



Implementation of Regency/Municipal Bawaslu Authority in Handling Election Criminal Violations Committed by Children

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ABSTRACT

The study aims to determine the authority of Regency/Municipal Bawaslu in handling election criminal violations and election criminal violations and to find out the implementation of the handling of election criminal violations and election criminal violations committed by children in the 2019 and 2020 elections. Cities in handling election criminal violations, starting from receiving and following up on findings and reports related to alleged election criminal violations, examining and reviewing election criminal violations, collecting evidence, requesting information needed from related parties or clarification, and forwarding the results review of findings and reports to authorized agencies for follow-up. Meanwhile, the handling of election criminal violations is carried out at each stage of the election implementation based on findings and reports. Following up on reports related to the alleged election criminal violations by conducting studies and clarifications, these were then forwarded to Gakkumdu. Meanwhile, the implementation of the handling of

election criminal violations and election crimes committed by children during the 2019 elections in Bombana Regency as well as the 2020 elections in South Konawe Regency and East Kutai Regency used diversion efforts at the investigative level. The Diversion process is conducted through deliberations involving children and their parents or guardians, the Gakkumdu Sentra Team, Community Advisors, and the community. This provision refers to the formal provisions of the juvenile justice system as stipulated in Law Number 11 of 2012.

A. Introduction

Election supervision is still a concern with the emergence of voting practices carried out by children who are not old enough to have their right to vote in the 2019 elections. This phenomenon is still limited to the attention of scholars regarding voting practices carried out by children who are not old enough. Meanwhile, election violations committed by election participants and election participation can have implications for criminal sanctions. The Sinaga report analyzes the regulation on election crimes and finds that there have been many amendments to articles and even additions in the form of non-implementative articles, but only cumulative among several articles containing criminal elements.¹ Meanwhile, Nurnajmiati and Tarmizi's report shows that political contestation in general elections, money politics, is a standard practice by buying people's voting rights.²

Based on previous studies regarding criminal sanctions for the involvement of minors in electoral contests, there are several trends related to this practice. Surya & Kencana revealed that in the context of juvenile crime, the diversion process is an ideal effort that can be carried out regardless of the context of the crime committed by a child.³ Minors have exceptions related to criminal sanctions so that a child has

¹M. Sinaga, "Politik Hukum Pidana Dalam Penanggulangan Tindak Pidana Pemilu Demi Mewujudkan Keadilan Pemilu," *To-Ra* 7, no. 1 (2021): 89–104, <http://ejournal.uki.ac.id/index.php/tora/article/view/2868>. lihat juga, Dinda Anggun Komala Citra, "Penegakan Hukum Tindak Pidana Oleh Badan Pengawas Pemilu Pada Pemilihan Gubernur Danwakil Gubernur Riau Tahun 2018," *JOM Fakultas Hukum* 6, no. 2 (2018): 1–14. Muhammad Junaidi, "Pidana Pemilu Dan Pilkada Oleh Sentra Penegakan Hukum Terpadu," *Jurnal Ius Constituendum* 5, no. 2 (2020): 220, <https://doi.org/10.26623/jic.v5i2.2631>.

²Nurnajmiati and Tarmizi, "Penyelesaian Perkara Tindak Pidana Politik Uang (Money Politic) Di Pemilu Menurut Undang-Undang Nomor 8 Tahun 2012 (Suatu Penelitian Pada Pemilu Legislatif Tahun 2014 Di Kabupaten Aceh Selatan)," *Jurnal Bidang Hukum Pidana* 2, no. 1 (2018): 15–30.

³Jurnal Surya and Kencana Dua, "Efektivitas Diversi Dalam Penyelesaian Perkara Tindak Pidana Anak Untuk Mencapai Keadilan Restoratif Pada Sistem Peradilan Pidana Anak," *Jurnal Surya*

special treatment for the actions he has committed.⁴ From several previous studies on trends regarding juvenile delinquency in elections, most of these studies focus on normative aspects and the juvenile justice system in Indonesia.

Based on the shortcomings of the results of previous studies, the purpose of this research is to look at the other side of the form of crimes committed by children in the general election process, and the settlement process is carried out by the organizers and supervisors of election violations committed by minors. Therefore, the main issues of this research are how the monitoring system and criminal sanctions measure minors who give up their voting rights in election contests and what the settlement process is.

