

AUTHORITY OF DISTRICT/CITY BAWASLU IN THE PROCESS OF HANDLING VIOLATIONS OF THE CODE OF ETHICS FOR AD HOC GENERAL ELECTION SUPERVISORS

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ABSTRACT

Bawaslu as an election supervisory agency has the authority, one of which is to decide on an election violation. If you look at the process of resolving election violations, it can also be related to the concept of justice, because election violations are not a category of ordinary crimes, but extraordinary crimes whose resolution requires the concept of justice in order to realize a good democracy. The election law has contained the formulation of delix and the threat of sanctions and penalties for election violations, including the mechanism for resolving them. In a theoretical study, the conviction of a person is closely related to criminal responsibility. The focus of the discussion on legal issues is how the process of resolving election violations against the concept of justice and the implications of the decision on election violations by Bawaslu on KPU policy making. This research is a type of qualitative research. This research emphasizes on election management institutions, so the main approach used is the institutional network approach to Bawaslu, namely through a legal approach and a conceptual approach. Meanwhile, the legal material uses laws related to elections and its derivatives, namely the Bawaslu regulations in dealing with election violations. The influence of a Bawaslu decision is very important in deciding election violations, if the independence of the Bawaslu is still attached and its dignity is maintained, then the democratic process in this country will run very well and fairly for all people who want electoral justice to be realized. With the importance of an Bawaslu decision in deciding a violation, Bawaslu itself must be far from being neutral. The code of ethics as the guardian of the dignity of democracy must be strictly guarded. Revision of Law 7 of 2017 concerning Special General Elections regarding administrative sanctions against administrative violations committed by election participants and election organizers is urgently needed. The sanctions given should be clearer and firmer so that the sanctions imposed are commensurate with the type of violation committed, which in the end can serve as a deterrent so that the election organizers work according to applicable norms/rules and have a deterrent effect.

INTRODUCTION

General Elections (Elections) are a means of people's sovereignty that are carried out directly, publicly, freely, secretly, honestly, and fairly every five years to elect Members of the House of Representatives, Regional Representative Councils, Presidents and Vice Presidents and Regional People's Representative Councils. The design of direct elections, especially for executive stakeholders, is the result of the amendment of the 1945 Constitution of the Republic of Indonesia as a fatigue against the authoritarian new order regime that caused a wave of resistance with the success of the reformers in overthrowing the authoritarian regime in 1998.

Because of the direct holding of elections, election organizing institutions were formed to hold the democratic contest periodically. Constitutionally, the position of the election organizer is stated in Article 22E Paragraph (5) of the 1945 Constitution of the Republic of Indonesia which emphasizes that general elections are held by a general election commission that is national, permanent, and independent. This is to avoid co-opting from elements that can create non-neutrality in the process of holding elections.

(Asshiddiqie, 2006) explained that election organizers must be neutral and free of intervention from political parties and state officials who reflect the interests of political parties or participants or candidates for general elections. The election participants are (i) political parties and their members who can become candidates in the election; (ii) candidates or members of the House of Representatives; (iii) candidates or members of the Regional Representative Council; (iv) candidates or members of the DPRD; (v) candidates or the President and Vice President; (vi) candidates or governors and deputy governors; (vii) Candidates or Regents and Deputy Regents; (viii) candidates or Mayor and Deputy Mayor; because they are elements that have a direct or indirect interest in the decision of the General Election Commission (KPU).

The naming of the General Election Commission (KPU) is the fruit of the legislation product because there is no explicit affirmation related to the naming of the election organizing institution itself. In his description, (Jimly Asshiddiqie, 2006) explained that in Article 22E of the 1945 Constitution of the Republic of Indonesia, the word general election commission is written in lowercase letters. It is intended that the general election commission referred to in Article 22E is not a name, but a general word to refer to the election organizing institution.

For this reason, Article 22E is the constitutional basis for the existence of election organizing institutions in general called "general election commissions" with lowercase letters meaning the KPU, the Election Supervisory Agency (Bawaslu), and the Election Organizer Honorary Council (DKPP) (Fajlurrahman Jurdi, 2018). Democratic constitution is not carried out without paying attention to the quality of democracy based on Direct, Public, Free of Secrets, Honest and Fair. There are 3 (three) institutions that are mandated through legislation products to carry out a series of processes in the implementation of elections in Indonesia. The KPU is an institution that has the task of holding elections that are institutionally national, permanent and independent in carrying out elections. In Article 12 of Law Number 7 of 2017 concerning General Elections

Methodology

This research is a type of normative juridical research. According to Suratman (2011: 13) the normative juridical research method is a research based on the philosophy of *post-positivism*, a method used to examine the condition of a natural object (as opposed to an experiment) where the researcher as a key instrument of data collection techniques is carried out in combination, data analysis is qualitative and the results of qualitative research emphasize more on the meaning of generalization. Meanwhile, according to Lexy J Moleong (1999: 6), qualitative research is research that intends to find out the phenomenon of what is experienced by the research subject, such as motivation, behavior, perception, action and others holistically by means of descriptions in the form of language and words,

in a special context that is natural by utilizing various scientific methods. As stated above in this study, data processing and presentation are carried out using qualitative analysis techniques.

