

THE PROBLEM OF PROVING THE INVOLVEMENT OF STATE CIVIL APPARATUS IN REGIONAL HEAD ELECTIONS IN A STRUCTURED, SYSTEMATIC AND MASSIVE MANNER IN DISPUTES IN THE CONSTITUTIONAL COURT

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ABSTRACT

The election of regional heads is a real manifestation of the sovereignty of the people, as stated in Article 18 paragraph (4) of the 1945 Constitution, stating "Governors, Regents, and Mayors are democratically elected as heads of provincial, district, and city governments", in this context, the existence of ASN is very important. It is hoped that ASN can maintain strong neutrality. If it is found that ASN is involved in deliberately supporting one of the candidates, then the ASN will be processed legally. If proven, of course it violates the ASN neutrality rules in Article 2 letter (f) of Law No. 20 of 2023, and this is included in the category of TSM Pilkada violations. So far, the Constitutional Court has rarely decided on Pilkada Results Dispute cases related to TSM ASN involvement. The Constitutional Court should conduct a re-investigation related to the involvement of ASN during the Pilkada, not only listening to statements from the parties, and it is also important to remove the threshold for violations that are TSM in nature, because in reality the Constitutional Court will carry out the proof process if it has met the threshold only, and it is also important to strengthen the implementation of the Pilkada organizing bodies, this is done because the Constitutional Court is the last door for candidates who feel disadvantaged by indications of fraud, and this will have an impact on the community because they get a leader who is not based on an election based on the principles of free and fair elections.

Keywords: Evidence, State Civil Apparatus, Regional Elections, Structured, Systematic, and Maif, Constitutional Court.

A. Introduction

Indonesia is a democratic country, the word democracy itself comes from Greek, demos means people and cratein or cratos means power or sovereignty, according to Abraham Lincoln democracy is a government of the people, by the people, and for the people.¹ If we look closely, the 1945 Constitution regulates the principle of people's sovereignty, which is stated in Article 1 Paragraph (2) which reads, "Sovereignty lies in the hands of the people and is implemented according to the Constitution." This confirms that sovereignty is directly in the hands of the

¹ Waisol Qoroni, (2021), "Kedaulatan Rakyat Dalam Konteks Demokrasi Di Indonesia", *Journal Inicio Legis*, Vol. 2, No.1, hal. 52.

people, the people who have the right to elect regional heads. The implementation of regional elections is carried out directly, publicly, freely, and secretly by the local community.²

Regional elections are a real manifestation of people's sovereignty, this is stated in Article 18 paragraph (4) of the 1945 Constitution, which states that "Governors, Regents, and Mayors are democratically elected as heads of provincial, district, and city governments", in this context, the existence of ASN is very important as the backbone of the bureaucratic system. It is hoped that ASN can demonstrate high professionalism, maintain strong neutrality, and be free from political interference.³

This ASN non-neutrality is very often found in the Pilkada, one of which is in the 2024 Pilkada, in North Maluku Province, there was fraud and violations committed by the Civil Servant Bureaucracy in the North Maluku Provincial Government and the North Maluku Provincial Election Commission and the North Maluku Provincial Bawaslu which was driven by the Acting Governor and the Acting Regional Secretary of North Maluku Province, namely Abu Bakar Abdullah, who called on all ASN of the North Maluku Provincial Government by distributing Photo Stickers of Candidate Pair No. 4, namely Sherly Joanda and Sarbin Sehe via WhatsApp messages and has been distributed to the wider community in North Maluku Province and throughout Indonesia.

In relation to this, the Constitutional Court finds it difficult to obtain convincing evidence regarding the existence of TSM violations, therefore the Constitutional Court as an institution that will decide on the case must ensure or further investigate the violations submitted by the applicants whether they are true or not, not only based on the statements submitted by the KPU and Bawaslu, so that it can clarify evidence in court, especially related to the re-nomination of incumbents in the Pilkada which has great potential to commit TSM violations by involving regional officials and ASN in campaign activities.

² Sarbaini, (2020), "Penyelenggaraan Pemilihan Kepala Daerah Secara Langsung Dan Demokratis Sebagai Bentuk Perwujudan Hak Asasi Politik Masyarakat Di Indonesia", *Jurnal Hukum*, Vol. 12, No. 1, hal. 107.

³ Sandy Mulia Arhdan, dkk, (2024), "Penegakan Hukum Terhadap Pelanggaran Netralitas ASN dalam Pilkada Serentak 2020 di Sumatera Barat", *Jurnal Unes Law Review*, Vol. 7, No. 1, hal. 256.

B. Research Methods

A study cannot be called research if it does not have a research method.⁴ Research methods are one of the factors of a problem that will be discussed.⁵ The study was conducted using secondary data which was analyzed qualitatively using the Desk Research Method.⁶ The literature materials used in writing this research are several references originating from research results, studies, and reviews of several writings which are then summarized into a scientific paper.⁷

C. Discussion

1. Forms of Violations of the Involvement of State Civil Apparatus in Regional Head Elections

ASN neutrality plays a very important role in ensuring that government institutions operate fairly and without bias. However, this policy faces various legal challenges that need to be further examined. In line with Article 28 J paragraph (2) of the 1945 Constitution, it is stated that "In exercising their rights and freedoms, everyone must submit to the restrictions stipulated by law to guarantee recognition and respect for the rights and freedoms of others and to fulfill just demands in accordance with moral considerations, religious values, security, and public order in a democratic society".⁸

Based on the above-mentioned article, it can be understood that rights and freedoms should not be absolute. Although every individual has rights, there are limitations set by law to ensure that these rights do not harm others. These limitations are important to maintain a balance between individual rights and the interests of society. Election Participants are also prohibited from involving ASN in campaign activities as stipulated in Article 280 paragraph (2) letter of the Election Law. This prohibition is intended so that ASN continue to work as public servants without harming the democratic process because they do not treat each candidate pair and legislative candidate fairly.

