



## The limit of authority of the Indonesian general election supervisory agency in supervising election violations in Indonesia

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### Abstract

This article aims to analyse the limits of BAWASLU's authority in overseeing election violations in Indonesia. This research is legal research with a statutory and conceptual approach. The result of this research is the limitation of BAWASLU's authority in handling Election violations only focuses on administrative violations, namely violations of procedures, protocols, or mechanisms related to the implementation of Election. DKPP (Honorary Council of Election Organisers) is tasked with handling any violations of the code of ethics, which includes violations related to the commitments and promises of Election organisers before carrying out their duties. Meanwhile, Election criminal offences are handled by Bawaslu, the Police, and the Attorney General's Office, all of which are incorporated in an integrated law enforcement forum / institution (Gakkumdu).

**Keywords:** Election violation, general election, general election supervisory agency

### Introduction

The General Election (Election) is managed by three institutions: The General Election Commission (KPU), the General Election Supervisory Agency (BAWASLU), and the Election Organiser Honour Council (DKPP). These agencies work together to facilitate the direct election of legislative members, heads of state, and regional council members by citizens. To ensure compliance with these regulations, Law Number 7 Year 2017, specifically Article 448 to Article 545, regulates Election offences for the smooth conduct of elections. The Election Supervisory Committee is a supervisory institution tasked with overseeing the Election, which was established in mid-1982. At that time, trust in the organisation of the Election began to fade due to government manipulation. The establishment of the Election Supervisory Committee for the 1982 Election was a response to protests raised over vote rigging and manipulation by the Election organisers in 1971. At that time, the government and the DPR were dominated by the Golkar party and ABRI. Finally, in 1982 a proposal was made to amend the legislation in order to improve the quality of the Election process. To fulfil the demands of the PPP and PDI, the government gave permission to representatives of the participating parties to join the Election Committee. In addition, the government planned to establish a new institution to support the KPU in organising the Election.

In 2018, district-level Election Supervisory Bodies were established. On 15 August 2018, the Election Supervisory Agency of the Republic of Indonesia (Bawaslu RI) appointed 1,914 people as members of the Election Supervisory Agency at the district/city level throughout Indonesia. By strengthening its institutional position, Bawaslu becomes more strategic, especially in efforts to effectively prevent potential Election violations. Bawaslu has the authority to take firm and efficient action and act as an arbiter in the Election dispute resolution process.

According to Law Number 7/2017 on General Elections,<sup>[2]</sup> Bawaslu has the authority not only to provide recommendations, but also to act or mediate various problems. Based on Article 461 paragraph (1) of Law

Number 7/2017, Bawaslu, both at the provincial and district/city levels, has the authority to receive, examine, and decide cases of violations of the Election. However, the rapid changes in society have made the current laws and regulations no longer able to accommodate these changes.

Another obstacle in Election 2019 is that Bawaslu emphasises the importance of not utilising SARA issues in the 2018 Regional Elections, Election 2019, and the 2019 Presidential Elections. Although there have been many Elections and regional head elections, there are still several Election problems that have not been resolved and have not been adequately addressed by the organisers, especially Bawaslu. Some of the problems that still exist include the need to update voter data, eradicate political corruption, accountability, neutrality of the state civil apparatus, maintain the integrity of the Election process and results, and supervision of legislative and regional Elections. The success or failure of legislative elections, legislative elections, and regional elections is determined by several conditions and actors.

The main obstacle of the current Election is the simultaneous Election which is held every five years. Specifically, the simultaneous Election is carried out starting from the election of members of the Regency / City DPRD, Provincial DPRD, DPR RI, DPD, President and Vice President. Election 2019 is different from previous Elections because it is the first moment of simultaneous Election. In previous Elections, the organisation of legislative Elections and presidential Elections was carried out in different ways.

