

Crimination of General Election Letter Printing Companies in General Election Law



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ABSTRACT: Article 345 paragraph (1) and paragraph (2) in conjunction with Article 529 and Article 530 of the Election Law prohibits companies from printing ballots beyond the prescribed amount and is obliged to maintain the confidentiality, security, and integrity of the ballot papers. The type of criminal in the provision is in the form of basic crime including imprisonment and fine (cumulative). There are incomplete norms in the provision regarding imprisonment and fines given to ballot printing companies. This paper is normative legal research, with a statutory approach, a comparative approach, and a conceptual approach. The result of this study is that the criminal law regulating election ballot printing company companies in the Election Law does not regulate the separation of basic crimes in the form of imprisonment and fines. The formulation of criminal convictions for election ballot printing companies does not pay attention to the regulation of corporate punishment in several statutory provisions including the Corruption Eradication Act, the Environmental Protection and Management Act, the Law on Prevention and Eradication of Money Laundering, and Perma No 13 of 2016. Required the reconstruction of the criminal prosecution of companies that print election ballots in the Election Law to ensure legal certainty and the implementation of law enforcement which creates fair and fair elections.

KEYWORDS: Criminalization; Ballot Printing Company; General Election

INTRODUCTION

The development of the times and the collapse of the new order to the reform order brought changes in the implementation of elections in Indonesia. Election dynamics in Indonesia can be seen in the electoral law from time to time. Currently, election arrangements are regulated in Law Number 7 of 2017 concerning General Elections (hereinafter referred to as the Election Law). The Election Law is a unification and simplification of several laws including Law Number 42 of 2008 concerning the General Election of the President and Vice President¹ (hereinafter referred to as the Executive Election Law), Law Number 15 of 2011 concerning General Election Organizers² (hereinafter referred to as Law on Elections). Election Organizers), and Law Number 8 of 2012 concerning General Elections for Members of the People's Representative Council, Regional Representative Council, and Regional People's Representative Council³ (hereinafter referred to as the Legislative Election Law).

Compared to problems within the scope of other legal regimes, election law issues can be said to be more complex.⁴ In addition to the many categories of problems, the implementation of handling election legal issues also involves many institutions/institutions.

There are at least six types of election legal problems, namely violations of the code of ethics for election administrators, violations of election administration, election disputes, election crimes, electoral state administrative disputes, and disputes over election results. The complexities that exist in elections are also inherent in election law issues in the realm of election crimes. At first glance, it seems simple, but upon closer inspection, the regulation and law enforcement of election crimes also has certain complexities. The main thing is the problem of proof, the professionalism of law enforcement and its enforcement bureaucracy which is regulated in various laws related to elections.⁵

Through the Criminal Code (hereinafter referred to as the Criminal Code) Book II Chapter IV concerning Crimes against carrying out state obligations and rights,⁶ basically the state has provided arrangements to prevent acts that hinder efforts to realize

¹ Lembaran Negara Republik Indonesia Tahun 2008 Nomor 176, Tambahan Lembaran Negara Republik Indonesia Nomor 4924.

² Lembaran Negara Republik Indonesia Tahun 2017 Nomor 182, Tambahan Lembaran Negara Republik Indonesia Nomor 6109.

³ Lembaran Negara Republik Indonesia Tahun 2012 Nomor 117, Tambahan Lembaran Negara Republik Indonesia Nomor 5316.

⁴ Khairul Fahmi, "Sistem Penanganan Tindak Pidana Pemilu", *Jurnal Konstitusi*, Vol. 12 No. 2, Juni 2015, p. 265.

⁵ *Ibid.*, p. 265-266.

⁶ Pasal 146 s/d Pasal 153 KUHP.

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honest and fair elections.⁷ However, the provisions contained in the Criminal Code must of course follow the development of democracy, technological advances and the legal needs of the community. Therefore, the existence of the Election Organizing Law is important, one of which is in the context of regulating prohibitions and sanctions on actions that can hinder the implementation of an honest and fair election or often referred to as election crimes.

Election crimes have distinctive or specific characteristics when compared to general crimes. This is because election crimes are only possible during the election period (in the election stage), because elections in Indonesia are held once in 5 (five) years. As a consequence of the conditions and timing of the occurrence of election crimes, many people and state apparatus (Government, Police, Prosecutor, General Election Commission/KPU, and Election Supervisory Body/*Bawaslu*) do not know, forget or do not understand what and how the provisions are. of election crimes.

Even though it is only held once every five years, the election must not be flawed and tarnished, and anyone who tarnishes or tries to tarnish the election, deserves strict action.⁸ Elections develop in line with the spirit to protect the electoral process from all forms of violations that can destroy the nature of an honest and fair election.

Elections must ensure the direct, general, free, confidential, honest and fair distribution of the people's voice. The Election Law is the legal basis for simultaneous elections. To ensure free and fair elections, it is necessary to protect the voters, for those participating in the elections, and for the people in general from any discovery, intimidation, bribery, fraud and other fraudulent practices that will affect the purity of the election results.⁹

The spirit of holding honest and fair elections is reflected in the legal politics of the Election Law by providing more complex and rigid criminal provisions. The Election Organizing Law regulates 77 (seventy-seven) types of criminal acts consisting of Articles 488 to 553.

