



Strengthening Bawaslu on The Legitimacy of Local Democracy in South Sulawesi Case Study of Gowa Regional Election In 2020

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Abstract. The state provides constitutional guarantees for people's sovereignty and is implemented based on the 1945 Constitution. The approach method that will be used in the research is the case approach method, namely the characteristics of the problem related to the background and current conditions of the subject being studied as well as its interaction with its environment. In this case, to obtain the desired data through interviews and observations, in relation to the political implications of strengthening Bawaslu on the legitimacy of local democracy in South Sulawesi in the 2020 Gowa Regency Pilkada. The involvement of institutions in the implementation of local democracy, in this case Gowa Regency in the 2020 regional elections, can be a reference for political involvement by many regional institutions. Apart from that, complete legitimate recognition is also mandatory to create a good state process and democracy that makes society prosperous. Among other things, the institutional role of the political implications of political parties, regional government, Bawaslu and KPU as well as related stakeholders, especially in the case study analysis of the political implications of the 2020 regional elections in Gowa Regency as a strengthening of the Bawaslu institution for the legitimacy of local regional elections which can serve as a reference for the implementation of regional elections throughout Indonesia.

Keywords: Regional Election, Political Implications, State Institutions.

1 Introduction

The state provides constitutional guarantees for the sovereignty of the people and is implemented based on the 1945 Constitution. One of them is the holding of regional elections, as a manifestation of democracy at the local level. Bawaslu, one of the organizers of regional elections, has the authority and obligation to conduct elections properly, but politically and legally it will have implications for the involvement of many institutions, including political parties, local governments, technical organizers of the General Elections Commission (KPU), all of which are institutionalized based on legal regulations that are present due to the influence of public dialectics and political interests of many parties. Thus, the presence of institutions due to human behavior either individually or as a group determined by the norms that live in the community

concerned, so that humans are actors who obey the norms. This institution in the sociological-anthropological perspective is called the Normative System, because it is part of the norm system that exists in society, besides that it is juridically determined by the state. So it is hoped that the involvement of this institution can provide both political and juridical strengthening of the implementation of local democracy in Gowa Regency in the future through the analysis of the 2020 regional election case.

This institutional or institutional theory consists of two types, namely old institutional theory and new institutional theory. Institutionalism (old) is a common approach to the study of political institutions. In a sense, a set of theoretical ideas and hypotheses regarding the relationship between institutional characteristics and political agents, performance, and political change. The old institutionalism emphasized the nature and social construction of political institutions. Institutions here are a collection of standard operating structures, rules, and procedures that have an autonomous role in political life. While the new institutions are criticisms of the old institutions that are considered too focused on formal institutions of government, constitutional issues and public law are seen as formalistic and antiquated models.

The new institutional theory developed into four variants, namely rational choice, historical, sociological, and discursive. These four variants will be used as analytical knives to explain the institutional strengthening of *bawaslu* and in writing this dissertation will be used historical or historical approaches. As is known that the role of the *Bawaslu* institution as a dynamic phenomenon in terms of history that changes between times whose theoretical application emphasizes the creation of institutional rules through regulation. The objectives to be achieved in this writing are: To understand the influence of political implications on political parties on the strengthening of *Bawaslu* institutions on the quality of local democracy in South Sulawesi, especially the Gowa district elections in 2020, To understand the influence of political implications on local governments on the legitimacy of strengthening *Bawaslu* institutions on the quality of local democracy in South Sulawesi, especially the Gowa district elections in 2020, To understand the influence of political implications on fellow organizers, in this case, the General Elections Commission on the legitimacy of strengthening *Bawaslu* institutions on the quality of local democracy in South Sulawesi, especially the 2020 Gowa district election.

2 Research Methods

The approach method to be used in research is the Case approach method, which is with the characteristics of problems related to the background and current conditions of the subject under study and its interaction with the environment. In this case, to obtain the desired data through interviews and observations, related to *Bawaslu*'s strengthening of the legitimacy of local democracy in South Sulawesi in the 2020 Gowa Regency Regional Election. This type of research is descriptive analysis, that is, research is directed at describing facts with appropriate arguments. The research is intended to collect information on the implication of strengthening *Bawaslu* on the legitimacy of local democracy in South Sulawesi Case study of the 2020 Gowa district election, The purpose

of descriptive research is to make systematic, factual and accurate explanations of the facts. However, in its development, in addition to explaining situations or events that have taken place, a descriptive study is also designed to make comparisons and to find out the relationship between one variable and another.

