

ANALYSIS OF BAWASLU'S AUTHORITY IN HANDLING ELECTION VIOLATIONS AFTER THE DETERMINATION OF ELECTION RESULTS ACCORDING TO JURIDICAL AND FIQH SIYASAH DUSTURIYAH

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Abstract

The focus of the research is the authority of Bawaslu in dealing with election violations after the determination of election results nationally according to Law Number 7 of 2017 concerning General Elections and how the fiqh dusturiyah fiqh review of the authority possessed by Bawaslu. This research is normative legal research. Based on the results of the research, it can be explained that Bawaslu in dealing with election violations after the determination of election results nationally in its implementation raises a separate problem because Bawaslu is very likely to issue decisions that can have implications for changes in the results of the votes acquired by election participants if the handling of violations is carried out after the determination of national election results. The practice of implementing Bawaslu's authority in dealing with violations that have an impact on the results of the vote acquisition after the determination of the national election results conflicts with the authority of the Constitutional Court so that it allows for overlapping of the authority of Bawaslu in following up on alleged election violations with the authority held by the Constitutional Court to resolve disputes over General Election Results Disputes (PHPU). The fiqh siyasa dusturiyah review of the authority of Bawaslu is not by the values in the Qur'an and fiqh siyasa dusturiyah related to the study of al-hisbah as an institution authorized to carry out supervision aimed at realizing amar ma'ruf nahi munkar which in principle is to bring benefits and reject mafsadat.

Keywords: *Bawaslu Authority, Election Violations, Jurisprudence, Siyasa Dusturiyah*

Abstract

Fokus penelitian adalah kewenangan Bawaslu dalam menangani pelanggaran pemilu pasca penetapan hasil pemilu secara nasional menurut Undang-Undang Nomor 7 Tahun 2017 tentang Pemilihan Umum dan bagaimana tinjauan fikih dusturiyah terhadap kewenangan yang dimiliki oleh Bawaslu. Penelitian ini merupakan penelitian hukum normatif. Berdasarkan hasil penelitian dapat dijelaskan bahwa Bawaslu dalam menangani pelanggaran pemilu setelah penetapan hasil pemilu secara nasional dalam pelaksanaannya menimbulkan permasalahan tersendiri karena Bawaslu sangat mungkin mengeluarkan putusan yang dapat berimplikasi pada perubahan hasil perolehan suara peserta pemilu apabila penanganan pelanggaran dilakukan setelah penetapan hasil pemilu secara nasional. Praktik pelaksanaan kewenangan Bawaslu dalam menangani pelanggaran yang berdampak pada hasil perolehan suara setelah penetapan hasil pemilu secara nasional berbenturan dengan kewenangan Mahkamah Konstitusi sehingga memungkinkan terjadinya tumpang tindih kewenangan Bawaslu dalam menindaklanjuti dugaan pelanggaran pemilu dengan kewenangan yang dimiliki oleh Mahkamah Konstitusi dalam menyelesaikan sengketa Perselisihan Hasil Pemilihan Umum (PHPU). Tinjauan fiqh siyasa dusturiyah terhadap kewenangan Bawaslu tidak dengan nilai-nilai yang ada di dalam Al-Qur'an dan fiqh siyasa dusturiyah yang berkaitan dengan kajian al-hisbah sebagai lembaga yang berwenang melakukan pengawasan yang bertujuan untuk mewujudkan amar ma'ruf nahi munkar yang pada prinsipnya adalah mendatangkan kemaslahatan dan menolak mafsadat.

Kata kunci: *Kewenangan Bawaslu, Pelanggaran Pemilu, Yurisprudensi, Siyasa Dusturiyah*

INTRODUCTION

Bawaslu has increasingly existed institutionally with the issuance of Law Number 7 of 2017 concerning General Elections. The crucial transformation carried out by the legislators towards Bawaslu was adding the authority of Bawaslu in resolving election violations election process disputes, and adjudication. As for what is meant by election violations based on Article 9 Paragraph (5) of Perbawaslu Number 7 of 2018 concerning Handling General Election Findings and Violations including violations of the KPU and Bawaslu code of ethics, election administrative violations, election crimes and/or violations of other laws and regulations.

