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Absolute Authority Of Bawaslu In Handling Election Violations Post The Determination Of The National Results

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Abstract

Indonesia is a country that adheres to a democratic system, and the people are an essential element where people can freely express their opinions and choose leaders according to their wishes. Bawaslu exists as an election management body tasked with overseeing the implementation of elections throughout the territory of the Unitary State of the Republic of Indonesia. The purpose of this research is to see the absolute bawaslu authority in handling election violations post the determination of the national results, research methodology of literature studies, and review of Indonesian laws and regulations with the conclusion obtained by Bawaslu has the authority to receive and follow up on reports relating to alleged violations of the implementation of laws and regulations regarding elections before setting the results nationally. Bawaslu is not responsible for dealing with election violations after the determination of the results nationally, which is because the case was after the determination.

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Introduction

The Election Supervisory Agency of Indonesia, commonly known as Bawaslu (Badan Pengawas Pemilu), is an independent institution responsible for supervising and ensuring the fairness of elections in Indonesia. Its establishment and constitutional basis can be traced back to the reform era in Indonesia's political history (Febriansyah, et al., 2020).

The historical constitutional basis for the birth of Bawaslu Indonesia can be primarily attributed to the reforms that took place after the fall of President Suharto's authoritarian regime in 1998 (Butt & Lindsey, 2012). The establishment of Bawaslu was a response to the need for transparent, accountable, and fair elections, as well as to prevent electoral fraud and manipulation that were prevalent during the authoritarian era (Sunarto, et al., 2021).

Key milestones in the establishment of Bawaslu include:

1. Amendments to the 1945 Constitution: Following the fall of President Suharto, Indonesia underwent a period of political reform, which led to amendments to the 1945 Constitution. These amendments included provisions for democratic elections and a new electoral system.

2. Election Laws and Regulations: The Indonesian government passed new election laws and regulations to ensure the democratic conduct of elections. These laws aimed to establish fair and transparent electoral processes.
3. Election Supervisory Body (Bawaslu) Establishment: The establishment of Bawaslu was formalized through Law No. 15/2011 on the Election Supervisory Body (Bawaslu) and its subsequent revisions. This law outlined the role, responsibilities, and structure of Bawaslu, granting it the authority to oversee and supervise elections at various levels, from national to local.
4. Independence and Autonomy: Bawaslu was designed to be an independent and autonomous institution, separate from the executive, legislative, and judicial branches of government. This independence is essential to ensure its ability to impartially monitor elections and address any irregularities.
5. Empowerment of Civil Society: The establishment of Bawaslu aimed to involve civil society and non-governmental organizations in the electoral process. These entities play a crucial role in monitoring elections, reporting irregularities, and contributing to the overall fairness of the process.

In summary, the historical constitutional basis for the birth of Bawaslu Indonesia lies in the post-Suharto reform era, characterized by constitutional amendments and the passage of laws to establish a fair and democratic electoral system. Bawaslu was created as an independent institution to supervise elections, prevent fraud, and ensure the transparency and integrity of the electoral process.

Indonesia is a country that adheres to a democratic system, the people are an important element where people can freely express their opinions and choose leaders according to their wishes (Harefa & Fatolosa Hulu, 2020). Of course, this cannot be separated from the supervision of Bawaslu as an institution that takes part in upholding the democratic system itself. The early establishment of Bawaslu was motivated by a crisis of confidence in the implementation of elections, the term Bawaslu is known as the Election Supervisory Committee (Panwaslak) (Wahyudi & Rifai, 2023). In 1971, protests emerged from the public, allegedly because of the manipulation of vote results by election officials. Then Politicians from the United Development Party (PPP) and the Indonesian Democratic Party (PDI) asked the government to improve the quality of the 1982 elections by improving the law (Haris, 2005). Then during the Reformation era an independent election management body was formed and called the General Election Commission (KPU), and Panwaslak also underwent a nomenclature change to become an election supervisory committee (Panwaslu) (Salurante, et al., 2022).

