

## **LEGAL PROTECTION OF CANDIDATE HEAD OF REGIONS IN THE GENERAL ELECTION PROCESS BASED ON SUPREME COURT DECISION NUMBER 1 P/PAP/2021**

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### **ABSTRACT**

This writing was written to understand the legal protection of candidates for regional heads in the election process based on Supreme Court Decision Number 1 P/Pap/2021. This study uses the method of literature (library research) and uses laws and regulations as well as decisions as research objects studied. The problems studied in this study are (1) What is the authority of the KPU in carrying out the election process in Indonesia? and (2) What is the legal protection for Regional Head Candidates in the election process based on Supreme Court Decision Number: 1 P/PAP/2021? The conclusions obtained are (1) In carrying out the election process in Indonesia, the KPU is given attributional authority based on Article 13 of Law Number 7 of 2017 concerning General Elections, the KPU which principally plays the role of executing orders issued by adjudication agencies (both judicial and quasi-judicial). The KPU also has the authority to implement decisions made by Bawaslu and DKPP, follow up on Bawaslu recommendations, and implement MK and judicial decisions within the Supreme Court, (2) Legal protection for Candidates for Regional Heads, namely the Panel of Judges who examine disputes using the legal basis of Article 135A paragraph (6) Law Number 10 of 2016. This article is a form of legal protection for candidates for regional heads whose constitutional rights have been harmed and violated as a result of the issuance of a KPU decision in the election process, namely by taking legal action through the Supreme Court. The result of the legal effort can be in the form of an annulment of the KPU's decision, and the KPU's decision is declared null and void.

**Keywords:** *legal protection, regional heads, elections*

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### **INTRODUCTION**

Indonesia is a country that adheres to a democratic system, in a democratic country of course there will be general elections (elections) every five years. The general election is a tool to elect representatives of the people. Therefore, if it is not carried out in a competitive, fair, and honest manner, it can be said that democracy is absent, that is, democracy is not functioning properly. Democratic elections are the basis for legitimized government. If there are no democratic elections, the government will lose legitimacy and support from its people (Surbakti et al., 2011).

To ensure that general elections are run by the principles of elections and statutory regulations, a national, permanent, and independent general election commission was formed. In the electoral system in Indonesia, there are known election management bodies which are a unified function, namely the General Elections Commission (KPU), the Election Supervisory Body (Bawaslu), and the General Election Organizer Honorary Council (DKPP) (Afifuddin, 2020). As for election supervisory bodies in Indonesia, namely the Election Supervisory Board for the central level, the Election Supervisory Board for the Provincial level, and the Election Supervisory Committee (Panwaslu) for the Regency/City level down to the sub-district, village/kelurahan levels. Even for regional head elections (Pilkada) to the lowest level, polling station supervisors (TPS) were formed (Munte, 2017).

The occurrence of violations in the implementation of elections is partly due to election regulations which have many deficiencies, too-light sanctions for violations of election rules, and the lack of regulation regarding restrictions and financial transparency of election funds. However, Regional Head Candidates who have been declared to have received the highest votes in the election process who are later declared to have committed election administration violations by the Bawaslu and the vote results annulled based on these allegations by the KPU must be greatly disadvantaged as was the case for the Regional Head Candidates in the dispute on Supreme Court Decision Number: 1 P/PAP/2021 (Negara, 2004).

In the Supreme Court Decision Number: 1 P/PAP/2021, what was requested by Eva Dwiana and Deddy Amarullah as the Petitioners for the object of the dispute is the KPU Decision of Bandar Lampung City Number 007/HK.03.1-Kpt/1871/KPU-Kot/I/2021, dated January 8, 2021, regarding the Cancellation of Candidate Pairs for the 2020 Mayoral Election. In the KPU Decree stated that the Petitioner was legally and convincingly proven to have committed a structured, systematic and massive violation in the form of promising and/or giving money or other materials to influence the organizer's elections and/or voters (Is & S HI, 2017; Tutik, 2006).

Based on the description above, the author will discuss the problem with the formulation of the problem as follows:

1. What is the authority of the KPU in carrying out the election process in Indonesia?
2. What is the legal protection for Regional Head Candidates in the election process based on Supreme Court Decision Number: 1 P/PAP/2021?

## **METHOD**

This research is a study conducted using the library research method which aims to examine and analyze laws and regulations and court decisions as research objects. This research has important relevance in the legal and jurisdictional context that applies in a particular country or region.

Legislation is the legal basis that forms the basis for state governance. They cover various aspects of life, such as criminal law, civil law, constitutional law, environmental law, and many more. Through this research, we can understand how these rules are formed, changed, and implemented in society. Analysis of laws and regulations can provide insight into legal developments in society, as well as their impact on individual rights and obligations (Muntuan, 2018).

In addition, this study also includes an analysis of court decisions. Court decisions are the product of a legal process involving law enforcement and dispute resolution. Through this analysis, we can understand how courts interpret and apply laws and regulations in concrete cases. Court decisions have a major impact on the individuals and organizations involved in the legal process, and this research can reveal trends in court decisions and their implications for society.

This research can also be used as a tool to evaluate the effectiveness of laws and regulations. Do these rules achieve their goals or do they need change? Analysis of court decisions can provide insight into how these rules are applied in practice, and whether they achieve justice.

