

RATIO LEGIS ESTABLISHMENT INTEGRATED LAW ENFORCEMENT CENTRE

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ABSTRACT

Regional head elections are a way of changing leadership at the regional level democratically, with the existence of regional elections, it is necessary to walk demoratically by involving the police in handling election crimes, especially in criminal violations. The existence of an Integrated Law Enforcement Center (Sentra Gakkumdu) which is a forum together with the coordination of the Election Supervisory Body (Bawaslu) is the place to report all criminal acts. The National Police in the Criminal Procedure Code and National Police Law have the duty and authority to receive reports and be independent in carrying out their authority, but with the existence of the Sentra Gakkumdu the report is not carried out by the Police, but by the Sentra Gakkumdu, so there is a conflict in the Sentra Gakkumdu and the authority of the Police in handling criminal offenses. Using the method of legal research with a philosophical approach and legislation, to find out the ratio of legislation supporting laws in forming the Sentra Gakkumdu..

Keywords: Polri, Bawaslu, Pemilihan Kepala Daerah, Rasio Legis

INTRODUCTION

Sentra Gakkumdu is a forum consisting of the Election Supervisory Body (Bawaslu), the National Police and the Attorney General's Office. The existence of Sentra Gakkumdu under the coordination of Bawaslu at each level of each. Election organizers are regulated in Republic of Indonesia Law 15 of 2011 concerning the Implementation of General Elections, which has now been changed to Republic of Indonesia Law No. 7 of 2017 concerning General Elections (Election Law). The success of organizing elections in Indonesia is highly dependent on the performance of the election organizers, in this case the General Election Commission (KPU) as the executor and the General Election Supervisory Committee (Panwaslu) as a supervisory institution that oversees the stages of the election. Whereas in Pilkada mandated by Law No. 10 of 2016 as the legal basis for the implementation of regional elections conducted

The supervisory authority of the election organizers is given to the Election Oversight Body (Bawaslu) and the ranks below are regulated in the Election Law. The existence of Bawaslu has a role in supervision that has an important function in monitoring the course of the electoral process and oversight of the election itself, including observing the election process, reviewing, evaluating and evaluating all processes in the implementation of elections in accordance with legislation also evaluating elections. To maintain and implement democratic elections directly, publicly, freely, secretly, honestly and fairly in accordance with election legislation, the Election Supervisory Board (Bawaslu) and the Election Supervisory Committee (Panwaslu) must work professionally.

Panwaslu has a strategic function and role in the effort to create democratic elections, efforts to create elections that are honest, fair and avoid the delegitimation of elections, issues related to election law enforcement must be resolved thoroughly by finding and identifying triggers to find solutions to enforce relevant laws elections.

Polri as one of the law enforcers included in one of the criminal justice systems has authority in law enforcement, which is in accordance with laws and regulations, namely in Law Number 8 of 1981 concerning KUHAP (Criminal Code Procedures) and Law Number 2 2002 concerning the National Police of the Republic of Indonesia (Polri), starting from the receipt of reports to the process of delegation to the Prosecutor's Office for prosecution..

The authority of the National Police in law enforcement in handling regional head elections (Pilkada) which is also in general elections (elections) is different from the presence of Integrated Law Enforcement Centers (Sentra Gakkumdu) which based on Law Number 10 Year 2016 dealing with violations of regional head elections, the reporting was carried out to the Gakkumdu Center, and the National Police could exercise its authority in conducting investigations after receiving orders by the Gakkumdu Center, so that this contradicted the duties and authorities of the Indonesian National Police which had been mandated by the Criminal Procedure Code and National Police Law.

Regional head elections aim to get regional leaders carried out democratically and safely, so that the principle of elections can be achieved. In elections there are sometimes violations, both administratively, Criminal and dispute over election results, so that law enforcers need to provide justice in the process.

The National Police, according to the mandate, has the authority to receive reports of criminal offenses, because of the Gakkumdu center, the Police cannot directly handle the process of receiving criminal violations in elections and conducting investigations awaiting a decision from Sentra Gakkumdu, so that the role of the National Police in handling election crimes is not can be carried out directly by the Police.

