



## Handling regional election violations

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### Abstract

Election organizers must increase their capacity in solving various problems that arise, because regional elections and general elections have different sensitivities, and organizers must be analytical in seeing changes and developments in political dynamics based on Law number 10 of 2016 concerning the election of governors and deputy governors, regents and deputy regents, Mayor and Deputy Mayor, KPU regulation number 4 of 2020 concerning nominations, KPU regulation number 15 of 2019 concerning program stages and schedules and Bawaslu regulation number 8 of 2020, Problem identification: first, what is the process and procedures for handling violations of candidacy carried out by Bawaslu in the 2020 Barru Regent and Deputy Regent election, secondly, how is Bawaslu's consideration of decision 004/Reg/LP/PB/KAB/27/XI/2020, Regarding alleged violations of the code of ethics and Decision Number 005/Reg/ LP/PB/KAB/ 27.24/XI/2020 concerning alleged violations of regional election crimes, this research is normative juridical research with a focus on analyzing decisions/recommendations for violations of Bawaslu administration, this research uses legislative regulatory approach, case approach, and conceptual approach. The data sources used are primary, secondary and tertiary data. The research results and conclusions: Firstly, the process of handling violations involving external parties is not in accordance with Bawaslu regulations article 29 number 8 of 2020. Second, the allegations regarding decision 004/Reg/LP/PB/KAB/27/XI/2020 concerning violations Code of ethics occurs because of legal disimplification, a legal norm is generalized, but in fact there are several legal events or legal facts but only general conclusions are drawn, the in-depth study of the case is less than optimal and the collective collegial system in this process becomes a symbol, does not show any similarity of interpretation. both internally and between fellow organizers, this case approaches the theory of American Realism which only generally sees a law as a law.

**Keywords:** Law, organizers

### Introduction

Article 57 paragraph 1 (one) of Law number 10 of 2016 which is a reference for the implementation of the election of Regent and Deputy Regent, Mayor and Deputy Mayor, Governor and Deputy Governor and in its implementation it cannot be denied that in every Democratic Celebration there is misunderstanding and miscommunication between candidates and The organizing body of the General Election Commission which technically organizes the election of Regent and Deputy Regent, even the information data released from (kompas com, 26/11/2020) gave rise to conflicts which ended in demonstrations or demonstrations by certain pairs of candidates.

The new district Bawaslu has determined that the KPU violated administration and violated ethics, and the clarification was carried out by members of the police without starting with a clarification process from the district Bawaslu so that in fact it leads to criminal elements, and what is more interesting is because the Bawaslu decision which was initially handled by the police ended up in court The Honorary Council for Election Organizers whose decision was considered an ethical violation, while the Constitutional Court's decision was a legal action in the sense that the candidate requirements document was initially considered incomplete and then the KPU carried out a correction process, which was considered by Bawaslu to be a violation and the Constitutional Court's decision to see the results of the filing process was not correct. Something needs to be questioned, this is something strange because Bawaslu considers the KPU's actions to violate the rules, but the basis for the violation referred to by Bawaslu is far from

the philosophy of considering the decision of the Constitutional Court. This strangeness prompted the author to publish a work with the title "Handling of 2020 Regional Election Violations

### Problem

What are the processes and procedures for handling violations of nominations carried out by Bawaslu in the 2020 Barru Regent and Deputy Regent elections?  
How does Bawaslu consider the decision /K.Bawaslu/SN02/PM.06.02/XI/2020

### Literature review

#### Election of Regent

Manifestation of article 1 of the Constitution of the Republic of Indonesia by the leadership of the MPR and the Amapara socialization working team for the period (2009-2014: 171) that, Article 1 paragraph (1) of the 1945 Constitution of the Republic of Indonesia which contains the principle that the Indonesian state is a unitary state that republican form, which leaves it up to the people to determine their choices in elections as part of a democratic country. In its implementation, political parties also determine the candidates and who will be elected. Unfortunately, DPRD members listen more to the voices of political elites in their parties than to the voices of the people they represent in the registration process and regional head elections by DPRD members, considering that the determinant of who is accepted and who is not as a candidate is the faction in the DPRD (Nike K. Rumokoy:2020:27)

The direct election of regional heads and deputy regional heads by the people is a political process in the region towards a more democratic and responsible political life (G. Gunawan, A. Bainus: 2020; 30) <sup>[3]</sup> further according to Rahmat Hollyson MZ and Sri Sundari, 2015, 38 -39, that democracy in Indonesia is determined by regional head elections.

