

Differences In Interpretation Between The District Kpu And Bawaslu Of Gorontalo District Related To Administrative Violations Of The 2020 Regional Elections In Gorontalo District

by Moh. Maskun Nuna

Submission date: 29-May-2024 01:46PM (UTC+0700)

Submission ID: 2390615260

File name: Jurnal_Maskun_Dkk.docx (57.72K)

Word count: 7062

Character count: 39019



Differences In Interpretation Between The District Kpu And Bawaslu Of Gorontalo District Related To Administrative Violations Of The 2020 Regional Elections In Gorontalo District

**Moh. Maskun Nuna, Roy Marthen Moonti, Yusrianto Kadir, Marten Bunga, Muslim
Kasim**

Universitas Negeri Gorontalo

Address : Jl. Jend. Sudirman No.6, Dulalowo Tim., Kec. Kota Tengah, Kota Gorontalo,
Gorontalo 96128

Abstract

The purpose of the research is to find out the causes of differences in interpretation between the Gorontalo Regency KPU and Bawaslu Gorontalo Regency regarding administrative violations of the 2020 elections in Gorontalo Regency and how the process of resolving administrative violations of the 2020 elections in Gorontalo Regency by the Gorontalo Regency KPU and Bawaslu Gorontalo Regency. This research uses two legal research methods, namely: Normative and empirical legal research to find answers to the differences in interpretation between the KPU and Bawaslu Gorontalo Regency regarding administrative violations of the 2020 Pilkada in Gorontalo Regency. The difference in interpretation between the Regency KPU and Bawaslu Gorontalo Regency regarding administrative violations is caused by overlapping statutory provisions. Where in Law Number 10 Year 201 concerning Pilkada, the two institutions are given the authority to examine and decide administrative violations, then the two institutions in deciding administrative violations have their own guidelines where Bawaslu is guided by Perbawaslu while the KPU itself is guided by KPU Regulations. This certainly does not provide legal certainty for justice seekers in election administration violations and the process of resolving administrative violations in the 2020 Pilkada in Gorontalo Regency, namely through DKPP and Constitutional Court decisions. We do not have to face different decisions between the two institutions because DKPP is an ethical judicial institution while the Constitutional Court is a legal judicial institution. Although there has been a decision from the Constitutional Court, it does not change the DKPP's decision because until now there has been no ethics court to appeal the DKPP's decision.

Keywords: Interpretation; KPU; Bawaslu; Administrative Violations; Pilkada

INTRODUCTION

Elections are an important instrument in a democratic country with a representative system. Elections have been recognized globally as a channel of popular sovereignty in the form of people's political participation to exercise their voting rights. (Lutfi Ansori, 2017) Sixteenth American President Abraham Lincoln, at a Republican party convention in 1956, he said that, "ballots are stronger than bullets". Which if we mean, ballots that represent the voice of the people have a greater impact on life than bullets. (M. Afifudin, 2020) As one of the tools of democracy, elections change the abstract concept of popular sovereignty to be clearer. The results of elections are people who are elected to represent the people and work for the people and on behalf of the people. Thus, elections are a way of change to lead the people to give birth to leaders who have the ability to formulate the right policies, to improve the fate of the people together. Because elections are a means of peaceful leadership change. (Hendra Budiman, 2015).

In Indonesia, election-related regulations continue to undergo changes to find the ideal electoral system in accordance with the wishes of politicians and lawmakers as well as adjusted

to the conditions of society and input from academics regarding the evaluation of the implementation of elections in Indonesia. (Muhamad A. Rauf, 2021) Elections in Indonesia, based on the Constitution of the Republic of Indonesia, are carried out to organize the state institutional system related to Article 2 paragraph (1) which regulates the MPR, Article 18 paragraph (3) which regulates the DPRD, as an element of regional government organizers, Article 19 paragraph (2) which regulates the composition of the DPR, Article 22C paragraph (4) which regulates the composition and position of the DPD, and Article 22E concerning elections for DPR, DPD and DPRD. Article 22E paragraph 6 states that elections are based on direct, general, free, secret, honest and fair principles. (Fujlurrahman, 2018).

Related to the general provisions of regional elections is regulated in Article 18 paragraph (4) of the 1945 Constitution which reads: Governors, Regents and Mayors are democratically elected heads of the provincial, regency and municipal governments, respectively. The definition of the phrase democratic can be interpreted alternatively as direct democracy and indirect democracy to recognize and respect regions that have privileges so that not all regional heads can be elected directly. (Iqbal Nasir, 2020) In the reform era, the demand for the formation of an election organizer that is independent and free from the cooptation of the authorities is getting stronger. For this reason, an independent election management institution was created (Dede Sri Kartini, 2017) As stated in the constitution, the 1945 Constitution article 22E paragraph (5) the institution mandated to carry out the election process is an election commission.

However, based on the Constitutional Court's decision No. 11/PUU-VII/2010 on election organizers, the Constitutional Court interpreted that the phrase "general election commission" is not specific to one particular institution, but rather indicates the function of election organizers which has a national, permanent and independent nature. Thus, based on this decision, the function of the election organizer is not only the task of the KPU but also Bawaslu. Along with the time of the election organizers, one more is added, namely DKPP as a mandate from Law Number 15 of 2011. The formation of DKPP is to handle violations of the code of ethics of election organizers.

