

# Authorities of Indonesian National Police in Criminal Act over Local Government Heads Elections

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## Abstract

The position of Indonesian National Police (Polri) is stipulated in Act Number 8 of 1981 concerning Criminal Code Procedure and Act Number 2 of 2001 concerning Indonesian National Police. Act Number 16 of 2016 implies that the authorities of Indonesian National Police cannot be directly executed without command from Integrated Law Enforcement Centre, thus this principle is deemed irrelevant to criminal justice system.

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## 1. Introduction

Local Government Heads Elections are intended to bring the voice of the people regarding their choice for government heads to the election of government heads at regional level, where it requires them to elect the leaders of their choice like in general elections<sup>1</sup>. Generally, a general election is a body and a form of political practice that enables the formation of representative government that is described by Robert Dahl as an ideal image of democratic governance in a modern world<sup>2</sup>. These days General Elections have sat on a vital post due to several factors. Firstly, a general election is of important mechanism for the sustainability of representative democracy, and secondly, the general election is the indicator of the state of democracy. Thirdly, general election is considered essential to be discussed since the election imposes extensive implications<sup>3</sup>. The manifestation of sovereignty of the people as enacted in Article 1 Paragraph (2) of 1945 Constitution of the Republic of Indonesia is the direct election by people, which is intended to democratically elect leaders in the government and according to Pancasila (Five Principles) and 1945 Constitution of the Republic of Indonesia. Article 1 Paragraph (2) reads “the sovereignty is in the hand of the people and it is performed based on the Constitution”.

The authority to supervise and to hold general election is given to Election Supervisory Board (hereinafter Bawaslu) and other lower authorities, which is regulated in Act concerning General Election. The existence plays a vital role in supervision of general election process. The supervision involves observing, studying, examining, and assessing all the process of the election that complies with the legislation in addition to the evaluation required for the general election. To assure democratic, direct, free, confidential, honest, and fair general election that abides by laws and regulations concerning general election, the Bawaslu and General Election Supervisory Committee (hereinafter Panwaslu) must work as they are regulated to and accordingly.

Panwaslu holds and plays a strategic role in terms of assuring democratic, honest, and fair general election, and of warding off any potential of delegitimising general elections, issues related to law enforcement in general election must be met with the solution and the trigger of the issues must be identified before the law on which general elections are based is enforced.

Recalling the importance of general elections, they must be held optimally to meet the objectives of the elections, or the situation of legal politics and economic transition that has taken place since reform will probably face failure.

<sup>1</sup> See Arend Lijphart, *Electoral System and Party System : A Study of Twenty-Seven Democracies 1945-1990*, (New York : Oxford University Press, 1994), p. 1 dalam Dhurorudin Mashad, *Korupsi Politik, Pemilu & Legitimasi Pasca Orde Baru*, (Jakarta : PT. Pustaka CIDESINDO, 1998), p. 1

<sup>2</sup> Syamsuddin Haris (et al.), *Menggugat Pemilihan Umum Orde Baru (Sebuah Bunga Rampai)*, (Jakarta : Yayasan Obor Indonesia, 1998), p. 7

<sup>3</sup> Sigit Pamungkas, *Perihal Pemilu*, (Yogyakarta : Laboratorium Jurusan Ilmu Pemerintahan dan Jurusan Ilmu Pemerintahan Universitas Gajah Mada, 2009), p. 4

To bring the enforcement that deals with the violation of general election that involves criminal act into effect, it is essential that Panwaslu, police, and Public Prosecutors form Gakkumdu whose legal umbrella refers to mutual understanding among Indonesian Attorney's General Office, Indonesian National Police, and Bawaslu in a Regulation of Bawaslu Head of Republic of Indonesia, Indonesian National Police, and Attorney's General Office of Republic of Indonesia of 2016, 01 of 2016, 013/JA/11/2016 concerning Gakkumdu for governors, regents, vice-regents, mayors, and vice-mayors. The members of Gakkumdu at central government level comprises the head of Criminal Investigation Department of Indonesian National Police, Junior Attorney's General Office of General Crime, and Head of Bawaslu responsible for handling any violation in General Elections. At provincial level, it consists of the Director of General Criminal Investigation, assistant of General Crime of Head of High General Prosecutor, Coordinator of Legal-related Cases and violation of general elections of provincial Panwaslu. At regency level, it consists of Head of Criminal Investigation unit, Head of General Crime, and Coordinator of Legal-related Cases and Violation of General Election of Panwaslu in the Regency of the city. Gakkumdu is located both in the state and overseas<sup>1</sup>.

