

THE SETTLEMENT OF ELECTION DISPUTES BY BAWASLU REVIEWED FROM THE INDONESIAN JUSTICE SYSTEM

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PAPER INFO	ABSTRACT
Received: <i>December 2021</i> Revised: <i>February 2022</i> Approved: <i>February 2022</i>	Background: In order to bring about a government that is just, prosperous, and still stands on a democratic government, a country must be based on the implementation of elections or elections that are fair, honest, free, and secret from the principles of good governance. Aim: This article aims to explore the settlement of election disputes conducted by Bawaslu through the Indonesian justice system's view. Method: This research is a normative legal study by reviewing or analyzing primary and secondary data by understanding the law as a device or positive norm in the legal system that regulates human life. Findings: The duration of the settlement of the case given to Bawaslu becomes a thing that is considered less wise in the effectiveness of the settlement of words and this is different from MK which is quite the opposite.
KEYWORDS	<i>Bawaslu, Election, Justice</i>

INTRODUCTION

In order to bring about a government that is just, prosperous, and still stands on a democratic government, a country must be based on the implementation of elections or elections that are fair, honest, free, and secret from the principles of good governance.

Samuel Huntington (1991) gave the idea that society and the world in these times are in an era or era of the so-called third democracy. This is seen from the claim that many countries in the world that say that they are democracies and Indonesia is no exception.

One of the figures, William Andres said that modern democracy is a country based on general agreements to the majority of the people about the state building that is dreamed of. State organizations are indispensable for the benefit of a person can be protected or promoted by the establishment or use of state mechanisms (Asshidqie, 2009). Of course, we often hear the term government by the people and for the people as stated by Abraham Lincoln, so democracy is interpreted.

Abraham Lincoln's explanation implies the characteristics of democracy in its depth that government or power is in the hands of the people, so it indirectly makes the people the ruler, and the government is banded on the people. With the sake of political space that allows people to develop and participate in open politics. In addition, democracy also presents a place for the people agr he can be an active person who participates in democratic affairs and processes so that in a democratic country, the people do not just participate as a contributor to votes.

As a major democracy in the world, then one of the implementations of its realization is to conduct elections. Elections or elections are a pillar or main pillar of what is the will of the people, and also as one of the procedures of the democratic state to elect a leader. It can then be simplified that elections are the main pillars of democracy. With the intermediary of

elections, the public can choose the candidate he wants without intervention from anyone such as free to choose the President, members of the DPR, DPD, and so on.

William Andrews also argues that modern democracy is based on the results or basis of how the majority of the people give their views on what the building and shape of an ideal state (Asshidqie, 2009). And the people are given a special place where all forms of decisions exist in the development of the state and various related regulations.

In a democracy, elections are a pillar of the set of people's will. Elections are also a democratic procedure for choosing the desired leader, and elections are also one of the mechanisms for the selection or change of heads of state/power holders in the safest way of various other means. The implementation of democracy is realized by how to resolve a dispute in an emerging election.

Speaking of disputes in elections, it is related to two things, namely the existence of electoral irregularities and disputes in elections. Which includes violations in the election of criminal violations, violations of administration, and violations of the code of ethics in the conduct of elections. The domain of the election dispute is divided into disputes over the results and non-election results.

The process to resolve election disputes is a legal problem that often occurs. This problem is a problem in the stage of the election where there should be a clear mechanism to complete it. So many people consider that in the development of elections in Indonesia there are still many obstacles and shortcomings that become a common task to be completed (Triono, 2017). The election in Indonesia is still accompanied by various disputes that arise and violations committed by many parties. This problem is a problem that is increasingly appearing and increasingly strange.

In the process of holding elections, there is an institution to hold the election, consisting of the Election Commission (KPU), the Election Supervisory Board (BAWASLU), and the Honorary Board of Election Implementation (DKPP) as a unitary function of holding elections to elect members of the House of Representatives, members of the Regional Representative Council, the President and Vice President, and to elect members of the Regional People's Representative Council directly by the people (Morisan, 2005).

