

Authority of Bawaslu to Handle Violations of Administrative Law in Fiqh Siyarah

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Received: 17-12-2023 Accepted: 11-03-2024 Advance Access Published: 12-04-2024

Published: 28-06-2024 doi: <https://doi.org/10.37035/ajh.v20i1.9832>

URL: <https://jurnal.uinbanten.ac.id/index.php/ahkm/article/view/9832>

ABSTRACT

General Elections a process where individuals carefully choose representatives or candidates who are considered good and appropriate to their preferences. General elections are an important tool in realizing people's sovereignty, which produces people's representatives who represent the aspirations of the people, have quality, and are responsible. The research focused on three main questions: 1. What is Bawaslu's authority in resolving violations of General Election administration law? 2. What factors hinder Bawaslu's authority in addressing violations of General Election administration law? 3. What sanctions apply for violations of General Election administration law?. Library study method was used. Meanwhile, the research results explained that Bawaslu had the authority to resolve violations of general election administration law, including monitoring, handling complaints, investigating, providing recommendations, hearings, campaign assistance, and issuing guidelines. Inhibiting factors for Bawaslu in addressing violations of election administration law in Indonesia include limited resources, legal complexities, authority limitations, non-compliance by parties, political interference, restricted information access, diverse legal cultures, lack of awareness, political party involvement, and time constraints. Meanwhile, the administrative sanctions that Bawaslu could

impose on violators of election administration law included cutting campaign budgets, terminating candidacy, as well as recommendations to the General Election Commission.

Keywords: Authority, *Bawaslu*, Violations, General Election, Simultaneous

How to cite:

Mustakim, M., Cholidi, C., Bukhori, K., Sadi Is, M., & Mohamad, A. B. B. Authority of Bawaslu to Handle Violations of Administrative Law in Fiqh Siyasah. Al Abkam, 20(1). <https://doi.org/10.37035/ajb.v20i1.9832>

A. INTRODUCTION

The concept of a democratic state has been extensively adopted worldwide, in both monarchies and republics. This ideology of democracy was followed, because it was based on positive values and contains universal moral elements. A democratic system that guaranteed the civil rights and political rights of the people in a country as adopted by Indonesia which was explicitly stated in the 1945 Constitution of the Republic of Indonesia¹. One of the tools for moving democracy was general elections or what were often abbreviated as elections as regulated in Article 22 E of the 1945 Constitution of the Republic of Indonesia which was included in Law of the Republic of Indonesia Number 7 of 2023 concerning General Elections.

General Elections, or more commonly called elections, were a process where individuals carefully chose representatives or candidates who were considered good and appropriate to their preferences. This was an important tool in realizing popular sovereignty, which produces people's representatives who represent the aspirations of the people, had quality and were responsible. This general election was based on the values of Pancasila and the 1945 Constitution of the Republic of Indonesia. General elections empowered citizens

¹ Taufiqurrahman Syahuri, *The Interpretation of the Constitution Various Legal Aspects* (Jakarta: Kencana, 2011), 156.

to express their democratic rights and shape the governance of a representative system, underscoring the pivotal role of elections in democratic nations².

In Indonesia, general elections had been held 13 times, starting in 1955, 1971, 1977, 1982, 1987, 1992, 1997, 1999, 2004, 2009, 2014, 2019, and 2024 (which are simultaneous general elections). Every time a general election was held, the law always undergoes changes, in fact the law has been changed 16 times, the latest being Law of the Republic of Indonesia Number 7 of 2023 concerning General Elections. Among the fundamental changes in the implementation of general elections after the 1945 Constitution of the Republic of Indonesia was amended since 2004, general elections apart from selecting candidates for the DPR (People's Representative Council) DPRD (Regional People's Representative Council) for both provinces and city districts, also to elect candidates for DPD (Regional Representative Council) members from each province. Technical voting to select several qualifications was carried out at the same time simultaneously throughout Indonesia, the day and date. Likewise, the 2019 elections and the 2024 elections aimed to elect candidates for members of the DPR, DPD, President and Vice President, Provincial DPRD and Regency/City DPRD³.

Violations that often occurred in the implementation of simultaneous general elections could occur as follows: first; requirements and verification of election participant candidacy according to procedures and making errors in inputting vote results. Second; false support for individual candidate pairs. Third; was that the installation of the APK (campaign props) did not comply with the provisions. Fourth; there were attempts to violate the government's budget facilitation for the campaign. Fifth; false documents or information as

² Yusuf Al Qordhawy Alasyi, *The Violation of Campaign Props in Elections*, (Banda Aceh: Yayasan Pena, 2021), 6.

³ Roni Wiyanto, *Law Enforcement for DPR, DPD and DPRD Elections* (Bandung: Mandar Maju, 2014), 1.

requirements for candidacy. Sixth; campaign in places of worship or places of education. Seventh; vote more than once. Eighth; ASN (state civil servants) carried out actions that benefit candidates. And ninth; there was money politics⁴.

