



## EFEKTIVITAS BAWASLU MELAKUKAN PENGAWASAN TERHADAP NETRALITAS APARATUR SIPIL NEGARA DALAM PEMILIHAN KEPALA DAERAH

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### Abstract

*Aparatur Sipil Negara (ASN) diharuskan berada pada posisi netral. Netral disini diartikan bahwa ASN mempunyai hak suara untuk memilih pasangan calon dalam pemilihan umum, hanya saja tidak diperbolehkan terlibat saling mendukung kepada salah satu pasangan calon termasuk pasangan incumbent. Penulisan ini menggunakan metode telaah pustaka (library research) untuk mentelaah data-data sekunder. Pengaturan peranan Bawaslu dalam melaksanakan pengawasan pemilu adalah Undang-Undang Nomor 7 Tahun 2017 tentang Pemilihan Umum, Undang-Undang Nomor 10 Tahun 2016 tentang Pemilihan Gubernur, Bupati dan Wali Kota. Tugas dan wewenang Bawaslu dalam pemilihan kepala daerah Bupati diatur dalam Pasal 101 Undang-Undang Nomor 7 Tahun 2017 tentang Pemilihan Umum. Implementasi peranan Bawaslu dalam melakukan pengawasan terhadap netralitas ASN adalah sebagai pengawas pemilu termasuk pengawasan terhadap netralitas ASN, TNI, maupun Polri. Atas dasar itu wewenang Bawaslu dalam hal menangani netralitas ASN tidak hanya dalam konteks penegakan hukum (pro justitia) tetapi juga dalam konteks melakukan pengawasan atau dengan kata lain pintu masuk wewenang Bawaslu dalam menangani netralitas ASN dapat melalui fungsi pengawasan dan dapat pula melalui fungsi penegakan hukum.*

**Kata Kunci:** Bawaslu, Netralitas, Aparatur Sipil Negara, Pemilu.

## EFFECTIVENESS OF THE BAWASLU IN OVERSIGHT OF THE NEUTRALITY OF THE STATE CIVIL APPARATUS IN REGIONAL HEAD ELECTIONS

### Abstract

*The State Civil Apparatus (ASN) is required to be in a neutral position. Neutral here means that ASN has the right to vote to choose a candidate pair in the general election, but is not allowed to be involved in mutual support for one of the candidate pairs, including the incumbent pair. This writing uses the library research method to examine secondary data. The regulation of Bawaslu's role in carrying out election supervision is Law Number 7 of 2017 concerning General Elections, Law Number 10 of 2016 concerning Election of Governors, Regents and Mayors. Bawaslu's duties and authority in the election of regional heads of regents are regulated in Article 101 of Law Number 7 of 2017 concerning General Elections. The implementation of Bawaslu's role in supervising the neutrality of ASN is as an election supervisor, including supervising the neutrality of ASN, TNI and Polri. On this basis, Bawaslu's authority in handling ASN neutrality is not only in the context of law enforcement (pro justitia) but also in the context of carrying out supervision or in other words, the entrance to Bawaslu's authority in handling ASN neutrality can be through the supervisory function and can also be through the law enforcement function. .*

**Keywords:** Bawaslu, Neutrality, State Civil Apparatus, Election.

## INTRODUCTION

Article 1 of the Third Amendment to the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia) affirms that Indonesia is a state based on law. Based on this, one of the important principles of a state based





on law is the guarantee of an independent judiciary, free from the influence of other powers, in order to administer justice to uphold law and justice.

Article 1 paragraph (2) of the amended 1945 Constitution of the Republic of Indonesia states that "Sovereignty rests with the people and is exercised according to the Constitution." The consequence of Article 1 paragraph (2) is that the MPR no longer has an exclusive position as the sole institution exercising and implementing people's sovereignty. The implementers of people's sovereignty are the people themselves, which is carried out in accordance with the provisions of the Constitution. Thus, people's sovereignty and law are placed on an equal footing and side by side, thus confirming the adoption of the principle of "constitutional democracy," which in essence is nothing other than a democratic state based on law or a democratic state based on law.

The principle of a state based on law cannot be upheld by ignoring the principles of democracy as stipulated in the 1945 Constitution of the Republic of Indonesia. Therefore, it is also necessary to emphasize that the sovereignty of the people is enforced according to the 1945 Constitution of the Republic of Indonesia which is balanced with the affirmation that the Indonesian state is a state based on law with people's sovereignty or is democratic (*demokratische rechtsstaat*).

Democracy comes from the Greek word *democraia*, "power of the people," which is formed from *demos*, "people," and *kratos*, "power." Democracy is a government of the people, by the people, and for the people. This is the simplest understanding of democracy, known to almost everyone. Democracy also means a form of political government in which governmental power comes from the people, either directly (direct democracy) or through representatives (representative democracy).

