

# EVALUATION OF RECOMMENDATIONS FOR THE GENERAL ELECTION SUPERVISORY AGENCY (BAWASLU)

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## ABSTRACT

*This article is the result of the author's research on the legal substance of the Regency/ The General Election Supervisory Agency (BAWASLU) in handling and assessing the presence or absence of election violations or findings/reports. In the process of inspection, research, study to produce recommendations, giving authority to Regency/Municipal Bawaslu to ensure formal and material truth, therefore the recommendations as referred to in Article 139 of Law Number 1 of 2015, with a technical handling mechanism in Bawaslu regulation Number 14 of 2017 are binding, must be followed up by the Regency/City General Elections Commission (KPU). Regency/City KPU based on Article 140 of Law Number 1 of 2015 uses operational instruments namely KPU Regulation (PKPU) Number 13 of 2014 in conjunction with PKPU Number 25 of 2013, which requires KPU to observe, review, and make decisions as a follow-up to recommendations Regency/City Bawaslu. The purpose of this study was to find out the legal problems recommended by the Regency/City Bawaslu in the process of handling election violations. The methodology used is normative juridical with a law and library approach. As a result of the findings and conclusions, the process of material examination by the City Regency KPU on Regency/City Bawaslu recommendations straddles the principle of efficiency in the implementation of elections and does not show the Proportionality Principle in the form of institutional alignment in obtaining authority, where the recommendation authority by City Regency Bawaslu is obtained from the law. while the authority of Regency/Municipal KPU is obtained from PKPU, besides this shows that Regency/Municipal KPU can supervise the results of Regency/City Bawaslu recommendations which when the two study results contradict it will have an impact on public distrust.*

**Keyword :** Authority, Bawaslu, Recommendations.

## 1. INTRODUCTION

KPU continues to monitor Regency/City Bawaslu in the recommended output. In general, Regency/City Bawaslu recommendations to the KPU are frequently viewed as non-binding in terms of direct acceptance by the Regency/Municipal KPU. Recommendations When evaluating the direct election regime as governed by Law 1 of 2015 until the most recent change to Law 10 of 2016, the Regency/City Bawaslu does not have the highest executive authority when dealing with the Regency/Municipal KPU (UU Pilkada).

The 2017 Perbawaslu No. 14 governs the technological framework for addressing electoral irregularities.

Regency/City Bawaslu examines findings/reports by conducting examinations, doing research, and conducting studies in order to provide suggestions. This method flow satisfies the formal and material requirements for processing findings/reports. According to the protocol, the Provincial/Regional/City KPU is responsible for following up on suggestions made in line with Article 139 of Law No. 1 of 2015. According to Perbawaslu No. 14 of 2017, the Regency/Municipal Bawaslu has the right to call and interrogate the reporter. the reporting party and the competent party to ascertain/accomplish the formal and material truths.

Using the operational instruments of PKPU 13 of 2014 and PKPU 25 of 2013, in response to the proposal from the Regency/City Bawaslu [Article 140 of Law 1 of 2015]. The KPU is required by Article 18 of PKPU No. 13 of 2014 to undertake observations and assessments before to rendering a judgment. Because the KPU's power was altered from PKPU 13 of 2014 to PKPU 25 of 2013, the Regency/Municipal Bawaslu's supervisory role was abolished.

Regency/City KPU can monitor the performance of Regency/City Bawaslu by examining the proposals [Article 18 PKPU Number 13 of 2014]. In basic terms, Regency/City KPU monitors and evaluates the performance of Regency/Municipal Bawaslu.

## 2. RESEARCH METHOD

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The data analysis technique used is descriptive qualitative analysis. Qualitative descriptive analysis is a type of data analysis in which facts from factual research are grouped and selected according to their quality and truth. This is related to laws and regulations, as well as ideas, concepts, and rules obtained through library research, to create solutions to problems and reach conclusions that can be accounted for.

