

The Role of Notaries in the Legality of Documents General Election (Election) Supervision

Wulandari¹⁾ & Achmad Arifullah²⁾

¹⁾Master of Notary Law, Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: jiilaanwulandari@gmail.com

²⁾Master of Notary Law, Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: achmadarifullah@unissula.ac.id

Abstract. *This study aims to determine and analyze the role of Notaries in providing legality to General Election supervision documents, to find out and analyze the legal force of General Election supervision documents that have been legalized by a Notary. The approach method in this study is the statutory approach (Statute Approach) and Conceptual (Conceptual Approach). This type of research is Normative Legal Research. The types and sources of data in this study are secondary data obtained through literature studies. The analysis used in this study is qualitative analysis. The results of the study concluded that Election supervision documents produced by Bawaslu have a solid legal foundation, sourced directly from the mandate of Law Number 7 of 2017 concerning General Elections, Legalization of Copies of supervision documents by notaries plays a strategic role in the context of proof having a higher formal evidentiary value, especially in legal processes related to election result disputes or handling alleged violations, but the notary's legalization authority has crucial limitations, namely only touching on the formal aspects of the authenticity of the copy. Notaries do not have the competence or responsibility to validate the truth of the contents, legal validity, or accuracy of the decisions contained in Bawaslu's election supervision documents. Responsibility for these material aspects lies entirely with Bawaslu as the authorized institution.*

Keywords: Document; Election; General; Legalization; Notary.

1. Introduction

General elections (Pemilu) are the main pillar of democracy that require strict supervision to be carried out honestly, fairly, and transparently. Supervision is one of the important components in determining the success or failure of an election. Supervision of the implementation of the Election is given to the Election Supervisory Body (Bawaslu) and its subordinates, the General Election Supervisory Committee (Panwaslu) as regulated in the provisions of Law Number 7 of 2017 concerning General Elections. The Election Supervisory Body (Bawaslu) as an

institution that carries out the duties and obligations to supervise elections certainly has several special notes regarding the implementation of the 2024 Simultaneous General Elections. For Bawaslu, the 2024 General Election is a joint effort of all components of the Indonesian nation. The success of its implementation is certainly not determined by one component of the organizers alone, but also by all stakeholders in the success of a democratic and dignified General Election.

Bawaslu has a very important role in enforcing election law. Bawaslu as an independent institution is determined in the Constitutional Court Decision No. 11/PUU-VIII/2010 institutionally. Bawaslu is no longer part of the KPU, and Bawaslu is no longer formed by the KPU. Bawaslu's position is an independent institution, its position is equal to the KPU, both as national, permanent and independent election organizing institutions as regulated in Article 22 E paragraph (5) of the 1945 Constitution. Based on this explanation, the duties and authorities of Bawaslu as an election supervisory institution still appear very limited in the implementation of elections.

The issue of weak election law enforcement often occurs during elections with many administrative violations and election crimes that are not resolved completely in each election period. This can be seen in the performance of Bawaslu, including:

- 1) During the 1999 election, the election supervisory body was nicknamed a recommendation maker, a warning maker, toothless and a data scavenger;
- 2) Then in 2004, Bawaslu's existence was merely as an election organizer because the cases it handled were not resolved by other institutions;
- 3) The election supervisory institution that was strengthened through the establishment of Bawaslu ahead of the 2009 election, as regulated in Law Number 22 of 2007 concerning General Election Organizers, did not change the negative perception at all. Bawaslu's existence increasingly absorbed a lot of the state budget, but its performance and usefulness were questioned and doubted;
- 4) The experience of the simultaneous elections in 2019, found many fatalities from the organizers. This is due to the stages that may overlap between the stages of the election and regional elections and several rules that may still need a lot of improvement;
- 5) Meanwhile, the implementation of the 2020 regional elections during the Covid-19 pandemic must be taken into consideration because it is uncertain when the pandemic will end.¹

¹Kurniawan. (2021). "Penguatan Bawaslu dalam penegakan hukum Pemilu serentak tahun 2024: Antara tantangan dan upaya penyelesaiannya." *JALHU: Jurnal Al-Mujaddid Humaniora*, Volume 7, No 2, Oktober Volume 7, No 2, October.

The Election Supervisory Body (Bawaslu) and the Election Supervisory Committee (Panwaslu) at all levels have an important role in ensuring that elections are held democratically, directly, generally, freely, secretly, honestly, and fairly in accordance with applicable laws and regulations and are tasked with supervising the course of elections or the implementation of elections throughout the territory of the Republic of Indonesia, including documenting various findings and reports related to election violations and disputes. This role must be optimally carried out in supervising and taking firm action in accordance with the rules for all forms of violations that occur during the election. In carrying out its duties, Bawaslu requires documents that have legal force, so that they can be used as valid and authentic evidence to carry out its duties and in the process of resolving disputes or other legal actions.