This addition of authority makes Bawaslu no longer just a recommendation giver but also a case breaker or executor. Referring to the Election Law, the adjudication function carried out by Bawaslu includes the authority to receive, examine, consider, and decide on election violations (Fritz Edward, 2018). Election administrative violations as outlined in Article 460 of the Election Law include violations of procedures, procedures, and mechanisms related to the administration of election implementation at every stage of the election administration. Apart from that, there were also election administration violations related to errors in the process of recapitulating the results of calculating the votes obtained by election participants as specified in Article 399 paragraph (1) in conjunction with Article 403 in conjunction with Article 407 of the Election Law. Where Bawaslu is obliged to resolve cases of administrative violations within 14 days of receiving the report as specified in Article 461 paragraph (5) of the Election Law.

Regarding election administrative violations, Bawaslu can resolve cases as specified in Article 461 paragraph (6) of the Election Law which states that "Bawaslu, Provincial Bawaslu, Regency / City Bawaslu decide on election administrative violations in the form of; a) administrative corrections to procedures, procedures, or mechanisms in accordance with the provisions of laws and regulations; b) written warnings; c) exclusion from certain stages in the implementation of elections; and / or, d) other administrative sanctions in accordance with the provisions of laws and regulations".

Sanctions in terms of administrative improvements as specified in point a above, in practice can have an impact on changing the election results. Improvements to procedures or procedures that also have to change the results or vote acquisition can indeed be carried out if the procedures carried out are not by statutory provisions. However, this provision will become

a problem if the change in vote acquisition results is made after the determination of the national election results by the KPU.¹

In practice, the implementation of Bawaslu's authority in dealing with administrative violations in the implementation of the recapitulation of the results of the vote acquisition after the determination of the national election results clashed with the authority of the Constitutional Court Article 24C paragraph (1) of the 1945 Constitution which was reaffirmed in Article 10 paragraph (1) letter a through d Law 24 of 2003 concerning the Constitutional Court, in which one of the five main powers of the Constitutional Court is in terms of deciding disputes about the results of general elections. This arrangement is then clarified again in Article 474 paragraph (1) of the Election Law

"In the event of a dispute over the determination of the vote acquisition results for members of the DPR, DPD, and DPRD nationally, election contestants for members of the DPR, DPD, and DPRD can submit a request for cancellation of the determination of the vote results by the KPU to the Constitutional Court".

The context of the two authorities is closely related to the vote acquisition results of election participants. In terms of exercising its authority, Bawaslu is very likely to issue a decision that could have implications for changes in the vote acquisition results of election participants. This very broad authority opens opportunities for conflicts and even overlapping decisions between the Bawaslu and the Constitutional Court, which results in legal uncertainty for the executors of these decisions, both from the election organizers, in this case, the KPU, and election participants as seekers of justice.

METHOD

Types of normative legal research, namely research that explores law as norms, rules, legal principles, legal principles, legal doctrine, and legal theory. Therefore, this research was conducted by examining library materials to answer legal issues regarding the authority of Bawaslu in handling election violations after the determination of national election results according to Law Number 7 of 2017 concerning General Elections regarding and the perspective of *fiqh siyasah dusturiyah* through data obtained from the literature. This normative legal research, namely a literature search comprehensively analyzed and described the authority of the Bawaslu in dealing with election violations after the determination of the national election results.

¹ Maulana, MI (2019a). *Legal Uncertainty in Settlement of Administrative Violations in the Election Results Recapitulation Process*. Journal KPU. 1-19

RESULTS AND DISCUSSION

A. Legal Theories

1. Legal Certainty Theory

According to Gustav Radbruch, as quoted by Oeripan Notohamidjojo (2001) law must contain 3 (three) identity values, namely the principle of legal certainty (*rechtmatigheid*), the principle of legal justice (*gerechtigheit*), and the principle of legal expediency (*zwechmatigheid*) because these three comments are conditions that must be met in law enforcement and preventing arbitrariness.²

Legal certainty is a principle that is included in the basic values of law so that the law refers to the application of clear, permanent, and consistent laws where its implementation cannot be influenced by subjective circumstances. In Indonesia, the principle of legal certainty is not the only principle of the Indonesian legal system.³ Article 28 paragraph (1) of Law Number 4 of 2004 concerning Judicial Power mandates that judges in deciding a case apart from applying the sound of the law, must also explore the values of justice that live in society. This means that the judiciary does not only consider legal certainty but also emphasizes the procedural aspect of justice, not merely substantive Justice.⁴

2. Authority Theory

Authority is what is called "formal power", power that derives from powers conferred by law or the legislature from executive or administrative powers. Authority is the power of a certain group of people or power over a sector of government or certain unanimous government affairs. While authority is only about a certain part of the authority. Authority is the right to give orders and the power to demand obedience. Authority can also be defined as the power to make decisions, govern, and delegate responsibility to others, functions that may not be carried out.

