Bawaslu Shifting Towards Quasi-Judicial Body: Institutional Design Failure?

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Abstract

The Indonesia General Election Supervisory Agency, or Bawaslu, is a newly established state agency during the reformation era. In the first place, Bawaslu simply planned to be an administrative office on broad races holding in Indonesia. However, Bawaslu is now acting not only as a supervisor but also as a quasi-judicial body for the purpose of resolving massive, organized, and systematic violations in general elections. Our main topic of discussion in this paper is this new function. This paper elaborated on the complexity of institutional design following the Bawaslu transformation into a quasi-judicial body against its traditional impediment due to its nature as a hierarchical state organ by employing a juridic-normative research method with a conceptual approach. Its subordinate in the provincial or city/regency area most likely cannot act independently in this situation. Due to its lack of justice and doctrinal denial, the Bawaslu relationship with the supreme court, which placed the supreme court in the role of settling structured, systematic, and massive administrative violations, also became a fallacy. So, these issues become the institutional plan disappointment endured by Bawaslu.

Keywords: Bawaslu, quasi-judicial, institutional, design, failure.

1. Introduction

The Indonesia General Election Supervisory Agency, or Bawaslu, is a newly established state agency during the reformation era. In the first place, Bawaslu simply planned to be an administrative office on broad races holding in Indonesia. However, Bawaslu is now acting not only as a supervisor but also as a quasi-judicial body for the purpose of resolving massive, organized, and systematic violations in general elections.

According to Jimly Asshiddiqie (2006), discussing state institutions/organs is always based on two dimensions. First, concerning the organ (the status of its shape); second, regarding function, namely the content/movement of the container based on the intention of its formation. In this regard, the deconstruction of Bawaslu institutions is carried out based on the two dimensions mentioned earlier in the paragraph. According to Fadli (2018), Bawaslu conducts from an organization known as the Election Supervisory Committee/General Election Supervisory Committee—also referred to as Panwaslak—based on a historical perspective. This organ emerged as a protest over a large number of frauds in the 1977 general elections which were later responded by the formation of this organ and dominated by ABRI, Golkar and placed representatives of general election participants in the Election Committee.

The Panwaslak is one of the tools that is part of the General Election Institution, which is an embryo of the General Election Commission/KPU. The organ is not independent. A similar idea was maintained through the law's regulation even after the reform. 12 of 2003, which established the KPU as the Election Supervisory Committee for the Election of Members of the DPR, DPD, and DPRD. Therefore, the KPU is entirely under the control of the General Election Supervisory Committee (Fadli, 2018).

Only then, by means of Law No. 22 of 2007 concerning Political decision Coordinators, decided an extremely durable establishment called the Political race Administrative Organization/Bawaslu. as one of the General Election organizers who are independent and institutionally distinct from the KPU. As a result, the institution's hierarchical structure makes the General Election Supervisory Body of the Republic of Indonesia (Bawaslu RI), which is no longer accountable to the Republic of Indonesia General Election Commission (KPU RI), the highest command holder in charge of overseeing elections.

Bawaslu is associated with the formulation of Article 22E paragraph (5) of the 1945 Constitution of the Republic of Indonesia, which stated that "General Elections are held by an electoral commission that is national, permanent, and independent," based on the process by which it was established. In response to this, Jimly Asshiddiqie (2005) stated, for instance, that although the regulation of state institutions in the 1945 Constitution of the Republic of Indonesia did not always explicitly state their names and authority in the 1945 Constitution of the Republic of Indonesia, these state institutions are deemed to have constitutional importance, so they must be mentioned in the 1945 Constitution of the Republic of Indonesia. In other words, these state institutions must be mentioned in the 1945 Constitution of the Republic of Indonesia.

The meaning of Article 22E paragraph (5) of the 1945 Constitution of the Republic of Indonesia, as intended by Jimly Asshiddiqie (2005), does not explicitly mention a name, particularly with regard to the limitation of the attached function. Indeed, the law established the electoral commission's role as organizer of the general election. Thus, it can be said that the position of the electoral commission is the same as the central bank in Article 23D of the 1945 Constitution of the Republic of Indonesia, which only has constitutional importance. According to Jimly Asshiddiqie (2005), as a condition where the existence of the institution is considered so important that it must be mentioned in the Constitution of the Republic of Indonesia.