Based on the background of the problem and the study in this study which emphasizes the institution of the election organizer, the main approach used is the institutional network approach to Bawaslu, namely through the approach: *First*, the Statute Approach is an approach that examines all other laws and regulations that are closely related to various legal issues that will be sought for answers. For the election case that is the initial goal, the author analyzes it in the form of a thesis, the author will focus on the election law and its derivatives in PKPU and PERBAWASLU. *Second*, Conceptual Approach is an approach that moves on the views and doctrines that develop in legal science. By studying it, the author will obtain legal concepts, legal definitions, legal concepts and relevant principles related to the problem of general election crimes that are being researched by the author so that he can find out the implementation of an election case decision.

Source of Legal Materials This research is a place where data legal materials dig up data sources. With the following sources of research data, *First*, Primary legal sources are data sources obtained directly in the form of information. These data sources are used to support and complement primary data sources. Secondary data sources include several expert opinions, archives, documents, library materials, laws and regulations, journals, research reports, electronic media and other literature materials that support the data. *Second*, Secondary legal materials are legal materials that are related to primary legal materials and can help to analyze and understand primary legal materials, which are as follows:

Results of research related to Election Crimes.

- 1) Books related to Election Law.
- 2) Books related to Criminal Law.
- 3) Books related to Legal theory.

Results and Discussion

The authority of the Regency/City Bawaslu in the process of handling violations of the code of ethics of the *Ad Hoc* General Election Supervisory Committee?

Every violation, irregularity, manipulation, unlawful act, and other election malpractice must be resolved through a mechanism determined by the applicable election legislation. A mechanism like this, in addition to requiring standardization that is in addition to being agreed upon as a result of a joint formulation, so that it can be the grip of election participants, election organizers and officials in it, is also a way to achieve the goals of election law, namely justice, certainty, and usefulness, which is referred to as electoral justice system with the aim of fairness, certainty, and usefulness of the implementation of elections.

In resolving election violations, Bawaslu has procedures and procedures in resolving them which are regulated in the Law and Perbawaslu, both in handling election administrative violations, election crimes, election codes of ethics, election process disputes and election result disputes. The number of election cases makes Bawaslu must quickly master existing regulations so that in making decisions it does not introduce new cases that can later lead to ethical violations and lawsuits to a higher realm.

Violation of the Election Code of Ethics In the regulation of the code of ethics, it does not distinguish between election organizers, because the purpose of the code of ethics is to maintain the honor and integrity of election organizing institutions, namely the KPU and Election Supervisors, both bawaslu and panwaslu at all levels. Each profession has a code of ethics that regulates the implementation of its profession, so that the profession that is carried out violates its oath and promise.

The code of ethics is a unity of moral, ethical and philosophical norms that are guidelines for behaviors that are required, prohibited, appropriate or inappropriate in all actions and speech. The phenomenon of the establishment of a code of ethics enforcement institution, both permanent and ad

hoc, is a reflection of the growing awareness of humanity regarding the professional ethical system being effectively enforced (Asshiddiqie, 2022). The purpose of the code of ethics is to maintain the independence, integrity, accountability, and credibility of election organizers. Meanwhile, the purpose of the code of ethics is to ensure the implementation of direct, public, free, confidential, honest, and fair elections.

Along with development, based on the Election Organizer Law which was born in 2011, namely Law Number 15 of 2011, the Election Organizer Honorary Council (which examines violations of the code of ethics, both for the KPU and Bawaslu) or abbreviated as DKPP is permanent and is tasked with handling violations of the code of ethics and is domiciled in the country's capital. Its membership is also more diverse, namely there are elements of the KPU, Bawaslu, political parties, the community, and elements of the government.

