


# Strengthening Quasi-Judicial Authority Election Supervisory Body (BAWASLU)



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## ABSTRACT

One indicator of a democratic state is the existence of independent state institutions. In this context, Bawaslu is the driving force in the democratic process through electoral activities. Bawaslu has a strategic role in realizing direct, public, secret, honest, and fair elections with integrity through transforming its authority. This study aims to describe Bawaslu's efficacy as Quasi-Judicial. Bawaslu's authority is based on Law No.2. On July 7, 2017, apart from being an Election Monitoring Agency, it also became a Judicial Body authorized to resolve election process disputes at the district/city Bawaslu level, which has the authority to receive, investigate, control, and resolve election violations. Of course, Bawaslu, in exercising its intellectual power has experienced obstacles and obstacles in resolving electoral administration violations and resolving electoral violations. Bawaslu has a strategic role in ensuring that elections are fair and have integrity. With strengthening its authority, it is hoped that Bawaslu can carry out its duties effectively.

**Keywords:** Bawaslu, Quasi-Judicial, Election

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## INTRODUCTION

The birth of Law No. 7 of 2017 concerning General Elections (from now on referred to as Law No. 7/2017) is a substantial transformation of Bawaslu, Bawaslu who initially only served as an election supervisor and then reported the results to the KPU; Law 7/2017 was given more discretion than Law Number 15 of 2011 concerning the Implementation of General Elections (from now on referred to as Law 15/2011). The passing of Law 7/2017 provides fresh air to Bawaslu in carrying out its duties and authorities. Besides that, Law 7/2017 also gives Bawaslu the jurisdiction to resolve process disputes and administrative violations, not only accepting but also resolving and adjudicating them.

The basis of the debate on Bawaslu's authority, in addition to being a supervisor of the implementation of elections and regional elections, is the handling of criminal violations together with the Prosecutor's Office, the Indonesian National Police is under one roof, namely the Integrated Law Enforcement Center (Gakkumdu Center) as the center of law enforcement activities for elections / regional elections. From this authority, Bawaslu also carries out judicial functions, namely examining, adjudicating, reviewing, and deciding alleged violations of election administration/elections and disputes over the election/election process as well as administrative violations of elections in the category of Structured, Systematic, and Massive (TSM) against the spouses of candidates for regional heads and members of the DPR, DPD, and DPRD as well as the spouses of candidates for President and Vice President.

The authority to adjudicate given to Bawaslu is almost similar to the authority possessed by the judiciary; in the fundamental constitution of the Indonesian state, it has been explained that judicial power or the authority to adjudicate as described in Article 24 paragraph (2) of the 1945 N.R.I. Constitution that judicial power is exercised by a Supreme Court and judicial bodies subordinate to it within the general judicial environment, religious courts, military courts, administrative courts, and a Constitutional Court. Granting the power to prosecute to Bawaslu in the perspective of the doctrine of separation of power is not justified because, in the doctrine of separation of power, institutions or state commissions cannot have dual authority; institutions can only have one authority, but the development of constitutional law studies in the world has had a significant impact on changes in the constitutional system in Indonesia, there are several institutions formed that have authority double one of them is Bawaslu.

The handling of administrative violations of General Elections (Pemilu) and Regional Head Elections (Pilkada) held at Bawaslu can be illustrated that Bawaslu formed an examination panel of at least 3 (three) people assisted by one assistant examiner and 1 minutes person. The chairman and members of Bawaslu became a panel of judges appearing formally, dressed in black suits with neat ties. They sit at high tables facing visitors. In front of the left and right sit the whistleblowers from political parties and the reported, usual members of the K.P.U., both central and regional, with election participants. The congregation leader from Bawaslu also has a hammer for the knock-to-start and end activities and the knock-on essential matters. So far, both the rapporteur and the reported person refer to the "assembly session" or "chairman of the assembly" for members and chairmen of Bawaslu.

