

Election Criminal Law Enforcement in the Era of Simultaneous General Election 2019



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ABSTRACT: This thesis addressed the issue of election criminal law enforcement in the era of simultaneous general election in 2019. Based on data released by The General Election Supervisory Agency (Bawaslu) there were 2,724 reports and findings of alleged violations of election crimes, which continued with the investigation of 582 cases, closed at the investigation stage there were 132 cases, then closed at prosecuting 41 cases, and adjudicated by the court in 319 cases. Meanwhile, based on the Indonesian Legal Roundtable (ILR) data from the whole cases in electoral crime, 170 cases or 53% were sentenced to conditional or probation. The method of this research is used normative legal research methods (normative juridical). Data research compiled based on suited laws and regulations through statutory approach, case approach, historical approach, comparative approach, and conceptual approach. Furthermore, normatively the data is analyzed based on applicable regulations as positive legal norms by interpreting and constructing statements contained in documents and applicable laws. The results of this study are to reveal and analyze the law enforcement applied in handling election crimes that occurred in simultaneous general elections in 2019. Analyzing the formulation of criminal law in tackling more effective general election crimes for the future through the formulation definite regulations, fair, not multi-interpreted and attend to all parties in equal rights of each individual before the law in order to establish a general election which honest and fair as well as legitimate.

KEYWORDS: Law enforcement, Election Criminal Law, General Election 2019

INTRODUCTION

General election is a means of embodiment of popular sovereignty. The people are sovereign to determine and elect of local and national leaders for the next five years according to their aspirations. General election in Indonesia is held to the aim of electing people's representatives and regional representatives, as well as to form a democratic, legitimate government, and supported by people to establish national goals as stated in the 1945 Constitution of the Republic of Indonesia.

Furthermore, democracy is not the only way to conduct being a good and prosperous nation. Democracy is a process to provide a capacity participation for all people to be involved in determining the direction of government in a country. The elected government in the democratic process is expected to be able to prosper all the people. The Unitary State of the Republic of Indonesia (NKRI) after the reformation entered the era of democracy, after 32 years under the rule of the authoritarian New Order. During the New Order era, the elections held did not reflect the fair implementation of democracy, the election participants were limited to only three parties so there was no opportunity to establish new parties. Even before the election was held, it was certain which party would win the election.

The implementation of elections during the New Order era that was intended to be democratic and qualified failed. So that when the Reformation emerged in 1998, one of the demands was the carrying out of democratic elections. Subsequently, in 1999, the first democratic elections were carried out after the end of the New Order regime, which was attended by multi-party contestants.

Indonesia is a democratic country where the highest sovereignty is in the people's hand, as it is stated in the 1945 Constitution Article 1 paragraph (2) which states sovereignty in the hands of the people, and is implemented according to the Constitution. The text of the article can be interpreted that the highest power is in the hands of the people, but administration of authority is based on the 1945 Constitution. While every citizen has the right to vote and being elected, the guarantor of the right to be elected is expressly stated in Article 27 paragraph (1) of the 1945 Constitution which states that " All citizens are equal before law and government and are obliged to uphold law and government with no exceptions.

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Article 28 of the 1945 Constitution stipulated that freedom of association and assembly, expressing thoughts orally and in writing, and so on are stipulated by law.¹ It can be said that the political rights of the Indonesian people are guaranteed by the 1945 Constitution. One of the awareness of democracy in Indonesia is the holding of the five-year general election.

Quality of the general election in the Reformation era different from the New Order era. From the point of view of Human Rights, especially social and political rights, General Election in the Reformation era provide full freedom for everyone to vote based on their political beliefs as regulated in Article 23 paragraph (1) of Law Number 39 of 1999 concerning Human Rights. Every citizen also has the right to be elected and to vote in general election based on equal rights to vote as direct, general, free, confidential, honest and fair in accordance with the provisions of the legislation.²

The implementation of simultaneous general election to elect for the President, Vice President and members of the legislature (DPR, DPR I, DPRD II and DPD held in 2019 is considered the most complicated election during the implementation of the general election in Indonesia. As the reason, the election of the President and Vice President, DPR, DPR I, DPRD II and DPD is carried out a very short time on the same day.

