

The Nature of Law Enforcement of General Election Crimes in Indonesia

by Nasrullah Nasrullah

Submission date: 25-Jul-2023 02:27PM (UTC+0800)

Submission ID: 2136491924

File name: D2802033343.pdf (318.04K)

Word count: 8241

Character count: 45941

The Nature of Law Enforcement of General Election Crimes in Indonesia

Meyke M. Camaru¹, Mulyati Pawennei², Syaharuddin Nawi² & Nasrullah Arsyad² Paramitha²

¹Doctor of Law Student, Universitas Muslim Indonesia, Indonesia

²Faculty of Law Student, Universitas Muslim Indonesia, Indonesia

³Master of Law Student, Universitas Muslim Indonesia, Indonesia

1

ABSTRACT

The purpose of this study is to find out and analyze the nature of mediation for divorce cases in the legal area of the High Religious Court. The purpose of this research is (1). To find out and understand and discover the essence of law enforcement on general election crimes in Indonesia. (2) To find out and analyze the effectiveness of handling election crimes in the Criminal Justice System in Indonesia. (3) To find out and understand and discover the factors that influence the law enforcement of general election crimes in Indonesia. The type of research used is a combination of normative legal research (Doctrinal) and supported by field/empirical data (NonDoctrinal). Field data were obtained through direct interviews at DPR-RI Commission II, General Election Commission (KPU), and Election Supervisory Body (Bawaslu) as well as through questionnaires to respondents representing elements of the police, the Attorney General's Office, Election Practitioners, and Election Observers, Academics, and members of the Provincial and Regency/City DPRD. The results of this study indicate that: (1). The nature of law enforcement on general election crimes in Indonesia based on Election regulation No. 7 of 2017 has not shown that there are steps in protecting all parties in the election contestation while at the same time not being able to realize honest elections, have integrity and justice. (2). Position (legal standing) Bawaslu at the Sentra Gakkumdu proved effective and inconsistent with the SPP construction in Indonesia. (3). The factors that influence the enforcement of general election crimes in Indonesia are, First, the substance of the law, the Election Law, and the construction of regulations that give authority to each institution that handles election crimes are still not regulated in detail and rigidly. Second, regarding Legal Structure Factors, Bawaslu institutions do not have the competence and jurisdiction as criminal law enforcers. Third, Legal culture, the culture of the people who are still unfamiliar with election law, the level of understanding and compliance of the community with law enforcement on election crimes is still very low, and the culture of money politics in society.

Keywords: General elections; Criminal act; Law Enforcement; Gakkumdu.

Date of Submission: 25-01-2023

Date of Acceptance: 08-02-2023

I. INTRODUCTION

Law enforcement for General Elections (from now on written as Elections) is fundamental in realizing elections with integrity, fairness, and credibility in line with the principles of elections. Election law enforcement is intended to guarantee the upholding of election regulations while at the same time ensuring that the implementation of elections follows statutory provisions and reflects the implementation of democracy in Indonesia. One form of election law enforcement is the law enforcement of criminal acts that occur during the election process, which are carried out by various institutions that form a criminal law enforcement system that specifically handles every action that includes the qualifications of election crimes. The presence of law enforcement facilities for election crimes is a response to various criminal acts during the election process, even since the first elections were held in Indonesia. Criminal acts in the election then developed, not only conventional crimes that often occur repeatedly, such as money politics but also include election crimes that use technological devices such as hate speech and black campaigns on social media.

Responding to such conditions, there are several institutions that carry out election law enforcement duties in Indonesia, starting from law enforcement officials known in the criminal justice system consisting of police, prosecutors, and judges. In addition, in the law enforcement system, election crimes are also carried out by other institutions, namely the Election Supervisory Body (Bawaslu), which is also given authority by election regulations to handle election crimes.

In essence, efforts to uphold election law, which also includes law enforcement on election crimes, are an effort to realize elections with integrity and fairness, which continue to be carried out as an areal manifestation of the implementation of democracy. One of the basic conditions of democracy is the existence of an open and fair general election system. Free and fair election). Honest and fair elections can be achieved if there are legal instruments that enforce election law. Therefore, the presence of election criminal law enforcement agencies is a form embodiment of people's sovereignty and guarding the 1945 Constitution, which outlines the principles of Elections, namely Direct, General, Free, Confidential, Honest, and Fair or better known as 'LUBER JURDIL.'

Observing the mandate of the constitution and people's sovereignty and eliminating perceptions of a crisis of distrust in the implementation of elections, the election supervisory institution as one of the election law enforcement systems underwent a fundamental change, where after the reform period the spirit of democracy was upheld, institutional strengthening, organization, functions, membership and authority from the election supervisory body known as Panwaslak is the top choice. The Panwaslak name was later changed to the Election Supervisory Committee (Panwaslu). Efforts to strengthen Panwaslu can be seen in Law no. 3/1999, which has regulated more clearly the Panwaslu institution, organization, membership, and duties and functions.

