



Comparison of Verdicts in Handling Election Violations Through Coordination of Gakkumdu Center North Lampung Regency

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ABSTRACT

Sovereignty is in the hands of the people as mandated in Article 1 Paragraph 2 of the 1945 Constitution of Republic Indonesia. The meaning of "sovereignty is in the hands of the people" in this case is that the people have sovereignty, responsibilities, rights and obligations to democratically elect a leader who will form a government to manage and serve all levels of society, as well as elect representatives of the people to oversee the running of the government. The research method used was normative and empirical juridical, using secondary and primary data, obtained from literature studies and field studies, and data analysis with qualitative juridical analysis. The suggestion is that the Gakkumdu Center at North Lampung Regency should provide concrete and important implementation rules to ensure legal certainty and justice.

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1. Introduction

For the sake of the creation of the principle of direct, public, free, secret, honest and fair elections lawmakers have made a number of fraudulent acts a criminal offense. Thus, the law on elections in addition to regulating how electoral conduct is carried out, also prohibits a number of acts that can destroy the nature of the free and fair election and threatens the perpetrators with punishment.³

Honest and fair elections can be achieved if there are legal tools in place that regulate the process of conducting elections while protecting organizers, candidates, voters, monitors, and citizens in general from fear, intimidation, violence, bribery, fraud, and various other

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³ International Electoral Standards. (2002). *Guidelines for the Legal Framework of Elections*. Stockholm: International Institute for Democracy and Electoral Assistance, p. 93.

fraudulent practices that will affect the outcome of the election. Therefore, an honest and fair election requires election laws and regulations along with the officials in charge of enforcing the election laws and regulations.⁴

In the process of the democratic party, of course, various problems will arise, according to the Director General of Regional Autonomy of the Ministry of Home Affairs, Djoehermansyah Djohan, said in the National Conference on Constitutional Law, there are seven problems that follow the election process, one of which is the rampant lawsuit over the election process. The existence of various problems that often arise in the implementation of regional elections certainly hinders the realization of democratic elections.

In order to solve the problem of violations in the election process, the Election Supervisory Committee in collaboration with the Police and Prosecutor's Office formed an Integrated Law Enforcement Center which is often known as the Gakkumdu Center. The establishment of the Gakkumdu Centre is one of the manifestations in overseeing the conduct of elections and local elections. The Gakkumdu Center is certainly expected to be able to provide values of integrity in the conduct of elections and local elections.

In its implementation in North Lampung Regency, there were several violations in the 2018 regional election process, one of which was a criminal violation of the election, namely a violation of the prohibition on campaigning carried out by village officials (in this case committed by the village head) and violations allegedly committed by the spouse of the Regent Candidate related to hate speech.

It's juridically reviewed that the Gakkumdu Center in carrying out the process of handling violations has implemented the rule of law in accordance with the provisions of the applicable regulations. However, according to Khairul Fahmi the application of criminal law or criminal law approaches in the implementation of elections and regional elections is still felt to be ineffective.⁵

The role of the Gakkumdu Center is considered to have various weaknesses, both in terms of process and in carrying out its duties and authorities. These include regulatory problems, including the police (investigators) and public prosecutors who are members of Gakkumdu in their implementation lack or do not carry out investigations to the maximum and the lack of appreciation in terms of honorarium or facilities, then differences of opinion in interpreting regulations.

In this case, the decision of input from Election Supervisory Agency of Indonesia it's Bawaslu, can be set aside by the police or the interim prosecutor's office to forward the report to the next level of the Gakkumdu Center. Dimician's view is justified through the study of S.L.P. Perbawa which concluded that there was a difference of view between the supervisor and the investigator.⁶ Sometimes the committee feels that the case being handled is worthy of being upgraded to the investigation stage, but investigators and prosecutors consider the events that occurred not to be included in the realm of election crimes.

In the election violations committed by unscrupulous village officials in North Lampung Regency, the Gakkumdu Center is considered to have various weaknesses, both in terms of the process and in carrying out its duties. These include regulatory problems,

⁴ M. N. Ramadhan. (2019). Evaluasi Penegakan Hukum Pidana Pemilu Dalam Penyelenggaraan Pemilu 2019. *Jurnal Adhyasta Pemilu*, 2(2), 115-127. <https://doi.org/10.55108/jap.v2i2.12> .