Then, there were additional forms of election violations that could occur during the general election process: first; Ineligible candidacy: When a person or political party nominated a candidate who did not meet the requirements established by electoral law, such as age requirements or citizenship requirements. Second; Misuse of Campaign Funds: Use of campaign funds in a way that violated regulations, such as using these funds for personal interests or outside campaign purposes. Third; Black Campaigning: Disseminating false or detrimental information regarding an opposing candidate or political party with the aim of damaging their reputation. Fourth; Vote Buying: Providing money, goods, or other rewards to voters with the intent of influencing them to vote for a particular candidate. Fifth; Using of Government Resources: Misuse of government resources, such as public facilities or government programs, for campaign purposes. Sixth; Campaign Rules Violation: Violating the rules governing the campaign, such as time, location, or campaign advertising restrictions. Seventh; Violation of Voter Data Security: Fraud in managing voter data or unauthorized access to voter data. Eighth; Fraud in Voter Registration: Registering false voters or using false identities to influence the outcome of an election. Ninth; Violations Related to Vote Counting: Manipulating or tampering with the vote counting process, including falsifying or stealing votes. And tenth; Mass Media Abuses: Controlling or monopolizing the mass media to provide unfair coverage to one candidate or political party.

The prevalence of election violations highlighted by Mahfud underscores the risk of elections becoming routine democratic processes, raising

⁴ Ranap Tumpal HS, "National Police Investigation Working Meeting, Bawaslu Reveals Nine Frequent Election Violations."

concerns about the integrity and effectiveness of the democratic system. In fact, elections were held instead of increasing the quality of democracy, but actually became more heartbreaking, where elections were filled with behavior that harms democratic values, money politics, bribery, broken promises, and cheating as if it were a normal occurrence at the election stage. Democracy throughout the reform era was still procedural, not yet substantial. Elections had not been carried out in an efficient and fair manner, so they had not produced people's representatives or regional leaders who were qualified and had integrity. Therefore, Mahfud said that democracy had not been able to form a government that was capable of improving the welfare of the people⁵.

Based on the explanation above, the focus of discussion in the research was first; What was *Bawaslu's* authority to resolve violations of General Election administration law? Second; What were the factors inhibiting *Bawaslu's* authority in resolving violations of General Election administration law? And third; What were the sanctions for violations of General Election administration law?

B. RESEARCH METHOD

The research method in this article involved studying legal materials in libraries, known as normative legal research, to establish the validity and logical truth in legal studies. The scientific logic of normative research was conceptualized by guiding scientific disciplines and the mechanisms of normative legal science⁶. The research material sources included primary materials, secondary data, and tertiary data. The primary source of material was Law of the Republic of Indonesia Number 7 of 2017 concerning General Elections. Secondary material sources were data or materials taken from documents, library

⁵ Mahkamah Konstitusi Republik Indonesia, "Mahfud MD: Democracy Has Not Made the People Prosperous," 2023.

⁶ Jhoni Ibrahim, *Normative Legal Research Theory & Methods* (Malang: Bayu Media Publishing, 2006), 47.

reference books that were relevant to the research title. Meanwhile, tertiary legal materials were dictionaries and encyclopedias related to this research⁷.

Meanwhile, the data analysis used *Bawaslu's* authority in resolving legal disputes regarding simultaneous election administration in Indonesia in 2024, both in the 1945 Constitution of the Republic of Indonesia and in its derivative law, Law of the Republic of Indonesia Number 7 of 2023 regarding General Elections. Meanwhile, the methodological approach used in this research required a comprehensive review⁸ to the general election law. In this approach, the aim was to strengthen *Bawaslu's* authority in resolving legal disputes over general election administration in Indonesia, especially the simultaneous general elections in 2024. This approach open up opportunities for researchers to study whether there was consistency and conformity between laws and the 1945 Constitution of the Republic of Indonesia, or one law and other laws, as well as between laws and other regulations.⁹. Because so far, *Bawaslu's* authority had only been limited to supervising and reporting violations of election implementation, *Bawaslu* did not yet have the authority to resolve violations of election administration law.¹⁰.

C. RESULT AND DISCUSSION

1. The Supervision of General Elections by *Bawaslu*

Supervising general elections aimed to ensure high-quality election processes and outcomes. The main contribution of general election supervision,

⁷ P. Joko Subagyo, *Research Methods in Theory and Practice* (Jakarta: Rineka Cipta, 2006), 87–88.

⁸ Jeane Neltje Saly and Qonita Rizqi Iffani Putri, “Law Enforcement Implementation and Efforts in Protecting Company Ownership Rights Over Rising Disputes over Share Ownership Reviewed Based on Law No. 40/2007 Concerning Limited Liability Companies,” *Al-Ahkam* 19, no. 1 (2023): 2.

⁹ Peter Mahmud Marzuki, *Legal Research* (Jakarta: Kencana, 2013), 93.

¹⁰ Radian Syam, “Strengthening General Election Supervisory Institutions: Normative Juridical Analysis,” *Ethics & Elections* 7, no. 1 (2021): 4.

apart from encouraging the implementation of technically quality general elections, was also a significant part of the sustainability of democratization in Indonesia. General election supervision was a conscious, deliberate and planned process based on the essence of the philosophy of democratization. A general election that was carried out without mechanisms and a climate of free and independent supervision would turn the general election into a process of power formation that was full of fraud. In such a situation, general elections had lost their legitimacy and the resulting government actually did not have legitimacy¹¹.

George R. Terry explained that supervision was “control was to determine what was accomplished evaluate it, and apply corrective measure, if needed to result in keeping with the plan”. In this sense, supervision focused on evaluating and correcting the results achieved with the aim that these results were in accordance with the plan. Then, Newman explains that supervision was “control was assurance that the performance conformed to plan”. This meant that supervision was an implementation of tasks to ensure that what is carried out is carried out according to plan.