### Nomination

Citizens will be faced with technical procedures for implementing regional head elections which are very vulnerable to obstruction or constitutional loss (Muhammad Sabri I Budahu; 2022; 4). a number of conditions that must be fulfilled as stated in article 4 Letter u of KPU regulation number 1 of 2020, amendment to pkpu number 3 of 2017 as follows. "declare in writing his resignation as a member of the Indonesian National Army, Indonesian National Police, Civil Servant, village head or other designation and village officials since it is stipulated as follows. This provision is specifically a candidate requirement for members of the National Police who wish to nominate themselves as candidates The Regent, guided by the rules of article 12 paragraph (1a) number 19 of 2011 concerning Nomination of Members of the Indonesian National Police in the election of regional heads/deputy regional heads as follows: "Submission of resignation requests for members of the National Police who will take part in the regional elections, is addressed to the National Police Chief, for members of the National Police with the rank of Pati and Pamen Polri." Elections are the right of every citizen given by the state to use the opportunity to elect representatives who will sit in parliament and use their authority for the benefit of the people they represent (Mahfud MD, 2010:75). manifest as every person's right. article 43 paragraphs (1 and 3) Law number 39 of 1999. Concerning human rights, one of the provisions of which states that "Everyone is free to choose and be chosen, and this freedom must receive protection from all parties, both individuals, institutions and other agencies or organizations." between individuals, the government (both civil and military government officials) and even the state, so fulfilling and demanding rights cannot be separated from fulfilling the obligations that must be carried out.

### Handling violations

Regarding the concept of authority, many experts have tried to provide a definition of authority (Hadjon, 2022). Authority is the main thing in regulating procedures for handling election violations originating from formal law (UU), in order to create an election justice system. By setting up election procedures and handling violations, the legal system has established the value of justice in elections/pilkada. (Supriyadi, 2020. 144), along with this. (Aminuddin Kasim, 2021, 503) <sup>[2]</sup> said " "Every violation in the implementation of simultaneous regional elections is a black spot that will damage basic values if not handled properly."

### Research methods

This research uses normative legal research which is conceptualized as what is written in legislation (law in books) and the data sources used are data consisting of primary legal materials, secondary legal materials or tertiary data, primary legal materials, laws, KPU regulations and

Bawaslu regulations and police chief regulations, and secondary legal materials which provide explanations of primary legal materials such as research results, expert opinions, as well as tertiary legal materials which provide instructions and explanations of primary and secondary laws such as encyclopedias (Amiruddin and H. Zaenal Azikin 2003:118) <sup>[1]</sup>.

### Result And Discussion

Process and procedures for handling violations of nominations carried out by Bawaslu in the 2020 Barru Regent and Deputy Regent elections.

The nomination process for Deputy Regent of Barru Aska mappel sparked controversy which ended in a demonstration of "interpretation of a rule outside the General Election Commission regulations and Bawaslu regulations" because the candidate who submitted himself as a candidate for deputy regent still had the status of a member of the National Police with the rank of pamen so that the official regulations still adhered to as long as the candidate for deputy regent is officially dismissed from the Chief of Police of the Republic of Indonesia as contained in article 12 (paragraph) 2 letter e number 19 of 2011 concerning Nomination of Members of the State Police of the Republic of Indonesia in the election of regional head/deputy regional head with the condition "Submission of a resignation request for Member Polri who will take part in the Pilkada, addressed to: Chief of Police for Polri Members with the rank of Pati and Pamen Polri, signed by the Chief of Police, for Members of Polri with the rank of Pati and Pamen Polri; article 13 paragraph (1) letter a, flash back to the membership of the Polri who is nominating becoming a deputy regent is required and is an absolute condition for nomination in Article 4 Letter t, KPU regulation number 1 of 2020, amendment to PKPU number 3 of 2017 concerning the nomination of Governor and Deputy Governor, Regent and Deputy Regent, as well as mayor and deputy mayor who declare written resignation as a member of the Indonesian National Army, the National Police of the Republic of Indonesia, apart from that, the most important thing is how Bawaslu monitors the candidacy itself. The existence of supervision when the incident occurs will certainly be correlated with the legal events that occur, including with the issuance of Bawaslu's clarification invitation letter. Barru district addressed to the KPU organizers where the contents of the invitation contained allegations that the KPU had committed criminal election violations with reference to the provisions of article 180 paragraph (2) of Law number 10 of 2016

The alleged violation indicates that it is reasonable to suspect that a mistake has been made by the KPU in passing certain pairs of candidates according to the articles suspected by Bawaslu, then supported by the implementation of clarifications carried out by the Police, then in the clarification process carried out at the Bawaslu office according to an invitation attended by staff. Bawaslu and the chairman of Bawaslu without the presence of other Bawaslu members, and when the author conducted a telephone interview with Bawaslu members, for the 2018-2023 period regarding their absence from the process of clarifying alleged election criminal violations in the recent regional elections, that they were not aware of the letter of alleged clarification because they did not was involved by the Bawaslu Chair at that time, as well as members of the

Bawaslu HR division, who said the same thing that they had never been involved in the clarification process regarding alleged criminal violations alleged by Bawaslu Chair Nuralim. The interview process was conducted by telephone on Tuesday, October 17 2023., (farida;12.45 WITA, and Abd Mannang; 11;27 WIT.