Law Number 7 of 2017 concerning elections has undergone many significant changes both in terms of the duties and authority of the election organizers in this case, KPU, Bawaslu, and DKPP. Law Number 7 Year 2017 in article 1 number 7 has regulated the three institutions. An important factor for the success of organizing elections lies in the readiness and professionalism of the election organizers themselves, namely the General Election Commission, the Election Supervisory Body, and the Honorary Board of Election Organizers as a unified function of

organizing elections. These three institutions are mandated by law to organize elections according to their respective functions, duties and authorities with one main unit of organizing elections.

The implementation of elections with integrity, accountability and quality is one of the goals to be achieved from a democracy to give birth to the best leaders of the people's choice at all levels or orders. However, we can see that the practice of democracy in Indonesia, which includes provinces, districts and cities, does not always run smoothly. Theoretically and empirically, there are still many obstacles that interfere with the substance and quality of elections. (Iqbal Nasir, 2020)

In its implementation, the presence of the EMB has not been effective because there are still many frauds, violations, or unlawful acts in the implementation of elections. Not only by election participants, candidate pairs, campaign teams, or by members of the community but also by the EMB from time to time. Since the first time it was held on June 1, 2005, there is a phenomenon that the holding of regional elections has always been followed by a lawsuit for election violations. In 2020, there were 136 requests for disputes over election results that had been registered at the Constitutional Court.

In Gorontalo Regency itself, there is an interesting election case where the Regency KPU and Bawaslu of Gorontalo Regency have different interpretations regarding election administration violations. On October 10, 2020, the Gorontalo Regency Bawaslu issued a recommendation with number 210/K.GO.03/PM-06.02/X/2020 regarding election administration violations committed by one of the candidate pairs. However, the Gorontalo Regency KPU itself did not follow up on the Bawaslu recommendation. This is stated in the results of the Gorontalo Regency KPU follow-up with number 658 / KPU-Kab / X / 2020. This indicates that the two institutions are no longer harmonious and will jeopardize democracy in Gorontalo Regency itself.

Law enforcement on administrative offenses must be identified by knowing the classification of legal problems. In addition, it must also be understood about the flow of resolving administrative violations and the institutions that handle them. The handling of administrative violations in the 2020 Pilkada refers to Law Number 10 of 2016 as last amended by Law Number 6 of 2020.

The problems in this study are what causes differences in interpretation between the Regency KPU and Bawaslu Gorontalo Regency regarding administrative violations in the 2020 elections in Gorontalo Regency and how the process of resolving administrative violations in

the 2020 elections in Gorontalo Regency by the Gorontalo Regency KPU and Bawaslu Gorontalo Regency.

RESEARCH METHODS

This research uses two legal research methods, namely: Normative and empirical legal research to find answers to the differences in interpretation between the KPU and Bawaslu Gorontalo Regency regarding administrative violations of the 2020 Pilkada in Gorontalo Regency. Normative research is doctrinal legal research, which refers to what is written in an invitation (positive law) which leads to appropriate rules or norms (Djoenadi Efendi, Johnny Ibrahim, 2018) Normative legal research serves to provide juridical arguments for vacancies, vagueness and conflicts of legal norms (Djulaeka et al, 2018) While empirical research is research called sociological legal research or direct research in the field with data obtained directly from the community. (Joenaedi, Johnny Ibrahim, 2018)

DISCUSSION

Causes of Differences in interpretation between the Gorontalo Regency KPU and the Gorontalo Regency Bawaslu regarding administrative violations in the 2020 regional elections in Gorontalo Regency.

The year 2020 is a moment of local democracy in Indonesia. Where several regions conduct their respective regional head elections. Gorontalo Regency is one of the regions that held the regional head election. The 2020 elections in Gorontalo Regency are followed by four candidate pairs determined by the Gorontalo Regency KPU, namely:

1. Regent Candidate H. Tonny S. Junius and Vice Regent Candidate H. Daryatno Gobel. (No. 1).
2. Regent Candidate Pair (Incumbent) Prof. Dr. Ir. H. Nelson Pomalingo, M.Pd, as the Incumbent and Vice Regent Candidate Hendra S. Hemeto, ST. (No. 2).
3. Regent Candidate Chamdi Ali Tumenggung Mayang, and Vice Regent Candidate Tomy Ishak. (No. sequence 3).
4. Candidate pair of Regent Dr. H. Rustam Hs. Akili, SH, MH, and Vice Regent Candidate Dicky Gobel, SE (No. sequence 4).

Among the four candidate pairs, the incumbent or Regent of Gorontalo is included in it. In the initial chronology related to differences in interpretation between the Regency KPU and Bawaslu Gorontalo Regency regarding administrative violations of the 2020 elections, it was

marked by the existence of several activities or programs carried out by the incumbent party which were suspected of being a form of election administration violation.

The first activity was a tourism cruise on June 27, 2020 by the Gorontalo Metig motorcycle community which was attended directly by the Regent of Gorontalo. The second activity is the launching of the handsanitizer on July 23, 2020. The third was on September 14, 2020 which was carried out by the fisheries service for the delivery of fiber assistance which was attended directly by the Regent of Gorontalo. These three events resulted in a report regarding alleged administrative violations at the Gorontalo Regency Bawaslu Office, which in turn the Gorontalo Regency Bawaslu issued a Recommendation Letter Number 210/K.GO-03/PM-06.02/X/2020 and was followed up by the Gorontalo Regency KPU with letter number 658/KPU-Kab/X/2020 in the form of PAPTL-2 form. The two letters have different contents due to different interpretations.