The seriousness of the state in cleaning up the disease (crime) of democracy in elections should not be tarnished even in the context of its legal substance.¹⁰ One of the problems in the Election Law related to criminal acts is contained in Article 345 paragraph (1) and paragraph (2) jo. Article 529 and Article 530 of the Election Law. If the criminal provisions are investigated further, it is still possible that they cannot be implemented, so that they are doubtful in the enforcement process.

Article 345 paragraph (1) and paragraph (2) jo. Article 529 and Article 530 of the Election Law, which state:

Article 345:

- (1) For certain purposes, a company that prints ballots is prohibited from printing more ballots than the number determined by the KPU.
- (2) The company that prints the ballots is obligated to maintain the confidentiality, security and integrity of the ballots.

Article 529:

Every ballot printing company that intentionally prints ballot papers in excess of the number determined by the KPU for certain purposes as referred to in Article 345 paragraph (1) shall be subject to a maximum imprisonment of 2 (two) years and a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah).

Article 530:

Every ballot printing company that does not maintain the secrecy, security, and integrity of the ballot papers as referred to in Article 345 paragraph (2) shall be subject to a maximum imprisonment of 2 (two) years and a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah).

Based on the provisions in Article 345 paragraph (1) and paragraph (2) jo. Article 529 and Article 530 of the Election Law, it can be seen that a ballot printing company is prohibited from printing more than the number of ballots determined by the KPU and the ballot printing company is obliged to maintain the confidentiality, security and integrity of the ballots. If these provisions are violated, the sanctions are imprisonment and fines.

This provision then deserves serious attention. This is because the Election Law stipulates that the subject of punishment is a "company" and the criminal sanctions imposed on the company are in the form of "a maximum imprisonment of 2 (two) years" and "a maximum fine of Rp. 5,000,000,000 (five billion rupiah)".

There is an incomplete norm of punishment in Article 345 paragraph (1) and paragraph (2) jo. Article 529 and Article 530 of the Election Law, namely no imprisonment and fines are connected with the word "and" so that the company according to the

⁷ Sintong Silaban, 1992, *Tindak Pidana Pemilu (Suatu Tinjauan Dalam Rangka Mewujudkan Pelaksanaan Pemilu Yang Jujur dan Adil)*, Jakarta: Pustaka Sinar Harapan, p. 19.

⁸ Dedi Mulyadi, 2012, *Kebijakan Legislasi Tentang Sanksi Pidana Pemilu Legislatif di Indonesia Dalam Persepektif Demokrasi*, Depok: Gramata Publishing, p. 8.

⁹ Nurul Huda, 2018, *Hukum Partai Politik & Pemilu Indonesia*, Bandung: Fokus Media, p. 286.

¹⁰ Lawrence M. Friedman memberi pengertian substansi sebagai berikut: "*The substance is composed of substantive rules and rules how institutions should behave*". Terjemahannya: "Substansi itu terdiri atas peraturan hukum substantif dan peraturan hukum tentang bagaimanakah seharusnya lembaga-lembaga itu berlaku/bertindak". Dalam M. Bakri, 2011, *Pengantar Hukum Indonesia (Sistem Hukum Indonesia pada Era Reformasi) Jilid 1*, Malang: UB Press, p. 21.

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provisions of the article is subject to imprisonment and fines. The punishment for the company that prints ballots should be regulated in full, and imprisonment should be imposed on the management, the corporation, or the management and the corporation. Likewise, fines are imposed on management, on corporations, or on management and corporations.

In addition to the incomplete punishment of the ballot printing company in terms of imprisonment and fines (basic crime). Article 345 paragraph (1) and paragraph (2) jo. Article 529 and Article 530 of the Election Law also do not pay attention to the regulation of corporate punishment. For example, in Law Number 31 of 1999 concerning the Eradication of Corruption Crimes (hereinafter referred to as the PTPK Law). Article 20 paragraph (7) of the PTPK Law stipulates that:

The principal punishment that can be imposed on corporations is only a fine, with the maximum sentence being added by 1/3 (one third).

From the provisions of Article 20 paragraph (7) of the PTPK Law, it is increasingly emphasized that there are incomplete sentencing arrangements in Article 345 paragraph (1) and paragraph (2) jo. Article 529 and Article 530 of the Election Law which contain the main criminal charges against companies that print election ballots. For this reason, in this paper, the author analyzes the penalties for companies printing election ballots by describing the shortcomings in construction in the Election Law and a comparison of corporate penalties in other laws and regulations, with two problem formulations, namely:

1. How is the punishment for companies printing election ballot papers in the Election Law?
2. Are the criminal arrangements for companies printing election ballots in accordance with the provisions of the laws and regulations in Indonesia?

METHOD

The method used in this research is normative juridical. The analytical technique used is prescriptive qualitative, namely to provide arguments for the results of the research conducted.¹¹ The approach used is a statutory approach, used to research, explore and review various laws and regulations including the draft discussion of the RKUHP regarding corporate punishment, especially companies that print election ballots. Furthermore, it also uses a comparative approach to see the similarities and differences in corporate criminal arrangements in general and in particular on the punishment of companies that print election ballots. criminal norms for companies printing election ballots by looking at the concept of corporate punishment, both the concept of basic and additional criminal penalties.

