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Ambivalence of Election Organizers and Supervisors in Participatory Supervision

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ABSTRACT: Participatory supervision is essential for ensuring the legitimacy of elections as well as the realization of democratic and credible elections. However, both in terms of regulation and policy, participatory supervision has not been fully utilized. As a result, it is critical to examine how the problem of participatory supervision is handled by the election management body and to develop future regulations concerning participatory supervision by the election supervisory agency. This study is categorized as a doctrinal research, using a statutory approach, a historical approach and a conceptual approach. The results of the study show that there is a problem in the form of ambivalence in the regulation of participatory supervision in the Election Law which does not explicitly grant technical regulatory authority to Bawaslu (Election Supervisory Agency) and only mentions that the KPU (General Election Commission) has implications for ambiguity in the regulation of electoral law in Indonesia and legal certainty for technical regulations for participatory supervision. The problem is even more complicated when changes to the Election Law cannot be carried out at this time because it has been determined to be a regulation that will be used in the 2024 simultaneous elections. Therefore, efforts that can be made to overcome these problems are by allocating an adequate budget, changing public perceptions, to partnering with local governments. The necessity that can be done after the 2024 election is to make changes to the Election Law by uniforming the authority of participatory supervision to Bawaslu, both in terms of making regulations to carrying out all programs related to participatory supervision.

Keywords-Election, Election Organizers, Participatory, General Election Supervisory Agency, Supervision,

I. INTRODUCTION

The success and legitimacy of the general election can be seen from the active participation of all parties in the success of the election, from the government, election organizers, related electoral institutions, to the community having the responsibility to give voting rights to active participation in overseeing the electoral process that has been determined. In comparison, voter turnout in the 2019 election which was targeted at 77.5 percent exceeded the targeted figure, which was 81 percent. [1] The highest level of community engagement occurs when the community becomes willingly involved in the election monitoring process. This form of monitoring as an illustration of supervision from the community requires skills and knowledge of electoral issues and election violations. [2]

Referring to Law Number 7 of 2017 concerning Elections (Election Law), the participation of the general public is specifically regulated in one chapter, namely in Chapter XVII. However, there is no mandate from the Election Law which clearly stipulates the form of public participation in supervising during the election process. Even more ironic is that the form of public participation in this chapter is only closely related to the community as voters, so that the technical form of its implementation and regulation only gives internal responsibility to the KPU to regulate it further as stated in 449 Election Law.

Participation in community supervision is essentially a desire on the side of the community to actively engage in election oversight. The stage of community participation in overseeing the electoral process that runs contextually is more similar to *Bawaslu* supervisory duty as the only election institution constituted to supervise elections. This is in line with what is described in Article 94 letter D, where one of the tasks of *Bawaslu* is to increase public participation in election supervision. However, this initiative to boost community participation does not provide *Bawaslu* any more responsibility over technical implementation and regulation.

The situation demonstrates that, while the Election Law, which offers a space for public supervision and involvement, is within the power of *Bawaslu*, it is "half-hearted" in not regulating it further under the Election Law's specific section on public participation. Meanwhile, on the one hand, the KPU is granted more

flexibility in terms of community participation, even though this participation is more closely tied to community participation as voters.

In terms of supervision from the public, the presence of psychologically massive public supervision will guard and remind them to always be careful, honest and fair in holding elections.[3] In essence, the supervision carried out by the community as a form of community participation is important without compromising public participation as voters. However, the mandate of the election law, which does not explicitly specify the authority for public involvement in conducting supervision, generates ambiguity in the Election Law's provisions.

II. RESEARCH QUESTIONS

The main issues raised in this study are first, how is the problem of participatory supervision carried out by election management institutions? Second, what is the future policy regarding participatory supervision by election supervisory agencies?

III. RESEARCH METHOD

This research is a doctrinal research, using primary and secondary legal materials, starting from legislation and research results that are relevant to the object of research. The approach used in this research is a statutory approach, a historical approach and a conceptual approach. Meanwhile, the analysis used in this paper is descriptive.

