

The Position and Authority of the Election Supervisory Board in Indonesian Constitutional System

Uu Nurul Huda

Faculty of Sharia and Law, Universitas Islam Negeri Sunan Gunung Djati, Indonesia.
E-mail: uunurulhuda@uinsgd.ac.id

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Abstract : *The institutional arrangement of election organizers through the strengthening of the Election Supervisory Board is regulated in Law No. 7 of 2017 concerning General Elections. One of these arrangements is related to the strengthening of the position and authority of the Election Supervisory Board in handling election violations. This study aims to find out the position of the Election Supervisory Board in Indonesian administration system and to analyze the authority of the Election Supervisory Board in handling election violations. The method used in this study was a normative juridical method by employing library research. The collected data were then analyzed qualitatively. The results showed that the position of the Election Supervisory Board in Indonesian administration system is one of the state election organizers in which its position is equal to the General Election Commission and the Honorary Council of Election Committee. Meanwhile, the authorities of the Election Supervisory Board include; receiving and following up on reports relating to alleged violations in the implementation of legislations governing general election; examining, analyzing and deciding on violations in general election administration; examining, analyzing and deciding on violations of money politics; and receiving, examining, mediating or adjudicating, and deciding upon the resolution of election process disputes. Based on these authorities, the Election Supervisory Board as an institution is a super-body general election organizer in handling election violations.*

Keywords: *The Election Supervisory Board, Position and Authority, Elections*

Kedudukan dan Wewenang Badan Pengawas Pemilihan Umum dalam Sistem Ketatanegaraan Indonesia

Abstrak : Penataan kelembagaan penyelenggara pemilu melalui penguatan Badan Pengawas Pemilihan Umum telah diatur Undang-Undang Nomor 7 Tahun 2017 tentang Pemilihan Umum. Penataan tersebut salah satunya berkaitan dengan penguatan kedudukan dan wewenang Badan Pengawas Pemilihan Umum dalam penanganan pelanggaran pemilu. Tujuan penelitian ini adalah untuk mengetahui dan menganalisis bagaimana kedudukan Badan Pengawas Pemilihan Umum dalam sistem ketatanegaraan Indonesia, dan untuk mengetahui serta menganalisis wewenang Badan Pengawas Pemilihan Umum dalam penanganan pelanggaran pemilu. Metode penelitian yang digunakan adalah yuridis normatif dengan pendekatan penelitian studi kepustakaan dan analisisnya menggunakan deskriptif analisis. Hasil penelitian menunjukkan bahwa kedudukan Badan Pengawas Pemilihan Umum dalam sistem ketatanegaraan merupakan salah satu lembaga negara penyelenggara pemilu, di samping Komisi Pemilihan Umum dan Dewan Kehormatan Penyelenggara Pemilihan Umum. Adapun wewenang Badan Pengawas Pemilihan Umum di antaranya menerima dan menindaklanjuti laporan yang berkaitan dengan dugaan adanya pelanggaran terhadap pelaksanaan peraturan perundang-undangan yang mengatur mengenai Pemilu; memeriksa, mengkaji, dan memutus pelanggaran administrasi Pemilu; memeriksa, mengkaji, dan memutus pelanggaran politik uang; menerima, memeriksa, memediasi atau mengadjudikasi, dan memutus penyelesaian sengketa proses Pemilu. Berdasarkan wewenang tersebut, Badan Pengawas Pemilihan Umum secara kelembagaan merupakan lembaga penyelenggara pemilu yang superbody dalam penanganan pelanggaran pemilu.

Kata Kunci: Badan Pengawas Pemilihan Umum, Penataan Kedudukan dan Wewenang, Pemilu

INTRODUCTION

Indonesia has declared itself as a democracy, as stated in Article 1 paragraph (2) of the 1945 Constitution that “sovereignty is vested in the people and implemented pursuant to the Constitution”. One of the concrete manifestations of public sovereignty is the implementation of general election. Thus, general election is an embodiment of public sovereignty and democracy in which its legal

position has been firmly and clearly regulated in the 1945 Constitution. The barometer of a democracy can be seen from the implementation of periodic, democratic and quality general election.

The constitutional foundation of general elections has been specifically regulated in Chapter VIII B Article 22E of the 1945 Constitution. One of the stipulations emphasizes the principles of general elections in which it is stated that general elections shall be held in a direct, public, free, secret, honest, and fair way. To implement these principles, a general election commission which is able to implement the principles of accountability, integrity and professionalism needs to be established. In addition to the three principles, general elections must also be carried out by an independent general election commission. The urgency of the independence of a general election commission has been emphasized in Article 22E paragraph (5) of the 1945 Constitution that general elections shall be organized by a general election commission that shall be national, permanent, and independent in nature. The existence of an independent nature of the general election commission is important so that the general election commission can run fairly and all general election commission decisions are free from intervention from any party.

The formulation of the 1945 Constitution concerning a general election commission has given rise to various interpretations. Jimly Asshiddiqie argues that the formulation is not the naming of an institution, but is an entity because it starts with the word “a” and the phrase of general election commission is written in lowercase letters.¹ Therefore, the name of General Election Commission is a name given by the law, not a name that is explicitly given by the 1945 Constitution. That interpretation is then followed up by Law No. 15 of 2011 concerning General Election Organizer. Law No. 7 of 2017 concerning General Elections in which it is stated that general elections are organized by KPU (General Election Commission), Bawaslu (Election Supervisory Board) and DKPP (Honorary Council of Election Committee) as election organizer boards/institutions which have their own positions, authorities and duties.

