

Analysis of the Use of Discretionary Rights in the Implementation of Regional Elections

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Abstract. *Democracy is a system of governance that places the people as the ultimate holders of political authority. One of its primary manifestations is the mechanism of general elections, including local elections (Pilkada). Pilkada represents a concrete form of democracy at the regional level, allowing citizens to determine their local leaders. In practice, however, election administrators may confront circumstances that are not clearly regulated. In such situations, discretionary right becomes relevant to enable decision-making in the face of legal gaps or ambiguities, provided that it aligns with the general principles of good governance. This study aims to analyze the use of discretion by the Banjarbaru City General Election Commission (KPU Kota Banjarbaru) as the election management body in the 2024 mayoral and vice-mayoral election. The research method was used normative (doctrinal). The novelty in this research is the need to address specific situations, such as those encountered during the Pilkada implementation phase, by examining the 2024 simultaneous Pilkada in Banjarbaru City. Based on the research concluded that KPU's decision to continue using the original ballotlisting two candidate pairs despite the disqualification of one pair and to classify votes for the disqualified candidate as invalid without clear differentiation constitutes an improper exercise of discretion. This decision neglected the principles of public interest, legal certainty, justice, and the protection of citizens' electoral rights. The KPU's inaccurate use of outdated ballots resulted in ambiguity regarding vote status, violations of fairness and electoral validity, and a decline in public trust in the integrity of the election process.*

Keywords: *Discretion; Dispute; Elections; Regional.*

1. Introduction

Democracy is a system of government in which political power is centered in the hands of the people, and decision-making is carried out directly by the people or citizens as the holders of the highest authority. In the administration of government, representatives of the people who occupy positions of power are chosen through a mechanism known as elections. The democratic process in regional elections is the hope for ideal leadership succession for regional heads (Siregar, 2021). In the realm of constitutional law, democracy serves as a crucial foundation that guarantees public involvement in determining the direction of politics and governance. One of the primary aspects of democracy is popular sovereignty, which asserts that all citizens possess equal rights to participate in the formulation of public policy. This principle is manifested through the implementation of free and fair elections, where every vote is valued equally and without discrimination.

The direct election of regional heads (hereinafter referred to as *Pilkada*) is a concrete manifestation of the implementation of democracy at the regional level. *Pilkada* constitutes a political process in the local arena designed to provide space for citizens to determine the leaders of their respective regions. The democratic process within *Pilkada* serves as a hope for an ideal succession of regional leadership. However, the significance of *Pilkada* extends beyond a mere change in leadership; it functions as a vital mechanism for translating the will of the people into governance. This transition from a democratic theory to a functional administrative reality ensures that the regional government remains accountable to its constituents. By acting as a bridge between the local community and the state apparatus, *Pilkada* transforms the act of voting into a powerful tool for civic empowerment.

Pilkada is an important instrument in the administration of local government, grounded in democratic system-based standards at the regional level, because it is through them that the people, as holders of sovereignty, determine the state. This means that the highest authority to manage state governance lies with the people. Through *Pilkada*, the people can choose who will serve as leaders and representatives during the period of conveying public aspirations, thereby determining the direction of a country's future. The determination of leaders through general elections or regional elections can be said to be successful if the people exercise their right to vote based on their conscience without coercion or threats from any party (Dewi, et.al., 2022: 36-48). In relation to the conduct of *Pilkada*, KPU is mandated to organize the elections through its duties of planning programs and budgets and determining schedules related to the stages of the election process, formulating the working procedures of its organizational structure, drafting the rules and regulations required at each stage of the

election, determining the election participants, determining and announcing the recapitulation of vote count results, issuing decisions to ratify the election results, and carrying out other duties and authorities as stipulated in the prevailing laws and regulations.

In the 2024 simultaneous *Pilkada*, there are patterns of violations that usually form the basis for disputes over election results, such as administrative violations like the KPU's carelessness in verifying candidacy documents, the use of forged documents, and procedural violations by election organizers, which often become the main reasons. In addition, substantive violations such as vote-buying (money politics), vote manipulation, and the partiality of officials also serve as grounds for filing election result disputes at the Constitutional Court (Sutisna, A. 2023: 94-112). The conditions depicted in the portrayal of the 2024 simultaneous *Pilkada* indicate that the succession of election administration does not always rely solely on adherence to normative regulations at each stage, but also requires appropriate decisions by election organizers when facing issues that are not fully detailed in the existing regulations (Virdaus, S, et al., 2024: 231-257).