The implementation of the general election in 2019 was also followed by law enforcement against violations in the implementation of the Election. Election law enforcement is divided into two categories, first, election violations which are categorized as criminal offenses and administrative violations and secondly, election disputes which are categorized as process disputes and outcome disputes. From these two categories, Law Number 7 of 2017 concerning general election is spread into 77 articles of election crimes with types of criminal threats varying from a maximum of 6 (six) months and a maximum imprisonment of 6 (six) year.

RESEARCH METHOD

The research method uses normative legal research (juridical normative) which is a research conducted by reviewing the applicable laws and regulations and applied to a particular legal problem.³ The normative juridical approach is used because it requires a study of the laws and regulations and related library materials to answer research problems regarding Election Criminal Law Enforcement. Processing of data obtained from primary data collection obtained directly from the community and library material data (secondary data).⁴ The data of this paper is compiled and analyzed based on the applicable laws and regulations through statutory approach, case approach, historical approach, comparative approach, and conceptual approach.⁵ Moreover, the data is analyzed normatively based on existing regulations as positive legal norms by interpreting and constructing statements contained in documents and applicable laws.

RESEARCH RESULTS AND DISCUSSION

The purpose of general election is establishing people's sovereignty as well as implementing democratic principles or values, increasing people's political awareness to actively participate in general elections for the realization of the ideals of a democratic Indonesian society. Constitutional Court Verdict Number 14/PUU-XI/2013 mentioned that holding the general election for President and Vice President as well as the Election for the Members of Representative Institutions (Legislative Elections) will be held in the same time or simultaneously in 2019. This was a new stage in the development of democracy in Indonesia. The 2019 Simultaneous General Election is considered as experimental elections, the most complex, complicated and competitive. The 2019 general election is somewhat different from the 2014 election administration system. For example, the Legislative elections and Presidential elections are held simultaneously; the threshold is tighter, both the threshold for nominations for members of the Legislature and nominations for the President. To ensure the quality of the 2019 elections, the implementation of elections should be followed by law enforcement against election crimes.

Based on data released by The General Election Supervisory Agency (Bawaslu), in 2019 there were 2,724 reports and findings of alleged violations of election crimes, which continued with the investigation of 582 cases, closed at the investigation stage there were 132 cases, then closed at prosecuting 41 cases, and adjudicated by the court in 319 cases.⁶ Meanwhile, based on the

¹ Indonesia, Undang-Undang Dasar Republik Indonesia 1945, pasal 28 huruf D ayat 3.

² Indonesia, Undang-Undang Nomor 39 tahun 1999 tentang Hak Asasi Manusia, Lembaran Negara RI Tahun 1999 Nomor 165, Tambahan Lembaran Negara No 3886, Pasal 43 ayat (1)

³ Soerjono Soekanto, *Pengantar Penelitian Hukum*, Cet III, Jakarta, Universitas Indonesia (UI-Press), Jakarta, 2008, hlm 51

⁴ Soerjono Soekanto, *Op.cit*, hlm. 51.

⁵ Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta, Kencana Prenada Media Group, 2005, hlm 133

⁶ Rahmat Bagja (Komisioner Bawaslu RI), *Evaluasi Penegakan Hukum Tindak Pidana Pemilu 2019*, disampaikan pada Diskusi dan Peluncuran Penelitian : "Jerat Pidana Pemilu 2019 : Dinamika dan Permasalahannya yang diselenggarakan oleh Indonesian Legal Roundtable (ILR), Jakarta, 7 Oktober 2019.

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Indonesian Legal Roundtable (ILR) data from the whole cases in electoral crime, 170 cases or 53% were sentenced to conditional or probation.⁷

A crime which is often referred to as an offense is a criminal act in which there is an element of crime or an element of violation, which must be accounted for by the person who commits an act that violates the value of public order. In making the law effective against criminal acts, sanctions must be imposed for those actions. Although in criminal law theory, a person can be free from a criminal act if the act cannot be accounted for. Or in other words, a person who commits a criminal act due to an element of coercion, hence that person is free from all lawsuits.⁸

The definition of an election crime in the literature as stated by Djoko Prakoso is said that an election crime is any person or legal entity or organization that intentionally violates the law, disrupts, hinders or interferes with the general election held according to law.⁹