The beginning of the establishment of Bawaslu, at the beginning of the establishment of the supervisory committee of implementation or Panwaslak in the era of new order elections. Panwaslak was born based on Law No. 2 of 1980, and the mandate first given to Panwaslak was to oversee the conduct of elections or conduct supervision at the electoral institution (LPU). This is based on the many aspirations of the people who guessed that there were allegations of fraud in the election that the LPU did in previous elections.

Then in the era of reform, which is the time when democracy is upheld highly, then the organizational institutions, as well as the functions of Panwaslak are strengthened. In that era, Panwaslak was renamed the election supervisory committee or Panwaslu. As an effort to strengthen the Panwaslu contained in Law No.3 of 1999 which clearly regulates the institution of panwasku, both in its organization, its members, and its duties and functions.

In the Law, there are 3 functions and duties carried out in the Panwaslu, namely:

1. Overseeing all stages of the election
2. Resolving disputes or differences of understanding that arise from the election organizers

3. Follow up findings, disputes or disputes that cannot be resolved to be reported to law enforcement agencies.

A big step from Panwaslu is if previously Panwaslu was ad Hoc, but after the law No. 22 of 2007, Panwaslu then was fixed and his name was substituted to be the election supervisory agency or Bawaslu, and its position was in line with the KPU and apart from the position of institutions that were once in the subordinates of the KPU as in the New Order era as well as in the general election in 2004, (Pradana, 2021)

Strengthening in Bawaslu is in Law No. 7 of 2017, this is also something new in terms of elections in Indonesia, namely in terms of the mechanism of a lawsuit on poses to resolve election disputes. And mekainsme was not previously known in previous elections. With Law No. 7 of 2017, it is also a new breakthrough for strengthening the election supervisory body (Bawaslu) in order to enforce the election law.

Strong Flexibility and So Visible from the Election Supervisory Body (Bawaslu)

It is possible to crack down or decide on the administration. The strengthening of Bawaslu is the findings of Bawaslu not a song in terms of giving recommendations but also has become a verdict. Now Bawaslu already has the authority in deciding administrative violations until the bawaslu verdict is not only a finding but also has become a decision that must be done by many parties (Pradana, 2021).

Article 95 of Law No. 7 of 2017 implies that Bawaslu has the authority to receive and follow up various reports related to violations in the implementation of elections. Bawaslu also has the authority to conduct checks, conduct a trial and give verdicts of violations, both election administration and violations of money politics. In the case of election disputes, Bawaslu is authorized to investigate, examine and mediate and resolve disputes submitted by election participants.

As a new breakthrough given to Bawaslu to break the resolution of disputes, it is very important to look at it from the lens side of the justice system in Indonesia in all scopes, where the justice system in Indonesia breathes the foundation that has been set in the constitution, namely in the 1945 Constitution.

General Election Theory

One of the real manifestations of the implementation of the democratic system of a country that is inndindied democratic system is to conduct elections or elections. Elections or elections are a way to realize the implementation of democracy itself. In many countries of the world, elections or elections are used as a symbol of the democratic system of government, (Quarter, 2010).

According to the International Commission of Jurist which conducted its trial in Bangkok in 1965, it produced a formula that holding free elections is one of the six basic conditions for democracy under the rule of law, (SupiyoNo, 2019). Then, in short, a country that claims to adhere to a democratic system must conduct elections.

Because elections are a way for the people to be able to participate directly in the system of national living order, where the people not only contribute votes but can also participate in the management of the course of the election. The people are then faced with an election to

choose who the representatives will then be elected to become public officials, whether in the legislative, ex-executive at the regional or central level. As a pattern of implementation of the people's sovereignty, then in carrying out elections must be carried out in a general, clean, honest, and fair for the realization of a government that is fair and can embrace all the interests of the community.

