

Bawaslu's Authority to Handle Violations of Neutrality of State Civil Apparatus in Regional Head Elections

Faisal Azis Manuruki¹, Abdul Razak², Zulkifli Aspan³, Yuli Rahayu⁴

¹Department of Law, Faculty of Law, Hasanuddin University, Makassar, Indonesia.

*Corresponding author's E-mail: Faisal Azis Manuruki

Article History	Abstract
Received: 06 June 2023 Revised: 05 Sept 2023 Accepted: 10 Dec 2023	<i>This research aims to determine and explain Bawaslu's authority in handling violations of neutrality of state civil servants in regional head elections as well as Bawaslu's obstacles in handling violations of neutrality of state civil servants in regional head elections. This research uses a normative type of research. The types and sources of law used in this research are document data and secondary data. The data collection method through legal materials is carried out by inventorying and identifying legal materials, all data is analyzed qualitatively and presented descriptively. The results of the research show that Bawaslu's authority in handling violations of the neutrality of state civil servants in regional head elections is divided into three, namely attributive, mandate and delegation in accordance with the Bawaslu agreement in handling State Civil Apparatus neutrality cases which refers to General Election Supervisory Body Regulation Number 7 of 2018. Factors The obstacles to Bawaslu in handling violations of the neutrality of the state civil apparatus can be explained, namely its law enforcement, facilities, and community participation, namely the absence of strict sanctions for perpetrators of violations of this law so that there are still many perpetrators who commit violations against the neutrality of the state civil apparatus in repeated regional head elections and continuously.</i>
CC License CC-BY-NC-SA 4.0	Keywords: Authority, BAWASLU, Regional Head Election

1. Introduction

General elections are essentially the application of democratic principles in political decision making, both directly and indirectly, through the involvement of citizens in general elections. This general election is one of the characteristics of the government empowering the participation and role of the community regarding their constitutionally guaranteed social and political rights. In the development of democracy in Indonesia, regional head elections have become the most important part that cannot be separated (Romli 2019, Rohman & Napang 2022, Syahril & Redi 2023). For all people, the direct election system has given birth and opened up widespread involvement as a process in selecting regional leaders (Ceaser 2017, Rohman & Mubarak 2022). The people have the opportunity to participate in regional elections directly through regional leaders in developing their region. Based on democratic principles, this is the regional election system adopted by the Indonesian people.

The neutrality of the State Civil Apparatus is something that needs to be continuously maintained and supervised, so that election events can run honestly (fair play) (Gunarto et al 2018, Malik et al 2020, Mutiarasari & Herawati 2020) and fairly between candidates who have power and candidates who do not have power relations within the government bureaucracy. In connection with regulating the neutrality of State Civil Apparatus in elections, the laws and regulations governing them are very diverse, not only legal products relating to elections, but also legal products that specifically regulate State Civil Apparatus issued by ministerial institutions. Bawaslu as one of the elections organizing institutions which has the function of preventing and enforcing the law has the authority to follow up on its findings regarding violations of State Civil Apparatus neutrality whose offenses are regulated in statutory regulations outside of elections/elections (other laws).

This is also confirmed in Government Regulation (PP) Number 53 of 2010 concerning civil servant discipline which states that ASNs are prohibited from providing support to regional head candidates. The modes of neutrality violation are varied. But mostly on social media. Namely uploading statuses,

tweets, responding to comments, likes, and distributing participants' photos. There are also those involved in socialization and campaign activities, taking part in installing campaign props, and attending candidate declarations. Likewise, the Makassar City Election Supervisory Agency (Bawaslu) has reported 14 Makassar City Government State Civil Apparatus who are indicated as not being neutral in the regional elections. Makassar. Of the 14 State Civil Apparatus, two of them are lecturers at Alauddin Makassar State Islamic University. There were 14 State Civil Apparatus who were reported to have taken sides against one of the candidates for the Makassar regional elections. Makassar City Bawaslu Chairman Nursari has said that the two lecturers were involved in practical politics, namely siding with one of the Makassar regional election candidates.

Bawaslu as an election supervisory institution, which was strengthened by the enactment of Law Number 7 of 2017 concerning Elections, has the main authority, namely monitoring/preventing violations, prosecuting violations, and resolving election process disputes. Bawaslu and the KPU are institutions that carry out a single electoral function. The KPU carries out the stages of organizing elections, Bawaslu supervises the stages of organizing elections. Ruslan Husen, Dynamics of Election Supervision. For Bawaslu's duties relating to efforts to act against election violations, Bawaslu receives, examines, and reviews allegations of election violations; investigate alleged election violations; determine alleged violations of election administration, alleged violations of the code of ethics of election organizers, and/or suspected election crimes; as well as deciding alleged violations of election administration. The General Election Supervisory Body consists of 1 (one) chairman and 4 (four) members and in carrying out its duties as a Bawaslu election supervisory body is supported by the Bawaslu Secretariat General led by the Secretary General.

