



Criminal Law Perspective In The General Elections That Occurred In Indonesia

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Abstract

The enactment of Law Number 7 of 2017 concerning General Elections is proof that Indonesia really designs elections on a strong, constitutional, legal basis and regulates everything related to elections on a legal basis. Enforcement of election crimes in Indonesia needs to be improved as an effort to create a democratic system that is certain and just. Without legal certainty it will lead to anarchism and result in death, therefore democracy must provide legal certainty to all parties who seek justice. So the supremacy of law must be prioritized in guarding the democratic process in Indonesia. Whether the election criminal law enforcement mechanism is enforced from the start in accordance with the provisions of procedural law (due process of law) or not (undue process), if it has been implemented in accordance with the provisions of procedural law then justice has been carried out and upholds the ideology envisioned by the supremacy of law (Rechtstaat) is based on democratic ideals to realize comprehensive justice so that election criminal law is used as a tool to postpone the ideological commitment to the ideals of establishing the Indonesian state. The aim of this research is to determine the perspective of criminal law on the implementation of elections in Indonesia. The method used in writing this research is normative juridical using statutory regulations and context.

1. Introduction

The implementation of General Elections (Elections) in countries that implement a democratic system is a major event in every period of leadership of a country. Indonesia, as a country that implements a democratic system, holds elections every 5 years. The announcement of election results by the KPU (General Election Commission) is the news most awaited by the public to find out who the President and Vice President (elect) will lead the country of Indonesia. The public is also looking forward to which figures will be elected as their representatives and will voice their inspiration in parliament for the next five years.

Evaluation of the election journey is very important to carry out in order to improve the legal and political system in order to become a legally sovereign country as is the ideal of democracy. Referring to data released by Bawalu RI (General Election Supervisory Agency of the Republic of Indonesia), during the 2019 General Election there were 548 criminal violations. The rise in election crime cases indicates that the process of journey is never finished regarding how we build democracy and hold elections to build a constitutional democratic country. Law enforcement in the context of the criminal justice system, which is often referred to as "penal effort", is a type of law enforcement that is repressive in nature, while law enforcement in a preventive context is more through "non-penal" channels. (Barda Nawawi Aref, 1991).

Election crime cases should be understood by conducting a comprehensive study of law enforcement with adequate handling authority by law enforcement

officials. That efforts to overcome crime through the penal route focus more on repressive characteristics after the crime occurs, while the non-penal route focuses more on preventive characteristics before the crime occurs. Because repressive actions can essentially also be seen as preventive actions in a broad sense, considering that efforts to overcome crime through non-penal channels are more about preventing crime from occurring.

Law enforcement is an effort to implement and apply the law and take legal action against any violations or deviations from the law committed by legal subjects, either through judicial procedures or through arbitration procedures for other dispute resolution (alternative disputes or conflicts resolution) or enforcement activities. law regarding all activities so that the law as a set of normative rules that regulate and bind legal subjects in all aspects of social and state life is truly obeyed and truly carried out as it should. Apart from that, law enforcement can also involve taking action against any violations of general election criminal cases (elections) or deviations from election laws and regulations through criminal processes involving the role of law enforcement officers, the Election Supervisory Agency (Bawaslu), the General Election Commission (KPU), Police, Prosecutor's Office, Courts and Correctional Institutions (LP) and/or Advocates/Attorneys.

The criminal justice mechanism for election criminal cases, which is a criminal justice system, includes activities in stages, starting from an investigation carried out by the police on the recommendation of Bawaslu, then escalated to an investigation by a police investigator and then a prosecution by the prosecutor's office, an

examination in court by a panel of district court judges. and the implementation of the judge's decision is carried out by correctional institutions, and usually accompanied by legal advisors/advocates, so that criminal justice can be interpreted as a process of the work of several law enforcement agencies.