As the official interpreter of the provisions of the 1945 Constitution of the Republic of Indonesia, the position of Bawaslu as a state institution with constitutional significance is then confirmed by the Constitutional Court. According to its interpretation in court verdict No. 11 / PUU-VIII / 2010 for the testing of Law No. 22 of 2007. The Court stated:

> "The function of holding national, permanent, and independent general elections is referred to as "an election commission" in the 1945 Constitution, rather than an institution's name. Therefore, the Court asserts that, in addition to the General Election Commission (KPU), the election supervisory institution, in this instance the General Election Supervisory Agency (Bawaslu), serves as a permanent and independent unit of national election implementation functions"

After the verdict was made, it was clear that the position of Bawaslu based on the constitutionalism approach was seen as a state institution that had constitutional importance. Its existence is considered to be so important that it must be mentioned in the 1945 Constitution of the Republic of Indonesia, even though it is not explicitly nominated in its name or clearly described functions attached to it. As mandated by Article 22E paragraph 6 of the 1945 Republic of Indonesia Constitution, these issues are then governed by the Law.

The initial foundation in discussing institutions is based on the dimensions of organs and functions. So, it can be revealed that the Bawaslu institution must be national, permanent and independent. So, in Law No. 22 of 2007 Bawaslu is separated from the KPU. Then, the decomposition of the functions possessed by the Bawaslu and other Electoral organizing institutions is also described in the Law relating to the implementation of elections.

Has given Bawaslu new authority to deal with organized, systematic, and massive administrative violations (TSM), particularly in legal matters. Consequently, the passing of Law No. concerning the Second Amendment to Law No. 10 of 2016 1 of 2015 pertaining to the Determination of a Government Regulation to Replace Law No. Law No. 1 of 2014, which incorporates the Election of Governors, Regents, and Mayors into Laws, 7 of 2017 about general elections. Bawaslu was also able to transform into a quasi-judicial body and resolve the TSM administrative violations report thanks to the attachment of the function.

Attachment of this function might be a good thing because, according to Iwan Satriawan & Rokiyah (2016) the existence of Bawaslu is also basically held as a basic need for a check and balances mechanism in implementing general elections. The attachment of this authority will certainly be one of the efforts to suppress fraud in general elections.

Attachment of functions related to judicial power in bodies outside the Supreme Court and the courts below it, and the Constitutional Court could be possible as long as the regulation of the functions of the judicial power is carried out through Law. This is also justified by the 1945 Constitution of the Republic of Indonesia. Because in the regulation of judicial powers, there is a clause that shows the existence of constitutional importance organs stipulated in article 24 paragraph (3) 1945 Constitution of the Republic of Indonesia.

Within the array of above development, this paper mainly discusses the construction and the legal challenge of Bawaslu organizational shifting.

2. Method

The normative legal research method is utilized in the discussion of this study. Argumentation is used in normative legal research to identify concepts, ideas, and principles in the examination and in-depth study of research issues.

Primary legal materials and secondary legal materials were utilized in this study. The procedure of gathering legitimate materials is brought out through writing studies. This study's data collection included an inventory of documents and a data search for legal literature in the form of legal documents, books, journals, and research-related legislation. The conceptual approach is one of the methods used in this study to look at and explain the idea of Bawaslu organizational shifting.

The collected legal materials were then processed and analyzed as part of the management of research materials, resulting in two types of truth—qualitative truths and quantitative truths. The method of interpretation is the analytical tool used.

3. Result and Discussion

This section of article found that there two challenges for the organizational shifting of Bawaslu. First is the question of independency of the Bawaslu judicial body since the Bawaslu RI can intervene by supervision

mechanism. The second is the challenge on impartiality on parties. However, in this process of quasi-judicial procedure, the plaintiff will be disadvantage party. The challenge will be widely and deeply discussed below.

3.1 Bawaslu Impediment on Performing Quasi-Judicial Function

The development of Indonesia's general and regional head elections' legal framework. has come to expect that the use of money politics will be considered an administrative violation of TSM. This is made clear by the definition in Law No. concerning the Second Amendment to Law No. 10 of 2016 1 of 2015 pertaining to the Determination of a Government Regulation to Replace Law No. 1 of 2014, which became law regarding the election of governors, regents, and mayors.

Article 73 paragraph 1 of this law says, "Candidates and/or campaign teams are prohibited from promising and/or giving money or other material to influence Election organizers and/or voters." This law serves as a legal umbrella for the regional head election regime. The provisions of article 135A, which classifies these violations as administrative violations that occur in a structured, systematic, and massive manner, regulate additional arrangements regarding the prohibition.

Explanation of the law's structured, methodical, and extensive concepts of administrative violations. It turns out that it refers to the interpretation made by the Constitutional Court through court verdict No. 45 / PHPU.D-VIII / 2010. Based on the explanation section in Law No. 10 of 2016 means structured, systematic and massive as follows:

(1) Fraud that is "structured" can be committed by both government officials and election organizers collectively.
(2) A violation that is "systematic" is meticulously planned, organized, and clean.
(3) Violations that have a significant impact on the election's outcome in whole or in part are considered "massive."

