

The Essence of Law Enforcement on Election Violations in Indonesia

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Abstract

General election is one of the manifestations of democracy. However, in its implementation there are various violations that tarnish democratic values. This research is an empirical juridical research with the object of research in the form of institutions related to the implementation of elections. The results of the study indicate that the nature of election law enforcement in resolving election violations in Indonesia has the meaning of providing equal opportunities and rights to the broadest basic freedoms, as wide as the same freedom for everyone so as to be able to reorganize the social and economic law gap in the midst of this phenomenon. Democracy. In addition, it can also maintain the dignity of democracy by providing protection to citizens in every election and regional election so that the principles of general election administration can be realized, namely Honest and Fair, Direct, General, Free and Confidential.

Keywords: Regional Head Elections, Election Violations, Law Enforcement

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A. Introduction

Initially, the resolution of disputes over the results of regional head elections (Pilkada) was the authority of the Supreme Court.¹ This is based on Law no. 32 of 2004 appointed the Supreme Court to decide disputes regarding the results of regional head elections. Article 106 paragraph (1) explains that objections to the determination of the results of the election of the Regional Head and Deputy Regional Head can only be submitted by a pair of candidates to the Supreme Court within 3 (three) days after the determination of the election results.

The objection is intended to be related to the results of the vote count that affect the election of a pair of candidates. The submission of objections to the Supreme Court is submitted to the high court for the election of regional heads at the provincial level and the district court for the district/city level. The Supreme Court's decision on the election results is final and binding. In exercising its authority, the Supreme Court may delegate to the High Court to decide disputes over the final vote count results for regional head elections at the district or city level.

The authority to settle disputes over the results of the regional head elections was then handed over to the Constitutional Court after the third amendment to Law no. 32 of 2004. Article 236C of Law No. 12 of 2008 as the third amendment to Law no. 32 of 2004 stipulates that the handling of disputes over the results of the election of regional heads and deputy regional heads by the Supreme Court is transferred to the Constitutional Court no later than 18 (eighteen) months from the promulgation of this Law.

Election violations are basically divided into 3 types of violations, namely:²

- 1) Administrative violation;
- 2) Election Crimes;
- 3) Disputes over the results of the vote count.

Violations as mentioned above when carried out systematically, structured and massively³ constitute a violation of the constitution, especially Article 18 paragraph (4) of the 1945 Constitution which requires that the Pilkada be conducted in a democratic manner and does not violate the principles of direct, general, free, confidential, honest and fair as stipulated in Article 22E paragraph (1) of the 1945 Constitution.

Regarding structured and massive systematic violations, the decision explained that Structured is a violation that has been carefully planned, and involves the election management officials in stages. Systematic is a violation carried out with careful planning and by using a good strategy. Massive is a violation carried out comprehensively in a broad scope.⁴

The issuance of Law No. 10 of 2016 concerning the Second Amendment to Law No. 1 of 2015 concerning

¹ Sudrajat, H. (2016). Kewenangan Mahkamah Konstitusi Mengadili Perselisihan Hasil Pemilu. *Jurnal Konstitusi*, 7(4), 159-178.

² Fahmi, K. (2016). Sistem Penanganan Tindak Pidana Pemilu. *Jurnal Konstitusi*, 12(2), 264-283.

³ Ali, M. M., Rachman, I. N., Wijayanti, W., Putranto, R. T. J., Anindyajati, T., & Asih, P. G. (2016). Tafsir Konstitusional Pelanggaran Pemilu yang Bersifat Sistematis, Terstruktur dan Masif. *Jurnal Konstitusi*, 9(1), 189-230. See also, Junaidi, V. (2016). Pelanggaran Sistematis, Terstruktur dan Masif: Suatu Sebab Pembatalan Kehendak Rakyat dalam Pemilihan Kepala Daerah Tahun 2010. *Jurnal Konstitusi*, 7(5), 041-072.

⁴ Zoelva, H. (2016). Problematika Penyelesaian Sengketa Hasil Pemilu oleh Mahkamah Konstitusi. *Jurnal Konstitusi*, 10(3).