The purpose of the election is: (Assidqie, 2016)

1. To allow the realization of a court of government leadership in an orderly and peaceful manner.
2. To allow the replacement of officials who are representatives for the benefit of each community in representative institutions
3. To establish the principle of people's sovereignty
4. To realize the human rights of citizens.

In addition, Indonesia, which also adheres to a democratic system, also holds elections as an element in implementing democracy in article 22E of the 1945 Constitution, as a reference to the rules regarding elections that read:

1. Elections are conducted directly, publicly, freely, honestly, and fairly within 5 years.
2. The general election is held with the aim of electing the members of the DPR, DPD, President, and his representatives as well as electing the members of the DPRD.
3. Participants of the general election aim to elect representatives of the people and anggota regional people's representative council is a political party,
4. General election participants electing councilors are individuals
5. General elections are organized by the KPU which is national, fixed, and independent.
6. Further provisions are stipulated in the Act

The implementation of elections that take place every 5 years is in line with what is contained in Article 22 E paragraph (1) of the 1945 Constitution, it indicates that in its implementation, elections are held periodically. This arises because of the change and time. Such changes can occur due to many factors, both internal and external about state policy. Thus, elections are conducted periodically so that a change in state interests can be realized that can adjust to existing changes so that what is the aspiration of the state can be fulfilled.

In carrying out elections, it becomes very important not only for the citizens who will choose their desired representatives, but elections are also of importance to political parties. Elections will be used as a means to realize the sovereignty of the people, as well as become a fair competition arena.

The implementation of elections is not only important for the people who will choose their representatives or vice versa. Elections are also important for political parties. Elections as a means of realizing the sovereignty of the people as well as the fairest competition arena for political parties, the extent to which they have carried out functions and roles and responsibilities for their performance to the people who elected them, (Supriyono, 2019)

To hold democratic elections, there are several conditions that must be met, (Huda, 2005) namely:

1. There is recognition of universal suffrage, where all citizens without exception who are ideological or political are given the right to be able to participate in elections or be elected in elections,
2. There is a flexibility to form a place to accommodate all the aspirants of society, the community has an alternative choice in free political aspirations. The limited number of election contestants in consideration of formal juridical reasons by eliminating the development of the aspirations of the community is an act of abuse in this principle.
3. The existence of a mechanism for political recruiting to various democratic candidates for representatives of the people.
4. There is freedom in choosing and discussing and making choices
5. There is an independent election committee.
6. There is flexibility for everyone to compete with health.
7. Do honest sound calculations
8. A neutral bureaucracy.

The implementation of elections in Indonesia is carried out by the General Election Commission (KPU), with the Election Commission as an institution to hold elections regulated in Article 22E of the 1946 Constitution, namely the General Election Commission is an institution to hold elections that are national, permanent and independent, it indicates that the KPU is an independent institution in holding independent elections.

In holding democratic elections, the independence of the KPU is determined from the independence of its supervisory agency which has the nature of otoNom, (Nugraha, 2015). The existence of this supervisory agency aims to oversee the election so that all forms of fraud and violations do not occur. In accordance with Indonesian Law No. 7 of 2017 on elections, the supervisory agency is carried out by the Uum or Bawaslu Election Supervisory Agency which is an institution that cannot be separated from the government's organizing institution. As for the position, wewenanang and funsginya have been arranged in detail in The Ri Law No. 7 of 2017 and regulations that have other links.

Law Enforcement Theory

Law enforcement can be interpreted because it is the implementation of the law carried out by law enforcement and everyone who has an interest based on the authority they have. SoerjoNo Soekanto explained that law enforcement is an activity to create as a narrative related to the relationship of values explained in the rules and attitudes of action as a series of elaboration of final-stage values to create and maintain and maintain peace in association in life, (Soekanto, 1983).