In carrying out this research, researchers used various sources of literature, including books, academic journals, legal documents, and case studies. This library method allows

researchers to explore insights from various perspectives and gain an in-depth understanding of laws and regulations and court decisions that are the object of research.

Thus, this research has important value in understanding the legal system and jurisdiction of a country or region. Analysis of statutory regulations and court decisions can provide a rich insight into how the law is applied in society, as well as the impact it has on individuals and society as a whole.

## **RESULTS AND DISCUSSION**

In the Supreme Court Decision Number: 1 P/PAP/2021 examined and tried the case for the dispute over Administrative Violations in the Bandar Lampung Regional Head Election, at the first and final levels, the Petitioner is a Candidate Pair of Candidates for the 2020 Mayor and Deputy Mayor Elections of Bandar Lampung based on a Decision Bandar Lampung City General Election Commission Number 461/HK.03.1-Kpt/1871/KPU-Kot/IX/2020 dated 23 September 2020 concerning Determination of Candidate Pairs for Mayor and Deputy Mayor of Bandar Lampung Year 2020 dated 23 September 2020. Object The dispute in this application is the Decision of the General Election Commission for the City of Bandar Lampung Number 007/HK.03.1-Kpt/1871/KPU-Kot/I/2021, dated 8 January 2021, regarding the Cancellation of the 2020 Mayoral Election Candidate Pairs (Utama, 2014).

### **The Absolute Authority of the Supreme Court**

Whereas the authority of the Supreme Court in examining, adjudicating, and deciding on applications for Election Administration Violations, is regulated in the provisions of Article 135A of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning Stipulation of Government Regulations instead of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors to Become Laws, which reads as follows:

"Paragraph (1): Election administration violations as referred to in Article 73 paragraph (2) are violations that occur in a structured, systematic and massive manner."

"Paragraph (5): Provincial KPU or Regency/Municipal KPU decisions as referred to in paragraph (4) may take the form of administrative sanctions for canceling pairs of candidates."

Paragraph (6): Pairs of candidates who are subject to the administrative sanction of cancellation as referred to in paragraph (5) may submit legal remedies to the Supreme Court within a period of no later than 3 (three) working days from the date the Provincial KPU or Regency/Municipal KPU's decision is stipulated."

The Supreme Court of the Republic of Indonesia has issued Supreme Court Regulation Number 11 of 2016 concerning Procedures for the Settlement of Election State Administration Disputes and Election Administration Violations Disputes which among other things regulates the legal remedies that can be taken by Candidates for Governor, Candidate for Deputy Governor, Candidate for Regent and Candidate for Deputy Regents, Mayor Candidates and Candidates for Deputy Mayor Election Participants who receive Administrative Sanctions in the form of cancellation of their participation as election participants (Syam, 2021).

Whereas Article 1 point 10, Article 1 point 13, and Article 14 of Supreme Court Regulation Number 11 of 2016 regulates as follows:

“Article 1 point 10: Election Administration Violations Dispute is a dispute between a pair of Candidates for Governor and Candidates for Deputy Governor, Candidates for Regent and Candidates for Deputy Regent or Candidates for Mayor and Candidates for Deputy Mayor against Provincial KPU/KIP Aceh or Regency/City KPU/KIP as a result of the issuance of a Decree by the Aceh Provincial KPU/KIP, or Regency/City KPU/KIP regarding the cancellation of the pairs of Candidates for Governor and Candidates for Deputy Governor, Candidates for Regent and Candidates for Deputy Regent or Candidates for Mayor and Candidates for Deputy Mayor”.

"Article 1 point 13: Supreme Court by candidate pairs against Aceh Provincial KPU/KIP or Regency/City KPU/KIP regarding administrative sanctions for canceling as a pair of Candidates for Governor and Candidate for Deputy Governor, Candidate for Regent and Candidate for Deputy Regent or Candidate for Mayor and Candidate Vice Mayor"

"Article 14: The Supreme Court has the authority to receive, examine, adjudicate and decide disputes over election administration violations."

As stated in Article 1 point 14 of Supreme Court Regulation Number 11 of 2016 which states that the Object of the Election Administration Violation Dispute is the Decision of the Aceh Provincial KPU/KIP or Regency/City KPU or Regency/City KIP, concerning cancellation as a pair of Candidates for Governor and Candidate for Deputy Governor, Candidate Regents and Candidates for Deputy Regents or Candidates for Mayors and Candidates for Deputy Mayors taken based on decisions of the Provincial Bawaslu or Bawaslu, as referred to in Articles 22B and 135A of Law Number 10 of 2016.

Whereas the object in this dispute is the KPU Decision of Bandar Lampung City Number 007/HK.03.1-Kpt/1871/KPU-Kot/I/2021 concerning the Cancellation of Candidate Pairs for Mayor Election for 2020, January 8, 2021), which was issued by KPU City of Bandar Lampung (Respondent) as a follow-up to the implementation of the Lampung Province Bawaslu Decision Number 02/Reg/L/TSM-PW/08.00/XII/-2020 dated January 5, 2021, which stated:

1. Declare that the Reported Party has been legally and convincingly proven to have committed a structured, systematic, and massive violation in the form of promising acts and/or giving money or other materials to influence election organizers and/or voters;
2. Declare to cancel the candidate pair for Mayor and Deputy Mayor of Bandar Lampung Serial Number 03;
3. Ordered the Bandar Lampung City KPU to cancel the decision of the Bandar Lampung City KPU regarding the determination of the Reported Party as a candidate pair in the Election.