Bagir Manan explained supervision into 2 (two) types based on how it was carried out. The first was preventive supervision. This supervision was structural and specific. What types were allowed and what were not allowed had been regulated beforehand, so they could be prevented. Second, repressive supervision. In contrast to preventive supervision, this supervision was carried out after a decision had legal consequences or there were certain sanctions¹².

Then, general election supervision had 3 (three) typologies. First, electoral observation; was supervision carried out by observers or observers. The task of the observer was limited to collecting information regarding the

¹¹ Masykurudin Hafidz Dkk, *Simultaneous Election Monitoring Design* (Jakarta: Bawaslu Republik Indonesia, 2020), iv.

¹² Bagir Manan, *Basics of the Republic of Indonesia's Constitution According to the 1945 Constitution* (Bandung: Universitas Padjajaran, 1994).

implementation of the general election and providing conclusions regarding the implementation of the election by providing an assessment or value judgment on the process of holding the general election. An observer did not have the authority to intervene in the election process. Electoral observation was usually carried out by international election observers, from the United Nations (UN), international election organizer coalitions, and so on. Second, electoral monitoring; was a supervisory practice that already had the authority or legitimacy to observe the implementation of general elections and had the authority to intervene in the process if general election norms were violated. The actors who usually acted as Election Observers are independent institutions that had received accreditation by the Election organizers, and third, electoral supervisory was a general election supervisory body. When compared with observers and general election observers, general election supervisors have more complex duties and authority. This was because the general election supervisor was an official institution formed by the state and had a special task to supervise general elections. General election supervisors not only had the authority to supervise the implementation process at each stage of the general election, but also general election supervisors had the authority to declare the validity and validity of the general election stages, from the preparation process to the process of determining the results¹³.

Based on the explanation of the article above, *Bawaslu* played a vital role in supervising the implementation of general elections to ensure the integrity and accountability of general elections. Supervision of general elections was carried out in accordance with the regulations governing the conduct of general elections. *Bawaslu* was taking preventative steps against potential election violations and fraud by creating an Election Vulnerability Index (IKP) which

¹³ Radian Syam, *Election Supervision Concepts, Dynamics and Future Efforts to Achieve Democratic and Quality Elections* (Depok: Rajawali Buana Pusaka, 2020), xxxi.

helped identify potential risks arising from election violations and fraud. *Bawaslu* as a supervisory institution before and after the General Election and *Pilkada*, opens access for the public to obtain information related to the course of the general election. If there was a violation during the general election process, the public was given security to report the violation with the guarantee of confidentiality of the reporter's identity. *Bawaslu's* performance was very important, because if its performance was optimal, the public could understand the types of violations that occurred during the general election process and had the potential to minimize general election violations¹⁴.

2. The Bawaslu's Authority on Violations of General Election Administration Law in the Fiqh Siasyah Dimension in Indonesia

Democracy had an important meaning for the people who used it, because with democracy the people had the right to determine for themselves the course of state administration. Democracy was a way of organizing a state by involving many people (the people), so the people determine the main issues of their lives, including state policy and that meant the state (government) acted with the consent of the people it led¹⁵.

Democracy was a form of government in which policy formulation, directly or indirectly, was determined by the majority vote of citizens who had the right to vote and be elected, through a forum for forming their votes freely and without any coercion. Joseph Schumpeter explained democracy in 2 (two) senses. First, democracy as the will of the people. Of course, democracy would exist when the wishes of the majority of the people could be fulfilled by the government in power properly. Second, democracy as a common good.

¹⁴ Prita Fitria Waluyo and Isnaini Rodiyah, "The Effectiveness of Bawaslu in Implementing the 2020 Sidoarjo Regency Pilkada," *Journal of Governance and Local Politics (JGLP)* 5, no. 2 (2023): 174.

¹⁵ Yudi Widagdo Harmurti, *Rule of Law and Democracy Concepts and Contemporary Developments* (Malang: Setara Press, 2021), 15.

Referring to the initial idea of state formation, it is said that the common good is the end of the collective will of citizens. Therefore, the goal of a democratic government system was to create the common good stipulated in the political contract¹⁶.

General elections were crucial in Indonesia's constitutional life as they represented the implementation of people's sovereignty. Bagir Manan highlighted that general elections, held every five years in Indonesia, were instrumental in embodying the democratic principles of Pancasila and the 1945 Constitution, showcasing direct governance by the people. It was during the general election that all candidates who wished to serve as administrators of the state and government depend entirely on the wishes or wishes of the people¹⁷.

Ismail Sunny explained that general elections are a certainty and an institution that was very vital for democracy. A free election meant that within a certain period of time the people would have the opportunity to express their desires regarding the political lines that the stated and society should follow and about the people who should implement those policies¹⁸.

The process of holding general elections would run democratically if a number of indicators were met. First, the general election system was in accordance with the characteristics of society and the democratic political system that was to be realized. Second, the legal umbrella for all stages of the process of holding general elections must guarantee legal certainty which was formulated based on the principles of democratic general elections. Third, free and fair competition for election participants. Fourth, general election organizers who were professional and independent in carrying out their duties and authority.

¹⁶ Suryo Sakti Hadiwijoyo, *State, Democracy, And Civil Society* (Yogyakarta: Graha Ilmu, 2012), 33.

¹⁷ Wilma Silalahi, *Simultaneous Election Dispute Resolution Design* (Depok: RajaGrafindo Persada, 2019), 45.

¹⁸ Internasional IDEA, *Continuing Dialogue Towards Constitutional Reform in Indonesia* (Jakarta: International IDEA, 2021), 71.