DISCUSSION

1. Regulations on the Criminalization of Election Ballot Printing Companies in the Election Law

Article 1 point 1 of the Election Law states that elections are a means of people's sovereignty to elect members of the DPR, DPD members, the President and Vice President, and to elect members of the DPRD, which are carried out directly, publicly, freely, confidentially, honestly and fairly in the Unitary State of the Republic of Indonesia based on Pancasila. and the 1945 Constitution of the Republic of Indonesia.

In general, elections were born from the conception and big idea of Democracy which means referring to John Locke and Rousseau, guaranteeing freedom, justice and equality for individuals in all fields.¹² In democracy, there are participatory values and sovereignty that are upheld and must be carried out by citizens and state instruments at the legislative, judicial and executive levels.

The relationship between citizens and the state, although still distant, can be facilitated by various institutions and elements of society because of the freedom for all parties to actively participate in national development, both political development and other fields.¹³

Democracy is characterized by the presence of three prerequisites:¹⁴

- 1) competition in gaining and maintaining power;
- 2) community participation; and
- 3) guarantee of civil and political rights.

In this case, the electoral system is one of the important institutional instruments in a democratic country to realize the three prerequisites above. Through this system, competition, participation and guarantee of political rights can be seen. In simple terms, the electoral system means an instrument for translating the vote gains in an election into the seats won by the party or candidate.¹⁵

Once the importance of elections in the context of a democratic country, election arrangements are always changing according to the demands of the community and the results of the evaluation of the electoral system that has been implemented.

¹¹ Peter Mahmud Marzuki, 2011, *Penelitian Hukum*, Jakarta: Kencana Prenada Media Group, p. 141.

¹² Farahdiba Rahma Bachtia, "Pemilu Indonesia: Kiblat Negara Demokrasi Dari Berbagai Representasi", *Jurnal Politik Profetik*, Vol 3 No 1 Tahun 2014, p. 3.

¹³ *Ibid.*

¹⁴ Kacung Marijan, 2019, *Sistem Politik Indonesia: Konsolidasi Demokrasi Pasca Orde Baru*, Jakarta: Kencana Prenada Media Group, p. 67.

¹⁵ *Ibid.*

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Changes in election arrangements are to renew election crimes. In the Election Law, there are 77 (seventy-seven) criminal acts. One of the new criminal acts in the special election law is the criminalization of ballot printing companies.

Ballots themselves are one type of voting equipment in the form of sheets of paper with a special design used by voters to cast their votes in the Election for DPR Members, Elections for DPD Members, Elections for President and Vice President, and Provincial DPRD and Regency/Municipal DPRD.¹⁶

Ballot Printing Company is a company that runs an industrial process for mass-producing Ballots with ink on paper using a printing press. The punishment of companies printing election ballots is regulated in Article 345 paragraph (1) and paragraph (2) jo. Article 529 and Article 530 of the Election Law.

Article 345 paragraph (1) and paragraph (2) jo. Article 529 and Article 530 of the Election Law, it can be seen that there are two criminal acts for companies that print election ballots, namely first if they print more ballots than the number determined by the KPU, and do not maintain the confidentiality, security and integrity of the ballots. The article provides for the main punishment in the form of a maximum imprisonment of 2 (two) years and a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah).

Corporate punishment, in this case the company that prints ballot papers in the Election Law, must pay attention to the provisions of the existing laws and regulations. In particular, the reasons that encourage the establishment of a corporation as a subject of criminal law cannot be separated from the impact caused as a result of corporate activities in carrying out business and economic activities. With the establishment of a corporation as a subject of criminal law, it will be easier to ask for accountability when there is a violation of the law caused by corporate activities.¹⁷

According to I.S. Susanto, the losses caused by corporate crimes are not only in the economic, health and life safety fields, but also in the social and moral fields.¹⁸ Crimes committed by corporations can damage moral measures of business behavior that damage public trust because these crimes are integrated into the structure of legitimate business.¹⁹

The term punishment (the sentencing system) is a statutory rule relating to criminal sanctions and punishment (the statutory rules relating to penal sanctions and punishment).²⁰

Starting from Hulsman's opinion, the author will examine several topics related to the type of crime (*strafsoort*), the size of the punishment (*strafmaat*), and the implementation of the crime (*strafmodus*) of the criminal provisions in Article 345 paragraph (1) and paragraph (2) jo. Article 529 and Article 530 of the Election Law. The type of crime in this provision contains 2 (two) main types of crime, namely the crime of deprivation of liberty (imprisonment), and fines.

Judging from the types of crimes (*strafsoort*) contained in these provisions are less than the types of crimes in the Criminal Code. Based on Article 10 of the Criminal Code, the main punishment consists of the death penalty, imprisonment, confinement, fines, and criminal closures. The main criminal sequences are based on the severity of the criminal sanctions imposed.

Imprisonment is a form of criminal deprivation of liberty which can only be imposed by a judge through a court decision. Prison sentences are oriented to the rehabilitation of convicts, are humanistic in nature and the imposition of prison sentences is more careful.²¹ Criminal acts that are punishable by imprisonment may only be included in the laws established by the parliament and the government.

