

Upholding Election Justice: The Election Supervisory Agency's Strategy to Monitor the Campaigns of Non-Candidate Regional Heads in Indonesia

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Abstract

Issues related to whether or not Regional Heads who are not candidates can participate in campaigning in elections and regional elections have become a separate discourse in the Indonesian electoral law system due to contradictory rules. Therefore, the government seeks to realize electoral justice through strengthening the duties and functions of The Election Supervisory Agency as an institution authorized to oversee all stages of elections and regional elections. In this case, The Election Supervisory Agency or Bawaslu is responsible for ensuring that there are no violations committed by regional heads who are not candidates in the context of elections and regional elections, especially in the campaign stage which is very prone to violations. This research uses a type of library research with a normative juridical research method that uses conceptual approaches and laws and regulations. The result of this study is that The Election Supervisory Agency needs to reform the supervision mechanism in terms of legal substance, legal structure, and legal culture in order to achieve electoral justice in elections and regional elections.

Keyword: Elections, Election Supervision, Regional Heads, Election Supervisory Agency

1. Introduction

In the democratic process in Indonesia, the implementation of elections and regional elections must be carried out honestly, fairly, and transparently as mandated by Article 22E paragraph (1) of the 1945 Constitution of the Republic of Indonesia and Article 2 of the Regional Elections Law which essentially states that "General elections are held directly, publicly, freely, secretly, honestly, and fairly every five years." The elections and regional elections are carried out in order to realize the sovereignty of the people and apply the principles of democracy in the life of the nation and state. Where to achieve this goal, elections must be carried out with careful and structured preparations so that they can take place in a transparent and accountable manner. One of the important aspects in the implementation of quality elections is the existence of an independent institution that is tasked with supervising the entire election process. Therefore, Bawaslu was formed as an institution tasked with supervising all stages of elections and regional elections which has a great responsibility to ensure that each stage takes place in accordance with the principles of justice and applicable regulations, including in the supervision of campaign stages.(Putra and Maranjaya 2023)

Without adequate supervision, the implementation of elections has the potential to cause various serious problems that can harm the community. Negative impacts that may arise include the loss of people's voting rights, where voters' votes are not counted or ignored, as well as the increasing practice of money politics that can influence election results and undermine democratic processes. In addition, without strong oversight, black campaigns or the practice of spreading misleading information can be rampant, which can degrade the quality of information for voters. Finally, elections that are not properly supervised are vulnerable to rule violations, which can create injustice and reduce public trust in the democratic process. (Aprilia and Rohim 2024)

In the implementation of elections, the campaign is one of the most important stages. Election Campaign is defined as activities carried out by election participants or parties appointed by election participants to attract the attention of voters by conveying the vision, mission, program, and/or self-image of election participants. This stage also aims to be a means of political education for the community and is carried out with full responsibility. Election campaigns must be carried out in compliance with applicable regulations, and violations of rules or community norms may be subject to sanctions. However, in the experience of previous elections, there were still many violations found during the campaign process. This is inseparable from the parties who carry out these activities, one of which is the participation of regional heads in campaigning to support certain candidates even though they are not candidates for participation in the elections and regional elections. (Anindyajati 2023)

The regional head of the notabene has great political influence in his area. As state officials, regional heads have a strategic position in the government that can affect the course of the campaign, both directly and indirectly. This situation raises the potential for abuse of power and conflict of interest, such as the mobilization of civil servants and village officials to support or direct support to certain candidates, which can affect the balance in political contestation. In some cases, regional heads may have closeness to certain candidates, which could open up potential abuse of authority, for example by utilizing state facilities or budgets to support certain candidates or parties. In addition, the partiality shown by the Regional Head when campaigning will be detrimental to other election participants, because they do not get support from regional leaders. Moreover, the political preferences of the Regional Heads are not based on considerations of the competence and capabilities of election participants, but are more based on the similarity of political parties. This will ultimately degrade the principle of *electoral justice* in elections and regional elections in Indonesia. Therefore, the role of Bawaslu is crucial to maintain the quality of democracy and ensure that all election participants have equal opportunities. (Husaini et al. 2024)