The Provincial Election Supervisory Body has the authority to receive, examine, and decide on violations. The Bawaslu RI can then file a legal "objection" to that effect. In accordance with article 135A paragraph (6) of the a quo Law, candidates subject to administrative sanctions for cancellation have the opportunity to submit legal remedies to the Supreme Court within three working days of the Provincial or District/City KPU's decision.

After receiving the case, the Supreme Court must then decide the remedies within 14 (fourteen) working days. The most important things that Law No. The General Election Supervisory Agency Regulation (Perbawaslu) delegates further arrangements regarding administrative violations. 10 of 2016 is restricted to these only.

The legal development of the general election regime as a result of the passing of Law No. 7 of 2017 regarding General Elections also includes systematic, massive, and structured violations as one of the content. This can be determined from the following provision in article 286:

(1) It is against the law for candidate pairs, candidates for DPR, DPD, Provincial DPRD, regency/city DPRD, campaign implementers, and/or campaign teams to promise or provide money or any other material to influence General Election Organizers and/or Voters.
(2) (2) KPU may impose administrative sanctions on candidate pairs, candidates for DPR, DPD, Provincial DPRD, and regency/city DPRD who are found to have violated the provisions of paragraph (1) on the basis of Bawaslu recommendations. KPU may also cancel candidates for DPR, DPD, Provincial DPRD, and regency/city DPRD.
(3) Violations, as referred to in paragraph (2), constitute violations that occur in a structured, systematic and massive manner.
(4) As referred to in paragraph (2), giving sanctions for violations does not abort criminal sanctions.

Formulation of the provisions of article 286 of Law No. 7 of 2017 is an anticipation of the practice of money politics by its categorization as an administrative violation of TSM. Apart from the provisions of article 286, it turns out that the object of TSM administrative violations in the general election regime was not limited to the practice of money politics alone.

In accordance with the provisions of Law No. In every stage of holding general elections, violations of the procedures or mechanisms relating to the administration of general elections occur in a structured, systematic, and extensive manner. In administrative TSM violations during the general election regime, it is also the subject of contention.

The Republic of Indonesia Bawaslu is created by the provisions of the a quo article and is given the authority to receive, investigate, and make recommendations regarding administrative violations of elections within a maximum of 14 (fourteen) working days. Within three (three) working days of the date the decision was made, the KPU must investigate the Bawaslu verdict.

Due to administrative TSM violations, the KPU's decision to exclude candidates for the DPR, DPD, Provincial DPRD, and Regency / City DPRD. Within three days of the publication of the KPU decision, the canceled party is permitted to submit the candidate pairs to the Supreme Court. The Supreme Court must decide on the legal course of action within 14 days of receiving the case file. The most crucial issues that are governed by Law No.

7 of 2017 concerning administrative infractions at TSM. because the a quo Law grants Perbawaslu the authority to further regulate the regulation in accordance with its provisions in article 465.

The conception of the violations that occur in TSM as intended by Law No. 7 of 2017. Additionally, refer to the Constitutional Court's interpretation of the TSM administrative violations regulation in the regional head election regime. Based on the explanation provided in paragraph 3 of article 286 of Law No. Seventh of 2017 as follows:

(1) "Structured violations" are fraud committed by structural officials, both government officials and election organizers collectively.
(2) "Systematic violations" are violations that are carefully planned, organized, even very neat.
(3) "Massive violation" is the impact of a very broad violation of the outcome of the election not only in part.

The authority possessed by Bawaslu in solving administrative violations of TSM itself is very unique in origin. If in the regime of regional head elections, authority tends to be given by the legislators, it is different in the general election regime. Because based on the original intent, it turns out that the authority of the administrative violation resolution is requested by the Bawaslu itself to be attached to the agency (Edy, 2017).

The formulation of TSM administrative violations in the regional head election and general election regimes share the same concept, as can be seen from the preceding explanation. The point of contention is confined to the issue at hand, which in the context of the general election regime includes not only the practice of money politics but also violations of the procedures or mechanisms pertaining to the administration of general elections at every stage of the organized, systematic, and massive elections.

The model that emerges later in the general election regime's process of resolving administrative TSM violations. If the proven objects of dispute are violations of procedures or mechanisms relating to the administration of general elections in every stage of the implementation of general elections that occur in a structured, systematic, and massive manner, the KPU's decision to cancel the participation of candidates for DPR, DPD, Provincial DPRD, Regency / City DPRD, and candidate pairs is only valid. An alleged practice of money politics is not included in the case of object disputes. Particularly regarding legal remedies that can be submitted for the KPU.

