

## **Vacation of Power in Regency/City Bawaslu as a Whole Indonesia**



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**ABSTRACT:** Bawaslu in the institutionalization of election organizers is expected to be a very important part of supervising the course of general elections in accordance with the constitution and laws and regulations in carrying out the function of checks and balances. In the recruitment process for Regency/City Bawaslu there have been several delays related to the selection schedule, which has resulted in delays in the establishment and inauguration of Regency/City Bawaslu which has resulted in no one serving as Regency/City Bawaslu members or a power vacuum in Regency/City Bawaslu as a whole. Indonesia.

**KEYWORDS:** power vacuum, Regency/City Bawaslu, General Election

### **A. INTRODUCTION**

According to Jimly Assiddiqie, constitutional democracy is nothing but a democracy based on law as the other side of the same coin as the principle of a democratic rule of law (demokratische rechtsstaat)-(Saldi Isra, 2019).. Sovereignty is in the hands of the people, and it is carried out by the Constitution stated in Article 1 Paragraph 2 of Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 which underlies constitutional democracy in Indonesia. Democracy is realized through the implementation of General Elections to elect the position of President and Vice President regulated in Article 6A Paragraph 1, members of the People's Election Council are regulated in Article 19 Paragraph 1, members of the Regional Representatives Council are regulated in Article 22 C Paragraph 1. In the following arrangements it is explained more fully general elections in addition to electing the positions of President and Vice President, the People's Legislative Council, the Regional Representatives Council, general elections are also intended to elect the Regional People's Legislative Council as stipulated in the provisions of Article 22E Paragraph 2.

General elections are carried out as one of the legal ways to transfer state power so that unconstitutional power struggles do not occur and there is no vacuum of power. Due to the very importance of general elections for the survival of a country, they must be carried out in accordance with the principles of direct, general, free, secret, honest and fair elections. Elections are held by a national, permanent and independent election commission in accordance with Article 22E paragraph 5. The meaning of the phrase "an election commission" in the Constitutional Court Decision Number 11/PUU-VIII/2009 provides a legal view and emphasis that holding general elections is an election commission consisting of three main components namely the General Election Commission (Komisi Pemilihan Umum (KPU)), the Election Supervisory Boards (Badan Pengawas Pemilu (Bawaslu)) and the Honorary Council.

The presence of Bawaslu in the institutionalization of election organizers is expected to be a very important part of overseeing the course of general elections in accordance with the constitution and laws and regulations in carrying out the function of checks and balances. Besides that, in the Public Hearing Meeting with the Commission II Working Committee, Bawaslu conveyed that this institution has the following functions:

1. The guardian of the electoral process
2. The guarantor of fair competition and responsibility
3. Election risk
4. Make sure the electoral process according to law
5. Deterrent effect (ensuring that the handling of violations committed creates a deterrent effect for the perpetrators)
6. Avoid power practices that may tend to be corrupt and power or authority that can be abused. (Indra Pahlevi, 2011).

The view that was conveyed by Bawaslu on 27 April 2010 at the Public Hearing Meeting, is still relevant to be adopted to complement the contents of the regulation regarding general election organizers as stipulated in Undang-Undang Nomor 7 Tahun 2017 concerning General Elections which states that the Election Supervisory Board is an Election Organizing Board that supervising the holding of elections throughout the territory of the Unitary State of the Republic of Indonesia. Oversight of each

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stage of the general election implementation can be carried out in accordance with the objectives of holding general elections as stated in Article 4 of the same law, namely the holding of elections aims to:

- a. Strengthening the democratic constitutional system;
- b. Realizing fair and integrity elections;
- c. Ensuring the consistency of election system arrangements;
- d. Provide legal certainty and prevent duplication in election arrangements; And
- e. Realizing effective and efficient elections.