Based on the results of the researcher's interview with the Chairperson of the Gorontalo Regency Bawaslu, Mr. Wahyudin MAkili, he said that before there was a report from the public regarding administrative violations, the Gorontalo Regency Bawaslu had learned of alleged administrative violations through information on online media. Then the Gorontalo Regency Bawaslu conducted an initial search related to the case by visiting the scene directly with members of the panwascam in the middle of the journey of this case right on October 1, 2020, one of the people with the initials RB reported to the Gorontalo Regency Bawaslu for alleged election administration violations that used authority, programs, and activities that benefit or harm one of the candidate pairs in their own area or in other areas both 6 (six) months before the determination of candidate pairs in tourism exploration activities carried out by the Gorontalo Regency Youth and Sports and Tourism Office, the production of hand sanitizers, which read NDP 912 through the Gorontalo Regency Regional Disaster Management Agency (BPBD) and the delivery of fisheries assistance to the Gorontalo Regency Fisheries Service carried out by the incumbent who is also a candidate for Regent in 2020. Based on that, the Gorontalo Regency Regent is indicated to have violated the provisions of article 71 paragraph 3 of law number 10 of 2016.

Not only that, RB also reported the Chairperson and Members of the Gorontalo Regency KPU regarding the stages of determining candidate pairs where on September 23 the Gorontalo Regency KPU determined one of the incumbent regent candidate pairs who allegedly took actions that were not in accordance with article 89 letter b of pkpu number 1 of 2020 which states: incumbents are not eligible if, using authority, programs, and activities that benefit or harm one of the candidate pairs both in their own area and in other areas within 6 (six) months

before the date of determining the candidate pair until the determination of the elected candidate pair.

In the next interview, the researcher interviewed a member of Bawaslu, Coordinator of the Legal Division, Handling Violations and Dispute Resolution of the Gorontalo Regency Bawaslu, Mr. Fadjiri Arsyad, where he said that after the formal and material requirements were met, the Gorontalo Regency Bawaslu took steps in accordance with statutory provisions. In the process of handling violations, the Gorontalo Regency Bawaslu is guided by Law Number 10 of 2016 which is technically regulated in Perbawaslu Number 8 of 2020.

Before the report related to this case, the Gorontalo Regency Bawaslu still used Perbawaslu Number 14 of 2017 after the report entered the Gorontalo Regency Bawaslu using Perbawaslu Number 8 of 2020. Because at that time Bawaslu RI ordered to use these rules because there were changes in regulations related to handling violations. Coinciding with reports related to alleged administrative violations, the Gorontalo Regency Bawaslu used Perbawaslu Number 8 of 2020. In Perbawaslu Number 8 of 2020 in article 3 states that the handling of election violations as referred to in article 2 is carried out based on reports or findings.

Where the explanation of reports and findings has been regulated in article 1 paragraph 18 and 19. Article 1 paragraph (18) Perbawaslu 8/2020 Alleged Violation Report hereinafter referred to as Report is a report submitted in writing by the reporter to the Election Supervisor regarding the alleged occurrence of Election violations. Whereas in article 1 paragraph 19 says that the findings of alleged violations are the results of active supervision of election supervisors containing alleged violations.

Based on the researcher's interview with the Gorontalo Regency Bawaslu member, Mr. Alexander Kaaba, at that time the Gorontalo Regency Bawaslu presented the relevant parties, namely the reported party, 24 witnesses and 2 witnesses from the Gorontalo Regency DPRD and the Gorontalo Regency Regional Asset Financial Management Agency and expert witnesses who were asked to explain whether the actions taken by the reported party violated the provisions of the law.

After conducting a study related to the case on October 10, 2020, the Gorontalo Regency Bawaslu issued a recommendation letter Number 210/K.GO-03/PM-06.02/X/2020 Regarding Tracing Violations of election administration, where based on a plenary meeting of the Chairperson and Members of the Gorontalo Regency Bawaslu, the report was suspected of being an election administration violation. The delivery of the letter was carried out live streaming on the Facebook account of the Gorontalo Regency Bawaslu.

Based on the recommendations in terms of the Gorontalo Regency Bawaslu study, it contains 3 conclusions, namely as follows:

1. The reported Chairperson and Members of the Gorontalo Regency KPU committed election administration violations of the provisions of article 89 letter b of KPU regulation number 13 of 2017, as amended by KPU Regulation number 9 of 2020 concerning the nomination for the election of Governors, and Deputy Governors, Regents and Deputy Regents, and Mayors and Deputy Mayors.
2. Reported Prof. Dr. Ir. H. Nelson Pomalingo, M.Pd as a Regent / Incumbent candidate violated article 71 paragraph 3 of law number 16 of 2016 concerning the election of Governors, Regents and Mayors.
3. Requesting the Chairman and Members of Gorontalo Regency KPU to amend the decision letter of Gorontalo Regency KPU number: 270/PL.02. . 3-Kpt/7501/KPU-Kab/IX/2020 concerning Determination of Sequential Numbers and List of candidate pairs participating in the Gorontalo Regent and Deputy Regent Elections in 2020 by complying with the provisions of Article 71 paragraph 5 of Law Number 16 of 2016 concerning the Election of Governors, Regents and Mayors which has been amended several times, the last being Law Number 6 of 2020 which states: in the event that the Governor or Deputy Governor, Regent or Deputy Regent and Mayor and Deputy Mayor as the incumbent violates the provisions of paragraph 2 and paragraph 3, the incumbent is subject to sanctions for cancellation as a candidate by the Provincial KPU, or Regency / City KPU and the provisions of article 90 paragraph 1 letter f PKPU number 9 of 2020.