According to Hidayat Sardini, the existence of election supervisory board in political and administrative law review is important to avoid delegitimization of the process and results of the election as well as to anticipate the development of various election violations based on an integrated and comprehensive legal system in order to strengthen public trust.² Thus, the existence of the Election Supervisory Board carrying out supervisory function is important to realize quality general elections.³

The presence of Election Supervisory Board (Bawaslu) as one of election organizer boards, in addition to KPU and DKPP, is a major breakthrough so that elections can be held pursuant to democratic principles and are guided by legislations in force. Thus, Bawaslu has a significant role in general elections because its duties and authorities focus on the supervision of the implementation of general elections. Hence, Bawaslu with its supervisory function acts as a check and balance for KPU in carrying out all stages of general elections.

Historically, the performance of Bawaslu began in the transition period, namely the 1999 Election. At that time, Election Supervisory Board was only authorized to provide recommendations as well as warnings to the organizers and participants of general election. Then, in the 2004, 2009, 2014 elections, the existence of Election Supervisory Board was still only a complement to the implementation of general elections because the various election violations handled were not finished until the execution, even many cases were not followed up by other institutions due to the nature of the decision which was only a recommendation. Finally, in the 2019 election, through Law No. 7 of 2017 concerning General Elections, the existence of Election Supervisory Board is strengthened. Bawaslu is then given authorities to examine, analyze and decide on certain cases.

¹ Jimly Asshiddiqie, 2009, *Komentar Atas Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*, Jakarta: Sinar Grafika, p. 81.

² Nurhidayat Sardini, 2009, *Pedoman Pengawasan Pemilu*, Jakarta: Election-MDP, p. 3.

³ Iwan Satriawan, *Pengawasan Pemilu oleh Rakyat*, Jurnal Bawaslu Vo. 2 Edisi I Tahun 2016, p. 115.

However, institutional and authority strengthening of Bawaslu does not necessarily change negative perceptions of Bawaslu. The main problem is that Bawaslu has not shown its authority as an election law enforcement board that has been mandated by Law to supervise all stages of general elections so that general elections can run pursuant to the principles of general elections as well as the legislations in force. The public has high hopes for Bawaslu to uphold general election law. Then, the performance of Bawaslu has improved in handling cases of alleged election violations. Yet, the public still believes that Bawaslu seems to be selective in handling alleged election violations, especially when election violations are allegedly committed by officials or incumbents or in certain cases.

In organizing the 2019 elections, starting from the verification stage of political parties to the establishment of Permanent Voter List (DPT), Bawaslu found as many as 1.247 alleged election violations originating from public reports as many as 331 cases and from the findings of Bawaslu as many as 916 cases. These cases are classified as follows: 648 cases or 53% of cases are elections administration violations, 90 cases or 7% of cases are election criminal acts, 84 cases or 7% of cases are code of ethics violations, and 125 cases or 10% of cases are other legal violations. Until now, there are still 64 cases or about 5% of alleged election violations being handled.

Based on the description, it is considered important to conduct a study to analyze the position and authorities of the Election Supervisory Body in Indonesian Administration System. This study was carried out as an effort to provide critical and analytical views on the formulation of legal norms governing Bawaslu as well as an effort to provide constructive input in the framework of unifying law enforcement and supervisory function within the framework of administration system. Hence, the issues discussed in this study are formulated into the following questions: 1) how is the position of the Election Supervisory Board in Indonesian administration system? and 2) what are the authorities of the Election Supervisory Board in handling election violations?

RESEARCH METHODS

The method used in this study was a normative juridical method. This method was used to analyze secondary data related to the problem under study by applying library research. The collected data were then analyzed qualitatively.

RESULTS AND DISCUSSION

The Position of Bawaslu in Indonesian Administration System

The term “position” is defined as location, position rank, and status.⁴ The term “position” is also defined as level, rank, or position of something in a hierarchy.⁵ Meanwhile, administration system refers to “all matters relating to state organizations both regarding the composition, position, duties, authorities as well as relationship between one another”.⁶ Administration system is also defined as “a set of constitutional elements that constitute a regular and interrelated entity in which its scope includes: the formation of positions and composition; appointment of officials; obligations and duties binding to a position; authority and legal authority binding to a position; regional environment and personnel on behalf of the duties and authorities of a position; the relationship of authority of a position between one another; transfer of a position; and relationship between a position and official.”⁷

A country’s administration system is closely related to its constitutional law. Van Vollenhoven argues that “constitutional law is a set of legislations which establish bodies as instruments (organs) of a

⁴ Departemen Pendidikan dan Kebudayaan, 1997, *Kamus Besar Bahasa Indonesia*, Jakarta: Balai Pustaka, p. 245.

⁵ Lorens Bagus, 1996, *Kamus Filsafat*, Jakarta: Gramedia Pustaka Utama, p. 53-54.