However, the Law that governs the two regimes only regulates the fundamentals when it comes to resolving administrative TSM violations in the regime of regional head elections and general elections. Perbawaslu is delegated the responsibility of further regulating additional arrangements. Regulation No. 1 of the National Supervisory Agency emerged because of this reason. Regulation Number of the National Supervisory Agency Procedures for Handling Administrative Violations Related to the Prohibition of Giving and/or Promising Money or Other Material Conducted in a Structured, Systematic, and Massive Way in the Election of Governors, Regents, and Mayors Concerning the Settlement of Administrative Election Violations, Act No. 13 of 2017 8 of 2018.

Those Perbawaslu are very accommodating the concept of massive characteristics. As proof of this, in reporting the alleged administrative violations of TSM. The material requirements in the submitted report must be accompanied by two shreds of evidence that indicate a structured, systematic and massive administrative violation in 50% of the electoral district. This is very relevant because of the concept of massive characteristics that arise as a result of the existence of structured and systematic violations. These two Perbawaslu act as formal/procedural law on the subject matter for the prohibition of administrative violations.

In simple terms, the construction of setting the scope of authority for resolving administrative violations of TSM can be mapped based on the following tabulations:

Table 1: Construction of authority in adjudicating administrative violations of TSM.

Scope of Justice	Election of Regional Heads	General election
Authority	a. Common Bawaslu has the power to get, analyze, hear and settle on reports of thought political decision infringement; b. The Provincial Bawaslu's verdict can be accepted, examined, heard, and decided upon by the Republic of Indonesia's Bawaslu; c. The Bawaslu of the Republic of Indonesia oversees, directs, and assists the Provincial Bawaslu in receiving, analyzing, hearing, and deciding on reports of alleged	a. Reports of suspected violations of the TSM general election against candidates for the DPR, DPRD, and DPD as well as candidates for President and Vice-President are subject to Bawaslu of the Republic of Indonesia's authority to receive, examine, review, and make a decision. b. Bawaslu of the Republic of Indonesia can shape a board of inspectors in the Common Bawaslu in settling managerial infringement of TSM by contender for Common DPRD as well as Rule/City DPRD.

	administrative violations. In accordance with Article 55, the Provincial Bawaslu's authority can then be assumed by the Bawaslu of the Republic of Indonesia in the following areas: (1) Bawaslu takes over the task of receiving, examining, and deciding on reports of administrative violations in the event that the Chairperson and Members of the Provincial Bawaslu are unable to carry out the task. (2) Unable to complete the tasks outlined in paragraph (1), which include failing to receive, investigate, and make a decision on administrative violations within the allotted time. (3) At the Provincial Bawaslu Secretariat or the Bawaslu General Secretariat, Bawaslu receives, examines, and decides on reports of administrative violations referred to in paragraph (1). (4) Bawaslu of the Republic of Indonesia cannot be challenged in its decisions regarding reports of administrative violations as described in paragraph (1).	

Source: regulations compiled from PPID Bawaslu.

Before further discussion regarding the construction of the scope of this authority, it is better if a review is made of what is meant by the authority itself. Perhaps to explain it briefly, it can be done by describing the opinions expressed by Adies Kadir (2018) where he formulated that what is meant by authority is:

> "is formal power, or the power that comes from the law, which is the source of competence; authority is only a small part of competence. A function (rechtsbevoegdheden) is a type of authority because it exists in authority."

The opinion of Adies Kadir seeks to illustrate that function is a species of authority, or in other words, he seeks to say that function is a derivative of authority. The question that then arises is about the true meaning of the authority itself, to answer this question, it will also be stated the meaning of authority expressed by Philipus M. Hadjon and Indraharto. Philipus M. Hadjon as quoted by Adies Kadir (2018) revealed that:

> "authority consists of at least three components: influence, legal basis, and legal conformity. The component of influence aims to control the behavior of legal subjects; basic legal components, that authority must be based on clear law, and legal conformity requires that authority must have clear standards (for general authority), and special standards (for certain authorities)."

When referring to the opinion of Philipus M. Hadjon by being linked to the scope of authority of Bawaslu as mapped in tabulation, the three components stated by Philipus M. Hadjon can be said to have been accommodated. Because the authority possessed by the Bawaslu is indeed based on influencing participants in regional head elections and general elections to be fair to realize the principle of democracy in the form of election that is free and fair.

Law Number 7 of 2017 and Law Number 10 of 2016 provide the authority to accept, examine, and decide cases of administrative violations of TSM. Regulations regarding the concept of authority in resolving TSM administrative violations have also been clear. Even with regard to the way in which Perbawaslu specifies the authority for trial.