The role of Bawaslu in supervising the involvement of regional heads is crucial to maintain the neutrality of the state apparatus and protect the integrity of elections. Law Number 7 of 2017 concerning Elections and other regulations stipulate that regional heads and public officials must be neutral and impartial. They are strictly prohibited from mobilizing government resources or influencing policies for the benefit of the campaigns of a particular candidate or party. However, this provision is in contradiction with other provisions that allow regional heads who are not candidates in elections and regional elections to campaign. This is stated in Article 280 paragraph (2), Article 281, Article 299 of Law No. 7 of 2017 concerning Elections and Article 70 paragraph 2 of Law No. 10 of 2016 concerning the Election of Regional Heads which stipulate that regional heads have the right to carry out campaigns. These problems ultimately led to a

debate about whether or not it was permissible for Regional Heads who were not candidates to participate in the campaign. (Satria, Ridha, and Rahman 2023)

Therefore, the author made this article with the aim of contributing thoughts on the role of Bawaslu in supervising campaigns involving regional heads who are not candidates in elections and regional elections. Some of the problem formulations are as follows; *First*, what is the position of regional heads who participate in campaigning even though they are not candidates in the elections and regional elections?; *Second*, how is the implementation of the role of Bawaslu in supervising campaigns involving regional heads who are not candidates in the elections and regional elections?

2. Method

The research method used is library *research* with a normative juridical approach, Normative juridical research is a type of legal research that focuses on the study of literature by examining library materials or secondary data. This approach is applied to analyze, search, and collect information and data through book reviews, journal articles, research reports, and laws and regulations relevant to the research topic. (Huda and S HI 2021)

3. Position of Non-Candidate Regional Heads Participating in the Campaign

One of the important elements in democracy is the existence of an election system and elections that are carried out honestly and fairly. Honest and fair elections can be achieved if there is a legal apparatus that regulates each stage of election implementation. Therefore, a *legal framework* is needed that is able to regulate all aspects of election activities and provide protection to organizers, candidates, voters, monitors, and all citizens from various forms of intimidation, bribery, and other fraudulent practices that can affect election results. Because, in *legal substance*, the election legal system in Indonesia is still in conflict with each other, especially the provisions related to the implementation of campaigns. This is evident in the provisions of Article 299 of the Election Law which stipulates that regional heads have the right to carry out campaigns. (Mpesau 2021)

However, the *provisions of a quo are* in fact contrary to the provisions of Article 22E paragraph (1) of the 1945 Constitution of the Republic of Indonesia and Article 283 paragraph (1) of Law No. 7 of 2017 concerning General Elections which in essence stipulate that State Officials are prohibited from holding activities that lead to the partiality of election participants both before, during, and after the campaign period. In addition, the participation of Regional Heads in campaigning is a form of mixing up authority as referred to in Article 17 paragraph (2) of Law No. 30 of 2014 concerning Government Administration. This is because the Regional Head does not have the authority to win certain candidates in elections and regional elections. (Kamil and Indah 2022)

In fact, John Rawls in his *theory of justice* emphasizes that in certain conditions justice must focus on the *principle of difference* that distinguishes the position between individuals because of the function of position and authority inherent in a person. In this case, the Regional Head should not be equated with other citizens because of the function of the position and authority inherent in him. Therefore, the right to campaign for Regional Heads can be limited using the legal instruments of Article 28J of the 1945

Constitution and Article 73 of the Human Rights Law as applied to ASN Employees and Members of the TNI/POLRI. The philosophical basis used is that if the Regional Head who is not a candidate participates in the campaign, it will cause injustice to other election participants. (Pakaya et al. 2024)

In this case, the participation of Regional Heads who are not candidates in campaigning will degrade the people's mandate to the functions and positions carried out by the Regional Head. This is because the Regional Head has the main responsibility to lead and prioritize the people in carrying out their duties. Meanwhile, when Regional Heads participate in campaigns, won't this ultimately degrade the interests of the people, because Regional Heads will be preoccupied with campaign activities and practical political interests so that they will override the interests of the people. In fact, the participation of Regional Heads who are not candidates in campaigning will degrade the principle of *electoral justice* in elections and elections. *Electoral justice* itself emphasizes that the election process takes place fairly, where every candidate should have an equal opportunity to gain public support without any distortion of the power inherent in office. (Manuruki et al. 2023)

There are 3 reasons why *electoral justice* will not be achieved when Regional Heads who are not candidates participate in the campaign:

1. Regional Heads' support for certain candidates is based on the preferences of political party similarities, not on political qualifications and competence. This is logical, considering that the Regional Head will be seated as a political party officer so that he is obliged to support candidates from the same political party;
2. The participation of Regional Heads in campaigning will open up the potential for *abuse of power*. Because the *goal* of the campaign team is to win a certain candidate. This can certainly provoke Regional Heads to use their power to influence the political preferences of constituents; and
3. Campaigns carried out by Regional Heads can cause psychological pressure on voters, especially those who are under the scope of power, such as ASN Employees, Village Apparatus, and Members of the TNI/Polri.