Over time, concurrent with the regulation of the General Election, which was constantly being refined, in the 2004 Election, the authority of the Panwaslu increased. The Panwaslu institutional arrangements are contained in Law No. 12/2003 concerning the General Election of Members of the Regional Representatives Council and the Regional People's Representative Council. This Law revokes Law No. 3 of 1999.

The big leap from the existence of an election supervisory agency occurred in the 2009 election event. If, in the previous era, the election supervisory agency was temporary or ad hoc, based on Law Number 22 of 2007, it was permanent and changed its name to the General Election Supervisory Body (Badan). Bawaslu). At that time, the position of Bawaslu was equivalent to the KPU. It broke away from the position of institutions that were subordinate to the KPU, such as during the New Order era and the 2004 elections.

Changes in the position of Bawaslu also go hand in hand with the strengthening of Bawaslu in terms of authority. Under Law No. 22/2007 and Law No. 42/2008, the duties and powers of Bawaslu are to oversee the election stages following the law, receive reports and alleged violations, and provide recommendations on findings of violations to the KPU or other authorized agencies. Regency/Municipal Supervisory Committees (Panwas) are given the authority to resolve findings and reports of election disputes if they do not contain elements of a criminal act.

Furthermore, in Law No.15/2011, there are three duties and authorities of Bawaslu as an election supervisory institution in the context of election law enforcement. First, supervise all stages of the election administration process in the context of preventing and taking action against election violations. Second, receive and review reports regarding alleged violations of election administration provisions and alleged violations of criminal election provisions. Third, resolve election administration disputes in a final and binding manner except for two matters of dispute. The two matters referred to are administrative disputes regarding the determination of election participants and disputes regarding the determination of the list of candidates for members of the DPR and DPRD.

The position of Bawaslu as a settlement of election disputes was further strengthened by Law Number 10/2016, which states that Bawaslu's decisions are binding. The next strengthening of Bawaslu authority is in Law No. 7 of 2017. One of the strengths is that the Bawaslu findings are no longer in the form of recommendations but have become decisions; Bawaslu now has the authority to decide on administrative violations so that the findings of Election supervisors are not only recommendations, but decisions/decisions that are must be carried out by the parties. In detail, article 95 of Law Number 7 of 2017 states that Bawaslu has the authority to receive and follow up on reports relating to allegations of violations against the conduct of elections. Bawaslu also has the authority to examine, review, and decide on violations, both election administration violations and money politics violations. Then in election process disputes, Bawaslu has the authority to receive, examine, mediate, adjudicate, and decide on settlements submitted by election participants.

Bawaslu's various powers, especially in carrying out election law enforcement, are not only limited to general elections held to elect candidates for members of the DPR, DPRD, DPD, and President-Vice President but also include supervisory duties as well as law enforcement in the election of candidates for governor, regent, and mayor. This is seen in Article 22B of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors to Become Laws.

Law enforcement against regional head elections is not much different from election law enforcement. This is because the implementers, the implementation process, and the problems that occur in the two forms of the election are also not much different; it's just that the subjects chosen have significant differences. Regarding law enforcement in regional elections, the issue of violations and criminal acts that have occurred are also

processed by law enforcers to enforce the law in regional elections, including law enforcement carried out by Bawaslu.

Thus, In short, it can be said that the implementation of law enforcement by Bawaslu is not only limited to the election context but also covers the election context. In particular, the issue raised in this research is the form of law enforcement authority by Bawaslu, which is limited to the context of election law enforcement.

Tracing back the authority of Bawaslu as one of the elements of election law enforcement, it is clear that the authority of Bawaslu is very large, which at the same time also shows the workload that is so much carried out by this post-reform institution. In principle, the magnitude of this authority will support the implementation of duties and functions as an institution that supervises elections and ensures. The holding of elections following statutory provisions. However, the magnitude of this authority, on the other hand, will be a 'boomerang' for an institution because it opens up space for the implementation of tasks not optimally in one aspect, such as Bawaslu, which does not optimally resolve criminal cases that occur in the election process.

In response to this, steps to change and develop the authority of the Bawaslu to become an ideal election supervisory institution are carried out continuously.