The electoral criminal justice system that is currently widely implemented prioritizes conventional methods, meaning: it only prioritizes positive laws that exist and are regulated in law alone, so that the impression is that law enforcers act as "mouthpieces" for the law. During the trial, if the charges can be proven, the defendant will be handed over to a correctional institution for development and will be returned to the community when his training period has been completed. However, if the charges are not proven and the judge will be acquitted, then the defendant will be returned to the community. Likewise, if the perpetrator of the crime happens to be a member of the party that committed the general election crime, the resolution process will also be treated the same.

Law enforcement efforts in the context of implementing Law no. 7 of 2017 concerning Elections which were created in order to resolve conflicts or election violations. The use of legal measures, in this case criminal law, as an effort to overcome social problems, including in the field of law enforcement policy. Because the goal is to achieve the welfare of society in general. Efforts to overcome violations of the Election Law, criminal law are part of social policy, namely all rational efforts to achieve public order and prosperity.

As a matter of policy, the use of criminal law is not actually a necessity. Likewise, because there is no absolutism in policy, it will also affect the functioning of the criminal justice system. Because you will be faced with the problem of assessing and selecting from various alternatives as well as more dominant political power factors that influence the operation of criminal law. Especially with problems related to violations of the Election Law where the political burden or power is far more dominant than the law.

Efforts to understand the law in overcoming violations of the Election Law through criminal law include part of social policy, namely all rational efforts to achieve public order and welfare. This effort is to find out about solving problems related to the inventory of legal problems in elections to law enforcement in this case the criminal justice system to the resolution of election criminal cases, so the author is interested in formulating the problem:

1. What are the problems that occur in the process of holding general elections?
2. How is general election criminal law enforced in Indonesia?

Literature Review

The process of reviewing research results relevant to this research has been carried out. However, from the study of research results, there are still various differences both in terms of research objects, research results and conclusions. The following are some of the research results that have been reviewed, including:

Research conducted by Achmad Sulchan with the research title: Reconstruction of Law Enforcement in

General Election Criminal Cases Based on Justice Values. This research discusses ideas for carrying out improvements in law enforcement in general election criminal cases based on his experience working as a lawyer.

The second research was conducted by Abdul Waid, research with the research title: "Ius Constituendum" Election Criminal Law Enforcement (Critical Reflection on the 2019 Election Towards the 2024 Election with Integrity) This research discusses the implementation of elections that have been carried out in Indonesia looking from a legal perspective regarding the implementation process from the people to the election organizers, as well as looking at the phenomena and problems faced which are expected to become a record for improving elections in Indonesia in the future.

Research Methods

The type of research used is normative legal research, namely research that examines statutory regulations that are related to the object of research study, especially regarding legal principles and norms contained in statutory regulations. In this research, the approach used is the Legislative Approach. (Statute Approach) and Concept Approach (Conceptual Approach).

Legislative Approach (Statute Approach), namely an approach by studying and analyzing laws and regulations that are related to the subject matter of the research.

Conceptual Approach, namely an approach by studying views and doctrines in legal science, concepts and legal

principles that are relevant to the main research problem.

2. Results and Discussion

A. Legal Issues in Organizing General Elections

Mapping general election legal issues is very important because it will be the basis for efforts to create a comprehensive election law enforcement system. Election law issues are all legal acts that deviate, contradict, or violate election laws and regulations in the election implementation process, including parties who feel disadvantaged in the election implementation process. (Topo Santoso DKK, 2007)

Legal problems or what are more often called disputes in the implementation of elections actually do not only occur in the practice of implementing elections. What is called a case of dispute in the administration of elections, is actually a case of violation of election administration or a case of dissatisfaction with the decision of the election organizers. Therefore, in presenting fair and democratic law, legislation as a legal product must open up space to correct the KPU's decision through an objection mechanism to the KPU's decision for parties who feel disadvantaged by the decision.

If we look back at international standards for democratic elections and also pay attention to election law enforcement practices in several countries, election law issues are divided into two groups, namely election offenses or corrupt practices, which can be translated as election crimes; and election contests (disputes over election results) submitted through election petitions

(election petitions or lawsuits). Apart from that, there are also issues regarding complaints against the decisions of election organizers during the stages of election implementation (for example, registration or determination of candidates). It is also known that there are cases before the announcement of election results and cases after the announcement of election results. Based on international standards for democratic elections, taking into account the practice of election law enforcement in several countries, and combining it with the experience of elections in Indonesia, election law problems can be divided into two large groups, namely violations and disputes.