The handling of criminal offenses is carried out in a fast process, apart from those carried out in handling general crimes, so that the completion of investigations until the prosecution process is under the authority of the National Police is carried out quickly, and causes difficulties in finding evidence, which can lead to expiration. The National Police cannot act on election crimes encountered directly in the field and must wait for reports submitted to Sentra Gakkumdu.

The existence of Sentra Gakkumdu for the process of receiving criminal election reports to the order of an investigation given by the Sentra Gakkumdu to the National Police hampered the police's enforcement authority, thus becoming a legal problem, namely the occurrence of legal norm conflicts, namely within the Polri's authority.

In the Election Law and the Election Law, the Gakkumdu Center is an institution that handles election crimes, which are regulated by law, so it needs to know the ratio of legislators who include Sentra Gakkumdu, so that this article will discuss the existence of the Legis Ratio invite.

METHOD

In this paper, the author uses legal research methods by examining legal norms related to the authority of the National Police in carrying out duties and authorities in law enforcement, with a philosophical approach and statute approach to analyze the authority of the Gakkumdu center and Polri authority in law enforcement in handling election crimes.

Philosophy of regional head Election in The Democracy System

Democracy in The Election of Regional

The issue of direct elections, in the history of the formation of the Indonesian constitution, was once discussed at a large meeting of the Indonesian Investigation Preparatory Agency (BPUPKI). In a further discussion on the draft UUD dated 15 July 1945, Soekirman Wirdjisandjojo, one of the members of BPUPKI, revealed that because the State of Indonesia was in the form of a republic, the sovereignty of the people must be recognized as the principle of its government. By looking at the level of intelligence of the Indonesian people at that time, the president was elected by the MPR, and for the time being was not directly elected by the people. So since President Soekarno as president of the first period in the old order up to President Soeharto as president of the following period in the new order, who ruled for 32 years all were elected by the MPR.

Entering the reform era, there was a change in the 1945 Constitution, one of which was to change the mechanism of direct election to elect the president and his representatives, and to fill the seats of the legislative body in administering the government following a constitutional system.³³ The mechanism for filling in certain political positions in the government is directly elected by the people³⁴. The choice of the mechanism for filling certain political positions by means of direct election is nothing else so that the formed government has wide legitimacy.

The idea of direct elections arose during meetings on the formulation of the amendments to the 1945 Constitution at the workers' body of the 2nd People's Consultative Assembly on 6 October 1999 Hamdan Zoelfa and Vincent Radja, discussing the need for new thinking about the TAP MPR II / MPR / 1973 governing presidential election procedures which results in extensive legitimacy. The election of the president and his representatives was made a package to describe political unity in welcoming the new government. The president can be directly elected in the election to create a Check and Balances as well As the heads of regions, can also be chosen directly by people in their regions. On another occasion, Theo L. Sambuaga stated that direct election was stronger in terms of people's representation, stronger people's trust given to who was given the mandate, who was elected to be president, but all political positions, including governors, regents and mayors.³⁵

The mechanism for the elimination of regional positions is carried out by democratically elected methods.³⁶ Understanding democratically chosen has a flexible meaning: it can be chosen directly by the people or chosen through the DPRD.³⁷ Directly elected by the people is democratic, elected through the DPRD as well as democratically. However, Valina Singka Subekti, interpreting democratically elected people directly as an effort to improve the accountability aspects of regents, governors and mayors to the people.³⁸

Direct regional head elections must be included in the grand framework for realizing democratic local governance. There are at least three main reasons why direct regional elections must be linked to democratic local government. First, democratic local government opens space for people to participate in various political activities at the local level (political

³³ See paragraph 4 Opening UUD 1945 “.. yang berkedaulatan rakyat dengan berdasarkan kepada..” dan Pasal 1 ayat 2 UUD 1945