For each implementation of authority, the judiciary is in administrative violations, TSM, regional elections, and general elections. It can be mapped concerning the pattern of completion, for example, the implementation of a bottom-up pattern in resolving administrative violations TSM in regional head elections by prioritizing the completion of the first level in the Provincial Bawaslu and Republic Indonesia Bawaslu competent in deciding objections raised against the Provincial Bawaslu verdict.

Concerning the settlement of authoritative infringement, the TSM in the overall appointment of ability judges is in the Republic of Indonesia Bawaslu. However, in some instances, namely the alleged administrative violation of the TSM, the violation is carried out by the legislative candidates of the Provincial / Regency / City DPRD, the Bawaslu of the Republic of Indonesia has the authority to delegate it to the Provincial Bawaslu in place of violations occurred. Thus in settlement of administrative violations, TSM elections have a top-down pattern.

Also, Indroharto, as quoted by Adies Kadir (2018), also has his own opinion regarding the concept of authority, which he reveals that:

> "Authority is the power granted by law to carry out actions that have legal repercussions." Every authority is limited, at least by positive law, at all times. The use of such authority is restricted or always subject to written and unwritten laws in accordance with the rule of law concept. In addition, the Indonesian government's unwritten law refers to general principles of good governance."

Indroharto's opinion is then very related to efforts to discuss the scope of authority in resolving administrative violations of TSM carried out by Bawaslu. Because in his opinion, Indroharto revealed that in addition to the authority arising from being given by legislation and causing legal consequences, he was also limited by both written law and unwritten law.

Regulation No. 1 of the Indonesian Election Supervisory Body is to blame for this issue's significance. 13 of 2017. The Republic of Indonesia Bawaslu has been given the authority to oversee, direct, and assist the Provincial Bawaslu in receiving, examining, and deciding on reports of alleged administrative violations.

Whereas when referring to the concept of the principle of judicial power independence, as explained in the blueprint for judicial reform prepared by the Supreme Court of Indonesia (2010), it is determined that in exercising judicial authority, judges must have institutional and functional independence. Furthermore, the importance of the urgency of the independence of judicial power is emphasized by Ilhami Bisri (2017), where he reflects the urgency based on the criminal justice that requires the absence of outside interference (other parties in the judiciary) towards and in judicial matters.

In the context of the rule of law, judicial independence is a requirement that must be met (Alim, 2010), and it is the most crucial tenet of both the rechtsstaat tradition and the rule of law. However, in resolving TSM administrative violations, the RI Bawaslu is not an extra-judicial party or outside the judicial authority. It is provincial Bawaslu superior, just like the Supreme Court, in charge of the High Court and District Court, and it is also authorized to resolve objections. As a result, the Indonesian Election Supervisory Body cannot be considered an intervention for its supervision and assistance activities.

The author also tried to learn more about the idea of supervision, guidance, and assistance by talking to Mrs. Fatikhatul Khoiriyah, S.H.I., M.H., Chairperson of the Bawaslu of Lampung Province. In his explanation, the Head of the Election Supervisory Body of Lampung Province said that the Indonesian Bawaslu gave technical guidance as a series of preparations for the regional head elections. Concerning supervision and assistance, they were not provided until the Provincial Election Supervisory Body dictated the verdict. However, it is restricted to instructions regarding the formal and reporting material requirements for receiving reports of alleged violations of TSM administration. Then, at that point, it very well may be circled back to a conference or not.

Suppose the authority of the RI Bawaslu is only carried out as such. Can it still be referred to as a form of a detrimental principle of the independence of judicial power? To answer the confusion regarding this matter, it is necessary to make a comparison with the judiciary which also carries a preliminary examination to assess the feasibility of the formal and material aspects of a report so that it can proceed with a case hearing or not.

The State Administrative Court is a type of court that can be used as a comparison based on these criteria. Because the Provincial Bawaslu and the Republic of Indonesia Bawaslu are based on its characteristics, which are the first level court under the High Administrative Court and Supreme Court. In any case, whether in the execution of the primer assessment completed the State Authoritative Court experienced something almost identical as experienced by the Common Political race Administrative Body.

Preliminary examination or also known as preparatory examination or dismissal process. Before that, it would be better if the State Administrative Court carried out a prior examination of the concept of the preliminary examination. Can be briefly understood by referring again to the opinion of Wiyono (2015) which reveals that the concept of preparatory examination as follows:

> "This examination can be carried out by a Member Judge appointed by the Chairman of the Panel of Judges who the Chairman of the Court has determined. The relevant State Administration Officer for the full suite, considering that the Plaintiff whose position is not the same as the Defendant."