Previously, it was also necessary to understand that the sanctions for violations of the law and sanctions for ethical violations are different, because according to the American Speech Language Hearing Association (ASHA) as quoted by Jimly Asshiddiqie, that in the ethical sanctions system, the forms of sanctions that can be applied are (Jimlmly Asshidqie, 2014):

- 1) Reprimand or reprimand;
- 2) Censure or a statement or motion of no confidence that is publicly stated and published in the association's media for fellow members and the wider community to know;
- 3) Revocation or revocation of membership status for a certain time, namely for 5 (five) years or can also be imposed for life (until death);
- 4) Suspension or temporary suspension of membership;
- 5) Withholding or sanction of suspension of the membership registration process; and
- 6) Cease and desist orders or in addition to other forms of sanctions.

In connection with the form of sanctions mentioned above, Jimly Asshiddiqie also said that the function of ethical sanctions is more preventive, in addition to enforcement. Ethical sanctions are usually determined in the form of reprimands or warnings that are tiered, ranging from verbal reprimands, written reprimands or light reprimands and harsh reprimands. In fact, sometimes it is also determined that the reprimand can be given gradually or in stages, for example, the first reprimand, the second reprimand, and the last level reprimand. The most severe form of sanction due to the seriousness or severity of ethical violations committed by an official or holder of public office (ambts-dragger), is the sanction of dismissal or dismissal of a person from the public office concerned (Jimlmly Asshidqie, 2014), but specifically for violations of the Election Code of Ethics, then in the Election Code of Ethics Regulation, it has been determined that sanctions for violations of the Election Code of Ethics consist of: (1) a written warning; (2) temporary suspension; or (3) permanent stops.

Settlement of Election Administration Violations

Administrative Violations in the Stages Process

The Election Law tries to accommodate the mechanism for resolving violations by differentiating violations of a criminal nature, administrative violations, and violations related to the code of ethics. The settlement mechanism is also made differently. But the Election Law does not provide a firm and clear definition of what is meant by administrative violations. Article 460 paragraph (1) of the Election Law only states that violations of election administration include violations of procedures, procedures, and mechanisms related to the administration of election implementation in each stage of election administration. Articles 318-320 of the Election Law, for example, allude to election administrative violations at the stage of campaign implementation.

It is further stated in the Election Law that election crimes and violations of the code of ethics cannot be qualified as administrative violations. This formulation is essentially intended to prevent criminal violations from being dragged into administrative violations, or vice versa from administrative violations being pulled into the criminal realm. Just an example can be seen from the report that came

to the police. Until January 3, 2019, a few months before the D-day of the election, the National Police received 144 complaints related to the election from the public. However, from the results of the National Police study, only 34 complaints were purely election crimes. Most of the election crimes handled by the National Police are falsification of documents.

In the context of general elections in Indonesia, the 2017 Election Law has contained several provisions on the mechanism for resolving administrative violations. One of the things that seems clear is that violations are not solely resolved based on reports from monitors or members of the public, but also findings. The findings are the result of active supervision, while reports are alleged violations reported by parties who have legal standing to report. A whistleblower is a person who has the right to report election violations. From the institutional aspect, the handling of election administration violations does not only involve Bawaslu and election supervisory organs at the lower levels, but also the Supreme Court and the Constitutional Court. This means that the process of handling violations at Bawaslu is still possible to continue to other judicial institutions. Bawaslu has great authority in cracking down on election violations. Not only receive reports, but can conduct monitoring, and if necessary, conduct their own investigations.

The mechanism for handling violations in the form of findings and reports has not actually been expressly described in the Election Law. It is only mentioned that reports can be submitted to Bawaslu, provincial Bawaslu, or Regency/City Bawaslu. Even the whistleblower can submit a report to the District Panwas even though the results are only in the form of recommendations to be submitted to the election supervisor in stages. To overcome this lack of regulation, the Election Law gives authority to Bawaslu to further regulate the settlement of administrative violations. In this context, Bawaslu Regulation No. 8 of 2018 concerning the Settlement of Administrative Violations of General Elections (hereinafter referred to as Perbawaslu 8/2018) was born. The object of election administrative violations is in the form of acts or actions that violate procedures, procedures, or mechanisms related to the administration of election implementation in each stage of election administration.

Perbawaslu Number 8 of 2018 distinguishes between mechanisms related to the administration of election implementation in each stage of election implementation that occurs in a structured manner of election administrative violations and structured, systematic and massive election administrative violations (TSM). The difference in implications is the difference in settlement mechanisms and institutions authorized to adjudicate them. The objects of TSM election administrative violations consist of:

- a. Acts or actions that violate ordinances, procedures, or, systematic, and massive;
- b. Acts or actions that promise and/or provide money or other materials to influence election organizers or voters that occur in a structured, systematic, and massive manner.