The democracy adopted in Indonesia is Pancasila democracy, which has undergone development and trials between periods of government. However, it cannot be denied that several core values of constitutional democracy are clearly implied in the 1945 Constitution of the Republic of Indonesia. The principles of democracy provide a method for decision-making. This principle demands that everyone have an equal opportunity to influence government actions. This principle is realized through a system of representation (people's representatives), which plays a role in the formation of laws and oversight of the government.

Referring to the provisions of Article 1 Paragraph (17) of Law Number 7 of 2017 concerning the Election Supervisory Body which states that the Election Supervisory Body (hereinafter referred to as Bawaslu) is an election organizing body that oversees the implementation of elections throughout the territory of the Republic of Indonesia. Bawaslu is a permanent body, with the term of office of its members for 5 (five) years calculated from the oath or promise of office. Bawaslu is an ad hoc institution that was formed before the first stage of the election, namely at the initial stage when voter registration began and was dissolved after the candidates elected in the election had been inaugurated.

Theoretically, elections are a mechanism created to legitimize democratic power. Elections in a democratic country are not just any elections, but elections that give rise to power and authority for the government. Elections are conducted through several stages





and involve several institutions with duties and authorities as stipulated by law. The organizational structure of the Elections Supervisory Agency (Bawaslu) from the central to the regional levels consists of the Republic of Indonesia Elections Supervisory Agency (Bawaslu), Provincial Elections Supervisory Agency (Bawaslu), Regency/City Elections Supervisory Agency (Bawaslu), and Sub-district Elections Supervisory Agency (Bawaslu).

Neutrality is a state of impartiality or independence. The legal basis for this is regulated in Law Number 5 of 2014 concerning the State Civil Apparatus. Article 2, letter f, states that one of the principles of implementing State Civil Apparatus management policies is the principle of neutrality. This principle is impartial and free from any form of influence and does not favor anyone.

### **IMPLEMENTATION METHOD**

The nature of this research is descriptive, namely research that attempts to describe and interpret an event, for example, existing conditions or relationships, developing opinions, ongoing processes, consequences or effects that occur, or ongoing trends. This type of research is normative legal research. The data obtained from the results of this study were analyzed qualitatively, namely scientific research, which aims to understand a phenomenon in its natural social context by prioritizing the process of in-depth communication interaction between the researcher and the phenomenon being studied. Next, data analysis was carried out using qualitative methods that emphasize data quality.

### **RESULTS AND DISCUSSION**

General elections are a form of democracy implemented by the people, for the people, and of the people. Elections are designed to elect representatives to establish a democratic government. Democratic elections require an independent and autonomous oversight body. This body was established to strengthen the pillars of democracy, minimize electoral fraud, and affirm the commitment to elections/regional elections as the core thesis of establishing a government with character.

The election oversight institution began to be formed based on Law Number 12 of 2003, which mandated the establishment of an ad hoc election oversight body that was functionally independent of the KPU structure. This oversight body was then strengthened again with the establishment of a permanent election oversight body based on Law Number 22 of 2007 concerning Election Organizers with the establishment of a permanent body called the General Elections Supervisory Body (Bawaslu).

The institutional dynamics of election supervisors are still ongoing with the issuance of Law Number 15 of 2011 concerning Election Organizers. Institutionally, election supervisors were strengthened with the establishment of a permanent election supervisory body at the provincial level, the Provincial Election Supervisory Agency (Bawaslu Provinsi).

The General Elections Supervisory Agency (Bawaslu) is an election management body that oversees elections throughout the Republic of Indonesia. As an institution, it holds significant authority, not only as a supervisor but also as an executor of cases, as mandated by Law Number 7 of 2017 concerning General Elections.





Bawaslu aims to ensure that elections are held, implemented, and run according to democratic principles and in accordance with applicable laws and regulations to ensure elections with integrity and to produce qualified leaders in carrying out their government positions in Indonesia.

Bawaslu or Panwaslu, like the General Elections Commission (KPU), have jurisdictions spread throughout the Republic of Indonesia, including provinces, regencies/cities, sub-districts, villages, and even rural areas. Some also operate outside the Republic of Indonesia to accommodate the political rights of citizens residing outside the country. Bawaslu's jurisdiction is regulated in Article 91 of Law Number 7 of 2017 concerning General Elections.

The Election Supervisory Agency (Bawaslu), the Provincial Bawaslu, and the Regency/City Bawaslu are a single, hierarchical organization, although the law defines the division of duties and responsibilities for each. Both the Provincial Bawaslu and the Regency/City Bawaslu are part of the Central Bawaslu and must implement and follow the directives, regulations, guidelines, and programs of the Central Bawaslu.