After that, there was a fundamental change regarding the election supervisory institution based on Law Number 12 of 2003 (Mardiyati & Indrajaya, 2021). This law describes the implementation of election supervision by forming an ad hoc (temporary) institution that is separate from the KPU structure. Then there was a change from an Ad hoc institution to a permanent institution which was strengthened by Law Number 22 of 2007, concerning Election Organizers by establishing a permanent institution called the Election Supervisory Body (Bawaslu) (Zaini, 2019). Then through the decision of the Constitutional Court on judicial review (JR), which was carried out by Bawaslu on Law Number 22 of 2007 which decided that the authority of election supervisors fully became the authority of Bawaslu, as well as in recruiting election supervisors who were the responsibility of Bawaslu, where previously it was the

responsibility of the Election Supervisory Board. answer from the KPU (Johan, 2018). Bawaslu continues to grow until now it has become an independent and permanent institution.

According to Law number 7 of 2017 concerning General Elections, Bawaslu (the General Election Supervisory Body) is an Election Organizing Agency whose job is to oversee the holding of elections throughout the territory of the Unitary State of the Republic of Indonesia (Ja'far, 2018). Elections are carried out based on the principles of direct, public, free, confidential, honest, and fair. In Article 91 concerning position, composition, and membership, the Election Supervisory Body is carried out by Bawaslu where the Bawaslu domiciled in the national capital has 5 (five) members, Provincial Bawaslu has 5 (five) or 7 (seven) members, Bawaslu the regency has 3 (three) or 5 (five) members, and the sub-district Panwaslu has 3 (three) members (Saleh, 2022). The Bawaslu chairman is elected by Bawaslu members and every Bawaslu member, be it Province, Regency/City, or District, has equal voting rights. And the term of office of the chairman and members of the Bawaslu is 5 (five) years from the taking of the oath/pledge (Teguh Prasetyo, 2021).

Bawaslu is tasked with formulating standard procedures for supervising the conduct of elections for election supervisors at every level, preventing and taking action against election violations, election process disputes, supervising preparations for holding elections, and so forth as stipulated in Article 93 of Law number 7 of 2017 (Furqoni, et al., 2022).

Method

Research on the absolute authority of Bawaslu in handling post-national result election violations can be a complex and relevant topic. The research methodology that can be employed in this study includes the following steps. Literature Review. Begin with conducting a literature review about Bawaslu, its role, and authority in elections. Identify laws and regulations that govern Bawaslu's authority in addressing election violations. Focus Determination. Define the research focus, such as specific aspects of Bawaslu's absolute authority or particular types of violations to be explored. Data Collection Method. Choose appropriate data collection methods, such as interviews with Bawaslu members, legal experts, or relevant parties, as well as legal document analysis and Bawaslu decisions. Document Analysis. Examine various official documents related to elections, including Bawaslu decision reports, rules, regulations, and relevant court rulings. Case Study. Conduct case studies on several election violations that have been handled by Bawaslu following the national result declaration. Analyze these violations, considering the handling process, imposed sanctions, and their impact. Data Analysis. Data analysis involves processing information obtained from documents to identify patterns, challenges, and successes in addressing violations.

Findings

Authority according to the Big Indonesian Dictionary is legal power given to institutions in society that allows officials to carry out their functions (Sudrajat, 2022). Meanwhile, according to the Big Indonesian Dictionary, Absolut is unlimited, absolute, or complete (Pureklolon, 2020).

Based on the definition above, absolute authority is a power or authority possessed by a legal entity whose nature is absolute. According to S.F. Marbun "Authority is power that is formalized, both in the field of government that comes from legislative power or government power, while the meaning of authority is an ability to act that is given by law that applies to carry out certain legal relations (Nurman, 2019).

Whereas in this case, the absolute authority of Bawaslu means the authority possessed by Bawaslu is absolute/full. According to Law Number 7 of 2017, the Authority of the General Election Supervisory Agency (Bawaslu) is:

1. prepare standard procedures for supervising the conduct of elections for election supervisors at every level.
2. Prevent and take action against Election violations and election process disputes.
3. supervising the preparations for holding elections.
4. Supervise the implementation of the stages of the Election.
5. prevent the practice of money politics.
6. supervise the neutrality of the state civil apparatus, the neutrality of members of the Indonesian National Armed Forces, and the neutrality of members of the Indonesian National Police.
7. supervise the implementation of decisions/decisions, whether they are DKPP decisions, court decisions regarding election violations and disputes, Bawaslu, Provincial Bawaslu, and Regency/City Bawaslu decisions/decisions, KPU, Provincial KPU, and Regency/City KPU decisions; and decisions of authorized officials for violations of the neutrality of the state civil apparatus, the neutrality of members of the Indonesian National Armed Forces, and the neutrality of members of the Indonesian National Police;
8. submit allegations of violations of the Election Organizer code of ethics to the DKPP.
9. submit allegations of election crimes to Gakkumdu.
10. Manage, maintain, and care for archives and carry out depreciation based on the archive retention schedule by statutory provisions.
11. evaluate election supervision.
12. supervise the implementation of KPU Regulations, and
13. carry out other tasks by the provisions of laws and regulations.