⁶ I Gde Pantja Astawa, 2000, *Hak Angket dalam Sistem Ketatanegaraan Indonesia Menurut UUD 1945*, Disertasi, Pascasarjana Unpad, Bandung,, p. 5.

⁷ Departemen Pendidikan dan Kebudayaan, *Kamus Besar... Op.Cit.*, p. 176.

country by giving authorities to these bodies and which divide the duties of government to various state instruments.”⁸

In general, administration system describes the constitutional duties or functions of a constitutional law. According to C.A.J.M. Kortman, the functions of constitutional law include:⁹ 1) *De constituerende of installingsfunctie*; 2) *De constituerende of Bevoegheidsverlenende functie*; and 3) *De regulerende of matigende functie, zowel inzake de ambten ondeling als inzake de relatie tussen ambt en ondernaam*. Based on these functions, it can be concluded that administration system shows the establishment of institutional functions, the distribution of authority, and the regulation of boundaries between positions with one another and with citizens. The establishment, distribution and regulation are constitutional functions acting as an administration system pursuant to constitutional norms and rules and refer to the principles of the rule of law and constitutionalism.¹⁰

According to Bagir Manan, each administration system contains two aspects, namely; 1) the main aspect concerned on the authorities of state institutions and relations between these state institutions, and 2) the other aspect concerned on the relationship between citizens and state institutions. Yet, even the administration system is sometimes not determined by constitutional rules, but by state practices influenced by political and social order. In fact, it is often a phenomenon where political and social order is more dominant than constitutional rules or other legal rules. The occurrence of this phenomenon can be caused by two factors, namely: the existing constitutional rules are inadequate to meet the need to carry out state functions properly; and/or the implemented political order deviates from the provisions of the Constitution.¹¹

In the same vein, Abustan argues that one important aspect relating to state institutions is the aspect of relations which will be determined by qualifications as a state institution or not.¹² In this sense, Bagir Manan explains:¹³ “From a legal perspective, state institutional relations can be constitutional (*staatsrechtelijk*) or not constitutional, such as administrative relations (*administratiefrechtelijk*). Yet, institutions that are not state institutions cannot conduct constitutional relations because the relations are not carried out for and on behalf of the state. Even if in certain circumstances the institutions carry out constitutional duties, it is merely due to a “delegation” from the original power holders. The constitutional duties and authorities of these institutions are derivative (not original). For example, the prosecutor’s office acts for and is on behalf of the state solely due to the delegation of state officials (executive)”.

In other perspective, a state sometimes has an administration system seen from the provisions regarding the form of the state (federal or unitary), the form of government (republic or kingdom), the system of government (parliamentary or presidential), the state offices or state institutions (which include the state officials, the relationship between state offices, the authorities of state offices, etc.), the people of the state (which include the determination of status and the relation between people and the state), and the government organizational units at the central and regional levels.¹⁴

⁸. Wiryono Prodjodikoro, 1989, *Asas-asas Hukum Tata Negara di Indonesia*, Jakarta: Penerbit Dian Rakyat, p. 8.

⁹. C.A.J.M. Kortman, 1990, *Constitutioneel Recht*, Deventer, Kluwer, p. 9.

¹⁰. *Ibid.*, p. 274.

¹¹. Bagir Manan, *Kedudukan Penegak Hukum dalam Sistem Ketatanegaraan Republik Indonesia*, Varia Peradilan, Nomor 243, Februari 2006, p. 4.

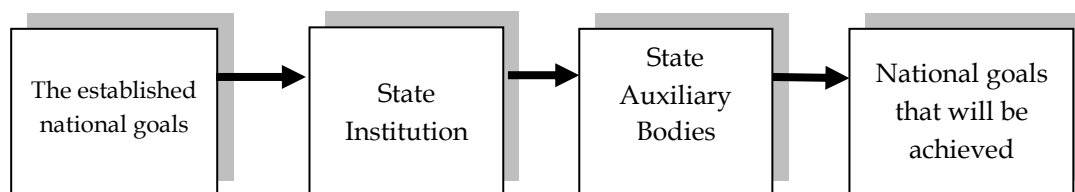
¹². Abustan, *Relasi Lembaga Negara Dalam Perspektif Undang Undang Dasar Negara Republik Indonesia 1945*, Jurnal Unifikasi, ISSN 2354-5976, e-ISSN 2580-7382, Vol. 04 Nomor 02 Juli 2017 p. 59.

¹³. Bagir Manan, 2006, *Hubungan Ketatanegaraan Mahkamah Agung (dan Mahkamah Konstitusi) Dengan Komisi Yudisial (Suatu Pertanyaan)*, Makalah, 2006, hlm.2 Dikutip juga dalam Abustan, *Relasi Lembaga Negara Dalam Perspektif Undang Undang Dasar Negara Republik Indonesia 1945*, Jurnal Unifikasi, ISSN 2354-5976, e-ISSN 2580-7382, Vol. 04 Nomor 02 Juli 2017 p. 60.

¹⁴. Lukman Hakim, 2010, *Kedudukan Hukum Komisi Negara Di Indonesia*, Disertasi, Malang: Program Pasca Universitas Brawijaya, p. 42.