Changes in the legal framework for election organizers, namely the KPU and BAWASLU, are linear with various changes and improvements to the Election Law, which always changes before the rituals of the election democratic party. The author found that there have been several changes, namely:

1. The Law on Elections that have been issued since the election in the reform era, namely Law no. 3 of 1999 concerning Elections.
2. UU no. 4 of 2000 concerning Amendments to Law no. 3 of 1999.
3. UU no. 12 of 2003 concerning general election for members of the People's Legislative Assembly, Regional Representative Council, and Regional People's Representative Council (This law revokes Law No.4 of 2000 and revokes Law No.3 of 1999).
4. UU no. 20 of 2004, concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2004 concerning Amendments to Law Number 12 of 2003 concerning the General Election of Members of the People's Representative Council, Regional Representative Council, and Regional People's Representative Council, to Become Laws.
5. UU no. 10 of 2006, concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2006 concerning the Second Amendment to Law Number 12 of 2003 concerning the General Election of Members of the People's Representative Council of the Regional Representative Council, and the Regional People's Representative Council to become Laws
6. UU no. 10 of 2008, concerning the general Election of Members of the People's Representative Council, Regional Representative Council, and Regional People's Representative Council. (This law revokes Law No. 12 of 2003 and Law No. 10 of 2006).
7. UU no. 17 of 2009 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2009 concerning Amendment to Law Number 10 of 2008 concerning the General Election of Members of the People's Representative Council, Regional Representative Council, and Regional People's Representative Council to Become Law.
8. UU no. 8 of 2012 concerning the General Election of Members of the People's Representative Council, Regional Representative Council, and Regional People's Representative Council (This law revokes Law No. 17 of 2009 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2009 concerning Amendments to Law Number 10 of 2008 concerning the General Election of Members of the People's Representative Council, Regional Representative Council, and Regional People's Representative Council to Become Law No. 10 of 2008 and revoked Law no. 10 of 2008)
9. Law Number 7 of 2017, this Election Law simplifies and harmonizes, and combines several election arrangements in one law, namely: Law Number 42 of 2008 concerning the Election of the President and Vice President, Law Number 15 of 2011 concerning General Election Organizers, and Law Number 8 of 2012 concerning General Election of Members of the People's Representative Council, Regional Representative Council, and Regional People's Representative Council.

The various amendments and improvements to the Election Law are, of course, intended to be able to answer various kinds of problems that have arisen in several previous elections, apart from that due to the need for quality improvement due to the influence of political configurations. Due to changes in population demographics and most substantively for the sake of improvement and adjustment to the implementation of elections that have a high level of escalation and political dynamics, especially for the election of members of the DPR, DPD and DPRD are certainly inseparable from various violations, findings or reports and other acts that violate and the most crucial are all fraudulent acts that have the potential to harm the election itself, so that to protect the purity of elections which are very important for democracy, the legislators have made several

fraudulent acts in elections as criminal acts. Thus, the Law on Elections, in addition to regulating how elections are carried out, also prohibits a number of actions that can destroy the nature of the free and fair election and threaten the perpetrators with punishment. All of these potential election law violations are formulated in Election Law Number 7 of 2017, which are categorized as Findings and Election Violations Reports, namely: Violations of the Election Organizer Code of Ethics, Election Administration Violations, Election Process Disputes, Election Disputes, and Election Crimes.¹

The various categories of violations, such as election crime, are of great concern. These various violations can be categorized as election crimes that occur throughout the stages of the implementation of the election. Election crimes have undergone many changes, both in the form of increasing the types of criminal acts to differences regarding the addition of criminal witnesses.

For an act to qualify as a crime must understand various elements, both subjective and objective elements. One of the basic principles of the qualifications of a crime is the existence of errors included in the subjective element. Error as a subjective element is an element that is inherent in or related to the perpetrator himself, including everything that is contained in his heart.² Therefore, any action taken by any party related to the implementation of the election and carried out on purpose is a form of crime in the election.

According to Dedy Mulyadi, an election crime is any person, legal entity, or organization that deliberately violates the law, disrupts, obstructs, or interferes with the general election held according to law. Apart from that, general election crimes can be interpreted as a series of criminal acts committed by subjects within the scope of the stages of the election administration, which are regulated both in the election law and outside the election law.³

Election crime is a threat that can endanger the democratic process for people's sovereignty. Various reasons make people commit election violations, one of which is to get as many votes as possible. The forms of violations that occurred varied, such as obstructing people exercising their right to vote, committing bribery or money politics, committing fraud, claiming to be someone else in participating in the election, thwarting the voting that has been carried out, vandalizing or commit acts of violence and threats, as well as other violations that are contrary to criminal law.

Election crimes have been regulated in Law Number 7 of 2017 from the preparation stage for the holding of elections to the voting stage. The types and classifications of election criminal acts are regulated in the provisions for election crimes. Regarding sanctions, election crimes are punishable by imprisonment and cumulative fines. For this reason, the Presence of Law Number 7 2017 concerning the General Election of Members of the People's Representative Council, the Regional Representative Council, and the Regional People's Representative Council at the same time has regulated the formulation of criminal acts (part) found in the Fifth Book, (Chapter II, Article 488 to Article 554).

