

RECONSTRUCTION OF STRUCTURED, SYSTEMATIC AND MASSIVE ELECTION ADMINISTRATION VIOLATIONS IN THE FRAMEWORK OF THE JUDICIAL SYSTEM

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Abstract

In the implementation of the General Election in Indonesia, there are several legal instruments that regulate the types of violations of the Election law. This type of violation becomes an interesting discussion to discuss because if the candidate participating in the election is proven, the sanction is disqualification. Bawaslu has the authority to handle election administration violations by structured, systematic, massive. In the handling process, the Bawaslu Commissioner acts as a panel of judges. The process of recruiting Bawaslu Commissioners is not oriented as a panel of judges in conducting trials, but as a supervisory institution in the administration of elections. So that there is a shift in the function of Bawaslu not only as a supervisory institution but into a judicial institution. Constitutionally, Bawaslu is not an institution of Judicial Power. So, in the Judicial System paradigm, this has the potential to reduce the quality in deciding alleged violations of the structured, systematic, massive election administration. The problem in this research is how is the concept of election administration violation by structured, systematic, massive in Indonesia? And how is the concept of handling election administration violations in a structured, systematic, massive manner in accordance with the framework of the judicial system in Indonesia?

This research method uses a normative juridical approach, with secondary data as the main data type. The data collection method was carried out by means of a library study of relevant primary, secondary and tertiary legal materials. Furthermore, data analysis was carried out using descriptive analysis method.

The conclusion of this study states that the concept of election administration violations by structured, systematic, massive in Indonesia is one type of special election administration violation with the handling authority owned by Bawaslu. The concept of handling election administrative violations by structured, systematic, massive which is in line with the framework of the judicial system in Indonesia, namely through a special election judiciary that administers justice with an ad hoc panel of judges for handling structured, systematic, massive violations of election administration in Indonesia.

Keywords: Reconstruction, Election Administration, Judicial System

A. BACKGROUND OF STUDY

Holding general elections is an important element in a democratic country, because this momentum can become a means/media for the people to channel their aspirations as well as a space for managing people's sovereignty. In a democratic country, the legitimacy of the government in exercising its authority requires legitimacy from the holder of popular sovereignty. (Mawardi 2014) Thus, one of the functions of holding elections is as a means of gaining legitimacy. There are at least 3 reasons for holding elections as a means of political legitimacy, namely: first, holding elections is an opportunity for the government to reassure or renew an agreement with the people as holders of popular sovereignty. Second, holding elections is also an opportunity for the government to influence the behaviour of the people or its citizens. Third, in the current modern political era, rulers/governments are required to maintain the agreement given by the people rather than coercion to maintain legitimacy. (Mawardi 2014)

In holding elections as a means of gaining legitimacy from the people as holders of sovereignty, it must be ensured that they take place within an honest legal framework and uphold justice. This is intended to ensure political stability and legal certainty. Therefore, all legal instruments are important instruments in ensuring the holding of honest and fair elections. (Abidin, Sensu, and Tatawu 2020) One of these legal instruments is related to election law enforcement instruments. The election law enforcement instrument as a system is the only instrument that guarantees the holding of honest and fair elections. Furthermore, justice in the implementation of elections must be oriented towards the realization of substantive justice.

As we known, since the Constitutional Court decision no. 97/PUU-XI/2013, the Constitutional Court has interpreted that there is a difference between the regime for holding general elections and the regime for holding regional head elections. **Aminuddin Kasim And Andi Intan Purnamasari, "Dekonstruksi Penanganan Pelanggaran Administrasi Yang Terstruktur, Sistematis Dan Masif Dalam Pilkada," Mimbar Hukum 33, No. 2 (N.D.): 494-520.** In other words, the Constitutional Court stated that regional head elections are not a general election regime. Thus, since the Constitutional Court decision no. 97/PUU-XI/2013, Indonesia has 2 regimes for organizing elections and regional elections. However, if we investigate further, it turns out that the separation of regimes is an argument built in the legal considerations of the Constitutional Court decision, whereas what many people have forgotten is that the ruling of the Constitutional Court Decision No. 97/PUUXI/2013 itself, that the Constitutional Court has no authority to adjudicate regional election disputes.

Although until now the Constitutional Court is still the institution that adjudicates disputes over regional election results in Indonesia.