This research uses a case study approach. A case study is research with the characteristics of problems related to the background and current conditions of the subject under study and its interaction with its environment. This case study approach is carried out to obtain the desired data through interview methods and observation of informants. In addition, informants and other supporting documentation will be made part of this research.

3 Results

The journey of Bawaslu's authority in guarding the nation's democracy is a process of institutional rights and power. The dynamics and constellation of the nation from the New Order period to post-reform greatly colored the strengthening of authority to supervise and uphold electoral justice. Effective election supervision is believed to be an instrument that can provide guarantees for the implementation of democratic elections. The instrument must be able to guarantee and promote transparency, accountability, credibility, and integrity of the conduct of elections. This guarantee is important because it has implications for public trust in the electoral process, election results and also for democracy itself.

Bawaslu as one of the organizers of the regional elections in its journey encountered various problems, obstacles, and challenges coloring the dynamics in attendance to strengthening Bawaslu as a supervisor and giver of electoral justice. There have been several changes and replacements to laws that mandate Bawaslu's authority as well as institutions. There are several stages that need to be known in the establishment to strengthen the position of Bawaslu. The first stage, through Law Number 3 of 1999. Second, Law Number 12 of 2003 concerning Elections and Law Number 23 of 2003 concerning Presidential and Vice-Presidential Elections which became the legal basis for holding the 2004 elections. Third, through Law Number 10 of 2008 concerning the Election of Members of the DPR, DPD, and DPRD. Fourth, there has been a significant change in the electoral legal framework, where regulatory norms regarding election administration are separated from the election law. The fifth stage is Law No. 7 of 2017 concerning General Elections. The law also introduced arrangements on administrative violations of a structured, systematic and massive nature. There are also regulatory norms regarding forms of electoral crimes, again increased to 66 articles.

The five stages of development of regulatory norms regarding the election law enforcement system show very dynamic changes. On the one hand, these developments show the direction of progressive law application, but on the other hand, they also show a tendency of 'trial and error' in preparing the electoral legal framework.

The strengthening of bawaslu institutions in the legitimacy of local democracy certainly affects political parties, local governments and among fellow election organizers, in this case the general election commission (KPU). Bawaslu's performance after its

institution was strengthened had a very significant influence in registering political parties participating in elections which was previously only a single task of the KPU, Bawaslu was present as a supervisor who participated in supervising the recruitment process of election participants in contestation.

Related to the strengthening of bawaslu institutions also affects local governments as bawaslu supervision partners in budget support as a form of government facilitation responsibility in implementing elections as a national agenda. The Regional Government optimizes the success of the election by optimizing the role of the Regional Leaders Coordination Forum, the synergy of officials and related stakeholders, the role of partnerships and encouraging the role of religious leaders, community leaders, and traditional leaders in maintaining the conduciveness of election contestation.

The impact of strengthening bawaslu also affects fellow election organizers, in this case the KPU. The KPU in carrying out technical implementation must receive inherent supervision by election supervisors because Bawaslu is an election organizing institution tasked with supervising the implementation of elections at every stage carried out by the KPU in all regions of the Unitary State of the Republic of Indonesia.

In fact, there are several regional election contestations whose supervision is considered less able to present the implementation of local elections that can be accepted by all parties, both those who win the contestation and those who lose in the struggle for regional power.

One example is the regional election of Gowa Regency, South Sulawesi Province. In the regional elections in 2005, 2010 and 2015 which were considered there were still some shortcomings. This problem occurs not only in the Gowa Regency area, but also in several other regions in Indonesia, for example in the Java Island area which has not maximally supervised the contestation of regional head elections.

The current Pilkada Regulation, namely Law Number 10 of 2016 concerning the Second Amendment to 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, is a law that in the regulation strengthens the position of authority of supervisory organizers. In the contestation of Regional Head Elections, there are 3 (three) organizers, namely the General Elections Commission (KPU) as the technical organizer, the General Election Supervisory Agency (Bawaslu) as the one who oversees the Regional Elections, and the Election Organizer Honor Board (DKPP). However, the subject of study in this dissertation is the organizer of the regional election supervisor, namely Bawaslu. Bawaslu's duties and authorities in supervising the running of regional elections are regulated in Article 30 of Law Number 10 of 2016 concerning the Election of Governors and Vice Governors, Regents and Vice Regents of Mayor and Vice Mayor.