These conditions demonstrate that the administration of *Pilkada* cannot rely solely on rigid normative regulations, but often requires election organizers to make discretionary decisions when confronted with legal vacuums or unclear norms. Although discretion has been formally recognized in Indonesian positive law as a legitimate administrative instrument to ensure effective governance, its application remains problematic due to unclear boundaries, the potential for abuse of power, and officials' fear of legal consequences. This dilemma is particularly evident in the conduct of election organizers, whose discretionary actions may significantly affect electoral integrity. Therefore, this research addresses the problem of how discretion is regulated within Indonesian law and how its application by the Banjarbaru City KPU during the 2024 mayoral and vice-mayoral election stages influenced the administration of the simultaneous *Pilkada*, highlighting the need for clear legal parameters, accountability mechanisms, and oversight to ensure that discretion is exercised in accordance with democratic principles and good governance.

Based on the background described above, this research examines issues regarding the regulation of discretion within Indonesian positive law and how the application of discretion by the Banjarbaru City KPU during the 2024 Mayoral and Vice-Mayoral election stages influenced the administration of simultaneous regional elections in Banjarbaru. The purpose of this study is to examine the regulation of discretion within Indonesian laws and regulations and to analyze the impact of the Banjarbaru City KPU's use of discretion on the implementation of the 2024 simultaneous regional elections. This research aims to analyze how the use of discretion by KPU affects the implementation of the simultaneous

Pilkada. This study uses the dispute over the results of the election of the Mayor and Deputy Mayor of Banjarbaru City in the 2024 simultaneous *Pilkada* as a concrete manifestation of the use of discretion in the context of the complex stages of organizing *Pilkada*.

2. Research Methods

According to Peter Mahmud Marzuki in the book *Penelitian Hukum*, legal research is a process to obtain coherent truth, which involves assessing whether legal policies are aligned with legal norms, whether norms containing commands or prohibitions are aligned with legal principles, and investigates whether specific legal commands or prohibitions harmonize with foundational legal principles, ensuring that individual conduct adheres to both the letter and the spirit of the law. The author contends that legal scholarship inherently maintains a normative character when documented (Marzuki, P. M, 2020). Consequently, this research adopts a normative legal framework (doctrinal) to analyze the theory and practice of discretionary power within regional election management, focusing primarily on established legal norms.

This research applies a statutory approach by utilizing legal rules and regulations. Through this approach, all provisions related to the legal issue under review are analyzed to uncover the *ratio legis* and the ontological basis for the formation of the law, while simultaneously understanding the underlying philosophical values. Consequently, a conclusion can be drawn regarding whether or not a philosophical conflict exists between the law and the legal issue being discussed (Suteki, & Taufani, G., 2020).

This research utilizes a statutory approach, which involves a comprehensive review of relevant laws and regulations to address the legal problem at hand. By examining these statutes, the study seeks to uncover the *ratio legis* (legal reasoning), the ontological foundations, and the underlying philosophical principles of the legislation. This analysis helps determine if there are any fundamental philosophical contradictions between the law and the specific issue being studied. Furthermore, the research incorporates a case approach. This involves analyzing specific court cases related to the subject matter that have already reached a final, legally binding judgment (*inkracht*). This research is prescriptive in nature because, fundamentally, legal science does not examine behavior influenced by external factors; rather, it analyzes the harmony between norms and legal principles, the relationship between rules and legal norms, and the alignment of individual behavior with prevailing norms. This study offers recommendations regarding the steps that ought to be taken and implemented in a particular issue based on moral-based legal principles.