Sanctions that can be decided by the leadership of the panel session in handling administrative violations consist of 4 (four) types of sanctions, which are born through decisions: a. organizational improvements to procedures, procedures, or mechanisms by statutory provisions; b. written reprimand; c. not being included at certain stages in the conduct of elections; and d. other administrative sanctions by the conditions in the Election Law, precisely in Article 461 Paragraph (6) of Law No. 7 of 2017 concerning Elections. When viewed from the perspective of the judicial system in Indonesia, the entire court case in a country is different from each other but interrelated or related and applied consistently with the parties involved in it, which are investigators, public prosecutors (prosecutors), judges, legal advisors, and justice seekers.

Bawaslu's authority as a supervisor of elections and regional elections, as well as acting as an examiner, review, adjudicate, and decide disputes over the administration of elections and provincial elections, can potentially cause abuse of power. The authority of Bawaslu as supervision of the stages of elections / regional elections, and also as quasi-judicial can be said to carry out executive functions and judicial functions, this is where the urgency of this study lies.

## **METHODS**

In accordance with the title and problems that will be discussed in the research this and in order to provide useful results, this research carried out using normative juridical research (normative legal research method). The normative juridical research method is library legal research. This is done by researching library materials or secondary data. (Soerjono Soekanto dan Sri Mahmudji, 2003).

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## RESULTS AND DISCUSSION

### 1. *Special Electoral Courts in Various Democracies*

From the comparative law perspective, the law enforcement process can be universally divided into 4 (four) large groups. First, countries that use purely judicial mechanisms use general judges supervised by the Supreme Court. This model is the oldest, first made in 1868 and then modified in 1879 in Great Britain. Available judges in the Queen's Bench Division are tasked with resolving cases of electoral misconduct and disputes.

Second, the use of political resolutions is also still used in the United States, where the House of Congress is given the mandate to resolve congressional election disputes, and the United States Electoral College is given the authority to resolve words that arise in presidential elections. The practice is quite interesting because the settlement approach used is purely political, not legal. With minor modifications, Germany also combined political and legal resolutions, allowing election participants to raise objections to parliament (Bundestag), but in the end, the appeal mechanism was carried out in the German Constitutional Court.

Third, Austria became the first country whose constitution in 1920 gave the Austrian Constitutional Court a direct mandate to be the sole institution for resolving disputes and violations of presidential and congressional elections at the federal level. The constitution then gave additional authority to the Austrian Constitutional Court to settle electoral cases at the regional level (Landers).

The last model is countries that form Special Electoral Courts. However, there are 2 (two) different variants: First, the electoral justice system, which is still under the hierarchy of Judicial Power, and (2) a purely electoral judicial system independent of any power. For example, Uruguay was the first country to establish an electoral court in 1924 and Chile in 1925. These institutions continue to gain reinforcement from pro-democracy forces in these countries and support from international soft power. In the political context of countries in the Latin American region, the acceleration of democratic steps is supported by inter-regional organizations, namely the Inter-American Commission on Human Rights (IACHR), which plays a crucial role in supporting the implementation of democratic and integrity elections in the Latin American region. In its investigative report, the IACHR reported that the conduct of the elections in Mexico was among the most encouraging, noting: "... adequate means or a simple and quick remedy or any other effective remedy before competent judges or independent and impartial court ...". Mexico's Special Electoral Court falls into the second category, which falls under the hierarchy of Judicial Power. However, other countries such as Uruguay, Panama, Guatemala, and Nicaragua chose to relinquish the Special Electoral Court as autonomous and independent of any power.

In the context of Mexican electoral democracy, electoral reform took place in 1996, when the Mexican government dissolved electoral political resolutions such as the Electoral College and established the Special Electoral Judiciary under the Mexican Supreme Court. This judicial institution takes care of all disputes and violations (administrative and criminal) in the conduct of elections, not only at the federal (national) but also at state (regional) levels. The Special Electoral Court under the Supreme Court of Mexico divides its jurisdiction into 1 (one) High Court in the capital city of Mexico City and 5 (five) District Courts in the states. Although still a career judge within the Mexican Supreme Court, judges of the Electoral Court must be independent and independent from the interests of political parties.