² Halilah, S. (2021). *Principle of Legal Certainty According to Experts*. Constitutional Law, 4, 56–65.

³ Prayogo, RT (2016). *Application of the Principle of Legal Certainty in Supreme Court Regulation Number 1 of 2011 Concerning the Right to Judicial Review in Constitutional Court Regulation Number 06/CONSTITUTIONAL COURT /2005 Concerning Guidelines for Procedures in Reviewing Laws*. Journal of Indonesian Legislation, 13, 191–201.

⁴ Iskandar, W. (2017). *Implementation of the Principle of Equitable Legal Certainty Based on the Aspirations of Indonesian Nation Law (Study of the Banyumas District Court Decision on Mbah Minah)*. Judiciary, 8, 19–44.

In its implementation, authority can be obtained in various ways. According to Article 1 paragraphs (22) to (24) of Law Number 30 of 2014 concerning Government Administration authority is obtained by attribution, delegation, and mandate. here is the content of the rules:

(22) Attribution authority is the granting of authority to Government Agencies and/or Officials by the 1945 Constitution of the Republic of Indonesia or Law.

(23) Delegation is the delegation of authority from the Agency and/or Lower Government officials with responsibility and accountability pass entirely to the recipient of the delegation.

(24) Mandate is the delegation of authority from lower government bodies and/or officials with responsibility and accountability remaining with the mandate giver.

B. Election Oversight Body (Bawaslu)

1. Meaning of Bawaslu

The Election Supervisory Agency (Bawaslu) is an election management body whose task is to oversee the holding of elections throughout the territory of the Unitary State of the Republic of Indonesia. Bawaslu is regulated in Law Number 7 of 2017 concerning Elections and Law Number 11 of 2011 concerning General Election Organizers. The number of Bawaslu members based on Article 72 of the Election Organizers Law is 5 (five) people, Provincial Bawaslu 3 (three) people, Sub-District Panwaslu 3 (three) people whose membership consists of professionals who can carry out supervision, not being part of a party politics and must pay attention to women's representation of at least 30% (thirty percent). To carry out their duties, Bawaslu members are supported by the Secretariat General of the Election Supervisory Agency.

2. A Brief History of Election Supervision

In the history of the implementation of elections in Indonesia, the term election supervision first appeared in the 1980s. When the first elections were held in Indonesia in 1955, the term election supervision was not yet known. In that year, trust was built among all participants and citizens regarding the implementation of the General Election which was intended to form a parliamentary institution which at that time was known as a constituent assembly. A new election supervisory institution emerged during the 1982 election, under the name of the Election Implementation Supervisory Committee (Panwaslak Pemilu). At that time distrust had begun to emerge about the implementation of the General Elections, which had begun to be co-opted by the forces of the ruling regime. The formation of the Election Panwaslak in the 1982 Election

was motivated by protests over the many violations and manipulation of vote counting carried out by Election officials in the 1971 Election, then the Election violations and fraud became more massive in the 1977 Election. The "quality" of the 1982 Election. To meet the demands of the United Development Party (PPP) and the Indonesian Democratic Party (PDI), the government agreed to place representative election participants on the election committee. In addition, the government also introduced a new body that will be involved in election affairs to assist the Election Supervisory Institution (LPU) called the Election Supervisory Panitia (Panwaslak Pemilu).⁵

Furthermore, the Election Supervisory Institution was strengthened through Law Number 22 of 2007 concerning Election Organizers by establishing a permanent institution called the Election Supervisory Agency (Bawaslu). The Bawaslu apparatus in the implementation of supervision is up to the sub-district/village level with the order of the Provincial Election Supervisory Committee, Regency/City Election Supervisory Committee, District Election Supervisory Committee, and Field Election Supervisor (PPL) at the sub-district/village level.⁶

3. Process of Settlement of Violations at Bawaslu

In terms of dealing with election administrative violations, referring to the Election Supervisory Body Regulation No. 8 of 2018 concerning Settlement of General Election Administrative Violations is a violation of procedures, procedures or mechanisms related to the administration of election implementation in every stage of the election implementation of other than election crimes and violations of the code of ethics. Violations of KPU regulations in each election stage are election administrative violations. This is because the Election Law does not specify in detail what election administrative violations are. Unlike the provisions in the previous law which stated that Election administrative violations were resolved by the KPU, Article 461 paragraph (5) of the Election Law stipulates that Election administrative violations were resolved by the Bawaslu.

