

**Discourse on the Debate on Bawaslu's Authority in Handling Election Violations After  
the Determination of National Vote Results**

**Satriya Nugraha<sup>1</sup>**  
**University PGRI of Palangka Raya, Indonesia**  
**Nugraha.str@gmail.com**

**Abstract**

Violations in the electoral process in Indonesia are an issue that often occurs during the electoral process, where the Election Supervisory Body (Bawaslu) is tasked with preventing and taking action related to alleged election violations, not only during the election but also when the vote results have been determined nationally, with the hope of realizing a fair and integrity election. This study aims to describe the limitations of Bawaslu in carrying out its duties fully to oversee the entire series of elections following statutory regulations. This research uses a normative juridical research method through a statutory approach. The results of this study reveal that Bawaslu is unable to fully carry out its duties in taking action against alleged election violations after the determination of the vote until the stage of taking the oath or pledge because there is a legal vacuum in Article 93 letter d of Law Number 7 of 2017 concerning General Elections which outlines that Bawaslu is only tasked with overseeing the implementation of the election until the stage of determining the election results. Law Number 7/2017 on General Elections must be reviewed to provide legal certainty to Bawaslu in carrying out its duties under statutory regulations.

**Keywords : General Elections, General Election Violations, the Authority of Bawaslu.**

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<sup>1</sup> Lecturer, University PGRI of Palangka Raya, Indonesia

## **1. Introduction**

In the Constitution of the Republic of Indonesia, the implementation of General Elections (Pemilu) in Indonesia is a manifestation in the performance of the concept of democracy, which is affirmed in the 1945 Constitution, namely Article 1 paragraph (2) which states that "sovereignty is in the hands of the people and shall be exercised according to the Constitution," which is further reaffirmed in Article 22 E paragraph (1) which states that "general elections are held, directly, generally, freely and secretly." As a Democratic State, the holding of elections in Indonesia is a form of ensuring the sustainability of national development and one of the efforts to fulfill and implement popular sovereignty. The realization of people's independence through elections follows the country's goals of producing a democratic state government based on the values of Pancasila and the 1945 Constitution (Indonesia, 2002).

Elections can be said to be an activity of representation of sovereignty from the people to election participants and candidates for members of the House of Representatives (DPR), Regional Representatives Council (DPD), Regional Representatives Council (DPRD), President/Vice President, and Regional Head/Deputy Regional Head to formulate and implement political decisions as the wishes of the people (Luki Sandra, 2016). Elections have become a global phenomenon. In both developed and developing countries, elections are the best means to facilitate a peaceful change of power. However, the practice of elections in various countries around the world shows a variety of implementations, from those that are carried out freely and relatively to those that are full of violations and fraud (Van Ham, 2015).

General election activities are also one of the means of channeling the fundamental rights of citizens. Therefore, to fulfill the human rights of citizens, the government should ensure the

implementation of general elections following the predetermined constitutional schedule. Under the principle of popular sovereignty, in which the people are sovereign, all aspects of the organization of the general election must also be returned to the people to determine. It is a violation of human rights if the government does not ensure the holding of elections, delays the holding of elections without the consent of the people's representatives, or does nothing so that elections are not held as they should be (Asshiddiqie, 2006).

The process of organizing elections only sometimes runs smoothly. Various problems and obstacles in the implementation of elections that occur during and before the polls are problems that will undoubtedly have a broad impact if they are not appropriately resolved. The existence of problems in organizing elections related to dissatisfaction with the decisions of election organizers and election violations affect the results of the polls (Anwar, 2019).

Violations can occur due to an element of intent or negligence. Many parties can commit election violations. It can even be said that everyone has the potential to become a perpetrator of election violations. Based on Law Number 7 of 2017 concerning General Elections, which is emphasized in Article 455 Paragraph (1), and Article 476, election violations include:

- a. Violation of the Code of Ethics;
- b. Administrative Violations;
- c. Violation of Election Crimes; and
- d. Violations of other laws and regulations that are not election offenses (Indonesia, 2017).