Based on data from the IACHR, Mexico's electoral court has issued many landmark decisions that significantly push Mexico to become a democratic country in the Latin American region, such as sanctioning fines to several political parties proven to have committed money politics, canceling and ordering money elections in several regions, and

issuing affirmative action rulings to indigenous people(indigenous peoples) in the Mexican highlands.

In addition to Uruguay, a Latin American country that also has something in common is Costa Rica, which also uses a presidential system of government with a multi-party system. Costa Rica also has a Special Judicial Institution called the Tribunal Supremo de Elecciones, which is considered the most respected state institution. Similar to the Corte Electoral in Uruguay, this institution is also institutionally independent from conventional Judicial Power, although, in its development, the Costa Rican Supreme Court can substitute 6 (six) substitute judges from 9 (nine) main judges. Unlike Uruguay, Costa Rica still involves the role of assistance from the Costa Rican Supreme Court in some judicial technicalities, which are considered not to interfere with the neutrality and independence of the main judges.

## ***2. Quasi-Judicial Authority of the Election Supervisory Board (Bawaslu)***

The idea of making Bawaslu the authority to adjudicate disputes over local election results is not impossible. This is due to the change in the function of Bawaslu, which was originally only tasked with being a supervisor of election implementation, to have quasi-judicial authority in election administration and electoral crimes. Supreme Court Circular (SEMA) 34/KMA/HK.01/II/2013 allowing administrative appeals in cases of election administration disputes. So Bawaslu is allowed to re-examine the State Administrative Decree issued by the agency/official of the State Administrative Decree, namely the KPU. So that Bawaslu can examine and decide state administrative cases issued by the KPU that are not related to the results of verification of Political Parties Participating in Elections, determination of lists of permanent candidates participating in elections, and determination of candidate pairs. Article 153 of the Elections Law (Law No. 10/2016) states that what is meant by a dispute over the administration of the state election is a dispute arising in the field of state administration Elections between Candidates for Governor and Candidates for Vice Governor, Candidates for Regent and Candidates for Vice Regent, as well as Candidates for Mayor and Candidates for Vice Mayor with the Provincial KPU and/or KPU Regency / City as a result of the issuance of Provincial KPU Decrees and/or District / City KPU.

The role of Bawaslu and/or District/City Panwas is to receive objections from Pilkada participants who feel aggrieved by the decision of the Provincial or District/City KPU. Election participants who feel aggrieved can file such objections only within a maximum period of three days after the KPU makes a decision. In this case, Bawaslu is affirmed as the executor of administrative appeals where election participants are required to submit their objections to Bawaslu in matters of election administrative decisions. Only after Bawaslu gives a decision, but candidates or participants in the regional elections feel dissatisfied, can a lawsuit be filed over the election state administrative dispute to the High Administrative Court after all administrative efforts in Bawaslu have been completed.

Bawaslu's authority to examine and decide election administration cases is strengthened by provisions in Article 95 of Law Number 7 of 2017 concerning General Elections, which states that Bawaslu is authorized to examine, review, and decide violations of election administration. Moreover, the same article also gives Bawaslu the authority to examine, review, and decide on violations of money politics, which are actually electoral crimes. In addition, Bawaslu can also examine, mediate, adjudicate, and decide on dispute resolution of the election process. The procedure for raising objections is also specifically regulated in the Election Law (Law No. 7/2017). Bawaslu, Bawaslu Province, Bawaslu District/City are required to decide the dispute over the election process no later than 12 (twelve) days from the receipt of the application. Bawaslu conducts a number of stages before adjudication, such as reviewing applications and bringing together disputing parties for mediation. However, if the petitioners are not satisfied with Bawaslu's decision, a lawsuit can be filed at the High

Administrative Court. The author sees a tendency to make Bawaslu an institution capable of deciding cases and becoming a quasi-judicial institution. Furthermore, this additional authority is very likely to increase to be given additional authority. This is in accordance with the opinion of Jimly Asshidiqie, who sees the possibility of Bawaslu transforming into an election court.