If in the case of a criminal election, the Bawaslu must forward a report to the police⁷. In contrast to, Election Administrative Violations, Bawaslu is given the

⁵ Gloria, R. (2020). *A Brief History of Bawaslu from its Beginning*.

⁶ Erlangga, Y. (2018). *What and Who is the RI Bawaslu: Behind the Scenes of Upholding Indonesian Democracy*. Bawaslu. 95

⁷ Prayitno, S. (2019). *Problems with Law Enforcement of 2019 Election Crimes*. RI KPU, 8.

authority to impose sanctions if the reported party is proven to have committed a violation by the provisions of Article 461 paragraph (6) which states that sanctions against reporters or perpetrators of administrative violations are: a) administrative improvements to procedures, procedures or mechanisms by the provisions of laws and regulations; b) written warning; c) are not included at certain stages in the election administration; and/or; d) other administrative sanctions by the provisions in the law on elections.

4. *Fiqh Siyasa Dusturiyah*

fiqh siyasah dusturiyah is part of *siyasah syar'iyah*, which means constitutional politics based on the teachings of Allah and the Prophet Muhammad. With the main goal of achieving benefits. In *fiqh siyasah dusturiyah*, the basic idea of doing politics is guided by the principles of Islamic law, which operationally can continue to develop and experience changes as long as there is no deviation from the prevailing principles⁸. Besides that, explains that the public benefit lies with the holders of power (government, until *amri orwulatul amr*), therefore, the form of laws, regulations, decisions, and public policies made by those in power are binding.

One of the values embedded in the constitution is the guarantee of the human rights of every member of society, as well as the equal status of all individuals before the law. Regardless of social status, income, education, or even religious beliefs. So that the purpose of passing laws and regulations which are the *fiqh* principles of *fiqh siyasah dusturiyah* can be fulfilled, namely to provide a sense of justice, legal certainty, and usefulness to realize the benefits of humanity and meet human needs.

5. *Al-Hisbah area*

Etymologically, *al-Misbah* is a noun derived from the noun *al-ihṭisab* which means 'holding wages', then the meaning extends to 'good supervision'. Meanwhile, in terms of terminology, *al-Mawardi* defines an order towards goodness (*ma'ruf*) when there is deviation from the truth and prevents evil when evil arises so that in its history the *al-hisbah area* is seen as an urgent institution in fostering society to comply with the rules that are imposed. has been determined by *ulil amri*⁹

Al-Misbah area (warning agency and supervisory agency) is an institution or

⁸ Ihsan, M. (2014). *Democracy and Shura: Islamic and Western Perspectives*. Substancia, 16, 1–12.

⁹ Sultan, L. (2013). *Judicial Power in Islam and Its Application in Indonesia*. 13, 439–440

body that has the authority to remind members of the public about existing rules that must be followed, how to use and comply with regulations and actions that must be avoided because they are contrary to regulations¹⁰

As for the duties of the al-Hisbah area, they include:

1. Supervise the implementation and violation of laws and regulations in the field of Islamic law
2. Carry out spiritual guidance and advocacy for everyone based on initial evidence that should be suspected of having violated laws and regulations in the field of Islamic law
3. Inform the public about the existence of statutory regulations in the field of Islamic law
4. Determining the existence of an act of violation of the provisions of Islamic law

C. Bawaslu Authority in Handling Election Violations after the Determination of National Election Results according to Law Number 7 of 2017 concerning General Elections

The authority of Bawaslu in dealing with election violations after the determination of election results nationally raises problems, especially related to the handling of administrative violations against errors in the process of recapitulating election results in several regions have created problems and complications of their own. Out of a total of 16,123 cases of administrative violations resolved by Bawaslu (Bawaslu 2019). There is one example of election law enforcement that does not provide legal certainty, namely the case that occurred in Electoral District (Dapil) 4, Batam City (Batam A), Riau Archipelago Province. This was revealed during the process of a dispute over the results of the election of members of the Provincial Legislative Council (DPRD) of Riau Archipelago to the Constitutional Court when the process of following up on election violations was still being carried out.