Gakkumdu starts to act the first time it receives a report from Panwaslu concerning any violation of general elections during local government heads elections. In details, the integrated case handling flows from receiving reports, local government heads election, study of the reports concerning violation, investigation/filing, to submission of received case files to General Prosecutors. It is clear that the General prosecutors are involved in report submission and in the discussion in the forum of Gakkumdu where studies carried out by enquirers of the police department and Panwaslu takes place in preliminary hearing. The studies are aimed to look deeper into the report sent by the people and passed to Panwaslu where it states that the violation of general elections reported has met the requirement to be considered as a crime committed in local government heads elections.

When handling the case related to the violation of general elections, the police encounter several issues rising in the forum of Gakkumdu or those coming from the police per se. The new issue that has never been encountered previously is the involvement of the prosecutors starting from when the criminal case starts to take place, from preliminary hearing session in the forum of Gakkumdu that is aimed to determine whether the report received can be considered as a criminal offense or not. When one is deemed as a criminal offense, police report made by enquirers assigned in Gakkumdu will follow.

What still becomes a problem is that the process in handling the case in Gakkumdu does not take long, leading to the prejudice against the quality of handling the case, and the principle of clean, honest, fair general elections of well-mannered candidates is still doubted. This hampers the authority of the police as enquirers of the crime, regulated in Criminal Code Procedures and Act concerning Indonesian National Police, to fully perform the tasks since the existence of Gakkumdu seems to give barrier to the authority of the Indonesian National Police where it requires the Police to assure whether a deed is deemed a criminal offense in local government heads elections or not.

From the above issues mentioned, this article is aimed to discuss the conflict of norms in regulating the authority of police enquirers in handling the criminal cases found in local government elections.

## 2. Research Methods

This article is categorised into a legal research aimed to answer the problems. The legal research method is seen as relevant for this research field, where philosophical, conceptual, and statute approaches are employed.

The legal materials relevant for this research are selected from related literature and laws and regulations to support the discussion of the existing issues.

## 3. Results and Discussion

### 3.1. Constitutionality of Direct Local Government Heads Elections

A direct election of local government heads is defined as direct votes of the people. The major vote is referred as to determine the winning candidates in the election. This election is held simultaneously over the local governments<sup>2</sup>. The concept of local autonomy followed by Indonesia has opened access for each region to hold its own local government heads elections and determine its own local head. In this Act, local government heads elections are not yet included in the regime of general election.

The system of law enforcement and fair and on time general election dispute settlement marks the nature of democratic elections. There are two types of the provisions in a general election and code of conduct that have to be enforced justly and three types of disputes that demand a just settlement: general election administrative provisions (KAP), Provisions of Crime in General Election (KPP), and Code of Conduct in General Election (KEPP), while the types of settlement involve general election administrative dispute (the dispute occurs when the

<sup>1</sup>[bawaslu.go.id](http://bawaslu.go.id)

[http://v1.bawaslu.go.id/sites/default/files/regulasi/Perbawaslu%20No.%2014%20Tahun%202016%20ttg%20Sentra%20Gakkumdu%20Pemilihan\\_0.pdf](http://v1.bawaslu.go.id/sites/default/files/regulasi/Perbawaslu%20No.%2014%20Tahun%202016%20ttg%20Sentra%20Gakkumdu%20Pemilihan_0.pdf). Retrieved on 1 October 2017

<sup>2</sup> Article 56 Paragraph 1 of Act Number 32 of 2004 concerning Local Governments

candidates of the general election press charge against the decision made by Provincial General Election Commission / the commission of Regency-city), disputes arising among the candidates of the election/ or candidate pairs, and the dispute related to ballot result that has to be completed on time.

The law enforcement and dispute settlement in general election/ local government heads elections must be justly performed as what is in the principle of democratic general elections (1945 Constitution of Indonesia Article 22E Paragraph (1)). The time dimension in general elections refers to the condition where general elections are held periodically. This principle is mentioned in the Constitution Article 22 Paragraph (1) as 'every five years'. However, regarding the period required in legal enforcement and the settlement of disputes in general elections is not mentioned in Article 22E<sup>1</sup>.