Based on the results of Bawaslu's recommendations, the Gorontalo Regency KPU took steps in accordance with statutory provisions. On this occasion, researchers interviewed the current chairman of the Gorontalo Regency KPU, Mr. Rasid Patamani, who said that according to Law Number 10/2016, the legal norms governing the duties and responsibilities of the Regency KPU regarding election administration violations are regulated in Article 13 letter p, Article 138, Article 139, Article 140 and Article 141. In handling election administration violations, the KPU must also refer to PKPU Number 25 of 2013 as amended to PKPU Number 13 of 2014. Where each article reads as follows:

1. Article 13 letter p of Law Number 10 Year 2016 reads: "follow up the recommendations of the Regency / City Panwaslu on the findings and reports of alleged election violations".
2. Article 138 of Law Number 10/2016 reads: "Election administration violations are violations that include procedures, procedures, and mechanisms related to the

administration of the implementation of elections in the implementation of elections outside of election crimes and violations of the election organizer's code of ethics”.

3. Article 139 of law number 10 of 2016.
 - a. The Provincial Bawaslu and/or Regency/City Panwaslu make recommendations on the results of their studies as referred to in Article 134 paragraph 5 related to election administration violations.
 - b. The Provincial KPU and/or Regency/City KPU shall follow up the recommendation of the Provincial Bawaslu and/or Regency/City Panwaslu as referred to in paragraph 1.
 - c. The Provincial KPU and/or Regency/City KPU in resolving election administration violations based on the recommendations of the Provincial Bawaslu and/or Regency/City Panwaslu in accordance with their levels.
4. Article 140 of Law Number 10 Year 2016.
 - a. The Provincial KPU and/or Regency/City KPU shall examine and decide on administrative violations as referred to in Article 139 paragraph 2 no later than 7 (Seven) days after the recommendation of the Provincial Bawaslu and/or Regency/City Panwaslu is received.
 - b. Further provisions regarding the procedures for resolving election administration violations are regulated in KPU regulations.
5. Article 141 of Law Number 10 of 2016 reads: “in the event that the Provincial KPU and / or Regency / City KPU PPK, PPS or election participants do not follow up on the recommendations of the Provincial Bawaslu and / or Regency / City Panwaslu as referred to in article 139 paragraph 2, the Provincial Bawaslu and / or Regency / City Panwaslu sanction an oral warning or written warning”.
6. KPU Regulation No. 25 of 2013 states in article 5 that the types of elections referred to in article 3 paragraph 1 include.
 - a. Elections for Members of the House of Representatives, Regional Representatives Council, and Regional People's Representatives Council.
 - b. Election of the President and Vice President.
 - c. Elections of Governors and Deputy Governors, Regents and Deputy Regents, and Mayors and Deputy Mayors.
7. Article 13 paragraph 1 of KPU Regulation Number 13 Year 2014 states that: “Provincial KPU / Aceh KPU / Regency / City KPU, PPK, PPS, PPLN KPPS / KPPSLN can consult with KPU 1 (one) level above”.
8. Article 18 of KPU regulation No. 13/2014 states that

- a. Re-examine the data or documents as recommended by Bawaslu in accordance with its level and/or
- b. Exploring, seeking and receiving input from various parties for completeness and clarity of understanding of reports of election administration violations.

That is the legal basis used by the Gorontalo Regency KPU in following up on the recommendation of the Gorontalo Regency Bawaslu, based on the results of an interview with Mr. Rasyid Sayiu where he said there were various steps taken by the Gorontalo Regency KPU after receiving the recommendation of the Gorontalo Regency Bawaslu, namely on October 11, 2020 the Gorontalo Regency KPU then compiled a chronology of initial percematan related to the case through a plenary meeting, and based on the results of the meeting the Regency KPU concluded that the Gorontalo Regency KPU must consult with the Provincial KPU and make reports and requests for guidance in resolving election administration violations to the Provincial KPU.

On October 12, 2020, the Gorontalo Regency KPU submitted a letter to the Provincial KPU regarding the follow-up of the Gorontalo Regency Bawaslu recommendations as well as submitting a chronology of the results of the initial review of the recommendations given by the Gorontalo Regency Bawaslu to the Gorontalo Regency KPU. And on the same day, the Gorontalo Regency KPU received instructions from the Provincial KPU regarding the Follow-up of the Gorontalo Regency Bawaslu Recommendation, which stated that in following up the Gorontalo Regency Bawaslu recommendation, the Gorontalo Regency KPU was guided by Article 17, Article 18, Article 19, Article 20, and Article 21 of KPU Regulation Number 25 of 2013 as amended by KPU Regulation Number 13 of 2014. Later that day, the KPU also invited the Regent of Gorontalo, Prof. Dr. H. Nelson Pomaling MP.d to be questioned regarding alleged election administration violations at the Gorontalo Regency KPU office.

On October 13, we asked RB as the reporting party to be questioned in the case of alleged election administration violations at the Gorontalo Regency KPU Office. And also asked for expert witness testimony Prof. Dr. Aminuddin Ilmar, SH, MH, lecturer at the Faculty of Law, Hasanudin University Makassar as well as chairman of the Hasanudin University Constitutional Law department where he argued that if the actions taken by the Regent were in accordance with the RPJMD which was then contained in the RKPD every year and carried out by regional apparatus organizations (OPD) in the form of strategic plans, the Regent's actions could not be said to be actions or actions that violated Article 71 paragraph 3 of Law Number 10 of 2016.