Stipulation of Government Regulations in Lieu of Law No. 1 of 2014 concerning the Election of Governors, Regents, and Mayors to become Laws is a breath of fresh air in the dynamics of local elections in Indonesia. This is a complement to the previous rules.

Next, in Article 146 of Law No. 10 of 2016 it is explained that the Bawaslu report related to violations of regional head elections is followed up by the police who are members of the Integrated Law Enforcement Center (which is abbreviated and hereinafter referred to as Gakkumdu).¹ The presence of an integrated law enforcement center (Gakkumdu) in the realm of general elections both for the election of the Regional Head and President, vice president, members of the DPR, DPD, and DPRD is a manifestation of the Constitutional Court's decision Number 97/PUU-XI/2013 which revoked the authority of the Constitutional Court to adjudicate disputes general election results. Gakkumdu is expected to be able to carry out the process of handling general election violations quickly, effectively and efficiently.

Based on Article 152 paragraph (1) of Law No. 10 of 2016 that an integrated law enforcement center is formed to equalize understanding and patterns of handling criminal acts in the general election, provincial Bawaslu, and/or Regency/Municipal Panwaslu, Regional Police and/or Resort Police, and the High Prosecutor's Office and/or the District Attorney's Office. Then the problem related to Gakkumdu regarding the process of handling general election violations is that there are relatively short time limits on the process of resolving the general election violations in question. As in Article 134 paragraph (5) that in the event that reports of election violations submitted by voters, election observers or election participants have been reviewed and proven to be true, the Election Supervisory Body (hereinafter abbreviated as Bawaslu) at the provincial level, the Supervisory Committee (hereinafter abbreviated as Panwas) at the provincial level Regency/City, District Supervisory Committee, Field Supervisory Committee (PPL) and TPS (Polling Place) supervisors must follow up the report no later than 3 (three) days after the report is received. Then in paragraph (6) of the article it is explained that in the event that the Provincial Election Supervisory Body is needed, the District Supervisory Committee, PPL and polling station supervisors can request additional information from the reporter within a maximum of 2 (two) days.

This means that the verification process from the incoming report to the decision to be followed up or not followed up is only 3+2 days. Of course, this short time has the potential to reduce the quality of evidence in handling general election violations. In addition, problems related to legal instruments for general elections have given rise to so many new problems, namely there are articles that tend to be vague and have multiple interpretations which result in uncertainty of legal justice in general elections. For example, to determine whether reports or findings of general election violations are followed up or not followed up for a maximum of 3+2 days, if the short time limit is passed, the impact or consequences of this matter are not explained in Law No. 10 of 2016 so as to reduce the quality of handling electoral violations in a fair manner.

B. Research Methods

This research is an empirical juridical research² with the object of research in the form of institutions related to the implementation of elections, namely the General Elections Commission (KPU), the Election Supervisory Office (Bawaslu), the Prosecutor's Office and the Police. The collected data was then analyzed using a qualitative descriptive analysis.

C. Results and Discussion

Nature can be understood as the essence, it can also be an attribute or general nature of something. It is also understood as the personal self or the identity of something. In English, we often find terms such as substance or essence, both of which designate an essential nature or the ultimate nature of a thing. So, it can also be understood as the basic core or the highest core of something.³

The development of election law enforcement today is inseparable from the long history of holding general elections both in Indonesia and in other countries. Elections are one of the most important elements in democracy. People's sovereignty is implemented through the holding of general elections. People can cast their political voice by participating in elections to elect their representatives to govern their country and also to express their interests.⁴ In the current general elections held by several countries, political parties are an important organizational (institutional) forum to convey the political aspirations of citizens.⁵ Political parties are currently institutions that are recognized constitutionally in many countries as representative organizations

¹ Alfiantoro, H. (2018). Sentra Penegakan Hukum Terpadu Dalam Konsep Sistem Peradilan Pidana Pemilu. *Jurnal Adhyasta Pemilu*, 1(2), 135-148.

² Irwansyah. (2020). *Penelitian hukum : pilihan metode & praktik penulisan artikel*. Yogyakarta: Mirra Buana Media

³ Suhartono, S. (2008). Filsafat Ilmu Pengetahuan Persoalan Eksistensi dan Hakikat Ilmu Pengetahuan. *Jogjakarta: Ar-Ruzz Media, Cet. Ke-1*.