The presence of the Bawaslu institution that oversees the smooth running of general election objectives is in line with Powell's thoughts, namely:

“.....election seems to be critical democratic instruments. The claim to establish connections that compel or greatly encourages policy makers to pay attention to citizens. There is in a wide spread consensus, that the presence of competitive elections, more that any other feature, identifies a contemporary nation-state as a democratic political system” (G. Bingham Powell JR., 2000)

### B. INSTITUTION OF THE ELECTION SUPERVISORY BOARD OF THE REPUBLIC OF INDONESIA

The Republic of Indonesia Bawaslu and Provincial Bawaslu which are permanent and independent, were formed based on Article 69 paragraph (2) of Law Number 15 of 2011 concerning General Election Organizers. At the district/city level, general election supervision is carried out by an adhoc committee, namely the Regency/City General Election Supervisory Committee. The law was then codified in Law Number 7 of 2017 concerning General Elections, and through this law the Regency/City Election Supervisory Committee was changed to the Regency/City Election Supervisory Board (Regency/City Bawaslu) which is permanent and independent.

Regency/City Bawaslu was formed by Bawaslu in accordance with the provisions of Article 95 letter i with a five-year working period, formed and first established on August 14, 2018 for a working period of 2018 – 2023. The term of office for Regency/City Bawaslu is August 14, 2023, so that Bawaslu conducts recruitment selection for Regency/City Bawaslu.

The formation of Regency/City Bawaslu begins with the formation of a Selection Team of 5 (five) people who come from academics, professionals and community leaders who have integrity. The duties of the Selection Team in the provisions of Article 129 paragraph (3) of Law Number 7 of 2017 are:

- a. Announce the registration of Regency/City Bawaslu member candidates through the local mass media;
- b. Receive registration of prospective Regency/ City Bawaslu commissioners;
- c. Conduct administrative research on prospective Regency/ City member candidates;
- d. Announcing the results of administrative research on candidates for Regency/ City Bawaslu members;
- e. Conduct a written selection with the main material about knowledge and loyalty to Pancasila, the 1945 Constitution of the Republic of Indonesia, the Unitary State of the Republic of Indonesia, and Bhinneka Tunggal Ika as well as knowledge about elections, state administration and parties;
- f. Conduct psychological tests;
- g. Announcing through the local mass media the list of names of prospective Regency/City Bawaslu member candidates who have passed the written selection and psychological tests to obtain community input and responses;
- h. Carrying out medical tests and interviews with election administration materials and clarifying community input and responses;
- i. Determine the names of candidates for Regency/City Bawaslu members as much as 2 (two) times the number of candidates for Regency/City Bawaslu members whose last term of office was in a plenary meeting; And
- j. Submit the names of Regency/City Bawaslu member candidates as much as 2 (two) times the number of Regency/City Bawaslu member candidates whose term of office has ended to Bawaslu.

The selection process for Regency/City Bawaslu by the Selection Team is completed after obtaining 2 (two) times the number of needs for Regency/City Bawaslu members. selection is formed. The selection team carried out the selection stage starting with announcing the registration of Prospective Bawaslu Members on May 22 2023 and registration starting on May 29 - June 7 2023. Because there were still few interested people who registered the registration was extended up to two times, namely on the first extension on June 13 - June 15, 2023, then a second change was made until June 21, 2023. And followed by changes to other stages, for example the results of research/selection of administrative files originally on June 20 to June 24, 2023. In the schedule changes made, the inauguration schedule remains on the 14th August 2023 in accordance with the final term of office of the Regency/City Bawaslu for the period 2018 – 2023.

### REGENCY/CITY BAWASLU MEMBERS SELECTION SCHEDULE TERM OF OFFICE 2023-2028

NO.	DESCRIPTION	BEFORE THE CHANGE	AFTER THE CHANGE
1.	Determination of the Selection Team	Tuesday, April 18th 2023	Tuesday, April 18th 2023
2a.	Supplies Selection Team part 1	Saturday, May 6 2023 -	Saturday, May 6 2023 -