Fifth, the voting and counting process was carried out directly, publicly, freely, confidentially, honestly and fairly. Sixth, a general election law enforcement system that was carried out fairly and on time. Seventh, community participation in the process of holding general elections¹⁹.

Based on the explanation above, general elections were an important foundation for the realization of democratic values in Indonesia which were in accordance with the values of Pancasila and the Constitution of the Republic of Indonesia²⁰. General elections in Indonesia still often caused problems, especially violations of general election administration. In order to make general elections free from administrative violations and realize electoral justice, the General Election Supervisory Body was established as a general election organizing institution which was authorized by the general election law to supervise and handle general election administrative violations in all regions of the country. Unity of the Republic of Indonesia. Although the existence of *Bawaslu* was not new, it had been monitoring elections since 1982 under the name of the election supervisory committee. Then, changes occurred to election supervisory institutions through Law of the Republic of Indonesia Number 12 of 2003 concerning General Elections of Members, People's Representative Council, Regional Representative Council, and Regional People's Representative Council. The name of the general election supervisory committee was ad hoc, meaning it was formed ahead of the democratic elections and elections²¹.

Bawaslu was the body that controls the implementation of elections throughout the territory of the Republic of Indonesia, prevents and takes action

¹⁹ Novembri Yusuf Simanjuntak, "Monitoring in the Election Implementation Process," *Journal of Bawaslu* 3, no. 3 (2017): 306–307.

²⁰ Mohammad Syaiful Aris, *Election Law Philosophy and Principles of General Elections in the 1945 Constitution* (Malang: Setara Press, 2021), 2.

²¹ Murjani dan Suwardi Sagama, *The authority of the Election Supervisory Body after the implementation of the General Election and Simultaneous Elections in 2024*, (Depok: RajaGrafindo Persada, 2023), 15–16.

against general election violations and disputes over the general election process, supervises preparations for holding general elections which consisted of planning and determining the schedule for the stages of the general election, planning logistics procurement by the KPU, socialization holding general elections, and carrying out other preparations for holding general elections in accordance with the provisions of laws and regulations. *Bawaslu* was formed by Law of the Republic of Indonesia Number 22 of 2007 concerning *Bawaslu*. The law stipulated that the implementation of general elections was controlled by the Provincial *Bawaslu*, Municipal/Municipal *Bawaslu*, District *Panwaslu*, Field *Panwaslu* and Overseas *Panwaslu*²².

Based on Jimly Asshiddique's explanation regarding the purpose of general elections above, Fritz Edward Siregar explained that *Bawaslu* must carry out a crucial transformation, by adding the function of resolving disputes to the general election process, adjudication. This additional authority meant that *Bawaslu* is no longer just a provider of recommendations, but rather an executor or case decider. Based on the general election law, *Bawaslu*'s adjudication function could be carried out to receive, examine, consider and decide on violations of general election administration and general election process disputes.²³ Then Firmansyah explained that the function of *Bawaslu* was very necessary as a state institution under the law which was permanent and has the authority to supervise the running of general elections, take action against violations and resolve disputes over the general election process²⁴.

Al-Mawardi believed that the head of state was the scope of human endeavor as a prophetic caliph in maintaining religion and governing the world.

²² Teguh Prasetyo, *Dignified Elections (Reorienting New Thoughts About Democracy)* (Jakarta: Raja Grafindo Persada, 2017), 124.

²³ Fritz Edaward Siregar, *Bawaslu Towards Election Justice* (Jakarta: Themis Publishing, 2018), 52.

²⁴ Ni'matul Huda dan M. Imam Nasef, *Structuring Democracy & Elections in Post-Reformation Indonesia* (Jakarta: Kencana, 2017), 110.

And taking allegiance to those who carry out the caliphate was obligatory according to Islam. Considering the importance of appointing the head of state, Al-Mawardi formed two groups: First, the electoral group whose task was to elect the imam (caliph) for the people. Second, the imamate (leadership) group which was tasked with appointing one of them as imam (caliph)²⁵. Al-Mawardi revealed the legal requirements for voters in choosing the ideal head of state:

1. Fair and the conditions that accompanied it.
2. Having knowledge that could enable him to know the person who has the right to be appointed as imam (caliph) in accordance with legal requirements.
3. Having wise ideas and attitudes that enabled him to choose the wisest people in managing various interests.

Imam Al-Mawardi who had the right to vote was a person whose personal credibility met all the criteria, and as a voter he must have knowledge, so as a voter he knew who had the right and was worthy of being head of state with the conditions, and as a voter he must also have a strong opinion, and the wisdom that allowed him to choose who was most deserving of the position of head of state and who was most capable of making policies that could realize the benefit of the people. According to Al-Mawardi, those who had the right to elect the imam were the people's representatives who were usually called *Ahl al-Hall wa al-'Aqd*, they were the ones who had the authority to bind, unravel and solve problems, or also called the al-Ikhtiar model.²⁶

Meanwhile, the authority of the Election Supervisory Body (*Bawashu*) from the perspective of *siasyah fiqh*, in dealing with cases of violations of general election administration could be described as followed: first; **Authority to**

²⁵ Imam Al-Mawardi, *Abkam Sulthaniyah* (Jakarta: Qisthi Press, 2017), 10.

²⁶ Muhammad Amin, "Al-Mawardi's Political Thought," *Journal of Prophetic Politics* 4, no. 2 (2016): 131.