On October 14, 2020 the Gorontalo Regency KPU requested expert testimony from Mr. Daud Markus Liando, S.IP, M.Si, an unsrat electoral lecturer. also an expert witness for the Head of Sub Directorate Region IV (Sulawesi) of the Directorate General of Regional Autonomy of the Ministry of Home Affairs named Dr. Saydiman Marto, S.STP, M.Si. where he provided information that should not be done by a regent so as not to violate article 71 paragraph 3 of law number 10 of 2016 juncto article 90 paragraph 1 letter f pkpu number 3 of 2017 amended by PKPU number 9 of 2020, namely as follows:

1. Shall not propose draft local regulations and enact them unilaterally with contents that benefit themselves in relation to the candidacy for the next period of Regional Head.
2. Shall not sign any documents containing local government policies and/or programs that are self-beneficial in relation to the candidacy for the next period of regional head.
3. May not take certain actions in urgent circumstances that are urgently needed by oneself unless it becomes a regional need.
4. Not to exercise any other authority especially related to the candidacy for regional head.
5. May not impose programs that are personally beneficial in preparation for the nomination of the Regional Head in official discussions both with local government officials and with the DPRD.
6. Shall not impose activities that are personally beneficial in the strategic plan document discussed with the regional government apparatus or with the DPRD.

Then on October 16, 2020 requested information from the informant, Mr. Hariyanto Manan S.E, head of the budget sector in the Gorontalo Regency finance sector. After that, the Chairperson and Members of the Gorontalo Regency KPU held a plenary meeting to discuss the follow-up to the recommendation of the Gorontalo Regency Bawaslu and decided on the results of the follow-up to the Gorontalo Regency Bawaslu's recommendation in the plenary minutes and set out in Form PAPTL-2 and announced it to the public through live streaming of the Gorontalo Regency KPU Facebook account by inviting the mass media.

The following is the conclusion of PAPTL-2, namely:

1. That the conclusion of the Gorontalo Regency Bawaslu which states that the Gorontalo Regency KPU received reports and public input related to article 89 letter b of KPU Regulation number 1 of 2020 does not correspond to the facts. The Gorontalo Regency KPU prior to the date of determining the candidate pair has never received a recommendation from the Gorontalo Regency Bawaslu regarding article 89 letter b of KPU Regulation Number 1 of 2020. In principle, the Gorontalo Regency KPU has carried out procedures, procedures and mechanisms related to the determination of candidate pairs for

2
Regent and Deputy Regent of Gorontalo Regency on September 23, 2020 in accordance with the provisions.

2. That the incumbent Regent candidate Prof. Dr. Nelson Pomalingo who is alleged to have violated article 71 paragraph 3 of law number 10 of 2016, related to the use of the authority of programs and activities that benefit the reported party is not fulfilled because the programs and activities in question are not programs held by the Regent as an incumbent for election purposes, but with regard to covid 19 prevention activities and blood economic recovery. This is supported by the fact that based on the results of examining the recommendation document of the Gorontalo Regency Bawaslu, there is no information that justifies the direction or invitation for election activities. Based on this, the reported party Prof. Dr. H. Nelson Pomalingo is not proven to have committed an administrative violation.
3. The recommendation that asks the chairman and members of the Gorontalo Regency KPU to correct the Gorontalo Regency KPU's decision letter on the determination of serial numbers and lists of candidate pairs participating in the election by complying with article 71 paragraph 5 of the election law in conjunction with PKPU number 9 of 2020 article 90 paragraph 1 is not appropriate because it is considered contrary to article 90 paragraph 2 where the article says "The cancellation of candidate pairs in paragraph 1 does not change the serial numbers of other candidate pairs participating in the election.

5 The Process of Settling Administrative Violations of the 2020 Regional Elections in Gorontalo Regency by the Gorontalo Regency KPU and the Gorontalo Regency Bawaslu

On the basis of differences in interpretation that led to this difference of opinion, four days after the announcement of the PAPTL-2 of the Gorontalo Regency KPU on Thursday, October 22, 2020 the Chairperson of Bawaslu and Members of Bawaslu Gorontalo Regency held a plenary meeting which then the results of the plenary on October 23, 2020 were outlined in the form of a letter numbered 231/K.GO-03/HK.04. .01/X/2020 which concluded to give a written warning letter to the Chairman and Members of the Gorontalo Regency KPU in accordance with the provisions of article 141 of Law Number 10 of 2016 joncto article 34 paragraph 6 of Perbawaslu number 8 of 2020 And again conveyed to the Chairman and Members of the Gorontalo Regency KPU to remain obliged to follow up Bawaslu's recommendations in accordance with the contents of recommendation number 210/K.GI-03 / PM-06.02 / X / 2020. Letter number 231/K.GO-03/HK.04.01/X/2020 of Gorontalo Regency Bawaslu regarding written warnings contains the following conclusions:

1. That as stipulated in article 141 of law number 10 of 2016 which has been amended into law number 6 of 2020 concerning the Election of Governors, Regents and Mayors in

conjunction with article 34 paragraph 6 of Bawaslu Regulation Number 8 of 2020 concerning Handling Violations of the Election of Governors, and Deputy Governors, Regents and Deputy Regents, and Mayors and Deputy Mayors.