IV. RESULTS AND DISCUSSION

4.1. Participatory Oversight's Ambivalence in Election Regimes

Bryant and White explain that the beginning of this form of participation was only fully understood politically until the 1960s. In the 1970s, participation began to be associated with administrative processes by adding participation in certain implementation processes so that individuals and groups could meet conflicting interests and be able to compete for the resources provided.[4] The role of individuals and groups is broadly an illustration of community participation.

The active engagement of the community in overseeing the election process as a type of participatory supervision, which is closely tied to the election process, is a manifestation of the people's freedom in elections (freedom election). The involvement of civil society in conducting supervision not only strengthens the capacity of election oversight, but also encourages the expansion of the monitoring area. The participation of the public in supervising this election is a form of using the rights of citizens to guard their voting rights.[5]

Supervision is generally interpreted as a joint collective effort involving various components of society to supervise the implementation of elections. There are at least two reasons behind the participatory supervision, namely: [6] *First*, it seeks to involve the community by viewing the community as more than a vacuum that can be formed according to *Bawaslu's* will, so that community participation in monitoring is aimed at the potential of local wisdom by positioning the community as independent supervisors who are aware of all aspects of their lives, particularly those related to election implementation. *Second*, while the second view is more technical in nature, it is based on positive law which is the legal basis for all stages of the election. Therefore, through this view, community participation is built on technical guidance, schools, electoral workshops, and similar activities.

In the formulation of the Election Law, the public provides their participation in the form of election socialization, political education for voters, surveys or opinion polls about elections, and quick counting of election results.[7] There are provisions in its implementation, such as not taking sides that benefit or harm election participants, not interfering with the process of organizing election stages, aiming to increase public political participation in general, and encouraging the creation of a conducive atmosphere for the implementation of safe, peaceful, orderly, and smooth elections.[8]

The government and local governments also have a responsibility to accommodate community participation. In Article 434 of the Election Law, it is stated that for the smooth implementation of the duties, authorities and obligations of election organizers, the government and local governments are obliged to provide assistance and facilities, where one form of assistance and facilities is the implementation of political education for voters to increase public participation in elections.

In Article 448, the implementation of elections involving the community does not *mutatis mutandis* mention the role of the community in supervising the implementation of elections. Indirect translation of participatory supervision by the community can only be interpreted from community participation in the form of 'election socialization and political education for voters'.

Moreover, when referring to 449 paragraph (1) which explains that public participation is required to follow the provisions stipulated by the *KPU*, then once again *Bawaslu* loses the obligation to aggregate public participation. In fact, in the same Election Law, *Bawaslu* is also given the task of increasing public participation

in supervision. The link between the authority of *Bawaslu* and public participation in supervising the implementation of elections is only present in the Election Monitoring Chapter. This shows that public participation in terms of election supervision is still a discourse between the organizing institutions and election supervisors.

If we trace the technical regulations on participatory supervision, until now, they have not been drafted or formed by the relevant parties. Moreover, in the Election Law there is no single article or section of explanation that clearly and unequivocally mentions a supervisory agency to form technical regulations such as *Bawaslu* regulations to accommodate this participatory monitoring model.

The unclear regulation of the Election Law shows the existence of regulatory ambivalence in the electoral regime in Indonesia, especially regarding election institutions, namely *KPU* and *Bawaslu*. The implications of the ambivalence of participatory arrangements in the Election Law are as follows:

1. Ambiguity of Election Law Regulations in Indonesia

Positioning participatory supervision should be the authority of *Bawaslu* as explained in Article 94 Article 98, Article 102 and Article 105 of the Election Law and is a form of aggregation of the interests and sovereignty of the people who hope that the election is clean and free from fraudulent practices. However, the regulation of the form of public participation which is only limited to voter participation through *KPU* technical regulations and does not clearly state further arrangements by *Bawaslu* once again becomes ambiguous in the electoral regime in Indonesia

The ambiguity of the Election Law, which is the basis for the implementation and authority of *Bawaslu* and *KPU*, actually opens up space for discourse between these two institutions. Hierarchically, the position of the two is in a parallel position. Although the position of the two are parallel and independent of each other, each has a different function. *KPU* is the organizer of the election, while *Bawaslu* is the supervisor of the election.[9] It is clear that both *Bawaslu* and *KPU* must be avoided from various things that can trigger institutional polemics in resolving election problems. Therefore, the ambiguity of the participatory supervision arrangement that can be followed up with various interpretations by the two institutions actually opens a new polemic for these two institutions.