The administration system can also be interpreted loosely,¹⁵ namely “not merely normative (dogmatic), especially from the point of view of the constitution”. For example, in the discussion of law enforcement agencies, not all constitutions regulate law enforcement agencies. Hence, if law enforcement agencies are not regulated in the constitution, it does not necessarily mean that law enforcement agencies do not have a constitutional position. The amendment of the 1945 Constitution reflects the strengthening of main state functions in which the relations between major state institutions are based on the principle of checks and balances.¹⁶ According to Sri Soemantri, after the amendment of the 1945 Constitution, in addition to the main state institutions, there are also state institutions that function to serve. This state institution is known as a state auxiliary body which has an important position and authority in realizing national goals.¹⁷ In state administration system in the world, the structure, position and relation of the state institutions are regulated in different ways. The 1945 Constitution which is the state constitution of the Republic of Indonesia only determines one state institution that is a state auxiliary body, namely the Judicial Commission. Meanwhile, state institutions or state commissions which are state auxiliary bodies outside the provisions of the 1945 Constitution are regulated by laws with varied nomenclature names (Commissions, Agencies, and Institutions) and its number is growing rapidly. A measure of the urgency of a state institution, that is a state auxiliary body, is the national goal of a country. The efforts to achieve and realize national goals are described as follows:

Table :
Chart of State Auxiliary Bodies



From the author’s point of view, a constitutionality of an institution is determined by its function not by the basis of its regulation because one of the measures of a constitutionality of an institution is seen from the aspect of constitutional functions (*staatsrechtelijke functie*). The constitutional function is to carry out the duties and authorities on behalf of the state organization or the state. Thus, Bawaslu is an institution carrying out the state constitutional function because it carries out the duties and authorities on behalf of the state.

According to Ratnia Solihah *et al.*, a parameter of democratic election is marked by the integrity of election administration process and its results. The integrity of election administration process will be successfully achieved if all stages of the election are carried out pursuant to the legislations in force, such as Election Law and KPU Regulations which contain legal certainty. All provisions, both the Election Law and KPU Regulations, may not deviate from the election principles in force. The significance of the existence of an election supervisory board, as mandated by the law, is to ensure that

¹⁵ Lukman Hakim, *Kedudukan Hukum.... Op.Cit.*, p. 43.

¹⁶ *Idem*.

¹⁷ Lihat Sri Soemantri M., 2016, *Lembaga Negara dan State Auxiliary Bodies dalam Sistem Ketatanegaraan Menurut UUD 1945*, dalam Departemen Hukum Tata Negara Universitas Airlangga, *Dinamika Perkembangan Hukum Tata Negara dan Hukum Lingkungan*, Surabaya: Airlangga University Press, p. 204.

the parameter of democratic election both in the process and results of the election, as well as the principles of the election can run optimally.¹⁸

The 1945 Constitution does not explicitly regulate the existence or position of Bawaslu. Yet, implicitly, the existence and position of the Election Supervisory Board is contained in Article 22E paragraph (5) of the 1945 Constitution. With this implicit regulation, the legislators then interpreted it with the birth of Law No. 15 of 2011 concerning General Election Organizer which was later codified in Law No. 7 of 2017 concerning General Elections. The two Laws regulate the existence of Bawaslu, in addition to KPU and DKPP, which carry out general elections pursuant to their duties and functions. According to Sodikin, the provisions of Article 22E paragraph (5) of the 1945 Constitution which writes with the term “a general election commission” can be interpreted that the implementation of general elections is carried out by institutions other than KPU. This idea then led to the strengthening of the existence of Bawaslu and DKPP.¹⁹ Based on Article 89 paragraph (2) of Law No. 7 of 2017, the institutional structure of Bawaslu consists of: Bawaslu; Provincial Bawaslu; District/City Bawaslu; Sub-District Election Supervisory Committee; Village Election Supervisory Committee; LN Election Supervisory Committee; and TPS Supervisor. Institutionally, the nature of Bawaslu consists of two categories: permanent (including Bawaslu, Provincial Bawaslu, and District/City Bawaslu) and adhoc (including Sub-District Supervisory Committee; Village Supervisory Committee; LN Supervisory Committee; and TPS Supervisor).

Bawaslu is a part of general election organizers supervising the implementation of general elections throughout the Unitary State of the Republic of Indonesia. Provincial Election Supervisory Board (Bawaslu) is a general election organizer supervising the implementation of general elections in Province. District/City Bawaslu is a general election organizer supervising the implementation of general elections in District/City. Sub-district Election Supervisory Committee is a committee established by District/City Bawaslu to supervise the implementation of general elections in sub-district. Village Election Supervisory Committee is a committee supervising the implementation of general elections in Village. Overseas Election Supervisory Committee, hereinafter referred to as LN Election Supervisory Committee, is a committee established by Bawaslu to supervise overseas general elections. Polling Station Supervisor, hereinafter referred to as TPS Supervisor, is an officer appointed by the Sub-district Election Supervisory Committee to assist village Election Supervisory Committee.²⁰