Institutionally, handling the four types of violations is processed and resolved by the Election Supervisory Body (Bawaslu). Bawaslu is positioned as one of the election organizing institutions, the General Election Commission (KPU), and the Election Organiser Honorary

Council (DKPP) based on Article 1 Point 7 of Law Number 7 of 2017 concerning General Elections. Under the provisions of Article 1 Point 17, Bawaslu is an Election Organising Body that oversees the Implementation of Elections in all regions of the Unitary State of the Republic of Indonesia.

In carrying out its role, based on Article 93 letter b of the Election Law, Bawaslu is tasked with preventing and prosecuting election violations and disputes over the election process. The implementation of the prevention of election violations by Bawaslu is confirmed in Article 94 Paragraph (1) letters a, b, c, and d, where Bawaslu is tasked with:

- a. identifying and mapping potential vulnerabilities and election violations;
- b. coordinating, supervising, guiding, monitoring, and evaluating the Implementation of Elections;
- c. coordinating with relevant government agencies; and
- d. increasing public participation in election supervision.

Furthermore, the implementation of prosecution of election violations is explained in Article 94 Paragraph (2) letters a, b, c, and d, which clarify that Bawaslu is tasked with:

- a. receive, examine and review allegations of election offences;
- b. investigate allegations of election offences
- c. determining alleged election administration violations, alleged violations of the Election Organiser's code of ethics and/or alleged election criminal offences; and
- d. decide on election administration violations.

Institutionally, article 95 letters a, b, and c of the Election Law stipulate that Bawaslu has the authority to receive and follow up reports relating to alleged violations of the

implementation of laws and regulations governing elections, examine, review and decide on election administration violations, examine, review, and decide on money politics violations.

Implementing Bawaslu's duties and authority is a form of law enforcement ensuring the uprightness and functioning of legal norms at the stages of holding elections. Three things must be of deep concern in law enforcement in elections, namely:

- a. Law enforcement is a deterrent to offenses or fraud that threaten the integrity of elections. Any violation must be corrected. Different institutions, with their mechanisms, can be responsible for upholding that integrity, which is specifically enshrined in the legal framework (Dobrzynska, 2006).
- b. The right to challenge election results and the aggrieved party in problem-solving must be contained in the law. It provides firmness to the procedural law, such as how the aggrieved party (candidate or political party) in the election fights for their rights by protesting the election results.
- c. Concerning offenses against election results, the Law should emphasize whether the state has a legal framework incorporating rules on the impact of violations on election results.

Law enforcement in handling election violations is an effort to realize elections based on direct, general, free, confidential, honest, and fair elections. It can provide benefits, justice, and legal certainty in the democratic process in Indonesia.

## **2. Analysis and Discussion**

Following statutory provisions, it is clear that Bawaslu's duties and authorities have been regulated in Article 93 and Article 95 of Law No. 7/2017 on General Elections. In election violations under the Election Law, Bawaslu has strengthened its authority, one of which is that

Bawaslu's findings are no longer in the form of recommendations but have become decisions. Bawaslu currently has the power to decide administrative violations so that the results of the Election Supervisor are not only recommendations but are decisions that the parties must implement (Abiyasa, 2019).

In detail, Article 95 of the Election Law explains that Bawaslu is authorized to receive and follow up on reports relating to alleged violations of the implementation of elections. Bawaslu also has the authority to examine, review, and decide on both election administration and money politics violations. Then in disputes over the election process, Bawaslu has the power to receive, examine, mediate, adjudicate, and decide on settlements submitted by election participants. The authority of Bawaslu as a form of carrying out the supervisory function of the stages of holding elections and handling criminal election violations and as a judicial institution is a phenomenon of the running of the executive function and judicial function of a State institution (Abidin et al., 2020).

Regarding the topic of the limitation of Bawaslu's authority in handling election violations after the determination of national vote results, based on the Election Law, we can know that Bawaslu's management does have limitations in handling election violations after the resolution of the vote results by the General Election Commission (KPU). This argument starts from the author's understanding of the explanation of Article 95 letter a, which reads, "Bawaslu has the authority to receive and follow up reports relating to alleged violations of the implementation of laws and regulations governing elections." Still, Article 93 letter d explains that Bawaslu is tasked with overseeing the implementation of the stages of the Election, which is described again in this article at number 11 that the phases of Bawaslu's duties only up to the supervision

of the determination of the election results, so it appears that Bawaslu's responsibilities and authorities have limitations in handling election violations after the conclusion of the national vote results and in the Election Law also does not explain in detail how Bawaslu's control in managing election violations after the determination of the vote results.