The legal materials used in this research are primary legal materials, which are authoritative and binding sources of law. Primary legal materials include legislation, official documents or minutes of the drafting of legislation, and court decisions. The primary legal materials utilized in this research include, among others: "Law No. 30 of 2014 concerning Government Administration, as amended by Law No. 6 of 2023 concerning the Enactment of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation into Law, Law No. 10 of 2016 concerning the Second Amendment to Law No. 1 of 2015 concerning the Enactment of Government Regulation in Lieu of Law No. 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law, as amended by Law No. 6 of 2020 concerning the Enactment of Government Regulation in Lieu of Law No. 2 of 2020 concerning the Third Amendment to Law No. 1 of 2015 concerning the Enactment of Government Regulation in Lieu of Law No. 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law, General Elections Commission Regulation Number 17 of 2024 concerning the Voting and Counting of Votes in the Election of Governors and Vice Governors, Regents and Vice Regents, and Mayors and Vice Mayors.

The method of collecting and assessing legal materials is conducted through document studies or literature reviews, specifically by examining documents related to laws and regulations as well as other relevant documents. This research gathers legal materials from literature sources related to the legal issues under study. The data analysis technique employs the deductive method, starting from a major premise in the form of legal provisions and a minor premise in the form of legal facts, from which a conclusion is then drawn.

3. Results and Discussion

Under the concepts of the rule of law (*rechtsstaat*) and the welfare state, the government carries the obligation to provide public services (Muntoha, A., 2009: 379-395). This indicates that the government's role is not limited to enforcing laws and regulations, but also involves formulating concrete legal rules to achieve the objectives set within those regulations. A tangible manifestation of the rule of law is the existence of a bureaucracy as the executor of governance. To perform these duties, the government is granted various types of authority, derived either directly from legislation (attributive) or through the transfer of power (delegative) (Maulliana, D. 2020). In the conduct of day-to-day governance, modern government cannot be separated from complex and dynamic state administrative practices. In line with this, administrative officials are faced with various circumstances that are not always regulated in detail by the relevant laws and regulations. To overcome these difficulties, administrative officials often make use of a special authority vested in them, known as discretion (Putri, S., et al., 2025: 33-42).

The concept of discretion in the Indonesian legal system is a relatively new normative idea and is beginning to be officially recognized through regulations. (Hafendi, D & Silalahi, W., 2024: 1-24). Derived from the Dutch term “discretionair,” discretion is understood as the wisdom exercised when an official with specific authority takes action based not solely on prevailing rules, laws, or legal provisions, but on considerations of judgment, wisdom, and a sense of justice. In English, it is referred to as “discretion,” which signifies both wisdom and the latitude to act. According to legal dictionaries, discretion is defined as the freedom of an official to make decisions based on their own judgment in accordance with the circumstances at hand (Taufikurrohman, M & Rahman, B. 2024: 55-77).

Provisions governing Discretion within Indonesia’s positive law are stipulated in Article 1 number 9 of Law No. 30 of 2014. It states that Discretion refers to Decisions and/or Actions determined and/or carried out by Government Officials to resolve concrete issues encountered in the administration of government in cases where laws and regulations provide options, are non-existent, incomplete or unclear, and/or in the event of government stagnation (Darojad, Z., 2018: 125–140). The exercise of Discretion must not conflict with laws and regulations and must be guided by the General Principles of Good Corporate Governance (AUPB), based on objective reasoning, free from conflicts of interest, and implemented in good faith.

The application of discretion to policy also emphasizes the importance of understanding governance norms, including how discretion ought to be utilized. A proper understanding of discretion is crucial to ensure its implementation does not deviate from its primary objectives: increasing the effectiveness of government administration and realizing justice. One form of discretionary policy analyzed in this research is the implementation stage of the 2024 Banjarbaru Mayoral and Vice-Mayoral Election.

The issues surrounding the Banjarbaru City Election began with the certification of two candidate pairs by the Banjarbaru City General Elections Commission (KPU). However, the South Kalimantan Province Election Supervisory Body (Bawaslu) later determined that Candidate Pair Number 2 was proven to have committed administrative violations against Article 71 paragraph (3) of Law 10/2016. Consequently, Bawaslu recommended the disqualification of their candidacy, which was subsequently enacted by the Banjarbaru KPU.

Following this disqualification, the Banjarbaru KPU coordinated with the KPU RI through the South Kalimantan Provincial KPU, adhering to KPU RI Decision Number 1774 of 2024 regarding the conduct of the 2024 Election voting process post-disqualification. However, in practice, the ballots still listed two candidate

pairs, whereas there should have only been one valid pair. As a result, votes cast for Candidate Pair Number 2 were declared invalid during the vote-counting process.