If Regional Heads who are not candidates are allowed to participate in the campaign, this will cause legal inconsistencies in the administration of the state. This is because the current legal system prohibits ASN Employees and Members of the TNI/POLRI from engaging in practical politics (including the prohibition of participating in campaigns). The reason is simple, namely the fear that the authority possessed by ASN Employees and TNI/POLRI Members is used to win political contestants. (Satibi et al. 2024)

This philosophical basis will cause legal ambiguity, because Regional Heads who are not candidates are allowed to participate in the campaign, even though the authority and influence possessed by Regional Heads is much greater than Civil Servant Employees and Members of the TNI/POLRI. Therefore, to realize legal harmonization, Regional Heads who are not candidates are ideally prohibited from participating in the campaign. Even Zainal Arifin Mochtar as an Expert in Constitutional Law at Gadjah Mada University stated that "Article 299 of the Election Law must be interpreted systematically with other provisions in the Election Law, where the *original intent* of the formation of Article 299 of the Election Law was only intended for Regional Heads who have the status of incumbents". So that Regional Heads who are not candidates should not have the right to campaign. (Nasution, Futra, and Subaidah 2024)

However, theoretically, the participation of Regional Heads who are not candidates in campaigning, can be seen as an effort to fulfill human rights. Ronald Dworkin in his "theory of rights" posits that "The State has an obligation to treat its citizens equally, even if the citizen has the status of a public official". This is in line with Jean-Jacques Rousseau's "theory of the social contract" which states that "A person who holds a position as a state official still has civil and political rights like any other citizen". In this case, according to these theories, prohibiting Regional Heads from campaigning can actually be categorized as a violation of human rights. (Syarifudin and Septiani 2023)

Moreover, the United States as the first country to implement a modern democratic system also still allows Presidents and Regional Heads who are not candidates to campaign. We can see this in the case of Joe Biden as the President of the United States who campaigned for Kamala Harris in the 2024 United States Presidential Election. There are 2 basic reasons why the United States still allows Presidents and Regional Heads who are not candidates to campaign, namely: First, to ensure the fulfillment of citizens' human rights as a *fundamental principle* in a democratic country; and second, to accommodate the political participation of Presidents and Regional Heads in the political process. Therefore, on the other hand, the idea of prohibiting Regional Heads from campaigning is considered a form of defiance of the principles of democracy itself. (R. S. R. Santoso and Zaharah 2024)

4. Implementation of the Role of the Election Supervisory Agency for Non-Candidate Regional Heads

The current legal framework actually still accommodates the right to campaign of Regional Heads as stipulated in Article 281 of Law No. 7 of 2017 concerning Elections and Article 70 paragraph 2 of Law No. 10 of 2016 concerning the election of Governors, Regents, and Mayors which expressly states that regional heads can campaign as long as they meet certain provisions, namely not using facilities in their positions and undergoing leave outside the state's dependents (Muid, Wamafma, and Mansawan 2024). Therefore, in terms of *legal structure*, Bawaslu as an institution that has the authority to supervise the implementation of Pemilukada as a whole, especially in supervising the campaign stages, must strengthen its supervisory duties through the formation of a task force that has the main task of supervising the implementation of campaigns involving Regional Heads from the moment he is registered as a campaign team, until the election period is completed to ensure that there is no abuse of power and conflicts of interest in the implementation of the Regional Head Election contest. (Efendi et al. 2023)

In detail, Bawaslu will supervise the restrictions that have been regulated in the Election and Regional Elections Law on how the mechanism of the President and Regional Heads in campaigning, so that the problems of *abuse of power* and *conflicts of interest* that are feared can be resolved, namely:

1. Presidents and Regional Heads who are not candidates must be registered with the Election Commission;
2. The President and Regional Heads are prohibited from using state facilities and regional facilities such as official vehicles, buildings, official houses, and other facilities financed by the State Budget or Regional Budget;
3. Presidents and Regional Heads who are not candidates are prohibited from promising or giving

money or other materials to members of the public as campaign participants; and

4. The President and Regional Heads who are not candidates are prohibited from making decisions and/or taking actions that benefit or harm one of the candidate pairs.