Based on the description above, it can be seen that the number of duties and responsibilities assigned by Bawaslu. Then how does Bawaslu prevent and take action against election violations and/or election process disputes? Are there any limitations for Bawaslu in its authority to follow up on election violations before, after, or after the election? These questions often arise both among academic activists, legal experts, students, and society in general.

Discussion

In Indonesia, various types of election violations have occurred during the electoral processes. These violations cover a wide range of aspects, from campaigning to the use of resources, as well as the voting and vote-counting processes. Here are some common types of election violations that have occurred in Indonesia:

1. Violations in Campaigning:
 - a. Unauthorized Campaigning: Violations occur when candidates or political parties campaign outside designated times or in prohibited locations.
 - b. Negative Campaigning: Involves spreading false information, defamation, or personal attacks against political opponents.
 - c. Religious Symbol Exploitation: The use of religious symbols for political gain that can provoke division and conflict.
2. Money Politics:
 - a. Cash Distribution: Offering cash to voters to influence their choices.

- b. Vote Buying: Paying voters or political parties to gain support or votes.
- c. Misuse of State Resources: Misusing public funds or state facilities for campaigning.
- 3. Multiple Voting and Vote Manipulation:
 - a. Multiple Voting: Non-eligible individuals casting votes or voters casting more than one vote.
 - b. Results Manipulation: Manipulating vote counting or other violations that can affect the election outcome.
- 4. Violence and Intimidation:
 - a. Threats and Violence: Using physical threats or violence to influence voter choices.
 - b. Intimidation: Forcing or intimidating voters to vote for a specific candidate or not vote at all.
- 5. Identity and Data Forgery:
 - a. Identity Forgery: Using fake identities to influence the election process.
 - b. Data Manipulation: Altering voter data, voter lists, or other election-related information.
- 6. Campaigning in Restricted Areas:
Campaign Restrictions: Violating campaign restrictions in government institutions, places of worship, and other designated no-campaign zones.
- 7. Spread of Fake News (Hoaxes):
Hoax Dissemination: Spreading false information or hoaxes that can influence voter perceptions.
- 8. Use of State Resources for Campaigning:
Abuse of Position: Using one's position or state resources for personal or party political campaigning.
- 9. Media Violations:
 - a. Media Imbalance: Media providing disproportionate coverage to certain candidates or parties.
 - b. Misleading Media: Media intentionally presenting inaccurate information or distorting facts.
- 10. Negative Campaigning on Social Media:
Spreading Defamation: Disseminating false information or defamation about political opponents on social media.
- 11. Fake Voters:
Ghost Voters: Registering fictional or ineligible voters to manipulate election outcomes.
- 12. Administrative Violations:
Document Inconsistencies: Candidates or political parties not meeting the administrative requirements set by election organizers.

These violations can have serious implications for the integrity and trust in the electoral process. Therefore, the role of institutions like Bawaslu is crucial in overseeing and addressing these violations to ensure that elections are conducted fairly, freely, and transparently.

According to Subarkti, legal disputes and election violations can be divided into six types (Surbakti, et al., 2011):

- 1. election criminal violations (election criminal acts);
- 2. disputes in the election process;
- 3. election administration violations;

4. violation of the election organizers' code of ethics;
5. election result disputes; And
6. Other legal disputes. And the most common election violations are election administration violations.