Allegations of violations of the Neutrality of the State Civil Service in the 2020 Pilkada season have increased drastically. The State Civil Apparatus Commission has noted that there are 12 areas that are most vulnerable, one of which is South Sulawesi. Even in the 2020 Makassar city elections, there was a stir regarding the video of civil servants inviting their staff to vote for certain candidates. Based on KASN data, South Sulawesi is currently in the red category regarding violations of the State Civil Apparatus code of ethics. ke-kasn.html.accessed on November 8 at 23.00] In the distribution of State Civil Apparatus neutrality violations in the 2020 Regional Elections, South Sulawesi is in fourth position with 58 cases. This data is as of 9 November 2020. Based on Law Number 5 of 2014 concerning State Civil Apparatus, State Civil Apparatus should be neutral and free from interference from groups and political parties.

Seeing this phenomenon, the central issue should be the authority of Bawaslu in dealing with violations of the neutrality of the state civil apparatus as a guarantee in carrying out regional head elections so that they are not polluted by detrimental actions. Based on the description and background of the problem above, the author is interested in analyzed and conducted research entitled "Bawaslu's Authority in Handling Violations of Neutrality of State Civil Apparatus in Regional Head Elections".

2. Materials And Methods

The research used in writing this thesis is legal writing which is also usually called normative legal research. Normative legal research (doctrine law) is legal research that is conceptualized as legal research written in statutory regulations (Law in books) or law that is conceptualized as rules or norms that guide human behavior. The primary legal materials used in this research consist of Law No. 7 of 2017 concerning General Elections, Law No. 10 of 2016 concerning the Election of Governors, Deputy Governors, Regents, Deputy Regents, Mayors, Deputy Mayors, Law No. 5 of 2014 concerning State Civil Apparatus, Government Regulation Number 53 of 2010 concerning Civil Servant Discipline, Perbawaslu No. 6 of 2018 concerning supervision of the neutrality of State Civil Apparatus, TNI and Polri members, as well as other laws and regulations related to the author's title. The legal materials that have been identified and inventoried are then qualified according to the title of the legal research carried out by the author, after which an analysis is carried out to adjust the problem formulation and research objectives to be completed. Then finally conclusions are drawn on the issues studied.

3. Results and Discussion

Bawaslu's authority to handle violations of the neutrality of state civil servants in regional head elections is attributively carried out in accordance with Bawaslu's contract agreement in handling State Civil Apparatus neutrality cases which refers to General Election Supervisory Body Regulation Number 7 of 2018 concerning handling findings or reports of General Election Violations. The authority of Regency/City Bawaslu is regulated in Article 101 letter d in the third part of Law No. 7 of 2017 regarding the Duties, Authorities, and responsibilities of Regency/City Bawaslu, Article 101

letter d, namely Supervising the neutrality of all parties who are prohibited from participating in campaign activities as regulated in the Law. The process of acting against violations, especially violations of State Civil Apparatus neutrality, is based on findings and reports from the public.

The authority of Bawaslu in handling violations of the neutrality of state civil servants in regional head elections is by mandate, namely giving authority to Bawaslu members, in this case the supervisory committee in each sub-district or even sub-district, to monitor violations of State Civil Apparatus neutrality that are indicated based on the results of public reports or Bawaslu's findings. itself which will then be reported in stages to the district/city Bawaslu members as the highest decision makers on the report. This has also been regulated in the general election supervisory body regulation number 7 of 2022 in Chapter I number 18 and 19 which reads: The sub-district election supervisory committee, hereinafter referred to as the sub-district panwaslu, is a committee formed by the Regency/City Bawaslu to supervise the implementation of elections in the region. sub-district or another name and the Subdistrict/Village Election Supervisory Committee, hereinafter referred to as the Subdistrict/Village Panwaslu, are officers to supervise the implementation of elections in the Subdistrict/Village or other name.

Several inhibiting factors in handling violations of the neutrality of state civil servants in regional head elections. Even though many perpetrators of criminal acts have been caught, this does not act as a deterrent to other perpetrators, this shows that the sentences given are still considered quite light, in fact there are no strict sanctions for perpetrators of violations of this law, so there are still many perpetrators who commit violations against neutrality of state civil servants in regional head elections repeatedly and continuously. This means that, according to the author, in this case the law does not have the nature of frightening and deterring perpetrators of crimes or perpetrators of neutrality violations against state civil servants, there is no direct involvement of Bawaslu in imposing sanctions on perpetrators of violations of the neutrality of the state civil apparatus in regional head elections, but only monitoring is carried out, as for the action regarding reports of these violations, it is handed over directly to the authorized institution, in this case the State Civil Apparatus Commission, Bawaslu does not have absolute authority in this case, but only as reporting material to monitor violations of State Civil Apparatus neutrality. However, it is only limited to reporting but there is no implementation of follow-up from KASN as a determinant of sanctions for reported violations of State Civil Apparatus neutrality so that the means and facilities that Bawaslu has in handling violations of State Civil Apparatus neutrality in regional head elections are not effective in terms of enforcement, prevention, and supervision.