In fact, the Election Law has also provided legal protection if the Regional Head abuses power in campaigning, where the act is categorized as an election crime which will be handled directly by the gakumdu center consisting of a combination of 3 institutions, namely Bawaslu, the Police, and the Prosecutor's Office. The Integrated Law Enforcement Center (Gakkumdu) has the responsibility to handle all violations related to election crimes. (Feibriadi 2022)

The handling of election violations is carried out through the stages of receiving, reviewing, and submitting reports or findings to Bawaslu. Bawaslu receives reports or findings that indicate violations of election crimes. After the report or findings are received, Bawaslu will coordinate with the Gakkumdu Center to follow up on the report. The Gakkumdu Center then discusses incoming reports or findings and provides recommendations to determine whether the case is an election crime or falls under the category of other election violations. In accordance with the Election Law, such violations can be punished according to Article 521 and Article 547 of the Election Law. Where in the process the Gakkumdu center was able to solve the case in a short time, so that the long process of the democratic party could run smoothly and efficiently. (Rahmat, Haryanto, and Purwanta 2022)

In following up on the provisions regarding supervision, Bawaslu actively develops the concept of participatory supervision that involves the community in every stage of the implementation of elections and regional elections. (Kurniadi, Madani, and Khaerah 2023) This participatory supervision aims to increase transparency, accountability, and strengthen community involvement in maintaining the integrity of the democratic process. With participatory supervision, the community plays an active role in ensuring that the election process runs honestly, fairly, and in accordance with applicable rules. Community involvement in participatory supervision can be carried out through several forms of activities, namely:

1. The community can contribute through voter education;
2. Conducting socialization related to the procedures and stages of elections and regional elections, helping to disseminate clear information about the election process so that every voter understands their rights and election procedures correctly;
3. The public can be directly involved in monitoring all stages of elections and regional elections, from preparation, implementation, to vote recapitulation, with the aim of identifying potential violations or non-conformities with established procedures;
4. The public can report suspected violations found, both related to the Code of Ethics for Election Organizers, administrative violations, and election crimes. These reports can cover various forms of abuse, such as black campaigns, money politics, intimidation, or abuse of authority by election officials or participants.

Through participatory supervision, the community not only monitors, but also has the right to submit the results of monitoring to Bawaslu and file an official complaint if they find suspected violations. Thus, participatory supervision is an important instrument in strengthening a clean, fair, and democratic election

system, because it involves all levels of society in maintaining the electoral process from all forms of fraud and violations. (R. Santoso and Zaharah 2023)

5. Conclusion

Bawaslu is responsible for ensuring that there are no violations committed by regional heads who are not candidates in the context of elections and regional elections, especially in the campaign stages which are very prone to violations. In carrying out supervision, Bawaslu has the authority to investigate alleged violations, summon witnesses, and cooperate with various institutions, such as the State Civil Apparatus Commission (KASN) and the Gakkumdu Center, to enforce administrative and criminal sanctions if necessary. Thus, the role of Bawaslu in supervising the involvement of regional heads who are not candidates aims to prevent abuse of power, reduce the risk of conflicts of interest, and ensure public trust in the election and regional elections process that takes place freely and fairly. Based on this, as Lawrence M. Friedman argues in legal system theory which states that the effectiveness of law enforcement is determined by three aspects, namely *legal substance*, *legal structure*, and *legal culture*, the solutions or suggestions offered by the author are: In *legal substance*, by revising Article 299 of the Election Law by explicitly stipulating that the President and Regional Heads have the right to campaign (whether they are candidates or not) and will require Regional Heads (whether they are members of political parties or not) to be registered with the KPU to facilitate the supervision process; In terms of *legal structure*, Bawaslu is obliged to form a task force that has the main task of supervising the implementation of campaigns involving Regional Heads; and In terms of *legal culture*, Bawaslu is obliged to facilitate socialization about prohibitions in the Regional Head campaign to optimize supervision by the community and related parties.

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