## 3. RESULT AND DISCUSSION

It is possible to see this as an inconsistency in the authority of the KPU as the organizer whose performance is supervised by the Regency/City Bawaslu, but instead participates in supervising and correcting the material goods of the Regency/City Bawaslu. Although there are no procedural problems because the mechanism is based on the rules [Article 18 PKPU Number 13 of 2014], examining the role of authority of each institution reveals several irregularities, both in terms of effectiveness and legal certainty. From the perspective of Regency/Municipal KPU, which is not a supervisory agency tasked with assessing the performance of Regency/City Bawaslu, this is exacerbated by including the functions of the Ministry of Home Affairs [particularly the fulfillment of established standards, stated in Article 71 paragraphs (2) and (3) of the Pilkada Law], so that both become functional institutions in assessing r

Regarding the nature of the recommendation as referred to in Article 139 of Law Number 1 of 2015, the author is of the opinion that it can be interpreted as binding because the adjudication decision of Regency/Municipal KPU, as regulated/requested by Law Number 1 of 2015 as referred to in Article 139 paragraph (2) and (3) related to follow-up, related to procedures for implementing recommendations. PKPU only supervises the formal aspects of the implementation of the recommendations, it should not be included in the material side of the recommendations.

It is known that the KPU in carrying out the recommendations of Regency/City Bawaslu has the authority to investigate and decide on administrative violations in accordance with Article 140 of Law No. 1 of 2015. This authority can be understood teleologically as a responsibility, carry out the findings of the Bawaslu/Regency/City evaluation materials. The term "necessary follow-up" refers to situations that arise as a result of a material inspection that should not be repeated. No need to repeat; The duties of Regency/City Bawaslu/Bawaslu within their authority are clearly regulated in Article 134 paragraph 5 of Law/1/2015. If the system is subjected to repeated material checks (such as das sollen), many problems arise, tripping over the concept of electoral organization, especially the notion of efficiency. Of course, it is inefficient to frequently verify content. In addition, there are two organizational institutions (Bawaslu/Regency/City Bawaslu and KPU), from which Bawaslu/Regency/Municipal Bawaslu obtain the authority to handle violations (formal and material investigations) attributively. This is an inter-agency power which, when handled properly, is disproportionate and also violates the Proportional Principle. In a way, the KPU's material examination is an embodiment of the KPU's concept of prudence and prudence in giving a

decision on the proposal [Article 140 of Law Number 1 of 2015]. The degree of accuracy must be proportional to the authority and function. Regency/City Bawaslu/Bawaslu must be careful in conducting formal and material evaluations, while KPU must be careful in conducting formal reviews of proposals.

Based on Article 18 letters a and b of PKPU No. 13 of 2014, the meaning of re-examining – exploring, seeking, and receiving input from various parties for the completeness and clarity of understanding of the report on Election Administration Violations, teleologically the examination study is directed at the KPU to make improvements to the questions. the formal side before implementing the a quo recommendations.

This issue can also be seen in the substance of Article 18 letter b of PKPU 13 of 2014, which requires the participation of competent state organs in the process of producing studies and opportunities to hear from the parties. Material inspection conducted by Regency/Municipal KPU is identical to material inspection conducted by Regency/Municipal Bawaslu/Bawaslu based on Article 13 paragraph (3) letter d of Perbawaslu Number 14 of 2017 which contains elements of evidence, then continues in Article 21 paragraph (1), which provides space for experts to provide their statements.

Reviewing the results of the good comparison of Article 18 letter b PKPU 13 of 2014 with Article 13 paragraph (3) letter d and Article 21 paragraph (1) Perbawaslu No. 14 of 2017 is a regulation that is parallel to its position in the context of pursuing material truth in one handling flow system.

Problems will arise if the material truth points in the handling by the KPU contradict the material truth points in the examination of Regency/Municipal Bawaslu/Bawaslu. The consequences of this are biased in terms of legal certainty. The further consequence is that it creates public distrust in one of the election management institutions (Bawaslu/Regency/City Bawaslu or KPU).

#### **4. CONCLUSIONS**

Ideally, the evaluation area in terms of the material proposed by the Regency/Municipal Bawaslu/Bawaslu should be understood as the authority of the court. Following the implementation of the KPU's proposal, if there are parties (incumbent candidates) who feel that their rights have been violated as a result of the KPU's decision in responding to the recommendation, they can file a lawsuit to the PTTUN/MA. This simplifies the authority of each implementing agency to avoid duplication while at the same time simplifying the flow of handling which has an impact on legal certainty. The Ministry of Home Affairs/other executive agencies authorized to evaluate program mutations/misuse do not have access points at the KPU level.