The structure of election supervisors has a hierarchical relationship, as stipulated in Article 89 paragraph (3) of Law No. 7 of 2017 that Bawaslu, Provincial Bawaslu, District/City Bawaslu, Sub-District Panwaslu, Village Panwaslu, LN Panwaslu, and TPS Supervisor are hierarchical in nature, including Provincial Bawaslu and District/City Bawaslu in special regions which are regulated by Law. The existence and position of Bawaslu was even stronger with the Constitutional Court Decision. In Constitutional Court Decree No. 11/PUU-VIII/2010 concerning request for judicial review of Law No. 22 of 2007 concerning General Election Organizer, including the mechanism for proposing and appointing Provincial and District/City Panwaslu members as regulated in Article 93, Article 94, and Article 95 of Law No. 22 of 2007.²¹ In its legal considerations, the Constitutional Court cited Article 22E paragraph (5) of the 1945 Constitution stating “general elections shall be organized by a general election commission that shall be national, permanent, and independent in nature”. The Constitutional Court stated the phrase “a general election commission” does not refer to the name of an institution, but

¹⁸Ratnia Solihah, Arry Bainus, dan Iding Rosyidin, *Pentingnya Pengawasan Partisipatif Dalam Mengawal Pemilihan Umum Yang Demokratis*, Jurnal Wacana Politik - ISSN 2502 - 9185 : E-ISSN: 2549-2969 Vol. 3, No. 1, Maret 2018, p. 17

¹⁹ Sodikin, 2014, *Hukum Pemilu sebagai Praktek Ketatanegaraan*, Bekasi: Gramata Publishing, p. 79

²⁰ Pasal 1 angka 17 s.d 23 UU No. 7 tahun 2017 tentang Penyelenggaraan Pemilu

²¹ Pengujian Undang-Undang Nomor 22 Tahun 2007 tentang Penyelenggara Pemilihan Umum, putusan diucapkan pada sidang tanggal 18 Maret 2010.

refers to the function of implementing general election by a national, permanent, and independent institution. Based on the provision of Article 22E Paragraph (5) of the 1945 Constitution, the Constitutional Court decided that the function of implementing general election was carried out by KPU as the executor of general election stages, the Election Supervisory Board as the supervisor of general election, and DKPP as the enforcer of the code of ethics of general election organizers.

The Constitutional Court Decision was then followed up with the issuance of Law No. 15 of 2011 concerning General Election Organizer and Law No. 7 of 2017 concerning General Elections. Article 1 point 7 of Law No. 7 of 2017 notes that general election organizers are institutions implementing general elections which consist of General Election Commission, Election Supervisory Board, and Honorary Council of Election Committee as a single entity organizing general elections to elect members of the House of Representative, the Regional Representative Council, and the President and Vice President. Based on the description, the position of Bawaslu in Indonesian administration system is equal to KPU. This perspective refers to Article 22E paragraph (5) of the 1945 Constitution and the Constitutional Court Decision which interprets the provision concerning the implementation and supervision of general elections as a unified system that is inseparable in the implementation of general elections. This interpretation is then emphasized in Article 89 paragraph (1) of Law No. 7 of 2017 that the supervision of general elections is carried out by Bawaslu. Since Bawaslu has a function to organize general election like KPU, Bawaslu also has a national, permanent and independent nature as attached to KPU. Law No. 7 of 2017 also confirms that the Election Supervisory Board has been declared as a permanent institution or its term of office is permanent as stipulated in Article 92 paragraph (13) of Law No. 7 of 2017 that the term of office for membership of Bawaslu, Provincial Bawaslu, and District/City Bawaslu is 5 (five) years and can be re-elected for only one term of office at the same level.

Thus, Bawaslu is a state institution. This state institution was born out of a legislative law politics which aims to differentiate the functions of general election implementation, between general election organizer function and general election supervisory function. Hence, Bawaslu has a position as a state institution in which its function is given by the 1945 Constitution, but is established based on the Law. If Bawaslu is a state institution, it means that Bawaslu has a legal standing to carry out judicial review and to resolve disputes over the authority of state institutions in the Constitutional Court.

The Authorities of Bawaslu in Handling Election Violations

The term authority is defined as a power to act.²² According to Robert Biersted, authority is an institutionalized power.²³ In the same vein, Harold D. Laswell and Abraham Kaplan define authority as a formal power.²⁴ If associating these definitions with the classification of authorities by Max Weber, namely traditional, charismatic and rational-legal, it refers to rational-legal authority.²⁵ The discussion concerning the duties and authorities of Bawaslu is closely related to its institutional structure in which each of them has the duties and authorities as regulated in Law No. 7 of 2017 concerning General Elections. The duties of Bawaslu are regulated in Article 93 of Law No. 7 of 2017 stating Bawaslu has the duties to:

- a. formulate supervision standard for the implementation of general elections at every level;
- b. Prevent and take action against:
 1. election violations; and
 2. election process disputes;

²² Departemen Pendidikan dan Kebudayaan, *Op.Cit.* p. 1128.

²³ Dikutip dalam Miriam Budiardjo, ed., 1984, *Aneka Pemikiran tentang Kuasa dan Wibawa*, Jakarta: Sinar Harapan, p. 14.