Regarding the resolution of election violations committed by minors, Ismail stated that the violation was data manipulation carried out by organizers during data verification and post-election data collection.⁵ There is a violation of this manipulation, and it is necessary to have rational policies to deal with these violations so that they do not apply massively in the future which are carried out by minors.⁶ Therefore, minimizing this practice requires a formulation with integrated complaints that can be accessed by all community groups so that the implementation of election contestation can take place properly and can check and balance each other with others.

Based on the problem of juvenile crimes in elections, this research contributes two substantial things to the process of supervising election violations. First, the conceptual contribution that this research provides is the concept that there need to be

Kencana Dua : Dinamika Masalah Hukum Dan Keadilan 8, no. 1 (2021): 70–86. Wahab Aznul Hidayat, “Penerapan Diversi Dalam Sistem Peradilan Pidana Anak,” *JUSTISI* 5, no. 2 (2019): 89–126, <https://doi.org/10.33506/js.v5i2.543>. Azwad Rachmat Hambali, “Penerapan Diversi Terhadap Anak Yang Berhadapan Dengan Hukum Dalam Sistem Peradilan Pidana (Diversions for Children in Conflict with The Laws in The Criminal Justice System),” *Jurnal Ilmu Hukum* 13, no. 1 (2019): 53–67.

⁴Gaby Monica Gabriela Sumangkut, Ronald J Mawuntu, and Grace M.F Karwur, “Eksistensi Sistem Peradilan Pidana Anak Dan Perlindungan Hukum Anak Pelaku Tindak Pidana Menurut Undang-Undang Nomor 11 Tahun 2012,” *Lex Crimen* 10, no. 1 (2022): 1–17. I Kadek Bagas Dwipayana, I Made Minggu Widyantara, and Luh Putu Suryani, “Kebijakan Hukum Pidana Terhadap Anak Sebagai Pelaku Tindak Pidana Pembunuhan,” *Jurnal Konstruksi Hukum* 3, no. 1 (2022): 17–30, <https://doi.org/10.22225/jkh.3.1.4463.207-211>. Rika Apriani Minggulina Damanik, “Hukum Pertanggungjawaban Pidana Anak Dalam Batasan Usia : Analisis Hukum Pidana Islam Dan Undang-Undang Nomor 11 Tahun,” *AL-QANUN: Jurnal Kajian Sosial Dan Hukum Islam* 1, no. 3 (2020): 124–36.

⁵ Ismail, “Efektivitas Pengawasan Pemilu Anggota DPR, DPD, Dan DPRD Dalam Perspektif Pencegahan Pelanggaran Pemilu,” *Jurnal Penelitian Hukum Legalitas* 9, no. 2 (2016): 67–74.

⁶M. Harun, “Reformulasi Kebijakan Hukum Terhadap Penegakan Hukum Pidana Pemilu Dalam Menjaga Kedaulatan Negara,” *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 5, no. 1 (2016): 101–16.

integrated and collective complaints made by community groups regarding election violations so that checks and balances work effectively. Second, practical contributions are a form of policy that can be carried out by the General Election Commission (KPU) and the Election Supervisory Body (Bawaslu) to carry out transformations in future election contestations.

B. Method

This research uses normative juridical and empirical juridical research using literature studies that are guided by books or legal literature and regulations related to the problems discussed in this study.⁷ The problem approaches used in this study are the statute approach, conceptual approach, and case approach. The sources of data used in this study are primary data and secondary data. Data collection in this study was carried out through library research and field studies.

C. Finding and Discussion

1. Election Crime Against Underage Voters

Efforts to protect the integrity of elections by using a legal framework are very important in the context of upholding democracy. International standards provide clarification that a good legal framework should provide for sanctions for violations of laws, including laws on elections as well as laws on regional head elections. The rules for sanctions for election and election violations in the law referred to here are criminal. Every penal provision formed for legal purposes must be able to accommodate the purpose of drafting laws.⁸

Juridically, general elections are regulated in Law Number 7 of 2017 concerning General Elections, while regional head elections are regulated in Law Number 1 of 2015 in conjunction with Law Number 8 of 2015 in conjunction with Law Number 10 of 2016 concerning the Election of Governors, Regents, and Mayors. The two aqua laws regulate prohibited actions as well as ordered actions that can undermine the integrity and quality of elections and are accompanied by threats of criminal sanctions for those who violate them. Not only that, but each quo law also stipulates procedures or processes for dealing with someone who commits a violation.