Based on the provisions of the law above, it can be concluded that the dispute between the Petitioner (Pair of Candidates) and the Respondent (KPU of Bandar Lampung City) as a result of the issuance of an administrative sanction decision in the form of canceling the Petitioner as a Candidate Pair for Regional Head Election, then this matter is qualified as a violation dispute Administration of the Election of the Mayor and Deputy Mayor of Bandar Lampung in 2020, so that according to the provisions of Article 135A paragraph (6) of Law Number 10 of 2016 in conjunction with Article 14 of Supreme Court Regulation Number 11 of 2016, it becomes the authority of the Supreme Court to examine and adjudicate disputes quo. This is also in line with Supreme Court Decisions relating to the settlement of Election Administrative Violations disputes with similar object disputes (Ulang et al., 2021).

### **Petitioner's Legal Standing**

The applicant is a Candidate Pair of Candidates for the Election of Mayor and Deputy Mayor of Bandar Lampung in 2020 with Serial Number 03 based on the Attachment to the Decision of the General Election Commission of Bandar Lampung City Number: 468/HK.03.1-Kpt/1871/KPU-Kot/IX/2020 regarding the Determination of Serial Numbers and lists of candidate pairs for the 2020 Bandar Lampung Mayor and Deputy Mayor Elections.

Based on the KPU Decision of Bandar Lampung City Number: 766/HK.03.1-Kpt/1871/KPU-Kot/XII/2020 concerning the Determination of the Recapitulation of Vote Count Results for the 2020 Mayor and Deputy Mayor of Bandar Lampung Election, December 15, 2020, the Petitioner has been determined as the winner of the 2020 Bandar Lampung Mayor and Deputy Mayor Elections. The recapitulation of the Vote Calculation Results for each of them is as follows:

1. Candidate Pair for Mayor and Deputy Mayor Candidate Number 1 in the name of Rycko Menoza and Johan Sulaiman, with a total of 92,428 (ninety-two thousand four hundred twenty-eight) votes;
2. Candidate Pair for Mayor and Deputy Mayor Candidate Number 2 in the name of Muhammad Yusuf Kohar and Tulus Purnomo Wibowo with a vote of 93,280 (ninety-three thousand two hundred and eighty) votes;
3. Candidate Pair for Mayor and Deputy Mayor Candidate Number 03 in the name of Eva Dwiana and Deddy Amarullah with a vote of 249,241 (two hundred forty-nine thousand two hundred and forty-one) votes.

On December 9, 2020, during the voting and counting of votes at TPS and the quick count results for the 2020 Election of Candidates for the Mayor and Deputy Mayor of Bandar Lampung, they were completed. The applicant was reported to the Lampung Province Bawaslu by Yopi Hendro, an Advocate job, with a Structured, Systematic, and Massive Election Administration Violation Report (TSM).

Whereas on January 8, 2021, the General Election Commission for the City of Bandar Lampung through Decree Number 007/HK.03.1-Kpt/1871/-KPU-Kot/I/2021, decided to stipulate the Cancellation of the Petitioner as Candidate Pair for Mayor and Deputy Mayor in the Election Mayor of Bandar Lampung in 2020.

Based on the description above, in essence, the Petitioner is a pair of candidates who have been designated as participants in the regional head elections and have been determined as the Winners of the 2020 Bandar Lampung Mayor and Deputy Mayor Elections, which were later canceled as participants in the regional head elections by the Respondent, p. it is detrimental to the interests and political rights of the Petitioner as referred to in Article 53 paragraph (1) of Law Number 9 of 2004. Thus, the Petitioner has legal standing to apply.

### **Dispute Chronology**

The object of the dispute is based on the Lampung Province Bawaslu Decision Number 02/Reg/L/TSM-PW/08.00/XII/2020 dated January 5, 2021, which principally concerns the distribution of basic food aid for Covid-19 and the provision of transportation for cadres of the Empowerment and Family Welfare Movement (PKK) carried out by the Mayor of Bandar Lampung who was active as the husband of the candidate for Mayor Serial Number 03 (Eva

Dwiana), involving City Government Apparatuses and their staff including RT, as other parties, is a violation of the TSM Administration (Amalia, 2017).

Whereas the Petitioner was reported for alleged violations of the TSM Administration to the Lampung Province Bawaslu carried out at 23.00 WIB in the evening when the voting day had ended and during the time for vote counting at the Voting Election Sites (TPS) and quick count results (quick count) had been completed and the results were known electoral votes (Mardiyati & Indrajaya, 2021).

In the Bawaslu decision, the Lampung Province Bawaslu Examining Council did not consider the legal position of the complainant in submitting a report on TSM administrative violations in its decision. The complainant only had a KTP identity document and did not prove whether he owned and obtained the right to vote registered at the local TPS and had exercised his right to vote in the election for the Candidates for Mayor and Deputy Mayor of Bandar Lampung.

The Lampung Province Bawaslu Examination Council concluded that there had been a violation of the TSM administration by the Petitioner because the Petitioner distributed the Covid-19 basic food assistance by the Mayor of Bandar Lampung who was active as the husband of the Petitioner as a candidate for Mayor Serial Number 03 (Eva Dwiana), involving apparatus The City Government and its staff including RT.