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		Monday, May 8, 2023	Monday, May 8, 2023
2b.	Supplies Selection Team part 2	Saturday, May 10 2023 - Monday, May 12, 2023	Saturday, May 10 2023 - Monday, May 12, 2023
3.	Preparation Meeting Team Selection	Friday, 19 May 2023 - Saturday, 20 May 2023	Friday, 19 May 2023 - Saturday, 20 May 2023
4.	Announcement and Outreach to potential candidates Bawaslu members Regency/City	Monday, 22 May 2023 - Saturday, 27 May 2023	Monday, 22 May 2023 - Saturday, 27 May 2023
5.	Reception Prospective Registration Bawaslu Candidates Regency/City	Monday, 29 May 2023 - Wednesday, June 7, 2023	Monday, 29 May 2023 - Wednesday, June 7, 2023
6.	Repair File Condition	Thursday, 8 June 2023 - Saturday, June 10, 2023	Thursday, 8 June 2023 - Saturday, June 10, 2023
7.	Announcement of Time Extension	Monday, 12 June 2023	Monday, 12 June 2023
8.	Time Extension Registration	Tuesday, 13 June 2023 - Thursday, 15 June 2023	Tuesday, June 13th 2023 - Wednesday, 21 June 2023
9.	Research and File Verification	Friday, 16 June 2023 - Monday, 19 June 2023	Thursday, June 22 2023 - Friday, 23 June 2023
10.	Announcement of Results Research/Selection Administration Files	Tuesday, 20 June 2023	Saturday, 24 June 2023
11.	Writing Test Candidate Bawaslu Member	Wednesday, June 21, 2023 - Friday, June 23 2023	Monday, 26 June 2023- Wednesday, June 28, 2023
12.	Psychological Test	Monday, 26 June 2023 - Wednesday, June 28, 2023	Friday, June 30 2023 – Monday, 3 July 2023
13.	Announcement of Pass Written Test And Test Psychology	Monday, July 3, 2023	Monday, 10 July 2023 - Tuesday, July 11 2023
14.	Community Enter and Response	Tuesday, 20 June 2023 - Friday, July 7, 2023	Saturday, June 24 2023 - Friday, 14 July 2023
15.	Health Test Candidate Regency/City Bawaslu member	Tuesday, 4 July 2023 - Thursday, 6 July 2023	Wednesday, 12 July 2023 - Friday 14 July 2023
16.	Interview Test Candidate Member	Friday, July 7 2023 - Wednesday, July 12, 2023	Monday, 17 July 2023 - Friday, July 21 2023
17.	Selection Team Plenary	Thursday, 13 July 2023 - Friday, 14 July 2023	Saturday 22 July 2023- Monday 24 July 2023
18.	Announcement of Test Results Health And Tests Interview	Monday, 17 July 2023	Tuesday, July 25 2023
19.	Preparation Final report Recruitment And Filtering	Thursday, 20 July 2023 - Friday, July 21, 2023	Wednesday, July 26, 2023 - Thursday, July 27 2023
20.	Submission of Name Prospective Members Regency/City Bawaslu	Monday 24 July 2023 - Tuesday, 25 July 2023	Friday, 28 July 2023

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21.	Fit and Proper Test	Thursday, July 27 2023- Wednesday, August 2, 2023	Monday 31 July 2023 - Thursday, 3 August 2023
22.	Plenary Determination of names selected	Thursday, August 3, 2023 - Friday, 11 August 2023	Friday, August 4, 2023 - Friday, August 11, 2023
23.	Announcement of Candidates Regency/City Bawaslu member Selected	Saturday, 12 August 2023	Saturday, August 12 2023
24.	<b>Inauguration Regency/City Bawaslu Selected</b>	Monday, 14 August 2023 - Wednesday, August 16, 2023	Monday, 14 August 2023 - Wednesday, August 16, 2023

The change in schedule is understandable if it occurs for one stage of recruitment due to tennis constraints, but in reality delays and delays in stages apply to all stages of recruitment in the Selection Team as well as the final stage in Bawaslu. This raises many questions from the public and the media, which shunting news about the delay in the recruitment stages for Regency/City Bawaslu throughout Indonesia. Like the news on <https://www.kompas.id/baca/polhuk/2023/08/16/pengumuman-hasil-seleksi-bawaslu-di-514-kabupaten-dan-kota-ditunda-dpr-possible-belum-selesai> Yanuar Prihatin, Deputy Chairman of Commission II of the Dewan Perwakilan Rakyat from the Partai Kebangkitan Bangsa faction, mentioned this has something to do with the recruitment frenzy, technical issues or Bawaslu's unpreparedness in making the selection schedule, he said at the Parliament Complex, Senayan, Jakarta, Wednesday (16/8/2023). The schedule for announcement of elected Bawaslu members in 514 Regency/cities will initially be carried out on August 12, followed by the inauguration on August 14. However, Rahmat Bagja made a circular letter containing a schedule for the announcement and inauguration of district/city Bawaslu members on August 16-20, 2023.

