

The Factors Causing The Emerging Of Transactional Politics In The Local Election In East Kalimantan 2005 From The Perspective Of *Siyāsah Syar'iyah*

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Abstract: *The Factors Causing The Emerging Of Transactional Politics In The Local Election In East Kalimantan 2005 From The Perspective Of Siyāsah Syar'iyah.* This study examines the practice of the Pilkada (Regional election) that took place in East Kalimantan in 2005. The aim is to obtain an overview of the extent to which the democratic process meets the quality standards desired by law and society at large. Based on the findings of the research, the quality standard is not met optimally due to the emergence of several fraudulent practices, one of which is in the form of transactional politics. Transactional politics or what in an Islamic perspective is called *risywah* (bribery) are strongly prohibited in legislation and haram in Islamic law. However, the reality is that such practices still take place in certain ways, such as gifts, *shadaqah*, wages, transport fees, and several other ways to get rid of the impression of bribery. This phenomenon occurs due to several factors which include: 1) weaknesses in regulation and law enforcement; 2) weaknesses in contestant ethic, 3). Weaknesses in society's political understanding.

Keywords: East Kalimantan pilkada, transactional politics, *siyāsah syar'iyah*

Abstrak: *Faktor-faktor Penyebab Timbulnya Politik Transaksional dalam Pemilukada Tahun 2005 di Kalimantan Timur dari Perspektif Siyāsah Syar'iyah.* Penelitian ini mengkaji praktik pelaksanaan Pilkada yang berlangsung di Kalimantan Timur pada tahun 2005. Tujuannya adalah untuk memperoleh gambaran sejauhmana proses demokrasi itu memenuhi standard kualitas sebagaimana yang diinginkan oleh Undang-undang dan masyarakat luas. Berdasarkan temuan penelitian yang dilakukan, ternyata standar kualitas itu tidak terpenuhi secara optimal disebabkan munculnya beberapa praktik kecurangan, salah satunya berbentuk politik transaksional. Politik transaksional atau yang dalam perspektif Islam disebut *risywah* (suap) jelas terlarang dalam perundang-undangan dan haram dalam hukum Islam. Meski demikian, kenyataannya praktik-praktik semacam itu tetap saja berlangsung melalui cara-cara tertentu seperti: pemberian hadiah, pemberian *shadaqah*, upah, uang transport dan beberapa cara lain untuk menghilangkan kesan penyyuapan. Fenomena ini terjadi karena sejumlah faktor antara lain: 1) lemahnya regulasi dan penegakan hukum; 2) lemahnya etika para kontestan 3) lemahnya pemahaman masyarakat terhadap realitas politik.

Kata Kunci: pilkada Kalimantan Timur, politik transaksional, *siyāsah syar'iyah*

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Introduction

Choosing a leader in Islamic teachings is obligatory. This is because the existence of a leader is the only way to create a state life as well as to obtain the benefit of the nation. As al-Māwardī stated, the *jumhur ulama* (the majority of Muslim Scholars) have agreed that forming a state, organizing a government, and appointing a head of state is mandatory. Similarly, Ibn Taymiyyah once stated that 60 years under an unjust leader is better than one night without a leader.¹

To obtain an ideal leader, at the local or national levels, and for executive or legislative body, a good election process that reflects the will of the wider community is necessary. Through an honest and democratic election process, a capable leader can be obtained, which is very much needed to bring the nation and state to the direction they aspire to. If the election process is unfair and flawed, it is quite certain that the leadership resulted from the process will fall to the irresponsible and incapable person who cares only about his or his group interests.

To achieve this goal, the people of Indonesia has carried out political and government reforms, one of which was through the policies of decentralization and regional autonomy through Law No. 22/1999 on Regional Government, which was amended by Law No. 32 of 2004 concerning Regional Government, which later was followed-up by Government Regulation No. 6 of 2005 concerning Election, Appointment, and Dismissal of Regional Heads and Deputy Regional Heads.² Based on those provisions, the election can be carried out directly, marking a historic momentum for the journey of democracy in Indonesia. Direct election of leaders by the community is believed as the only process to achieve legitimate government. This belief is not only justified by experts in constitutional law, but also by political experts.³

¹ Hasbi Ash-Shiddiqiy, *Koleksi Hadis Hukum, Juz IX* (Semarang: Pustaka Rizki Putra, 2000), pp. 457–59; Ibn Taimiyah, *Al-Siyāsah al-Syar Iyyah Fi Ishlāhi al-Rāi Wa al-Ra'iyah*, pp. 156–60; Abu Hasan Ali bin Muhammad bin Habib al-Basri al-Bagdadi al-maawardi, *Kitab Al-Ahkam al-Sulthaniyah*, 1st edn (Beirut: Dar al-Fikr, 1966), xxxv, p. 5.