Regarding the Mayor of Bandar Lampung being active as the husband of the Petitioner as a candidate for Mayor Serial Number 03 (Eva Dwiana), the Constitutional Court has decided in its Decision Number 33/PUU-XIII/2015, dated 8 July 2015. In its Ruling, the Court stated Article 7 letter r along with Explanation of Article 7 letter r Law Number 8 of 2015 concerning Amendments to Law Number 1 of 2015 concerning Stipulation of Government Regulations instead of Law Number 1 of 2014 concerning Election of Governors, Regents, Mayors to Become Laws This law (State Gazette of the Republic of Indonesia of 2015 Number 57, Supplement to the State Gazette Number 5678) is contrary to the 1945 Constitution of the Republic of Indonesia, and has no binding legal force.

Whereas Article 7 letter r reads "has no conflict of interest with the incumbent", which is then explained in the Explanation of Article 7 letter r reads "what is meant by "does not have a conflict of interest with the incumbent" is not having blood relations, marital ties and/or lineage of 1 (one) level straight up, down, sideways with the incumbent, namely father, mother, in-laws, uncles, aunts, brothers, sisters, in-laws, children, sons-in-law unless they have passed a gap of 1 (one) term of office". By declaring the cancellation of Article 7 letter r along with the Explanation of Article 7 letter r Law Number 8 of 2015 concerning Amendments to Law Number 1 of 2015 concerning Stipulation of Government Regulations instead of Law Number 1 of 2014 concerning Election of Governors, Regents, Mayors Becoming a Law, by the Constitutional Court Decision Number 33/PUU-XIII /2015, dated 8 July 2015, the Petitioner has the constitutional right to be elected or run for election in the Mayor and Deputy Mayor of Bandar Lampung in 2020.

### **KPU Authority in Organizing the Election Process in Indonesia**

Arrangements regarding the holding of elections, including election organizers, are regulated in Law Number 7 of 2017 concerning General Elections. The Election Organizers

referred to in the Law include the KPU, Bawaslu, and the Election Organizer Ethics Council (DKPP).

The last development in the implementation of elections was after the enactment of the Election Law, from the point of view of the authority of the election management body, the most striking change lies in the strengthening of the authority of the Bawaslu. In addition to carrying out prevention and supervision, Bawaslu is also given the authority to decide on administrative violations and process disputes. In this way, Bawaslu takes on the role of a supervisory and adjudicatory institution (Kusuma et al., 2020).

The KPU as executor of stages plays a role as executor of orders issued by adjudication agencies (both judicial and quasi-judicial). This is related to the development of the establishment of DKPP and Bawaslu as separate institutions. Thus the KPU is obliged to implement decisions made by Bawaslu and DKPP, follow up on Bawaslu recommendations, and implement the decisions of the Constitutional Court and the judiciary within the Supreme Court. As the spearhead of the forefront of holding elections, it is understandable if the term KPU always appears in a "ter" position, namely either as Defendant, Defendant, Respondent or at least Related (General Election Commission, 2022: 18)

The existing KPU until now has existed since the Reformation era. Even though institutionally as an election organizer, it has existed for a long time as an election management body (LPU).

The first KPU (1999-2001) was inaugurated and formed for the first time by President BJ Habibie by Presidential Decree No. 16 of 1999 which consisted of 53 members from elements of the government and political parties. The second KPU (2001-2007) was formed by Presidential Decree No. 10 of 2001 which consisted of 11 members from academics and NGOs appointed by President Abdurrahman Wahid. The Third KPU (2007-2012) was formed based on Presidential Decree No. 101/P/2007 which consisted of seven members from Provincial KPU members, academics, and researchers (KPU Mojokerto, 2009). Seeing the progress of the KPU from year to year, it is increasingly apparent that the KPU is always trying to transform itself into a clean and independent election organizer.

As per Article 12 of Law Number 7 of 2017, the KPU has the following regulated tasks:

1. Planning programs and budgets and setting schedules;
2. Develop work procedures for KPU, Provincial KPU, Regency/City KPU, PPK, PPS, KPPS, PPLN, and KPPSLN;
3. Prepare KPU regulations for each election stage;
4. Coordinate, organize, control, and monitor all election stages;
5. Receive voter lists from the Provincial KPU;
6. Updating voter data based on the last election data by taking into account population data prepared and submitted by the government and stipulating it as a voter list;
7. Prepare official reports and certificates of the recapitulation of vote counting results and must hand them over to witnesses from election contestants and Bawaslu;
8. Announce the candidates for members of the DPR, the candidates for the DPD members, and the elected Candidate Pairs and prepare the minutes;
9. Immediately follow up on Bawaslu decisions on findings and reports of alleged election violations or disputes;

10. Disseminate the election administration and/or related duties and authorities of the KPU to the public;
11. Evaluate and make reports for each stage of the election administration; And
12. Carry out other tasks in the administration of elections by the provisions of laws and regulations.