The violation in question is a violation of the obligations or prohibitions regulated in the election law. Violation of these obligations or prohibitions is punishable by criminal sanctions in the election law which is referred to as an election crime. Meanwhile, violations of requirements, obligations, orders and prohibitions that are not threatened with criminal sanctions are referred to as administrative violations. Dispute issues in elections consist of disputes over election results and election administration disputes. Disputes over election results occur when parties feel disadvantaged by the election organizer's decision to determine the election results; Meanwhile, election administration disputes occur when parties feel disadvantaged by the election organizer's decision regarding the determination of the voter list, election participants, list of legislative candidates, campaign schedule and location, vote count recapitulation, etc. which fall into the category of non-election results.

Based on the description above, it can be seen that there are four election legal problems, namely (1) election crimes, (2) election administration violations, (3) election administration disputes, and (4) election results disputes.

1. Election Crime Problems

Election crime is a violation of the provisions regulated in the election law which is punishable by criminal sanctions. (Topo Santoso, 2006) Not all criminal acts that occur during elections are classified as election crimes. For example, criminal acts of traffic violations, murder of political opponents, assault and so on, even though they occur during the election period, are not election crimes, but are general crimes.

Based on these general principles in criminal law, provisions for election crimes have been regulated in Law No. 7 of 2017 concerning General Elections. Actions that can be classified as election crimes are regulated in Articles 488 to Article 554. If you read the articles that regulate election crimes in Law No. 7 of 2017, in general the criminal provisions apply to the three parties involved in the election. . First, the election organizers which include the KPU and all its staff such as PPK (District Election Committee), PPS (Voting Committee), KPPS (Voting Organizing Group), Bawaslu, the Government. Second, election participants include political parties, candidates for members of the DPR (People's Representative Council), DPD (Regional Representative Council), DPRD (Regional People's Representative Council) at district/city and provincial levels, candidates for President and Vice President). Third, the community as legal subjects (as voters, the success team

including the community who asked not to use their voting rights).

Several acts that constitute election crimes as regulated in Law No. 7 of 2017 concerning General Elections include the following:

1. Providing incorrect information when filling in personal data on the voter list (Article 488 of the Election Law)
2. Disrupting, Obstructing or Disrupting the Election Campaign (Article 491 of the Election Law)
3. Campaigning outside the schedule determined by the General Election Commission ("KPU") (Article 492 of the Election Law)
4. Violating the Campaign Prohibition (Article 280 paragraphs (1) and (2) of the Election Law)
5. Providing incorrect information in the Election Campaign Fund Report (Articles 496 and 497 of the Election Law)
6. Causing other people to lose their right to vote (Article 510 of the Election Law)
7. Providing material (money) or material promises to voters (Article 515 of the Election Law)
8. Voting more than once (Article 516 of the Election Law)
9. make decisions or actions that benefit or harm one of the election participants (Article 490 of the Election Law)

2. Problems of Election Administration Violations

Election administration violations are acts of violating statutory provisions that are not punishable by criminal sanctions, in particular violations of provisions, requirements, obligations, orders and

prohibitions. In election administration violations, election laws and regulations clearly regulate the forms of violations and what the sanctions are, as well as the parties authorized to impose sanctions, as well as the mechanism for resolving these violations.

Election law regulations state that several potential problems with election administration violations can occur at several stages of election implementation, including; 1. Voter Registration, 2. Registration of Election Participants, 3. Determination of General Electoral Districts, 4. Campaign, 5. Voting and Counting of Votes, 6. Determination of Election Results, 7. Determination of Elected Candidates, 9. Pronunciation of Oaths and Promises.