³⁴ See Article 22E ayat 1 UUD 1945

³⁵ *Ibid.* Hlm 263-264

³⁶ the provisions of Article 18 paragraph 4UUD 1945: gubernur, bupati dan wali kota masing-masing sebagai kepala pemerintah daerah provinsi, kabupaten, dan kota dipilih secara demokratis

³⁷ This opinion is taken by Asnawi Latief. *ibid.*, hlm. 1255

³⁸ *Ibid.*, hlm. 1317-1318

equality). Second, democratic local government prioritizes local accountability. Third, democratic local government increases the acceleration of socio-economic development based on local community needs (local responsiveness). These three things become the main reference in an effort to roll out direct election discourse so that the direction of development has a solid backrest.³⁹

According to Bambang Widjojanto, there are at least three important things that form the basis and the main reason for the people's insistence that direct regional elections be held immediately:

- First, the public wants the regional head to be more accountable to the voters and not to the factions of the political parties who elect him or other government officials who also determine the outcome of the election;;
- Second, the people want the regional heads to be more oriented to the interests of the voters. The voters will be able to determine for themselves whether a particular regional head can be re-elected for a second term; Third, direct elections will make the base of regional heads' responsibility to refer to voters in truth not only to political interests of the power of political parties alone.

There is an interesting trend when looking at a democratic system that is now developing in various countries that are experiencing a political transition process like Indonesia. Most of these countries no longer believe in "representative democracy" because it actually creates and strengthens the system of authoritarian power. Initially the adopted democracy representative was part of the characteristics of a modern country. At this stage some of the power is left to certain groups or politicians who make decisions for and in the name of the interests of the community / people (demos). Because, in its development the number of people is getting bigger in number, so it is impossible to have to involve the people to participate in deciding various problems that develop directly. Moreover, there is also the problem of time and the limited knowledge and understanding of ordinary people on increasingly developing problems.⁴⁰

In the conduct of elections, it is possible to commit fraud in the democratic process, so that all actions that undermine the democratic process must be dealt with firmly, one of which is a crime related to the process and running of democracy in the election of regional heads. democratic ones

Ratio Legis Establishment Sentra Gakkumdu

Forming legislation in drafting the Election Law to make the legal basis for democratic regional elections, one of them is by establishing Sentra Gakkumdu in implementing law enforcement in the conduct of elections, especially in handling election crimes, in order to create democratic regional elections.

The Center for Integrated Law Enforcement (Sentra Gakkumdu) in the academic text drafting the law on regional head elections, is not stated clearly and in detail, both in Law No. 1 of 2015, Law No. 8 of 2015 and Law No. 10 of 2016. So that the existence of Sentra Gakkumdu cannot be clearly known the philosophy and meaning of the existence of Sentra Gakkumdu in handling criminal acts. Philosophical and the purpose of amending Law No. 8 of 2015 became Law No. 10 of 2016 the aim is to run and prepare the regional / district and provincial level regional elections (pilkada) simultaneously, and also the result of the Constitutional Court ruling which examines several articles in Law No. 8 of 2015.

³⁹ *Ibid.*,

⁴⁰ *Ibid.*,

Historically the existence of Sentra Gakkumdu is a strategic step for Bawaslu, a mandate of Law No. 8 of 2012 concerning the Election of Members of the DPR, DPD, and DPRD, so that there will be no more differences in perceptions between the Bawaslu, the Police and the Attorney General's Office in handling criminal violations in the General Election. Previously, the absence of a Gakkumdu Sentra forum made it difficult for Election Supervisors to follow up on findings or criminal reporting of elections. For example, there were cases which were continued by the Election Supervisors rejected by the Police due to insufficient evidence or Sentra Gakkumdu had not yet been formed.

It should be stated here that based on the formulation in Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 Year 2015 concerning the Establishment of Government Regulations in lieu of Law Number 1 Year 2014 concerning Election of Governors, Regents and Mayors to Act Regarding, the provisions of Article 152 mentioned in the above considerations have been amended.

