

Critical Analysis of the Selection Process for the General Election Commission Selection Team and the Election Supervisory Body in Indonesia

Diyanto

Master of Law, Universitas Dirgantara Marsekal Suryadarma. diantocomol@gmail.com

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Abstract

This research seeks to analyze the selection process for the General Election Commission Selection Team and the Election Supervisory Body in Indonesia from a legal perspective. Through a normative method with a statutory and conceptual approach, the results of this research conclude that the formation of the General Election Commission (KPU) and Election Supervisory Body (Bawaslu) selection team as regulated in article 22 jo 118 of Law No. 7 of 2017 concerning Elections which the President formed is contrary to the duties and authority The President is regulated in the 1945 Constitution because no article or paragraph explains clearly and explicitly that the President's right to form the authority to create the selection team of KPU and Bawaslu and is not in accordance with the principle of legality or the principle of the rule of law. So, the formation of the selection team is based on article 22 jo 118 of Law No. 7 2017 concerning Elections is null and void along with legal regulations or derivative legal products. There is a legal violation by the President of Article 22E paragraph (5) of the 1945 Constitution.

Keywords: Election supervisory body, general election commission, general election, selection team



INTRODUCTION

The Indonesian state is a legal state in accordance with the mandate of Article 1 paragraph (3) of the 1945 Constitution so that state or government power is exercised by statutory regulations and legal objectives, namely justice that humanizes humans (Teguh Prasetyo's legal theory of dignified justice) as the law, namely to serve humans in order to achieve benefit, legal certainty and justice (Prasetyo, 2017).

The fundamental milestone of the Indonesian people's state life after being free from colonialism was the unity of the people in implementing democracy, namely the holding of the first general election in 1955, which was claimed to be an election with integrity based on history, which was then continued in the decade of the New Order until the Reformation Order and until later the general elections and local elections. in 2024 which will be held by-election management institutions such as the General Election Commission (KPU), the Election Organizer Honorary Council (DKPP), and the Election Supervisory Body (Bawaslu).

Of course, to produce elections that are independent, direct, public, free, secret, honest, and fair, a selection of election organizer commissioners, including the KPU, Bawaslu, is made, which selection is regulated in Article 22 jo 118 of Law No. 7 of 2017 concerning Elections, namely the existence of authority (Wagiman, 2023). The President forms a KPU selection team, Bawaslu, which will then submit the prospective candidates to the DPR for approval. This is very inconsistent with the President's duties and authority, which are not explicitly regulated in the 1945 Constitution, which lies with the General Election Commission, which has the authority. Article 22E paragraph (5) of the 1945 Constitution states that general elections are held by a national, permanent, and independent general election commission (1945 Constitution Amendment).

So, if the President violates the law, his legal policy can lead to injustice, lack of legal certainty, and even lack of benefit because when the law is violated, the results of the legal action will be legally flawed or null and void, and even unconstitutional, thus impacting the results of the formation of the KPU. Provincial KPU, district KPU, and Bawaslu, Provincial Bawaslu district/city Bawaslu are null and void. The legal policy also does not adhere to the principles of constitutional law as regulated in the 1945 Constitution, namely the existence of the principle of the rule of law, namely based on Article 1 paragraph (3) of the 1945 Constitution. or the principle of legality (*wetmatigheid*) (Sibuea, 2013).

Based on the explanation of the problem above, in this research, the author attempts to analyze from a legal perspective the selection process for the General Election Commission Selection Team and the Election Supervisory Body in Indonesia.

METHOD

The research method used in this research is a normative method that prioritizes library research. Namely, the study of literature on several legal documents, such as statutory regulations and research carried out previously from journals or other available sources. Thus, this research approach tends to be a statutory and conceptual approach. The data source is also taken from

secondary data sources. The secondary data obtained was then analyzed using prescriptive analysis.

ANALYSIS AND DISCUSSION

Legal standing of the President in the Formation of the KPU and Bawaslu Candidate Selection Team

Legal standing is based on Black's Law Dictionary, namely the free translation of a party to file a lawsuit or seek legal enforcement of an obligation or right. According to Harjono, (2008) in "konstitusi sebagai rumah bangsa" is the condition that a person or party is determined to meet the requirements and, therefore, has the right to submit a request for resolution of a dispute or case before the Constitutional Court.

In this case, the 1945 Constitution explicitly regulates the duties and authority of the President in Article 4 paragraph (1) of the 1945 Constitution, which explains that the President holds governmental powers according to the Constitution and the President's duties and authority are as head of state and head of government.