²⁴ *Ibid.*, p. 15

²⁵ *Ibid.*, p. 16

- c. supervise the preparation of general election, which consists of:
 - 1. planning and determining the schedule for general election;
 - 2. planning the logistics procurement by KPU;
 - 3. socializing general election; and
 - 4. other preparations in the implementation of general elections pursuant to the legislations;
- d. supervise the implementation of general election stages which consist of:
 - 1. updating voter data and establishing temporary voter list and permanent voter list;
 - 2. determining the area for District/City DPRD election;
 - 3. determining general election participants;
 - 4. proposing and determining candidates for DPR members, candidates for DPD members, and candidates for DPRD members pursuant to the legislations;
 - 5. implementing campaigns and arranging campaign funds;
 - 6. carrying out procurement of general election logistics and its distribution;
 - 7. supervising the voting and vote counting against the results of General Election at TPS;
 - 8. supervising the movement of ballot papers, vote counting, and certificates of the results of vote counting from TPS level to PPK;
 - 9. carrying out recapitulation of the results of vote counting in PPK, District/City KPU, Provincial KPU, and KPU;
 - 10. implementing re-counting and re-voting, follow-up elections, and supplementary elections; and
 - 11. determining election results;
- e. prevent the practice of money politics;
- f. supervise the neutrality of the state civil apparatus, the members of the Indonesian National Army, and the members of the Indonesian National Police;
- g. supervise the implementation of decisions which consists of:
 - 1. DKPP decision;
 - 2. court decisions regarding election violations and disputes;
 - 3. Bawaslu, Provincial Bawaslu and District/City Bawaslu decisions;
 - 4. KPU, Provincial KPU, and District/City KPU decisions; and
 - 5. competent officials decisions for violating the neutrality of the state civil apparatus, the members of the Indonesian National Army, and the members of the Indonesian National Police;
- h. convey alleged violation of code of ethics of general election organizers to DKPP;
- i. convey alleged criminal acts in general election to Gakkumdu;
- j. manage, safeguard, and maintain archives and carry out depreciation based on archive retention schedule pursuant to the legislations;
- k. evaluate general election supervision;
- l. supervise the implementation of KPU Regulations; and
- m. carry out other duties pursuant to the legislations.

Furthermore, relating to the prevention and enforcement of election violations and election process disputes, Article 94 of Law No. 7 of 2017 states:

- (1) In carrying out the prevention of election violations and election process disputes as referred to Article 93 letter b, Bawaslu has the duties to:
 - a. identify and map potential vulnerabilities and election violations;
 - b. coordinate, supervise, guide, monitor, and evaluate the implementation of general election;
 - c. coordinate with relevant government agencies; and
 - d. increase public participation in election supervision.
- (2) In handling election violations as referred to Article 93 letter b, Bawaslu has the duties to:

- a. receive, examine and review alleged election violations;
 - b. investigate alleged election violations;
 - c. determine the alleged violation of general election administration, the alleged violation of the code of ethics of general election organizer and/or the alleged of criminal acts in general election; and
 - d. decide upon violations of general election administration.
- (3) In handling election process disputes as referred to Article 93 letter b, Bawaslu has the duties to:
- a. receive requests for handling election process disputes;
 - b. formally and materially verify the request for handling election process disputes;
 - c. mediate between disputing parties;
 - d. adjudicate election process disputes; and
 - e. decide the resolution of election process disputes.

Meanwhile, the authorities of Bawaslu are regulated in Article 95 of Law No. 7 of 2017 that Bawaslu has the authorities to:

- a. receive and follow up on reports relating to alleged violations of the implementation of legislations governing general elections;
- b. examine, analyze and decide on violations of general election administration;
- c. examine, analyze and decide on violations of money politics;
- d. accept, examine, mediate or adjudicate, and decide upon the resolution of election process disputes;
- e. recommend to the relevant agency regarding the supervision results against the neutrality of the state civil apparatus, the members of the Indonesian National Army, and the members of the Indonesian National Police;
- f. temporarily take over the duties, authorities and obligations of Provincial Bawaslu and District/City Bawaslu if Provincial Bawaslu and District/City Bawaslu are temporarily unavailable due to sanctions or other consequences pursuant to the legislations;
- g. request the required information from related parties in the context of preventing and enforcing administrative violations, code of ethics violations, alleged criminal acts in General Election, and election process disputes;
- h. correct the decisions and recommendations of Provincial Bawaslu and District/City Bawaslu if there are things conflicting with the legislations;
- i. establish Provincial Bawaslu, District/City Bawaslu, and LN Panwaslu;
- j. appoint, guide, and dismiss members of Provincial Bawaslu, District/City Bawaslu, and LN Panwaslu; and
- k. carry out other authorities pursuant to the legislations.

Based on the normative authorities of Bawaslu, as an election supervisory board, Bawaslu has three authorities in the context of enforcing election law, namely: 1) authority in efforts to prevent and handle alleged violations in the implementation of general election stages. This supervisory authority can be carried out through collaboration between Bawaslu with election supervisors, participants, voters, community organizations, mass media, survey institutes, and volunteers; 2) the authority to receive, review, investigate, and determine sanctions for alleged violations of general election administration and alleged of criminal acts in general election; and 3) the authority to resolve general election administration disputes in a final and binding manner, except for two dispute cases, namely the administrative dispute on the determination of election participants and the dispute on the determination of candidates for DPR and DPRD members. The Bawaslu's decision on these two cases is not final because KPU can propose an appeal to the PTUN (State Administrative Court) whose decision is final.