The mechanism for resolving election administration violations in general can be distinguished by preparation before the trial, trial, and after the verdict. The pre-trial stage includes the occurrence of the violation, the preparation of the whistleblower to prepare his or her identity, and evidence, and report the alleged violation to the election supervisory body according to the level. The trial stage is related to the trial structure such as the panel of examiners and trial assistants, preliminary examinations including examination of the validity of the reporter and his report, supporting evidence to the reading of the verdict. The post-decision stage is part of a mechanism that contains the correction of the complainant, the follow-up of the decision by the General Election Commission or other institutions, as well as other possible legal remedies.

The settlement of election administrative violations recognizes two procedural laws of examination, namely ordinary examination and expedited examination. A quick check is carried out shortly after the occurrence of the violation at the scene taking into account feasibility and safety. In essence, the violation must be resolved as soon as possible. The earliest possible limit in the context of resolving administrative violations through expedited procedural law according to Perbawaslu 8/2018

is no later than two days from the receipt of the report. The election supervisor can recommend to the KPU at each level to temporarily suspend activities until there is a decision on the alleged administrative violation.

Administrative violations after the recapitulation stage

At the stage of voting and recapitulation of the results of vote counting in general elections (elections), the potential for loss or theft of voters' votes, either intentionally or unintentionally, is very likely, one of which is due to *mal-administrative* actions carried out by the organizers. Errors or lack of knowledge about the procedures or procedures for counting and recapitulating votes are generally the trigger for this problem. On the other hand, there is an interest of the contestants to win the election by all means, including 'cooperating' with the organizers to change the results of the vote count according to the contestants' orders.

To avoid a loss and practice of such injustice, one of the prerequisites for good election holding must provide space or access to anyone in order to seek justice when there is a suspicion of the loss of the people's vote (right to justice). IDEA International (2010) introduces the concept of electoral justice as a characteristic and character that must exist in a democratic electoral system as follows:

- 1) ensuring that every action, procedure, and decision related to the electoral process is in accordance with the legal framework;
- 2) protect or restore the right to vote; and
- 3) allowing citizens who believe that their voting rights have been violated to file complaints, attend trials, and get verdicts.

In the context of Indonesian Law, Law Number 7 of 2017 concerning General Elections provides space and mechanism for anyone to seek justice when alleged election violations are found. Both violations of criminal, ethical and election administration aspects. This law gives authority to the Election Supervisory Agency (Bawaslu) to handle alleged election violations, one of which is at the stage of counting and recapitulating the results of votes.

However, in practice, the implementation of this authority raises complex problems, because in some cases, when the process of handling administrative violations by Bawaslu is still ongoing, at the same time the process of disputes over election results (PHPU) at the Constitutional Court (MK) has begun. So it is very likely that the alleged violation is handled by two different institutions, where this raises the issue of conflict of authority, and in the end has the potential to give rise to different decisions so as to cause legal uncertainty.

In West Kalimantan, there are a number of Bawaslu decisions related to administrative violations that occurred at the stage of recapitulation of vote counting results. Among these decisions, there are 2 cases in Landak and Sanggau that are quite controversial in the law, because the process of resolving administrative violations is still ongoing after the recapitulation stage of the results of the vote count and the determination of election results has ended, so it is considered by several parties to overlap with the authority of the Constitutional Court. In the case of West Kalimantan where there was a legal problem during the implementation of the Constitutional Court's decision which granted the application of one of the applicants by correcting the acquisition of his votes, but was not followed by an adjustment to the votes obtained by other candidates as a result of the granting of the application. As a result, there was a discrepancy in the overall vote results During the recapitulation process of the vote counting results in Sanggau and Landak districts in the 2019 DPR, DPD and DPRD Member Elections, there was a lawsuit from legislative candidates against violations committed by the District Voter Committee. These two cases had become a polemic that was quite hot at the local level so that it became one of the hot issues discussed in the local mass media.

The case in Sanggau Regency surfaced because the seat contested was the incumbent seat from the Gerindra party. One of the candidates for Gerindra West Kalimantan constituency 6, Sanggau-Sekadau for the West Kalimantan Provincial DPRD, Hendri Makaluasc felt that he was secretly replaced

by the West Kalimantan KPU as an elected Member of the West Kalimantan Provincial DPRD for the 2019-2024 period. For this action, Hendri will bring the KPU into the legal realm.

Meanwhile, in the example of the case in Landak Regency, this was also influenced by the change in the map of the political elite within PDIP in Landak Regency. Maria Lestari as the incumbent candidate in the Provincial DPRD initially had to be willing to be displaced because of the inclusion of the second daughter of the Chairman of the West Kalimantan PDIP DPD who was also the Governor of West Kalimantan for 2 (two) periods, namely Angelica Fremalco. In addition, this case is also considered to affect the constellation of battles for the chair of the West Kalimantan PDIP DPD which will hold a Regional Conference in September 2019.