It is necessary to understand that based on the results of the preparatory examination, it can be determined that the claim filed can be immediately followed up with a case hearing or not by making a lawsuit revision at first. However, the important point of this is that the implementation of the preparatory examination is carried out by not involving outside appointed judges or even the State Administrative Court.

This indicates that the representative panel of judges appointed to examine the lawsuit conducts the preparatory examination independently. This is the problem when it comes to resolving administrative violations of the TSM regional head elections, and it's the same problem when it comes to resolving administrative violations of

the TSM elections. In contrast to the completion of the TSM administrative election violations by regional heads, the author's searches did not uncover the attachment of authority to the Bawaslu of the Republic of Indonesia.

It might happen because the authority to examine it is indeed attached to the Republic of Indonesia Bawaslu, except for the authority to examine, prosecute and decide on allegations of TSM administrative violations. Thus, it can be said that implementing the TSM in general election court more accommodated the principle of independence of judicial power compared to the TSM judiciary for regional head elections.

The main point of this discussion is the importance of eliminating the concept of authority, such as supervision and assistance, because these two authorities have effectively harmed the principle of judicial power independence. Although in its defense, the implementation of supervision and assistance authority was not carried out at the point of examination or during the formulation of the decision. Still, the judicial power independence concept referred to here is a unit of activity carried out to achieve justice. Therefore, since the report has been received, the examining panel must be able to independently determine whether to receive the report by following up on the hearing or requesting a revision of the report.

Also, the authors assume that it will be better if the settlement of violations of the TSM elections can be made a distribution of absolute competency. This absolute competency can be understood as defined by Andi Hamzah (2015) where he defines absolute competency as a power based on legal rules regarding judicial power (*attributie van rechtsmacht*) to a variety of courts, not other courts.

Compared to devolving, it is better just to do normative attribution of power to examine administrative violations of TSM conducted by provincial /regency/city legislative candidates to the Provincial Bawaslu, thus reducing the workload of the Republic of Indonesia Bawaslu. Assurance of the quality of decisions can also be accounted for by considering the proximity of the place of trial with the location of the violation, making it easier to conduct a hearing especially in the case of examination of witnesses.

This society's refusal to recognize the Bawaslu's authority to resolve administrative TSM violations. resulting from the supervision and assistance frame's interference in the resolution of administrative TSM violations during regional head elections. Then, despite the possibility of the RI Bawaslu delegating cases, the TSM in the general election may be rejected in the settlement of administrative violations due to the centralization of its resolution. However, it would be preferable to resolve cases of electoral administration violations through an absolute competency distribution.

3.2 Injustice Which Produces from Bawaslu Verdict

This injustice is generated based on legal remedies that can be made against the Bawaslu's ruling on the administrative violations of the TSM. As mentioned earlier, the authors found differences regarding aspects of access to justice based on the pattern of authority to resolve administrative violations of TSM, which resulted in legal remedies on the verdict.

The verdict that is not supported is the source of this distinction. The reporting party can then only challenge the RI Bawaslu in resolving TSM violations during regional head elections. The Indonesian Election Supervisory Body will also look into this objection to see how the Provincial Election Supervisory Body's verdict applied the law. As a result, this objection verdict may result in the Provincial Bawaslu being strengthened through an objection decision that is unacceptable, or it may result in the acceptance of objections and the annulment of the Provincial Bawaslu's decision.

The reported party that is a candidate pair and declared to be legally and convincingly proven to be subject to administrative sanctions for cancellation can take legal action to the Supreme Court within three working days of the Provincial/Regency/City KPU decision's issuance, similar to access to justice granted to the reported party.

Legal remedies to the Supreme Court were also given to the reported party in resolving administrative violations of the TSM in general elections, even the inequality was terrible where the settlement was carried out directly by the RI Bawaslu. The reporting party cannot take legal action on the verdict of the RI Bawaslu, except the delegation of authority to the Provincial Bawaslu, the reporting party can still make legal remedies to correct the verdict in the Republic of Indonesia Bawaslu.

The issue of injustice over the decision of the Bawaslu is due to the differentiation of access to justice to the reporter and the reported party, who are the legislative candidates/candidate pairs. The distinction is in the form of access to justice that can be carried out by the reporter who is a candidate pair up to the Supreme Court. Then, can the Supreme Court be used as part of legal remedies for judicial decisions that are not from the court environment?