The constitutionality of regulation of general election and local government heads elections are regulated in different Sections and Articles, where the former is regulated in Section VII B General Elections Article 22E Paragraph (2) of the 1945 Constitution: "The general elections are organised to elect the members of the House of Representatives (DPR), Regional Representative Council (DPD), the President and the Vice President and Regional House of Representatives (DPRD)", which is conducted in direct, public, free, confidential, honest, and fair way for every five years. The latter is regulated in Section VI of Local Government Article 18 Paragraph (4) of the 1945 Constitution "A Governor, Regent, Mayor, each heading respectively the administration of a province, a regency, and a city shall be elected democratically. Article 22E Paragraph (5) of the Constitution, however, states: "The General Elections shall be organised by a general election commission that shall be national, permanent, and independent." It is obvious that the Constitution has regulated the general elections and local government heads elections accordingly. The arrangement of general elections is clearly stated in Article 22E Paragraph (2) of the Constitution while the regulation concerning the local government heads elections is provided separately in Section VI of Local Government Article 18 Paragraph (4) of the 1945 Constitution of the Republic of Indonesia.

### 3.2. Management of Integrated Law Enforcement Centre (Gakkumdu) in Act concerning Local Government Heads Elections

Gakkumdu in Academic Paper regarding the formation of law concerning local government heads elections is not clearly mentioned either in Act Number 1 of 2015, Act No. 8 of 2015, or Act Number 10 of 2016. Therefore, the existence of Gakkumdu is not known philosophically, neither is the meaning of its existence regarding criminal case handling. The amendment of Act Number 8 of 2015 to Act Number 10 of 2016 is aimed to prepare and run the local government heads elections at city/ regency level and provincial level (for local government heads elections) simultaneously. Moreover, this arrangement is also as part of the implication of Constitutional Court that scrutinises several Articles in Act Number 8 of 2015.

Historically, the existence of Gakkumdu is considered as a strategic step taken by Bawaslu, and it is as ordered by Act Number 8 of 2012 concerning the election of the members of DPR, DPD, and DPRD. This is aimed to avoid gaps in perceptions among Bawaslu, Police, and Prosecutors in handling any criminal offense found during general elections. Earlier, the absence of Gakkumdu was present as an issue for the Bawaslu to tackle further the reports or findings on criminal offenses in general elections. For example, several criminal cases were passed by Bawaslu to the Police but it ended up with rejection from the police due to insufficient evidence or due to the fact that Gakkumdu was not formed yet.

It is essential to know that according to the provision of Act Number 10 of 2016 concerning the second amendment of Act Number 1 of 2015 concerning Stipulation of Government Regulation in Lieu of Law number 1 of 2014 concerning Governor, Regent, Mayor Elections to Act. The provision of Article 152 mentioned above has been amended.

The details of the amendment of provision of Article 152 involve: Paragraph (1): to implement equal understanding and methods of handling criminal offenses in general elections, Provincial Bawaslu, and/or Supervisory Committee (Panwas) in Regency/City, Local Police and/or Sub-regional Police, and High Prosecutor General and/or District Prosecutor General form Gakkumdu. Paragraph (2) stipulates that Gakkumdu as mentioned in Paragraph (1) is embedded to Bawaslu, Provincial Bawaslu, and Supervisory Committee (Panwas) of the regency/ city. Paragraph (3) of operational budget of Gakkumdu is imposed on the budget of Bawaslu. Paragraph (4) of provision regarding Gakkumdu is controlled under joint regulation between Head of Indonesian National Police and Head of Bawaslu. Paragraph (5) of joint regulation as intended in Paragraph (4) was stipulated, following consultation with House of Representatives (DPR and the government in the forum of hearing whose decision is binding).

Joint regulation was arranged based on the consideration of the number of laws and regulations that apply: (1) Act Number 8 of 1981 concerning Criminal Code Procedures (Indonesian State Gazettes of 1982 76, supplement of State Gazettes 3209); (2) Act Number 2 of 2002 concerning Indonesian National Police (Indonesian

<sup>1</sup> Read Ramlan Surbakti in Penegakan Hukum dan Pilkada., retrieved on <https://www.perludem.org/2016/03/08/penegakan-hukum-dan-pilkada-oleh-ramlan-surbakti/>

State Gazettes of 2002 2, supplement of Indonesian State Gazettes 4168; (3) Act Number 16 of 2004 concerning Indonesian Prosecutors (Indonesian State Gazettes of 2002 4401)

Apart from the three laws mentioned, joint regulation is made by considering the following laws: (4) Act Number 15 of 2011 concerning Arrangement of General Elections (Indonesian State Gazettes of 2011 5249) and (5). Act of 2015 concerning Stipulation of Government Regulation in Lieu of Law 1 of 2014 concerning Governor, Regent, and Mayor Elections to Act (Indonesian State Gazettes of 2015 23, supplement of Indonesian State Gazettes 5656), as amended several times to Act 10 of 2016 concerning Stipulation of Government Regulation in Lieu of Law No. 1 of 2004 concerning governor, regent, and mayor elections to Act (Indonesian State Gazettes of 2016 130 supplement of Indonesian State Gazettes 5898).