Article 95 of Law Number 7 of 2017 states that Bawaslu has the authority to receive and follow up on reports related to alleged violations of the implementation of elections. Bawaslu also has the authority to examine, review, and decide on violations, both election administration violations and money politics violations. Then in disputes over the election process, Bawaslu has the authority to receive, examine, mediate or adjudicate, and decide on the settlement submitted by election participants.²In carrying out its functions, Bawaslu produces various documents resulting from supervision, such as violation reports, recommendations for follow-up and evidence documents that can be used in legal processes. However, challenges often arise in terms of formal and material proof of supervision documents, especially when brought to the realm of dispute resolution or election law enforcement. Rosidin in his journal also discusses the importance of strengthening Bawaslu in the process of enforcing election law with the existence of revisions to the various Bawaslu Regulations are certainly important in the process of enforcing election law, especially in terms of handling violations of election law. However, of course the revisions to the various Bawaslu Regulations that have been carried out must be followed up with a synchronization process between Bawaslu Regulations and other laws and regulations, especially with the General Election Commission Regulations.³

Election supervision documents are official state administrative documents. produced in the Election supervision process by Bawaslu requires formal legal force in order to have strong evidentiary power. This is where the role of a notary as a public official who has the authority to provide legal certainty for important documents for further review. Although the documents issued by Bawaslu are official state administrative documents and do not directly require

² Mushafi, RB, & Rofiqi, M. (2022). ""Keabsahan putusan hukum Bawaslu dalam menangani pelanggaran Pemilu". *Legal Studies Journal*, Volume 2, No 2, p. 57

³ Rosidin. (2023). "Penguatan Badan Pengawas Pemilu dalam proses Penegakan hukum Pemilu". *Jurnal Keadilan Pemilu*. Volume 2, <https://journal.bawaslu.go.id/index.php/JKP/article/view/422> accessed on 13 April 2025

legalization by a notary.

Notaries as public officials have an important role in helping the community make valid agreements and ensure legal certainty. The need for these written agreements to be made before a Notary is to ensure legal certainty for the parties to the agreement. Written agreements made before a Notary are called deeds (hereinafter referred to as written deeds). The purpose is so that the deed can be used as strong evidence if at some point there is a dispute between the parties or there is a lawsuit from another party. The provisions governing the duties, authorities, and obligations of a notary, including in providing legalization, *waarmerking*, and making authentic deeds are in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary.

Based on history, a notary is a state official/public official who can be appointed by the state to carry out state duties in providing legal services to the community in order to achieve legal certainty as an official who makes authentic deeds in civil matters.⁴ therefore in the context of election supervision, notaries can assist Bawaslu in ensuring the legality of documents used in the supervision process. However, the role of notaries in this case is still unclear and requires further research to understand how notaries can assist Bawaslu in ensuring the legality of election supervision documents.

One important aspect in ensuring the legality of election supervision documents is the involvement of a notary. Notaries play a role in providing legal certainty for documents made by Bawaslu, especially in the form of authentic deeds, legalization, or document validation. With strong legality, these documents can have higher evidentiary value before the law. However, in practice, cooperation between Bawaslu and notaries has not been explicitly regulated in legislation. However, Bawaslu can use the services of a notary to strengthen the formal legality aspect in supporting the validity of supplementary documents such as witness statements, additional evidence from the community, or reports from participatory supervision without interfering in the substance of the material. Legalization of signatures, *waarmerking*, and strengthening of external documents by a notary can provide added value in the process of proving and enforcing election law.

Based on the issues and background above, the Author feels the need to conduct a more in-depth study and research on "The Role of Notaries in the Legality of General Election Supervision Documents" is very important to do. This research can help understand how notaries can assist Bawaslu in ensuring the legality of election supervision documents and increasing the effectiveness of supervision

⁴Sulihandari, H., & Rifiani, N. (2013). *Prinsip-prinsip dasar profesi notaris*. (Cet. 1). Jakarta: Dunia Cerdas. p. 5

and enforcement of election law in Indonesia.

2. Research Methods

The research method that will be used in this research is normative legal research. Normative legal research or library research is research that examines document studies using various secondary data such as legislation, court decisions, legal theories, and can be in the form of opinions from scholars..⁵The approach method in this study is the statutory approach and the conceptual approach. The types and sources of data used in this study are secondary data in the form of primary, secondary, and tertiary legal materials. The data collection method used in this study is library research. The data analysis method used in this study is qualitative analysis. Qualitative Research Methods are often referred to as naturalistic research methods because the research is conducted in natural conditions (nature setting) by paying attention to the research location sites with qualitative data, not using statistical mathematical models and the analysis is more qualitative.⁶

3. Results and Discussion

3.1. The Role of Notaries in Providing Legality to General Election Supervision Documents

The General Election (Pemilu) supervision documents issued by Bawaslu are a manifestation of the implementation of the authority granted by law. The existence and legal force of these documents are directly derived from the Election Law and its implementing regulations, which provide legitimacy to Bawaslu to record, report, and decide on matters relating to election supervision.