Provisions relating to who carries out clarifications regarding alleged violations, both administrative and alleged criminal violations, are contained in article 29 of Bawaslu regulation number 8 of 2020 concerning handling regional election violations at the city district level, consisting of (1) consisting of:

- a. Chairman and/or Members;
- b. structural officials; and/or
- c. Regency/City Bawaslu secretariat staff.

(3) The clarification team as intended in paragraph (1) is determined by the decision of the Chair of Bawaslu

From these provisions it is clear that the person carrying out the clarification is not someone who is classified as a *gakumdu* because the integrated legal combination has a task in handling regional election criminal violations, so that in studies that produce allegations of criminal violations, clarification is still carried out by Bawaslu, after the clarification is carried out by Bawaslu in accordance with the provisions of the article. 29 is followed by a study whose decision focuses on 3 types of violations, criminal, administrative or ethical (article 31 paragraph 2 Bawaslu Regulation number 8 of 2020) <sup>[13]</sup>. The clarification made regarding the alleged criminal violation on Saturday 28 November 2020, 19.00 WITA which involved parties outside the provisions of Article 29 of the Perbawaslu is contrary to the process of handling violations which in the world of justice allows something that is not appropriate to be excluded.

The Barru Regency General Election Supervisory Board concluded that the report number: 004/REG/LP/PB/KAB/27.24/XI/2020, which was received by the Barru Regency Bawaslu, was alleged to be an alleged violation of the code of ethics for election organizers and an alleged violation of procedures and mechanisms relating to the administration of election implementation in the implementation stages. That based on the conclusions of the facts and provisions of report number: 004/REG/LP/PB/KAB/27.24/XI/2020 reported by Mr. Bayazit B Yusuf, Bawaslu Barru Regency recommends the following

That report number: 004/REG/LP/PB/KAB/27.24/XI/2020 reported by Br. Bayazit B Yusuf is an alleged violation of the procedures and mechanisms of all mechanisms relating to the administration of elections during the implementation stages. Barru Regency Bawaslu forwarded the report on alleged election violations with Number.144/K.Bawaslu/SN-02/PM.06.02/XI/2020, to the Barru Regency KPU to review and clarify the purpose of the letter that was issued to deputy candidate serial number 02 and the letter received from deputy candidate serial number 02 after the 23rd September in accordance with PKPU No.3 of 2017. On November 22 2020, Barru Regency Bawaslu received a letter with number 595/PL.02.2-SD/7311/KPU-Kab/XI2020 as a response to the continuation of election administration violations with number. 144/K.Bawaslu/SN-02/PM.06.02/XI/2020

The analysis of the publication of the letter for the new deputy regent candidate is based on the Collective Collegial principle, which started from the results of consultations between the chairman of the Barru Regency KPU and the South Sulawesi Regional Police, then asked the technical division to gather at the lobby of Soekarno Hatta's departure because at that time the chairman of the KPU was preparing to leave for sea. on November 6 2020 and the technical division arrived from Jakarta together with technical staff and the head of the Legal Subdivision, in an informal meeting at Soekarno Hatta airport, the chairman of the KPU said that the resignation letter of the deputy Regent candidate Aska Mapped was based on the reason that he wanted to manage the pond, and on that basis The chairman of the KPU asked the Parmas division for a draft of a letter addressed to the candidate for deputy regent with a request for resignation by taking into account the provisions of PKPU number 3 of 2017 and the National Police Chief's Regulation number 19 of 2011. supporters that no one could sign because of the external service of the chairman and members of the KPU, and the chairman of the KPU again said that the letter should be scanned. The results of the scan were submitted to the new deputy regent candidate and a letter was issued in accordance with police regulations on the specified deadline, namely the 9th, so that administratively Aska Mapped as the new deputy regent candidate who was paired with Ir Suardi Saleh with serial number 2 was declared to have met the requirements. The new district Bawaslu issued a KPU decision stating that it violated administration but the Constitutional Court legalized the letter from the candidate pair number 2 team regarding approval from the National Police Headquarters as required in the Constitutional Court trial (the causality of the letter on the 9th which was justified in the Constitutional Court trial because of the letter on the 7th) so that based on the strength of the regulations and the work process carried out by the Barru Regency KPU in accordance with the applicable mechanisms and provisions, and there are no elements of violation, however the Bawaslu decision recommended an ethical violation decision to the Honorary Council, then the case was reported by two reporters for one case. accepted by Bawaslu in the same case in criminal law known as *Ne Bis In Idem*, in this criminal law principle, if an act that has been decided by a judge cannot be examined and tried again, here the principle has not yet been implemented in law enforcement in the implementation of elections or regional elections.