According to Topo Santoso, it is stated that the definition of an election crime in three models includes: 1) All crimes related to the administration of elections which are regulated in the Election Law; 2) All criminal acts related to the implementation of elections which are regulated inside and outside the Election Law (for example in the Political Party Law or in the Criminal Code); 3) All criminal acts that occurred during the election (including traffic violations, persecution, violence, vandalism and so on).¹⁰

The definition of election crime according to Dedi Mulyadi redefines election crimes, into two categories: 1) Special election crimes are all crimes related to elections and carried out at the stages of election administration, both those regulated in the Election Law and Election Crime Law; 2) General election crimes are all criminal acts related to elections and carried out at the stage of organizing elections, both those regulated in the Election Law and the Election Crime Law and their resolution outside the election stage through the General Court.¹¹

Definition of election crime in several election laws such as Law Number 10 of 2008, Law Number 8 of 2012 and the last Law Number 7 of 2017 is not explained in detail, what is meant by a criminal act.

The definition of election crime appears in Perbawaslu number 7 of 2018 Article 1 number 31 where it is stated that election crimes are criminal acts of violation and/or crimes against the provisions of election crimes as regulated in the Law on General Elections.

According to Wirnyaningsih, there are 4 (four) problems to the settlement of criminal violations in the General Election: 1) regulations in legislation are not clear and not holistic; 2) there are differences in interpretation between law enforcement officials in Sentragakkumdu (investigators and prosecutors) and Bawaslu; 3) unpreparedness, incompetence, and unwillingness of law enforcement in tackling criminal election violations; 4) ineffective coordination between election supervisors, investigators and prosecutors.¹²

Furthermore, according to Fahmi, there are two problems in the enforcement of election law, regulation and enforcement of election law. There is uncertainty regarding the regulatory issues in the formulation norms of electoral law, particularly in relation to election law issues. Then, on the issue of election law enforcement there are some problems in the function, relationship, and perspective of each election law enforcement agency.¹³

According to Kania, there are two problems in resolving election crimes: 1) problems in the regulation of election crimes are the material law and procedural law so that it interferes with the completion of criminal law enforcement itself; 2) the problem in material law is in classifying criminal acts in the General Election, while the problem in procedural law is in the process of resolving criminal acts in the General Election.¹⁴

Furthermore, it is mentioned that there are problems in the mechanism for handling election crimes: 1) the election law stipulates that the mechanism for the settlement of election crimes refers to the Criminal Procedure Code, but on the other hand the general election law provides a handling mechanism that different from the Criminal Procedure Code; 2) from the aspect of norms,

⁷ Firmansyah Arifin, *Jerat Pidana Pemilu 2019 Dinamika dan masalahnya*, Jakarta, Indonesian Legal Roundtable (ILR), 7 Oktober 2019.

⁸ <https://www.negarahukum.com/tindak-pidana-pemilu.htm>

⁹ Djoko Prakoso, 1987, *Tindak Pidana Pemilu*, Jakarta, Sinar Harapan, Hlm. 148

¹⁰ Topo Santoso, 2006, *Tindak Pidana Pemilu*, Jakarta, Sinar Grafika, Hlm. 1.

¹¹ Dedi Mulyadi, 2012, *Kebijakan Legislasi tentang Sanksi Pidana Pemilu Legislatif Di Indonesia dalam Perspektif Indonesia*, Jakarta, Gramata Publishing, Hlm. 418

¹² Wirnyaningsih, 2019. *Dinamika Penegakan Hukum Pemilu*. Jakarta.

¹³ Fahmi, K., 2019. *Menata Penegakan Hukum Pemilu yang Berkeadilan*. Jakarta.

¹⁴ Kania, D., 2019. *Keadilan Pemilu dalam Penanganan Tindak Pidana Pemilu dan Pilkada*. Bandung.

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regulations in the Election Law are not sufficiently clear and complete in managing the material and procedural law aspects; 3) regulations in the election law are presumed to be dominant in political interests leading to denial; 4) the material law and procedural law on election crimes are not detailed and rigid, thus it creates debates on interpretations that interfere with the implementation of election criminal law enforcement.