Law enforcement is also a process that is carried out as an effort to uphold and to make the functioning of various legal norms in real terms as a guideline in the behavior of legal relations in the life of the community and state. If viewed from the point of view of the subject, law enforcement can be done by a broad subject and can also be considered as an attempt to enforce the law that will involve all objects.

Law enforcement is an attempt to realize various ideas about justice, legal certainty and social expediency, (Rahardjo, 1987). More specifically about the enforcement of criminal law is the effort to realize various ideas about justice in legal certainty and social expediency to be realized in every legal relationship, (Mahmud, 2012)

Polemic in law enforcement is a problem that is not trivial due to several factors that affect it, (Raharjo, 1987) namely:

1. Content in the laws and regulations
2. Interest groups in society
3. Legal culture
4. Morals of law enforcement who participate in the judicial process.

Thus, law enforcement is a system that surrounds an alignment between theories and human behavior. These rules then become a guideline or benchmark for actions that are considered appropriate, application, or actions that have the purpose of creating or maintaining and maintaining peace. Law enforcement is an attempt to realize the ideas of legal passivity, its usefulness, and justice to become a reality. The stage to make it happen is what is the essence of law enforcement, (Rahardjo, 1983).

There are also things that can affect the inhibition or absence of law enforcement, (Soekanto, 1983) namely:

1. Statutory factors.

There are several principles in the law that aim to make the law have a positive impact. This means that the law can achieve its goals and be effective in people's lives.

2. Law enforcement factors

The law enforcement factor has an important place and role, it is an important part in the process to enforce the law.

3. Means or facilities factors

This factor is a very supportive factor for legal pressure that is very likely not to run smoothly without the means or facilities. This factor can be skilled human experts, good organization, adequate instruments, and sufficient finances.

4. Community factors

Law enforcement starts from the community, which has the goal to be able to achieve peace in the community, therefore the community is seen as a factor in the influence of law enforcement.

5. Cultural factors

This factor is a factor in the process of internalization of values in order to understand the law and strive to realize it well for the sake of mutual intuition. Culture basically surrounds the values that are the basis for the applicable law. Value is an abstract concept of anything that is considered good or bad.

METHOD

This research is a normative legal study by reviewing or analyzing primary and secondary data by understanding the law as a device or positive norm in the legal system that regulates human life (Soekanto, 1985). So, this study is literature that conducts research on primary and secondary data that has been collected. Primary data sources are legislation related to the issues

discussed or Law No. 7 of 2017 and secondary sources in the form of support to facilitate discussion from primary sources, namely books, related journals, and various other research.

RESULTS AND DISCUSSION

The General Election Supervisory Agency or Bawaslu is the body that has the main task to conduct supervision on the election organizing process that includes the election of the President and his deputy, the DPR, DPD, dprd as well as regional heads and deputy heads of regions. Bawaslu is similar to other institutions and positions in the government whose members are given a term of 5 years and from the time of taking the oath or appointment in the office.

Democratic elections require a supervisory agency that works independently, this institution is formed to strengthen the pillars of democracy and minimize the existence of irregularities in elections, in addition to strengthening the commitment of the election itself.

The main characteristics of election supervisors who have independency are: (Nasef, 2017)

1. Formed by order from the constitution and law
2. Cannot be interfered with by various parties
3. Responsible to parliament
4. Carry out duties in accordance with the stages of elections and have good integrity and morals
5. Understand and understand how to hold elections. Thus, the supervisory committee is not only responsible for the formation of a democratic government but also participates in helping the people choose qualified candidates.

Additional Authority on Bawaslu

The election supervisory agency or Bawaslu based on Law No. 7 of 2017, is currently given a large authority, not only as a supervisor but currently also given the authority to be the executor and judge in deciding a case. With great authority granted to him, Bawaslu must make the best use of the additional authority to prove his role as not only the supervisor of elections who has integrity but also play a role to mediate and decide the case that is on him.