Based on the KPU RI letter Number 982 regarding the implementation of the Bawaslu Decision Number 047/LP/PL/ADM/RI/00.00/V/2019 dated June 21, 2019, the Regional General Election Commission of Batam City has made changes to the Provincial DAA1-DPRD and forms model DA-DPRD Province for TPS 42 Batu Selicin Sub-District, TPS 87 Baloi Permai Sub-District, and TPS 07, TPS 08 and TPS 59 Sadai Sub-District, based on

¹⁰ Hananan, S., & Hidayatina, : (2017). *Opportunities and Constraints of Implementing Al-Hisbah Regional Duties as Market Supervisors in Aceh Province*. Scientific Journal of Sharia, 16, 163-164.

the Model C1 Plenary Form of the Provincial DPRD C1-Provincial DPRD as long as it relates to the Gerindra Party (Alasman, 2021: 83). After further investigation, the KPU's decision to change the vote tally turned out to be a follow-up to the recommendation issued by Bawaslu (Farisa, 2019).

The case that occurred in Batam City above proves that there are problems related to unclear time in law enforcement, administrative violations, and errors in the results recapitulation process at Bawaslu. On the one hand, Bawaslu has legal standing in receiving and following up on the report by the authority mandated in Article 454 of the Election Law. On the other hand, if the decision issued by the Bawaslu has implications for changing the election results while the PPHU dispute process is ongoing at the Constitutional Court, the decisions of these two institutions may overlap with one another. As reflected in the Constitutional Court Decision No. 146-02-10-/PPHU.DPR-DPRD/XVII/2019 at point 5 which was decided on 1 August 2019 as follows:

"Regarding Bawaslu decisions or Bawaslu recommendations or other forms taken by Bawaslu that have implications for vote acquisition after the determination of the national election results must be set aside because everything related to or having implications for vote acquisition after the determination of the national election results vote acquisition is the authority of the Constitutional Court to examine, try and decide. This means that after the KPU has determined the national election vote acquisition, it is no longer possible to have decisions, recommendations, or other forms from other institutions that could have implications for changes to the vote acquisition that has been determined based on the determination of the national election vote acquisition, unless based on a decision. Constitutional Court"

Based on the decision above, the Constitutional Court overruled decisions, recommendations, or other forms issued by Bawaslu after the determination of the national election results. If investigated further, the Bawaslu is still within the deadline given by law, which is 14 (fourteen) working days after the findings and reports are received and registered as mandated in Article 461 paragraph (5), and the reporter has legal standing to file a complaint. report to Bawaslu regarding vote counting recapitulation errors, as stated in Article 454 paragraph (5) of the Election Law and Article 25 paragraph (5) of Bawaslu Regulation Number 8 of 2018 concerning Settlement of Election Administrative Violations as stated in Bawaslu Decision Number 047/ LP/ PL/ADM/RI/00.00/V/2019 dated 21 June 2019.

If it is understood more comprehensively that the authority of Bawaslu in dealing with election violations is an authority derived from the absolute attribution mandated by

law which is explicitly available directly from the redaction of the law and articles in the Election Law (Gandara, 2020: 93). Bawaslu as the attribution recipient can expand the attribution field and expand the new authority that has been obtained as long as it does not pass through the area of authority, the attribution authority will remain attached as long as there are no changes to laws and regulations, absolute responsibility and accountability to the attribution recipient, the legal relationship of authority between legislators with government organs/bodies as specified in Law Number 30 of 2014 reads that authority obtained through attribution is the authority given to government organs/bodies and/or officials by the 1945 Constitution and the Election Law.

“Bawaslu, Provincial Bawaslu, Regency/City Bawaslu are required to decide on the settlement of election administrative violations no later than 14 (fourteen) working days after the findings and reports are received and registered.”

Juncto Article 461 Paragraph (5)

“Bawaslu, Provincial Bawaslu, Regency/City Bawaslu are required to decide on the settlement of election administrative violations no later than 14 (fourteen) working days after the findings and reports are received and registered.”