In fact, the Banjarbaru KPU should have adhered to Article 54C, Paragraph (2) of Law No. 10/2016, which stipulates that an election with a single candidate pair must be conducted using ballots containing two columns: one featuring the candidate pair's photo and one blank column without a picture. Furthermore, in conducting a vote with only one candidate pair, the KPU should have also followed Articles 80-81 of KPU Regulation No. 17 of 2024, which state that voters may choose either the candidate pair or the blank column, both of which hold equal legal standing.

Instead of implementing these regulations, the Banjarbaru KPU decided to continue using the old ballots—which still displayed the names and images of Candidate Pair Number 2. They claimed this was due to technical constraints, arguing that reprinting new ballots could not accommodate the sudden legal decision to disqualify the candidate pair, as the cancellation occurred only 29 (twenty-nine) days before election day. Consequently, the voting process proceeded with ballots featuring two candidates, even though, legally, only one candidate was recognized as a valid participant in the election.

Based on this summary of the 2024 Banjarbaru election process, regulations governing single-candidate mechanisms are clearly stipulated in Article 54C of Law 10/2016 in conjunction with Article 81 of KPU Regulation (PKPU) 17/2024. These explicit provisions should have served as the basis for the Banjarbaru KPU to act in accordance with the prevailing laws. In addressing this issue, the Banjarbaru KPU relied on KPU RI Decision Number 1774/2024, which states if the chairman of the KPPS finds a ballot marked for a Candidate Pair whose candidacy has been cancelled due to a Bawaslu recommendation or a court ruling—covering the serial number, photo, or name of said pair—the vote on that ballot is declared invalid. This provision was misinterpreted by the Banjarbaru KPU, as the contents of that Decision only apply if the cancellation of one or more candidate pairs still leaves more than one candidate pair in the election. The reality of the Banjarbaru regional election is that only one candidate pair remained as a participant. Therefore, the Banjarbaru City KPU should have used the provisions in Article 54C paragraph (2) as the applicable legal basis for such conditions.

The Banjarbaru City KPU's decision to declare votes obtained by disqualified candidate pairs as invalid is clearly inconsistent with the principle of legal certainty. Furthermore, the applicability of a Law (*Undang-Undang*) as a regulation cannot be overridden by a Decision issued by an institution—in this

case, KPU Decision 1774/2024. Under the concept of the hierarchy of laws and regulations, its position is subordinate to Law No. 10 of 2016.

KPU Banjarbaru should have exercised its discretionary authority to prioritize legal certainty and the constitutional rights of voters by reprinting the ballots following the disqualification of Candidate Pair Number 2, even if it meant disregarding time and cost constraints. The failure to reprint has resulted in a ballot design that does not reflect the actual situation on the ground (a single-candidate election), which has the potential to confuse voters and undermine the principles of honest and fair elections. Consequently, administrative efficiency must not override the essence of democracy, where the protection of the people's voice must remain the top priority.

The failure of KPU Banjarbaru as the organizer is reflected in the uncertainty of the voting mechanisms and the procedures for counting valid votes, which clearly violates the constitutional rights of voters. This is evident in several aspects: the decision to render votes for a disqualified pair invalid effectively erases the traces of democratic expression, even though those votes remain a legitimate expression of the people exercising their right to vote.

Furthermore, this decision creates legal uncertainty. A key principle in elections is legal certainty and transparency of results. By merging all invalid votes without detail, KPU Banjarbaru has undermined legal certainty and invited suspicion and potential disputes over election results. Discretion should be used to fill legal gaps or clarify ambiguities to ensure the election remains honest, transparent, and accountable.

Using time efficiency and budget limitations as the basis for the KPU's decision indicates that administrative considerations were prioritized over the constitutional interests of the voters. According to the General Principles of Good Administration (AUPB), every administrative decision must consider proportionality between the efficiency of an institution's duties and the protection of public rights. By choosing the administratively easiest path, KPU Banjarbaru disregarded the principle of proportionality and diminished the legitimacy of the election results.