To answer these questions, it is necessary to first comprehend the Supreme Court's natural meaning and definition. According to Cornelis Hendrick (Remco) van Rhee and Yulin Fu's (2017) opinion, the Supreme Court's definition can be understood as follows:

> A court can be considered a "supreme court" if: 1) Judging individual cases in accordance with procedure is its primary function; 2) Its judgments cannot be reexamined by another court or authority; this means

that its decision is final and cannot be challenged or reexamined elsewhere; 3) its decisions are highly authoritative in that they not only aim to achieve justice in a specific case but also to interpret and/or clarify the law, ensure its unity, and/or shape its future development.

Based on this opinion, Cornelis Hendrick and Yulin Fu define the position of a judicial institution that can be referred as the Supreme Court only if it fulfills the three conditions mentioned, among others, deciding individual cases based on the decision procedure. The higher authority cannot annul the verdict and the decision is very influential in the sense of giving justice to individual matters and interpreting the law for its unification and/or shaping the law's development.

The third requirement/characteristic is then interpreted as jurisprudence. The connection of this opinion with the subject matter of the discussion is that the Supreme Court is the highest judicial authority, so it is the last attempt to seek justice. The problem is, is there a practice in the Supreme Court that facilitates access to justice from the special court/judicial environment that is not under its authority.

According to the author's search results, the doctrine that the special or judicial court outside the Supreme Court must render the final verdict is not strictly followed. This alludes to the way that the Chinese High Court encountered a progress where they could settle on an allure from an extraordinary court. Yulin Fu (2017) stated this, describing the connection between the ordinary, special, and military courts in China's judicial environment as follows:

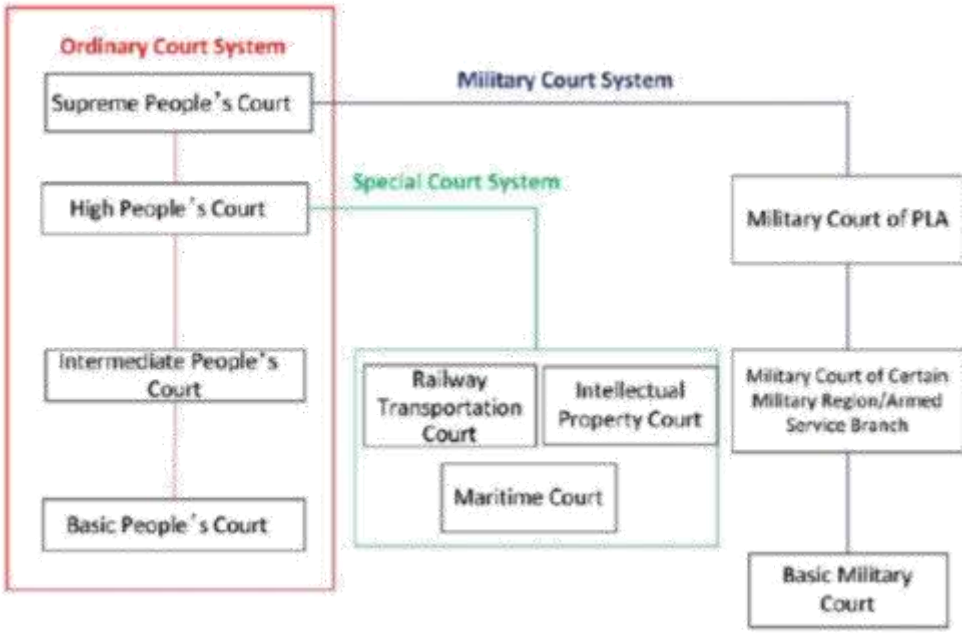

Diagram 1: justice system in China. Source: Yulin Fu (2017)

Based on the mapping of relations between the judicial environment in China, Yulin Fu found that there had been a shift in the Chinese Supreme Court of access to justice where the Chinese Supreme Court could receive appeals from the special court and military courts as illustrated in the illustration above.

In point of fact, according to his explanation, the People's High Court was the first court through which the special court's legal proceedings in China were conducted. As a result, it is possible to draw the conclusion that the Supreme Court of the Republic of Indonesia's transition to expanding access to justice, like that of the Supreme Court of China, can be justified by providing candidates who are subject to administrative sanctions for canceling legal action on the Supreme Court.

What item was examined in the Supreme Court for legal remedies submitted by the candidate and candidate pair is another intriguing topic for discussion. Concerning the provisions of paragraph (3) of article 45, Regulation No. 13 of 2017 and the provisions of paragraph (5) of article 463 of Law 7 of 2017.

It can be seen that the object examined by the Supreme Court is the Decision of the Republic of Indonesia KPU or Provincial/Regency/City KPU which cancels the determination of the participation of candidate/candidate pairs as election participants, as issued based on the Provincial Bawaslu verdict on the results of the TSM administrative violation resolution issued by the Republic of Indonesia Bawaslu based on the results of the examination in the administrative violations of the general election TSM. This means that at the examination in the Supreme Court, this legal effort will be settled at the state administrative courtroom.