The punishment for a company that prints ballots is different from that adopted by the Criminal Code, where a criminal offense or a crime is only sentenced to one principal sentence. The general principle in imposing basic crimes under the Criminal Code is that judges are prohibited from imposing more than one principal criminal.²² Therefore, criminal threats in the Criminal Code are generally an alternative between imprisonment and fines.

According to R. Soesilo, for one violation or crime, only one main crime may be imposed so that it cannot combine more than one principal crime.²³ In some cases, the accumulation of two or more principal criminal sanctions can be applied in general between the main criminal and additional penalties. The non-acceptance of accumulation between the two principal crimes is in accordance with the conception of punishment adopted by Wetboek van Strafrecht (WvS) 1886, which does not recognize the existence of a cumulative principal punishment (*cumulative van hoofdstraffen*). On this basis, the accumulation of two or more principal crimes is also not regulated in the Indonesian Criminal Code.²⁴

¹⁶ Pasal 1 angka 14 Peraturan Komisi Pemilihan Umum Nomor 1 Tahun 2019 tentang Pengamanan Surat Suara di Percetakan dan Pendistribusian Ke Komisi Pemilihan Umum/Komisi Independen Pemilihan Kabupaten/Kota.

¹⁷ Asep Mulyana, 2019, *Reformulasi Delik Migas Dalam Mewujudkan Keadilan Energi*, Jakarta: PT. Gramedia Widiasarana Indonesia, p. 189.

¹⁸ I.S. Susanto, *Kejahatan Korporasi di Indonesia Produk Kebijakan Orde Baru*, Pidato Pengukuhan Penerimaan Jabatan Guru Besar Madya dalam Ilmu Hukum pada Fakultas Hukum Universitas Diponegoro, Semarang: 12 Oktober 1999, p. 7-11.

¹⁹ *Op.Cit.*, p. 190.

²⁰ LHC. Hulsman, *The Dutch Criminal Justice System for A Comparative Legal Perspective*, Dalam *Ibid.*, p. 193.

²¹ Franklin E. Zimring, Gordon Hawkins & Sam Kamin, 2001, *Punishment And Democracy: Three Strikes And You're Out In California*, Oxford University Press, p. 110 dalam *Ibid.*, p. 464.

²² Eddy O.S. Hiarij, 2016, *Prinsip-Prinsip Hukum Pidana (Edisi Revisi)*, Yogyakarta: Cahaya Atma Pustaka, p. 453.

²³ R. Soesilo, tanpa tahun, *Kitab Undang-Undang Hukum Pidana serta Komentar-Komentarnya Lengkap Pasal Demi Pasal*, Bogor: Politeia, p. 30.

²⁴ Satochid Kartanegara, tanpa tahun, *Hukum Pidana Bagian II*, Tanpa Kota: Balai Lektur Mahasiswa, p. 328-329.

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In essence, the cumulative formulation is no different from the single formulation because it indirectly requires imposing certain types of crimes, without giving the option of imposing other types of crimes. One of the weaknesses of the single and cumulative formulation system lies in its very rigid nature, which does not provide the opportunity or freedom for judges to determine the type of punishment that they consider most suitable for the accused.²⁵

Another weakness of the single and cumulative formulation system is related to the execution of the crime against the perpetrator. As is the case in one of the court decisions that impose criminal penalties for deprivation of liberty (imprisonment or confinement) against corporate legal subjects because the formulation of criminal provisions in the relevant laws does not contain the threat of punishment against corporate legal subjects, either in the form of partial or temporary prosecution of the company, revocation of business license or company closure, or confiscation of company assets. As a result, the prosecutor as the executor cannot carry out the said court decision, because the subject of corporate law cannot be imprisoned.²⁶

From the point of view of the application of criminal law (*strafmodus*), the single or cumulative formulation system is imperative and is the influence of the classical school. In other words, judges do not have the flexibility to individualize criminals that are oriented to the nature and characteristics of the perpetrators, especially to determine the type of crime.²⁷

At the beginning of the emergence of the classical school, it did not give the judges the freedom to determine the type of punishment and the size of the punishment. However, in its development, a thought emerged that wanted to objectify the criminal law from the personal characteristics of the perpetrator so that the type of punishment that was threatened and applied would be in accordance with the characteristics of the perpetrator.²⁸

As a result of this imperative formulation, the judicial process and the imposition of criminal charges are very mechanical and rigid. It is as if there has been a definite type of crime when the defendant's actions have fulfilled the formulation of the offense.

Finally, in terms of the size of the sentence (*strafmaat*), companies that print election ballots are threatened with a maximum imprisonment of 2 (two) years and a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah). In the formulation of the crime, it adheres to the concept of punishment adopted by the Criminal Code, namely the maximum system (indefinite system). Theoretically, the application of the indefinite system has several advantages, namely:²⁹

1. can show the level of seriousness of each crime;
2. provide flexibility and discretion to judicial authorities in applying criminal sanctions;
3. protect the interests of the offender himself by setting the limits of the power of punishment.