⁴ Jurdi, F. (2018). *Pengantar Hukum Pemilihan Umum*. Jakarta: Prenadamedia.

⁵ Hussein, H., Riza, M., Pangerang Moenta, A., & Ilyas, A. (2018). Implementation of Functions of Political Party in Indonesian Constitutional Systems. *JL Pol'y & Globalization*, 80, 146.

(institutions) and serve as liaisons between the government and the people. The main function of political parties is to seek and maintain power to carry out certain ideological programs by participating in general elections. Political parties also carry out activities such as selecting candidates, campaigning and carrying out government functions (legislative and executive) during elections.¹

For the people as voters, elections are one way to participate in the political process as an embodiment of people's sovereignty. Good elections should reflect the current expectations that arise in society about what is expected of the government. In terms of participation, the general election also provides a space for full participation to mobilize the will of the public.² With honest and open elections, the public gets information about the best candidate in the area before the community makes a rational choice.

Every democracy around the world has used elections as a mechanism for the peaceful and orderly transfer of power. Because elections are the pillars of democracy that are considered the most effective in dealing with the transfer of power. Through elections, the transfer of power is ensured to be safer and more efficient, because it can reduce the level of chaos. Leadership rotation will be more competitive and open. However, in some countries, the opposite is true, which shows that elections are used as an arena for power competition and however, election candidates create competition. Unfair competition and election objectives are often tarnished even by the organizers and themselves participating in elections, making it difficult to obtain elections with integrity.³ Many countries claim to be democratic, but in reality the election is only carried out as a ritual, even a celebration of democracy.⁴ That is why, in this modern democratic era, world leaders have begun to reflect on the importance of fair elections.

The birth of Law no. 32 of 2004 concerning Regional Government is the legal basis for direct regional elections. The Pilkada legal instrument then underwent two changes, namely through Law No. 8 of 2005 concerning Stipulation of government regulations in lieu of Law no. 3 of 2005 became Law no. 3 of 2005 became law. The second amendment through Law No. 12 of 2008 concerning the Second Amendment to Law no. 32 of 2004 concerning Regional Government.⁵ These changes revise the position of political parties as the only institutions that can nominate pairs of candidates for regional head elections. So with this change, regional head candidates can compete through individual channels.⁶

The dynamics of direct local elections led the government to issue Law no. 22 of 2004 concerning the Election of Governors, Regents and Mayors. The law returns the election mechanism to the regions to the Regional People's Representative Council. The wave of rejection from the people then became a factor in the issuance of Law No. 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law No. 1 of 2014 into Laws. Thus the election of regional heads is re-elected directly by the people.

Political developments in Indonesia made Law No.1 of 2015 again underwent four updates until Law No. 10 of 2016 as a legal instrument that is currently in effect in the implementation of regional head elections.

In relation to filling the position of Regional Head in Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia, it is affirmed that the Governors, Regents, and Mayors respectively as heads of provincial, regency and municipal governments are elected democratically. The term democratically elected is stated in Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia. There are at least two main principles contained in the formulation of "Democratically elected regional heads", namely: First, regional head elections must be elected through a democratic process. election which of course does not allow to be directly appointed. Second, the election is carried out democratically, meaning that it does not have to be directly by the people, but can also be elected by the Regional People's Representative Council⁷ whose members are also the result of democratic elections through general elections or even progressively, it can be interpreted as being approved by all the people by acclamation.⁸

The interpretation of the meaning of democracy in Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia cannot be separated from the philosophy of the meaning of Pancasila democracy as a characteristic of Indonesian democracy. The amendment to the 1945 Constitution which is quite basic and changes the paradigm of the state administration is in Article 1 paragraph (2) of the 1945 Constitution that:

¹ Mutawalli, M., Moenta, A. P., & Hasrul, M. (2021). Kewenangan Partai Politik Dalam Penarikan Dukungan Bakal Pasangan Calon Kepala Daerah. *Jurnal Al-Qadai: Peradilan Dan Hukum Keluarga Islam*, 8(1), 48-61.