The simultaneous implementation of this task is very important for the organisers, especially the KPU and Bawaslu. Therefore, together with the participants of the five-year celebration. First of all, the KPU must really organise logistics and human resources carefully and meticulously. Furthermore, Bawaslu will encounter a different map of potential and violations compared to previous Elections. Finally, as mandated in Law 7 of 2017, Bawaslu plays an important role in the process of organising the Election. Bawaslu's main task is to oversee the process of organising the Election and ensure compliance with laws

and regulations, so as to prevent violations. Bawaslu has an important role in preventing potential Election violations through the implementation of effective prevention measures. Bawaslu is expected to be the foundation of hope for the entire community, uphold justice in law enforcement of Election violations, and become an impartial arbiter in every Election dispute.

Bawaslu Surabaya City has issued letter number 436/KJI - 38/PM.05.02/IV/2019 recommending Recapitulation at PPK and Vote Recount for PPS on 21 April 2019. Recommendation 436/KJI - 38/PM.05.02/IV/2019 was made in response to complaints from several political parties regarding discrepancies in vote data recorded in the C1 form in a number of polling station locations on 20 April 2019. In the supervision carried out by Bawaslu Surabaya City, TPS Supervisors utilised the Siwaslu program and were supported by the Google Form application. On the day of voting, a number of polling stations showed discrepancies in the documentation of the C1 form and the inclusion of the C1 or DA1 hologram. In fact, some of these forms were left blank. In the voting process, around 300 polling stations were not synchronised according to the Siwaslu and Google Form applications. However, this decision is not in accordance with the findings of supervision conducted by Bawaslu Surabaya City. For this decision, Deputy Mayor of Surabaya Wisnu Sakti Buana reported the Bawaslu to DKPP.

The action was taken because he considered the verdict was not in favour of his party and was not balanced. All Surabaya City Bawaslu commissioners at DKPP underwent an ethical hearing which resulted in a verdict of Dismissal from the Chairmanship of Hadi Margo Sambodo. In addition, Agil and other members also received a final stern warning. For this incident, Bawaslu must be more careful and prioritise professional ethics as an Election Supervisory Institution that upholds justice and honesty.

Therefore, this research will analyse the limits of BAWASLU's authority in overseeing election violations in Indonesia.

### Literature review

According to Article 2 of Law No. 7/2017 on General Elections, the organisation of Elections shall adhere to the principles of direct, general, free, secret, honest and fair. These six principles will remain in effect until the current general election ends, namely:

#### 1. Direct principle

Direct elections have two different interpretations. The first refers to the technical process by which members of the public exercise their right to vote without the need for a representative. This measure is used to reduce fraudulent activities by representatives. Furthermore, the concept of direct elections has a significant meaning. Conducting direct elections is a means of realising the constitutional principle that power rests with the people. Individuals have inherent autonomy in the selection of their leaders. Therefore, the Election Act, which has been used before, explicitly affirms that elections serve as a means to safeguard the sovereignty of the people. The main objective of direct elections is to increase the level of civic engagement. Elections are a democratic process that is generally seen as a process by the people, for the people.

#### 2. General principles

The principles have three different interpretations. All persons who have been given the opportunity to exercise their right to vote in accordance with the law should participate in elections. Registration is mandatory for all eligible individuals, and those who have completed the registration process should be given easy voting opportunities. Furthermore, the integrity of the vote must be safeguarded, nothing should be lost or changed. Furthermore, the deeper meaning is that the Election is conducted simultaneously throughout Indonesia. Elections are held simultaneously at designated polling stations, with the same day, time and location. Furthermore, the deeper meaning of this concept is that the Election is conducted by the same institutions, voters, and individuals involved.

#### 3. Free principle

A free election is characterised by the freedom of voters to determine their political attitudes independently without any influence or coercion from other parties. Every human being has the inherent right to express their political attitudes or opinions. According to Article 23 paragraph (1) of Law Number 39 Year 1999, every person has the right to exercise their right to vote and to have their own political beliefs. Voters must be free from any form of intervention, coercion, or manipulation to favour a particular candidate. The existence of freedom and fairness allows each citizen to choose a candidate leader based on his or her personal ideas. One has the freedom to decide not to vote for a leader who cannot be trusted and should not be given the opportunity to rule again.