The weakness of this system is especially in the practice of applying criminal sanctions against defendants. One of the weaknesses of the indefinite system lies in the wide range of policies of the Public Prosecutor in carrying out prosecutions, as well as for judges in passing sentences against defendants. The breadth of the policy is because through an indefinite system it is possible for the Public Prosecutor and Judge to prosecute and sentence a defendant, from the general minimum to the relevant criminal threat.³⁰

Imprisonment in the Criminal Code is for life or for a certain time. Imprisonment for a certain period of time is a minimum of 1 (one) day and a maximum of 15 (fifteen) consecutive years. This means that the general minimum penalty for imprisonment is 1 (one) day and the general maximum threat is 15 (fifteen) years. Articles 529 and 530 of the Election Law do not stipulate a specific minimum in terms of their threats, so the Public Prosecutor and Judge can sue and sentence them to imprisonment ranging from 1 (one) day up to a special maximum threat of 2 (two) years. This also applies to fines, in the Criminal Code a minimum fine of 25 (twenty five) cents, the maximum limit for ballot printing companies is Rp. 5 Billion.

2. Comparison Of Criminalization of Ballot Printing Companies in Several Regulations Regarding Corporate Criminalization

As described above, that the punishment of a company printing ballots in Article 345 paragraph (1) and paragraph (2) jo. Article 529 and Article 530 of the Election Law are incomplete. For this reason, in answering the second problem, the author describes the comparison of corporate punishment in several laws and regulations, in order to provide answers and solutions to problems.

2.1. Comparison of Criminalization of Ballot Printing Companies in Several Regulations Regarding Corporate Criminalization³¹

The reforms launched in 1998 mandated the eradication of corruption, collusion and nepotism (KKN) which was considered to have plunged the Indonesian nation and state into a multidimensional crisis, especially economic downturn. The

²⁵ Asep Mulyana, *Op.Cit.*, p. 195.

²⁶ *Ibid.*

²⁷ Sudarto, 1977, *Hukum dan Hukum Pidana*, Bandung: Alumni, p. 47-55.

²⁸ *Op.Cit.*, p. 196.

²⁹ Colin Howard, dalam Barda Nawawi Arief, 1996, *Bunga Rampai Kebijakan Hukum Pidana*, Bandung: PT. Citra Aditya Bhakti, p. 131-132.

³⁰ *Op.Cit.*, p. 197.

³¹ Undang-Undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi, sebagaimana telah diubah dengan Undang-Undang Nomor 20 Tahun 2001 tentang Perubahan Atas Undang-Undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi.

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PTPK Law is a reflection of a legal product aimed at eradicating criminal acts of corruption that harm state finances or the state economy and hinder national development.³²

A new development regulated in the PTPK Law is that corporations are legal subjects of corruption that can be subject to sanctions. This was previously not regulated in Law Number 3 of 1971 concerning the Eradication of Corruption Crimes.

Article 1 point 1 of the PTPK Law states that a corporation is an organized collection of people and/or assets, whether they are legal entities or not.

Corporate punishment in the PTPK Law is spread in several articles with threats of capital punishment, imprisonment, and fines which are the main crimes. And additional criminal threats in Article 18 of the PTPK Law.³³

Although the normalization of criminal acts of corruption committed by corporations is also threatened by imprisonment and fines. Article 20 provides limitations regarding corporate punishment. The following is Article 20 of the PTPK Law:

- (1) In the event that a criminal act of corruption is committed by or on behalf of a corporation, criminal charges and penalties may be made against the corporation and or its management.
- (2) The criminal act of Corruption is committed by the Corporation if the crime is committed by people, either based on a work relationship or based on other relationships, acting within the corporate environment, either alone or jointly.
- (3) In the event that a criminal charge is made against a corporation, the corporation is represented by the management.
- (4) The management representing the corporation as referred to in paragraph (3) may be represented by another person.
- (5) The judge may order the management of the corporation to appear before the court himself and may also order that the management be brought before a court session.
- (6) In the event that a criminal charge is made against a corporation, the summons to appear and the submission of the summons shall be submitted to the management at the management's residence or at the management's office.
- (7) The principal punishment that can be imposed on a corporation is only a fine, with the maximum sentence being added by 1/3 (one third).

From the above provisions, it can be seen that in the PTPK Law "everyone" means an individual or corporation is threatened with imprisonment and a cumulative fine equal to the punishment of a ballot printing company. However, the cumulative punishment for corporations is limited in Article 20 of the PTPK Law, namely that the main punishment that can be imposed on corporations is only a fine with the maximum penalty plus 1/3 (one third).

Thus, imprisonment cannot be imposed on corporations, but imprisonment can be imposed on corporate management. Management is a corporate organ that carries out the management of the corporation concerned in accordance with the articles of association, including those who in fact have the authority and participate in deciding corporate policies that can be qualified as criminal acts of corruption.