Logically, the implication of the condition of ambiguity in the boundaries and norms in the election law is that there are differences in interpretation between law enforcement officials and The General Election Supervisory Agency (Bawaslu), which ultimately results in the disruption of the settlement process and enforcement of general election crimes.

The essence of the law enforcement of the General Election Law, especially the enforcement of election crimes is to uphold the justice of the election itself. According to Kelsen, justice is a condition of social order that is able to ensure that the search for truth can develop optimally. Justice represents of freedom, peace, democracy, and tolerance.¹⁵

Some examples of criminal cases in the 2019 election which were sentenced to conditional or light decisions: 1) The case of the Provincial DPRD candidate from the Nasdem Party named Gusanda Sosia Nagoya and the Wonosobo Regency DPRD candidate from the Nasdem Party, Maryadi. Both were sentenced by the Wonosobo District Court (PN) with imprisonment for 3 months with a probationary period of six months and a fine of IDR 5 million subsidiary two months in prison, "Convicted of using government facilities for campaigning in violation of Article 521 in conjunction with Article 280 paragraph (1) letter h of Law No. 7 of 2017 concerning Election"; 2) The next case involved the village head, namely the Head of Sunitah Village in Tegal because of his actions that benefited the election participants, as the administrator of the United Development Party (PPP). On January 29, 2019, he was sentenced to 3 (three) months in prison with a probationary period of 6 (six) months by the Tegal District Court for violating Article 490 in conjunction with Article 282 of Law No. 7 of 2017 concerning Elections; 3) The case that happened to Basuki, a candidate for DPRD Boyolali Regency from PKS. The Boyolali District Court judge on January 22, 2019 sentenced Basuki to prison for 10 days and a fine of Rp. 1 million for being proven to have carried out money politics which is prohibited by Article 521 in conjunction with Article 280 paragraph (1) letter j of Law No. 7 of 2017 concerning Election.¹⁶

In addition, there was an acquittal on behalf of the defendants "Siti Ambar Fatonah (SAF) and Sarwono (SW)" who were charged with campaigning by distributing envelopes containing money during an alms event in Kalikembar Hamlet, Pakopen Village, Bandungan District, Semarang Regency. The two candidates for legislative members from the Golkar Party were tried with the article on Money Politics at the Ungaran District Court". The Ungaran District Court decided to release the two incumbent candidates from all criminal charges for the Election of Judges with the consideration that all elements of the criminal acts listed in the indictment had been fulfilled, but the giving of money by the SAF and SW was not a crime (*ontslag van alle rechtsvervolging*). The judge disagreed with the opinion of the Public Prosecutor who stated that SAF and SW were found guilty of violating Article 521 of Law Number 7 of 2017 concerning General Election in conjunction with Article 55 paragraph (1) to 1 of the Criminal Code.

Based on mentioned above, the handling of criminal election violations up to the trial stage by Bawaslu is a reflection that law enforcement for violations of election crimes in 2019 is not optimal. The enforcement of the General Election Criminal Law in particular is essential in the implementation of the General Election and has the aim of achieving justice in the implementation of the General Election, as well as a legal justice framework composed of procedural (formal) justice and substantive (material) justice. These are interconnected and cannot be separated based on the priority of their fulfillment. Achieving a sense of justice will lead to public trust in the implementation of honest and fair elections.

The holding of simultaneous elections should be balanced with law enforcement that is able to provide a deterrent effect through the imposition of deprivation of rights, not just a probation sentence hence, it can provide the authority of election criminal law as well as a deterrent effect so that others do not commit the same act. To solve all problems in handling election crimes, at least there is also needed for legal politics in the direction of legislative policies on election law enforcement,

CONCLUSION

From the discussion above, it can be made conclusion that law enforcement in election crimes is the main factor to construct a better Election Law and Regulations in the future as the law enforcement for violations of election crimes in 2019 was not running optimal. From several cases that have emerged, they can be used as considerations to construct an election law which formulated with certainty, does not have multiple interpretations, firm and clear, and attend to the equality of every individual's right to justice (impartial principle). So that it becomes a legal protection that can construct a better regulations, trustworthy and fair election implementation system, as well as become a guide for law enforcers who can be professional, impartial and independent in carrying out their functions in accordance with the applicable legal framework or legislation. In the end, the process of enforcing the general

¹⁵ Kelsen, H. (2014). *Teori Umum Tentang Hukum dan Negara*, Diterjemahkan dari buku Hans Kelsen: *General theory of law and state*, penerjemah Raisul Muttaqien. *Penerbit Nusa Media*..