Each type of document has different legal force according to its function in the election monitoring system. Dispute decisions and administrative violation decisions have binding force, while reports are more informative and serve as a basis for further action.

Documents produced by Bawaslu in carrying out its election supervision function have the status of state archives. This is based on Law Number 43 of 2009 concerning Archives. The Regulation of the Head of the National Archives of the Republic of Indonesia (Perka ANRI) further regulates the management and access of state archives. Bawaslu as a state institution is obliged to refer to this regulation in managing its archives, including election supervision documents.

The authority of a notary in Indonesia is comprehensively regulated in Law Number 30 of 2004 concerning the Position of Notary as amended by Law Number 2 of 2014 (UUJN). UUJN grants a number of authorities to notaries, which are

⁵ Online Law. [Normative Legal Research Objects for Final Assignment](#). accessed on May 04, 2025

⁶ Umrati & Hengki Wijaya. (2020). *Analisis Data Kualitatif : Teori Konsep Dalam Penelitian Pendidikan*. Sekolah Tinggi Theologia Jaffray. P. 11

broadly divided into the authority to make authentic deeds and other authorities. One of the "other" authorities that is relevant to our discussion is the legalization of photocopies of documents. Article 15 paragraph (2) of the UUJN explicitly lists the authority of notaries outside of making authentic deeds. In letter c of the article it is stated that notaries have the authority to "validate photocopies in accordance with the originals." This provision is the legal basis for legalization actions carried out by notaries on various types of documents, including the potential legalization of copies of documents issued by Bawaslu.

In the context of legalizing photocopies of Bawaslu documents, the notary only ensures that the copy is visually accurate to the original. The notary does not verify whether the information in the Bawaslu document is correct or whether Bawaslu's actions are in accordance with laws and regulations. Responsibility for the material legality of Bawaslu documents remains with Bawaslu as the institution that issued them.

Bawaslu documents are official products of state institutions. For official documents issued by Bawaslu (such as minutes, violation reports, decisions), so the notary's more relevant action for their ratification is photocopy legalization. The goal is to ratify the authenticity of copies of Bawaslu documents if needed as evidence or for administrative purposes.

Warning more appropriately applied to private letters because Bawaslu documents are not private letters whose signatures need to be authenticated by a notary. However, if Bawaslu receives a private letter from the public (for example, an initial report of alleged violations that is handwritten and signed by the reporter), then the original document of the letter can be certified to record its existence and validate the reporter's signature (if the reporter is present before a notary or the notary knows him). Meanwhile, a photocopy of the public report letter can be legalized.

legalization is seen in the signatures of the parties that have not been affixed to the deed and signed before a notary to be registered later so that the signing date between the parties involved in the deed and the notary must be the same. While *waarmerking*, the parties have previously agreed and signed the deed first and appeared before a notary, so that the date of signing the deed by the parties is different, namely earlier than the date of signing the deed.⁷

3.2. Legal Power of General Election Supervision Documents (Pemilu) that have been legalized by a Notary

The legal force of general election supervision documents that have been legalized by a notary is an important aspect in understanding the validity and evidentiary power of the document in a legal context. The legalization action by a notary,

⁷ Website: Perbedaan Legalisasi, Waarmerking dan Legalisir Akta di Notaris | Persekutuan Perdata Doni Budiono & Rekan accessed on May 09, 2025

which is legally based on Article 15 paragraph (2) letter c of Law Number 30 of 2004 concerning the Position of Notary as amended by Law Number 2 of 2014 (UUJN), provides special attributes to copies of election supervision documents issued by the General Election Supervisory Body (Bawaslu). The essence of this legalization is formal validation of the conformity and identity of the copy with the original document shown to the notary. The legalization action carried out by a notary on a photocopy of a document is often seen as a mere formality, a stamp and signature that proves that the copy is in accordance with the original. However, if examined more deeply, the legal and practical implications of the notary's legalization authority, as regulated in Article 15 paragraph (2) letter c of the UUJN, are much more significant and go beyond mere visual validation.

Article 15 paragraph (2) letter c UUJN provides a clear legal basis for notaries to legalize photocopies. This authority places notaries as public officials who are trusted to provide legal certainty regarding the formal authenticity of a copy of a document. In the realm of procedural law, both civil and criminal (including election crimes), documentary evidence has a significant position. Copies of documents, in general, have lower evidentiary value compared to the original document. However, when the copy is legalized by an authorized public official, such as a notary, its formal evidentiary value increases substantially.