In addition to these tasks, further matters that become the authority of the KPU as regulated in Article 13 of Law Number 7 of 2017 are as follows:

1. Establish the work procedures for KPU, provincial KPU, Regency/City KPU, PPK, PPS, KPPS, PPLN, and KPPSLN;
2. Establish KPU Regulations for each election stage;
3. Determining election participants;
4. Establish and announce the results of the vote counting recapitulation at the national level based on the results of the recapitulation of vote counting at the Provincial KPU for the Presidential and Vice-presidential election and for the election of members of the DPR as well as the results of the recapitulation of vote counting at each provincial KPU for the election; prepare an official report on vote counting and certificates of counting results voice;
5. Issuing the KPU's decision to validate the election results and announcing them;
6. Determine and announce the number of seats won for DPR members, Provincial DPRD members, and Regency/Municipal DPRD members for each political party participating in the election for DPR members, Provincial DPRD members, and Regency/Municipal DPRD members;
7. Establish standards and requirements for procurement and distribution of equipment;
8. Establish Provincial KPU, Regency/City KPU, and PPLN;
9. Appoint, foster, and dismiss Provincial KPU members, Regency/Municipal KPU members, and PPLN members;
10. Imposing administrative sanctions and/or temporarily disabling Provincial KPU members, Regency/Municipal KPU members, PPLN members, KPPSLN members, and KPU secretaries-general who are proven to have committed an act that disrupted the ongoing stages of the election implementation based on a Bawaslu decision and/or provisions legislation;
11. Establish a public accounting firm to audit election campaign funds and publish reports on contributions to election campaign funds; And
12. Exercising other authorities in the holding of elections by the provisions of laws and regulations.

### **Consideration of the Panel of Judges in the Supreme Court Decision Number: 1 P/PAP/2021**

The Panel of Judges in the subject matter of the dispute considered that the Respondent violated his authority in terms of time (*onbevoegdheid ratione temporis*) because he had made the Decision to Cancel the Candidate Pair beyond the stages specified in Article 5 Law Number 1 of 2015 concerning Stipulation of Government Regulation instead of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors to Become Law Juncto General Election Commission Regulation Number 5 of 2020 concerning the Third Amendment to

General Election Commission Regulation Number 15 of 2019 concerning Stages, Programs and Schedules for the Election of Governors and Deputy Governors, Regent and Deputy Regent, and/or Mayor and Deputy Mayor for 2020, as follows:

1. Administrative dispute process up to November 9, 2020;
2. Implementation of Elections on 9 December 2020;
3. Reports of alleged administrative violations by TSM dated 9 December 2020;
4. The applicant is declared the winner of the election on 15 December 2020; And
5. The decision on the object of the dispute was issued on January 8, 2021.

In connection with the distribution of social assistance due to the impact of Covid-19, this is a work program that must be carried out by Regional Heads based on the Instruction of the Minister of Home Affairs of the Republic of Indonesia Number 1 of 2020, April 2, 2020, concerning Prevention of the Spread and Acceleration of Handling of Corona Virus Disease 2019 in Government Environments Area. Therefore, the distribution of social assistance is packaged in the form of Covid-19 assistance activities carried out by the Mayor of Bandar Lampung who is active as the husband of the Petitioner as a Candidate for Mayor Serial Number 03 (Eva Dwiana), involving City Government officials and their staff (including RT ), does not necessarily benefit the nomination of Candidate for Mayor Serial Number 03 which results in Election Administration Violations by TSM.

Whereas it is a political reality in the face of Regional Head Elections that there is polarization among the public to support one candidate pair, either the Petitioner or another candidate pair. Moreover, the Candidate for Mayor Number 02, namely Muhammad Yusuf Kohar, who is the Incumbent Deputy Mayor of Bandar Lampung until February 17, 2021, should also benefit from social assistance. If social assistance has a beneficial impact on the Applicant, then all members of the community receiving assistance due to the impact of the Covid-19 Pandemic will vote for the Petitioner or other pairs of candidates in the Election of the Mayor and Deputy Mayor of Bandar Lampung. This cannot be used as a measure to show the support of recipient community members for the Petitioner or other candidate pairs and how the impact of the Covid-19 social assistance has on the election of candidate pairs (Nasir, 2020).

Thus, the Petitioner is not proven to have committed the violation as referred to in Article 73 paragraph (1), paragraph (2), paragraph (3), and paragraph (4) of Law Number 10 of 2016 Juncto Article 4 paragraph (1) and paragraph (2) ) Regulation of the General Election Supervisory Agency Number 9 of 2020 concerning Procedures for Handling Violations in the Election Administration for Governors and Deputy Governors, Regents and Deputy Regents, and Mayors and Deputy Mayors that Occur in a Structured, Systematic and Massive manner.

### **Amar Decision of the Panel of Judges**

In the Supreme Court Decision Number: 1 P/PAP/2021, the Panel of Judges who examined the TSM Administrative Violation dispute case in the main case gave the verdict on the dispute as follows:

1. Granted the Petitioner's request in its entirety;
2. Declare the cancellation of the Decision of the General Election Commission for the City of Bandar Lampung Number 007/HK.03.1-Kpt/1871/KPU-Kot/I/2021, dated 8

January 2021, regarding the Cancellation of Candidate Pairs for Mayor and Deputy Mayor of Bandar Lampung Year 2020, on behalf of Hj. Eva Dwiana, S.E. and Drs. Deddy Amarullah, Serial Number 03;

3. Ordered the Respondent to revoke the Decision of the General Election Commission of Bandar Lampung City Number 007/HK.03.1- Kpt/1871/KPU-Kot/I/2021, dated 8 January 2021, concerning Cancellation of Candidate Pairs of Mayor and Deputy Mayor of Bandar Lampung Year 2020, on behalf of Hj. Eva Dwiana, S.E. and Drs. Deddy Amarullah, Serial Number 03;
4. Ordered the Respondent to re-establish and issue a new decision declaring the Decision of the General Elections Commission for the City of Bandar Lampung Number 461/HK.03.1-Kpt/1871/KPU-Kot/IX/2020, September 23, 2020, concerning Determination of Candidate Pairs for Election Contestants The Mayor and Deputy Mayor of Bandar Lampung in 2020, remain valid and have binding legal force;
5. Sentenced the Respondent to pay court costs in the amount of Rp. 1,000,000.00 (one million Rupiah).