² Setiadi, W., Sadiawati, D., Meliala, A. J., Bakhtiar, H. S., & Harefa, B. (2021). The Role of Indonesia Constitutional Court Decision in the Process of Establishing the Law: A Case Study in the Process of Establishing the Law on General Elections. *Journal of Legal, Ethical and Regulatory Issues*, 24.

³ Pontoh, C. (2015). Strategi Kampanye Pemenangan Bupati Dan Wakil Bupati Terpilih Pada Pemilihan Kepala Daerah Kabupaten Minahasa. *Acta Diurna Komunikasi*, 4(1).

⁴ Huda, N. (2017). *Penataan Demokrasi dan Pemilu di Indonesia*. Jakarta: Kencana.

⁵ Moenta, A. P. (2019). *Pokok-Pokok Hukum Pemerintahan Daerah*. Depok: Rajawali Pers.

⁶ Constitutional Court Decision No.5/ PUU-V/ 2007

⁷ Imran, I., Bakhtiar, H. S., & Achmad, D. (2020). Legal Standing and Authority of the Regional Representative Council in the Indonesia Constitutional System. *Amsir Law Journal*, 1(2), 54-60.

⁸ Saldi, T., Moenta, A. P., & Riza, M. (2022). Fungsi Dewan Rakyat Daerah Pada Pengawasan Penyelenggaraan Pelayanan Administrasi Dinas Kependudukan Dan Pencacatan Sipil Kabupaten Pasangkayu. *Indonesian Journal of Criminal Law*, 4(1), 112-132.

"Sovereignty is in the hands of the people and is carried out according to the constitution". This assertion shows that democracy as a model is not isolated, but the model of democracy to be built must be built, protected and also based on legal values, so that democratic products can be adequately controlled by the legal model. is a model of democratic rule of law or rule of law democracy. This model makes sense for state institutions, the state power model, the principle of decentralization and checks and balances, as well as regulatory control exercised by the judicial power government.¹ Thus, changing the parliamentary supremacy model into a rule of law model (the state, government and society are governed by law). The principle of the rule of law means that all public policies of public bodies and the selection of civil servants must be based on the rule of law.

Continuing the discussion on election law enforcement, in order to enforce the legal instruments for the Regional Head Election, a number of organizations have been formed and empowered to deal with violations of the Regional Head Election Law.

The authority of each of the above agencies can be seen in the table below:²

Table 1.
Authority of Law Enforcement Agencies

No	Institution	Legal basis	Authority
1	Police	Article 146 Paragraphs (1), (2) and (3) of Law No. 10 of 2016	Investigation and Delegation to the Public Prosecutor
2	Prosecutor's Office	Article 146 paragraph (4) of Law No. 10 of 2016	Transferring case files to PN
3	Election Supervisory Body	Article 22B letter b in conjunction with Law No. 10 of 2010	<ol style="list-style-type: none"> 1. Receive, examine and decide on objections to the decision of the Provincial Bawaslu regarding the selection of disqualifications. 2. Following up on recommendations and/or decisions of the Provincial Bawaslu and Regency/Municipal Panwas to the KPU regarding the disruption of the election stages
4	Provincial/District/City level Election Supervisory Body	Article 138 paragraphs (1), (2) and (3) of Law No.1 of 2015	Resolving violations of procedures, procedures, and mechanisms related to the stages of the election
5	The Integrated Law Enforcement Center	Article 152 paragraph (1) of Law No. 10 of 2016	Equating understanding of the handling of election crimes
6	District Court	Article 147 paragraphs (1) and (2) of Law No. 10 of 2016	Examine, adjudicate and decide cases of election crimes
7	High Court	Article 148 paragraphs (4) and (5)	Examine and decide on criminal appeal cases in the last election and binding
8	Administrative Court	Article 153 paragraph (2) of Law No. 10 of 2016	Receive, examine, adjudicate and decide on State Administrative disputes between election participants and election organizers.
9	Supreme Court	Article 135 paragraph (7) and Article 154 paragraph (9) and (10) of Law No. 10 of 2016	Deciding on legal remedies for administrative violations of cancellation of candidates due to money politics and giving a decision on the petition for cassation of disputes. The General Election Commission's State Administrative Decision is final.
10	Constitutional Court	Article 157 paragraph (3) of Law No. 10 of 2016	Examine and adjudicate disputes over election results until a special court is established
11	Election Organizing Honorary Council	Article 137 paragraphs (1) and (2) number 24 of Law No.1 of 2015	Handling violations of the code of ethics for election organizers.