2. Whereas looking at the results of the follow-up of the Gorontalo Regency KPU number: 658/KPU-Kab/X/2020 dated October 17, 2020 on the recommendation of the Gorontalo Regency Bawaslu number 210/K.GO-03/PM-06.02/X/2020 dated October 10, 2020 regarding the investigation of election administration violations, which basically the Gorontalo Regency KPU did not follow up as recommended by the Gorontalo Regency Bawaslu, then based on the Plenary Meeting of the Chairperson and Members of the Gorontalo Regency Bawaslu on Thursday, October 22, 2020, they gave written warning sanctions to the Chairperson and Members of the Gorontalo Regency KPU.
3. That based on the above description and in accordance with the provisions of article 139 paragraph 2 of law number 10 of 2016 which has changed to law number 6 of 2020, the Gorontalo Regency KPU is obliged to follow up according to the recommendation of the Gorontalo Regency Bawaslu number: 210/K.GO-03/PM-06.02/X/2020 dated October 10, 2020.

Then based on this letter, the Chairperson and Members of the Gorontalo Regency KPU on October 23, 2020 held a plenary meeting regarding the written warning letter from the Gorontalo Regency Bawaslu which concluded as follows:

1. That the Gorontalo Regency Bawaslu's letter basically contains in addition to a written warning to the Chairman and Members of the Gorontalo Regency KPU, it also states that the Gorontalo Regency KPU is obliged to follow up according to the recommendation of the Gorontalo Regency Bawaslu number 210/K.GO-03/PM-06.02/X/2020 dated October 10, 2020. In principle, the Gorontalo Regency KPU since receiving the recommendation on October 11, 2020, has followed up by re-examining the data or documents of the letter/recommendation of the Gorontalo Regency Bawaslu and exploring, seeking, and receiving input from various parties for clarity and understanding of the alleged administrative violations referred to as the provisions of the law and has submitted the results of the follow-up (PAPTL-2) and has been announced on October 17, 2020.
2. That the Gorontalo Regency KPU will submit a report as well as ask for guidance and direction from the Gorontalo Provincial KPU and KPU RI.
3. That the Gorontalo Regency KPU will take further steps after consulting and receiving instructions and directions from the Provincial KPU and KPU RI.

In terms of getting instructions and directions from the Provincial KPU, the Gorontalo Regency KPU which at the time of consultation with the Provincial KPU, the Regency KPU must consult with KPU RI. The result of the consultation and request for guidance from KPU RI is not to reply to the letter because between KPU and Bawaslu is not a Post Office whose function is to reply to each other's letters.

Furthermore, as a result of the actions of these two institutions, they were reported to the Honorary Council of Election Organizers (DKPP). The Honorary Council of Election Organizers is an institution dedicated to balancing and supervising (check and balance) the performance of the KPU and Bawaslu and their staff. DKPP was formed on June 12, 2012 based on Law Number 15/2011 article 109.

Law Number 7 Year 2017 has regulated the duties and authority of DKPP. The duties of DKPP are:

1. Receive complaints and/or reports of violations of the code of ethics committed by election organizers.
2. Investigating and verifying as well as examining complaints and/or reports of alleged violations of the code of ethics committed by election organizers.

The authority of DKPP is:

1. Calling election organizers who are suspected of violating the code of ethics to provide explanations and defenses.
2. Calling the complainant, respondent, and/or other parties concerned for questioning, including for documents or other evidence.
3. Impose sanctions on election organizers who are proven to have violated the code of ethics.
4. Decide on violations of the code of ethics.

Five members of the Gorontalo Regency KPU, namely Rasyid Sayiu, (Chairman) Kadir Mertosono, Ruzli ZB. Utiahman, Rivon Umar, and Rasid Patamani were reported by Robin Bilondatu, Anton Abdullah, Paris Djafar, and Budiyanto Biya in case 168-PKE-DKPP/XI/2020.

In this case, the Chairperson and members of the Gorontalo Regency KPU were complained for allegedly not following up on the recommendation of the Gorontalo Regency Bawaslu as stipulated in Article 139 paragraph 2 of Law Number 10 of 2016. Where on October 17, 2020, the Gorontalo Regency KPU issued a letter in the form of Formui PAPTL 2, which rejected the recommendation of the Gorontalo Regency Bawaslu.

Meanwhile, three members of the Gorontalo Regency Bawaslu, Wahyudin Akili, Moh Fadjiri Arsyad, and Alexander Kaaba, were complained in case number 169-PKE-

DKPP/XI/2020. All three were complained by candidate pair number 2 of the Gorontalo Pilbup, Nelson Pomalingo and Hendra S. Hemeto. The Chairperson and Members of the Gorontalo Regency Bawaslu were reported for not acting based on the SOP when registering reports that did not meet the formal requirements and making recommendations that could not be implemented by the Gorontalo Regency KPU as well as not respecting and respecting fellow election organizers by sanctioning the Gorontalo Regency KPU with a written warning.

The summons for the hearing from the Honorary Board of Election Organizers of the Republic of Indonesia to the Gorontalo Regency Bawaslu is stated in DKPP RI letter number 1212/PS.DKPP/SET-04/XI/2020 dated November 27, 2020 which in its contents summons the Chairperson and Members of the Gorontalo Regency Bawaslu to appear before the DKPP hearing panel in the courtroom of the Gorontalo Province Bawaslu Jl. Drs. Ahmad Nadjamudin No. 107 Kel. Limba U II, Kec. Kota Selatan, Kota Gorontalo Gorontalo Province on Saturday 5 December 2020, at 09.00 Wita as the complained party. In the note stated in DKPP RI letter No. 1212/PS.DKPP/SET-04/XI/2020 that the Gorontalo Regency Bawaslu needs to prepare 8 (eight) copies of answers to the complainant's complaint complete with primary evidence and bring the necessary witnesses. While the Session Call from the Honorary Board of Election Organizers of the Republic of Indonesia to the Gorontalo Regency KPU is contained in DKPP RI letter number 1213/PS.DKPP/SET-04/XI/2020.