With this change, the formulation of Article 152 becomes: paragraph (1): to equalize the understanding and pattern of handling criminal acts of election, Provincial Bawaslu, and / or District / City Supervisory Committee, Regional Police and / or resort police, and the Prosecutor's Office The country forms an integrated law enforcement center. Whereas in paragraph (2) it is formulated that the integrated law enforcement center as referred to in paragraph (1) is attached to the Bawaslu, Provincial Bawaslu, and Regency / City Supervisory Committee. Paragraph (3) the operational budget of the integrated law enforcement center is borne by the Bawaslu Budget. Paragraph (4) Provisions regarding integrated law enforcement centers are regulated by a joint regulation between the Head of the National Police of the Republic of Indonesia, and the Chairperson of the Bawaslu. Paragraph (5) The joint regulations as referred to in paragraph (4) are stipulated after consultation with the House of Representatives and the Government in a forum for hearings whose decisions are binding⁴¹.

Joint regulations are made keeping in mind a number of applicable laws and regulations, namely: (1) Law No. 8 of 1981 concerning Criminal Procedure Law (State Gazette of the Republic of Indonesia of 1982 No. 76, Supplement to the State Gazette of the Republic of Indonesia No. 3209); (2). Law No. 2 of 2002 concerning the National Police of the Republic of Indonesia (State Gazette of the Republic of Indonesia of 2002 No. 2, Supplement to the State Gazette of the Republic of Indonesia No. 4168; (3) Law No. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia (State Gazette of the Republic of Indonesia 2002 No. 4401).

In addition to the three Acts above, the Joint Regulation is made by remembering (4). Law No. 15 of 2011 concerning the organizer of general elections (State Gazette of the Republic of Indonesia of 2011 No. 5249) and (5). The 2015 Law concerning Determination of Government Regulations Substituting Law No. 1 of 2014 concerning the Election of Governors, Regents and Mayors into Laws (State Gazette of the Republic of Indonesia of 2015 No. 23, Supplement to the State Gazette of the Republic of Indonesia No. 5656) as

⁴¹ It is estimated that the principles contained in the draft of the new Joint Regulation are not too different from the principles in the description presented here. Because in the explanation in the Law of the Republic of Indonesia No. 10 of 2016 concerning the Second Amendment to Law No. 1 of 2015 concerning the stipulation of Government regulations in lieu of Law No. 1 of 2014 concerning the election of Governors, Regents and Mayors into Laws on Article 152 paragraph (4) stated that what is meant by "Joint Regulations" are regulations made by the Head of the National Police of the Republic of Indonesia, Head of the Attorney General's Office, and Chairperson of Bawaslu The Republic of Indonesia contains at least provisions regarding the procedure for submission and handling of reports or objections, relationship patterns, and work procedures, and placement of personnel.

amended several times the latest by Law No. 10 of 2016 concerning Stipulation of Government Regulation in lieu of Law No. 1 of 2004 concerning the Election of Governors, Regents and Mayors into Laws (State Gazette of the Republic of Indonesia of 2016 No. 130 Additional State Institutions of the Republic of Indonesia No. 5898.

Based on the evaluation, the handling of electoral violations that are often confronted is due to the inequality of perceptions in the application of articles in criminal provisions regulated by the Election Law. Therefore, in this Coordination Meeting, it is expected that there will be a clear output of a standard operating procedure (SOP) in handling election crimes.

Academic manuscripts in Law No. 1 of 2015 and Law No. 10 of 2016 do not find philosophical foundations and the main content of the existence of Sentra Gakkumdu, even in the minutes of the session, Gakkumdu Sentra is only mentioned twice and is only limited to the process of handling election crimes, which is stated so that law enforcement officers, police and prosecutors place members who understand about elections or elections.