### ***3. Strengthening Bawaslu Quasi-Judiciary***

Through organizational strengthening and additional authority, Bawaslu is expected to prevent violations in elections, handle election cases, resolve election disputes, and enforce election law as a whole. This is because Bawaslu was formed to ensure the implementation of one of the requirements of popular sovereignty, namely, general elections. In addition, Bawaslu was formed in an effort to institutionalize political control in order to guarantee the political rights of every individual citizen in elections.

Therefore, Bawaslu has a strategic role in realizing direct, public, secret, honest, and fair elections with integrity. The expansion of Bawaslu's authority in preventing and enforcing election violations is a positive thing because, with the granting of broad authority, it is hoped that Bawaslu can carry out its duties and functions optimally. Previously, Bawaslu only had the authority to receive review reports and findings of alleged election violations and then recommend them to the authorities. Now, with Law Number 7 of 2017, Bawaslu's authority is strengthened, especially against administrative violations of elections. This is because the settlement of election administration violations is in the hands of Bawaslu as a whole.

The impact arising from the change in Bawaslu's authority is also different from the existing authority. If Bawaslu previously received a report and findings of alleged violations of election administration, then if the report is proven and true there is a violation of election administration, then Bawaslu will make recommendations for the study. The recommendation is an output of an examination conducted by Bawaslu. The recommendations that have been made by Bawaslu are submitted to the KPU; then, the KPU decides whether to implement or follow up on these recommendations because these recommendations are optional. If the KPU does not follow up on the recommendations from Bawaslu, the sanctions given to the KPU are only in the form of verbal warning sanctions and written warnings, while the impact of the deciding authority that Bawaslu currently has is the output it produces is a decision. The decision is executory, so the decision issued by Bawaslu must be interpreted as a decision issued by a quasi-judicial institution that must be directly implemented despite Bawaslu's position as an institution that oversees elections.

Until now, the follow-up to recommendations for administrative violations is still a polemic between the KPU and Bawaslu. For the KPU, the obligation to follow up on recommendations from the Provincial Bawaslu or Regency/City Bawaslu as regulated in Article 139 paragraph (2) of the Regional Election Law is carried out by conducting an examination of the recommendations received. The form of activity is to review Bawaslu's data or recommendation documents. On the other hand, Bawaslu interprets the obligation to follow up on recommendations for administrative violations as not only limited to reviewing them but also imposing administrative sanctions according to the recommendations given. Does the obligation to follow up on recommendations have the consequence that Bawaslu's recommendations have executorial or coercive power to be implemented? Or is it the other way around, when Bawaslu's recommendations still have to be followed up with an examination and decision-making process by the KPU, these recommendations do not yet have the power to enforce them? Regarding the executorial power of a decision, in civil procedural Law, the concept of executorial power is interpreted as the power to carry out what is stipulated in the decision by force. This means that a



decision is said to have executorial power when it can be enforced by force against a party who does not implement the decision voluntarily. If this concept is used to describe the strength of recommendations for administrative violations, there are several aspects that need to be looked at further.

First, against Bawaslu's recommendation to the KPU to impose witnesses on members of the Provincial KPU and the secretariat, Article 10 of the Elections Law only regulates the obligation of the KPU to implement Bawaslu's recommendation regarding the imposition of administrative sanctions. The Elections Law does not stipulate that the implementation of such recommendations must be carried out by conducting examinations. This can be interpreted as the implementation of the Bawaslu ruling carried out directly. Therefore, recommendations related to the imposition of administrative sanctions can be said to have executory power. Because if these obligations are not implemented, KPU members can be judged to have not carried out their obligations. However, the formulation of Article 10 letter b1 of the Election Law also has legal problems. The problem in question is the equating between recommendations and decisions through the relationship word "and/or." This equalization causes the meaning of the recommendation to be proportional to the decision, so it must be implemented.