### C. VACANCY OF POWERS IN REGENCY/CITY ELECTION SUPERVISORY BOARDS THROUGHOUT INDONESIA

The establishment of Regency/City Bawaslu is the authority of Bawaslu, regulated in Article 95 letter i, so all responsibility for the formation lies with Bawaslu starting from the formation of the Selection Team to the determination and inauguration of Regency/City Bawaslu. The law regulates in such a way that the implementation of the change of position can run according to the period. From the selection process, which experienced many schedule changes at each stage, there were indications of administrative errors made during the selection process. Administrative errors in terms of Ridwan's opinion that law is placed as a rule of the game in the administration of state, government and society, where the purpose of the law itself is placed, among other things, to organize a peaceful, just and meaningful society. The goal of a rule of law state is the creation of state, government and social activities that are based on justice, peace and usefulness or meaningfulness. In a rule of law state, the existence of law is used as an instrument in managing the life of the state, government and society (Ridwan H.R., 2003).

Provisions of Article 129 Paragraph (4) of Law Number 7 of 2017, the Selection Team carries out the stages of activities objectively within a maximum period of 3 (three) months after the selection team is formed. The Selection Team for Candidates for Regency/City Bawaslu Members by Bawaslu was established on April 18, 2023 and announced through Announcement Number 325/KP.01.00/K1/04/2023 concerning the Formation of a Selection Team for Candidates for Members of the Regency/City Election Supervisory Board for the 2023-2028 period in April 19, 2023, so if you count down three months from the determination, the Selection Team must have ended on July 18, 2023. This means that the determination and announcement of 2 (two) times the needs of Regency/City Bawaslu candidates must have been completed before their term of office ends. However, the Selection Team announced the new Bawaslu member candidates on 31 August 2023 throughout Indonesia on orders from Bawaslu via letter 520/KP.01.00/K1/07/2023 dated 25 July 2023 regarding Extension of Announcement of Health Test Results and Interviews to the Selection Team Candidates for Regency/Municipal Bawaslu Members who result in the working period of the Selection Team exceeding the working period of the Selection Team in accordance with the provisions of the Law.

Delays due to many schedule changes, for example in the change in schedule for Announcement of Health Test Results and Interview Tests, from the 17 July 2023 schedule to 25 July 2023 and the last to 31 July 2023. The change in schedule is not based on the provisions of Article 129 Paragraph (4) Law Number 7 of 2017 regarding the provisions for the term of office of the Selection Team.

Another delay occurred when the announcement of the selected candidate was announced on August 12, 2023. On that date, Bawaslu was unable to announce the selected candidate by issuing a Decree of the Chairman of the General Election Supervisory Board Number: 280/KP.01.00/K1/08/2023. In the *first dictum*: Bawaslu changes regarding the Schedule for Announcement of Elected Candidate Members and Inauguration as stated in the Selection Schedule for Regency/City Bawaslu Members for the 2023-2028 Term of Office, page ii number 13. , 14 August 2023 and the implementation of the Inauguration from the beginning: "Monday, 14 August to. Wednesday, 16 August 2023" changed to "Wednesday, 16 August s.d. Sunday, August 20, 2023." *Second dictum*: This decision will come into effect from 12 July 2023, with the provision that if later it turns out that there is a mistake, it will be regulated by a Bawaslu decision. This decision was made in Jakarta on August 12, 2023.



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The Bawaslu decision is the law governing the rescheduling of the announcement stage. One of the general principles in the formation of laws and regulations which become legal norms according to Ni'matul Huda is that laws (norms) are only binding for the future and have no retroactive force, contained in Article 13 *Algemene Bepalingen van Wetgeving* (Ni'matul Huda, 2011). By looking at this principle, it is certain that the Bawaslu Decision Number 280/KP.01.00/K1/08/2023 has a legal disability with a backward validity period before the date of stipulation. The decision was then amended against its validity period due to legal defects with the Decree of the Chairman of the Election Supervisory Board Number 285/HK.01.00/K1/08/2023 concerning the Fourth Amendment to the Decree of the Chairperson of the General Election Supervisory Board Number 280/KP.01.00/K1/08/2023.