1. Give sanction of dishonorable dismissal or permanent dismissal from his membership as Commissioner of Gorontalo Regency KPU.
2. Stating that according to the law the letter (Gorontalo Regency General Election Commission) Number: 658/KPU-Kab/X/2020 dated October 17, 2020 regarding Follow-up to the Recommendations of the Gorontalo Regency Election Supervisory Body Regarding Alleged Violations of Election Administration, is null and void or invalid or does not comply with the provisions of the laws and regulations in the field of regional elections (formal defects) and has no binding legal force.
3. Punish (Gorontalo Regency General Election Commission) to:
 - a. Revoke the Letter of the Gorontalo Regency General Election Commission Number: 658/KPU-Kab/X/2020 dated October 17, 2020 regarding the Follow-up of Recommendations of the Gorontalo Regency Election Supervisory Agency for Alleged Election Administration Violations.
 - b. Implement the Recommendation of the Gorontalo Regency Election Supervisory Agency Number: 210/K.GO-03/PM-06.02/X/2020 based on the provisions of the appropriate laws and regulations.

In case number 168-PKE-DKPP/XI/2020, the complainants have 28 pieces of evidence that have been submitted to the Election Supervisory Honor Council and brought 2 witnesses to the trial. Meanwhile, case number 169-PKE-DKPP/XI/2020 in which the reported Bawaslu Gorontalo Regency has the following demands:

1. Stating that the Respondents I, II, III respectively: Wahyuddin M. Akili, SE, Moh. Fadjri Arsyad, S.Pd., MH and Aleksander Kaaba, ST. As the Chairman and Members of the Election Supervisory Body of Gorontalo Regency have violated the Code of Ethics as Election Organizers;
2. Order Bawaslu Gorontalo Province to implement this decision within 7 (seven) days at the latest;
3. Order Bawaslu RI. to supervise the implementation of this decision;

In this trial, the Rapporteur, in this case Paslon Number 2, had 6 evidences submitted to the Honorary Board of Election Organizers (DKPP). While Bawaslu and KPU Gorontalo Regency brought their respective expert witnesses. Based on the assessment of the facts in the trial as described above, after examining the testimony of the Complainants, examining and hearing the answers of the Respondents, and examining the documentary evidence submitted by the Complainants and the Respondents, the Honorary Council of Election Organizers concluded that:

Complainant I, Complainant II, Complainant III, Complainant IV, and Complainant V Case 168-PKE-DKPP/XI/2020 in this case the Chairman and Members of the Gorontalo Regency KPU are proven to have violated the Code of Ethics and Code of Conduct for Election Organizers. DKPP believes that the Gorontalo Regency KPU lacks extensive knowledge regarding the regional political situation. So that in the DKPP decision, it gave a stern warning to KPU members and dismissal from the position of Chairman of the Gorontalo Regency KPU.

Respondent I, Respondent II, and Respondent III in Case 169-PKE-DKPP/XI/2020, in this case the Chairperson and Members of the Gorontalo Regency Bawaslu, are not proven to have violated the Code of Ethics and Code of Conduct for Election Organizers. Dkpp believes that the Gorontalo Regency Bawaslu has carried out the task of enforcing election administration violations by issuing a recommendation letter. As an election organizer, Bawaslu Gorontalo Regency understands the philosophical meaning of the provisions of Article 71 paragraph 3. Therefore, the DKPP decision rehabilitated the good name of the Chairperson and Members of the Gorontalo Regency Bawaslu.

Based on this decision, in accordance with the provisions of Law Number 7 of 2017 in Article 458 number 13 states that the DKPP decision is final and binding. Therefore, based on

researcher interviews with both parties, namely KPU members and Bawaslu members of Gorontalo Regency, they accepted and respected what was decided by DKPP. At that time, the researcher interviewed a member of the Gorontalo Regency KPU Program and Data Division, Mr. Rusli Utiahrman, who said that when he received DKPP Decision Number: 168-169-PKE-DKPP/XI/2020, they immediately held a plenary meeting regarding the replacement of the Chairman of the Gorontalo Regency KPU and Rasid Patamani was elected as chairman at that time.

Not only that, the KPU and Bawaslu of Gorontalo Regency again faced a lawsuit by candidate pairs number 1 and 4 to the Constitutional Court regarding disputes over election results. Where according to candidate pair number 1 through his legal counsel, the Gorontalo Regency KPU did not follow up on the disqualification of candidate pair number 2 which had been determined by the Gorontalo Regency Bawaslu. Meanwhile, candidate pair number 4 argued through their attorney, there are three important points in the arguments for the election case in the Constitutional Court. First, the issue of disqualification of candidate pair number 2 that was not carried out by the KPU. Second, the discovery of TSM violations committed by the incumbent by forming an election desk team. Third, the discovery of additional votes or vote inflation at several polling stations.