Monitor and Supervise: In Islam, the principles of transparency and honesty in the election process were highly emphasized. *Bawaslu* had the authority to monitor and supervise the entire general election process, including administrative processes such as candidate registration, voting and vote counting. This was in line with the principles of justice and public benefit in Islam. Second; **Authority to Receive and Process Complaints:** In Islam, it was important to give individuals and groups the right to submit complaints regarding election violations. *Bawaslu* had the authority to receive, process and investigate complaints related to violations of general election administration. This principle reflected justice and protection of individual rights in Islam. Third; **Authority to Provide Recommendations and Sanctions:** In Islam, proven violations of election law must be dealt with firmly and fairly. *Bawaslu* had the authority to provide recommendations to authorized parties, such as the General Election Commission (KPU) or legal institutions, regarding sanctions or legal action that must be taken against violators. This reflects the principles of justice and public benefit. Fourth; **Authority to Encourage Compliance with Laws:** In Islam, authority holders such as *Bawaslu* had the responsibility to ensure that all parties complied with general election laws. *Bawaslu* could use its authority to educate and provide direction to political parties, candidates and voters to comply with general election laws. This principle reflected efforts to achieve public benefit and maintain the integrity of general elections, and fifth; **Authority to Prevent Violations:** One important aspect in the Islamic perspective is the prevention of violations. *Bawaslu* had the authority to take preventive action, including providing warnings and recommendations to parties who had the potential to commit violations.

3. The Factors Inhibiting *Bawaslu's* Authority in Resolving Violations of Simultaneous General Election Administration Law

General election organizers who had integrity, professionalism and accountability would realize direct, general, free, secret, honest and fair general elections, which was an important requirement in holding general elections, therefore holding general elections in democratic countries was carried out by appointed independent institutions. by the government. In the context of general elections, legal structure entities were certainly inseparable from the role of the General Election Commission (KPU), *Bawaslu*, and the Election Organizer Honorary Council (*DKPP*)²⁷. In carrying out the prevention of general election violations, *Bawaslu*, Provincial *Bawaslu*, and Regency/City *Bawaslu* were regulated in Article 5 Article 6 Article 7 of Election Supervisory Body Regulation Number 20 of 2018 concerning Prevention of Violations and Disputes in the General Election Process, in carrying out general election supervision duties, *Bawaslu* identified and map potential violations and process disputes at each election stage and other important aspects that were not included in the general election stages. *Bawaslu* carried out mapping and early detection (as an early warning system mechanism) of various potential violations and vulnerabilities in order to be prepared to face the simultaneous legislative and presidential and vice-presidential elections and regional head elections.²⁸

Factors that influenced *KPU* compliance in the form of the construction of mandatory norms in the Election Law and the Regional Election Law give rise to different interpretations, compliance was still at the compliance level, obeying the law because of strict sanctions, not yet reaching compliance at the internalization level, the rules in accordance with the intrinsic values he

²⁷ Suwari Akhmaddhian Erga Yuhandra, Iman Jalaludin Rifa'i and Yani Andriyani Haris Budiman, "The Effectiveness of the Prevention Function of the General Election Supervisory Body in Preventing Election Fraud," *Jurnal Ius Constituendum* 8, no. 1 (2023): 5–6.

²⁸ Sukimin Sukimin and Subaidah Ratna Juita, "Actualization of the General Election Supervisory Body in Preventing Election Fraud in Indonesia," *JPeHI (Indonesian Legal Research Journal)* 4, no. 1 (2023): 87.

adhered to, and non-compliance due to the absence of norms that regulated the limits for handling administrative violations. So, this problem did not continue in the next general election/*pilkada*, appropriate steps must be taken in the future; First. Formulate norms that clarified the meaning of the obligation to implement *Bawaslu's* decisions and recommendations in Article 462 of the Election Law by adding one paragraph so the formulation of Article 462 read: (1) The *KPU*, Provincial *KPU*, and Regency/Municipal *KPU* were obliged to follow up on the decisions of *Bawaslu*, Provincial *Bawaslu*, and Regency/City *Bawaslu* no later than 3 (three) working days from the date the decision was read out. (2) The obligation to follow up on the decisions of *Bawaslu*, Provincial *Bawaslu*, and Regency/City *Bawaslu* as intended in paragraph (1) was carried out by not handling administrative violations again. The provisions in the formulation of paragraph (2) of Article 462 of the General Election Law were also applied in the provisions of Article 139 of the Regional Election Law. Second, place criminal sanctions in addition to ethical sanctions in the General Elections/*Pilkada* Law for the *KPU* and staff who did not follow up on *Bawaslu's* decisions and recommendations as a form of compliance. Third, formulate and include provisions governing limits for handling administrative violations in the Election Law General/*Pilkada*, then there was no dualism in handling between *Bawaslu* and the Constitutional Court (*MK*)²⁹.

Handling administrative violations in Regional Head Elections (*Pilkada*) *Bawaslu* formed a panel of examiners consisting of at least 3 (three) people assisted by 1 assistant examiner and 1 note taker. The chairman and members of *Bawaslu* as the panel of judges appeared formal, dressed in black suits and neat ties. They sat at high tables facing visitors. At the front on the left and right sit

²⁹ Bahrul Amal, "Bawaslu's Authority to Adjudicate Over Election Process Disputes Regulated in General Election Commission Regulations (Study of Dki Jakarta Province Bawaslu Election Process Dispute Resolution Decision Number 004/Reg.Lg/Dprd/12.00/Viii/2018)," *Problems of Law* 48, no. 3 (2019): 307.

the reporters from political parties, and the reported parties were usually members of the KPU, both central and regional, with election participants. The chairman of the *Bawaslu* session also had a hammer to start and end activities, as well as knocks on important matters. So far, both the reporter and the reported party had referred to "assembly session" or "chairman of the assembly" for *Bawaslu* members and chairmen³⁰.