This study focuses on the aim of understanding the effect of strengthening the Bawaslu Institution based on Law Number 7 of 2017 concerning Elections on the quality of local democracy in South Sulawesi, especially the legitimacy of the 2020 Gowa district election, and to understand the role of strengthening the Bawaslu Institution legally on the quality of Local Democracy, especially in the 2020 Gowa Regency Regional Election. Therefore, perspectives and methods are adapted to these goals, so that

researchers can choose research subjects as well as informants who can provide the necessary data and information.

Referring from a theoretical perspective using state institutional legitimacy, this research perspective is directed at combining qualitative and qualitative methods. This is intended to produce findings or truths which in qualitative research are called "inter-subjective" truths, namely truths built from the interweaving of various factors that work together. The reality of truth is something that is "perceived" by who, sees not just facts free of context and interpretation of anything. Truth is a building (construction) compiled by researchers by recording and understanding what happens in social interaction.

4 Discussions

4.1 The influence of political implications for political parties on the legitimacy of strengthening Bawaslu institutions on the quality of local democracy

Bawaslu as the general election organizing institution is the institution tasked with supervising the implementation of elections throughout Indonesia. The legal basis is Law Number 7 of 2017 concerning General Elections. As an independent state institution, Bawaslu obtains direct authority from the law which has quasi-legislative authority with supervisory functions, as well as quasi-judicial law enforcement, with the authority:

- Receive and follow up on reports relating to alleged violations of the implementation of laws and regulations governing elections;
- Examining, reviewing and deciding on election administration violations;
- Examining, reviewing and deciding money politics violations;
- Receive, examine, mediate or adjudicate, and decide on the resolution of election process disputes.

As an Independent State Commission, Bawaslu is ideally free from interference from any branch of power. Bawaslu's independence as an Independent State Commission is related to constitutional independence, functional independence and administrative independence, but at the same time has the function and character of a combination of the functions of existing branches of power. . "It is not uncommon for the Independent State Commission to have quasi legislative, quasi executive and quasi judicial powers."

Theoretically, if there is an accumulation of some executive powers and some judicial powers in Bawaslu as an independent state institution, this can be justified. The requirements for an institution to be categorized as an independent state commission must meet the following characteristics:

- The legal basis for its formation expressly states the independence or independence of the relevant independent state commission in carrying out its duties and functions (normative requirements);
- Independent, in the sense of being free from influence, will or control from the executive branch of power;

- Dismissal and appointment of commission members using certain mechanisms that are regulated not solely based on the will of the President (political appointee);
- The leadership of the commission is collegial collective, the number of members or commissioners is odd and decisions are taken by a majority of votes;
- The leadership of the commission is not controlled or the majority does not come from a particular political party;
- The terms of office of the definitive commission leaders expire simultaneously and can be reappointed for another period;
- Membership in state institutions is sometimes aimed at maintaining a balance of non-partisan representation.

Bawaslu as a state institution to carry out permanent and independent national election supervision was formed based on Law Number 7 of 2017, its duties, authority and obligations have been clearly outlined, odd number of members, collegial collective decision making, appointment and dismissal. Members use mechanisms regulated by law and have a definitive term of office of five years and can be reappointed for another period. Thus, there is sufficient reason to place Bawaslu as an Independent State Commission in the Indonesian constitutional system. There are several types of power that determine whether a state institution can be said to be a quasi-judicial institution or not, including:

- The power to exercise judgment and discretion (The power to exercise judgment and discretion);
- The power to hear and determine or ascertain facts and decide (The power to hear and determine or to ascertain facts and decide); And
- The power to make binding orders and considerations that bind a legal subject with the decision and considerations made (The power to make binding orders and judgments).

By paying attention to the duties and authority of Bawaslu, it is confirmed that Bawaslu has the same authority as the points above. Because in general Bawaslu has the authority to examine, adjudicate and decide on cases that are discovered or reported.

Regarding the functions of Bawaslu which are a consequence of the development of constitutional concepts and state institutional law, the presence of Bawaslu as an independent state institution that carries out quasi-judicial functions cannot be avoided. Bawaslu's independent position is expected to be able to carry out its duties well, and free from interference from other parties. However, there is no guarantee that as an independent state institution, Bawaslu can carry out its functions without making mistakes because everything depends on the leadership of the people who fill the institution.