However, the Chairperson of the Election Supervisory Board Number 285/HK.01.00/K1/08/2023, decided *on the first dictum*: Change the arrangements regarding the Announcement Schedule for Elected Members and Inauguration as stated in the Regency/City Bawaslu Member Selection Schedule for 2023-2028 Term of Office page ii number 13 Announcement of Elected Members and Inauguration candidates has been changed to Wednesday, 16 August 2023 s.d. Sunday, August 20, 2023.

This decision does not resolve the problem of legal defects in Decision Number 280/KP.01.00/K1/08/2023, but instead raises new problems regarding the power vacuum at Regency/City Bawaslu where the 2018-2023 period ends on August 14, 2023. That is bad precedent for general election organizers that there was a structured, massive and systematic emptying of power for Bawaslu because of the issuance of the decision.

To overcome this situation, Bawaslu issued a Letter to the Chairperson of the Provincial Bawaslu/Panwaslih of Aceh Province Number 565/KP.05/K1/08/2023 regarding the Taking Over of Tasks and Authorities of Regency/City Bawaslu/Panwaslih. The letter is based on the provisions of Law 7 of 2017. If you look at the provisions of Article 95 letter f which reads that Bawaslu temporarily takes over the duties, powers and obligations of Provincial Bawaslu and Regency/City Bawaslu in stages if the Provincial Bawaslu and Regency/City Bawaslu are temporarily absent due to subject to sanctions or other consequences in accordance with the provisions of the legislation. This means that there are 2 (two) reasons why the Bawaslu has the authority to temporarily take over the duties, powers and obligations of the Regency/City Bawaslu, namely first that the Regency/City Bawaslu receives a sanction so that it cannot carry out its duties, powers and obligations. In this case there is no such situation so this reason cannot be taken as a reason for expropriation, the other two consequences are in accordance with the provisions of the laws and regulations, this is also not an appropriate reason because in this case the circumstances that occur are not part of what is regulated in the laws and regulations - promulgation of a situation when there is a power vacuum due to a process that is still in question as to compliance with statutory regulations that, judging from the process, a form of maladministration has occurred in the selection process.

Maladministration when referred to in Sunaryati Hartono's opinion, is a form of maladministration in general which includes protracted delays, neglect of obligations, and failure to handle it so that the administrative process runs slowly and is inefficient over time so that public services become uncertain. Forms of maladministration that give rise to discrimination and injustice in the form of nepotism and collusion, take sides without having objective criteria so that it creates injustice and decisions made by public officials can be detrimental to other parties (Sunaryati Hartono, 2003). So in this case there have been many protracted delays with many changes to the selection schedule, neglecting its obligation to form Regency/City Bawaslu in a timely manner and taking power not in accordance with reasons justified by laws and regulations and not handling it professionally and not handling the process administration properly so that state administration experiences delays and inefficiency.

The takeover of a government vacuum is in a precarious state so that it is necessary to issue a new law, looking at the opinion of Bagir Manan, the element of urgency must show two general characteristics, namely crisis and urgency (a grave and sudden disturbance). Meanwhile, urgency is interpreted as a situation that was not calculated beforehand and includes an immediate action without waiting for deliberation first. Or there are signs of a real start and according to reasonableness (Bagir Manan, 1999). The vacuum of power and the takeover of the duties, authorities and obligations of the Regency/City Bawaslu have not yet been fulfilled from these two sudden circumstances, because the process has been delayed a lot so this was intentional.

The Bawaslu denied that there was a vacancy, as reported by <https://kaltimpost.jawapos.com/utama/18/08/2023/kekosongan-member-bawaslu-di-514-kabupatenkota-klaim-pengawasan-pemilu-Not-disturbed>. Bawaslu RI member Herwyn Malonda explained, his party had ordered provincial Bawaslu officials to carry out supervision up to the inauguration of district/city Bawaslu members. This is in accordance with the provisions of Article 556 paragraph (3) of Law Number 7 of 2017 concerning General Elections which stipulates the authority of provincial Bawaslu to carry out its supervisory function if something happens which results in the regency/city Bawaslu not being able to carry out its duties. In contrast, the opinion of Acting Chairperson of the Network for Indonesian Democratic Society (Netfid) Afid Khomsani highlighted the Bawaslu perspective which seemed to make things easier. He emphasized that the supervision carried out by the provincial Bawaslu was not in accordance with the provisions. The takeover of authority requires that the district/city Bawaslu cannot carry out its duties. In fact, what is happening now is the absence of personnel due to not having been elected and appointed.