As head of state are as follows:

1. The President holds supreme power over the Army, Navy, and Air Force (article 10)
2. The President, with the approval of the DPR, declares war and makes peace with other countries (article 11 paragraph (1))
3. The President declares a state of danger; the conditions and consequences of the state of danger are determined by law (article 12)
4. The President appoints Ambassadors and consuls (article 13 paragraph (1))
5. The President grants pardon and rehabilitation with the consideration of the Supreme Court (article 14 paragraph 91)
6. The President grants amnesty and abolition with the consideration of the DPR (article 14 paragraph (2))
7. The President gives titles, decorations, and other honors regulated by law (Article 15).

The President as head of government is:

1. The President is assisted by State Ministers in carrying out government duties (article 17)
2. The President has the right to submit a bill to the DPR (article 5 paragraph (1))
3. The President stipulates Government Regulations to implement the Law (article 5 paragraph (2))
4. Ministers are appointed and dismissed by the President (article 17 paragraph (2))
5. Every bill is discussed by the DPR and the President to obtain joint approval (article 20 paragraph (2))
6. The President ratifies the bill that has been mutually agreed to become law (article 20 paragraph (4))
7. Candidates for Supreme Court Justices are proposed by the Judicial Commission to the DPR for approval and then appointed as Supreme Court Justices by the President (article 24A paragraph 3)

8. The APBN Bill is proposed by the President for discussion with the DPR with consideration by the DPD (article 23 paragraph 2)
9. The Constitutional Court has 9 (nine) members as constitutional judges appointed by the President, each nominated by 3 (three) people by the Supreme Court, 3 (three) people by the DPR, and 3 (three) people by the President.

So, based on the rights, authority, and duties of the President in the 1945 Constitution, it is very clear and explicitly that there is no regulation or absence of the authority, rights, and duties of the President to form a KPU and Bawaslu selection team, then article 22 paragraph (1), paragraph (2) in conjunction with Article 118 of the Law No. 7 of 2017 concerning Elections is contrary to the 1945 Constitution so that it has the effect of being null and void or unconstitutional.

Legal Principles of Legality or Principles of the Rule of Law

The legal principle of legality (*wetmatigheid*) in state administrative law can be interpreted that every action of a state administrative official must have a legal basis or legal basis, and according to Indroharto in his book *Efforts to Understand the Law on State Administrative Justice*, that the principle of legality in state administrative law or administrative law The state was originally an effort to fight against the king's right to collect taxes from the people if the people were not represented in representation or if they carried out arrests and imposed criminal penalties, but now all the authorities of government officials who violate the freedom or property rights of citizens at any level can be acted upon. The concept of the principle of the rule of law was also initiated by Plato and emphasized by Aristotle with his concept that a good state administrator is based on sound legal arrangements called norms (Indroharto, 1993).

This principle of legality is based on Article 1, paragraph (3) of the 1945 Constitution also called the principle of the rule of law because the meaning of this article is that Indonesia is a country of law, and the principle of legality is also regulated in Article 1 number 8 of Law No. 51 of 2009 concerning PTUN which explains that state administrative bodies or officials are bodies or officials who carry out government affairs based on applicable laws and regulations and Article 5 of Law No. 30 of 2014 concerning government administration as amended by the Job Creation Law or Law No. 6 of 2023 (Sibuea, 2013).

From the understanding of the principle of legality or the principle of the rule of law in this discussion, it is evident that the President violates Article 22 jo 118 of Law No. 7 of 2017 because there is no legal basis or basis in the 1945 Constitution which regulates that the President has the authority to form a KPU and Bawaslu selection team so that the decision or legal The President's policy based on Article aqua is an act that violates the law or is unconstitutional and is null and void because it is contrary to the principle of legality or the principle of the rule of law based on Article 1 paragraph (3) of the 1945 Constitution.

Based on the Legal Perspective of Check and Balancing Theory or Trias Politica

historically, the concept of check balancing or Trias Politica was an initial concept discovered by English philosopher John Locke and developed by Montesquieu in his book "*De l'Esprit des Lois*" (Farid, 2023; Ruhenda et al., 2020) namely the concept of separation of power and the Trias

politica concept aims to prevent absolute state power and according to the Journal entitled Implementation of Trias Politica in the Indonesian government system by Wahyu Eko Nugroho explains that Trias politica is the idea that a sovereign government must be separated between two or more independent, strong units (Nugroho, 2014).