The legal basis for holding elections is Law Number 7 of 2017 concerning General Elections. Meanwhile, the legal basis for holding regional head elections is Law Number 1 of 2015 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors into Law as has been amended several times, most recently by Law. Law Number 6 of 2020 concerning the Determination of Government Regulations in Lieu of Law Number 2 of 2020 concerning the Third Amendment to Law Number 1 of 2015 concerning the Determination of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors into Law. These two legal bases also fully contain the types of election violations as a complement to the regulation of election law enforcement instruments. There are at least 5 types of election law violations formulated in the legal basis for organizing elections and regional elections in Indonesia, namely administrative violations of elections, violations of the code of ethics of election organizers, criminal violations of elections, disputes over elections and disputes over the results of elections. (Abidin et al. 2020)

Of the several instruments in election law enforcement for various types of election violations, one discourse that is always interesting and emerges is the instruments in the election law enforcement system for types of election administration violations which are carried out in a structured, systematic and massive manner. (Amal 2019) This type of election violation is a discourse that is always interesting to discuss because if the candidate participating in the election is proven, the sanction is cancellation as a participant in the election, in other words disqualification. Procedures for resolving administrative election violations that are carried out in a structured, systematic and massive manner are regulated by Bawaslu Regulation No. 8 of 2018 concerning Settlement of General Election Administrative Violations. Meanwhile, procedures for resolving administrative violations in regional head elections which are carried out in a systematic and massive structured manner are regulated by Bawaslu Regulation No. 9 of 2020 concerning Procedures for Handling Administrative Violations in the Election of Governors and Deputy Governors, Regent and Deputy Regent, and Mayor and Deputy Mayor that Occur in a Structured, Systematic and Massive manner.

Administrative violations of elections carried out by structured, systematic and massive are classified as very serious violations, considering that these violations can involve administrators and state civil servants who are ideally expected to act independently. Apart from that, in practice so far there are many facts that

show that candidates use all means, including money political transactions, to get votes. (Amal 2019) Ideally, regional elections are an opportunity to evaluate and elect leaders for one term of office, so a good process is needed to produce good output. Ignoring Structured, Systematic and Massive manner administrative violations is one form of presenting the process of holding the simultaneous regional elections as not being good and lacking in integrity. Even though it has very serious sanctions, it is still doubtful that up to now the construction built to resolve administrative violations in elections carried out by Structured, Systematic and Massive manner can realize substantive justice. (Jukari 2022)

The provisions of the Election Law give authority to the Election Supervisory Body (Bawaslu) as an institution that carries out legal enforcement of Structured, Systematic and Massive manner election administration violations in Indonesia. Article 3 Bawaslu Regulation No. 9 of 2020 states that the Provincial Bawaslu has the authority to handle Regional Election Administrative Violations using the Structured, Systematic and Massive manner. Furthermore, Article 4 Bawaslu No. 8 of 2018 explains that Bawaslu has the authority to receive, examine, review and decide on reports of alleged the Structured, Systematic and Massive manner Administrative Election Violations against DPR, DPD and DPRD member candidates as well as Candidate Pairs. So, it explicitly states that the Election Supervisory Body has the authority to resolve election administration violations using the Structured, Systematic and Massive manner.

In simple terms, perhaps it can be immediately understood that in carrying out the authority to resolve election administrative violations using the Structured, Systematic and Massive manner, Bawaslu falls into the category of a quasi-judicial/semi-judicial institution that has a constitutional basis. However, if analysed further, there is confusion, one of which is because in the process of handling election administration violations using the TSM, the parties can take legal action to the Supreme Court, which in fact is constitutionally the Judicial Authority in Indonesia.

The process of resolving alleged violations of the Structured, Systematic and Massive manner election administration is carried out through an examination between the reporter and the reported party in the form of a trial. If Bawaslu is considered a semi-judicial institution, the consequence is that the position of the Bawaslu chairman and members will also act as semi-judges in administering justice. Thus, Bawaslu commissioners must also apply general principles that apply to judges. For example, the judge's behaviour is related to ethical standards (code of ethics) and code of conduct. Apart from that, the Bawaslu commissioners also apply the principles known as "The Bangalore Principles of Judicial Conduct" which are recognized throughout the world. **Alasman**

Mpesau, "Kewenangan Badan Pengawas Pemilu Dalam Penanganan Pelanggaran Administrasi Ditinjau Dari Perspektif Sistem Peradilan Indonesia," *Audito Comparative Law Journal (ACLJ)* 2, no. 2 (2021): 74–85. In practice, however, the recruitment of Bawaslu members is not oriented as judges who have the authority to examine and adjudicate legal violations. So, there is a shift in the function of Bawaslu not only as a supervisory institution but also as a judicial institution. Constitutionally, Bawaslu is not included in the Judicial Authority. So in the Judicial Power System paradigm, this has the potential to reduce the quality in deciding alleged violations of the Structured, Systematic and Massive manner Election administration.