Bawaslu had a very important role in enforcing election law. *Bawaslu* as an independent institution as stipulated in Constitutional Court Decision No. 11/PUU-VIII/2010 institutionally *Bawaslu* was no longer part of the KPU, *Bawaslu* was also no longer formed by the KPU. *Bawaslu*'s position was that of an independent institution, its position was equal to that of the KPU, equally as a national, permanent and independent general election organizing institution as regulated in Article 22E paragraph (5) of the 1945 Constitution of the Republic of Indonesia. However, based on the explanation, the duties and authority of *Bawaslu* as a general election supervisory institution still appeared to be very limited in the implementation of general elections³¹.

Based on the decision of the Constitutional Court above, the position of *Bawaslu* as a quasi-judicial/semi-judicial institution in the Indonesian judicial system was actually to respond to the development of modern judicial practices and the fulfillment of real justice for justice seekers in General Elections/*Pilkada*, justice was not only carried out through processes in court (in-court), but could also be done outside the court (out of court). *Bawaslu* as a semi-judicial institution, of course the position of the chairman and members of *Bawaslu* also acted as semi-judges, must apply general (universal) principles that apply to

³⁰ Alasman Mpesau, "Study of Forestry Crimes in Forest Logging Outside the Annual Work Plan for Business Permit Holders for Utilizing Timber Forest Products," *Audito Comparative Law Journal (ACLJ)* 2, no. 1 (2021): 75.

³¹ Dedi Ramdani, "Analysis of the Role of BAWASLU in Law Enforcement for the 2024 Simultaneous Election," *Journal of the Center for Popular Education Studies* 3, no. 1 (2023): 170, <https://pusdikra-publishing.com/index.php/jies>.

judges, for example including ethical standards (code of ethics) and code of behavior. (code of conduct). In this way, *Bawaslu* was no longer just an institution providing recommendations, but as an executor or case decider³². The presence of *Bawaslu* as a General Election judicial institution to handle administrative violations would clearly reduce the lengthy process of general election administration, so this condition would cause the resolution of cases of general election administration violations to be more effective and less lengthy. The reason was that administrative violations could resolved at *Bawaslu*. Moreover, the results of the examination at *Bawaslu* were in the nature of a decision, and must be obeyed by the *KPU* without further consideration, because *Bawaslu*'s decision was final and binding.³³.

Based on the explanation above, Veri Junaidi and Muhammad Ihsan Maulana explained that the institutional model itself was not perfect enough to be used as a model for designing a special court for general elections for *Bawaslu*. However, in the midst of these imperfections, this fragmented institutional model would be much easier if it was reorganized. First, there was no need to build or form new institutions such as the special election court model. Optimizing existing institutions would have a great opportunity to make the work of each institution more effective. We just needed to create a more perfect and integrated design, as well as a high commitment to running this institution in the future. Second, constitutionality was certainly not a matter of debate because it did not use judicial nomenclature. Some institutions did not have to be under the Supreme Court so that they did not give rise to debates about trust in the judiciary, technical debates about careers and ad-hoc judges, caseloads, and so on. Moreover, the Constitutional Court of course still had the authority to

³² Jimly Asshiddiqie, *Special Court, In Black and White Special Court* (Jakarta: Sekretariat Komisi Yudisial Republik Indonesia, 2013), 27.

³³ Abdul Waid, "Affirming Bawaslu as a 'Judicial Institution' in the Frame of Election Supervision," *Adhyasta Election Journal* 1, no. 1 (2021): 58.

resolve disputes over general election results. The one-stop design for enforcing administrative and criminal election violations had both positive and negative impacts in its enforcement. Things that needed to be improved, for example in determining general election crimes. *Bawaslu* had been given the authority to receive reports of suspected general election crimes, so it should be enough for *Bawaslu* to determine whether an act fulfills the elements of a general election crime and then proceeded to the next stage³⁴.

The factor of the still weak enforcement of general election law was not only the substance, but also the process. In discussing general election criminal violations, there were several cases which were later declared not to be violations. Due to several things that could be felt regarding the weaknesses of the Gakkumdu Center, including; first, differences of opinion between institutions (dissenting opinions) which were only a note in the decision. Second, the prosecutor's office and the police who were the members of the Gakkumdu Center were still charged with work responsibilities from their respective agencies so that they did not run effectively, and third, the authority of *Bawaslu*, which should have a central position, was not equal to other institutions (the prosecutor's office and the police) which are institutionally independent. Was part of the executive power which often the executive parties themselves were part of the contestants in the implementation of elections/elections from political party sources. *Bawaslu's* position in Indonesian laws and regulations seemed to be a supporting institution because it was limited by the authority of

³⁴ Veri Junaidi and Muhammad Ihsan Maulana, "Organizing Legal Enforcement Institutions for Simultaneous Elections in 2024," *Journal of Bawaslu, Riau Islands Province* 2, no. 2 (2020): 51–52.

other institutions. This weakness was of course the main problem for Sentra Gakkumdu in handling general election crimes³⁵.