² Cornelis Lay, *Pemilukada Langsung Dan Pendalaman Demokrasi* (Jakarta, 2006), p. 2.

³ Gouzali Saydam, *Dari Bilik Suara Ke Masa Depan Indonesia Potret Konflik Politik Pasca Pemilu Dan Nasib Reformasi*, 1, 1st edn (Jakarta: PT.Raja Grafindo Persada, 1999), p. v.

Unfortunately, democratic practices that are expected to bring about improvement and the welfare of the nation have suffered a lot of obstacles. The performance of the representatives in representing the interests of the nation is still minimal.⁴ The majority of legislative members are concerned only with themselves and their groups/party's interests, which results in effective governance and improvement of people's welfare and social justice mandated in the constitution become increasingly far from reach.⁵ In addition, public trust in people's representatives who sit in executive and legislative positions has dropped dramatically to the lowest level, following the rise of the apathy sentiment among the people towards the world of politics. Whereas the goal of reform is to create a clean and good Governance so that the ideals of the nation, namely a prosperous and prosperous life, can be realized.

The weakening of political morale that is getting worse among government policymakers, both in the executive and legislative bodies, has started since the beginning of the democratic process, originating from various forms of fraud and bad political behavior in the election process.

One of the bad political conducts that violates democratic principles is money politics. Money politics, which is a form of transactional politics, is prohibited by both positive law and Islamic law and becomes the main enemy of democracy. In Islamic Law, the conduct is considered as *risywah* (bribery). In connection with this action, the Qur'an, the hadiths, and the *ijtihad* of the scholars have shown that in reality, *risywah* is haram. Only in certain conditions, even with very strict terms and conditions, the *risywah* may be carried out.⁶

The government has made great efforts to prevent or minimize transactional political practices, one of which is the issuance of several

⁴ Zen, 'Politik Uang Dalam Pandangan Hukum Positif Dan Syariah, *AL-'ADALAH*' p. 526 <<http://ejournal.radenintan.ac.id/index.php/adalah/article/view/205>>.

⁵ 'Tindak Pidana Korupsi Yang Ditangani KPK – Kompas.Id' <https://kompas.id/baca/kompas_multimedia/tindak-pidana-korupsi-yang-ditangani-kpk/>.

⁶ Hartoyo, *Risywah* (Suap-Menyuap) dan Perbedaannya dengan Hadiah dalam Pandangan Hukum Islam (Kajian Tematik Ayat dan Hadis Tentang *Risywah*), *Al-Mashlahah Jurnal Hukum Islam dan Pranata Sosial*' <<http://jurnal.staialhidayahbogor.ac.id/index.php/am/article/view/155>>.

regulations, including Law Number 10 of 2016, which in Article 73 explicitly contains a prohibition on transactional politics. Unfortunately, this regulation cannot be properly applied, shown by the rampant cases of transactional politics at pilkada events. In 2005, the Bawaslu (Election Supervisory Agency) reported that, in 10 provinces, 535 cases were found on the campaign stage, 35 cases during the interlude period and 2 cases at the time of voting. In East Kalimantan Province, as reported on Merdeka.com, the provincial Election Supervisory Agency (Bawaslu) noted that there were 448 indications of transactional politics from around 7,200 polling stations in the 2005 Governor election.⁷

Such a phenomenon shows that government efforts to eradicate transactional political practices so far have not been maximally realized. For this reason, this research is conducted, focusing on the 2005 election for the Governor of East Kalimantan.⁸

Campaign in Positive Law dan Islam

In Positive Law, campaign activity is something that is permitted and regulated in law and is one of the most important stages in the democratic process of selecting leaders. Apart from being a medium of interaction between contestants and voters to convey the vision, mission, and work program for the future, the campaign is also a medium for political education for the community which is carried out responsibly.