Bawaslu in carrying out its duties is supported by the Bawaslu Secretary led by the Head of the Secretariat and was established based on Presidential Regulation of the Republic of Indonesia Number 49 of 2008. The Bawaslu Secretariat has the task of providing technical and administrative support to Bawaslu. The Bawaslu Secretariat itself consists of at most 4 (four) sections, and each section consists of at most 3 (three) sections.

Bawaslu is an agency whose primary duty is to supervise the stages of election administration, including elections for members of the DPR, DPD, DPRD, the Presidential and Vice Presidential elections, and elections for Regional Heads and Deputy Regional Heads. Bawaslu is a permanent body, with its members serving for 5 (five) years, calculated from the time of taking the oath/pledge of office.

Bawaslu (Elections Supervisory Agency) or Panwaslu (Elections Supervisory Committee) is an ad hoc body established before the first stage of an election, namely during voter registration, which begins and is disbanded after the elected candidates are inaugurated. Election supervisory bodies are unique to Indonesia, with Panwaslu established to oversee the implementation of election stages, receive complaints, and handle cases of administrative and criminal election violations.

Civil servants in Indonesia have a dual position regarding political rights. On the one hand, civil servants have the right to vote, choosing candidates for representatives and leaders at the village, district/city, provincial, and national levels. To exercise this right, civil servants participate in the selection process for their preferred candidates and make their choice in the voting booth. The exercise of this right to vote represents a civil servant's allegiance to a particular candidate, therefore, it cannot be said that they are completely neutral in politics.

Civil servants (ASN) are also government bureaucratic operators who implement government policies. They serve all citizens without discrimination, regardless of political affiliation. Unlike political officials, civil servants are recruited based on the competency





of prospective employees, who are placed in public sector or bureaucratic organizations according to the organization's needs.

Bureaucracy does not operate in a vacuum, sterile from the surrounding environment, including the political environment. For example, in the process of formulating policy plans such as draft laws or regional regulations, civil servants (ASN), as part of the government bureaucracy, are involved in the draft's preparation before being discussed with the House of Representatives (DPR) or Regional People's Representative Council (DPRD). Furthermore, the bureaucracy, as part of the executive body, is operated by civil servants who implement political decisions at both the central and regional levels.

Civil servant neutrality in politics is therefore defined as the civil servant's impartiality toward any particular political group or interest. This impartiality is due to the civil servant's obligation to serve all components of society without discrimination and to avoid conflicts of interest in carrying out their duties as civil servants.

Neutrality is a crucial principle in the implementation of public service, government, and development tasks. Every civil servant (ASN) must maintain neutrality to carry out their duties professionally. To enforce ASN neutrality, the government has issued several laws and regulations. However, violations of the principle of neutrality among ASN employees still occur, particularly in the lead-up to the simultaneous regional elections.

The lack of neutrality of civil servants can lead to bias or injustice in policymaking and service delivery, ultimately harming the wider community. One crucial aspect of enforcing civil servant neutrality is oversight. An effective civil servant oversight system is essential to ensure that civil servants comply with laws and regulations related to civil servant neutrality in carrying out their duties, thus creating a professional and accountable bureaucracy.

As one of the institutions responsible for overseeing the entire election process, including regional elections, Bawaslu faces a significant challenge during these five-yearly events. Although the law stipulates that prevention, oversight, and fostering the neutrality of civil servants, members of the Indonesian National Armed Forces (TNI), and members of the Indonesian National Police (Polri) are the responsibility of authorized officials from their respective institutions/agencies, at all levels.

In practice, Bawaslu also plays a role in preventing civil servants from violating neutrality. As an election organizing body with preventive and law enforcement functions, Bawaslu has the authority to follow up on findings of civil servant neutrality violations regulated by laws outside of elections (other laws).

Bawaslu's authority in handling ASN neutrality can be seen from the formal legal aspect (procedural law) and Bawaslu's supervisory function. In this regard, Bawaslu Regulation Number 6 of 2018 and Bawaslu Regulation Number 14 of 2017 can be used as references. Article 3 of Bawaslu Regulation Number 6 of 2018 contains a provision that reads: "The neutrality of ASN Employees, TNI Members, and Polri Members can be the object of supervision by Bawaslu, Provincial Bawaslu, and Regency/City Bawaslu.





The actions of ASN employees, TNI members, and Polri members have the potential to violate the provisions as stipulated in the provisions of laws and regulations regarding elections and/or elections and violate the code of ethics and/or discipline of each institution/agency.

By examining this article, it is clear that Bawaslu functions not only as a law enforcer but also as an election supervisor, including overseeing the neutrality of civil servants (ASN), the Indonesian National Armed Forces (TNI), and the Indonesian National Police (Polri). Therefore, Bawaslu's authority to address ASN neutrality extends not only to law enforcement (*pro justitia*) but also to oversight. In other words, Bawaslu's authority to address ASN neutrality can be through both its oversight and law enforcement functions.

