



Violation of Incumbent Candidates and Bawaslu's Authority

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Abstract

The Republic of Indonesia Constitution, Article 1, Paragraph 2: "Sovereignty is in the hands of the people and is exercised under the Basic Law," ratified in 1945." This provision provides a strong foundation that Indonesia is a constitutional democracy; therefore, the people's participation in government implementation is the main requirement, especially in filling public offices. Among the cases of simultaneous election disputes that have arisen is the disqualification process of incumbents suspected of committing violations in the elections. Resolving disqualification disputes with the incumbent still found various issues and opinions about the legal norms in force today. This study employs a qualitative normative approach to data analysis by examining and describing the retrieved legal materials in light of applicable legal standards or regulations. The relevant information is then given in narrative texts, with descriptions that follow a consistent, well-thought-out structure. The prohibition on exercising authority in his favour is a subject of electoral discussion. On this side, we are all aware that the incumbent's policies must be advantageous to him from the moment he is elected, as incumbents have the propensity to seek re-election. On this side, the incumbent candidate already has extensive access to the community's voters. When the activity is deemed advantageous to the incumbent candidate, it is vital to establish clear boundaries. And whether six months constitutes adequate time to limit initiatives that benefit the incumbent.

Keywords: *Election; Incumbent; Democracy; Law*

Introduction

With autonomy, autonomous regions are given the freedom and independence to manage and regulate all government affairs under their authority (Anantadjaya et al., 2020). The Republic of Indonesia Constitution, Article 1, Paragraph 2: "Sovereignty is in the hands of the people and is exercised under the Basic Law," ratified in 1945." This provision provides a strong foundation that Indonesia is a constitutional democracy; therefore, the people's participation in government implementation is the main

requirement, especially in filling public offices (Wanto & Sebastian, 2019). The provision also explicitly gives the people the right to determine and choose their leader (Gathii & Akinkugbe, 2021).

One of the tasks of the government that is the focus of the study of Administrative Law is the implementation of regional head elections (Pilkada) simultaneously (Khairi, 2020). Direct elections manifest the fulfilment of citizens' rights (Saputra, 2020). Regional elections play a significant role in realizing democratic local government (Wang & Mou, 2021). The democratic local government is characterized by community participation in filling the position of the regional head (Qibtiyah & Muafifah, 2019).

The principle of conducting regional head elections (Pilkada) simultaneously must be able to protect the legal rights of interested parties in the election, especially in the event of disputes. Some of the problems arising from simultaneous elections have their roots in removing sitting officials for election malfeasance (Wagiyanto, 2019). Resolving disqualification disputes to incumbents still found various issues and opinions about the legal norms in force today (Siboy, 2020). These issues include how to probe into allegations of misconduct committed by incumbents (Jafar, 2018). One of the fundamental values of an electoral process is fulfilling the values of electoral justice (Citrayanti & Yuhertiana, 2021). Legal justice must ensure the conduct of elections by fulfilling all rights of voters and participants (Asrifai, 2020). In the context of the contestation of the participants, the electoral system must be able to position the participants as having the same rights and obligations, aka nothing is privileged by a system or power (Suaib et al., 2017).

The principle of conducting regional head elections (Pilkada) simultaneously must be able to protect the legal rights of interested parties in the election, especially in the event of disputes (Pardede & Kristian, 2021). Among the cases of simultaneous election disputes that have arisen is the disqualification process of incumbents suspected of committing violations in the elections (Rosidi & Nurcahyo, 2021). Resolving disqualification disputes with the incumbent still found various issues and opinions about the legal norms in force today (Saputra, 2020). These issues include how to probe the case of allegations of misconduct committed by the incumbent (Esfandiari & Putra, 2021).

The disqualification of sitting officials is a hot topic, and it all comes down to how the General Election Commission (KPU) makes its decisions (Wita et al., 2020). Because of this, there needs to be an exhaustive investigation into the KPU's examination patterns and legal authority to ensure that election disputes are settled fairly and following the law (K.D Sweinstani, 2019). In a situation where rights and responsibilities are being contested, an election system must be able to cast all candidates in the same light to avoid creating an unfair advantage for any one group (Basalaeva, 2019). Having the sitting president or prime minister as a candidate often sparks heated debate in this conversation (Laritmas et al., 2022). On the one hand, running for re-election is an exercise of the incumbent's right to be elected; on the other, the re-advancement of the Regent/Mayor and Governor creates injustice for other candidates by giving the incumbent an unfair advantage due to his continued tenure in office (Wahyudi, 2022).