Similarly, Islamic law views that campaign activities are permissible activities. Although Islamic law does not recognize the term campaign, what does exist is an attempt to offer oneself, however, this may be done as stated in the QS. Yusuf / 12: 55.

⁷ 'Selama Pilkada 2018, Polri Proses 25 Kasus Politik Uang' <<https://nasional.kompas.com/read/2018/07/19/14330721/selama-pilkada-2018-polri-proses-25-kasus-politik-uang>>; 'Kota Samarinda Disebut Paling Rawan Politik Uang Di Pilgub Kaltim | Merdeka.Com' <<https://www.merdeka.com/politik/kota-samarinda-disebut-paling-rawan-politik-uang-di-pilgub-kaltim.html>>.

⁸ 'Selama Pilkada 2018, Polri Proses 25 Kasus Politik Uang'; 'Kota Samarinda Disebut Paling Rawan Politik Uang Di Pilgub Kaltim | Merdeka.Com'.

قَالَ اجْعَلْنِي عَلَى خَزَائِنِ الْأَرْضِ إِنِّي حَفِيظٌ عَلَيْكُمْ

Translation: Said Joseph: "Make me treasurer of the state (Egypt); Verily I am a person who is good at guarding, again knowledgeable".⁹

The above verse is the proposition of a person to truly praise himself if he is not known and also to ask for office on the condition that it will create public benefit. This condition is determined because the position of a leader is not just power for individuals, but a mandate as well as a means to create benefit for society. That is why Islam provides a number of criteria for a good leader, that he must be knowledgeable, fair in every decision; physically and mentally healthy and have adequate leadership skills.¹⁰

Even though Islam allows a person to strive to be elected a leader, it does not mean that in achieving this goal he may do any prohibited efforts. Strictly speaking, all efforts that violate legal and religious norms, including, in this case, transactional politics, which in an Islamic perspective are called *risywah* (bribery), are prohibited and should not be carried out by a prospective leader. Unfortunately, even though legal and religious norms have expressly prohibited, such practices continue, through certain methods such as gifts, giving shadaqah, wages, transport fees, and several other ways to eliminate the impression of bribery.

Transactional political practices in Pilkada in East Kalimantan in 2005

Fraud and violations that occur in the process of the Pilkada may occur at the stage of the nomination process (administrative), during the campaign, up to the voting stage and vote counting.¹¹ For contestants, the most important and strategic stages in Pilkada contestation are: the stage of selecting supporting parties, the campaign stage, and the voting

⁹ Kementerian Urusan Agama Islam, Wakaf, Dakwah dan Irsyād Kerajaan Saudi Arabia, *Al-Qur'ān Dan Terjemahnya* (Madinah: Percetakan al-Qur'ān al-Karim Raja Fadh, 1426), p. 357.

¹⁰ Fahmi Huwaydi, *Demokrasi, Oposisi, Dan Masyarakat Madani, Trsl. M. Abd. Ghofar in "al-Islam Wa al-Dimuqratiyah"* (Bandung: Mizan, 1996).

¹¹ Hari Darmanto Dispute Settlement Division Agustan, Election Supervisory Agency (Bawaslu) of East Kalimantan Province, Interview, 2019.

and counting stages.¹² These three stages are indeed so strategic that the contestants and political elites will take the most benefit to achieve victory. For this reason, they will make various efforts, both positive and negative, to gain the sympathy of the voters and get as many votes as possible. In the Regional Head election in East Kalimantan in 2005, many contestants carried out their winning strategy in the campaign stage. At this stage, transactional political practices occurred not only at the provincial level, but also at the district and city, sub-districts, and even at the village level. Among the forms of bad practice that can be categorized as part of transactional politics at the event are:

1. Leisurely strolling

Leisurely strolling is a kind of sports activity and is usually carried out by the community at certain events, such as the commemoration of Independence Day, Regional Anniversary, etc. In the context of the Pilkada, taking a leisurely walk was one of the strategic activities used by the contestants to introduce themselves as well as to get sympathy from the wider community. This activity is usually accompanied by the giving of prizes for participants who have succeeded in reaching certain predetermined conditions. Based on statutory provisions, giving gifts in campaign activities is allowed as long as the value does not exceed Rp. 1,000,000, - (one million rupiah) if converted into money. In reality, however, the implementation of activities like leisurely walks or tournaments or certain sporting events held by one of the contestants offers the lure of door prizes that exceed a predetermined limit such as free *Umrah* (pilgrimage), motorbike, savings, etc. Such practices clearly violate the law in the form of transactional politics. Unfortunately, almost all of the practices, that should be subject to sanctions either in the form of administrative punishment (dismissal of a candidate pair) or in the form of political crimes, are not touched by the law, because the Bawaslu can not collect authentic evidence and the witnesses are reluctant to give testimony.