With the example of the case above, based on the authority of Bawaslu in the Election Law against administrative violations both in general and at the stage of recapitulation of the results of the vote count basically have the same, but in the handling of administrative violations at the stage of vote recapitulation as regulated in Article 407, a more specific purpose is seen, namely the authority to receive, examine, and decide on alleged violations, irregularities, and/or errors in the implementation of the recapitulation of the results of the vote count of Election Participants.

Settlement of Violations of the Code of Ethics of the *Ad Hoc* General Election Supervisory Committee

The handling of alleged violations of election crimes has a certain characteristic. One of the characteristics is that the handling of election crimes is processed through the Gakkumdu center as regulated in Article 486 of the Election Law. In Article 486 paragraph (1), in order to equalize the understanding and pattern of handling election crimes, Bawaslu, the National Police of the Republic of Indonesia, and the Attorney General of the Republic of Indonesia formed Gakkumdu. Furthermore, according to Article 486 paragraph (2) of Law Number 7 of 2017 concerning General Elections, Gakkumdu is attached to Bawaslu, Provincial Bawaslu, and Regency/City Bawaslu. Further regulated in Article 486 paragraph (3), Gakkumdu consists of investigators from the National Police of the Republic of Indonesia and prosecutors from the Attorney General's Office of the Republic of Indonesia. Then according to Article 486 paragraph (5), investigators and public prosecutors are temporarily seconded and are not given other duties from their home agency while carrying out their duties at Gakkumdu, and according to Article 486 paragraph (9), the operational budget of Gakkumdu is charged to the Bawaslu budget. If you look at the provisions in Article 486 between paragraphs (1), (2), (3), (5) and paragraph (9) of the Election Law, there is a state of inconsistency in legal rules (*condradictio in terminis*) regarding Gakkumdu.

The procedure for handling election acts is carried out in a way that refers to Bawaslu Regulation Number 31 of 2018 concerning the Integrated Law Enforcement Center. The handling of election crimes is technically also called "Enforcement" which is a series of processes for handling violations that come from the findings of election supervisors or those derived from reports of Indonesian citizens who have the right to vote, reports of election participants or reports from election monitors to be followed up by Bawaslu, investigators and public prosecutors and examined, tried and decided by the court. The process of prosecuting election crimes is carried out with 4 (four) main stages which include: receipt of reports or findings; the first discussion; the second discussion; The third discussion; and the fourth discussion. The stage of receiving reports or findings is carried out by Bawaslu.

The provisions for fulfilling the Formal and Material Requirements, Bawaslu must be really careful and assess as carefully and objectively as possible. This is done as a manifestation of the basic principle in criminal law, namely: *nullum delictum nulla poena sine praevia lege poenali* which contains three elements of meaning: there is no punishment without law; there is no punishment without crime; and there is no crime without punishment determined by law.

Furthermore, at the first stage of discussion, Bawaslu with Police investigators and public prosecutors who are members of the gakkumdu conducted a joint discussion to assess and decide on

the fulfillment of formal and material requirements for the report or findings. If the results of the discussion decide that the report does not meet the requirements, the report will not be continued for further action. On the other hand, if the results of the discussion decide that the conditions are met, further examination of the case will be carried out.

In the second discussion stage, it was a forum for Bawaslu together with National Police investigators and public prosecutors in the gakkumdu center to discuss the results of the Bawaslu study and the results of the investigation conducted by National Police investigators regarding the fulfillment of the elements of criminal acts on reports of alleged election crimes. If the results of the Bawaslu study obtained from the examination process of the complainant, the reporting witness, the reported party and/or the reported witness as well as the assessment of the evidence and in accordance with the results of the investigation do not show any criminal acts of the election, the process of taking action on the alleged election crime is stopped. On the other hand, if based on the results of the study and the results of the investigation there are indications of election crimes, further action is carried out in the form of an 'investigation' by the National Police investigators, and at this stage Bawaslu follows up on the report to the investigators.

The third stage of discussion is a forum for Investigators to submit the results of the investigation, and the results of the investigation are discussed together between the Investigator, Bawaslu and the Public Prosecutor. The results of the discussion are to conclude that the case of alleged election crimes can or cannot be delegated to the Prosecutor.

Then the fourth stage of discussion of the prosecution and verdict stage, is a forum for the Prosecutor together with Bawaslu and the General Police Investigator to report the results of the court examination and court decision after the reading of the verdict by the court. In addition, in this forum, Gakkumdu will determine its attitude towards 2 (two) things, namely: making legal efforts against court decisions, and implementing court decisions.