The original election supervision document issued by Bawaslu has primary legal force based on the authority granted by Law Number 7 of 2017 concerning General Elections (Election Law) and its implementing regulations. Legalization by a notary provides secondary legal force to the copy of the document, especially in the context of evidence. The legalized copy becomes a formal representation that is recognized as true by law. Although notary legalization strengthens the formal aspect of the copy, the potential for challenges to the legal force of the legalized election supervision document remains. The opposing party in a dispute or handling of violations may try to dispute the authenticity of the original document or the truth of the contents of the document even though the copy has been legalized. In this case, the court or dispute resolution body will consider all the evidence presented comprehensively. In the context of Bawaslu's election supervision document, the legalization of the copy by Bawaslu itself certainly has authentic force from a state administration perspective. However, legalization by a notary can provide an additional layer of legalization from an independent public official, which may be more considered in legal processes outside the realm of state administration.

A copy of the Bawaslu election supervision document that has been legalized by a notary is included in the category of written evidence. As regulated in the Criminal Procedure Code, a letter as evidence has formal and material evidentiary value. Legalization by a notary strengthens the formal evidentiary value of the copy, namely ensuring that the copy is in accordance with the original. Although legalization by a notary provides significant strengthening of the formal

evidentiary power of the Bawaslu election supervision document copy, it is important to understand that the notary's authority in this case has clear limitations. These limitations mainly lie in the separation between the formal authenticity of the copy and the material truth (content) of the original document. An accurate understanding of these limitations is crucial in assessing the overall legal force of the legalized document. In the context of evidence law, the formal authenticity of a document refers to the authenticity of the document in terms of the maker, signature (if any), and the process of making it. Legalization by a notary focuses on this aspect for copies of documents. The notary states that the copy is visually identical to the original document shown to him. On the other hand, the material truth of a document relates to the content of the information contained therein. The facts written in the document are true, the conclusions or decisions taken based on these facts are in accordance with applicable laws and regulations. Notary legalization does not touch on this aspect of material truth. Notaries do not have the authority or competence to verify the truth of the contents of Bawaslu election supervision documents. The main responsibility for the truth of the contents and legal validity of Bawaslu election supervision documents lies entirely with Bawaslu as the state institution that issues them. Bawaslu has an obligation to ensure that every supervision report, minutes, decision, or other document it issues is based on accurate facts and in accordance with the provisions of the Election Law and other related laws and regulations. Legalization of copies of Bawaslu documents by a notary does not transfer this responsibility to the notary. The notary only acts as a party that certifies the authenticity of the copy, not as a guarantor of the truth of the document's content. Parties interested in Bawaslu election supervision documents must still rely on Bawaslu's credibility and accountability as a state institution to ensure the truth of the contents and legal validity of the document.

4. Conclusion

Election supervision documents produced by Bawaslu have a solid legal foundation, derived directly from the mandate of Law Number 7 of 2017 concerning General Elections. The authority of a notary to legalize photocopies of documents, as regulated in the Notary Law, is a valuable legal instrument in providing reinforcement to the formal authenticity of a copy in Article 15 paragraph (2) of the UUJN explicitly includes the authority of a notary outside of making authentic deeds. In letter c of the article it is stated that a notary has the authority to "certify photocopies in accordance with the original." This provision is the legal basis for legalization actions carried out by notaries on various types of documents, including the potential legalization of copies of documents issued by Bawaslu. In the context of Bawaslu documents, the legalization action by a notary serves to certify that the submitted copy is visually identical to the original document shown. This validation increases the level of trust in copies of documents for various administrative and legal purposes. Legalized copies of Bawaslu's election supervision documents have higher formal evidentiary value,

minimize the potential for denial of the authenticity of the copy, and make it easier for courts and dispute resolution bodies to focus on the substance of election problems. The existence of a copy that is guaranteed to be authentic can speed up the legal process and increase justice in resolving election cases, but the notary's legalization authority has crucial limitations, namely only touching on the formal aspects of the authenticity of the copy. Notaries do not have the competence or responsibility to validate the truth of the content, legal validity, or accuracy of decisions contained in Bawaslu's election supervision documents. Responsibility for these material aspects lies entirely with Bawaslu as the authorized institution.

There is a need for the preparation of clear and integrated national guidelines regarding the procedures for legalization of election organizer documents, including Bawaslu, by notaries. Bawaslu needs to increase the capacity of human resources in understanding the importance of document legalization for legal evidence purposes and there needs to be harmonization of laws and regulations related to evidence in election disputes with provisions regarding document legalization by notaries. Clarity regarding the evidentiary value of legalized copies in the context of election procedural law will provide legal certainty for all parties.

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