Thus, it can be concluded that KPU Banjarbaru failed to apply its discretionary power appropriately by not using that authority to guarantee voting rights, legal certainty, and transparency. Discretion that should have been directed toward protecting the constitutional interests of the voters was instead used solely to cover technical and budgetary limitations. As a result, the KPU's decision not only creates uncertainty regarding the election results but also damages the democratic integrity of the regional election.

4. Conclusion

Thus, it can be concluded that the Banjarbaru City KPU failed to apply discretion properly and in accordance with the General Principles of Good Governance (AUPB). Misuse of discretion has caused legal ambiguity and uncertainty in election results during the local election process in Banjarbaru City, rather than ensuring a democratic, honest, and fair election. The problems in organizing the local election in Banjarbaru City highlight the importance of a comprehensive understanding and accountability in decision-making within the context of discretion, so that such authority is not biased and is used in accordance with the purpose of conducting democratic governance.

5. References

Journals:

- Darojad, Z. (2018). Penggunaan diskresi oleh pejabat pemerintahan dalam kaitannya dengan kerugian keuangan negara yang mengakibatkan tindak pidana korupsi. *Jurnal MP (Manajemen Pemerintahan)*, 5 (2), 125–140.
- Dewi, L. Y., Sinaga, H. L. N., Pratiwi, N. A., & Widiyasono, N. (2022). Analisis peran Komisi Pemilihan Umum (KPU) dalam partisipasi politik masyarakat di *Pilkada* serta meminimalisir golput. *Jurnal Ilmu Politik dan Pemerintahan*, 8(1), 36-48.
- Hafendi, D., & Silalahi, W. (2024). Diskresi sebagai instrumen penegakan hukum: Kajian terhadap kewenangan kepolisian berdasarkan UU Kepolisian. *Jurnal Hukum Lex Generalis*, 5(12), 1-24.
- Muntoha, A. (2009). Demokrasi dan negara hukum. *Ius Quia Iustum Law Journal*, 16(3), 379–395.
- Putri, S. A., Triono, A., & Kasmawati, K. (2025). Diskresi pejabat administrasi dalam pelayanan publik terhadap batasan dan pengawasan diskresi. *Lex Stricta: Jurnal Ilmu Hukum*, 4(1), 33–42.
- Sutisna, A. (2023). Analisis faktor-faktor non-elektoral potensi pemicu konflik pemilu tahun 2024. *Electoral Governance: Jurnal Tata Kelola Pemilu Indonesia*, 5(1), 94–112.
- Taufikurrohman, M., & Rahman, B. (2024). Studi literatur: Penanganan degradasi lahan di DAS. *Jurnal Kajian Ruang*, 4(1), 55–77.
- Virdaus, S., Yoel, S. M., & Prasetya, W. A. (2025). Pola putusan perselisihan hasil *Pilkada* 2024: Strategi permohonan dan upaya pencegahan. *Electoral Governance: Jurnal Tata Kelola Pemilu Indonesia*, 6(2), 231-257.

Books:

- Marzuki, P. M. (2020). *Penelitian hukum* (Edisi revisi). Jakarta: Kencana.
- Suteki, & Taufani, G. (2020). *Metodologi penelitian hukum (filsafat, teori, dan praktik)*. Jakarta: Rajawali Pers.

Siregar, F. E. (2021). *Diskualifikasi petahana: Kajian pelanggaran penyalahgunaan wewenang kepala daerah di Pilkada*. Jakarta: Konstitusi Press.

Dissertation:

Mauliana, D. (2020). *Kewenangan diskresi inovasi dalam peningkatan pelayanan pemerintahan daerah* [Dissertation, Universitas Hasanuddin].

Regulation:

Law No 30 of 2014 Concerning Government Administration, as amended by Law No 6 of 2023.

Law No 10 of 2016 concerning the Second Amendment to Law No 1 of 2015 concerning the Stipulation of Government Regulation in Lieu of Law No 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law, as amended by Law No 6 of 2020.

KPU Regulation No 17 of 2024 concerning Voting and Vote Counting in the Election of Governors and Deputy Governors, Regents and Deputy Regents, as well as Mayors and Deputy Mayors.