In 2019, based on the KPU RI letter number 982 regarding the implementation of the Bawaslu decision number 047/LP/PL/ADM/RI/00.00/V/2019 dated June 24, 2019, the Batam KPUD has made changes to DAA1 and DA1 at TPS 42 in the Batu Selicin sub-district and TPS 87, Balui Permai Village (Supriyadi & Purnamasari, 2023). After reviewing it, the KPU's decision to change the vote tally was a follow-up to Bawaslu's recommendation. Bawaslu considered that there was an error in the vote recapitulation procedure so the votes had to be changed while the Bawaslu recommendation was terminated on 24 June 2019 and registered on 23 May 2019, two days after the KPU determined the results of the 2019 general election votes on 21 May 2019 (Vranciska, et al., 2022). This case confirms that there is unclear time in law enforcement for administrative violations and errors in the recapitulation process of Bawaslu results. On the one hand, Bawaslu cannot be blamed because Bawaslu has to receive and follow up on the report by the authority set out in the election law. This problem creates legal uncertainty for election organizers, especially the KPU, and also election participants in terms of seeking election justice.

Each of these election law issues is resolved by different institutions. For example, in handling violations of the election organizers' code of ethics, the authority for the Election Organizer Ethics Council (DKPP) (Manik, et al., 2019). Not all legal issues that occur during elections are election disputes or violations, this needs to be limited because it will make it difficult for Bawaslu to exercise its authority to oversee elections. For example, election organizers are accused of corruption, of course, this concerns corruption laws and not election laws.

There are limitations for Bawaslu in following up on election crimes, Article 252 of Law Number 10 of 2008 states "Election criminal violations are violations of the election criminal provisions stipulated in this Law whose settlement is carried out through courts within the general court environment".

Election violations can indeed be classified at different levels: national, provincial, and regional. This classification helps to understand the scope and impact of violations in different areas. Here's a breakdown of how election violations can be classified at each level (Sidik, 2016):

1. National Level:
 - a. Misuse of State Resources: Misusing national funds or state facilities for campaigning on a national scale.
 - b. Spread of National-Level False Information: Dissemination of fake news or hoaxes that affect the national perception of the election.
 - c. Mass Vote Buying: Attempting to buy votes on a larger scale, involving a significant number of voters.
 - d. Significant National Negative Campaigning: Negative campaigning that has a significant impact on the national level, such as personal attacks or the spread of false information.
 - e. Campaigning Beyond Designated National Timelines: Campaigning conducted outside the designated national campaign period.
2. Provincial Level:
 - a. Provincial-Level Money Politics: Distributing cash or buying votes at the provincial level.

- b. Use of Regional Resources for Campaigning: Misusing regional funds or facilities for provincial-level campaigning.
 - c. Regional Media Violations: Regional media that does not provide balanced coverage to candidates or political parties.
 - d. Campaigning in Prohibited Places at the Provincial Level: Campaigning in government institutions or restricted areas at the provincial level.
3. Regional Level:
- a. Administrative Violations at the Regional Level: Candidates or political parties failing to meet administrative requirements at the regional level.
 - b. Campaigning Violations at the Regional Level: Campaigning that violates timing or location rules at the regional level.
 - c. Local Vote Manipulation: Multiple voting or manipulation of vote results at the regional level.
 - d. Local Voter Intimidation: Intimidation or physical threats against voters at the local level.
 - e. Spread of Local-Level Defamation: Spreading false information or defamation about candidates or political parties at the local level.

This classification helps election organizers and supervisory bodies like Bawaslu to identify, investigate, and address violations according to the appropriate geographic level. As a result, monitoring and enforcing election violations can be more effective and targeted.

Ideal Handling by Bawaslu (Supriyadi & Purnamasari, 2023):

1. Violation Identification: Bawaslu should be capable of accurately identifying various types of election violations through monitoring mechanisms, information gathering, and collaboration with various parties.
2. Thorough Investigation: Bawaslu needs to conduct in-depth investigations into identified violations. This involves collecting evidence, interviewing witnesses, and examining relevant documentation.
3. Transparency and Accountability: Bawaslu should carry out violation handling actions transparently, provide information to the public, and offer periodic reports on developments and actions taken.
4. Educational and Awareness Approach: Apart from enforcement actions, Bawaslu should also engage in educational and awareness-building efforts for both the public and political actors on the importance of upholding election ethics and laws.
5. Imposition of Sanctions: If violations are proven, Bawaslu should impose sanctions in accordance with applicable rules. Sanctions could involve fines, disqualification, or other appropriate measures.
6. Collaboration with Law Enforcement: Bawaslu needs to coordinate and collaborate with law enforcement agencies for violations involving criminal offenses.