Consequently, testing the KPU's decision seemed to be aimed at testing the material of its decision. However, there are criticisms of efforts to expand state administrative justice competencies in Indonesia against material testing of a decision, as expressed by Adriaan W. Bedner (2012) which states that:

> "under article 53 of the PTUN Law states that there are three reasons for conducting material tests: first, contrary to the applicable laws and regulations; second, abuse of authority; third, arbitrariness. Compare this with Netherlands AROB which also includes the basic principles of good administration."

The criticism delivered by Adriaan W. Bedner was also accommodated in its development through the establishment of Law Number 30 of 2014 concerning Government Administration which provides an update on the regulation of State Administrative Decisions as:

(1) written stipulations which also include factual actions;
(2) The decision made by State Administration Officers in the executive, legislative, and judicial branches of the state;
(3) Based on legal arrangements and general standards of good administration;
(4) it is last in the more extensive sense;
(5) Choices that have the potential to result in legal action; and/or
(6) Citizens-specific decisions.

The decision/KTUN arrangement has removed the old provisions as stipulated in Law No. 5 of 1986 concerning PTUN which has been amended by Law No. 9 of 2004 and Law No. 51 of 2009. So that the material test can also be based on the general principles of good government, in this case, referred to Adriaan W. Bedner as the basic principles of good administration.

However, the KPU's decision was issued based on the results of the examination of cases of TSM administrative violations committed by the Provincial Bawaslu / Bawaslu RI. So, it should not be tested again because of course, it is produced through trials based on the principles of justice which are also good elements of government/administration. In line with this, Wicipto Setiadi (quoted by Simanjuntak, 2018) revealed that several state administrative decisions (KTUN) were excluded from being tested in the court. One of them is the KTUN that was issued after the judicial body examined the provisions of the applicable legislation.

However, according to Enrico Simanjuntak (2018), the PTUN can still test the KTUN in terms of the KTUN discrepancy with the decision of the judicial body underlying the KTUN. This is despite the fact that the KTUN issued based on the results of the examination of the judiciary based on the prevailing laws and regulations.

Based on the discussion above, author argue that in the case of the object of examination of legal remedies submitted to the Supreme Court is the KPU's decision, the reporting party should be given equal access to justice because a new conception of the KTUN is intended as a written stipulation that includes factual actions. This means that when an official/administrative entity does not issue a decision, this is also a factual action as referred to in the KTUN requirements based on a new conception.

So that the actions of the Provincial/District/City KPU that do not issue a decision to cancel the participation of the candidate/candidate pairs as election participants can be considered as KTUN which can be materially tested at the Supreme Court as the KTUN material testing submitted by a candidate pair subject to administrative sanctions for cancellation because it is not in accordance with the decision the judicial body that is the basis for the issuance of the KTUN.

4. Conclusion

The failure of Bawaslu's institutional design to carry out its authority to resolve administrative violations of TSM as a quasi-judicial body is becoming increasingly evident from the discussions. The failure of the institutional design arose due to the interference of the Republic Indonesia Bawaslu to the Provincial Bawaslu, in resolving administrative violations of the TSM in regional head elections through the legal framework of supervision and assistance. This fact, which is a result of the traditional form of the hierarchical Bawaslu institution, strengthens public sentiment that is reluctant to legitimize Bawaslu as a quasi-judicial body due to the lack of implementation of the principle of judicial power independence.

It is very disadvantageous in the context of giving access to justice to make legal efforts because it is limited in such a way based on Law No. 10 of 2016 and Law No. 7 of 2017 as a material law and based on Regulation No. 13 of 2017 and Regulation No. 8 of 2018 as formal law. Besides, the Bawaslu's decision can also be criticized as a source of injustice in the context of legal remedies that can be made against the resulting decision. Especially from the reporter's perspective on administrative violations of the TSM.

It differs from the party that is reported to have access to justice space up to the Supreme Court. Even though, based on the discussion that has been carried out the arguments behind this can be refuted. Bawaslu needs to be able to reformulate the two contexts to restore the state of institutional design failure, especially to obtain the legitimacy of its position as a quasi-judicial body as well as a decision that will be produced later based on the case investigation conducted.

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[18] Law Number 7 of 2017 concerning General Elections.

[19] Election Supervisory Agency Regulation Number 13 of 2017 concerning Procedures for Handling Administrative Violations related to the Prohibition of Giving and/or Promising Money or Other Materials Conducted in a Structured, Systematic, and Massive manner in the Election of Governors, Regents, and Mayors.

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