B. DISSCUSION

1. Construction of the Structured, Systematic and Massive Manner Election Administration Violations in Indonesia.

Before discussing the authority of Bawaslu in resolving election administrative violations, we will first explain the conception of administrative violations that are carried out in a structured, systematic and massive manner. Talking about the concept of electoral administrative violations in Indonesia cannot be separated from the Constitutional Court decision no. 41/PHPU.D-VI/2008 concerning the 2008 East Java Governor Election Results Dispute Case. In this Decision the Constitutional Court stated that in order to advance democracy and break free from the practice of structured, systematic and massive systematic violations, the Court needs to always create good breakthroughs and innovations. The basis of the Constitutional Court's considerations is the jurisprudence and reference for subsequent General Election cases. The basic consideration of the Constitutional Court in establishing the concept of violations of election administration carried out through structured, systematic and massive manner is the idea that procedural justice should not be allowed to override substantive justice. (Winata and Indonesia 2020)

Initially, the Constitutional Court only had the authority to adjudicate disputes over "general election results" in accordance with the authority granted in Article 24B of the 1945 Constitution of the Republic of Indonesia. However, as the trial progressed, it turned out that a number of election violations were also revealed has damaged the foundations of democracy as stated in Article 22E paragraph (1) of the 1945 Constitution of the Republic of Indonesia. (Kurnia, Terina, and Mahardika 2020) In this case it can be said that the Constitutional Court has expanded its authority in adjudicating disputes over election results. However, this can be understood when at that time there were many election violations, for example criminal election violations, which

could not be resolved completely. Kasim and Purnamasari, "Dekonstruksi Penanganan Pelanggaran Administrasi Yang Terstruktur, Sistematis Dan Masif Dalam Pilkada." In the name of the guardian of democracy, the Constitutional Court carries out examinations of disputes over election results, not limited to just looking at quantitative figures, but more broadly examining qualitative aspects that occur significantly and can harm the practice of democracy in Indonesia. In fact, if you look at it, legal enforcement instruments for election violations have been provided in statutory regulations. Although in fact in this case the Constitutional Court does not appear to be carrying out other justice in violations of criminal law/election administration. However, the violations committed are used by the Constitutional Court as a measure to provide decisions on holding elections/re-elections or even disqualification if the violations committed are proven to meet the elements of structured, systematic and massive.

Since the implementation of the concept of administrative violations carried out through structured, systematic and massive by the Constitutional Court, legislators have then adopted this concept in the form of norming the Regional Election Law, since the birth of the 2015 Regional Election Law until the latest amendments in 2020, as well as in the Law 2017 Election. So, the structured, systematic and massive concept has become its own variant in assessing violations of election administration in Indonesia.

As previously explained, provisions specifically relating to types of election administration violations by structured, systematic and massive have been accommodated. In Article 134A of Law Number 1 of 2015 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors into Law as it has been amended several times, most recently by Law Number 6 of 2020 concerning Stipulation of Government Regulation in Lieu of Law Number 2 of 2020 concerning the Third Amendment to Law Number 1 of 2015 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors into a Law regulating types of administrative violations regional head elections carried out by structured, systematic and massive. Furthermore, it is regulated more concretely with derivative regulations, namely Election Supervisory Body Regulation No. 9 of 2020 concerning Procedures for Handling Administrative Violations in the Election of Governors and Deputy Governors, Regent and Deputy Regent, and Mayor and Deputy Mayor that occur in a structured, systematic and massive manner. Furthermore, Article 463 of Law Number 7 of 2017 concerning General Elections also states that it relates to administrative election violations that occur in a structured, systematic and massive manner.

More concretely, it has been regulated in detail in implementing regulations, namely Bawaslu Regulation No. 8 of 2018 concerning Settlement of General Election Administrative Violations.

Bawaslu Regulation Number 8 of 2018 as implementing regulations of Law Number 7 of 2017, which specifically provides provisions related to resolving election administration violations carried out via structured, systematic and massive manner, formulates the objects of election administration violations which are included in the structured, systematic and massive manner category, namely:

1. Actions or actions that violate procedures, procedures or mechanisms relating to the administration of election implementation at every stage of election implementation that occurs in a structured, systematic and massive manner; and/or
2. Acts or actions of promising and/or giving money or other materials to influence election organizers and/or voters which occur in a structured, systematic and massive manner.