2. Legal Certainty of Participatory Supervision Technical Regulations

The holding of elections cannot be separated from various related regulations and these regulations cannot be separated from the existence of legal certainty from the regulations that are formed. In short, legal certainty can be interpreted as the strict enforcement of the law in society. Regarding legal certainty, one law cannot be contradictory to another law, because if this happens, it will only become a source of doubt. If there is a legal contradiction, then such a conflict must be ended as soon as possible through the legal system itself.[10] Regarding the legal certainty, *Bawaslu* actually in issuing technical regulations on participatory supervision will not show any form of legal certainty, because there is a contradiction with the regulation of public participation which only gives space to the *KPU* in issuing technical regulations. When *Bawaslu* still insists on issuing implementing technical regulations from participatory supervision, the enforceability and binding power of these technical regulations do not reflect the values of certainty in law.

The legal implication of the ambivalence of participatory monitoring arrangements in the election law is actually detrimental to *Bawaslu* as an election supervisory agency in maximizing the duties and responsibilities of supervision carried out by all parties. Therefore, *Bawaslu* as an election monitoring house through the involvement of all elements of society will not be effective because election regulations that are not formed take into account the duties and responsibilities of *Bawaslu*.

4.2. Strengthening Participatory Supervisory Agency

In particular, regarding public participation in supervising, there are also various problems that keep recurring in the election process, namely: the limited ability and skills of election supervisors' resources, limited funding with a wide distribution of supervisors that require a large allocation of funds, and the level of participation. lower level of community participation in voting.

These obstacles and challenges are increasingly complex with the participatory oversight arrangements in the Election Law which create regulatory ambivalence as described above. Regarding changes to the Election Law, it is difficult to do because the Election Law has now been established as a regulation that forms the basis of the 2024 simultaneous elections that have been running. Based on this, efforts to improve and strengthen participatory supervision, which is an important matter to be implemented, are relevant to several approaches.

1. Provision Adequate Budget

The extent of the area and the distribution of locations as well as monitoring resources have an impact on the amount of costs that must be provided in maximizing election supervision in Indonesia. Therefore, adequate

budget allocations should also include budget allocations for public participation in monitoring. The existence of public reports of various forms of violations and fraud in elections must get an award from the government, and this award certainly requires adequate costs too.

2. Creating a Shift in Public Perception

The public's perception of elections that are democratic and with integrity must always be renewed. The tendency to allow violations or fraud, such as accepting the practice of money politics but not choosing certain candidates, must be changed and removed from public perception. This effort should be eliminated by changing people's mindsets through strengthening political education in the community which is the responsibility of various parties, ranging from election administration, government, to political parties.

3. Partnership with Local Government

One of the mandates of the Election Law is regional involvement in the implementation of elections. In this case, efforts to increase participatory supervision can be carried out in partnership with local governments. For example, in regional agencies such as the National and Political Unity office, they have a budget to monitor the election process. In fact, Bawaslu can use this to establish cooperation with relevant regional agencies in increasing participatory supervision. Such a step is also one of the things to answer the lack of allocated supervision budget.

V. CONCLUSION

The problem of ambivalence in the regulation of participatory supervision is that the Election Law does not explicitly grant the technical regulatory authority to *Bawaslu* and only mentions that the *KPU* has implications for ambiguity in the regulation of electoral law in Indonesia and the legal certainty of technical regulations for participatory supervision. The problem is even more complicated when changes to the Election Law cannot be carried out at this time because it has been determined to be a regulation that will be used in the 2024 simultaneous elections. partnership with local government. The necessity that can be done after the 2024 election is to make changes to the Election Law by uniforming the authority of participatory supervision to *Bawaslu*.

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