However, in Law Number 8 of 2012 it is stated about the duties and authorities of the parties involved in handling electoral crimes, then the process described in Law Number 8 of 2012 that the process of handling election crimes is shorter than the crime in generally. The prolonged process between the police and the prosecutor's office will be longer. Therefore, this Law also regulates the Center for Integrated Law Enforcement (Sentra Gakkumdu) with the intention of equating understanding and patterns of handling criminal offenses of the Election, Bawaslu, National Police of the Republic of Indonesia, and the Attorney General's Office. Head of the Republic of Indonesia National Police, Attorney General of the Republic of Indonesia, and Chairperson of Bawaslu.⁴²

In the Pilkada law which up to the second change, namely Law Number 10 of 2016, the existence of handling election criminal offenses has similarities with what is regulated in Law Number 8 of 2012 which is now not valid and replaced with the Act Number 7 of 2017 concerning General Elections. So that in the academic text there is no mention of the existence and purpose of Sentra Gakkumdu in addition to coordinating and equating perceptions regarding violations of regional head crimes.

The implementation of regulations and the application of law enforcement regulations based on Law Number 10 of 2016 have specific provisions. Provisions that are specific in nature can be viewed from two aspects, namely material aspects and formal aspects. The review of these two aspects is basically a work standard for election organizers and election law enforcement officers to carry out their functions.

The functioning of Law No. 10 of 2016 from the material aspect due to the existence of formal regulations, but formal regulatory regulations without the support of election organizers or law enforcement officials, the law enforcement for the election of DPR, DPD, Provincial DPRD and Regency / City DPRD cannot work effectively. Material regulations are basically rules that regulate actions or actions that are required or prohibited in the implementation of the DPR, DPD, Provincial DPRD and Regency / City DPRD Elections. Whereas formal regulations cover the implementation and implementation of how or procedures to implement the material regulations for the Election of DPR, DPD, Provincial DPRD, and Regency / City DPRD.

In Law Number 8 of 2012, there are laws and regulations outside of Law Number 8 of 2012 which are used as a juridical basis for resolving legal problems in the Elections of DPR, DPD, Provincial DPRD, and Regency / City DPRD, both criminal provisions, civil affairs,

⁴² Topo Santoso, *Tindak Pidana Pemilu*, (Jakarta: Sinar Grafika, Cetakan Pertama, 2006), hlm. 121

TUN disputes, as well as other laws and regulations, especially regarding institutions authorized to handle and resolve legal issues. Therefore, following the principle "lex specialis derogate legi generali", the provisions contained in Law Number 8 of 2012 are lex specialis (special in nature) which must take precedence over the prevailing provisions in general.

So if viewed from the beginning of the existence of the Gakkumdu Center in Law Number 10 of 2016, it is adopting Law Number 8 of 2012, also known as the MD3 Act. In the academic text of Law Number 8 of 2012, Sentra Gakkumdu did not get clear details about the existence that only appeared in Article 267 in Law Number 8 of 2012.

The existence of the Election Law, Law Number 2016 which subsequently mandates the existence of Sentra Gakkumdu which is formed through joint regulations of the bawaslu, the police and prosecutors, which are then set forth in a Joint Regulation of the Chair of the Republic of Indonesia National Election Supervisory Board, Attorney General of the Republic of Indonesia No. 14 of 2016, No. 01 of 2016, No. 013 / Ja / 11/2016 concerning the Integrated Law Enforcement Center for the Election of Governors and Deputy Governors, Regents and Deputy Regents, and Mayor and Deputy Mayor (hereinafter referred to as Perbawaslu 2016, to distinguish between Bawaslu mandate from Law Number 7 of 2017 about Elections)

CONCLUSION

The existence of Sentra Gakkumdu in the regional head elections was aimed at coordinating forums and receiving perceptions in formulating an election crime, which must be reported through Sentra Gakkumdu. The receipt of criminal reports must be carried out by the Police, but in the Joint Regulation, the authority is transferred to Sentra Gakkumdu to receive reports of election violations. The purpose of the Sentra Gakkumdu in this case is to achieve understanding in the process of handling and being the ratio of legislation to legislation is to coordinate and achieve success in the handling of criminal offenses and the achievement of election objectives, so that the democratic process runs well.

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