Based on the evaluation, different perception of implementing Articles regarding criminal provisions as regulated in Act concerning General Elections triggers the issue in violation of law found in general elections. Therefore, coordination meeting is expected to form clear standard operating procedure (SOP) for handling any criminal offenses in general elections.

Act Number 8 of 2012 regulates the authorities and tasks of the parties taking part in the arrangement of general elections, while the process of the elections remain in the same law emphasising that the process required in handling criminal offenses in general elections does not take much time, not like in most criminal cases. Lengthy process between police and public prosecutors will lead to inefficiency. The law concerning Gakkumdu is aimed for equal understanding and patterns required to tackle the criminal cases arising in general elections among Bawaslu, Police, Indonesian National Police, and office of Attorney General in Indonesia, and thus equal agreement among the parties can be achieved<sup>1</sup>.

The implementation of the regulation concerning law enforcement required in general elections according to Act Number 10 of 2016 has several special provisions, especially when it is seen from two different aspects: substantive and procedural. Those two aspects are set as a standard for both the arrangement of general elections and law enforcers to run accordingly.

From substantive aspect, the fact that the Act Number 10 of 2016 is still effective is due to the procedural law, but such a law will not work without the arrangement of general elections and the assistance from law enforcers; moreover, the enforcement of general elections, DPR, DPD, and Provincial DPRD of the Regency/City will not run effectively without the existence of the law. The substantive regulation is aimed to regulate deeds or conducts that are encouraged or forbidden in the arrangement of general elections for DPR, DPD, provincial DPRD and DPRD of Regency/ City, while the procedural regulation deals with the implementation of the procedures required to perform substantive regulations concerning general elections for DPR, DPD, Provincial DPRD, and DPRD of Regency/ City.

The existence of Act concerning Local Government Heads Elections Number 10 of 2016 encourages the establishment of Gakkumdu formed through joint regulation made by bawaslu, Indonesian National police, and Public Prosecutors, stipulated in Joint Regulation of the Head of Bawaslu, the Head of Indonesian National Police, and Office of Attorney General of Indonesia No. 14 of 2016 01 of 2016 013/Ja/11/2016 concerning Gakkumdu in the elections of governors, vice-governors, regents, vice-regents, mayors, and vice-mayors (Perbawaslu 2016, to differentiate it from the substance of Perbawaslu in Act Number 7 of 2017 concerning General Elections).

### **3.3. Authority of Indonesian National Police in Integrated Law Enforcement Centre (Gakkumdu)**

The establishment of Gakkumdu involves law enforcers that consists of representatives form Indonesian National police, Public Prosecutors of the regency/city, and province, along with the members of Bawaslu. In other words, the existence of Gakkumdu is aimed for equal perception required to handle criminal offenses in general elections.

Law is complex and technical and this nature has triggered anger in parties concerned, as said by Ilarold J. Berman. He further said that the law received attention from civilised members of society and it was considered essential worldwide since law provides protection for tyranny and anarchy.

Berman idea reflects the form of law in people's perspective since no one can figure out law only by referring to its legislations and followed by comparing it to how the law is implemented in real life<sup>2</sup>.

Some practices of law are performed in different way from what is stipulated in existing regulations. In other words, there is still a gap between law in positive scope (rechts positviteit) and that in real life (rechts werkelijkheid). Two different implementations of law are apparent almost in all fields, and such a difference is also obvious in criminal law.

Criminal law presents clear guidelines concerning protection for human being. Surprisingly, the guidelines are sometimes found to serve as issues for those deserving protection. Therefore, this criminal law and criminal code procedure have become the spotlight, receiving criticism from a wide scope of legal and non-legal parties,

<sup>1</sup> See Topo Santoso, *Tindak Pidana Pemilu*, Sinar Grafika, Jakarta, Cetakan Pertama, January 2006, p. 121.

<sup>2</sup> See, Lord Relilif, *The Law and its Compass*, Jakarta:1961, Cource Materials Program Pacasarjana Ilmu Hukum Universitas Indonesia, p. 92: you will not mistake my meaning or suppose that I depreciate one of the great humane studies if I say that we cannot learn law by learning law.

and this holds true since criminal law embraces all human being from all social levels, including individuals, groups, people with direct and indirect authorities.