¹² Mukhasan Ajib, Human Resources and Parmas Division, East Kalimantan Province General Election Commission (KPU), Interview, 2019.

2. Bazaar / Cheap Market

The bazaar/cheap market is one of the means chosen by the contestants to convey their vision and mission as well as to attract the sympathy of the voters to make their choice on them. This practice is actually commonplace, but it is against the regulations because at that event the contestants or their success teams or sympathizers sell goods much cheaper than the market price or even the wholesale price.¹³

This kind of practice can be found during the 2005 East Kalimantan Regional Head Election, but, again, it escaped the reach of the law because it was difficult to construct the activity as money politics. This is because if someone tries to question the organizers, they testify that this happened on their initiative as volunteers and have absolutely nothing to do with the contestants.¹⁴ Furthermore, the community or participants in the cheap market also acknowledged that their presence at the activity had nothing to do with the campaign, but merely for shopping because the items offered were cheap. Besides, they also said that this bazaar would not affect their choice and there was no guarantee that they would vote for the contestants who had organized the event.¹⁵

3. Giving money or parcel

Transactional politics in the form of handouts of money or gifts and the like has become a common cultural phenomenon not only at the election event for regional heads but also at regents/mayors, even at the level of village head elections.¹⁶ Sometimes the giving is in the form of social assistance to build places of worship, repair roads, or other public facilities, but not infrequently in the form of direct gifts

¹³ Agustan, Chair of Balikpapan City Election Supervisory Board (Bawaslu), and Dedi Irawan, Dispute Settlement Division, 2019.

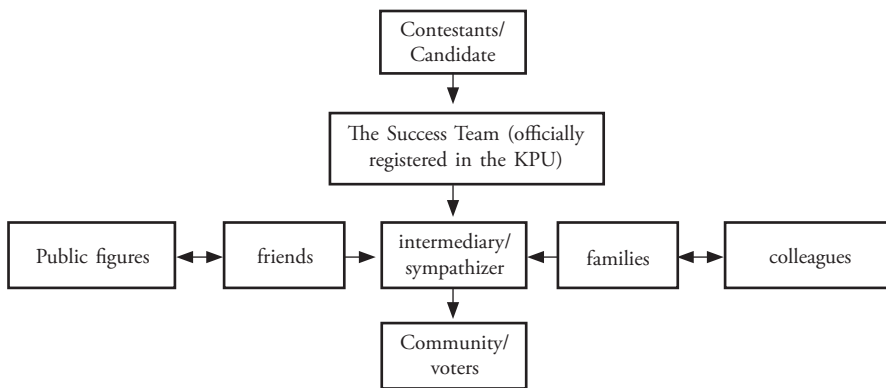
¹⁴ Agustan, Chair of Balikpapan City Election Supervisory Board (Bawaslu), and Dedi Irawan, Dispute Settlement Division; Hari Darmanto, Dispute Settlement Division of East Kalimantan Province Election Supervisory Board (Bawaslu), 2019.

¹⁵ Muhammad Ramli, Law and Information Division of East Kalimantan Province Election Supervisory Board (Bawaslu), Interview, 2019.

¹⁶ Galeh Akbar Tanjung, Supervision and Prevention Division of the East Kalimantan Election Supervisory Agency (Bawaslu), Interview, 2019.

to individuals and is done door-to-door. The giving in the first form (social assistance), however, it is often considered ineffective because the community sees it as part of the imaging.¹⁷ Therefore, most contestants prefer the second method namely direct giving in the form of gifts or money. These patterns and strategies are implemented through a flow as illustrated in the following chart:

Chart. 1. Patterns of Distribution of Money and Other Gifts



Source: *interview*, East Kalimantan Election Supervisory Agency (Bawaslu)¹⁸

This pattern is considered the safest way as it is not part of a legitimate team. With this strategy, election observers will find it difficult to uncover the case on the pretext that the gift was given on their initiative, not of the candidate.¹⁹

The only case that led into the courtroom was the case that occurred in Paser Penajam Utara district, during the regency election in 2005. This case was in the form of distribution of packaged rice accompanied by stickers of candidates during a flood disaster, but the

¹⁷ Abdul Basir, entrepreneur and community leader, Batua village, Loa Janan, Kutai Kartanegara, 2019.