**Decision number:** 005/LP/PB/KAB/27.24/XI/2020. concerning alleged criminal violations

Whereas based on the discussion of the 2nd *Gakkumdu* Center, it was stated that the actions of the reported Syarifudin Haji Ukkas, Masdar, S.Pdi, Lilis Suryani and Muh.Natsir Azikin, Abdul Syafah.B, did not fulfill the elements of Article 180 Paragraph (2) in conjunction with Article 7 and Article 45 Law Number 10 of 2016, so it cannot be followed up.

That the actions of Mr. Masdar, S.Pdi (Barru Regency KPU Commissioner) and Andi Muhammad Nadhir, are suspected of violating the code of ethics for election organizers.

This decision shows that the answer to the first formulation regarding the process of handling violations carried out by Bawaslu was not answered in depth by extracting information so that the imposition of sanctions given was

not appropriate, because a technical staff member who was reported to have temporarily violated the KPU's technical regulations regarding work procedures and governance had clear duties. The principle of the secretariat staff is to facilitate the commissioner's duties. The Bawaslu report to the Honorary Council was a wrong decision according to the confirmation of the Regional Audit Team at the hearing on the Bawaslu report. The Regional Audit Team, represented by one of the Fatmawati provincial KPU commissioners, asked Bawaslu member Abd Mannang, what exactly is Bawaslu's job in supervising the nomination stage, is there not some kind of preventative effort? Questions like this should arise in clarification because to resolve one problem then this Even the smallest thing that is considered trivial must be taken into account because it will shape and support the resolution of the problem. In the same incident, the technical division via Vidio, occurred on the day of the postponement of the second debate on 23 November 2020, where the reason was that candidate pair number 1 and number 3 were not willing. following a series of debates on the process of determining deputy candidate number two as a candidate who met the requirements, as evidenced by the preparation of an official report on the evening of the 23rd which was signed by 3 commissioners, the other 2 commissioners did not agree with the signing of the late date and not because it did not meet the requirements. The requirements for candidates are only the process of making the official report which was made on the evening of 23 November. On the other hand, the public or the mass of supporters and candidate pairs know that no official report has been produced for the fulfillment of the MS and TMS because the person concerned (Aska Mapped) has fulfilled the requirements according to the technical division's submission., the clarification process carried out by Bawaslu did not get to the root of the problem so that it became an incomplete puzzle and in the end other parties were also involved which resulted in public interest forming a negative stigma due to errors in the process

### Conclusion

A clarification process that is carried out sharply and in depth and does not have multiple interpretations will not cause prolonged turmoil and will not give rise to the principle of presumption of innocence due to errors in the process, so that the analysis of the decision is concluded; The process of handling violations committed by Barru Regency Bawaslu is not in accordance with Bawaslu regulations article 29 number 8 of 2020, because the clarification team involved has been determined, namely

- Chairman and/or Members;
- structural officials; and/or
- Regency/City Bawaslu secretariat staff.

Errors in the clarification process give rise to new things in the electoral legal system because they are stated in Bawaslu regulations and field facts that occur are shifted from the provisions., the issue of the letter issued on November 7 2020 is something that is considered a violation by the chairman of Bawaslu but he does not see the results of the process, namely that on the 7th it does not indicate that the candidate does not meet the requirements but it is the KPU's duty and responsibility to convey in writing things that must be known to the public. candidates and candidate pairs' teams, and the fact that the reply to the letter on the 7th has

become a concern for Deputy Regent Candidates who have finally complied with the provisions of police regulations. Bawaslu's consideration of decision 004/Reg/LP/PB/KAB/27/XI/2020. Regarding alleged violations of the code of ethics and Decision Number 005/Reg/ LP/PB/KAB/ 27.24/XI/2020 concerning alleged violations of regional election crimes

### Suggestion

in the process of handling violations by Bawaslu as confirmation that in considering decisions regarding reports received by Bawaslu and answers to clarifications by other organizers, they must pay attention to election principles as fundamental principles in holding all stages of elections. is aspired to by the people of the nation and state, because honest organizers will produce elections with integrity and become a mouthpiece for the upholding of democracy

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