⁷ Philipus M. Hadjon and Tatiek Sri Djatmiati, *Argumentasi Hukum (Legal Argumentasi/ Legal Reasoning) Langkah-Langkah Legal Problem Solving Dan Penyusunan Legal Opinion*, ed. 1 (Yogyakarta: Universitas Gadjadara Press, 2005), pp. 3.

⁸ Zuhad Aji Firmantoro, "Problem Pelaksanaan Wewenang Penanganan Pelanggaran Pemilihan Umum Di Daerah Istimewa Yogyakarta (Studi Kasus Penanganan Pelanggaran Pemilu DPR, DPD Dan DPRD Tahun 2014 Di Daerah Istimewa Yogyakarta)" (Universitas Islam Indonesia, 2016), pp. 65.

Table 1. Data on Underage Voters' Criminal Violations

Location	Selection Type	Reported Name and Age	Type of Crime	Violated Article	Status	Information
Bombana Election Supervisory Body	2019 election	Rusnandar 17 years	Election Crime	Article 533 Law no. 7 of 2017	Forwarded to Investigation	Stop at the Third Discussion
South Konawe Election Supervisory Body	Election of Regent & Deputy Regent 2020	Resy Amalia, 16 years	Election Crime	Article 178A Law no. 10 of 2016	Forwarded to Investigation	Stop at the Third Discussion
East Kutai Election Supervisory Body	Election of Regent & Deputy Regent 2020	Yudi Ardi Putranto, 16 Years	Election Crime	Article 178A Law no. 10 of 2016	Forwarded to Investigation	Stop at the Third Discussion

Source: Bawaslu of Bombana Regency, South Konawe Regency Bawaslu and East Kutai Regency Bawaslu

The practice of voters who are still underage can be a concern in the general election process. The continuation of this practice can have long-term implications for the integrity of general elections, which are held periodically, and can become a reference for candidates having an interest in winning political contests. Regarding the form of affirmation and supervision of election violations, Sudi Prayanto analyzed the GAKKMUDU center and that the Baswaslu had made a mistake in interpreting the regulations for supervising election violations, so it seemed that the form was only coordination of various sectors.⁹

a. Diversion

Law No. 7 of 2017 and Law No. 10 of 2016 concerning the Election of Governors, Regents, and Mayors concerning General Elections prohibits the practice of election violations and criminal sanctions involving the involvement of a child who is not old enough to give voting rights to one of the candidates. If the involvement of the child voter is based on the law, then it is obligatory for them to be subject to criminal sanctions for their actions. The provisions of the law refer to the lex specialist legal fiction concept that there are no exceptions if the violation is proven based on the text of the law.

Violations committed by minors are still exceptions. The exception is found in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, which regulates juvenile crimes. The contextualization of this law explains that if a child

⁹ Sudi Prayinto, "Problematika Penegakan Hukum Tindak Pidana Pemilu 2019" Electoral Research. 1.1 (2019): 1-18.

commits a criminal offense, as long as the violation is not in a serious category, it can still be tolerated and/or the sanctions reduced. Therefore, the maximum punishment is that a child can be given forgiveness according to the context of the offense committed.

Based on the criminal act of a child committing a violation in the general election, Hasdin Nampo, Chairman of the Bombana Bawaslu, informed that:

“In the case of voters who are not old enough, the Sentra Gakkumdu Team, Bombana Regency, a criminal act committed by a child who is not old enough is resolved by diversion by arguing that election crimes committed by children are election crimes regulated in Article 533 of Law Number 7 of 2017 regarding General Elections”

The practice of voting for voters who are not old enough in general elections can be detrimental to one of the candidates and violates the principle of election integrity. Kairul Fahmi revealed that data manipulation and encouraging underage children to vote are criminal practices.¹⁰ However, this crime is a misdemeanor crime, so the criminal process that is often carried out by law enforcers is restorative justice and/or forgiveness of children, provided that parents are required to carry out proper supervision and guidance.¹¹

b. The Process of Enforcing Voter Practices is Not Old Enough

Enforcement of election violations committed by a child who is not old enough can have implications for the integrity of the election process. The emergence of practices of giving space to voters who are not registered on the Final Voters List (DPT) makes it possible for the election process for both the executive and legislative branches to not take place healthily due to data manipulation practices. Voter practice is shown in the following table:

¹⁰ Parlin Azhar Harahap, Gomgom T.P. Siregar, and Syawal Amry Siregar, “Peran Kepolisian Daerah Sumatera Utara (Polda-Su) Dalam Penegakan Hukum Terhadap Tindak Pidana Pemilihan Umum,” *Jurnal Rerentum* 2, no. 1 (2021): 90–98.