The announcement and inauguration of the elected candidates for Regency/City Bawaslu members throughout Indonesia were carried out by Bawaslu on August 19, 2023. In the announcement there was one district/city, namely Pegunungan Arfak District, West Papua Province, which announced only 2 (two) Bawaslu members. Regardless of whether it was intentional or not,

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of course it is also a maladministration because in the provisions of Article 92 Paragraph (2) it stipulates that Regency/Municipal Bawaslu consist of 3 (three) or 5 (persons). This means that there is still a discrepancy in the amount that must be met in determining the elected candidate as a Regency City Bawaslu member.

Every implementation in a state institution must be guided by the applicable norms, this is not an exception for the General Election Supervisory Board which has the duties, authorities and obligations to supervise the implementation of general elections so that general elections can run in accordance with applicable norms and regulations. Bawaslu is responsible for adhering to the norms and provisions when acting and when making decisions. This is in line with Fritz's opinion that to uphold the principles of honesty and fairness in holding general elections, in addition to good legal instruments, as well as institutions that carry out supervision to enforce general election laws consistently and responsibly (Fritz Edward Siregar, 2020).

### D. CONCLUSION

The presence of the Election Supervisory Board is a guarantor of the degree of healthy and responsible competition and guarantees the functioning of constitutional democracy in Indonesia, so that with the presence of Bawaslu general elections can proceed in accordance with applicable laws and regulations. However, in the recruitment process for the Regency/Municipal Election Supervisory Board the following occurred:

1. Bawaslu's order to delay the announcement of the top 10 by the Selection Team from July 17 to July 25 and finally postponed to July 31 2023, in the provisions of Article 129 Paragraph (4) Law Number 7 of 2017 that the Selection Team's working period is the longest three months, judging by the Determination of the Selection Team on April 18, 2023, the longest their term of office must have been completed is July 18, 2023. The schedule change is not based on the provisions of Article 129 Paragraph (4) of Law Number 7 of 2017 against the provisions Selection Team working period.
2. Announcement of selected candidates scheduled for August 12, 2023, postponed to August 16-20, 2023 together with the inauguration schedule. Thus creating a power vacuum in Regency/City Bawaslu throughout Indonesia.
3. Decree of the Chairperson of the General Election Supervisory Board Number: 280/KP.01.00/K1/08/2023 is set on 12 August 2023 but the validity period is on 12 July 2023.
4. Bawaslu issued a letter to the Chairperson of the Provincial Bawaslu/Panwaslih of Aceh Province Number 565/KP.05/K1/08/2023 concerning the Taking Over of the Tasks and Authorities of the Regency/Municipal Bawaslu/Panwaslih not in line with the provisions of Law Number 7 of 2017 Article 95 letter f and Article 556 Paragraph (3).
5. Announcement and inauguration of the elected candidates for Bawaslu Members of the Arfak Mountains Regency, West Papua Province, which announced only 2 (two) people, is not in accordance with the provisions of Article 92 Paragraph (2).
6. The number of articles that were ignored by Bawaslu in the formation of the Regency/City Election Supervisory Board would certainly set a bad precedent for the upholding of constitutional democracy in Indonesia. Bawaslu, which has the duty to prevent and supervise and take action against violations of the process of holding general elections in Indonesia for the sake of upholding constitutional democracy, has committed many administrative violations during the recruitment of district/city Bawaslu throughout Indonesia.
7. Regency/City Bawaslu was formed in a process of maladministration, which can lead to public distrust of the supervisory process carried out by the Bawaslu Board that in order to carry out the orderly administration of the Bawaslu does not enforce the provisions of laws and regulations which form the basis of the Regency/City Bawaslu recruitment process.

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