3. Election Administration Dispute Issues

Election administration disputes are disputes arising from decisions or actions of election organizers which are deemed to be detrimental to certain parties, in this case citizens (who have the right to vote and be elected), parties participating in the election, legislative candidates, legislative candidates, presidential candidates. /vice president and prospective regional head/deputy regional head candidates, as well as presidential/vice presidential candidates and regional head/deputy regional head candidates, which occur during the election stages.

Handling objections to administrative disputes in elections requires the need for rules of the game that are clear (transparency), certain (measurable) and easy to apply (applicable). Apart from the fact that elections require such principles, in the end an election is deemed credible or not

if all its organizers succeed in handling objections raised by those who feel disadvantaged. Thus, the mechanism for handling election complaints is at stake for the credibility of an election.

Based on the experience of previous elections, potential election administration disputes can occur at almost all stages of the election. The results of studies conducted in many countries show that election disputes cannot all be classified as violations of election administration or procedures, nor can they be categorized as criminal election violations.

4. Problems of Election Results Disputes

Disputes over election results are disputes arising from the decision of election organizers regarding election results which are deemed to be detrimental to certain parties, in this case individual election participants (for the election of DPD members), political party election participants (for the election of DPR and DPRD members), presidential and deputy candidates, president, as well as regional head and deputy regional head candidates, which occurs at the stage of determining the election results.

Objections after the announcement of election results by the KPU (especially in elections for DPR/DPRD members include objections regarding the determination and announcement of election results by the KPU and the determination of elected DPR/DPRD member candidates.

The Indonesian legal system does not have an electoral court or judges who handle elections. This does not mean that there are no institutions that play a role in disputes or disputes over election results. In this country, this role is held by the

Constitutional Court (MK), one of whose duties and authorities is to resolve disputes over election results. In this case, election participants who felt disadvantaged submitted their objection to the Constitutional Court. This institution has issued Constitutional Court Regulation no. 4/PMK/2004 concerning Guidelines for Procedures in Election Results Disputes which contains the ins and outs of management and proceedings in MK trials. The decisions taken in the judges' deliberation meeting are pronounced in the judges' plenary session. Judicial proceedings in disputes over election results are fast and simple, and the decisions are final and binding.

The desire for the election process to take place quickly is the reason why many KPU/KPUD decisions are declared final. This of course can have negative effects, namely the loss of opportunities for disadvantaged parties (citizens, voters, political parties or candidates) to correct KPU/KPUD decisions that may be wrong. The holding of elections in which such KPU/KPUD decisions are declared final is clearly not in accordance with democratic election standards which emphasize providing opportunities for aggrieved parties to take legal action/object to any detrimental decisions. Another impact is that if an error occurs on the part of the election organizers, there is no proper, adequate and trustworthy mechanism to correct it. For election officials who lack integrity, conditions like this will encourage bad actions, for example accepting bribes.

B. Enforcement of Election Criminal Law in Indonesia

Law No. 7 of 2017 concerning Elections does not provide a clear definition

or understanding of what is meant by election crimes. Regarding election crimes, Law No. 7 of 2017 only regulates criminal threats for acts that fall into the category of election crimes. We can actually find the formulation regarding the meaning of election crimes in Supreme Court Regulation Number 1 of 2018 concerning Procedures for Resolving Election Crimes and General Elections (Perma 1/2018). Article 1 point 2 of Perma 1/2018 states that election crimes are "criminal acts of violations and/or crimes as regulated in Law No. 7 of 2017 concerning Elections".

Criminal acts must be resolved by the criminal justice system (SPP). In general, the SPP consists of main components: police, prosecutor, court (general). In specific crimes, these components may differ. Handling of election crimes is no different from general crimes, namely they are resolved by the SPP: police, prosecutors, courts. It's just that in the 1999 and 2004 elections, before an investigation was carried out by the police, there was a process of 'filtering' reports/findings by election supervisors. However, election supervisors do not have the authority to investigate (let alone prosecute) so they are not included in the SPP. In short, the handling of election criminal acts goes through a process: election supervisors are completed by the SPP (police, prosecutor, court).