According to Gaffar, general elections are empirically regarded as an essential requirement for realising democracy. General elections are organised at regular intervals. Every adult has the right to exercise his or her right to vote, run for office, and exercise his or her freedom to choose according to his or her own beliefs. He or she has the autonomy to choose a political party or candidate of his or her choice without coercion from other political entities. Participants are given the autonomy to engage in all election-related activities including campaigning and witnessing the vote counting process.

#### 4. The principle of confidentiality

The primary meaning of a secret ballot is to keep an individual's choice from being revealed to others. As a result, voters are prohibited from revealing their choice to anyone. Secrecy also means that groups or individuals cannot impose their will on other people or groups. The existence of secrecy has emerged as an important concern in the ongoing electoral procedures. The increasing influence of sectarian politics, financial politics, and mobilisation of power has resulted in the erosion of the meaning of the concept of secrecy.

#### 5. The principle of Honesty

The goal of an honest Election is to prevent any form of fraud in all aspects related to the Election process. It starts from the recruitment of candidates, followed by the announcement of campaign promises, and influencing the public without any reward or coercion, while ensuring that there is no vote manipulation in the vote counting process. Elections are civilised contests that aim to secure voter support in a more civilised manner. Elections cannot be

considered successful if they are conducted in a manner that goes against the values of fairness and reasonableness. The value of honesty does not only apply to the participants and organisers of the Election. This component covers all stakeholders in the Election, including the integrity of voters in expressing their political opinions, free from the influence of gifts or coercion. The integrity of the government in providing early voter information, the integrity of the media in news coverage, the honesty of survey agencies in releasing findings, and the integrity of university scientists in voicing their opinions.

## 6. Fair principle

The purpose of an Election is to ensure fair treatment for all voters, organisers and participants involved in the Election process. The concept of Election sovereignty is closely related to the level of trust given to the Election process. The Election Regulations as stated in Article 4 of the Election Law aim to improve the democratic constitutional system, ensure the implementation of a fair and comprehensive Election, and avoid redundancies in Election procedures in order to realise an effective and efficient Election. Fairness has three important elements. Firstly, all Election rules, including laws and regulations, must prioritise the concept of fairness for everyone in the country. Further, every Election organiser must ensure the provision of equal services to all participants and voters, without discrimination of any kind. Election tribunals must ensure that all decisions are made with equal fairness.

## Research methodology

This research is a type of normative research. In this research, law is conceptualised as what is written in legislation (law in book) or law which is conceptualised as rules or norms which are a benchmark for society's behaviour towards what is considered appropriate. However, in fact, law can also be conceptualised as what is in action (law in action). The law in the book is a law that should work as expected, both are different, meaning that the law in the book is often different from the law in people's lives.

The approaches in this research are statute approach and conceptual approach. The legal materials used are primary and secondary legal materials.

The technique for collecting legal materials used in this thesis research is Normative Law research or literature with library studies of legal materials, both primary legal materials, secondary legal materials, tertiary legal materials and non-legal entities. Searching for legal materials can be done by reading, listening, viewing or by searching for legal materials via the internet. In fact, the law is then analysed to find answers to existing legal issues.

## Discussion

Election offences are actions that contradict or do not comply with the laws and regulations related to Election. Election violations can come from findings or reports. Election violation findings are the result of active supervision from Bawaslu, Provincial Bawaslu, Regency / City Bawaslu, Sub-district Panwaslu, Village / Village Panwaslu, Overseas Panwaslu (LN), and Polling Station Supervisors (TPS) at each stage of the Election. Apart from the findings of Bawaslu, reports of Election violations can be directly reported by Indonesian citizens who have the

right to vote, Election participants, and Election observers to Bawaslu, Provincial Bawaslu, Regency / City Bawaslu, District / City Panwaslu, Sub-district Panwaslu, Village / Village Panwaslu, Overseas Panwaslu, and / or TPS Supervisors. Election violation reports are submitted in writing and at least contain the name and address of the reporter, the reported party, the time, the place of the incident and a description of the incident. Election violation reports are submitted no later than 7 (seven) working days from the time of the alleged Election violation.