Settlement of Violations of the Election Code of Ethics

Since the enactment of Law No. 7 of 2017, the institution of the Election Organizing Council (DKPP) has undergone changes. Starting from the original number of members from 5 people to 7 people. In the proceedings, the DKPP is guided by DKPP Regulation No. 2 of 2019 concerning amendments to DKPP Regulation No. 3 of 2017 concerning Guidelines for the conduct of the code of ethics for election organizers.

In making complaints and/or reports on the code of ethics of election organizers, election organizers can be submitted by election organizers, election participants, campaign teams, communities, and/or voters. Meanwhile, the complainant can be ascertained that the election organizers, both the KPU and its staff, as well as Bawaslu and its staff. Complaints and reports submitted are not limited in time, they can be reported at any time as long as the organizer is still in office.

For complaints and/or reports that have met administrative verification and material verification, then they are registered and set a hearing schedule no later than 2 (two) days after the complaint or report is declared eligible and registered. In the trial, the DKPP adopts the trial run by the Constitutional Court which includes examining the legal status of the complainant and/or the complainant, listening to the complainant's and/or the complainant's testimony under oath, listening to the complainant's and/or reported defendant's testimony and defense, listening to witnesses under oath, listening to experts under oath, listening to related parties and examining and certifying evidence and evidence.

In assisting in examining and deciding complaints and/or reports at the provincial level and below, a Regional Inspection Team was formed by the DKPP based on Article 164 of Law No. 7 of 2017. After the code of ethics hearing is completed, the reading of the verdict will be carried out no later than 30 (thirty) days from the meeting of the decision determination. Election organizers are required to implement the decision no later than 7 (seven) days from the date the decision is read. The decision is final and binding.

Bawaslu's Authority in Deciding Election Violations

Institutionally, election supervisors consist of Bawaslu, Provincial Bawaslu, and Regency/City Bawaslu. Article 95 letters a, b, and c of the Election Law stipulates that Bawaslu is authorized to receive and follow up on reports related to alleged violations of the implementation of laws and regulations governing elections, examine, review and decide violations of election administration, examine, review, and decide on violations of money politics. The use of authority by Bawaslu, Provincial Bawaslu and Regency/City Bawaslu in handling the enforcement of election violations refers to the technical concept of authority as stipulated in the Law on Government Administration, Law No. 30 of 2014 (UU. AP) Article 15 paragraph (1) of the Law. AP, which stipulates that the authority of the Agency and/or Government Officials is limited by: the period or grace period of the authority, the region or region in which the authority applies, and the scope of the field or material of the authority. The period or grace period of Bawaslu's authority to handle the enforcement of election violations consists in a broad sense and in a narrow sense. In a broad sense, the handling of the enforcement of election violations from the beginning of the election stage to the end of the election stage. According to Article 3 paragraph (1) of KPU Regulation (PKPU) Number 7 of 2017 concerning the stages, programs and schedules for the implementation of the 2019 General Election, the election stages consist of: socialization, program and budget planning as well as the preparation of regulations for the implementation of elections, updating voter data and compiling voter lists, registration and verification of election participants, determination of election participants, determination of the number of seats and determination of election regions, nomination of the President and Vice President as well as members of the DPR, DPD, DPRD Provincial and Regency/City DPRD, election campaign period, quiet period, voting and vote counting, determination of election results, and pronouncement of oaths/promises of the President and Vice President as well as members of the DPR, DPD, DPRD Province and Regency/City DPRD.

Based on these provisions, the handling of election violations by Bawaslu is carried out in stages: Updating voter data and compiling voter lists, Registration and verification of election participants, Determination of election participants, Determination of the number of seats and determination of election areas, Nomination of President and Vice President as well as members of the House of Representatives, DPD, Provincial DPRD and Regency/City DPRD, Election campaign period, Quiet period, Voting and vote counting, determination of election results, and the pronouncement of the oath/promise of the President and Vice President as well as members of the DPR, DPD, DPRD Province and Regency/City DPRD. In a narrow sense, the period or grace period for handling the enforcement of violations depends on the time when the act/event is found by the ranks of election supervisors or the time when the act/event by the whistleblower is known.

Bawaslu is authorized to receive, examine and decide on administrative violations if the supervisory ranks find that the alleged violation does not exceed 7 (seven) working days or if the reporter knows that the alleged violation does not exceed 7 (seven) working days. If the findings of alleged violations by the ranks of election supervisors or reports submitted by the reporters have exceeded 7 (seven) working days, a finding or report of alleged election violations has passed or expired, so that Bawaslu is not authorized to examine and decide on them. Based on the place or area where the authority applies, Bawaslu can handle the enforcement of election violations that occur throughout Indonesia and election violations abroad, even though the institutional structure of Bawaslu oversees the Provincial Bawaslu, and the Regency/City Bawaslu.