Neutrality as one of the principles of ASN, in reality still shows many ASN violating the principle. This indicates a gap between the expectations that should occur and the reality

⁴ Koto, I., Hati, L. P., Manurung, A. S., & Siregar, A. S. (2024). Islamic Holy Days: The Contention of Rukyatul Hillal and Hisab Hakiki Wujudul Hilal Disputes for Muslims in Indonesia. *Pharos Journal of Theology*, 105(2).

⁵ Hanifah, I., & Koto, I. (2025). Legal Protection for Workers with Fixed-Term Employment Agreements Before and After the Job Creation Law. *Kosmik Hukum*, 25(2), 245-256.

⁶ Simatupang, R. S. A. (2024). Pelaksanaan Sistem Peradilan Pidana Anak Di Indonesia Perspektif Nilai Keadilan. *Jurnal Yuridis*, 11(1), 54-63.

⁷ Perdana, S., & Koto, I. (2024). Providing Legal Protection for Consumers Against Standard Clauses/One-sided Agreements Made by Business Actors. *DE LEGA LATA: Jurnal Ilmu Hukum*, 9(1), 23-30.

⁸ Roni Sulistyanto Luhukay, (2024), *Netralitas Aparatur Sipil Negara Dalam Perspektifhak Asasi Manusia*, *Jurnal Humanity Jurnal Riset Dan Kajian Hukum Hak Asasi Manusia*, hal. 52.

that occurs in the field. Based on the Press Release of the State Civil Service Agency, during the 2020 simultaneous Pilkada, there were 2,034 cases of violations of ASN neutrality. This figure illustrates the complexity of the challenges in maintaining ASN neutrality in the midst of the general election process. Of the total, 1,597 ASN or 78.5% were proven to have committed violations. This situation raises concerns about the integrity of the ongoing democratic process.

2. Evidence of State Civil Apparatus in Regional Head Election Disputes at the Constitutional Court

The implementation of disputes over regional election results is now under the authority of the Constitutional Court with the enactment of Law No. 12 of 2008 concerning Amendments to Law No. 32 of 2004 concerning Regional Government, based on Article 236 C which reads: "Handling of disputes over the results of vote counting for regional head and deputy regional head elections by the Supreme Court is transferred to the Constitutional Court no later than 18 months since this Law is enacted."⁹

Election result disputes are disputes between the Provincial KPU and/or Regency/City KPU and election participants regarding the determination of the vote acquisition of the election results, the KPU is a national, permanent, and independent election organizing institution tasked with implementing elections. Bawaslu is an election organizing institution that oversees the implementation of elections throughout Indonesia, while election participants are Candidate Pairs for Governor and Deputy Governor, Candidate Pairs for Regent and Deputy Regent, and Candidate Pairs for Mayor and Deputy Mayor. Determination of the acquisition of different numbers of votes is submitted to the Constitutional Court as an institution that has the authority to try this case.¹⁰

The procedure for resolving disputes over regional election results at the Constitutional Court is specifically regulated in PMK 6/2020 concerning Procedures in Disputes over the Results of the Election of Governors, Regents, and Mayors. One important aspect regulated in this regulation is the evidence process carried out during the trial related to disputes over regional election results, as well as the types of evidence used in the evidence process.

Evidence submitted to the Constitutional Court, whether submitted by the applicant or the respondent and/or related parties, must be legally accountable for its acquisition or method

⁹ Rizqa Amelia, (2023), *Dinamika Penyelesaian Sengketa Perselisihan Hasil Dalam Pemilihan Umum Kepala Daerah*, *Jurnal Ilmu Hukum Legal Opinion*, Vol. II, No. 4, hal. 239.

¹⁰ Fitra Mutiara Al Hasna, (2024), *Tinjauan Terhadap Penyebab Sengketa Perselisihan Tentang Hasil Pemilihan Umum di Indonesia*, *Ethics and Law Journal: Business and Notary*, Vol. 2, No. 1, hal. 275.

of acquisition. Evidence obtained or obtained in a manner contrary to the law cannot be validated by a constitutional judge as evidence. Therefore, every applicant and/or other party submitting evidence to a constitutional judge, the method of obtaining or obtaining the evidence is always examined.

D. Conclusion

The Constitutional Court will accept the application, conduct a process of proof related to TSM violations if it has met the threshold for calculating the number of votes with the provisions above, whereas in fact, the Constitutional Court as an institution authorized to decide this case needs to conduct an in-depth investigation into the violations reported by the applicants. This is important so that the authenticity of the violation can be ascertained, not only relying on the threshold of the difference in votes between candidates and the information provided by the KPU and Bawaslu. Thus, the Constitutional Court can dig up clear evidence in the trial. Moreover, in the context of the re-nomination of incumbents in the regional elections, there is great potential for TSM violations to occur, especially with the involvement of regional officials in campaign activities.

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