2.2. Corporate Criminalization in The PPLH Law³⁴

According to Drupsteen, environmental law (*milieurecht*) is law related to the natural environment (*natuurlijk milieu*) in the broadest sense.³⁵ Its scope relates to and is determined by the scope of environmental management. Considering that environmental management is carried out primarily by the government, environmental law mostly consists of governmental law (*bestuursrecht*).³⁶

The PPLH Law stipulates prohibitions that should not be violated either by individuals or corporations as subjects of environmental law. These prohibitions are regulated in Article 69 which stipulates:

- a. Perform actions that result in environmental pollution and/or destruction;
- b. Importing B3 which is prohibited according to laws and regulations into the territory of the Unitary State of the Republic of Indonesia;
- c. Entering waste originating from outside the territory of the Unitary State of the Republic of Indonesia into the environmental media of the Unitary State of the Republic of Indonesia;
- d. importing B3 waste into the territory of the Unitary State of the Republic of Indonesia;
- e. Dispose of waste into environmental media;
- f. Dispose of B3 and B3 waste into environmental media;
- g. Releasing genetically engineered products into environmental media that are in contravention of statutory regulations or environmental permits;
- h. Clearing land by burning;
- i. Prepare an amdal without having a certificate of competence in preparing an amdal; and/or
- j. Providing false, misleading, omitting information, tampering with information, or providing false information.

³² Consideration Menimbang huruf a UU PTPK.

³³ Salah satunya ialah penutupan seluruh atau sebagian perusahaan untuk waktu paling lama 1 (satu) tahun (Pasal 18 huruf c UU PTPK).

³⁴ Undang-Undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup.

³⁵ Ruslan Renggong, 2016, *Hukum Pidana Khusus (Memahami Delik-Delik di Luar KUHP)*, Jakarta: Kencana, p. 158.

³⁶ Koesnadi Hardjasoemantri, 1999, *Hukum Tata Lingkungan*, Yogyakarta: UGM Press, p. 33.

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Business entity is a term used in the PPLH Law on corporate legal subjects. Corporations according to Article 1 number 32 of the PPLH Law are business entities, both legal entities and non-legal entities.

Criminal threats for corporations that violate the provisions of the PPLH Law are regulated in Article 97 to Article 115. In the construction of the PPLH Law, the main types of punishment are imprisonment and fines with a cumulative formulation.

It is different from the regulation of corporate punishment (company printing election ballot papers) in the Election Law. The PPLH Law provides complete criminal provisions for imprisonment and fines for corporations. If an environmental crime is committed by, for, or on behalf of a business entity, criminal charges and criminal sanctions will be imposed on:

- a. business entity; and/or
- b. the person who gives the order to commit the crime or the person who acts as the leader of the activity in the crime.³⁷

If an environmental crime is committed by a person, based on an employment relationship or based on other relationships acting within the scope of work of a business entity, criminal sanctions are imposed on the giver of the order or the leader in the crime without regard to the crime being committed individually or jointly.³⁸

Article 117 of the PPLH Law states that criminal charges are filed against the giver of the order or the leader of a criminal act with a criminal threat imposed in the form of imprisonment and a fine that is increased by 1/3 (one third).

If a criminal act is committed by a business entity, criminal sanctions are imposed on the business entity represented by a management authorized to represent inside and outside the court in accordance with the laws and regulations as a functional actor.³⁹

Functional actors are business entities and legal entities.⁴⁰ Criminal charges are imposed against the leaders of business entities and legal entities because the criminal acts of business entities and legal entities are functional crimes so that punishments are imposed and sanctions are imposed on those who have authority over physical perpetrators and accept the actions of the physical perpetrator. What is meant by accepting action in this article includes approving, allowing, or not adequately supervising the actions of physical perpetrators, and/or having a policy that allows such criminal acts to occur.⁴¹

The PPLH Law also regulates additional criminal or disciplinary actions in the form of:⁴²

- a. deprivation of profits derived from criminal acts;
- b. closure of all or part of the place of business and/or activity;
- c. repairs due to criminal acts;
- d. the obligation to do what is neglected without rights; and/or
- e. placement of the company under supervision for a maximum of 3 (three) years.

From the description above, it can be seen that the PPLH Law regulates corporate punishment with the main punishment in the form of imprisonment and a (cumulative) fine. Imprisonment is given to administrators who are authorized to represent inside and outside the court in accordance with the laws and regulations as functional actors. Meanwhile, fines are given to corporations (business entities).

2.3. Corporate Criminalization in The Money Laundering Law⁴³

Money laundering is a new crime in the legal system in Indonesia. The criminalization of money laundering has only started since the enactment of Law Number 15 of 2002 concerning the Crime of Money Laundering. The law was formed with the consideration, among other things, that crimes that generate large amounts of wealth are increasing, both crimes committed within national boundaries, as well as those that cross territorial boundaries.⁴⁴

The Law No. 15/2002 was then amended in 2003. In the end, it was revoked and replaced by Law No. 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering (hereinafter referred to as the Money Laundering Law).

The Anti-Money Laundering Law was established with the consideration that the crime of money laundering not only threatens economic stability and the integrity of the financial system, but can also endanger the foundations of social, national and state life based on Pancasila and the 1945 Constitution of the Republic of Indonesia.⁴⁵

Money laundering is any act that fulfills the elements of a criminal act in accordance with the provisions of the Money Laundering Law.⁴⁶ The Money Laundering Law has regulated corporate punishment. Article 1 point 9 states that "Every person is

³⁷ Pasal 116 ayat (1) UU PPLH.

³⁸ Pasal 116 ayat (2) UU PPLH.

³⁹ Pasal 118 UU PPLH.

⁴⁰ Penjelasan Pasal 118 UU PPLH.

⁴¹ *Ibid.*

⁴² Pasal 119 UU PPLH.