⁵ K. Fahmi. (2016). Sistem Penanganan Tindak Pidana Pemilu. *Jurnal Konstitusi*, 12(2), 264-283. <https://doi.org/10.31078/jk1224> .

⁶ S. L. P. Perbawa. (2019). Penegakan Hukum Dalam Pemilihan Umum. *Jurnal Ilmiah Dinamika Sosial*, 3(1), 80-102. <https://doi.org/10.38043/jids.v3i1.1765> .

including the police (investigators) and public prosecutors who are members of Gakkumdu in their implementation, lack or not conducting maximum investigations and lack of appreciation in terms of honorarium or facilities, then differences of opinion in interpreting regulations.

In this case, there are still weak regulations governing the central Gakkumdu where there is only one article, namely Article 152 of Law Number 10 of 2016 concerning on the Election of Governors, Regents, and Mayors. In addition, there are also contained in Articles 486-487 of Law Number 7 of 2017 concerning General Elections. In this case, the input decision from the Bawaslu can be overridden by the police or the prosecutor's office while continuing the report to the next stage of the unanimous decision of the Gakkumdu Center.

The decision of input from Bawaslu can be set aside by the police or the prosecutor's office while forwarding the report to the advanced stage of the unanimous decision of the Gakkumdu Center. This view was justified through the study of S.L.P. Perbawa who concluded that there was a difference of views between the supervisor and the investigator. Sometimes the Election Oversight Committee or Panwaslu feels that the case handled is worthy of being upgraded to the investigation stage, but investigators and prosecutors consider that the events that occurred are not included in the realm of election crimes.⁷ The police and prosecutors who are members of the Gakkumdu Center should improve the coordination pattern with the Bawaslu ranks so that differences in interpretation can be minimized.

2. Method

This research used a normative juridical approach as the main approach and an empirical approach. The normative approach was intended to explore and examine laws and regulations as a basis for researching in problems which then based on this the researcher sees empirically in the practice of its implementation. Normative juridical approach is doctrinal legal research, which is often referred to as literature research or document study, where the approach by examining rules and/or norms, rules related to the problem to be discussed. The purpose of the problem approach is to collect various kinds of legislation, theories and literature that are closely related to the problem to be discussed. The normative juridical approach emphasizes more on the synchronization of some of the doctrines adopted in constitutional law. The normative juridical approach is carried out through literature research by studying theoretical matters related to legal principles, conceptions, views, legal regulations and laws related to problems in research.⁸

3. Results of Research and Discussion

3.1. Comparison of *Incraht* and Non-*Incraht* Decisions in the Process of Handling Election Violations and the Coordination Pattern of the Gakkumdu Center against the Panwaslu Decision of North Lampung Regency

Elections are a practice of realizing human rights. The implementation of democratic elections is one part of efforts to form a government that is able to guarantee the protection of human rights, the rule of law, and the formation of democratic institutions. The essence of the election is a process of political competition to fight for the support of the owners of sovereignty (the people) so that they want to represent their sovereign mandate, so that it can become legitimacy for the winner of the election to exercise state political power. As a competition (especially political competition), this process is very vulnerable and vulnerable

⁷ *Ibid.*

⁸ Soerjono Soekanto. (2006). *Pengantar Penelitian Hukum*. Jakarta: UI Press, p. 8.

to violations, both intentional and unintentional. The vulnerability of this violation practice is unlikely to occur during the implementation of the election, even in the process of designing the electoral system there are opportunities for violations to occur, for example in the form of designing an electoral system chosen by certain parties.

Decisions that have permanent legal force are the result of a follow-up to the forwarding of reports of alleged violations that have been verified both formally and materially so that they are appropriate to proceed to the level of investigation in the police and already have complete files so that they enter the judicial stage so that they result in a decision, while decisions that do not yet have permanent legal force is a decision which after going through the formal and material verification stages, it turns out that the investigation stage cannot continue because it is deemed insufficient for the legal element. The court decision which has permanent legal force in this election process is the decision Number: 1/Pid.S/2018/PN.Kbu.