¹⁸ Muhammad Ramli, Law and Information Division of East Kalimantan Province Election Supervisory Board (Bawaslu); Hari Darmanto, Dispute Settlement Division of East Kalimantan Province Election Supervisory Board (Bawaslu).

¹⁹ Fahmi Arif, Legal Division, General Election Commission (KPU) of East Kalimantan Province, Interview, 2019.

case was not handled by Bawaslu but by an attorney of one of the contestants.²⁰

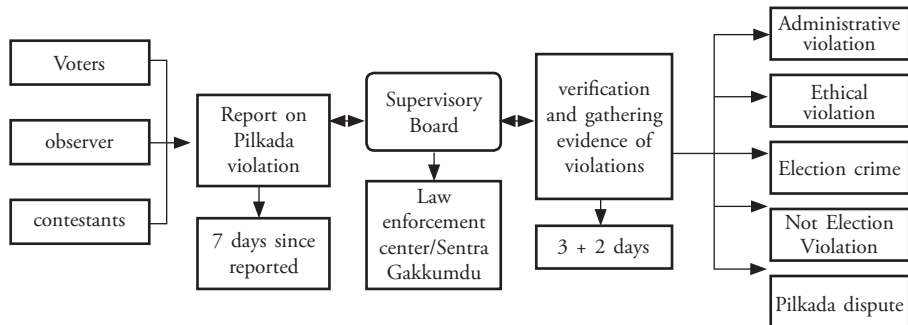
4. Influencing factors

Fraud in the implementation of Pilkada, as outlined in the previous description, can occur due to several factors, including:

a. Normative and institutional factors

The General Election Supervisory Body (Bawaslu), as an institution in charge of supervising and preventing election violations, has a clear flow of task implementation as shown in the following scheme:

Chart.2 Violation Handling in Governors, Mayors, and Regents Election



Source: *interview*, the East Kalimantan Election Supervisory Agency (Bawaslu)²¹

The scheme above shows that Bawaslu has considerable power to realize the ideal Pilkada. Unfortunately, however, the problem is not as easy as one may imagine because legal norms, both in the form of Laws and Regulations of the General Election Commission (PKPU), are often unclear, leaving a crack for violations to occur. One example is the

²⁰ Irwan Sahwana, Chairman and Division of Kul and RT, General Election Commission (KPU) of Penajam Paser Utara Regency, 2019; Edwin Irawan, Chair and Division of Law and Violation Law, Penajam North Paser Regency Election Supervisory Board (Bawaslu), 2019.

²¹ Muhammad Ramli, Law and Information Division of East Kalimantan Province Election Supervisory Board (Bawaslu); Hari Darmanto, Dispute Settlement Division of East Kalimantan Province Election Supervisory Board (Bawaslu).

prohibition of money politics. Law No. 10 of 2016 concerning the Second Amendment to Law No. 1 of 2015 concerning Stipulation of Government Regulation, in place of Law No. 1 of 2014 concerning the Election of Governors, Regents, and Mayors, including the General Election Commission Regulation (PKPU) Number 4 of 2017, expressly prohibits the practice of money politics. However, as Fahmi Arief pointed out, if the gift was converted in non-money form, for example, as exemplified by Muhammad Ali Mukid, by providing consumption and transportation, or in the form of coupons for fuel oil purchase, the supervisory agency will find it difficult to construct a violation because it is difficult to distinguish between giving money that aims to influence someone with money to compensate for consumption, transportation, other costs. In addition, the regulation, in fact, allows the giving of goods as long as their value do not exceed the 25 thousand rupiahs.²²