In addition, judging from the KPU's decision 047/LP/PL/ADM/RI/00.00/V/2019 dated 21 June 2019 in the consideration section of the assembly examining the a-quo case to be precise in the third part

"Considering in connection with the Reported Party's exception which is emphasized 'in the a-quo case the Reporting Party has been reported to the Constitutional Court of the Republic of Indonesia as a Dispute/PHPU (Dispute on General Election Results) Determination Of Voice Acquisition Results Of Election Members Of Dprd Riau Islands Province Dapil 4 on behalf of the Reporting Party, in evidence T-1 has been registered on the CONSTITUTIONAL COURT RI WEB page --- Evidence – 1, the exception material is a procedural aspect that has been in the Preliminary Decision where the Complainant has legal standing to file a Report, as specified in Article 454 paragraph (5) of the Law -Law Number 7 of 2017 concerning General Elections and Article 25 paragraph (5) of Bawaslu Regulation Number 8 of 2018 concerning Settlement of General Election Administration Violations, thus the Reported Party's exception was not considered by the Examining Council”

This means that Bawaslu has the right to receive the following statutory provisions and the reporting party also has the legality to report so that what was decided by the Constitutional Court in decision No. 146-02-10-/PHPU.DPR-DPRD/XVII/2019 ignoring the decisions and recommendations from the Bawaslu certainly creates a problem in itself because in principle the Bawaslu's decision is a decision that is final

and binding and has a juridical character like a court decision, although it is not issued by a judicial institution. This can be identified through several aspects. First, in terms of objectives, the Bawaslu decision has the same goal as the objective of issuing a decision, which is to end the dispute between the judicial parties. The parties who feel aggrieved by the enactment of the object of the dispute,

Second terms of substance, the Bawaslu decision has the same substance as the substance of the decision of the Judicial Body. The substance of a final decision contains the head of the decision, in the form of an irah-irah "For the sake of Justice Based on Belief in the One and Only God", the identity of the parties, the parties' answers/conclusions, legal considerations, and the verdict. The Amar verdict can be in the form of a claim/application rejected, granted, unacceptable, or aborted. And, the substance of such a decision can also be seen from the decision made by the Bawaslu who tried it.

Third, Procedural Aspects. A decision can be issued after going through the process of examining the case file, and through a trial mechanism that listens and considers the legal position and interests of the parties. The Election Law explicitly states that Bawaslu has the authority to carry out adjudication processes in resolving election violation disputes (Husen, 2018). Besides that, Bawaslu in making decisions is also guided by the Election Law, which in principle is to provide legal certainty, benefit, and justice.

Inconsistency between the Election Law and the Constitutional Court's decision No. 146-02-10-/PHPU.DPR-DPRD/XVII/2019 is a form of out-of-synch between the Bawaslu decision and the Election Law and the Constitutional Court's decision. The disharmony that occurs certainly raises big questions for justice seekers. The Election Law, which should be the basis for every stage of the Election implementation, actually creates a dilemma that causes the absence of legal certainty in this Law. Article 1 paragraph (3) of the 1945 Constitution has emphasized that Indonesia is a country based on law. Among the aspects of a rule of law namely the guarantee of legal certainty as stated in Article 28 D paragraph (1) of the 1945 Constitution that everyone has the right to recognition, guarantees, protection, and fair legal certainty.¹¹

¹¹ Muabezi, Z. A. (2017). *State-based on Law (Rechstaat), not Power (Machstaat)*. Journal of Law And Justice, 6, 421–446.

D. *Siyasa Durturiyah Fiqh* Review of the Authority of Bawaslu in Handling Election Violations after the Determination of National Election Results according to Law Number 7 of 2017 concerning General Elections.

In a democratic party, the Election Supervisory Body's duties are not only to supervise but also to take action against all forms of election violations to achieve election justice and ensure that the principles of free, secret, honest, and fair elections can be realized as they should. Bawaslu's duties in preventing and taking action against election violations and election process disputes are very much in line with Islamic principles. In Islam preventing a crime, mistake, or violation from happening or causing harm to others is the greatest worship.

Bawaslu as an election supervisory institution in Indonesia has the identity or has the same legal illat as the al-Misbah institution, namely that they are both institutions that have the task of amar ma'ruf nahi munkar, calling for good and preventing evil. (Samsu, 2017). Apart from being assigned to be a supervisor in the holding of elections, the duties of Bawaslu in Indonesia which are by other Islamic values are also assigned to prevent and take action against election violations. the al-Misbah institution, namely one of them by preventing every attempt and practice of election violations. If violations are found, Bawaslu can not only remind and warn but can take action and resolve them by applicable laws and regulations.