The importance of increasing synergy in handling election violations, because this will be related to the success, effectiveness, obstacles or problems that occur in regency/city Bawaslu. Because in the implementation of elections justice is the spirit of election administration, handling violations is the crown of Bawaslu. The Violation Handling Division must really understand the rules for handling violations, because Bawaslu determines the decisions on events that are alleged to have violated the category of administrative violations, the code ethics of violations, election crimes or other violations of law.

The existence of Bawaslu is in line with public expectations. Previously, Bawaslu as an Election Supervisory Agency did not have adequate authority. Especially the Election Supervisory Agency which was functionally present to enforce election justice. The products are placed more as recommendations, which the General Election Commissions or KPU is often reluctant to implement. This is what initiated the institutional strengthening of Bawaslu, both in terms of structure and authority until the birth of Law Number 7 of 2017 concerning General Elections. The crucial transformation carried out by the legislators on Bawaslu is to add the function of dispute resolution in the election process, adjudication.

The addition of this authority makes Bawaslu no longer just a recommender, but as an executor or case breaker. Based on the election law, the adjudication function of Bawaslu can be carried out to receive, examine, consider, and decide on violations of election administration, and disputes over the election process. Furthermore, the presence of Bawaslu and its staff in accordance with the election law, with the authority to settle election process disputes, is expected to contribute to realizing the implementation of an honest and fair election stage. An election whose process and results gain public legitimacy, until the elected leader of the people is born—the owner of sovereignty. The function of Bawaslu is very much needed as a state institution under a law that is permanent and has the authority to oversee the election, take action against violations and resolve disputes over the election process.

Law enforcement is a process to make the wishes of the law come true, what is referred to as the desire of the law here is nothing but the thoughts of the legislators formulated in the legal regulations. The formulation of the thoughts of legislators (laws) as outlined in legal regulations will also determine how law enforcement is carried out. Law enforcement does not only mean the implementation of legislation, although in reality in Indonesia the trend is so, the main problem of law enforcement actually lies in the factors that may influence it.

Things that can be prepared for efforts to strengthen the Gakkumdu center with the concept of reorientation are dynamic movements towards improvement and progress due to seeing previous factors that have not been optimal, by reviewing the performance of personnel from the police and prosecutors, reaffirming commitment and dedication as law enforcers in the forum. North Lampung Regency, reformulated by conducting effective coordination with the structure of Gakkumdu, including advisory organs, directors, coordinators and members. Gakkumdu also encourages the release of duties or at least reduce the burden of overloading tasks from the original agency. In addition, improving facilities and infrastructure such as adequate rooms for coordinating or meeting with relevant agencies, increasing legal awareness in the general election of Gakkumdu members and the community, making breakthroughs in rewards and punishments for each criminal act.

Gakkumdu personnel with the substance of election crimes, handling processes, procedural law, all of which are part of capacity building to maximize quality. the personnel of the general election Gakkumdu Center. Law enforcement requires four conditions, namely the existence of rules, the existence of institutions that will carry out the rules, the existence of facilities that support the implementation of the regulations, and the existence of legal awareness of the people affected by the regulation. Several factors affect the law enforcement process, including a conflict between legal certainty and justice, this is because the conception of justice is an abstract formulation, while legal certainty is a procedure that has been determined normatively.

According to Lawrence M. Friedman theory that when talking about law enforcement, it means having to discuss the legal system, that the success or failure of the application of the law depends on the legal system running. Therefore, the comparison of *incrabt* and non-*incrabt* decisions in the process of handling election violations to the coordination pattern of the Gakkumdu Center based on the application of Article 152 Paragraph 2 of Law Number 10 of 2016 concerning Decision of the Election Supervisory Committee. North Lampung Regency based on the Legal System theory states that there are three the elements involved in implementing a program: legal substance, legal structure, and legal culture.