Before being investigated by the police, the report is processed by election supervisors, but in the police the inspection is often repeated from the beginning. Sometimes the report format from election supervisors is not even accepted (because the police have their own format). Apart from forwarding reports received from the public, election supervisors also report

suspected election crimes that they know about themselves. Because of this, election observers are often questioned as reporting witnesses, which often complicates the position of election observers themselves. In several cases, election supervisors who reported or forwarded reports from citizens to the police were actually made suspects in cases of defamation. This causes many cases to stop due to differences in perception between election supervisors and the police or cases that cannot be handled because they are considered to have expired.

For the sake of the effectiveness of the investigation and investigation of election crime cases, it is best to form a special police unit that is trained to handle election crime cases. This is because handling election crimes, apart from requiring general knowledge about criminal acts, also requires special knowledge because elections are a political process where various modes of election crimes are very disguised or very complicated, for example money politics which is carried out by means of donations, compensation, competition prizes, price cuts, salary increases, or fraud in reporting campaign funds. From the police the case files are handed over to the prosecutor. It is hoped that a special unit of prosecutors will also be formed to handle election criminal cases. The consideration is, as in the investigation process, prosecutors for election criminal cases also need to be equipped with knowledge about elections.

The birth of Law Number 7 of 2017 concerning General Elections is proof that Indonesia really designs elections on a strong, constitutional, legal basis and regulates everything related to elections on a legal basis. In other words, there is not a

single part of the election that does not have a legal basis. Law Number 7 of 2017 can actually be interpreted as an effort to organize elections based on legal provisions that aim at three legal objectives, namely justice, expediency and legal certainty. (Achmad Ali, 2017)

Enforcement of election crimes in Indonesia needs to be improved as an effort to create a democratic system that is certain and just. Without legal certainty it will give rise to anarchism and result in misery, therefore democracy must provide legal certainty to all parties who seek justice. So the rule of law must be prioritized in guarding the democratic process in Indonesia. However, there are still problems that are difficult to resolve and require great attention to resolve.

The problems in enforcing election law in question include, firstly, the practice of money politics. There are a number of modes of money politics perpetrators which actually fall into the category of election crimes but cannot be charged under Law No. 7 of 2017. For example, Law No. 7 of 2017 prohibits 3 (three) subjects from committing money politics, namely campaign organizers, election participants, and campaign team. Apart from that, these three subjects are not regulated by Law No. 7 of 2017. This can be seen in the formulation of Article 286 paragraph (1) of Law No. 7 of 2017 which states, "Candidate pairs, candidates for members of the DPR, DPD, provincial DPRD, district/city DPRD, campaign organizers, and/or campaign teams are prohibited from promising and/or giving money or other materials to influence Election Organizers and/or Voters."

Therefore, apart from the three subjects involved in money politics: campaign organizers, election participants and campaign teams, there is a legal loophole for people who are not included in the three subjects who are prohibited from carrying out money politics during the elections. Even though money politics practices are found in the field, the perpetrators are not included in the three subjects regulated in Law No. 7 of 2017, so they cannot be dealt with firmly. In fact, when they are forced to be taken to court, the judge will decide that they will be acquitted. Such regulations of course allow anyone to practice money politics as long as they are not part of the campaign team, election participants or election implementers.

As a result, this loophole was exploited by "unscrupulous" election participants to carry out money politics. They carry out money politics but do not use the identities of three subjects which are prohibited by the election law so they cannot be prosecuted criminally. Because, during the campaign period, as long as money politics is not carried out by election participants, campaign teams, campaign implementers, then the subject elements are not fulfilled at all.

Apart from that, in terms of providing criminal sanctions for money politics, Law No. 7 of 2017 only provides sanctions to the giver, not the recipient. This actually violates the rules (provisions) of criminal law. In money politics transactions, as one of the acts categorized as election crimes, it should not only be the giving party who is sanctioned or threatened with criminal action, but also the recipient party. This is because the recipient party in a money politics transaction can be categorized as a

medepleger, namely a person who makes an agreement with another person to commit a criminal act and together he also takes part in carrying out the criminal act in accordance with what has been agreed. (Rahmanuddin Tomalili, 2019).