The handling of enforcement of election violations by Bawaslu depends on the nature of the violations that occur, for example, consideration of the magnitude of intervention to the ranks of election supervisors, the domicile of the reporting party and/or the reported party, and the level of difficulty of the alleged violation. In addition, Bawaslu can also take over the process of handling enforcement carried out by the ranks of election supervisors or receive delegation from the ranks of election supervisors with some of these considerations. Regarding the field or material of authority, Bawaslu

handles the enforcement of violations that include violations in the field of elections or are directly related to election acts/events that occur in the stages of updating voter data and compiling voter lists until the inauguration of members of the DPR, DPD, DPRD Province and district/City DPRD and/or the end of the inauguration of the President/Vice President.

The authority of Bawaslu in deciding election violations must be really guided by the procedures in the election law, because Bawaslu's decision in practice can still be filed with the Supreme Court and the PTUN so that later the results of the Supreme Court and PTUN will also affect the violation of the code of ethics on the decision and will be accounted for to be heard at the Honorary Council of Election Organizers (DKPP).

In the case of the Surabaya City Bawaslu which has issued letter number 436/K.JI-38/PM.05.02/IV/2019 regarding the recommendation for Recapitulation at the PPK and Recount of Votes for PPS dated April 21, 2019. The reason for the issuance of recommendation 436/K.JI-38/PM.05.02/IV/2019 was a report from several political parties on April 20, 2019 regarding the issue of inflating, subtracting, and incorrectly summing valid votes in the C1 form in almost all polling stations. The results of the supervision of the Surabaya City Bawaslu through the TPS Supervisor which is equipped with the Siwaslu application which is also backed up through the google form application, on the day of voting, many TPS whose C1 writing is not in accordance with the C1 hologram and DA1 or even blank. On the day of voting, based on the Siwaslu application and google form, data for 800 polling stations had been entered and around 300 polling stations were found whose data was not synchronized, but in the issuance of the decision was not based on the results of supervision carried out by the Surabaya City Bawaslu.

With this decision, finally the Surabaya City Bawaslu was reported to the DKPP by Wisnu Sakti Buana, the Deputy Mayor of Surabaya at that time because it was considered detrimental to his party and was considered not neutral and in making the decision was not fundamental, so that in the DKPP all commissioners of the Surabaya City Bawaslu to undergo an ethics hearing until the decision of Dismissal from the Chairman position to Mr. Hadi Margo Sambodo and the last stern warning to Mr. Agil and warnings to the other three members.

In this case example, Bawaslu in making a decision must be really careful and prioritize professional ethics as an Election Supervisory Institution that is truly fair and has integrity.

Factors Affecting Bawaslu's Decision

In making a very decisive decision in a violation of the general election, the General Election Supervisory Agency should uphold an independent attitude. But on the other hand, there are still many factors that affect Bawaslu in issuing a decision to handle violations, including threats of violence, lure of money, or power intervention that seriously threatens the independence of Bawaslu as a fair election supervisory institution.

The political factor in the bawaslu environment itself is also very decisive because the bawaslu itself was appointed through a competency test in commission 2 of the House of Representatives of the Republic of Indonesia so that the political element within the bawaslu scope is very thick when there is an election violation that violates the political party that holds power, that's where the independence of the bawaslu will be tested.

Legal arrangements regarding elections in Indonesia must be based on the principle of general elections, namely clean, honest, public, free, secret, and fair. The principle of election must also be applied by the ranks of election supervisors, especially on the principle of fairness must be really implemented because it concerns the dignity of the election supervisory institution that is given the authority to decide on an election violation.

Implications of the Bawaslu Decision on KPU policy-making

At the stage of voting and recapitulation of the results of the vote count in general elections (elections), the potential for loss of voters' voting rights, either intentionally or unintentionally, is very likely, one of which is due to mal-administrative actions carried out by election organizers. Errors or

lack of knowledge about the procedures or procedures for counting and recapitulating votes are generally the trigger for this problem. On the other hand, there is also the interest of the contestants to win the election, including 'cooperating' with the organizers to change the results of the vote count according to the contestants' orders (Riza, 2019).