Legal Substance are the rules, norms, and patterns of real human behavior that are in the system, including the products produced by people who are in the legal system, including the decisions they issue or the new rules they arrange. Article 152 Paragraph 2 of Law Number 10 of 2016 is a rule produced in the legal system that includes decisions in the handling of election violations the *incrabt* decision in the process of handling violations is the result of handling violations that have been tried and obtained a decision in this case the decision with Number: 1/Pid.S/2018/PN.Kbu. Meanwhile, what is not-*incrabt* is the result of handling violations that were stopped at the discussion of two integrated law enforcement centers.

Legal structure covers legal institutions, legal apparatus, and law enforcement systems. The legal structure is closely related to the judicial system implemented by law enforcement officials. Whereas in the structure of Article 152 Paragraph 2 of Law Number 10 of 2016 it is closely related to the legal culture system which applies a continuous system to the establishment of Gakkumdu Center from the center to the regions.

Legal culture it's an emphasis on culture in general, habits, opinions, ways of acting and thinking, which direct the social forces in society. In Article 152 Paragraph 2 of Law Number 10 of 2016 it is in accordance with the legal culture because in the Process of handling election violations against the coordination pattern of the Gakkumdu Center, a pattern of handling violations has been carried out in accordance with the provisions. Based

on the legal system theory proposed by Lawrence M. Friedman above, it can be analyzed that if the legal product does not run optimally, this is because it is influenced by the legal system itself including legal substance, legal structure and legal culture. Whereas based on this theory, the comparison of *incraht* and Non-*incraht* decisions in the process of handling election violations against the coordination pattern of the Gakkumdu Center based on the application of Article 152 Paragraph 2 of Law Number 10 of 2016 on the decision of the election supervisory committee of North Lampung Regency, that the similarities are the same -there is a pattern of handling violations in accordance with the provisions of the joint regulation of the chairperson of the general elections supervisory agency of the Republic of Indonesia.

The head of the State Police of the Republic of Indonesia, and the attorney general of the Republic of Indonesia Number 14 of 2016, Number 01 of 2016, Number 013/ja/11/2016 concerning Enforcement Centers Integrated Law in the Election of Governors and Deputy Governors, Regents and Deputy Regents, as well as Mayors and Deputy Mayors. Meanwhile, the difference is that in the *incraht* decision, a comprehensive pattern of handling violations is found, namely the acceptance of registration applications, discussion 1 to the determination of a court decision, while in the non-*incraht* decision, the pen pattern only the violation stops at discussion two.

3.2. Legal Consequences in Comparing *Incraht* and Non-*Incraht* Decisions in the Process of Handling Election Violations Against the Coordination Pattern of the Gakkumdu Center in North Lampung Regency

As a consequence of the rule of law, it follows that every attitude, policy and behavior of state apparatus and residents must be based on law. Likewise with matters relating to prosecution activities for any election violations or deviations from electoral laws and regulations through a process that involves the role of law enforcement officers, the Bawaslu, the KPU, the Police, the Prosecutor's Office, and Court. Decisions that have permanent legal force (*incraht* decisions) are decisions that have fulfilled the process of handling violations in accordance with the provisions and have been entered before the court while decisions that do not have permanent legal force (*incraht* decisions) are the results of handling violations that are not continued because they do not meet the elements of action. election crime.

Various violations in post-conflict local elections that are often used as arguments by applicants in the process of handling violations include: money politics, mobilization of civil servants and village officials, abuse of authority, black campaigns and so on. The problem of handling election crime violations is caused by several things, including "regulation". That from the regulatory aspect it has not provided a comprehensive legal solution, because it only regulates the juridical aspect, without paying attention to the social aspects that exist in society as a reality. In addition, the existing regulations still provide an opportunity for the incumbent not to leave his position even though the person concerned wants to run for himself (in the post-conflict local election).

Zainal also said that there is a coordination pattern that is felt to be disproportionate in the Gakkumdu center itself, so that it often causes unequal perceptions of the parties in assessing a case which causes the process of handling the violation to be continued so that it has permanent legal force but can also be terminated because it is considered not fulfilling

the elements and sufficient evidence to enter the next legal realm, in this case the trial process to obtain permanent legal force.