It was decided in a deliberative meeting of the Panel of Judges on Friday, January 22, 2021, by Prof. Dr. H. Supandi, S.H., M.Hum., Junior Chair of the Supreme Court for Environmental Affairs of the State Administrative Court appointed by the Chief Justice of the Supreme Court as Chair of the Assembly, together with Is Sudaryono, S.H., M.H., and Prof. Dr. H. M. Hary Djatmiko, S.H., M.S., Supreme Court Justices as Members, and pronounced in a session open to the public on that day by the Chairman of the Panel in the presence of the Member Judges, and Dr. Maftuh Effendi, S.H., M.H., Alternate Registrar, without being attended by the parties.

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### **KPU Bandar Lampung City Has Performed Actions Beyond the Authority Granted By Legislation**

The KPU of Bandar Lampung City issues a decision that is the object of dispute in a case that has been decided in the Supreme Court Decision Number: 1 P/PAP/2021 based on the legal basis, namely the provisions of Article 135A paragraph (4) and paragraph (5) of Law Number 10 Year 2016, which reads:

“Paragraph (4): Provincial KPU or Regency/Municipal KPU is obliged to follow up on Provincial Bawaslu decisions by issuing Provincial KPU or Regency/Municipal KPU decisions within a period of no later than 3 (three) working days from the issuance of the Provincial Bawaslu decision.”

Paragraph (5): Provincial KPU or Regency/Municipal KPU decisions as referred to in paragraph (4) may take the form of administrative sanctions for canceling pairs of candidates.”

Based on these rules, normatively the KPU of Bandar Lampung City really has the authority to make State Administrative Decisions which are the object of dispute. The violations committed by the Bandar Lampung City KPU in exercising their authority were related to the legitimacy of governmental acts (*bestuur handelingen*) committed by the Bandar Lampung City KPU. Although the authority of the Bandar Lampung City KPU was obtained by attribution through Law Number 10 of 2016, this authority is limited by content (*materiae*), region (*locus*), and time (*temporal*).

That any use of authority beyond these limits is a defect of authority or an act of violating authority (*onbevoegdheid*). Actions violating authority in terms of content or material

(onbevoegdheid *ratione materiae*) mean that administrative organs take actions in fields that are not included in their authority. The act of violating authority from a regional perspective (onbevoegdheid *ratione loci*) means that an administrative organ has taken an action that exceeds the boundaries of its territory. The act of violating authority in terms of time (onbevoegdheid *ratione temporis*) occurs when the authority used has exceeded the period stipulated for that authority.

The action of the KPU of Bandar Lampung City to issue a decision on the object of the dispute was an act of violating authority in terms of time (onbevoegdheid *ratione temporis*), namely, the authority used by the Respondent has exceeded the period stipulated for that authority. As has also been conveyed in the consideration of the Panel of Judges examining the case in the Supreme Court Decision Number: 1 P/PAP/2021.

Whereas the Stages, Programs, and Schedules for the Election of Governor and Deputy Governor, Regent, and Deputy Regent, and/or Mayor and Deputy Mayor for 2020 are regulated in General Election Commission Regulation Number 5 of 2020 concerning the Third Amendment to General Election Commission Regulation Number 15 of 2019 It is clearly stated in the Appendix to the General Election Commission Regulation Number 5 of 2020, one of which is to regulate the settlement of Election State Administrative Disputes, the implementation of which is regulated starting on September 23, 2020, and ending on November 9, 2020.

Referring to the 2020 Stages, Programs, and Schedules for the Election of Governors and Deputy Governors, Regents and Deputy Regents, and/or Mayors and Deputy Mayors stipulated in the General Election Commission Regulation Number 5 of 2020, then the Bandar Lampung City KPU's actions issuing a decision on the object of the dispute has exceeded the period stipulated by General Election Commission Regulation Number 5 of 2020. The Bandar Lampung City KPU decision was issued on January 8, 2021, while it has been determined regarding the settlement of disputes, which is supposed to be on November 9, 2020.

About the non-implementation of the Decision of the State Administrative High Court (PT.TUN) regarding the settlement of Election state administrative disputes, there has been a precedent for electoral law through General Election Commission Letter Number 1055/HK.06-SD/03/KPU/XI/2020, November 17, 2020, regarding the Instructions, which were addressed to the Chairperson of the General Election Commission for North Sumatra Province, which contained the following:

1. Whereas based on the provisions of Article 154 paragraph (2) of Law Number 10 of 2016, which provides a time limit for carrying out Court Decisions (PT.TUN or MA) no later than 30 days before voting day, the Medan PTTUN decision 6 /G/PILKADA/2020/PT.TUN-MDN (Decision of PT.TUN Medan) on 13 November 2020 has passed the deadline;
2. That to guarantee legal certainty in the holding of elections for the Governor and Deputy Governor, Regent, and Deputy Regent, and/or Mayor and Deputy Mayor, the Medan PTTUN Decision based on the provisions of Article 154 paragraph (2) of Law Number 10 of 2016 does not can be implemented;
3. About the explanation mentioned in number 1 and number 2, the Serdang Bedagai Regency KPU immediately held a plenary meeting in the context of following up on the Medan PT. 2) Law Number 10 of 2016.