Principally, criminal law has attracted legal practitioners, justice seekers, lawmakers, public, and scholars. Criminal law is intended to enforce public order, guarantee freedom, and protect Human Rights and enforce justice and truth. Whether criminal law is intended to enforce justice and truth is questioned. In regards to this question, J.E. Sahetapy argues:

“Natural law is inherently independent, meaning that it is not linked to justice and truth. The law itself is intended as a facility for governments or those with authorised functions to drive the mind and action of the people to expected directions. Therefore, justice and truth are not enforced by law, but by courts”<sup>1</sup>.

Judicial process is based on rules of game not in the scope of criminal code procedure. The criminal code procedure (procedural law) is to maintain the criminal law (substantive law). Therefore, the criminal code procedure and its fundamental of enforcing justice and truth by courts are closely related. The procedural criminal law provides guidelines for judicial process on how judicial process is supposed to be performed by the legal enforcers like police, general prosecutors, judges, and lawyers or the in-charge members of Department of Corrections, and justice seekers such as defendants, victims, or people.

The procedure regulated in criminal judicial process is aimed to search for the truth or reveal the truth of the case settled. With this, it is expected that justice can be provided for justice seekers involved in the case. In a general term, criminal code procedure can be understood as a set of provisions regarding procedures required in enquiry, investigation, and judgement for those violating the provision of substantive criminal cases. In other words, the role of procedural criminal law will be apparent when the substantive criminal law is disrupted or violated. Thus, procedural criminal law exists to maintain the substantive criminal law.

Criminal judicature is a process that works in several law enforcement bodies. However, the process of criminal judicature does not reveal any close connection among law enforcement bodies or any sign regarding criminal judicial systems. Why criminal judicature is a system serves as a basis of this research. This also helps find out how the system runs based on Criminal Code Procedure (Act Number 8 of 1981, Indonesian State Gazettes Number 76, Supplementary State Gazettes Number 209).

People keep wondering why in several cases on similar criminal scope receive different decisions from judges and why legal measures taken in courts do not reduce the number of reoffenders. These questions trigger another question questioning whether the former questions are appropriately addressed to the police, prosecutors, judges, or to departments of corrections. This has been raised in a discussion that the questions are aimed to look deeper into how the judicial process is administered and how it involves other law enforcement bodies. Addressing the questions in such a way is considered inappropriate. Giving answer to those questions requires the perspective that looks into criminal judicature administered as a system (a legal body as a system).

The legal system, in its mechanism, requires legal elements either in written or non-written forms apart from the law based on its substantive term. In structural term, it involves the process or an institution or a legal actor, and in terms of culture, it requires the existence of legal culture. Friedman<sup>2</sup> suggests that effective legal system consists of three components such as culture, structure, and substance.

The existence of the Indonesian National Police, according to Act Number 2 of 2002 concerning Indonesian National Police, serves as the state tool playing an essential role in guaranteeing the security and public order, enforcing law, and providing protection and services to societies for the sake of the security of the state as a whole.

As mentioned earlier in previous chapter, the law of police applies for both Criminal Code and Criminal Code Procedure. Laws and regulations regulate criminal sanctions and the administration of criminal law and Act Number 2 of 2002 concerning State Police.

Indonesian National Police as one of or sub system of criminal judicial system is the spearhead of criminal law enforcement. The practice of integrated criminal law involves conventional crimes or the crimes in criminal code, while the integration of corporate criminal cases is not obvious yet.

Crimes seem inevitable and they will remain in the life of the people in this state and worldwide and will remain a challenge for law enforcement to face. Law enforcement is aimed to stabilise the disrupted security and public order to achieve legal certainty.

Normatively, based on the criminal judicial system in Criminal Code Procedure, the tasks and authorities of Indonesian National Police serving as an enquiry are integrated with those of institutions and judges. The institutions and judges also run similar function to departments of corrections; the materials of Articles are also integrated and connected. However, the formulation of laws and regulations containing the provisions of criminal code procedure has some of its materials not in line with the criminal code procedure. It seems that the police, public prosecutors, courts, legal aids, and departments of corrections work on their own to achieve the objectives of criminal judicial system. It is clear that in Criminal Code Procedure, there is integration of functional and

<sup>1</sup> Sahetapy, Pokok-pokok Penelitian tentang Analisa Beberapa Asas dan Arah Perkembangan Hukum Pidana Dewasa ini, Surabaya: Law Faculty Unair, tt, p. 6-7.