In carrying out the settlement, Bawaslu is given additional authority to conduct mediation and adjudication. the settlement process for the implementation of elections is different from the regional head election. In elections, supervisors can also mediate and adjudicate before a decision. The termination of the case in the investigation or prosecution stage due to various problems. However, the most common reason is the lack of understanding in the perception of Bawaslu, the police, and the prosecutor's office simultaneously in handling election criminal cases.

The reasons are various, but the most dominant ones are not found with opinions related to criminal elements. There are several legal weaknesses in Law Number 10 of 2016 in dealing with election crimes. For example, such as the matter of campaigning outside the schedule. The element is clearly stated that there must be the decision of the General Election Commission of North Lampung Regency which is cumulative in nature because it uses the word. This means that it must be concurrent, there must be a hierarchy across the organizers in the form of decisions about the campaign schedule in the media. This gives rise to differences of opinion. Also, related to the general election criminal arrest operation conducted by the police in several places. Bawaslu itself does not recognize hand arrest operations, but only findings or reports. Therefore, the function of prevention and supervision is an inseparable part in handling election crimes.

According to Thomas R. Dye, the government's policy: "is whatever governments choose to do or not to do". Dye said that public policy is anything the government chooses to do or not to do. There are two meanings that can be taken from the definition of Dye, argues that public policy can only be made by the government, not private organizations. Both Dye reaffirmed that the public policy concerns the choices made or not made by the government. In this case, the choice made by the government is an intentional act to do or not to do something. According to Dye, if the government chooses to do something, then of course there is a purpose, because public policy is an action by the government. If the government chooses not to do something, this too is a public policy, which of course has a purpose.

Based on the foregoing, it can be analyzed based on the theory of Thomas R. Dye saying that public policy is everything that is done and not done by the government to do something or not to do something, it can be seen that the legal consequences in the comparison of *incraht* decisions and the decision is not *incraht* in the process of handling election violations against the coordination pattern of the Gakkumdu Center based on the application of Article 152 Paragraph 2 of Law Number 10 of 2016. Whereas the public policy carried out by the Election Supervisory Committee of North Lampung Regency has created a relationship pattern in the process of handling violations itself, giving rise to *incraht* decisions and non- *incraht* decisions in the process of handling election violations.

This is in accordance with Thomas R. Dye theory which says that government policy: "is whatever governments choose to do or not to do". Based on Dye's theory, it can be seen that the legal consequences in the comparison of inclusive and non-*incraht* decisions in the process of handling election violations against the coordination pattern of the Gakkumdu center are based on the application of Article 152 Paragraph 2 of Law Number 10 of 2016. The Panwaslu of North Lampung Regency examined and decide on election criminal offenses no later than 12 (twelve) days from the receipt of the application. North Lampung Panwaslu performs the stages of receiving the Election report through the stages of receiving and reviewing applications. Panwaslu forwards the report on the handling of violations to

the prosecutor's office for trial and obtains permanent legal force in accordance with the mandate of the law. Meanwhile, for decisions that are not *incrabt*, the legal consequence is the termination of the process of handling violations.

4. Conclusion

Based on the results of the discussion and research of the problem, the difference is that in the *incrabt* decision a comprehensive pattern of handling violations is found, namely the acceptance of registration applications, discussion at the first level, to the determination of court decisions, while in non-*incrabt* decisions, the pattern of handling violations stops at discussion. In terms of collecting evidence, investigators experienced difficulties because the facts on the ground did not match the reports given to investigators, because when the reporter submitted the report, there was not enough evidence attached, and also because the public did not present witnesses for alleged election crimes.

The legal consequences in the comparison of *incrabt* decisions and non-*incrabt* decisions in the process of handling election violations against the coordination pattern of the Gakumdu. The Panwaslu of North Lampung Regency examines and decides on election criminal offenses no later than 12 (twelve) days from the receipt of the application. North Lampung Panwaslu performs the stages of receiving the election report through the stages of receiving and reviewing applications. Panwaslu forwards the report on the handling of violations to the prosecutor's office for trial and obtains permanent legal force in accordance with the mandate of the law. Meanwhile, for decisions that are not *incrabt*, the legal consequence is the termination of the process of handling violations.

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Conflict of Interest Statement:

The author declares that the research was conducted in the absence of any commercial or financial relationships that could be construed as a potential conflict of interest.

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