4.2 The influence of political implications for local government on the legitimacy of strengthening Bawaslu institutions on the quality of local democracy

We can see the function of Bawaslu to explore the duties and authority of Bawaslu as an independent state institution as stated above, namely as follows:

The position and function of Bawaslu as Election Supervision

Bawaslu was formed specifically to supervise the implementation of elections and elections in Indonesia. Supervision in a broad sense includes prevention (preventive) and repression (repressive), in fact, in theory, one form of supervision is also known, namely preemptive (an initial effort to prevent violations). In supervising the implementation of the General Election and Elections, Bawaslu has generally made various efforts including initial efforts such as preparing technical regulations that regulate supervision mechanisms including prevention and direct supervision and taking action or suppressing all forms of violations that occur during the implementation. stages which include administrative violations, code of ethics violations, criminal violations and other legal violations related to the implementation of elections.

Bawaslu's authority to supervise the implementation of elections is clearly regulated in Article 89 paragraph (1) and paragraph (2) of the Election Law (paragraph (1) "Supervision of Election Implementation is carried out by Bawaslu" paragraph (2) "Bawaslu as intended in paragraph (1) consists of:

- Bawaslu;
- Provincial Bawaslu;
- Regency/City Bawaslu;
- District Panwaslu;
- Subdistrict/Village Panwaslu;
- Overseas Panwaslu; And
- TPS Supervisor.

The duties and authority of Bawaslu to TPS Supervisors are then regulated separately in Chapter 2, Part Three:

- Paragraph 1 Article 93 to Article 96 regulates the duties, authority and obligations of Bawaslu;
- Paragraph 2 of Article 97 to Article 100 regulates the duties, authority and obligations of the Provincial Bawaslu;
- Paragraph 3 of Article 101 to Article 104 regulates the duties, authority and obligations of Regency/City Bawaslu;
- Paragraph 4 of Article 105 to Article 107 regulates the duties, authority and obligations of the District Panwaslu;
- Paragraph 5 Article 108 to Article 110 regulates the duties, authority and obligations of the Subdistrict/Village Panwaslu;
- Paragraph 6 of Article 111 to Article 113 regulates the duties, authority and obligations of the Overseas Supervisor;
- Paragraph 7 of Article 114 to Article 116 regulates the duties, authority and obligations of TPS Supervisors.

If we look closely at the duties, authority and obligations of Bawaslu, in general, they give authority to Election Supervisors at all levels to prevent potential violations, carry out direct supervision in every activity in the implementation of the election stages and handle violations and resolve disputes in the process of implementing the election stages for the purpose of providing guarantees for the implementation of the election in a safe manner. democratic, accountable and dignified, of course in accordance with the principles of direct, general, free, confidential, honest and fair (*luber jujur*).

To achieve dignified elections, credibility and integrity must be possessed by every member of the election organizers, including in this case Bawaslu, which in carrying out its main duties and functions as election supervisors must prioritize integrity. Integrity as a concept is only a small part of the electoral system that is desired in the national soul (*volkgeist*) regarding elections which manifests itself in the Election Law. Meanwhile, from the perspective of the theory of dignified justice, an election is said to be dignified if the election is carried out in accordance with the election administration system according to the applicable laws and regulations.

4.3 The influence of political implications for fellow organizers, in this case the General Election Commission, on the legitimacy of strengthening Bawaslu institutions on the quality of local democracy

Bawaslu as the election organizer is an institution specifically formed to supervise the implementation of elections in Indonesia. In general, election supervision activities are carried out with steps starting from preemptive activities (initial efforts to prevent violations), prevention (preventive) and the authority to take action against violations or handle violations (repressive). Bawaslu's authority to handle various forms of election violations and crimes is regulated in article 93 letter b number 1 of Law Number 7 of 2017 concerning Elections "Bawaslu is tasked with preventing and taking action against election violations, article 94 paragraph (2). In carrying out action against election violations as intended in Article 93 letter b, Bawaslu is tasked with:

- Receive, examine and review allegations of election violations;
- Investigate alleged election violations;
- Determine alleged violations of Election administration, alleged violations of the Election Organizer's code of ethics, and
- Decide on violations of election administration).

Article 95, Bawaslu has the authority to receive and follow up on reports relating to alleged violations of the implementation of laws and regulations governing elections; Examining, reviewing and deciding on violations in election administration; and Examining, reviewing and deciding money politics violations.