Meanwhile in Bawaslu regulation No. 9 of 2020 as implementing regulations of the Regional Election Law, which specifically provides regulations for resolving administrative violations of Regional Elections using the structured, systematic and massive, formulates that the object of handling Regional Election Administrative Violations using the structured, systematic and massive is the actions of candidates in the form of promising and/or giving money or other materials to influence the electoral organizers who occurs in a structured, systematic and massive manner. Then the structured, systematic and massive categories are also explained:

- a. Fraud committed by structural officials, both government officials and election organizers collectively or jointly;
- b. Violations that are carefully planned, organized, even very neat; And
- c. The impact of violations has a very broad impact on the election results, not just in part.

Hamdan Zoelva quoted by Irvan M, et al. Providing criteria as a condition for fulfilling the structured, systematic and massive election administration violations, namely: (Mawardi 2014)

1. Alleged violations of the structured, systematic and massive money politics must have a grand design at the behest of candidate pairs/election participants;
2. Alleged violations of election administration by the structured, systematic and massive were committed due to negligence by officials and organizers.

2. Concept for Handling Election Administrative Violations Within the Frame of the Judicial System in Indonesia.

In *Black Law Dictionary*, (Black et al. 1999) *reconstruction is the act or process of rebuilding, recreating, or reorganizing something*, Reconstruction here is interpreted as the process of rebuilding or recreating or reorganizing something. Reconstruction means building or returning something based on the original incident, where the reconstruction contains primary values that must remain in the activity of rebuilding something in accordance with its original condition. (Kbbi 2016) Reconstruction is carried out in an effort to rebuild something, down to the conception of thought that has been put forward by previous thinkers in order to find a better conception. The obligation of reconstructors is to look at all sides, so that the thing they are trying to rebuild is in accordance with the actual situation and avoids excessive subjectivity, which can later obscure the substance of the thing we want to build. So, the reconstruction in this research is to provide a conception of a new construction in resolving violations of the structured, systematic and massive election administration in Indonesia.

Reconstruction of the resolution of the structured, systematic and massive election administration violations in Indonesia begins with an explanation and understanding of the framework of the judicial system in Indonesia. Understanding the constitutional framework of the judicial system in Indonesia is regulated in Chapter IX with the title "Judicial Power". If understood further, the phrase Judicial Power is a translation of the Dutch term which is usually called "Rechterlijke Macht". This phrase refers to Montesquieu's theory regarding the separation of powers. The meaning of the term "power" can be interpreted as "organ" (body) or it can also mean "function" (duty). The relationship between separation of powers and independent judicial power and the freedom of judges is related to fairness and impartiality. To ensure that a dispute or violation of the law can be resolved fairly and impartially, a neutral judicial body and judges are needed. That is why judicial power must be separated from legislative and executive powers or the influence of other powers. (Noviawati and Komariah 2019)

The constitution also emphasizes that "judicial power is independent power". In other words, the constitution embraces and recognizes the independence of judicial power. In his book quoted by Simanjuntak, Montesquieu wrote "... there is no liberty, if the judicial power is not separated from the legislative and executive". With a slightly different formulation, a similar expression was also expressed by George Hamilton: "there is no liberty, if the power of judging is not separated from legislative and executive". Anas Malik, "Perbandingan Penanganan Pelanggaran Administrasi Antara Pemilu Dan

Pemilihan Comparison Of Administrative Violation Handling Between Election And Regional Election," *Jurnal Pettarani Election Review*, N.D.

The Judicial System/Judicial Power System in Indonesia is constitutionally regulated in Article 24 paragraph (2) which states that "Judicial Power is exercised by a Supreme Court and judicial bodies subordinate to it in the general court environment, religious court environment, military court environment, state administrative courts, and by a Constitutional Court". Meanwhile, Article 24 Paragraph (3) states that "Other bodies whose functions are related to judicial power are regulated by law". This provision actually provides constitutional recognition that special judicial institutions or other independent institutions can be established that can carry out judicial functions within judicial power as a result of the emergence of new needs outside the court to provide restorative justice for justice seekers. Mpesau, "Kewenangan Badan Pengawas Pemilu Dalam Penanganan Pelanggaran Administrasi Ditinjau Dari Perspektif Sistem Peradilan Indonesia."