⁴³ Undang-Undang Nomor 8 Tahun 2010 tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang.

⁴⁴ Ruslan Renggong, *Op.Cit.*, p. 92.

⁴⁵ Koesnideran Menimbang huruf a UU TPPU.

⁴⁶ Pasal 1 angka 1 UU TPPU.

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an individual or a corporation." A corporation is an organized collection of people and/or assets, whether they are legal entities or not.⁴⁷

The formulation of punishment in the Anti-Money Laundering Law also uses a cumulative formulation with the type of punishment in the form of a principal sentence including imprisonment and a fine. The formulation of the crime of money laundering offenses is regulated in Article 3, Article 4 and Article 5. Provisions regarding corporate punishment are regulated rigidly or clearly. In the event that money laundering is committed by a corporation, the punishment shall be imposed on the corporation and/or the controlling personnel of the corporation.⁴⁸

Criminals are imposed against corporations if the crime of money laundering:⁴⁹

- a. Carried out or ordered by the controlling personnel of the corporation;
- b. Conducted in the context of fulfilling the purposes and objectives of the corporation;
- c. Performed in accordance with the duties and functions of the perpetrator or the giver of orders; and
- d. Done with the intention of providing benefits to the corporation.

The principal punishment imposed on the corporation is a maximum fine of Rp. 100 billion.⁵⁰ The Money Laundering Law also stipulates additional penalties against corporations in Article 7 paragraph (2) in the form of:

- a. Announcement of judge's decision;
- b. Suspension of part or all of the corporate business activities;
- c. Revocation of business license;
- d. Dissolution and/or prohibition of the corporation;
- e. confiscation of corporate assets for the state; and/or
- f. The takeover of corporations by the state.

In the event that the corporation is unable to pay the criminal fine, it is replaced with the confiscation of assets belonging to the corporation or the controlling personnel of the corporation whose value is the same as the criminal decision handed down. In the event that the sale of the assets belonging to the confiscated corporation is insufficient, imprisonment in lieu of a fine is imposed on the controlling personnel of the corporation by taking into account the fines that have been paid.⁵¹

The controlling person of the corporation is any person who has the power or authority to determine corporate policy or has the authority to carry out the corporate policy without having to obtain authorization from his superior.⁵²

The Money Laundering Law regulates the punishment of corporations, although with the same formula as the punishment for companies that print election ballots in the Election Law. The visible difference is the completeness of the criminal norm in the Money Laundering Law which separates the imposition of imprisonment and fines on corporations.

2.4. Perma No. 13 of 2016 Concerning Procedures for Handling Criminal Cases by Corporations

Perma No. 13/2016 has become a "fresh air" for law enforcement officers.⁵³ In addition to regulating the mechanism for criminalizing corporations, the Perma also provides guidelines for judges in imposing criminal sanctions on corporations.⁵⁴

Corporations as an entity or legal subject whose existence makes a major contribution to increasing economic growth and national development, but in reality, corporations sometimes also commit various criminal acts (corporate crimes) that have a detrimental impact on the state and society. The reality of the corporation can be a place to hide assets resulting from criminal acts that are not touched by the legal process in criminal liability.⁵⁵

Many laws in Indonesia place corporations as legal subjects of criminal acts that can be held accountable, but cases with corporate legal subjects submitted in criminal proceedings are still very limited, one of the reasons is that the procedures and procedures for examining corporations as perpetrators of criminal acts are still unclear. Therefore, it is deemed necessary to provide guidelines for law enforcement officers in handling criminal cases committed by corporations.⁵⁶

Corporations according to Article 1 point 1 of Perma No. 13 of 2016 are organized collections of people and/or assets, both legal entities and non-legal entities. The general provisions of the Perma also regulate the parent company, subsidiary company, merger, consolidation, separation, dissolution, etc.

⁴⁷ Pasal 1 angka 10 UU TPPU.

⁴⁸ Pasal 6 ayat (1) UU TPPU.

⁴⁹ Pasal 6 ayat (2) UU TPPU.

⁵⁰ Pasal 7 ayat (1) UU TPPU.

⁵¹ Pasal 9 UU TPPU.

⁵² Pasal 1 angka 14 UU TPPU.

⁵³ Hukumonline.com, *Disparitas Sanksi Pidana Korporasi di Berbagai UU*, (Online) <https://www.hukumonline.com/berita/baca/1t58875313748b9/disparitas-sanksi-pidana-korporasi-di-berbagai-uu/> (diakses pada tanggal 25 Juli 2020).

⁵⁴ *Ibid.*

⁵⁵ *Konsideran Menimbang huruf a dan b Perma No 13 Tahun 2016.*

⁵⁶ *Konsideran Menimbang huruf c Perma No 13 Tahun 2016.*

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A criminal act by a corporation is a crime committed by a person based on an employment relationship, or based on another relationship, either individually or jointly acting for and on behalf of the corporation inside and outside the corporate environment.
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Article 4 paragraph (1) determines that corporations can be held criminally liable in accordance with the provisions on corporate crime in the law governing corporations. In imposing a criminal offense against a corporation, the judge may assess the corporation's faults, including:⁵⁸

- a. The corporation may obtain profits or benefits from the crime or the crime is committed for the benefit of the corporation;
- b. Corporations allow criminal acts to occur; or
- c. The corporation does not take the necessary steps to prevent, prevent a bigger impact and ensure compliance with applicable legal provisions in order to avoid the occurrence of criminal acts.