Elections are an actual democratic mechanism and are designed to transform the nature of community conflict into a competitive and integrity political event, in elections that work and run orderly and in quality. Elections are a means to realize the sovereignty of the people in order to bring about a democratic government based on Pancasila and the 1945 Law which is carried out with article 1 paragraph 2.

With the presence of Law No. 7 of 2017 on general elections, it will strengthen the authority of Bawaslu. Then Bawaslu incarnated not only as an institution that gives recommendations but also acts as an executor to break the dispute. It is as stated in article 461 paragraph 1 of Law No. 7 of 2017, that Bawaslu has the authority to accept, conduct examinations, conduct studies, and trigger violations of election administration. But with time, the dynamics that exist in the community and on the other hand, no regulation can accommodate these dynamics.

Sophisticated existing modes and various forms of violations, ranging from fraudulent competition, dark campaigns, negative campaigns that can cause election violations, triggering

the potential presence of diverse election violations. So Bawaslu must be able to accommodate and work with integrity in deciding whatever matters are presented to him.

In detail, in article 95 of Law No. 7 of 2017, it is clear that Bawaslu has the authority to receive and follow up on reports related to the alleged budget on the implementation of elections. Bawaslu also has the authority to examine and review and break violations of the election administration or political violations of money. And in disputes in the electoral process, Bawaslu has the authority to accept, examine and mediate and adjudicate and decide cases.

Disputes and Violations in the Holding of Elections

Violation is an act of matter by violating existing regulations. The existence of such violations cannot be avoided and arises due to the existence of intentional elements or due to negligence committed by many parties or all people who have the potential to be able to commit violations.

Violations in elections in the view of Topo Santoso (Santoso, 2009) are generally divided into:

1. Violations of election administration
2. Criminal violations of elections
3. Violation of the organizer's code of conduct
4. Disputes in the election process
5. Difference in election results
6. And other legal disputes.

While Moh Jamin argues that the election dispute is two, namely, (Jamin, 2008):

1. Disputes in the election process that are the authority of Bawaslu
2. Election disputes results

The dispute in the election is in article 157 of Indonesian Law No. 8 of 2012 concerning the general election of the DPR, DPD, DPRD is a dispute that arises between the election participants and disputes of election participants with the election independence as a result of the exit of the KPU decision.

In article 261 of The Republic of Indonesia Law No. 8 of 2012, the criminal offense or crime of electoral crimes is as stipulated in this Law, while in Law No. 7 of 2017, is a criminal offense and or a crime there is a criminal act as stipulated in Law No. 7 of 2017 on general regulation.

The settlement of electoral crimes based on Law No. 8 of 2012 or based on Law No. 7 of 2017 can be done by proceedings in court. When Bawaslu finds or gets a report about the alleged election violations, then Bawaslu will make recommendations for violations including in the elements of electoral crimes, then the case will be submitted to the police and will be handed over to the prosecutor's office and to the court.

Comparison of Dispute Resolution by Bawaslu and the Indonesian Justice System

Strengthening the authority of Bawaslu is in Law No.7 of 2017. One of the reinforcements is that Bawaslu's findings are no longer in the form of recommendations, but have become a verdict. Bawaslu has the authority to resolve disputes over the election process resulting from

the decision of the KPU. Kewenangan to break administrative violations so that the findings of the election supervisor are not only recommendations but are decisions that must be implemented by the parties.

In detail, article 95 of Law No. 7 of 2017 mentions Bawaslu is authorized to receive and follow up on reports related to alleged violations of the implementation of elections. Bawaslu is also authorized to examine, review, and decide violations of both violations of election administration and political violations of money. Then in the dispute over the election process, Bawaslu is authorized to accept, examine, mediate or adjudicate, and break the settlement submitted by election participants.

The dispute resolution of the election in Bawaslu is further regulated in Bawaslu Regulation No. 18 of 2017 on Procedures for Dispute Resolution of the General Election Process. Where the regulation explained the procedures and mechanisms for dispute resolution of the holding of elections in Bawaslu.