Based on Law Number 7 of 2017 concerning General Elections, there are 3 (three) types of Election violations, namely violations of the code of ethics, administrative violations and Election criminal offences. These violations can be explained as follows:

1. Breach of Code of Ethics
2. Administrative Offences
3. Election offences

That Election Violations according to their characteristics are divided into 3, namely, Code of Ethics Violations, Administrative Violations, and Election Related Criminal Violations. Election violations are through a monitoring mechanism with outputs in the form of findings or reports. In practice, the authority of BAWASLU in overseeing Election violations according to the above characteristics is still constrained by the overlapping authority of BAWASLU with DKPP and KPU due to the lack of firm characteristics of Election violations and the classification of Election violations regulated by the Government in Law Number 7 of 2017 concerning General Elections.

## The following are some examples of possible Election offences:

1. Black Campaigning is engaging in malicious campaigning, spreading inaccurate information, or slandering other candidates to manipulate voter opinion.
2. Identity forgery and multiple voting refer to the act of using a fake identity or fake documents to cast multiple votes in an election.
3. The act of unlawfully giving or receiving money or gifts to influence voters or others involved in the electoral process.
4. Inappropriate Utilisation of Government Resources: Utilising government facilities or resources for personal campaign or partisan gain.
5. Breach of Code of Conduct: Engaging in actions that violate the ethical standards and guidelines set by the Election organiser, such as failing to fulfil responsibilities as promised.
6. Ballot Manipulation refers to the act of unlawfully removing or altering ballot papers, or engaging in other activities that undermine the credibility and reliability of the Election results.
7. Coercion and Threats: Using threats or intimidation tactics to manipulate the outcome of an Election by instilling fear in voters or participants.
8. Administrative Offences: Non-compliance with administrative procedures or mechanisms that may affect the conduct of the Election, such as incorrect data recording or failure to adhere to the Election timetable.

9. Media Bias by Manipulating or controlling the mass media unfairly to favour a particular candidate or political party.
10. Limitations on Information Accessibility: Imposing limitations on the availability of information or freedom to express oneself, potentially affecting the voter's decision-making process.

In the event of an Election violation, the reporting procedure is as follows:

1. Indonesian citizens (WNI) who have the right to vote, Election participants, and Election monitors have the right to make reports of Election violations. This shows the active role of the community in maintaining the integrity and sustainability of the Election process.
2. To relevant agencies. Reports can be submitted to various supervisory institutions, such as the central Bawaslu, provincial Bawaslu, district/city Bawaslu, sub-district Panwaslu, village/kelurahan Panwaslu, overseas Panwaslu, and/or polling station supervisors. The selection of the institution is adjusted to the level of the region or location where the violation occurred.
3. Report format. Election violation reports must be submitted in writing. The report should contain at least the following information: the name and address of the reporter, the identity of the reported party, the time and place of the incident, and a full description of the incident. Including this information makes the report more comprehensive and makes it easier to understand the context and nature of the violation reported by the oversight body.
4. Reporting time. Election violation reports must be submitted within the specified timeframe. According to Bawaslu's guidelines, reports must be submitted within a maximum of 7 working days from the time the alleged Election violation is detected. The implementation of this deadline ensures quick processing and monitoring of reports, thus facilitating a fair and transparent Election process.

Things that need to be considered in the process of reports related to Election violations are as follows:

1. It is necessary to know who is the Reporting party, in the process of reports related to Election violations, it is necessary to know that Reporting is a person or body that has the authority to document and disclose alleged Election violations. Including Indonesian residents who have the right to vote, Election monitors, and / or Election participants.
2. In addition, it is also necessary to know who is the reported party, in the process of reports related to Election violations, it is necessary to know that the reported party is a legal entity that is suspected of committing Election violations.
3. In addition to the Reporting Party and the Reportee, it is also necessary to know about the Alleged Violation Report which is a written report submitted by the reporter to the Election Supervisor reporting alleged Election violations. There are 2 requirements that must be met in the process of reports related to Election violations, which are as follows:

#### a. Formal requirements

That the formal requirements in the process of reports related to Election violations are the parties authorised to make reports where the reporting time does not exceed the specified time limit and the validity of the Alleged Violation Report, which includes: verification of the signature on the alleged violation report form with the identity card; and the date and time of the report.