On this occasion the researcher interviewed one of the Gorontalo Regency Bawaslu Members, Hubal and Public Relations Coordinator, Mr. Alexander Kaaba, according to him, the trial at the Constitutional Court yesterday was in a pandemic situation, therefore the Gorontalo Regency Bawaslu which was originally going to be attended directly by the three Members, but based on local medical examinations, only two were allowed to enter the courtroom while one Member was only through zoom. As for the Gorontalo Regency KPU itself, all members were present directly in the courtroom.

This case was heard twice and in the end the Constitutional Court argued through its two decisions, namely Number: 56/PHP.BUP-XIX/2021 filed by candidate pair 4 and decision Number: 48/PHP.BUP-XIX/2021 filed by candidate pair number 1 that the actions taken by the Gorontalo Regency KPU against the recommendation of the Gorontalo Regency Bawaslu were a form of caution by the Gorontalo Regency KPU before issuing a decision.

CONCLUSIONS

The difference in interpretation between the Regency KPU and Bawaslu Gorontalo Regency regarding administrative violations is caused by overlapping statutory provisions. Where in Law Number 10 Year 201 concerning Pilkada, the two institutions are given the

authority to examine and decide administrative violations, then the two institutions in deciding administrative violations have their own guidelines where Bawaslu is guided by Perbawaslu while the KPU itself is guided by KPU Regulations. This certainly does not provide legal certainty for justice seekers in election administration violations and the process of resolving administrative violations in the 2020 Pilkada in Gorontalo Regency, namely through DKPP and Constitutional Court decisions. We do not have to face different decisions between the two institutions because DKPP is an ethical judicial institution while the Constitutional Court is a legal judicial institution. Although there has been a decision from the Constitutional Court, it does not change the DKPP's decision because until now there has been no ethics court to appeal the DKPP's decision.

LITERATURE

Chairman and Members of the Gorontalo Regency Bawaslu, Press Conference on Handling of Election Administration Violations number 11/LP/PB/Kab/29.04/X/2020
<https://www.facebook.com/bawaslukabupatenggorontalo/vidios/352973606053374/>
(accessed March 24 at 15.20)

Dede Sri Kartini, Democracy and Election Supervision, Journal of Governance, Vol 2, No 2, 2017

Djoenadi Efendi, Johnny Ibrahim, Normative and Empirical Legal Research Methods Mold 2, Depok: Prenadamedia Group, 2018

Djulaeka Dkk, Textbook of Legal Research Methods, Jakarta: Scorpindo Media Pustaka, 2019

Fujlurrahman Jurdi, Introduction to general election law, Jakarta: Kencana Prenadamedia group, 2018

Hendra Budiman, Indirect elections and fake democracy, Yogyakarta: Medpress digital, 2015

<https://dkpp.go.id/dkpp-periksa-ketua-anggota-kpu-dan-bawaslu-kabupaten-gorontalo-terkait-pelanggaran-petahana/> (accessed on March 20, 2022 at 10.40)

<https://gorontalopost.id/2021/01/28/sidang-perdana-mk-mencuat-penggelembungan-suara/Jitro-paputungan> (accessed on Thursday, March 31, 2022 at 10.35)

https://id.m.wikipedia.org/wiki/Dewan_Kehormatan_Penyelenggara_Pemilihan_Umum
(Accessed on March 20, 2022 at 17.20)

<https://perludem.org/2021/01/13/perludem-ada-136-permohonan-sengketa-pilkada-2020-di-mk/> (accessed October 22, 2021)

Iqbal Nasir, Legal Analysis of Election Administration Violations, Khazanah Hukum, Vol. 2, No. 1, 2020.

DIFFERENCES IN INTERPRETATION BETWEEN THE DISTRICT KPU AND BAWASLU OF GORONTALO DISTRICT RELATED TO ADMINISTRATIVE VIOLATIONS OF THE 2020 REGIONAL ELECTIONS IN GORONTALO DISTRICT

Joenaedi, Johnny Ibrahim, Normative and Empirical Legal Research Methods, Depok: Pranadamedia Group, 2018

Law Number 7 of 2017 concerning Elections

Lutfi Ansori, An Analysis of the Presidential Threshold in General Elections, Yuridical Journal, Vol 4, No 1, 2017

M. Afifudin, Grounding Election Supervision, Jakarta: PT Alex Media Komputindo, 2020.

Muhamad A. Rauf, Ali Ismail Saleh, The Effectiveness of the Establishment of a Special Election Court in National Legal Development in the 2020 Pilkada in the Covid 19 Era in Indonesia, Journal of Justice Light, Vol. 9, No. 2, 2021

Differences In Interpretation Between The District Kpu And Bawaslu Of Gorontalo District Related To Administrative Violations Of The 2020 Regional Elections In Gorontalo District

ORIGINALITY REPORT

21 %
SIMILARITY INDEX

21 %
INTERNET SOURCES

7 %
PUBLICATIONS

3 %
STUDENT PAPERS

PRIMARY SOURCES

1	ejurnal.ung.ac.id Internet Source	11 %
2	ejournal.mandalanursa.org Internet Source	3 %
3	international.appihi.or.id Internet Source	3 %
4	journal.unnes.ac.id Internet Source	1 %
5	ijmmu.com Internet Source	1 %
6	Eny Kusdarini, Anang Priyanto, Sri Hartini, Suripno Suripno. "Roles of Justice Courts: Settlement of General Election Administrative Disputes in Indonesia", Heliyon, 2022 Publication	1 %
7	en.mkri.id Internet Source	1 %

Exclude quotes On

Exclude matches < 1%

Exclude bibliography On