As previously explained, Bawaslu can be empowered with hisbah institutions. Bawaslu as hisbah is obliged to carry out supervision of the election implementation process and follow up on all forms of violations originating from supervision and findings in the field. The existence of Bawaslu is needed to follow up on reports and/or findings related to alleged election violations.¹² So in deciding on an alleged violation, Bawaslu must make ijthihad to decide whether the allegation is included in the violation or not. If it is classified as a violation, the Bawaslu can give ta'zir (sanctions) to the violator and can also give a decision in the form of changing the election vote results and even canceling it.

The decision given by the Bawaslu had a major impact on the contestation of the General Election as the largest democratic party in Indonesia. Therefore, all forms of injunctions given by Bawaslu, whether in the form of decisions or recommendations, must

¹² Saputra, AD (2020). *Application of Election Administrative Violations Sanctions for Election Organizers*. Jure Plenum, 9, 129-142.

be *ijtihad* as much as possible by making the 1945 Constitution and the Election Law the foundation for deciding them. Besides that, the decision or recommendation of the Bawaslu must be able to provide legal certainty to provide benefits for all parties and minimize the appearance of harm. The existence of Bawaslu is needed to follow up on reports and/or findings related to alleged election violations so that in deciding on an alleged violation, Bawaslu must make *ijtihad* to decide whether the allegation is a violation or not.

The authority of Bawaslu in dealing with election violations after the determination of election results nationally according to Law Number 7 of 2017 concerning Elections is not by *fiqh siyasah dusturiyah*, especially in the study of *al-hisbah*. Even though Bawaslu is authorized to deal with election violations within 14 (fourteen) days, this time is very tentative and opens up opportunities for new conflicts to emerge in the form of overlapping authorities with the Constitutional Court in PPHU matters. This is because the 14 (fourteen) days may exceed the time for determining the results of the national election vote acquisition by the KPU because the Bawaslu's reference in dealing with election violations is the 14 (fourteen) days by the mandate of the Election Law, not on determining the results of national elections by the KPU. Such overlap of authority will certainly open up opportunities for the emergence of new conflicts so that the principle of *amar ma'ruf nahi munkar* which is the goal of forming *hisbah* cannot be realized. Besides that, legal uncertainty over the Bawaslu decision will certainly cause harm so it is not in line with *fiqh* rules :

الضَّرَرُ يُزَالُ

"The harm must be removed"

The rule explains that damage or *mafsadat* must be removed. Everything that can cause harm is not allowed in Islam. In terms of dealing with election violations after the determination of national election results according to Law Number 7 of 2017 Elections, it certainly creates a disadvantage because, in essence, every alleged violation that is followed up by Bawaslu is to be proper to legal certainty for justice seekers. However, this could not be realized because the implementation of the decision issued by the Bawaslu was ignored by the Constitutional Court as if the Bawaslu's decision had no legal force and the decision issued was simply a waste. Besides that, Bawaslu's handling of election violations after the determination of the national election results allows for overlapping authority with the Constitutional Court so that the same case is handled by two institutions whose decisions will also be different.

CONCLUSION

The practice of implementing Bawaslu's authority in dealing with violations that have an impact on changes in the results of vote tallies after determining the results of the national election clashes with the authority of the Constitutional Court in Article 24C paragraph (1) of the 1945 Constitution which is reaffirmed in Article 10 paragraph (1) letters a to d Law 24 of 2003 concerning the Constitutional Court, where one of the five main authorities of the Constitutional Court is in deciding disputes regarding the Calculation of General Election Results (PHPU). The very broad authority within Bawaslu opens up opportunities for clashes and even overlapping decisions between Bawaslu and the Constitutional Court, which results in legal uncertainty for the implementers of these decisions, both from the election organizers, in this case, the KPU and election participants as justice seekers. Bawaslu's authority to handle election violations after determining the national election results according to Law Number 7 of 2017 concerning General Elections is not yet by *siyasah dusturiyah*, especially in the concept of al-Misbah as a supervisory institution. Because, although Bawaslu has the authority to handle election violations by the results of reports or findings during supervision, this very broad authority opens up opportunities for overlapping authority with the Constitutional Court as the highest institution whose decisions are final and binding in terms of deciding disputes (PHPU). Apart from that, al-Misbah Bawaslu in principle should be able to provide legal certainty. However, Bawaslu in deciding election violations after determining the national election results which have implications for changes in vote results has not been able to realize the goal of legal certainty.

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