According to Article 23 paragraph (1), a judge can impose a sentence on a corporation or management, or a corporation and its management. In the provisions of Article 23 paragraph (2), in imposing a crime, it is based on the respective laws that regulate criminal threats against corporations and/or management.

Thus, even though it has been regulated in Perma No. 13/2016, the punishment of companies printing election ballots must take into account the criminal formulation contained in the Election Law itself.

Article 25 of Perma No. 13/2016 states that:

- (1) The judge shall impose a sentence on the Corporation in the form of a principal and/or additional penalty.
- (2) The principal penalty that can be imposed on the Corporation as referred to in paragraph (1) is a fine.
- (3) Additional penalties are imposed on the Corporation in accordance with the provisions of laws and regulations.

2.5. Comparison of Corporate Sentencing in Several Regulations

After the author describes about each corporate punishment. The following can be drawn similarities between each of the regulations in the Election Law, PTPK Law, PPLH Law and Money Laundering Law:

- a. The type of crime is the main crime consisting of imprisonment and a fine;
- b. The criminal formulation is cumulative between imprisonment and fines.

While the differences in the comparison of each criminal provision can be seen in the following table:

Table 1. Comparison of Corporate Sentencing

Differentiator	Election Law	UU PTPK	UU PPLH	UU TPPU
Maximum imprisonment	2 years	Lifetime	15 years	20 years
Maximum fine	Rp. 5 billion	Rp. 1 billion plus a third of the principal penalty	Rp. 15 billion plus a third of the main crime	Rp. 100 billion
Main criminal segregation	-	It is regulated in Article 20. Criminal penalties may be imposed on corporations and or their management. The principal punishment for corporations is only a fine with the maximum penalty plus 1/3.	It is regulated in Articles 116 to 120. The imposition of criminal charges on business entities; and/or the person who gives the order to commit the crime or the person who acts as the leader of the activity in the crime. Fines for business entities, while imprisonment for administrators/ functional actors.	It is regulated in Article 7. The principal penalty imposed on a corporation is a maximum fine of Rp. 100 billion.
Additional penalties	-	confiscation of goods used or obtained from criminal acts of corruption; Payment of replacement money; Closure of all or part of the company for a	Deprivation of profits derived from criminal acts; Closure of all or part of the place of business and/or activity; Repair of the consequences of a criminal act; Obligation to do what is	Announcement of judge's decision; Suspension of part or all of the corporate business activities; Revocation of business license; Dissolution and/or

⁵⁷ Pasal 3 Perma No 13 Tahun 2016.

⁵⁸ Pasal 4 ayat (2) Perma No 13 Tahun 2016.

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maximum period of 1 year;	neglected without rights;	prohibition of the
Revocation of all or part of certain rights or elimination of all or part of certain benefits, which have been or may be granted by the government to the convict.	Placement of the company under supervision for a maximum of three years.	corporation; Confiscation of corporate assets for the state; Takeover of corporations by the state.

Source: processed from various sources (2020)

From the table above, it can be seen that the punishment for companies printing election ballots in the Election Law (Article 345 paragraph (1) and paragraph (2) in conjunction with Article 529 and Article 530) is incomplete. With the same formulation as the sentencing arrangements in other laws, namely cumulative with two main types of criminal. These provisions must provide legal certainty, especially regarding corporate punishment, considering that election crimes are different from other crimes, namely once every five years (according to the implementation of elections).

With an incomplete formulation, of course, there will be a risk of harming the democratic party in the election. This is mainly done by corporations that will have an impact on various fields, such as the economic, political, and security fields.

Crimes committed by corporations can damage moral measures of business behavior that damage public trust because these crimes are integrated into the structure of legitimate business.⁵⁹ Criminalization of corporations provides a deterrent effect for corporations and is a feature of strong law enforcement in a country.⁶⁰

CONCLUSION

Based on the discussion above, the conclusions that can be drawn in this paper include: 1) The regulation on punishment for companies printing election ballots in the Election Law is incomplete. The incompleteness of the regulation regarding the separation of the main criminal penalties in the form of imprisonment and fines. 2) The formulation of punishment for companies printing election ballots does not pay attention to the regulation of corporate punishment in several statutory provisions including the PTPK Law, PPLH Law, TPPU Law, and Perma No. 13/2016.

With the incomplete regulation of criminal penalties for companies printing election ballots, resulting in weak legal substance and affecting election law enforcement. Whereas election crimes have characteristics compared to other crimes. It only happens once every 5 (five) years or at the time of an election. Therefore, it is necessary to reconstruct the penalties for companies that print election ballots in the Election Law in order to ensure legal certainty and the implementation of law enforcement that creates honest and fair elections.

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⁵⁹ Asep N. Mulyana, *Op.Cit.*, p. 190.

⁶⁰ Sakeus Ginting, *Kebijakan Pidanaan Korporasi Dalam Tindak Pidana Pencucian Uang*, Jurnal Program Magister Ilmu Hukum Universitas Udayana, p. 11.

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