Meanwhile, the authority of the Election Supervisory Body (*Bawaslu*) in enforcing violations of election administration law in Indonesia could be hampered by various factors. Some of these inhibiting factors included: first; **Limitations of Authority:** *Bawaslu* had limited authority to take action against election administration violations. Some election violations, especially those related to criminal law, were outside *Bawaslu*'s authority. This could hinder *Bawaslu*'s ability to deal with serious violations. Second; **Resource Limitations:** *Bawaslu* often faced limited resources, including budget, personnel and infrastructure. These limitations could affect *Bawaslu*'s ability to carry out effective supervision and law enforcement. Third; **Dependence on Other Institutions:** *Bawaslu* often relied on cooperation with other institutions, such as the police and prosecutors, to crack down on election law violations. This dependency could slow down the law enforcement process and reduce the independence of *Bawaslu*. Fourth; **Slow Legal Process:** Legal processes in Indonesia were often slow, and resolution of election violation cases could take months or even years. This could reduce the effectiveness of law enforcement and encourage injustice. Fifth; **Lack of Political Support:** *Bawaslu* sometimes faces political pressure and intervention from interested parties. This could hamper *Bawaslu*'s ability to act independently and effectively. Sixth; **Non-compliance from Parties Involved:** sometimes, parties involved in election violations did not comply with decisions or sanctions imposed by *Bawaslu*. This non-compliance could hinder law enforcement. Seventh; **Complexity of Election Law:** Election law in Indonesia was sometimes complex and difficult to implement. This could hinder *Bawaslu* in understanding and taking action

³⁵ Muh. Aripin Nurmantoro Carto, Adnan Murya, "Analysis of Election and Election Law Enforcement (Study of Handling Violations in Bawaslu, Indramayu Regency)," *Yustitia Journal* 4, no. 02 (2024): 103–104.

against election law violations. Eighth; **Technology and Social Media Obstacles:** In the digital era, the spread of information and propaganda via social media could make monitoring and law enforcement difficult. *Bawaslu* might face difficulties in tracking and dealing with online violations. Ninth; **Challenges in Handling Complaints:** *Bawaslu* received many complaints regarding election violations. The process of investigating and handling complaints could be a very time-consuming task and hamper law enforcement. And tenth; **Security Conditions:** In some cases, security conditions in some areas may hinder *Bawaslu* from carrying out their duties, especially if there was tension or conflict related to elections.

4. The Sanctions for Violations of General Election Administration Law in the *Fiqh Siyasah* Dimension

Legal disputes and election violations could be divided into 6 (six) types: (1) criminal election violations (general election crimes); (2) disputes in the general election process; (3) violations of general election administration; (4) violation of the code of ethics for general election organizers; (5) disputes (disputes) of general election results; and (6) other legal disputes. General election administration violations were violations of the provisions of the Election Law which were not general election criminal provisions and of other provisions regulated in *KPU* regulations. The provisions and requirements according to the general election law could be of course be in the form of provisions and requirements that were regulated, both in the election law and in *KPU* decisions which were regulatory in nature as implementation rules of the general election law. The resolution of general election administration violations is intended to maintain the independence, integrity, accountability and credibility of general election organizers. The resolution of general election administration violations aimed to ensure that elections were held directly, publicly, freely, confidentially, honestly and fairly. Election administration violations were

resolved by the *KPU*, Provincial *KPU*, and Regency/City *KPU* based on reports from *Bawaslu*, Provincial *Pamwaslu*, and Regency/City *Pamwaslu* according to their levels. Reports of election administration violations could be submitted by Indonesian citizens who had the right to vote; election observers; or general election participants³⁶.

The role of legal sanctions had been felt so far, it was a motivator for society to be able to obey the rule of law. In addition, it functioned as a factor that influenced the effectiveness of law in carrying out its function as a means of social control. The definition of sanctions could also be in the form of decisions taken by the state against an apparatus outside of criminal and civil law, for example administrative sanctions, in other words, sanctions had a very big influence on the implementation of the electoral duties of general election organizers. Logically, this could be accepted because from a psychological perspective, humans would feel threatened by sanctions if they violated the law³⁷.

The practice of holding general elections could not be separated from the phenomenon of violations and was committed by general election participants, candidate pairs, campaign teams, legislative candidates and/or members of the public or voters, even general election organizers³⁸. The role of legal sanctions had been felt so far, namely that it is a motivator for society to be able to obey the rule of law. In addition, it functioned as a factor that could influence the effectiveness of law in carrying out its function as a means of social control. The definition of sanctions could also be in the form of decisions taken

³⁶ Topo Santoso Ramlan Surbakti, Didik Supriyanto, *Handling Election Violations* (Jakarta: Kemitraan bagi Pembaruan Tata Pemerintahan, 2011), 18.

³⁷ Asbudi Dwi Saputra, "Application of Sanctions for Administrative Election Violations for Election Organizers," *Pleno Jure* 9, no. 2 (2020): 132.

³⁸ Amal, "Bawaslu's Authority to Adjudicate Over Election Process Disputes Regulated in General Election Commission Regulations (*Study of Dki Jakarta Province Bawaslu Election Process Dispute Resolution Decision Number 004/Reg.Lg/Dprd/12.00/Viii/2018*)," 3.

by the state against an apparatus outside of criminal and civil law, for example administrative sanctions, in other words, sanctions had a very big influence on the implementation of the electoral duties of general election organizers. Logically, this could be accepted because from a psychological perspective, humans would feel threatened by sanctions if they violate the law. In this connection, the threat of sanctions for general election organizers was always intimidating, so their actions were always controlled and try to avoid violations, not only criminal election violations, but also violations of general election administration. This would be achieved if the administrative violations were accompanied by strict sanctions for any general election violations. The legal sanctions for violations of general election administration were regulated in Law of the Republic of Indonesia Number 7 of 2023 concerning General Elections.