As reports of the politicization of incumbent-led government policies and job programs emerge, fears of incumbents abusing their authority have risen (Cuzán, 2022). In the implementation of regional elections, the Provincial Election Supervisory Agency (BAWASLU) and Provincial Election Supervisory Regency/City supervise and crack down on alleged election violations (Djuyandi et al., 2019). In addition, Provincial Election Supervisory Agency and the Provincial Election Supervisory Regency/City also have the authority to resolve disputes over regional head elections (Taylor, 2019).

The parties are the applicants in disputes between participants, such as the candidate's spouse or campaign team. The parties are the applicants in disputes between election participants and the organizer. Election disputes can be either about the decision of the Provincial KPU or Regency/City KPU or the Provincial KPU or Regency/City KPU Minutes, with the latter being the party respondent (Prawira,

2019). According to the Pilkada dispute resolution laws, the application for dispute resolution for the Regional Elections must be submitted no later than three working days after the Provincial KPU or the Regency/City KPU has established the object of the disagreement (Yunanto et al., 2019).

The ban above sparks arguments like employing authority to support the forbidden activity. From this side, it is common knowledge that the incumbent's first day in the office is when his policies begin to benefit him the most and that he will seek re-election if given a chance. To win over voters here, the incumbent candidate does not need to do any campaigning (White & Alcantara, 2019).

The community's growth will be stunted in other ways when policymakers are constrained (Hackenberger et al., 2021). Then we have to ask how far we can go in taking advantage of ourselves. And whether preplanned programs that are only implemented shortly before an election might be considered illegal (Bartels et al., 2021). This perspective also highlights the value of level playing fields in electoral competition, which is essential for maintaining parity between the incumbent and potential contenders for regional heads (Wardani Amnesti, 2018). When it comes to resolving election disputes, there are two main categories: disputes over violations of election administration and debates over the results of counting electoral votes (Setiawan & Sa'diyah, 2021).

Methods

The judicial normative legal study is the method of inquiry here. The statutory and conceptual methods were used in this investigation (conceptual approach). In other words, this study aims to prescribe actions for the legal offender to take to fix the issues that have been identified. Two legal materials, known as "primary sources of law" and "secondary sources of law," make up the research materials employed in the legal field. The fundamental legal sources analyzed here provide the framework for understanding the issues. General Elections Law (Law No. 17 of 2017) and Second Amendment to Government Regulations Law (Law No. 1 of 2015) instead of Law No. 1 of 2014 Concerning the Election of Governors, Regents, and Mayors (Law No. 10 of 2016) serve as primary sources for this analysis. Various secondary legal authorities, including reference books on government law and local election law, national and international journals on elections and local elections, and miscellaneous papers and websites, were consulted to understand the investigated topics better. This study employs a qualitative normative approach to data analysis by examining and describing the retrieved legal materials in light of applicable legal norms or regulations. The relevant information is then given in narrative texts, with descriptions that follow a consistent, well-thought-out structure.

Result and Discussion

BAWASLU is responsible, in part, for enforcing measures and preventing violations of the electoral process and resolving any related disputes. The Election process is subject to review, mediation, and a final decision by BAWASLU. When the Governor or Deputy Governor, Regent or deputy Regent, and the Mayor and Deputy Mayor as the incumbent violate the provisions outlined in paragraphs (2) and (3), the incumbent is subject to cancellation sanctions as a candidate by the Provincial KPU or the Regency/City KPU. Who is willing to oversee the incumbent candidate's policies if they are perceived to favour himself or another candidate? In implementing elections, all elements, including the community, KPU to BAWASLU, and the final officials, can serve as supervisors, including the community, KPU to BAWASLU, and the last officials.

The election supervision agency, BAWASLU, will undoubtedly play a more significant role. When managing a case, BAWASLU acts passively (*passive stelsel*). The topic before him is the handling of the case by BAWASLU. As a supervisory and quasi-judicial institution. Before making a decision,

BAWASLU assesses by first analyzing the posita or fundamentum of the petendi and the plaintiff's plea for judgment (petitum).