Another difficulty that Basawlu also encountered in handling election violation cases was the limitation of time. The law only gives a maximum of 5 days for Bawaslu and the Law enforcement center (Sentra Gakkumdu) to collect data, to study the case, to present witnesses/perpetrators, to review, and, lastly, to make decision on incoming cases. In many cases, the time limit is often not enough. Moreover, many community members who are aware of a violation are reluctant to report or object to be asked as witnesses. As a result, Bawaslu found it difficult to present evidence due to the difficulty of gathering information from the public.²³

The difficulties mentioned above are also added to the differences in views between Bawaslu and Sentra Gakkumdu in understanding a matter. Frequently, the Bawaslu party believes that a case is a violation, but other parties in Sentra Gakumdu (Police, Attorney) have a different opinion.²⁴ A concrete example is a case of distributing cellphones and batik clothes during the campaign in Tenggarong in 2005 Pilkada in

²² Fahmi Arif, Legal Division, General Election Commission (KPU) of East Kalimantan Province.

²³ Hari Darmanto, Dispute Settlement Division of East Kalimantan Province Election Supervisory Board (Bawaslu).

²⁴ Muhammad Ali Mukid, Law and Information Division, Election Supervisory Board (Bawaslu) Kutai Karta Negara Regency, 2019.

East Kalimantan. Those items were confiscated and the case was taken to Sentra Gakkumdu. The case, however, ran aground on the way, because Bawaslu finds it difficult to prove.²⁵ These obstacles have caused all transactional political violations that have occurred in East Kalimantan, none of which have reached the stage of administering administrative sanctions or political criminal sanctions, because Bawaslu cannot reveal the facts of fraud.²⁶

b. Contestants tendency

To gain or maintain power, political elites rarely hold on to ethical and moral foundations. On the contrary, they do various kinds of ways to win the contest, even things that violate the law.²⁷ Among a number of ways that they most frequently do is a transactional political practice. This practice is believed by the contestants to be effective in influencing and convincing the public to make their choice on their side. The practices like this frequently occur and the community has different characteristics and reactions in dealing with it. Those who accept bribery argue that this is a fortune and is common in the democratic party. Whereas, for those who refused, they reasoned that they were afraid of legal or religious sanctions.²⁸

c. The Weakness of public political awareness.

Transactional political practices, especially in the form of the distribution of gifts or money, are difficult to prevent. Not only because they are carried out in secret or disguised as if they are not money politics practices, but also because the facts on the ground show that the community also plays

²⁵ Galeh Akbar Tanjung, Supervision and Prevention Division of the East Kalimantan Election Supervisory Agency (Bawaslu).

²⁶ Muhammad Ramli, Law and Information Division of East Kalimantan Province Election Supervisory Board (Bawaslu),.

²⁷ Student Research in collaboration with PTPS Desa, 'Persepsi Masyarakat Desa Loa Duri Tentang Money Politik' (Samarinda: Election Clinic, Faculty of Law, Mulawarman University, 2005).

²⁸ H. Kaharuddin, Entrepreneur and Community Leader, and H. Jamaluddin, Head of RT as well as a Religious Leader Kec. Muara Jawa, Kab. Kutai Karta Negara, 2019.

a role in supporting the occurrence of these forbidden practices. The term “*wani piro* (how much you dare to pay)” is a term that often appears during the election period which indicates that some people even wait and expect something from the contestants in the form of envelopes or gifts, although there is no guarantee that they will make their choice on the contestants who give money/the parcel. If the public still understands the political reality as a means of obtaining economic benefits, a clean and honest Pilkada will be difficult to perform, and, as a result, clean, fair, and trustworthy leaders will be difficult to obtain as well.²⁹

Conclusion

The phenomenon of transactional politics as emerged in the implementation of regional elections in East Kalimantan, as well as in other places, is a reflection of how chaotic the democratic process is still in this country. This phenomenon arises due to many factors, both from normative aspects (legal rules), institutional aspects (Pilkada organizers and participants), as well as from social aspects (people's political understanding is still weak). This is where the importance of the involvement of all parties, especially the organizers (KPU and Bawaslu) to always actively socialize and educate about the importance of ethics and honesty in responding to the process of selecting leaders.

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²⁹ Mukhasan Ajib, Human Resources and Parmas Division, East Kalimantan Province General Election Commission (KPU); Junaidi Samsuddin, Human Resources and Parmas Division, General Election Commission (KPU) Kab. Kutai Kartanegara, 2019.

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