4. Conclusion

Bawaslu's authority in handling violations of the neutrality of state civil servants in regional head elections is divided into three, namely attributively, namely in accordance with the Bawaslu agreement in handling State Civil Apparatus neutrality cases which refers to General Election Supervisory Body Regulation Number 7 of 2018 concerning handling findings or reports of General Election Violations. By mandate, this means giving authority to the supervisory committee in each sub-district or even sub-district to monitor violations of State Civil Apparatus neutrality that are indicated based on the results of public reports or Bawaslu findings and then report them in stages to the competent authorities. And by delegation it is not absolute authority possessed by Bawaslu in terms of handling violations of State Civil Apparatus neutrality but is included in the category of election crimes. This means that every act or action that is prohibited by law or criminal provisions (law) is related to the process of means of popular sovereignty. Bawaslu's authority in handling violations of the neutrality of state civil servants in regional elections is regulated in Article 101 letter d in the third part of Law No. 7 of 2017 regarding the Duties, Authorities and Responsibilities of Regency/City Bawaslu. Related to decisions by authorized officials regarding violations of neutrality. As for the inhibiting factors for Bawaslu in handling violations of the neutrality of the state civil apparatus legally, there are no strict sanctions for perpetrators of these legal violations, so there are still many perpetrators who commit violations against the neutrality of the state civil apparatus in regional head elections repeatedly and continuously. Apart from that, structurally, law enforcement does not have direct involvement from Bawaslu in imposing sanctions on perpetrators of violations of ASN neutrality in regional head elections, but only supervision is carried out, as for action on reports of these violations, it is handed over directly to the authorized institution, in this case the State Civil Apparatus Commission.

References:

A Madjedi Hasan. 2009. Oil and Gas Contracts Based on Justice and Legal Certainty. Fikahati Aneska. Jakarta.

- Abdul Razak, 2004. Legal Analysis of How to Form Regional Regulations. Ammanagappa Journal volume 12. Makassar: Hasanuddin University
- Andi Pangerang Moenta, Journal of Law, Policy and Globalization vol 50
- Ceaser, J. (2017). Presidential selection. In *The Presidency in the Constitutional Order* (pp. 234-282). Routledge.
- Gunarto, G., Hafidz, J., & Sutrisno, S. (2018). Neutrality of the State Civil Apparatus In Regional Head Election Based On Justice Values. *Jurnal of Education and social Science*.
- Kelik Pramudya, 2015, Realizing an Effective and Fair Regional Head Election Results Settlement System, *National Legal Development Media RechtsVinding Journal* Volume 4, Number 1, April 2015, p. 125
- Law Number 23 of 2014 concerning Regional Government
- Law Number 5 of 2014 concerning State Civil Apparatus
- Lawrence M Friedman, *Law and Society an Introduction*, 1977. Prentice Hall Inc, New Jersey.
- Malik, A., Supriyono, B., Hermawan, & Mindarti, L. I. (2020). Direct and simultaneous regional head election in indonesia with government efforts to build a balance of political and managerial approaches. *East Asia*, 37, 261-279.
- Mutiarasari, N. N., & Herawati, R. (2020). Supervision of Bawaslu Pemalang Regency in the 2020 Regional Head Election. *Law Reform*, 16(2), 264-275.
- Rohman, S., & Mubarak, B. U. (2022). SINGLE CANDIDATES AGAINST THE EMPTY BOX; ON REGIONAL HEAD ELECTIONS 2020 IN INDONESIA. *Jurnal Wacana Politik*, 7(2).
- Rohman, S., & Napang, M. (2022). Degradation of democracy with the existence of a single candidate for regional head elections in Indonesia. *Masyarakat, Kebudayaan & Politik*, 35(2).
- Romli, L. (2019). Political Identity and challenges for democracy consolidation in Indonesia. *Politik Indonesia: Indonesian Political Science Review*, 4(1), 78-98.
- Syahril, S. N., & Redi, A. (2023). The Single Candidate in the 2020 Regional Head Election is Viewed From the Perspective of Democratic Principles Adopted by the Indonesian State. *Journal of Social Research*, 2(7), 2188-2205.
- Undang-Undang Nomor 7 Tahun 2017 tentang Pemilihan Umum.
- Zulkifli Aspan, Abdul Razak, Marthen Arie, R.Muhammad Thamrin Payapo, *Journal of Law, Policy and Globalization*, Vol.66, 2017.
- Zulkifli Aspan, Abdul Razak, Marthen Arie, R.Muhammad Thamrin Payapo, *Journal of Law, Policy and Globalization*, Vol.66, 2017 "Instituional Strengthening of The General Election Commission in Order to Realizes Fair and Just Election",