Judicial Power". Namely, Article 38 Paragraph (1) states that "apart from the Supreme Court and subordinate judicial bodies as well as the Constitutional Court, there are other bodies whose functions are related to judicial power". The provisions of Article 38 Paragraph (2) further regulate the limitations of functions related to judicial power, including: (a) investigation, (b) inquiry, (c) prosecution, (d) execution of decisions, (e). provision of legal services, and (e). dispute resolution outside of court. Furthermore, Article 38 paragraph (3) regulates that provisions regarding other bodies whose functions are related to judicial power are regulated in law. The existence of special regulations regarding quasi-judicial/semi-judicial institutions shows that there is legislative politics related to legal recognition of the existence of more and more quasi-judicial/semi-judicial institutions in the realm of judicial power in Indonesia, which is also a further regulation of Article 24 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia.

Departing from the explanation above, the construction conception for handling election administration violations using the structured, systematic and massive is carried out through the judicial system approach that applies in Indonesia. In the judicial power system in Indonesia, there are only 2 types of institutions, namely, first: Judicial power institutions which constitutionally have attributive authority in administering justice. Second, state institutions outside/other than judicial institutions that carry out judicial functions (quasi-judicial/semi-judicial). (Jurdi 2018) So in the construction concept of handling election administrative violations by the structured, systematic and massive, authority should be consistently given to these 2 types of institutions. In reality, confusion now occurs when authority is given to Bawaslu in handling

election administration violations using the structured, systematic and massive, but can take legal action against the consequences of decisions given by Bawaslu through the Supreme Court.

Apart from that, when Bawaslu exercises authority in handling the structured, systematic and massive election administration violations using a semi-judicial process, at that time the Chairman and Members of Bawaslu change their status as a Panel of Judges with the authority to examine the reported case. In fact, the process of recruiting Bawaslu members is not at all oriented as Judges handling a case, in fact the process of recruiting a Judge has its own special procedures. Such conditions have the potential to reduce the value of democracy in the context of realizing election justice in Indonesia.

According to the author, a construction that is in accordance with the framework of the judicial system in Indonesia is the existence of a special judicial institution for elections, one of whose authorities is handling violations of election administration using the structured, systematic and massive. With the existence of a special judicial institution for elections, ad hoc judges will be recruited who will later serve in accordance with the timing of elections in Indonesia. So that consistently the special election judicial institution in handling election administration violations using the structured, systematic and massive will be carried out by ad hoc judges who have the capability as real judges.

The construction of handling the structured, systematic and massive election administration violations carried out by special election judicial institutions is as follows:

1. Bawaslu has the authority to receive and examine reports of alleged violations of the structured, systematic and massive election administration;
2. The inspection process carried out by Bawaslu in order to collect sufficient initial evidence;
3. If the preliminary evidence is sufficient, Bawaslu submits the report file on alleged violations of election administration by the structured, systematic and massive along with the results of the collection of preliminary evidence to the special election judicial institution;
4. Special election judicial institutions have the authority to examine, adjudicate and decide on reports of alleged violations of the structured, systematic and massive election administration;
5. Decisions given by special election judicial institutions related to alleged violations of the structured, systematic and massive election administration are final and binding.

6. The special election judicial institution conveys its decision to the KPU and related parties for further action.

3. CONCLUSION

Violations of election administration carried out in a structured, systematic and massive manner were first raised by the Constitutional Court in 2008. However, the Constitutional Court used this concept as a consideration in giving its decision. Furthermore, this concept continues to develop to this day, both in the Election Law and in the second Regional Election Law it has adopted a type of election administration violation which is specifically carried out by the structured, systematic and massive with legal consequences if it is proven that it can be cancelled as an election participant (disqualification).

The authority to handle election administration violations carried out in a structured, systematic and massive manner belongs to Bawaslu. The handling stages are carried out by Bawaslu, then regarding legal action that can be taken if there is dissatisfaction with the results of Bawaslu's recommendations to the KPU, each party can submit an objection to the Supreme Court.

The judicial system frame in Indonesia only recognizes 2 institutions of judicial power, namely institutions which attributively have authority to carry out judicial functions, and institutions which do not have authority in the realm of judicial power but carry out judicial functions (semi-judicial). The construction of handling election administration violations using the structured, systematic and massive which is in accordance with the framework of the judicial system in Indonesia must be built in 2 types of existing judicial power institutions. The structured, systematic and massive can handle election administrative violations by establishing a special election judicial institution. This institution is consistently a judicial institution with ad hoc judges as the panel of judges who handle cases. Bawaslu's role as a supervisory institution that receives and provides initial evidence regarding alleged violations of the structured, systematic and massive election administration. It can then be forwarded to the special election judicial institution to be examined and decided by the ad hoc panel of judges that has been formed. The decision of the special election judicial institution in handling election administration violations using the the structured, systematic and massive is final and binding, in order to create legal certainty.

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