Referring to the legal theory of Montesqueui's Trias Politica, regarding general elections as regulated in the 1945 Constitution, article 22E paragraph (5), namely that general elections are held by a national, permanent, and independent general election commission. In that mandate, the general election commission or Bawaslu, even DKPP, as an election organizing institution, must be independent in selecting candidate members with technical means such as creating a permanent KPU or Bawsalu Council with a certain term of service, which has the task and authority to select candidates for Commissioners of the KPU, BAwaslu, DKPP with the composition of the Dewas/supervisory board consisting of various representatives of the community, academics, community organizations so that the KPU, Bawaslu and even DKPP as national, permanent and independent election organizers in accordance with the mandate of Article 22E paragraph (5) of the 1945 Constitution.

According to the author, checks and balances of power or separation of powers is very important because it is a control over power in the executive, legislative, and judiciary (de Archellie et al., 2020). An example of this in the formation of Law No. 7 of 2017 is when Law No. 7 of 2017 concerning elections was passed; at that time, the incumbent was still in power and would run for re-election in the next presidential election, which ended up being re-elected, which was a response to various connotations of the community so that a stigma of "reciprocation" arose against the KPU and Bawaslu Selection Team with quotes based on their authority because the KPU and Bawaslu Selection Team based on Law No. 7 of 2017 was tasked with carrying out the selection. 7/2017 is tasked with the authority to select the KPU and Bawaslu, even though the KPU and Bawaslu are elected with integrity and independence based on the value of each individual's test results. Still, several things have become the author's highlight. For example, in the recruitment of Bawaslu in the regency/city for the period 2022-2027, namely from direct sources, the candidate was very disappointed because when failing the CAT and Psychological Test level, there is no transparency/openness of the test results of each candidate so that with a unilateral announcement, namely not openly announcing the results of the CAT and Psychological Test in advance is a violation of the law stipulated in Article 23 of Law No. 7/2017, namely the Selection Committee (Pans Pans). 7/2017, namely, the Selection Committee (Pansel) does not openly announce the CAT and Psychological Test results. 7/2017, namely the Selection Committee, in carrying out its duties openly and with public participation. Besides that, there are also highlights related to Presidential Decree 120 / P in 2021, which does not comply with the mechanism of the Presidential Decree (Faozan, 2023).

Based on the Perspective of the KPU and Bawaslu selection teams from a Political and Legal Science Point of View

Legal politics is the direction of policies that will, are, or have been implemented nationally by the government, based on the opinion of Mahfud MD and according to Satjipto Rahardjo, legal politics is the activity of choosing and how to be used to achieve a certain social and legal goal in

society, while based on the opinion of Teuku Nohammad Radhi, legal politics is a statement of the will of the state authorities regarding the laws that apply in their territory and regarding the direction of legal development that is built (Mahfud MD, 2012).

The author's analysis based on Iium's definition of legal politics above related to highlighting the formation of the KPU and Bawaslu Timsel is the President's legal policy from the perspective of his duties and authorities regulated in the 1945 Constitution, namely the deviation of his duties and authorities which are explicitly not regulated in the 1945 Constitution (violation of the principle of legality and the principle of the rule of law) so that the results of the legal product are legally defective or null and void.

CONCLUSION

Based on the description above, the author concludes that the formation of the KPU and Bawaslu Selection Team, as regulated in Article 22 jo 118 of Law No. 7 of 2017 concerning Elections which is formed by the President, is contrary to the duties and authority of the President as regulated in the 1945 Constitution because there is no article or paragraph that clearly and explicitly explains the right of the President's authority to form the KPU and Bawaslu Selection Team and is not in accordance with the principle of legality or the principle of the rule of law so that the formation of the Selection Team based on Article 22 jo 118 of Law No. 7 of 2017 concerning Elections is null and void along with the rules of law or derivative legal products. There is a violation of law by the President against Article 22E paragraph (5) of the 1945 Constitution, which states that "General elections are organized by a general election commission that is national, permanent and independent." This means that the article clearly explains that the authority to organize elections is the General Election Commission or what is interpreted is the KPU, Bawaslu, DKPP, the implementation of which is the authority to form, endorse the KPU and Bawaslu Selection Team or even DKPP as well as the process of the following stages in general elections.

The legal politics of the formation of the KPU and Bawaslu selection teams implemented by the President is very contradictory and contrary to the principle of legality or the principle of the rule of law, which is explained in Article 1 paragraph (3) of 1945 Constitution "The State of Indonesia is a state of law" which of course the legal policy of the government or President must be based on a legal basis so that the legal product of its decision is not legally flawed or has no legal basis so that it will have implications for legal violations and even null and void or unconstitutional.

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