¹¹ Kamaruddin Jafar, “Restorative Justice Atas Diversi Dalam Penanganan Juvenile Delinquency (Anak Berkonflik Hukum),” *Jurnal Al-'Adl* 8, no. 2 (2015): 81–101.

Table 2. Enforcement of Underage Child Voters

Region	Violation	Process	Enforcement
Bombana	Choose	Diversion (involving parents)	Investigation terminated: 1. The perpetrator did not fulfill the summons. 2. The proceedings at the juvenile court did not take place.
South Conawe	Choose	Diversion (involving parents)	The settlement process is carried out outside the court to conduct deliberations between the Bawaslu and the perpetrators.
East Kutai	Have Voting Notice	Diversion (involving parents)	Coaching is carried out for children outside the court because they receive payment from one of the candidate parties.

Political contestation in general elections with the involvement of minors in giving their voting rights to one pair of candidates is a form of negligence by the election implementers and general election supervisors. This negligence in the data verification process carried out by the implementing team in the field resulted in a large potential for fraud in the election system. The involvement of children is an indicator that the form of intervention and manipulation of data is carried out by the election executors. Likewise, election supervisors are still hampered in identifying forms of fraud because the implementation of supervision is still normative and/or based on documents from election administrators.

Zetra, Chatra, and Sari found that the voters with underage status revealed that the violation was included in the category of code of ethics violations committed by the General Elections Commission (KPU). Violations occurred because the KPU, being in the area, did not carry out strict verification and the KPPS did not carry out thorough examinations of election participants before casting their vote at TPS.¹² These findings are related to election violations; basically, what is audited is not only voter participants (voters) but includes the KPU which is on duty at TPS and conducts community data collection for those who are eligible to vote.

3. Handling Election Crimes

Ramlan Subekti and Kris Nugroho¹³ stated that in the Indonesian context, election organizers refer to the General Elections Commission (KPU), while the Election Supervisory Body (Bawaslu) is administratively, technically, and operationally not directly involved. The Bawaslu Law is given the authority to carry out the oversight function of the election stages. Furthermore, Subekti and Nugroho

¹² Aidinil Zerra, Emeraldy Chatra, and Yulia Sari, "Pelanggaran Kode Etik Berat Oleh Anggota Kpu Kabupaten/Kota Di Provinsi Sumatera Barat Pada Pemilu Tahun 2014 Dan Pilkada Tahun 2015," *Jurnal Ilmu Sosial* 16, no. 1 (2017): 20, <https://doi.org/10.14710/jis.16.1.2017.20-30>.

¹³ Ramlan Subekti dan Kris Nugroho, 2015, *Studi tentang Desain Kelembagaan Pemilu yang Efektif*, Kemitraan bagi Pamaruan Tata Pemerintahan, Jakarta, pp. 11

emphasized that, even so, the positions of the KPU, Bawaslu, and DKPP must still be seen as a unified system of election administration, with their respective duties and authorities.

Election supervision by Bawaslu is believed to be effective as an instrument and guarantees the implementation of democratic elections. One of the election instruments is to guarantee transparency, accountability, credibility, and integrity for the continuity of direct and open elections. Open election to give voting rights to the community in determining what they want for the candidate pairs.¹⁴

In elections, the democratic system has five main principles, namely the principles of direct, general, free, confidential, honest, and fair. It is written in Art 22E (1) Constitutional Law of Indonesia 1945. The realization of this principle is very much influenced by high integrity, understanding, and respect for citizens' civil and political rights by election organizers. The implementation of general elections in a democratic country is one of the basic patterns of the actualization of a democratic system. One important factor in the success of holding general elections lies in the readiness and professionalism of the general election organizers themselves.

Based on the description of Article 1 point 7 of Law Number 7 of 2017, the organizers of general elections are carried out by an institution, namely the General Election Commission, the Election Supervisory Body, and the Ethics Council of Election Organizers, as a unitary function of holding elections. In other words, these institutions have received legality by law to hold general elections according to their respective functions, duties, and authorities.