Bawaslu can actively carry out supervisory work as regulated in Bawaslu Regulation Number 6 of 2018 which includes:

1. Identify potential abuse of authority, budget use, and use of facilities;
2. Identify the potential involvement of ASN employees, TNI members, and Polri members;
3. Coordination with the Indonesian National Armed Forces and the Republic of Indonesia National Police in a hierarchical manner as well as KASN;
4. Cooperation with election observers and the mass media and the public to supervise.

The results of supervisory work can take the form of findings as one of the entry points for law enforcement (*pro justitia*) because besides findings, there are other sources that Bawaslu can use to carry out *pro justitia*, namely reports. In conducting reviews of findings or reports, Bawaslu also has the authority to request the presence of the reporter, the reported party, the party suspected of being the perpetrator of the violation, witnesses, for clarification, or experts to be heard under oath. The results of the review can include the following:

1. Violation of ASN neutrality as stipulated in the Election Law.
2. Violation of ASN neutrality as determined by legislation outside of elections
3. Not a violation of ASN neutrality.

Violations of ASN neutrality that violate the Election Law are recommended to the KPU or to the Police if they are in the form of election criminal violations, whereas if the results of the study do not find any violations of ASN neutrality, the handling process is stopped, but if it is in the form of violations of provisions outside the Election Law, Bawaslu will forward it to the authorized agency (Article 32 of Bawaslu Regulation Number 14 of 2017).

Based on the above, violations of ASN neutrality are only regulated in Article 71 of Law Number 1 of 2015, namely regarding making decisions or actions that benefit or harm one of the candidates. Furthermore, the offense of violating ASN neutrality regulated in legislation outside of election legislation is spread across many laws and regulations, including Law Number 5 of 2014, Government Regulation Number 42 of 2004, Government Regulation Number 53 of 2010, and the letter of the Minister of Administrative and Bureaucratic Reform. Number B/71/M.SM.00.00/2017.





All the laws and regulations above only regulate the formulation of the offense of violation, do not regulate the authority of Bawaslu in handling violations of ASN neutrality. In legal science, the laws and regulations that regulate the formulation of offenses of violation are called material law, while the laws and regulations that regulate the procedures for enforcing material law (including those regulating authority) are called formal law (procedural law), therefore the way to see Bawaslu's authority must be seen in the laws and regulations related to elections, namely the law on regional elections, the law on elections, and Bawaslu regulations.

Based on this, the status of Bawaslu's authority is attributive authority because the source of its authority does not come from other institutions and Bawaslu's independence remains unharmed because laws and regulations outside of elections only formulate the offense of violation, while its authority still originates from the Election Law.

The activities carried out by Bawaslu in the practice of coaching in order to prevent violations of ASN neutrality can be seen from several socialization activities, namely:

1. Civil servants are not permitted to engage in political activities. There are regulations that must be followed. Violations will result in sanctions from the civil service development officer, while the Elections Supervisory Agency (Bawaslu) only issues recommendations.
2. ASN must be neutral in accordance with existing laws and regulations.
3. This outreach is a form of prevention model so that during the election campaign, not many ASN commit violations and are subject to sanctions.
4. Asking Panwaskab to actively carry out supervision by increasing their field visits.
5. Socializing ASN neutrality is very important, the position of ASN in the regional elections is very clear, it must be neutral.
6. The implementation of ASN neutrality needs to be known and ASN must be warned not to engage in practical politics.

Through these activities, Bawaslu has participated in efforts to minimize violations during the general election and regional head elections. These efforts can be integrated through cross-institutional outreach activities, followed by other prevention strategies, to optimize their impact in reducing violations related to civil servant neutrality in the general election and regional head elections.

## CONCLUSION

The regulation regarding the duties of the Serdang Bedagai Regency Election Supervisory Agency (Bawaslu) in overseeing the neutrality of ASN in the implementation of the General Election is Law Number 7 of 2017 concerning General Elections, Law Number 10 of 2016 concerning the Election of Governors, Regents and Mayors. The duties and authorities of Bawaslu in the election of regional heads and Regents are regulated in Article 101 of Law Number 7 of 2017 concerning General Elections.

The implementation of Bawaslu's role in supervising ASN neutrality is As an election supervisor, Bawaslu oversees the neutrality of ASN, the Indonesian National Armed Forces (TNI), and the Indonesian National Police (Polri). Therefore, Bawaslu's authority to handle ASN neutrality extends not only to law enforcement (pro justitia) but





also to supervision. In other words, Bawaslu's authority to handle ASN neutrality can be through its supervisory function and also through its law enforcement function.

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