<sup>2</sup> See Lawrence M. Friedman, On Legal Development. Rutgers; Law Review, 1969, p. 20-30

institutional coordination in terms of the implementation of the Criminal Code Procedure, as mentioned in details as follows:

- a. The relation between enquirers and general prosecutors:
  1. starts from enquiry and submission of information to general prosecutors (Article 109 Paragraph 1).
  2. deals with extension of detention during enquiry process (Article 24 Paragraph 1).
  3. is regarding discontinuation of enquiry informed to general prosecutors (Article 110 Paragraph 1).
  4. involves additional enquiry according to instructions from general prosecutions where files needed can be returned when they are incomplete (Article 10 Paragraph 3).
- b. The relation between an enquirer and a civil servant serving as an enquirer (PPNS) involves:
  1. coordination and supervision (Article 7 Paragraph 2)
  2. Provision of information and assistance regarding the report that provides the schedule of enquiry and submission of enquiry results (Article 107 and 109 Paragraph c. The relation between an enquiry and a court involves:
    1. House search (Article 33)
    2. Seizure (Article 38)
    3. Scrutiny of letters (Article 47)
    4. An enquiry of misdemeanour (Article 205)
    5. Investigation of traffic violation (Article 211-216).
- d. Relation between an enquirer and a lawyer is in terms of:
  1. misuse of the relation and talk with a suspect (Article 70).
  2. supervisory enquirer serving as a solicitor for a suspect and an enquirer investigating a suspect (Article 71 and Article 115).

The integrated law enforcement has not managed to suppress the incidence of crime, and the result of the enforcement fails to satisfy the societies since it has not provided any legal certainty and justice that should result from sub-systems. There is lack of understanding that what law can offer is part of plan, process, and mechanism to handle crimes. When crimes are not reduced and they increase in number, it may indicate that existing related policies seem to no longer work.

The inconsistency between the law and what occurs in reality is seen as criminogenic factor. The further away the law has sifted from living perception and values of the societies, the more obvious the scepticism and the potential of the failure of the legal system will grow.

In terms of handling criminal offenses in general elections, the Indonesian National Police must receive reports regarding law violation in general elections from the general elections supervisory board (bawaslu), which complies with Article 146 suggesting that the reports regarding criminal offenses found in the arrangement of general elections and Indonesian National Police are given fourteen working days to submit enquiries results to Bawaslu<sup>1</sup>.

However, in accordance with the regulation of Bawaslu 2016, the authorities of Indonesian National Police to deliver enquiries, to publish Notification of Investigation (SPDP), and to pass it to general prosecutors are regulated in Article 21 to Article 26 of Regulation of Bawaslu 2016.

Reports on criminal offenses in general elections are received by Bawaslu along with Indonesian National Police and Public Prosecutors.

Receiving and clarifying the criminal offenses in local government heads elections<sup>2</sup> is followed by enquiries of the reports posted<sup>3</sup>. In other words, enquiries cannot be performed without recommendation and clarification regarding the criminal offenses reported. When an enquiry is forced without any clarification, it is against the authorities of Indonesian National Police to receive reports and hold enquiries over criminal cases.

Bawaslu holds higher position based on the hierarchy of law than that of the regulation of Bawaslu, but it seems that the regulation of bawaslu sets aside the Act concerning Indonesian National Police and Criminal Code Procedure.

As a consequence, the existence of Indonesian National Police as an enquirer in Gakkumdu is subordinate to the authority of Bawaslu in determining criminal cases regarding elections.

#### 4. Conclusion

The authorities of Indonesian National Police to hold enquiries over criminal offenses in Article 60 of Act Number 10 of 2016 does not comply with the authorities of Indonesian National Police to enquire in criminal offenses in Criminal Code Procedure and in Act Number 2 of 2002 concerning Indonesian National Police. Therefore, the authorities held regarding local government heads elections need to be re-addressed based on Criminal Code Procedure and Act concerning Indonesian National Police. From this measure, criminal justice system is expected

<sup>1</sup> See Article 146 Paragraph (4) of Act Number 10 of 2016

<sup>2</sup> See Article 16 Paragraph (6) Perbawaslu 2016

<sup>3</sup> See Article 16 Paragraph (7) Perbawaslu 2016

to run accordingly as it should and the authorities to be performed based on existing laws and regulations

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