In this regard, in 1993, Ghana and various other countries made declarations and established general election principles, including 1) organizing periodic free, direct, and fair elections; 2) conducting elections according to constitutional provisions, conducting voter education, party registration, general election policy general elections, and resolving election disputes; 3) Non-partisan membership (members of certain parties, groups, or views), provisions regarding the number of members, are appointed by the head of state and obtains approval from parliament; 4) general elections obtain proper funding, have their budget to design the needs and procurement of goods by way of a flexible auction, in contrast to the government bureaucracy; 5) There is legality (a legal basis) that allows election organizers to mobilize staff and other sources in support of holding elections.

4. Problems with the Election Oversight System by the Election Supervisory Body

¹⁴ Muhadam Labolo dan Teguh Ilham, 2015, *Partai Politik dan Sistem Pemilihan Umum di Indonesia*, PT RajaGrafindo Persada, Jakarta, pp. 46

Criminal steps on direct election violations carried out by the KPU show that Paswanslu has an urgent role in eradicating and overcoming both competing candidates and voters who violate the provisions of the election process. However, Harahap, et al. revealed that the enforcement steps taken by the Bawaslu and Panwaslu limited the time for the investigation process, so that there may be cases that are not followed up on and resolved.¹⁵ One of these enforcements includes the process of proving and obtaining information based on facts.

This regulation is also not found in the Regulation of the General Election Supervisory Agency of the Republic of Indonesia Number 7 of 2018 concerning the Handling of Findings and Reports of Election Violations and the Regulation of the General Election Supervisory Agency of the Republic of Indonesia Number 9 of 2018 concerning the Integrated Law Enforcement Center, which was later amended by the Election Supervisory Body Regulation General Republic of Indonesia Number 31 of 2018 concerning the Integrated Law Enforcement Center, which is the Bombana Regency Bawaslu guideline in carrying out the process of handling alleged election criminal violations. In this regulation, no article specifically regulates the procedures for resolving election criminal violations committed by a child with the status of a child.

It's not just a matter of a child participating in elections being violated. However, this integrated law enforcement includes violations that are not registered on the DPT and other legal violations that arise. Nuryanto also touched on the issue of integrated law enforcement, saying that law enforcement should be resolved professionally and quickly to optimize enforcement for violating elections.¹⁶ This can take place and be applied to electoral contests, starting with general elections and even village head elections.

Then supervised the general election and determined that a complaint center was needed regarding election violations. In this complaint center, the public can participate directly in the process of political contestation, so that in the election process, the community's role is not only as voters but also as monitoring and complaints regarding election violations. One of the supervisory violations of a child participating in elections functions that can be carried out is that the voting is carried out by a child who is not old enough and is not registered with the DPT and/or registered with DPT, but rationally, this fact is compared to the facts. Because

¹⁵ Harahap, Siregar, and Siregar, "Peran Kepolisian Daerah Sumatera Utara (Polda-Su) Dalam Penegakan Hukum Terhadap Tindak Pidana Pemilihan Umum."

¹⁶ Budi Nuryanto, "Fungsi Sentra Penegakan Hukum Terpadu (Gakkumdu) Dalam Penegakan Hukum Tindak Pidana Pemilu Tahun 2019 Di Kabupaten Cianjur," *Journal Justiciabelen (Jj)* 1, no. 2 (2021): 116, <https://doi.org/10.35194/jj.v1i2.1283>.

community supervision (volunteers) can be provided by providing a complaint center that can be accessed by the general public.

D. Conclusion

Handling of election criminal violations is carried out at every stage of the election administration based on findings and reports followed up on by conducting studies and clarifications, then forwarded to Gakkumdu. In general, this authority is based on Law Number 7 of 2017 and Law Number 10 of 2016 concerning the Election of Governors, Regents, and Mayors. Implementation of handling election crime and election crime violations committed by children during the 2019 election in Bombana Regency as well as the 2020 election in South Konawe Regency and East Kutai Regency by using diversion efforts at the investigative level. The Diversion process is carried out through deliberations involving children and their parents or guardians, the Gakkumdu Sentra Team, Community Advisors, and the community. Investigators carrying out diversion consider the category of crime, the age of the child, the results of social research from the Bapas, and the support from the family and community environment. This provision refers to the formal provisions of the juvenile justice system as stipulated in Law Number 11 of 2012.

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