massive (TSM) have never been obtained by election supervisors, which is even the practice of these violations often occurring and is only an open secret in elections.

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