The importance of sanctions in maintaining the fairness of general elections could not be doubted. Sanctions had a central role in maintaining the integrity and transparency of the general election process. The several reasons why sanctions were important in maintaining the fairness of general elections: first; preventing legal violations: sanctions acted as a deterrent for individuals or entities likely to violate election laws. A clear threat of sanctions could reduce incentives to commit fraud or break the law, such as vote fraud or voter intimidation. Second; maintaining public trust: the fairness of elections was the foundation of public trust in a democratic system. If elections were deemed unfair because legal violations were not followed up, then public trust would be eroded. Fairly applied sanctions help maintain this trust. Third; encouraging honest participation: when people believed that election violations would be punished, they were more likely to participate in elections honestly. They would not feel that fraud by other parties would harm their voting rights. Fourth; provide justice for honest candidates: candidates who went through the election process honestly and followed the rules should receive protection from the

authorities. Sanctions against fraudulent competitors provided justice for candidates with integrity. Fifth; respect democratic principles: a healthy democracy required the rule of law to be enforced fairly. Sanctions were an important part of these rules. When violations of election law were not subject to sanctions, the principles of democracy and the supremacy of law were threatened. Sixth; Avoiding Social Conflict: Unsanctioned election violations could trigger social tension and conflict. Strict sanctions helped to prevent potential conflict and political instability. And seventh; provide deterrence: strict sanctions could function as a deterrence tool, preventing potential violations with the threat of clear punishment. This helped to maintain a level of honesty in elections.

The importance of sanctions in maintaining the fairness of general elections in the dimension of *siyasah fiqh* were linked to the principles of *fiqh* and *qaidah ushul fiqh*. In this context, several relevant *ushul fiqh qaidah* were: first; *Qaidah Al-Maslahah Murlah* (unstated principle of usefulness): In *fiqh*, the principle of usefulness (*maslahah*) was very important. In the context of general elections, sanctions applied for violations of election administration law aim to protect public benefits, maintaining the integrity of the election process and public trust in democracy. This principle justified the use of sanctions to prevent and punish election violations that could damage the public interest. Second; *Qaidah Al-Adillah fi Al-Maqasid* (principle of justice in fulfilling objectives): One of the main objectives of elections was to achieve justice and fulfill people's rights. The sanctions applied must be in line with this principle of justice. They must be enforced fairly, indiscriminately, and based on strong evidence. This was to ensure that the rights of the people and candidates are protected. Third; *Qaidah Al-Tafsil li Al-Mashalih* (detailed principle in understanding benefits): In the context of elections, sanctions must be detailed and applied proportionally. This principle reminded us that sanctions must be appropriate to the level of the

violation committed. In the case of election violations, the type of sanction and the severity of the sanction must be adjusted to the violation that occurred. And Fourth; *Qaidah Al-Ihtiyat* (vigilance principle): This principle emphasized the importance of preventing potential damage. Sanctions in elections were preventive and remedial measures. By implementing sanctions, the public and election participants would be more careful in carrying out the election process and would not risk to break the law.

Meanwhile, in the *fiqh siyasah* dimension, sanctions that might be applied in the context of violations of general election administration law can vary depending on the level of the violation and the applicable law. Some sanctions that were applied included: first; **Candidate Disqualification**: If a candidate was proven to have committed serious violations, such as vote falsification or other fraudulent acts, they might be disqualified from voting and barred from running in future elections. Second; **Monetary Fines**: Monetary fines might be imposed on individuals or political parties involved in election violations. These fines might include fines that must be paid as a penalty or as compensation for losses caused by the violation. Third; **Suspension of the Right to Vote and Nominate**: Election violations might result in the suspension of the right to vote or stand for election for a certain period of time. This was an important precaution to deter individuals from engaging in serious misconduct. Fourth; **Strict Scrutiny**: Political parties or individuals involved in violations may be subject to strict scrutiny in the upcoming elections. This oversight included close monitoring by election authorities to ensure compliance with election rules. Fifth; **Withdrawal of Election Results**: In cases of serious violations that could affect election results, election resulted might be annulled or withdrawn, and new elections held to ensure a fairer process. And sixth; **Temporary Suspension of Political Parties**: In extreme situations where a political party was involved in

the serious violations, the party might be temporarily suspended or prohibited from participating in politics.

D. CONCLUSION

Bawaslu had various authorities in dealing with violations of general election administration law, including monitoring, handling complaints, investigating, providing recommendations, hearings, campaign assistance, and issuing guidelines. This authority aimed to maintain the integrity and fairness of general elections. *Bawaslu's* authority reflected the principles of justice, public benefit and protection of individual rights. Monitoring and handling complaints was an instrument for preventing violations and ensuring that general elections ran in accordance with moral principles. In addition, the hearings and recommendations provided by *Bawaslu* aimed to maintain integrity and fairness in the election process, in line with the principles of *fiqh siyasah* which encouraged the implementation of justice for all levels of society in political matters or general elections.

Administrative sanctions that *Bawaslu* could impose on violators of election administration law include cutting campaign budgets, terminating candidacy, as well as recommendations to the General Election Commission (*KPU*). These sanctions aimed to encourage compliance with the rules and provide consequences for violators. Even these sanctions were administrative in nature, *Bawaslu's* role in maintaining the integrity of general elections was an important step in supporting the democratic process in Indonesia.

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