The strengthening of the authorities of Bawaslu as regulated in Article 468 of Law No. 7 of 2017 has given Bawaslu the authority to resolve election administration disputes and election process

disputes. The authority to resolve disputes is a new authority of Bawaslu because this regulation had not been issued in previous general elections. The resolution of disputes handled by Bawaslu is the resolution of election administration disputes and election process disputes. In resolving election process disputes, there are 2 (two) stages done by Bawaslu, namely mediation and adjudication. In the first stage, mediation, Bawaslu will bring together the disputing parties. If there is no agreement between the disputing parties in mediation, then the dispute enters the trial adjudication stage. Dispute resolution through adjudication is a new general election dispute resolution that has not been used in previous general elections. The trial adjudication is a new legal product in resolving general election disputes.²⁶

Thus, the issuance of Law No. 7 of 2017 has further strengthened the position and authorities of Bawaslu as a supervisory and law enforcement institution for general elections. Law No. 7 of 2017 has provided a strong legal foundation for Bawaslu. This institutional and authority strengthening of Bawaslu should be able to strengthen the authority of Bawaslu to uphold election law to its roots and indiscriminately. Yet, various cases handled by Bawaslu have not fully shown that the election law is enforced seriously and significantly. Bawaslu which has a strong structure from the central, province and district/city seems experiencing uncertainty and its law enforcement approach also seems to prioritize conduciveness rather than firmness of the election law itself.

CONCLUSION

Based on the results of the analysis, it can be concluded that:

1. The position of Bawaslu in Indonesian administration system is equal to the General Election Commission (KPU). This is because the implementation of general elections as regulated in Article 22E paragraph (5) of the 1945 Constitution of the Republic of Indonesia is interpreted by the Constitutional Court as an integral system of the implementation and supervision of general elections. This provision is then emphasized in Article 89 paragraph (1) of Law No. 7 of 2017 that General Election Supervision is carried out by Bawaslu. Due to its position as a general election organizer, Bawaslu also has a national, permanent and independent nature as attached to KPU. Hence, the position of Bawaslu is in line with KPU. Bawaslu is a state institution that was born out of a legislative law politics which differentiate the functions of general election implementation, between general election organizer function and general election supervisory function. Bawaslu has a position as a state institution in which its function is given by the 1945 Constitution, but is established based on the Law. If Bawaslu is a state institution, it means that Bawaslu has a legal standing to carry out judicial review and to resolve disputes over the authority of state institutions in the Constitutional Court.
2. As an election supervisory board, Bawaslu has three authorities in the context of enforcing election law, namely: 1) supervise all stages of the implementation of general election in order to prevent and handle election violations. The supervisory function of the Election Supervisory Board is strengthened by collaboration between Bawaslu with election supervisors, participants, voters, community organizations, mass media, survey institutes, and volunteers; 2) receive and review reports regarding alleged violations of general election administration and alleged of criminal acts in general election. Bawaslu has the authority to enforce violations of general election administration, including receiving complaints, investigating alleged violations, and determining whether a violation has been proven or not, as well as giving sanctions if it is proven; and 3) resolve general election administration disputes in a final and binding manner, except for two dispute cases, namely the administrative dispute on the determination of election participants and the dispute on the determination of candidates for DPR and DPRD members. The Bawaslu's decision on these two

²⁶ Ramlan Surbakti. 2016. *Penegakan Hukum Pemilu dan Pilkada*, Jakarta: Kelompok Gramedia, p. 6.

cases is not final because KPU can propose an appeal to the State Administrative Court whose decision is final.

SUGGESTION

Considering the high number of administrative and criminal violations, it is proven that there are serious problems faced by Indonesian people with regard to the quality of general election law enforcement that has not been supported by an adequate general election law enforcement system. Therefore, the following recommendations are proposed:

1. Rearrangement of position and authority of Bawaslu. The arrangement is intended to emphasize that Bawaslu needs to be transformed into an Election Supervisory and Law Enforcement Commission (KPPHP) in the future. This transformation is important in order to increasingly strengthen the law enforcement agencies which function to enforce law and resolve general election disputes. Hence, it is necessary to reform the law enforcement system.
2. Bawaslu should be filled by human resources who have a legal education background and understand the process of complaints and investigations in handling alleged election violations, in addition to the Police and Attorney General's Office. With the institutional arrangement, Bawaslu is given the authority to appoint Bawaslu Investigators, like other independent institutions, such as KPK. This can be done by comparing the concept of election law enforcement organized by other countries, such as UK. Besides, in the context of arranging Political Parties and maximizing the supervisory function of Bawaslu, Bawaslu must be given the authority to conduct accreditation towards Political Parties in the future.