Bawaslu, in addition to having the authority to supervise election participants, also has the authority to supervise election organizers, namely the KPU in carrying out its duties as election organizers so that they work in accordance with election laws and regulations. The influence of a Bawaslu decision in KPU policy-making is very important and needs to be a special concern because there should not be an interest of the contestants to win the election by all means, including 'cooperating' with election organizers. Here, Bawaslu must really maintain its independence because the concept of justice predicted by the community can be realized.

In the 2019 election in Tuban Regency, for example, there were violations of election administration carried out by the General Election Commission (KPU) elections that occurred accompanying the implementation of the Legislative Election and Presidential Elections. These violations vary greatly, from technical problems in the election where various errors are still found in updating Voter Data such as the number of Multiple Voter Lists ranging from Name to NIK spread across several sub-districts to villages, and after the DPTHP plenary there are still 2,760 voters who do not meet the requirements and 1380 voters who have corrected their data. From the data, administrative violations are acts that can later cause a voter's vote to become worthless or lose his voting rights due to data errors or cause certain election participants to get additional votes or the votes obtained by election participants will be reduced with the number of NIK or Double Names in several sub-districts.

Based on the data on election administration violations, the sanctions imposed on the KPU are only written warnings in the form of recommendations to be corrected as soon as possible in accordance with the sanctions in article 461 paragraph 6 of Law 7 of 2017 even though in policy-making on the determination of voter data there are rights of the community that should not be eliminated in determining their choices, of course this is not in line with the theory put forward by Plato, Phytagoras and Aristotle, that one of the purposes of the threat of sanctions is to scare people not to violate the law, in this case the position of the threat of sanctions is for prevention (Kelsen, 2017). Similarly, Hans Kelsen's view that sanctions are given by the legal order with the intention of causing certain acts that are considered desired by lawmakers. Legal sanctions have the character of a coercive action (Kelsen, 2017). It can be concluded that the sanctions given for prevention and coercive actions to be in line with the rules, do not apply if they are coupled with election administration sanctions as an effort for the organizers to work according to applicable norms/rules. So the sanctions do not contain threatening content so that they do not have an effect on prevention, especially regarding the determination of the voter list, so later it may eliminate the public's right to vote.

Sanctions are ways of applying a norm or regulation. Legal sanctions are sanctions outlined or authorized by law. Every legal regulation contains or implies a statement regarding legal consequences (Friedman, 2019). If the written reprimand given is actually not a consequence just as a mere statement that there has been a violation of election administration. These consequences are sanctions, promises or threats.

In any case, any theory of sanctions must proceed from accepting the fact that the threat of punishment tends to prevent, just as rewards tend to encourage rewarded behavior (Friedman, 2019). As a general rule, people always want things that are pleasant and satisfying, and they avoid what is harmful, punishable, and sick.

Conclusions

The handling of election violations by the Bawaslu institution must really meet the sense of justice. Electoral justice itself is very important to be realized because it will ensure the democratic process that all people want, electoral justice must at least pay attention to several things: *First*, to ensure that every

action, procedure, and decision related to the electoral process is in accordance with the legal framework; *Second*, protecting or restoring people's voting rights; and *Third*, allowing citizens who believe that their voting rights have been violated to file complaints, attend trials, and obtain judgments. The electoral justice system is an important instrument to enforce the law and ensure the full application of democratic principles through the implementation of direct, public, free, secret, honest and fair elections. The handling of election violations by the Bawaslu institution must be firm to prevent and identify violations in elections, as well as a means and mechanism to correct the existence of these violations and provide sanctions to the perpetrators of violations. Any action, procedure, or decision regarding the election process that is not in accordance with the law in the election process can cause disputes, a fair process in deciding an election violation will greatly affect the violations that occur in the election. Therefore, strengthening the Bawaslu institution is very important to ensure the legitimacy of democracy and the credibility of the election process. The influence of a Bawaslu decision is very important in deciding election violations both for election participants and election organizers, if the independence of Bawaslu remains inherent and its dignity is maintained, then the democratic process in this country will run very well and fairly for all people who want election justice. With the importance of a Bawaslu decision in deciding a violation, Bawaslu itself must be far from an attitude of non-neutrality. The code of ethics as the guardian of the dignity of democracy must be really maintained. The authority of Bawaslu to supervise election organizers, namely the KPU in carrying out its duties as election organizers in order to work in accordance with election laws and regulations, is very important. As supervisory institutions and election organizers, Bawaslu and KPU must carry out their duties according to their respective duties in accordance with the election law. The influence of a Bawaslu decision in resolving election violations from the elements of election organizers is very important and also needs to be a special concern because there should not be an interest of the contestants to win the election by all means, including 'cooperating' with election organizers. Here, Bawaslu must really maintain its independence because the concept of justice predicted by the community can be achieved.

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