Source: Data processed, February 2020

Based on the table above, it can be seen that the dynamics of the pilkada legislation occurred because of the

¹ Bonadi, A., Syafa'at, R., & Sudarsono, S. (2019). Analisis Putusan Mahkamah Konstitusi Nomor: 137/PUU-XIII/2015 Tentang Pembatalan Kewenangan Gubernur dalam Pembatalan Peraturan Daerah Kabupaten/Kota. *Jurnal Ilmiah Pendidikan Pancasila dan Kewarganegaraan*, 4(1), 1-14.

² Riwanto, A. (2020). Model Pengintegrasian Penegakan Hukum Pilkada Serentak Guna Mewujudkan Keadilan Substantif (Evaluasi Penegakan Hukum Pilkada Serentak 2015-2020). *Jurnal Adhyasta Pemilu*, 3(1), 61-81.

need for institutions to have a legal basis in law enforcement for election violations in Indonesia.

Philosophically, it can be interpreted that law enforcement is something that must be done in order to realize justice, order and peace as well as legal certainty for the parties involved in the contestation of regional head elections. This election also shows, because the complexity of legal issues in elections is the main motive why the makers of the regional head election law provide various doors, both from the aspect of election law enforcement agencies and election law enforcement officers in order to achieve election justice. However, on the other hand, the diversity of election institutions and apparatus in practice is actually a problem in itself in law enforcement, because each institution does not have the same perception in interpreting the norms of the Pilkada Law. As a result, apart from different procedures and decisions, the parties have the potential to be motivated to always try their luck from one institution to another. From the perspective of the intent and purpose of enforcing election law through various doors of justice, it shows that the philosophical objectives are not clear:¹

- 1) whether to protect the rights of election participants
- 2) whether to protect the rights of election organizers;
- 3) whether to protect the rights of voters; or
- 4) whether it is intended to enforce law and order in society in general..

In the enforcement of election law, with the various doors to seek justice, it is impossible to realize the four objectives. So ideally, electoral law enforcement must first determine its philosophical objectives so that it can be measured and ascertained what will be prioritized in achieving and realizing the protection of these rights.

1. Justice

Justice in relation to elections according to Janedjri M. Gaffar means that in the implementation of elections, every voter and election participant gets the same treatment, and is free from fraud by any party. In other words, the principle of fairness is the equal treatment of election participants and voters without any privilege or discrimination against certain participants or voters.

Fairness is the midpoint between the two extremes of too much and too little. In a position, there are two people who have the same thing in a predetermined size, each must get the same thing. Otherwise, each person will receive an unequal share. The distribution is in the form of a proportion so that justice is obtained, which is referred to as distributive justice. In distributive justice, everyone gets their rights according to the individual, namely based on qualifications, skills, abilities, services, or needs so that the principle of equality is the basis of justice.²

Aristotle also puts forward the concept of restorative justice³, which is a middle point between the two poles in the form of gain and loss, or justice as the setting right of the wrong, namely providing compensation to victims of mistakes or punishment to the perpetrators; and commercial justice which is a proportional reciprocal consideration in the business of exchanging goods or services among members of the community. justice because reciprocity can be exchanged.

Justice is of course very closely related to the provision of equal rights and opportunities as well as the ability to regulate socio-economic inequalities. This is in line with John Rawls's opinion that justice enforcement programs with a populist dimension⁴ must pay attention to 2 (two) principles of justice, namely: First, to provide equal opportunities and rights to the broadest basic freedoms, to the extent of equal freedom for everyone. Second, being able to reorganize the socio-economic gaps that occur so that they can provide reciprocal benefits.