Based on the electoral law precedents above, it can be concluded that Provincial KPU or Regency/Municipal KPU is required to follow up on the decision of the State Administrative High Court or the decision of the Supreme Court of the Republic of Indonesia regarding the decision regarding the determination of pairs of candidates for Election contestants as long as they do not pass the stages by no later than 30 (thirty) The day before voting day, as stipulated in the provisions of Article 154 paragraph (12) of Law Number 10 of 2016.

So it can be understood that the Lampung Province Bawaslu Decision Number 02/Reg/L/TSM-PW/08.00/XII/2020, dated January 5, 2021, should also not be implemented by the General Election Commission of the City of Bandar Lampung (Respondent), to guarantee certainty law in organizing the 2020 Election of Mayor and Deputy Mayor of Bandar Lampung. By not implementing the Lampung Province Bawaslu Decision Number 02/Reg/L/TSM-PW/08.00/XII/2020 dated January 5, 2021, this is a reflection of the implementation of the Stages, Program, and the Schedule for the 2020 Governor and Deputy Governor, Regent, and Deputy Regent, and/or Mayor and Deputy Mayor Election as stipulated in General Election Commission Regulation Number 5 of 2020.

The enforcement of the General Election Commission Regulation Number 5 of 2020 must be interpreted as a legal basis regarding the non-implementation of the Lampung Province Bawaslu Decision Number: 02/Reg/L/TSM-PW/08.00/XII/2020 dated January 5, 2021, due to voting and vote counting at the TPS as well as the results of the quick count (quick count) of the Election of Candidates The regional head elections have been completed. If we examine more deeply the electoral law precedent above, about the enactment of the General Election Commission Regulation Number 5 of 2020, in fact, the position of the Medan TUN High Court Decision 6/G/PILKADA/2020/PT.TUN-MDN is of a higher degree when compared to Lampung Province Bawaslu Decision Number 02/Reg/L/TSM-PW/08.00/XII/2020 dated 5 January 2021, bearing in mind that the Lampung Province Bawaslu Decision cannot be equated with a Court decision, Lampung Province Bawaslu is an internal organ of election organizers that is not included in the courts one of the judicial environments at the Supreme Court as referred to in the provisions of Article 24 paragraph (2) of the 1945 Constitution, which confirms that judicial power is exercised by a Supreme Court and judicial bodies under it in the general court environment, religious court environment, military court environment , the state administrative court environment, and by a Constitutional Court, and Article 27 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power which confirms that a special Court can only be formed in one of the judicial environments which is under the Supreme Court as referred to in Article 25, and also not included as one of the perpetrators of judicial power as referred to in the provisions of Article 24 paragraph (2) of the 1945 Constitution. So when carrying out its duties and authorities, the Lampung Province Bawaslu turns out to be abusing its authority, does not work optimally, and takes sides in dealing with election administration violation disputes that occur in a structured, systematic, and massive manner, the settlement of which results in injustice, the decision is submitted to the Supreme Court to be corrected again or to be annulled.

Whereas referring to such a frame of mind, where the TUN Medan High Court in its position as a judicial institution through its Decision Number: 6/G/PILKADA/2020/PT.TUN-MDN adjudicates the Election state administrative dispute concerning the determination of pairs of candidates, in electoral practice it turns out that the Serdang Bedagai Regency KPU cannot be

carried out as directed by the KPU-RI through letter Number 1055/HK.06-SD/03/KPU/XI/2020, November 17, 2020, with the reason for legal certainty because the 30-day deadline has passed before voting day, then naturally by law the KPU of Bandar Lampung City should also not implement the Lampung Province Bawaslu Decision Number 02/Reg/L/TSM-PW/08.00/XII/2020 dated 5 January 2021 in its position as an internal election organizer, with the same reason, namely for legal certainty because the 30 (thirty) day deadline has passed before voting day, and even the voting has been completed, and the Determination of the Recapitulation of Vote Count Results for the Mayor and Deputy Mayor of Bandar Election has also been completed. Lampung in 2020.

Based on the laws and regulations above, referring to the precedent of electoral law through the General Election Commission Letter Number 1055/HK.06-SD/03/KPU/XI/- 2020, November 17, 2020, concerning; Instructions, addressed to the Chairperson of the General Election Commission of North Sumatra Province, the General Election Commission of Bandar Lampung City (Respondent) is no longer authorized to issue administrative decisions of the state object of dispute because the time limit (temporary) has passed. Stages, Programs, and Schedules for the Governor Election and Deputy Governor, Regent, and Deputy Regent, and/or Mayor and Deputy Mayor for 2020 as stipulated in the General Election Commission Regulation Number 5 of 2020, Juncto Article 154 paragraph (2) and paragraph (1) of Law Number 10 of the Year 2016.

### **Legal Protection for Regional Head Candidates in the Election Process Based on Supreme Court Decision Number: 1 P/PAP/2021**

Based on article 1 paragraph (3) of the Constitution of the Republic of Indonesia reads "Indonesia is a country based on law" What is meant by a country based on law is that a government decision cannot be taken if it is not based on existing law. What is meant is a reasonable law, not a law made suddenly or arbitrarily. Materially, something cannot take effect suddenly but is based on existing legal levels and it stands in the name of justice (Pamudji, 1985).