Second, regarding recommendations related to violations of election administration, Article 135A paragraph (4) of the Elections Law expressly states the Provincial KPU and/or District / City KPU must follow up on the recommendations of election supervisors, but the form of follow-up is to conduct an examination and decide on administrative violations received. In the event that the election supervisor's recommendation remains to be examined further, the recommendation cannot be said to have executory power. Because, in the examination process, it is possible that the Provincial KPU and/or District / City KPU impose a decision that is different from the recommendation of administrative sanctions issued by the Provincial Bawaslu and/or District / City Bawaslu. Furthermore, when the Provincial KPU or District/City KPU is authorized to give decisions on the recommendations of election supervisors, the recommendations issued by Bawaslu according to their level are not final so they cannot be executed. Therefore, even the recommendation certainly cannot be qualified as having executory power.

Third, Article 141 of the Elections Law affirms that if the election supervisor's recommendation is not implemented by the Provincial KPU or the District/City KPU, then the Provincial Bawaslu or District/City Bawaslu are authorized to sanction oral warnings or written warnings. Referring to this provision, it can be understood that the recommendations of election supervisors actually have coercive power. This is indicated by the threat of sanctions, verbal reprimands, or written warnings if recommendations are not implemented.

However, the existence of Article 141 of the Election Law also contains two possible interpretations. First, non-follow-up is interpreted as not carrying out an examination of alleged administrative violations that have been recommended by the election supervisor; Second, not-following-up is interpreted as not issuing decisions in accordance with the recommendations of election supervisors. If the first interpretation is chosen, then the election supervisor's recommendation has no executory power. Conversely, if a second interpretation is chosen, the recommendation can be qualified as having executory power. However, this interpretation actually contradicts the existence of Article 140 of the Elections Law, which authorizes the Provincial KPU or District/City KPU to conduct examinations and decide recommendations for administrative violations of local elections.

Based on the description above, it can be understood that the polemic or difference in the position of the KPU and Bawaslu in assessing the obligation to follow up on the recommendations of election supervisors stems from insufficiently clear regulations in the

Elections Law. On the one hand, the Election Law requires the KPU, according to the level, to follow up on the recommendations of election supervisors, but on the other hand, the Law also authorizes the KPU, according to its level, to re-examine recommendations for administrative violations submitted by election supervisors.

In addition to the problems related to the regulation of the mechanism for handling administrative violations, as previously discussed, the regulations related to institutions that handle administrative violations of local elections also have an evaluation record. The trend of making Bawaslu an institution that handles disputes to resolve election disputes can also be a loophole to make Bawaslu the first institution that can resolve disputes over election results. This is because disputes over election results in practice can only be heard when they meet the requirements for the difference in votes determined by Law. Even in this case, Bawaslu can immediately act on the miscalculation of the postulated difference because Bawaslu has officers who are directly at each polling station and present at each stage of the vote count. However, there must still be a forum to appeal to the court. The author sees that the method to make Bawaslu the first stage institution to select disputes over election results can be combined with subsequent appeals to the High Administrative Court (PTTUN). So that candidate pairs who are dissatisfied with Bawaslu's decision can apply to PTTUN as the last forum to handle disputes over the results of the regional election vote count.

## CONCLUSION

Bawaslu has a strategic role in realizing elections that are direct, public, secret, honest, fair, and have integrity. Law Number 7 of 2017 concerning General Elections gives Bawaslu broader authority in supervising General Elections and Pilkada. Bawaslu's authority includes supervising the stages of the General Election/Pilkada, resolving disputes, and handling administrative violations. It is hoped that strengthening the Bawaslu organization and adding authority will strengthen the role of this institution in preventing election violations, handling disputes, and enforcing the Law. However, there is still a polemic between the KPU and Bawaslu regarding taking action against recommendations for administrative violations. This is due to the lack of clarity in the regulation of the Regional Election Law regarding the follow-up to Bawaslu recommendations. Bawaslu has a strategic role in ensuring that elections are fair and have integrity. By strengthening its authority, it is hoped that Bawaslu can carry out its duties effectively.

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