#### b. Material requirements

The material requirements in the process of reports related to Election violations are the identity of the Reporter which contains the name and address of the reported party, a detailed description of the incident, including events and descriptions; the exact time and location of the incident, witnesses who know the incident; and any potential evidence that can be obtained or is already known.

4. In the process of reporting Election offences, it is important to note that a Finding is the result of close scrutiny by the Election Supervisor of the reported offence.
5. A report of an alleged Election Offence must be filed promptly with the Election Supervisor within 7 days of the discovery of the offence, considering the level and working area of the alleged offence.

That based on the provisions of Law Number 7 of 2017 Concerning General Elections, it can be understood that BAWASLU has the duty and authority to supervise the implementation of Elections throughout the territory of the Unitary State of the Republic of Indonesia. More detail is regulated in the provisions of Article 95 of Law Number 7 of 2017 Concerning General Elections stipulates that the authority of BAWASLU is as follows:

1. Receive and monitor reports of alleged violations of the provisions of laws and regulations in the field of organising Elections;
2. Assessing, reviewing, and determining violations of the Election;
3. Analysing, reviewing, and determining corruption offences in political funding;
4. Receiving, analysing, facilitating, or resolving problems in the organisation of the Election and giving a final decision on their resolution;
5. Advise relevant agencies on the results of impartiality assessments of state civil servants, members of the TNI, and police personnel;
6. Taking over the duties, authorities, and obligations of the provincial and regency/city Bawaslu in stages, if the provincial and regency/city Bawaslu are unable to carry out their duties due to sanctions or other consequences stipulated in laws and regulations.
7. Collect necessary information from relevant parties to proactively address and mitigate administrative violations, code of conduct violations, alleged Election offences, and disputes relating to the Election process.
8. Correct the decisions and recommendations of the provincial Bawaslu and district / city Bawaslu if violations of laws and regulations are found;
9. Establish provincial Bawaslu, district/city Bawaslu, and overseas Panwaslu;
10. Selecting, fostering, and dismissing provincial Bawaslu members, regency/city Bawaslu members, and overseas Panwaslu members.

In addition, Bawaslu also carries out to receive and investigate alleged violations of the Election Law also mentioned in Article 95, namely in letters a, b, and c. Furthermore, Bawaslu is authorised to examine, evaluate, and decide cases of administrative violations of Election and corruption offences by using money in politics.

Based on the provisions of Article 94 of Law Number 7 of 2017 concerning General Elections, Bawaslu has the authority to handle Election disputes which are only limited to disputes arising during the Election process, namely as follows:

1. Receive requests for dispute resolution relating to the Election process;
2. Conduct careful and objective verification of requests for dispute resolution relating to the Election process;
3. Facilitate communication and negotiation between the disputing parties;
4. Implement formal processes to adjudicate Election process disputes;
5. Give final judgement on the resolution of disputes relating to the Election process.

### **Conclusion**

The limitations of BAWASLU's authority in handling Election violations only focus on administrative violations, namely violations of procedures, protocols, or mechanisms related to the holding of Elections. DKPP (Honorary Council of Election Organisers) is tasked with handling any violations of the code of ethics, which includes violations related to the commitments and promises of Election organisers before carrying out their duties. Meanwhile, Election criminal offences are handled by Bawaslu, the Police, and the Attorney General's Office, all of which are incorporated in an integrated law enforcement forum / institution (Gakkumdu).

### **Suggestions**

In emphasising the limits of BAWASLU's authority as an independent institution in Election supervision, preventive and prosecutorial measures should be applied. Prevention is done by taking proactive steps and making optimal efforts to avoid potential violations and detect early signs of violations so as to minimise the number of cases of violations that go public.

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