There is also justice in elections according to International IDEA which is defined more from the perspective of a fair and timely electoral dispute resolution system and is limited to the direction of the electoral law problem solving system in order to uphold citizens' voting rights. Likewise, Ramlan Surbakti argues that there are seven criteria that must be met to realize an election that is fair and with integrity in creating election justice, including: (1) equality between citizens, both in voting and counting votes as well as in the allocation of seats in the House of Representatives and Regional People's Representative Council and the establishment of electoral districts; (2) legal certainty formulated based on the principle of democratic elections; (3) free and fair competition among election contestants; (4) participation of all stakeholders in the entire series of electoral stages; (5) a professional, independent and impartial election management body; (6) integrity of voting, counting, tabulating and reporting of election votes; and (7) fair and timely resolution of electoral disputes.

Therefore, the author's idea of justice in relation to the regional election can be seen from the implementation of the regional election itself with indicators of achievement of its implementation can

¹ *Ibid.* p.81

² Nur, R., Amriyanto., Bakhtiar, H. S., & Purwanda, S. (2022). *Sistem Peradilan Pidana*. Gorontalo: Cahaya Arsh Publisher & Printing.

³ Setyowati, D. (2020). Memahami Konsep Restorative Justice sebagai Upaya Sistem Peradilan Pidana Menggapai Keadilan. *Pandecta Research Law Journal*, 15(1), 121-141.

⁴ Amin, S. (2019). Keadilan Dalam Perspektif Filsafat Hukum Terhadap Masyarakat. *El-Afkar: Jurnal Pemikiran Keislaman Dan Tafsir Hadis*, 8(1), 1-10.

be described as follows:

- 1) The neutrality of the election organizers;;
Pilkada organizers in this case the Regional General Election Commission (KPUD) and the Provincial/Regency/City Election Supervisory Body (Bawaslu) will greatly determine the realization of justice for all parties, by not taking sides with certain candidates.
- 2) Information disclosure;;
Disclosure of information, in this case the organizer, explains to the public the number of votes obtained both through print and electronic media so that the principle of public information disclosure is realized.
- 3) Service at The Integrated Law Enforcement Center
The Integrated Law Enforcement Center as the front line of law enforcement in dealing with election violations must be able to be the parent in creating justice for the litigants.

2. Protection of the Democratic Process

Democracy and the rule of law are two conceptions of power mechanisms in running the wheels of state government.¹ The two conceptions are interrelated and cannot be separated from each other, because on the one hand democracy provides the basis and mechanism of power based on the principle of equality and human equality, on the other hand the rule of law provides a benchmark that those who govern in a country are not humans, but the law. At the practical level, the principle of democracy or people's sovereignty can guarantee the participation of the community in the decision-making process², so that every legislation that is implemented and enforced truly reflects the feeling of community justice. Meanwhile, in a state based on law, in this case the law must be interpreted as a hierarchical unit of the order of legal norms culminating in the constitution.³ Democracy is full of pictures of how direct public participation is a real benchmark in the implementation of democracy. This of course becomes a substantive matter when the responsibility of regional leaders is not highlighted so that it is as if after the election the democratic process is considered over. In fact, the real commitment of the elected regional leaders is to improve the welfare of the people as the campaign advertises.

D. Conclusion

The nature of election law enforcement in resolving election violations in Indonesia has the meaning of providing equal opportunities and rights to the broadest basic freedoms, as wide as the same freedoms for everyone so as to be able to reorganize social and economic law gaps in the midst of the Democracy phenomenon. In addition, it can also maintain the dignity of democracy by providing protection to citizens in every election and regional election so that the principles of general election administration can be realized, namely Honest and Fair, Direct, General, Free and Confidential.

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¹ Muntoha, A. (2009). Demokrasi Dan Negara Hukum. *Ius Quia Iustum Law Journal*, 16(3), 379-395.

² Rosana, E. (2016). Negara demokrasi dan hak asasi manusia. *Jurnal Tapis: Jurnal Teropong Aspirasi Politik Islam*, 12(1), 37-53.

³ Nasozaro, H. O. (2018). Peranan Hukum Dalam Kehidupan Berdemokrasi Di Indonesia. *Warta Dharmawangsa*, (58).

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