REFERENCES

Books

- Adi Sulistyono and Muhammad Rustamaji, 2009. *Hukum Ekonomi Sebagai Panglima*, Surabaya : Masmedia Buana Pustaka
- Ahmadi Miru and Sutarman Yodo, 2004. *Hukum Perlindungan Konsumen*, Jakarta, PT Raja Grafindo Persada
- Dian Alan Setiawan. 2018. "The Implication of Pancasila Values on the Renewal Law in Indonesia", *UNIFIKAS : Jurnal Ilmu Hukum*, Volume 05 Nomor 02, Juli 2018.
- Iswi Hariyani. 2005. "Perlindungan Hukum dan Penyelesaian Sengketa Bisnis Jasa PM-Tekfin", *Jurnal Legislasi Indonesia* , Kemenhumham., Vol 5 tanggal 25 Mei 2005.
- Jawahir Thontowi and Pranoto Iskandar, 2016, *Hukum Internasional Kontemporer*, Bandung, PT Refika Aditama.
- Sarip and Diana Fitriana. 2018. "Legal Antropology on the Application of Village Website in Digital Economic Era in Indonesia", *UNIFIKASI : Jurnal Ilmu Hukum* Volume 05 Nomor 02, Juli 2018.
- Sunaryo, 2014, *Hukum Lembaga Pembiayaan*, Jakarta, Sinar Grafika.
- Suwari Akhmaddhian and Asri Agustiwi. 2016. "Perlindungan Hukum Terhadap Konsumen Dalam Transaksi Jual Beli Secara Elektronik Di Indonesia", *UNIFIKASI : Jurnal Ilmu Hukum*, ISSN 2354-5976 Vol. 3 No. 2 Juli 2016.40-60.
- Asshiddiqie, Jimly, 2009. *Komentar Atas Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*. Jakarta: Sinar Grafika.
- Atmadja, I Dewa Gede, et.al, 2013. *Membangun Hukum Yang Bermartabat*. Malang.
- Bagus, Lorens, 1996. *Kamus Filsafat*. Jakarta: Gramedia Pustaka Utama.
- Budiardjo, Miriam, ed., 1984. *Aneka Pemikiran tentang Kuasa dan Wibawa*. Jakarta: Sinar Harapan.
- Departemen Pendidikan dan Kebudayaan, 1997. *Kamus Besar Bahasa Indonesia*. Jakarta: Balai Pustaka.
- Huda, Uu Nurul, 2018. *Hukum Parpol dan Pemilu di Indonesia*. Bandung: Fokusmedia.

- Kortman, C.A.J.M., 1990. *Constitutioneel Recht*. Kluwer: Deventer.
- Prodjodikoro, Wiryono, 1989. *Asas-asas Hukum Tata Negara di Indonesia*. Jakarta: Penerbit Dian Rakyat
- Sardini, Nurhidayat, 2009. *Pedoman Pengawasan Pemilu*. Jakarta: Election-MDP.
- Sodikin, 2014. *Hukum Pemilu sebagai Praktek Ketatanegaraan*. Bekasi: Gramata Publishing.
- Soemantri M., Sri, 2006. *Lembaga Negara dan State Auxiliary Bodies dalam Sistem Ketatanegaraan Menurut UUD 1945*. Surabaya: Airlangga University Press.
- Surbakti, Ramlan, 2016. *Penegakan Hukum Pemilu dan Pilkada*, Jakarta: Kelompok Gramedia, 2016
- Wibowo, Arif, 2013. *Menata Ulang Sistem Penyelesaian Sengketa dan Pelanggaran Pemilu dalam buku Demokrasi Lokal*. Jakarta: Konstitusi Press.

Dissertation, Journals, and Other Sources

- Abustan, Relasi Lembaga Negara Dalam Perspektif Undang Undang Dasar Negara Republik Indonesia 1945, Jurnal Unifikasi, ISSN 2354-5976, e-ISSN 2580-7382, Vol. 04 Nomor 02 Juli 2017.
- Astawa, I Gde Pantja, 2000. *Hak Angket dalam Sistem Ketatanegaraan Indonesia Menurut UUD 1945*. Disertasi, Bandung LPascasarjana Unpad.
- Hakim, Lukman, 2010/ *Kedudukan Hukum Komisi Negara Di Indonesia*. Disertasi. Malang: Program Pasca Universitas Brawijaya.
- <https://nasional.kompas.com/read/2018/12/10/14174191/bawaslu-temukan-1247-dugaan-pelanggaran-pemilu-selama-2018>
- Mahfud, Moh., MD., *Tidak Ada Sistem Ketatanegaraan Asli*, <http://www.mahfudmd.com/index.php?page=web.OpiniLengkap&id=12>.
- Manan, Bagir, *Kedudukan Penegak Hukum dalam Sistem Ketatanegaraan Republik Indonesia*, Varia Peradilan, Nomor 243, Februari 2006.
- Manan, Bagir *Hubungan Ketatanegaraan Mahkamah Agung (dan Mahkamah Konstitusi) Dengan Komisi Yudisial (Suatu Pertanyaan)*, Makalah, 2006.
- Satriawan, Iwan Satriawan, *Pengawasan Pemilu oleh Rakyat*. Jakarta: Jurnal Bawaslu Vo. 2 Edisi I Tahun 2016.
- Solihah, Ratnia Solihah, dkk., *Pentingnya Pengawasan Partisipatif Dalam Mengawal Pemilihan Umum Yang Demokratis*, Jurnal Wacana Politik-ISSN 2502 - 9185 : E-ISSN: 2549-2969 Vol. 3, No. 1, Maret 2018.