For example, in the 2020 Simultaneous Regio-Regional Election in Ogan Ilir, the pair Number 2 Ilyas Panji Alam-Endang PU Ishak was accused of violating election administration. Those who petitioned were granted a favourable ruling by the Supreme Court (the spouses of candidates Ilyas Panji Alam and Endang PU Ishak). Cancellation of the Spouse of the Candidate for Regent and Deputy Regent, Decision Number: 263/HK.03.1-Kpt/1610/KPU-Kab/X/2020, Ogan Ilir Regency General Election Commission (KPU). This concerns the ouster of the current representative in the Ogan Ilir area. As per article 71 no. 10 of 2016, BAWASLU is unable to choose a replacement within the incumbent's office within six months before the date of the candidate's spouse's decision without the minister's written consent; thus, he has decided to withdraw the incumbent's nomination (BAWASLU.go.id, n.d.).

Numerous officials were discovered to have engaged in fraudulent activity, including the incumbent candidate from Tasikmalaya, whose candidacy was subsequently terminated by BAWASLU due to rule violations (merdeka.com, 2021). Each DKM in the Tasikmalaya district was given a service document from the incumbent candidate as part of the waqf land certification procedure. Or, as discovered in 2020, incumbent candidates from Lampung committed infractions by distributing covid-related groceries while wearing campaign insignia. (Hasiholan Limbong et al., 2021). However, even when it is evident that behaviour is illegal, it is sometimes commonly practised. Take the third mayoral candidate couple in Lampung, Eva and Eddy, who ran an untimely campaign with the help of covid, as an example. BAWASLU had presented the evidence in court, but the Supreme Court ultimately decided not to grant the application to remove the sitting candidate. (rm.id, 2021).

Elections are considered democratic if they adhere to a few simple criteria. Universality, Liberty, Pluralism, Anonymity, and Transparency are all necessary components (Transparency). Among the five conditions mentioned above, the need for fair elections is particularly pertinent when discussing potential candidates' standings in the context of the already serving district (Yunanto et al., 2019). In addition to providing a foundation for elections, the electoral justice system is an important consideration throughout the process—transparency and accountability in voting methods to address disenfranchisement and ensure that only eligible voters participate. Just because no legal action was taken during the voting process does not indicate that it could not have been prevented.

According to election law 7 of 2017, BAWASLU has the authority to address issues related to the voting process. BAWASLU is a supervisory body and an institution with the ability to investigate, adjudicate, and settle problems linked to elections, all of which are delegated to it by this election law. This is obvious from paragraphs 2 and 3 of Article 94 of the Election Law, which state that BAWASLU is responsible for receiving, examining, assessing, and resolving complaints regarding electoral process breaches. In addition, Article 93 letter b says that BAWASLU is accountable for enforcing election law and resolving problems that arise throughout the voting process. For elections to be a good democratic process, justice and equality must be prioritized. It will also reduce election squabbles and division among supporters of candidates' wives.

Conclusion

The prohibition on exercising authority in his favour is a subject of electoral discussion. On this side, we are all aware that the incumbent's policies must be advantageous to him from the moment he is elected, as incumbents have the propensity to seek re-election. On this side, the incumbent candidate already has extensive access to the community's voters. When the activity is deemed advantageous to the incumbent candidate, it is vital to establish clear Boundaries. And whether six months constitutes adequate time to limit initiatives that benefit the incumbent. The law makes it plain that it is illegal to use

authority to assist the incumbent, but on the other side, the policy adopted by the Regional heads must have helped him win votes. It is anticipated that stakeholders will pay more attention to the problem so that regional head candidates compete pretty.

Integrity in voting is a deterrent against abuse and a corrective to wrongdoing. Avoiding a lawsuit during voting is not a guarantee of success in preventing electoral fraud. What we mean by “prevention” in this context includes a straightforward, unambiguous, and consistent legal framework. This political and civic environment promotes democratic and law-abiding conduct, impartial, professional bodies and members of election organizing and dispute resolution bodies, and the Guidelines for adherence to electoral practices.

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