¹⁶<https://news.detik.com/berita-jawa-tengah/d-4493814/di-jateng-3-caleg-dan-2-kades-jadi-pesakitan-pidana-pemilu> diakses 6 Mei 2021. (Perkara Gusanda Sosia Nagoya No perkara : 8/Pid.Sus/2019/PN Wsb, Perkara Sunitah No Perkara :3/Pid.Sus/2019/PN.Slw, Perkara Basuki No Perkara : 10/Pid.Sus/2019/PN Byl)

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election criminal law as strictly and without multiple interpretations could provide a deterrent effect and to ensure all electoral violations that occur can be resolved as fair and consistent in the future.

REFERENCES

Book:

- 1) Dedi Mulyadi, 2012, *Kebijakan Legislasi tentang Sanksi Pidana Pemilu Legislatif Di Indonesia dalam Perspektif Indonesia*, Jakarta, Gramata Publishing
- 2) Fahmi, K. 2019. *Menata Penegakan Hukum Pemilu yang Berkeadilan*. Jakarta.
- 3) Kania, D., 2019. *Keadilan Pemilu dalam Penanganan Tindak Pidana Pemilu dan Pilkada*. Bandung.
- 4) Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta, Kencana Prenada Media Group, 2005.
- 5) Soerjono Soekanto, *Pengantar Penelitian Hukum*, Cet III, Jakarta, Universitas Indonesia (UI-Press), Jakarta, 2008
- 6) Topo Santoso, 2006, *Tindak Pidana Pemilu*, Jakarta, Sinar Grafika
- 7) Wirnyaningih, 2019. *Dinamika Penegakan Hukum Pemilu*. Jakarta.

Paper:

- 1) Firmansyah Arifin, Jerat Pidana Pemilu 2019 Dinamika dan masalahnya, Jakarta, Indonesian Legal Rountable (ILR), 7 Oktober 2019.
- 2) Rahmat Bagja (Komisioner Bawaslu RI), *Evaluasi Penegakan Hukum Tindak Pidana Pemilu 2019*, disampaikan pada Diskusi dan Peluncuran Penelitian : “Jerat Pidana Pemilu 2019 : Dinamika dan Permasalahannya yang diselenggarakan oleh Lembaga Swadaya Masyarakat Indonesian Legal Rountable (ILR), Jakarta, 7 Oktober 2019
- 3) Djoko Prakoso, 1987, *Tindak Pidana Pemilu*, Jakarta, Sinar Harapan.

Legislation:

- 1) Indonesia, 1945, Constitution of Republik Indonesia 1945.
- 2) Indonesia, 1999, Law of the Republic of Indonesia No. 39 of 1999 concerning Human Right, Lembaran Negara RI Tahun 1999 No. 165, Tambahan Lembaran Negara No 3886.
- 3) Indonesia, 2017, Law of the Republic of Indonesia No. 7 of 2017 concerning General Election.
- 4) Indonesia, 2013, Constitutional Court Verdict No. 14/PUU-XI/2013 concerning general election for President and Vice President as well as the Election for the Members of Representative Institutions (Legislative Elections) will be held in the same time or simultaneously in 2019
- 5) Indonesia, 2018, Perbawaslu No. 7 of 2018

Website:

- 1) <https://news.detik.com/berita-jawa-tengah/d-4493814/di-jateng-3-caleg-dan-2-kades-jadi-pesakitan-pidana-pemilu> diakses 6 Mei 2021. (Perkara Gusanda Sosia Nagoya No perkara : 8/Pid.Sus/2019/PN Wsb, Perkara Sunitah No Perkara :3/Pid.Sus/2019/PN.Slw, Perkara Basuki No Perkara : 10/Pid.Sus/2019/PN By1)
- 2) <https://www.negarahukum.com/tindak-pidana-pemilu.htm>
- 3) <https://semarangkab.bawaslu.go.id/>Jejak Kasus Pidana Pemilu 2019 Catatan Penegakan Hukum Pemilu di Kabupaten Semarang diakses 6 Mei 2021