Second, the second weak point in election regulations is the weak understanding between law enforcement stakeholders themselves. The Integrated Law Enforcement Center (Sentra Gakkumdu), which consists of Bawaslu, Polri and the Prosecutor's Office, often has different opinions in determining whether or not the elements of the crime committed have been fulfilled. This kind of weak understanding means that Bawaslu's recommendations are often not followed up by investigators. As a result, Bawaslu's findings in the field regarding election crimes are completely meaningless.

In fact, as stated by Hardi Munte in his book entitled Regional Election Administration Dispute Resolution Model (2017), Bawaslu/Panwas needs to collaborate well with the Indonesian National Police (Polri) and the Attorney General's Office in the Gakkumdu Center in order to expedite the enforcement of criminal law provisions. Election. (Hardi Munte, 2017).

Third, the third weak point in election regulations is the issue of punishment, namely the threat of too many criminal sanctions. In the author's opinion, in terms of effectiveness, emphasizing administrative sanctions for election participants - except for money politics and actions that threaten election security - will actually be much more effective than emphasizing the threat of criminal sanctions. The administrative sanctions paradigm will have an impact on election

participant compliance rather than emphasizing the punishment paradigm.

As stated by Nur Hidayat Sardini in Election Supervision Leadership: A Sketch (2014), sanctions do not always have to take the form of imprisonment (read: criminal). Sanctions can also take the form of social sanctions. For example, sanctions of reprimand, sanctions of dismissal, disqualification from participating in elections, administrative sanctions, and so on. In fact, in some cases social sanctions can be more severe than criminal sanctions. (Nur Hidayat sardine, 2014). This means that in carrying out elections, it is better for us to pay attention to the principle of criminal law as a last resort (*ultimum remidum*). (Duwi Handoko, 2017)

In Law No. 7 of 2017, there is one violation that can receive two sanctions at once, namely criminal sanctions and administrative sanctions. This can be seen in article 286 which reads, "(1) Candidate Pairs, candidates for members of the DPR, DPD, provincial DPRD, district/city DPRD, campaign organizers, and/or campaign teams are prohibited from promising and/or giving money or other materials to influence the organizers. Elections and/or Voters". Then the next paragraph reads, "(2) Candidate Pairs and candidates for members of the DPR, DPD, provincial DPRD and district/city DPRD who are proven to have committed violations as intended in paragraph (1) based on Bawaslu's recommendations may be subject to administrative sanctions of cancellation as Candidate Pairs and candidates. members of the DPR, DPD, provincial DPRD and district/city DPRD by the KPU." Then paragraph (3) reads "Issuing sanctions for violations as intended in paragraph (2) does not invalidate criminal sanctions".

Therefore, this is where criminal law politics is needed that emphasizes balance in determining norms and sanctions for serious and minor acts of law violations,

between acts that have a broad impact and those that do not have an economic, social and political impact. Legislators are required to "sensitive" in making election rules, what violations are worthy of criminal sanctions and what violations are sufficient to be punished with administrative sanctions.

3. Conclusion

Organizing elections is always synonymous with handling election law enforcement. The perspective of election criminal law in Indonesia has never been separated from law enforcement regarding existing election implementation problems. This was caused by the many violations of election regulations that were not resolved completely and also the feeling of being treated unfairly by election organizers. A study of election law enforcement problems that occurred in Indonesia concluded that there were four election law problems, namely election crimes, election administration violations, election administration disputes and election results disputes.

In an effort to build a comprehensive law enforcement system, the four must be clearly defined, in order to facilitate the involvement of voters, participants, candidates, observers and election organizers in implementing the election stages. If the issue of weak law enforcement is not resolved, efforts to improve the quality of elections that are truly free and fair will be difficult to achieve. This means that the laws governing elections must be perfected, then the institutions that handle election legal issues must be strengthened and reorganized. However, considering the existing conditions, this study recommends

that the development of an election law enforcement system should be carried out more seriously and comprehensively for all components of law enforcement..

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