Article 5 states that exercising the authority is carried out in several stages:

1. accept requests for dispute resolution of the Election process
2. perform formal verification and material verification of the application
3. Mediating between the parties to the dispute
4. Adjudicating disputes of the election process and
5. resolve the disputed election process.

Then Article 6 confirms the duration of the dispute resolution time of the Election process at least 12 (twelve) days from the receipt of the election process dispute application. Mediation is one of the dispute resolution processes in Bawaslu. Bawaslu made a summons against the parties who had been registered and declared eligible formal and material of the dispute application. If mediation does not reach an agreement, Bawaslu poured in the News of the Mediation Event Not Reached agreement and continued the process of resolving election disputes to the Adjudication stage.

Bawaslu will form an Adjudication assembly consisting of 3 (three) bawaslu members, of which 1 (one) member of Bawaslu as the speaker of the assembly and 2 (two) others as members of the assembly session. The trial is like a trial in general. The nature of the Bawaslu Ruling is final and binding, except to dispute the election process relating to: (1) verification of election political parties, (2) the determination of DCT members of the DPR, DPD, Provincial DPRD, and District / City DPRD and (3) the determination of candidate pairs.

Before Bawaslu is given the authority to adjudicate, then the dispute over the results of the election becomes the authority of the Constitutional Court to examine and break it. the authority of the Constitutional Court to decide, based on the provisions of Article 24 C paragraph (1) of the 1945 Constitution. Furthermore, the provisions of Law No. 24 of 2003 as amended by Law No. 8 of 2011 on Amendments to Law No. 24 of 2003 concerning the Constitutional Court, mandate that disputes about the results of electoral votes are resolved through the Constitutional Court.

The Constitutional Court (MK) in terms of the resolution of PHPU cases regulates the procedure for resolving disputes for the results of the 2014 election in the guidelines of the Constitutional Court (PMK) No. 1 of 2014, as amended by PMK No. 3 of 2014 on Guidelines for Speech in Disputes over the Results of General Election Members of the DPR, DPD, and

DPRD. Based on these provisions can be grouped five stages in the resolution of legislative PHPU cases in MK, namely:

1. Application Submission
2. Case Registration
3. Scheduling and SummoningDang
4. Examination of Matters; and
5. Verdict

In resolving the general election period both MK (as a reflection of the judicial system in Indonesia to oversee the resolution of election disputes) and Bawaslu, there is a comparison in terms of the duration given for the resolution of the dispute, which the author quoted from the statement of Bawaslu Member Ratna Dewi Pettalolo that the handling of violations in Bawaslu was bumped with a short time so that the complainant often could not complete the evidence needed because of the problems needed. Found, for example not getting a list of attendance, can not present witnesses when reporting the event to Bawaslu. This is not similar when the application to MK what their need for the proof process can be fulfilled so that MK can get enough facts. That is what the author outlines as a distorted or anomalous thing between the authority that MK and Bawaslu have in investigating the dispute over the election results.

Then it should be known that if there is a dispute over the election results, then the institution that is authorized to resolve it is the Constitutional Court (MK). However, for disputed election processes, the institution that is authorized to accept, examine, and break the resolution of disputes of the process is the Election Supervisory Agency.

CONCLUSION

Bawaslu was given additional authority since Law No. 7 of 2017, namely bawaslu not only provide recommendations for fraud and so on but was also given the authority to break public voting disputes. In this case, Bawaslu is considered qualified to be able to speak as they should trigger a general election dispute. In the judicial system in Indonesia or in this case is the MK, both of them trigger election disputes, it is just that MK is the result of the election while Bawaslu is the process in the general election. The duration of the settlement of the case given to Bawaslu becomes a thing that is considered less wise in the effectiveness of the settlement of words and this is different from MK which is quite the opposite.

As for the advice that the author can give, Bawaslu must be an institution that can really prove its integrity in controlling public elections and also by exercising the additional authority given to him.

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