Furthermore, in stages the authority of the Provincial Bawaslu is regulated in Article 99 letter a, namely "receiving and following up on reports relating to alleged violations of the implementation of laws and regulations governing elections". The authority of Regency/City Bawaslu is regulated in Article 103 letter a: "Regency/City Bawaslu receives and follows up on reports relating to alleged violations of the implementation of laws and regulations governing elections."

Technically, the handling of election violations is regulated in Article 454-465 of Law Number 7 of 2017 concerning Elections and the handling of Election Crimes is regulated in Article 476-487 of Law Number 7 of 2017 concerning Elections and, the technical regulations are regulated by Perbawaslu Number 7 of 2017 2018 concerning Handling Findings and Reports of General Election Violations, Bawaslu Regulation Number 31 of 2018 concerning Integrated Law Enforcement Centers, and Bawaslu Regulation Number 8 of 2018 concerning Resolving General Election Administrative Violations, and Bawaslu Regulation No. 8 of 2018 also regulates acts or acts 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.

So, by referring to these provisions, Bawaslu and its staff have the authority to handle election violations and criminal acts including administrative violations and the criminal act of "promising or giving money or other materials" or commonly called "money politics", with procedures, rules and regulations. The methods or mechanisms for handling violations and criminal acts are technically regulated in Bawaslu Regulation Number 7 of 2018 concerning Handling Findings and Reports of General Election Violations and Bawaslu Regulation Number 8 of 2018 concerning Resolving General Election Administrative Violations.

5 Conclusion

The involvement of the Bawaslu Institute in the implementation of local democracy, in this case Gowa Regency in the 2020 Regional Election Year, can be a reference as political involvement by many regional institutions, besides that complete legitimate recognition is also mandatory to create a good state process and democracy that prospers the community. Among others, the role of institutionalization by the political implications of political parties, local governments, Bawaslu and KPU as well as related stakeholders, especially in the case study analysis of the political implications of the 2020 regional elections in Gowa Regency as a strengthening of the Bawaslu Institution on the legitimacy of local elections that can be a reference for the implementation of regional elections throughout Indonesia.

References

1. A. Ahsin Thohari, "Kedudukan Komisi-komisi Negara dalam Struktur Ketatanegaraan Indonesia", *Jurnal Hukum Jentera*, edisi 12 Tahun III, April-Juni 2006.
2. Anajeng Esri Edhi Maharani. *Resultan Sistem Pemilu dan Sistem Pemerintahan terhadap Pelaksanaan Demokrasi di Indonesia*. *Jurnal Yustika*, Fakultas Hukum Universitas Surabaya, Vol. 22 No. 02, Desember 2019.
3. Ansori. 2017. *Legalitas Hukum Komisi Pemilihan Umum Daerah dalam Menyelenggarakan Pilkada*. *Jurnal Konstitusi*, Volume 14, Nomor 3, September 2017.
4. Berkeley, U. California P, 1967. The title page has correctly Pure Theory of Law, but the paperback cover has wrongly The Pure Theory of Law. This has been corrected, for the paperback cover as well as the hardback dustjacket, in a reprint by another publisher "by

arrangement with" the Hans Kelsen-Institut: Clark, NJ; The Lawbook Exchange; 2004 ISBN 978-1-58477-578-2 (p), ISBN 978-1-58477-206-9 (h).

5. Cora Elly Noviaty. 2013. Demokrasi dan Sistem Pemerintahan. *Jurnal Kosntitusi*, Volume 10, Nomor 2, Juni 2013
6. Deden Fathurahman, *Jurnal Demokrasi Lokal Dalam Pemilihan Kepala Daerah Langsung di Indonesia*, jurnal *legality*, Vol 12, Nomor 1, (2005).
7. Gunawan A. Tauda. Kedudukan Komisi Negara Independen dalam struktur Ketatanegaraan Republik Indonesia, *Pranata Hukum* Volume 6 Nomor 2 Juli 2011.
8. Jimly Assidiqie. 2012. *Perkembangan Dan Konsolidasi Lembaga Negara Pasca Reformasi*. Jakarta: Sinar Grafika, 2012.
9. Refly Harun. Transformasi Pengawas Pemilu: Dari Pengawas ke Pengadil. *Jurnal Pemilu dan Demokrasi, Perludem*, Jurnal Nomor 7, Januari 2015.

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