If justice is not paid attention to, then at one time a division may occur between the community or community groups. Of course, if this is left unchecked and not handled immediately it will get worse and the reconciliation process will be difficult because the problems are getting more complicated. The government is obliged to intervene to resolve the problem to create conduciveness in the country in the right and fair way so that the division can be muffled (Prodjodikoro, 1971; Tutik, 2006).

The nature and style of a rule of law state is that there is a limitation of state power over individuals, in other words, the state is not omnipotent. With this, the state cannot act arbitrarily. Actions taken by the state against its citizens are limited by law. This is what British legal experts have known as the "rule of law". We can see that the individual has rights to the state. In a broader line, it can be said that the people have rights against the authorities and individuals have rights against the community. In this case, there is an individual field (individual sphere) of each person that cannot be interfered with by the state. Furthermore, violations of individual rights can only be carried out if permitted and based on existing legal regulations. This is known as the principle of legality from a state of law. Every action taken by the state must have a legal basis. Legislation that has been made beforehand is the limit of

the state's acting power. The Constitution contains legal principles and legal regulations that must be obeyed by the government or existing institutions (Santoso & Budhiati, 2021).

The rule of law, whether in the form of statutes or unwritten laws, contains rules that are general in nature which then become guidelines for individuals and in behaving in social life. These rules become limits for society in taking action against individuals. The existence of such rules and their implementation will lead to legal certainty and the implementation of legal protection.

In maintaining legal certainty and implementing legal protection, the role of the state and courts is very important. The government may not issue implementing regulations that are not regulated by law or are contrary to law. If that happens, the court must declare that such a regulation is null and void, meaning that it is deemed to have never existed so that the consequences arising from the existence of said regulation must be restored to normal. However, if the government still does not want to revoke regulations that have been declared null and void, this will turn into a political problem between the government and legislators. Even worse if the people's representative institutions as legislators do not question the government's reluctance to revoke regulations that have been declared null and void by the court. Of course, such matters do not provide legal certainty and as a result, the law does not have predictive power, and legal protection is not implemented.

As is the case in the implementation of the electoral process which is a form of democracy that is carried out in Indonesia. Each Regional Head Candidate Candidate is given legal protection if their constitutional rights are violated by government agencies or other parties. One form of implementing legal protection can be seen through the Supreme Court Decision Number: 1 P/PAP/2021.

In Supreme Court Decision Number: 1 P/PAP/2021, the Petitioner for this Case is a Regional Head Candidate who feels he has been harmed as a result of the Bandar Lampung City KPU Decision which canceled the Petitioner's winning results in the election process in Bandar Lampung City in 2020 because the Petitioner was suspected and was found guilty of committing an act of violation of the TSM administration by the Bandar Lampung City Bawaslu. The form of legal protection for candidates for regional heads who object to the Bawaslu decision regarding the imposition of sanctions for administrative violations of the TSM is Article 135A paragraph (6) of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulations Substitute Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors to Become Laws, which reads as follows:

"Pairs of candidates who are subject to the administrative sanction of cancellation as referred to in paragraph (5) may submit legal remedies to the Supreme Court within a period of no later than 3 (three) working days from the date the Provincial KPU or Regency/Municipal KPU's decision is stipulated."

Based on this article, it is a form of legal protection for candidates for regional heads who have been harmed and their rights violated in the election process by providing legal remedies to cancel the KPU decision through an application to the Supreme Court.

In the Supreme Court Decision Number: 1 P/PAP/2021, the Panel of Judges gave a decision that it had been proven based on the results of the examination and trial that the Bandar Lampung City KPU had violated its authority in carrying out its duties as a government agency

in organizing the election process by issuing an Administrative Decision State in Bandar Lampung City KPU Decree Number 007/HK.03.1-Kpt/1871/KPU-Kot/I/2021, dated January 8 2021 in the form of Cancellation of the 2020 Candidate Pair for Mayor and Deputy Mayor of Bandar Lampung, on behalf of the Eva Spouse Dwiana and Deddy Amarullah, Serial Number 03. So that to realize legal protection the Panel of Judges declared and ordered the Bandar Lampung City KPU to cancel the decision.

## **CONCLUSION**

In carrying out the election process in Indonesia, the KPU is given attributional authority based on Article 13 of Law Number 7 of 2017 concerning General Elections, the KPU principally acts as the executor of orders issued by adjudication agencies (both judicial and quasi-judicial). The KPU also has the authority to implement decisions made by Bawaslu and DKPP, follow up on Bawaslu recommendations, and implement decisions of the Constitutional Court and courts within the Supreme Court.

Legal protection for Regional Head Candidates in Supreme Court Decision Number: 1 P/PAP/2021 namely the Panel of Judges examining dispute cases using the legal basis namely Article 135A paragraph (6) Law Number 10 of 2016. In this Article, it is a form of legal protection for candidates for regional heads whose constitutional rights have been harmed and violated as a result of the issuance of a KPU decision canceling the regional head candidate's victory in the election process, namely by taking legal action through the Supreme Court. The result of the legal effort can be in the form of an annulment of the KPU's decision, and the KPU's decision is declared null and void.

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