In addition, juridically, the existence of Bawaslu is not only a supervisory institution but also a judicial institution. Bawaslu also carries out judicial functions as a judicial institution in general so that the rules for resolving election administration violations follow the trial mechanism in general. On these conditions, there will be two functions of Bawaslu. On the one hand, Bawaslu carries out the function of supervising elections, but on the other hand, it also performs a judicial process. This dual function of Bawaslu can undoubtedly lead to polemics and debates over interests in implementing elections. It is because, in terms of election supervision, Bawaslu has a special assessment of election administration violations, both those reported by political parties (the public) and Bawaslu discovered itself in the field (Waid, 2018). Therefore, it is reasonable to limit Bawaslu's authority after the determination of the national vote results to maintain the integrity and professionalism of Bawaslu as an institution with the duty and authority to oversee the stages of the election.

From the explanation above, there are contradictions related to Bawaslu's authority in handling election violations after determining the national vote results. Based on the description of Article 1, paragraph 17 of the Election Law, Bawaslu is an Election Organising Agency that oversees the Implementation of Elections in all regions of the Unitary State of the Republic of Indonesia. Suppose we refer to Article 167, Paragraph (4) letters a to k. In that case, it is clear that what is said to be the stages of holding elections start from the steps of the program and

budget planning and the preparation of regulations for the implementation of elections and ends at the inauguration stage, namely the oath/pledge of the President and Vice President and members of the DPR, DPD, Provincial DPRD and Regency/city DPRD.

There is a controversy in the implementation of Bawaslu's duties and authorities where it was previously stated in Article 167 Paragraph (4) letter k that the stage of the election ends at the location of swearing in, but in the supervisory duties by Bawaslu can only be carried out until the step of determining the election results mentioned in Article 93 letter d number 11. This results in a weakening of the implementation of Bawaslu's authority in supervising, preventing, and prosecuting violations in the stages of holding elections and is a form of effort not to realize elections with the principles of legal certainty and professionalism, effectiveness, and efficiency.

Bawaslu should be given the broadest possible authority in exercising its jurisdiction to prevent violations that can occur during the stages of holding elections. It is also expressly supported in Article 93 letter c number 4, which states that Bawaslu supervises the implementation of other preparations in the Election under the provisions of laws and regulations, where the stage of taking the oath/pledge, which is part of the stage of holding the Election based on Article 167 Paragraph (4) letter k, which means that until this stage there should be no restrictions on Bawaslu's authority after the determination of the vote results, in this case, is the supervision of preparations for taking the oath/pledge so that the overall control of the stages of the Election by Bawaslu in preventing and prosecuting election violations runs well and optimally following the provisions of laws and regulations.



In addition, as stated by Muhammad Andri Alvian and Vivin in their research, which confirms that Bawaslu is equipped with the authority to supervise each stage of the elections carried out, including after the determination of the vote until the final step to maintain the continuity of democracy from violations that can occur in each stage (Alvian, 2022)

### **3. Conclusion**

Bawaslu is an institution with the duty and authority to oversee the stages of the election, so it is appropriate for Bawaslu to have complete control in the implementation of the stages of the election that have been mandated under Law Number 7 of 2017 concerning General Elections. The restriction of Bawaslu's authority should not be carried out in handling election violations after the determination of national vote results because, indeed, the conclusion of vote results by the KPU is still in a series of stages of holding elections as confirmed in Article 167 Paragraph (4) of the Election Law where the last stage is the oath/pledge of the President and Vice President and members of the DPR, DPD, Provincial DPRD and Regency/city DPRD.

In terms of the implementation of Bawaslu's duties mentioned in Article 93 letter d, which does not include the task of supervising the oath of pledge stage, which is still part of the stages of holding elections, it is necessary to review the Election Law relating to the duties and authority of Bawaslu, so that the regulations that oversee the steps of holding elections can provide legal certainty in the process of holding elections, supervising the holding of elections as well as preventing, taking action handling the polls, also to create elections that guarantee consistency in the implementation of election system arrangements and provide legal certainty to develop fair and integrity elections.

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