Violations Committed by Bawaslu in the Field (Hermawan, 2022):

1. Please note that in this context, “violations committed by Bawaslu” might refer to errors or issues that occur during the monitoring or handling of violations. Some violations that might occur in the field are:
 - a. Resource Shortages: Bawaslu may face limitations in terms of personnel, funds, or technology that could impact their ability to monitor and handle violations effectively.

- b. Slow Response: At times, Bawaslu might encounter challenges in responding quickly to violations, especially if they occur in remote or hard-to-reach locations.
- c. Lack of Neutrality: There's a possibility that Bawaslu's monitoring teams or personnel involved in violation handling might not be entirely neutral, which could damage the institution's image.
- d. Inadequate Sanctions: Sanctions imposed by Bawaslu might not be sufficiently effective in deterring future violations if the penalties are not stringent enough.
- e. Legal Process Discrepancies: In some cases, legal processes involving Bawaslu might not always proceed smoothly, which could hinder the proper handling of violations.

It's important to remember that Bawaslu is a human institution and may face challenges in carrying out its tasks. Continuous efforts to enhance transparency, accountability, and the institution's capabilities are crucial to maintaining the integrity of the election process in Indonesia.

Conclusion

The absolute authority of Bawaslu means the authority possessed by Bawaslu is absolute/full. Whereas in this case, the absolute authority of Bawaslu means the authority possessed by Bawaslu is absolute/full. According to Law Number 7 of 2017, the Authority of the General Election Supervisory Agency (Bawaslu) is prepare standard procedures for supervising the conduct of elections for election supervisors at every level. Prevent and take action against Election violations and election process disputes. Supervising the preparations for holding elections. Supervise the implementation of the stages of the Election. Prevent the practice of money politics. Supervise the neutrality of the state civil apparatus, the neutrality of members of the Indonesian National Armed Forces, and the neutrality of members of the Indonesian National Police. Supervise the implementation of decisions/decisions, whether they are DKPP decisions, court decisions regarding election violations and disputes, Bawaslu, Provincial Bawaslu, and Regency/City Bawaslu decisions/decisions, KPU, Provincial KPU, and Regency/City KPU decisions; and decisions of authorized officials for violations of the neutrality of the state civil apparatus, the neutrality of members of the Indonesian National Armed Forces, and the neutrality of members of the Indonesian National Police. Submit allegations of violations of the Election Organizer code of ethics to the DKPP.

Based on Article 252 of Law Number 10 of 2008, not all criminal acts that occur during the election period or are related to the holding of elections are classified as election crimes. Election criminal acts are actions that exist/or are listed in the Election Law, if they are not listed or explained in this Law, then those actions are beyond the authority of the Election organizers, in this case, the Bawaslu. Election crimes are regulated in Chapter XXI, from Article 260 to Article 311 of Law No. 10/2008.

Bawaslu has the authority to receive and follow up on reports related to alleged violations of the implementation of laws and regulations on elections prior to determining the results nationally. Bawaslu is not responsible for dealing with election violations after the determination of the results nationally, which is because the case was after the determination. So the authority to handle it is the Constitutional Court. Constitutional Court. The task of the Bawaslu is only to oversee the election until the results are determined so that it is clear that the authority of the Bawaslu is limited and this is strengthened by Law No. 4 of 2014 concerning the establishment of a government regulation in lieu of Law No. 1 of 2013 concerning the second amendment to Law

no. 24 of 2003 concerning the Constitutional Court to become a Law regulates the 4 powers and 1 obligation of the Constitutional Court. Which reads point 4 “Determining disputes about the results of the general election”. In our opinion, the things that need to be improved at this time is make clear and firm revisions to the Law on Election Organizers. Outreach to the community about the duties and powers possessed by Bawaslu and the limitations of Bawaslu in resolving cases of election violations, so that the public understands and does not always blame Bawaslu for deficiencies that occur. The need for concrete cooperation between law enforcers and election supervisors in resolving cases of election violations. Improving the quality of work for the district or city Panwaslu and tightening the existing TPS so that if there is administrative fraud that occurs it must be reported immediately and followed up so that the problem is quickly handled by the provincial Bawaslu. And if the reports that occurred were received after the voting was collected and published, then in this case Bawaslu cannot adjudicate and take authority in cases that were reported after the voting was published. Therefore this case must be reported immediately so that it can be resolved quickly.

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