There are around 66 norms governing the subject, object, fine, and sentence period that are deemed to violate legal certainty and justice in elections. Even This law has regulated well specifically regarding the type and severity of threats, as well as being accompanied by the prosecution of any violations of election crime cases or deviations from election laws and regulations through criminal proceedings involving the role of law enforcement officials from the Election Supervisory Body (Bawaslu) in the Integrated Law Enforcement Center (GAKKUMDU), Police, Attorney, Court.

Various changes and improvements to the legal framework and handling scheme that are clear and bright should be able to resolve various reports of criminal acts that occur in various stages of the election and should be able to eliminate fears of stagnation in law enforcement of election crimes. Still, the reality refers to the implementation and practice of the 2019 election, various problems, and many obstacles that occurred in enforcing the election crime act.

Based on data released by the General Election Supervisory Body during the 2019 simultaneous elections, Bawaslu has received findings and reports of 2,798 election criminal acts in Indonesia. Of the 2,798 reports, 582 cases continued to the investigation stage, while 345 cases continued to the examination stage at trial courts and have permanent legal force (inkracht van gewijsde).[4] From the description of the data on the number of reports of criminal acts of 2,798, it can be explained that public reports of violations of general election crimes were eliminated and dismissed at the beginning of the report, as many as 2,216 findings and reports.

¹Undang-Undang Nomor 7 Tahun 2017 tentang Pemilihan Umum

²P.A.F Lamintang, *Dasar-Dasar Hukum Pidana Indonesia*, (Bandung: PTCitra Aditya Bakti, 2013), hal. 193. Lihat juga dalam S.R Sianturi, *Asas-Asas Hukum Pidana Indonesia dan Penerapan*, Cet.3, (Jakarta: Stora Grafika, 2003), hal. 208.

³Dedy Mulyadi, *Perbandingan Tindak Pidana Pemilu Legislatif Dalam Perspektif Hukum Di Indonesia*, (Bandung: Refika Aditama, 2013), hal. 186-187

There were 2,216 (Two thousand One Hundred Forty-Two) reports of general election crimes, which were stopped at the start and continued to examinations at the District Court and the High Court (Appeal), only resulting in court decisions in 345 cases.

Table 1. Alleged TP Election Violations in Indonesia in 2019
based on data from the RI Bawaslu



Table 2. Distribution of 2019 election decision-making decisions in Indonesia
based on RI Bawaslu Data



The decisions that were executed were very far from the number of initial reports showing various indicators, so this situation gave rise to a phenomenon of distrust, anxiety, and pessimism from the public towards the law enforcement of election crimes. Based on the description above, then to welcome the implementation of Simultaneous Elections in Indonesia in 2024, the handling of election crimes still requires arrangement and improvement; this conception of handling must be criticized and studied more comprehensively to realize election¹ with integrity and justice in Indonesia. These things became the basis for the authors to propose research on the Nature¹ of Law Enforcement of General Election Crimes in Indonesia so that researchers can provide a novelty for law enforcement on general election crimes in Indonesia.

II. RESEARCH METHODS

Research Type

Referring to the research title and the formulation of the problem set by the author, in this study, a combination of Normative Legal Research (*doctrinal*) and supported by field/Empirical data (*non-doctrinal*) is legal research using 2 (two) research approaches. In this case, the researcher conducted 2 (two) studies at once, namely normative legal research and empirical legal research studies.⁴

Legal research is aimed at finding the truth of coherence, namely whether there are legal rules according to norms in the form of orders or prohibitions following legal principles and whether a person's actions are following legal norms (not just according to legal rules) or legal principles.⁵ In this case, there are a number of things that are not contained in legal norms and occur in the legal field, then become the basis for choosing field data as a support, specifically through mechanisms and explanations from the main parties, namely Bawaslu, KPU, Commission II DPR- RI and election observers.

Types, Data Sources, and Legal Materials

Referring to the choice of normative legal research types supported by field / empirical data, the data to be analyzed comes from:

1. Primary data, namely data obtained by researchers through direct and directed observation and interviews with competent sources and respondents to obtain valid and complete answers according to the object of this research study.
2. Secondary data, namely data found through the results of a literature review through various reading sources related to the issues raised. Secondary data consists of the following:
 - a) Primary legal materials; is legal material that is binding and consists of basic norms or rules. Primary legal materials consisting of:
 1. The 1945 Constitution of the Republic of Indonesia.
 2. The Criminal Code.
 3. Law Number 7 of 2017 concerning Elections.
 4. PERBAWASLU AND PKPU
 - b) Secondary legal materials, which contain explanations regarding legal materials. Not binding but explaining primary legal materials, which are the result of processed opinions or thoughts of experts or experts who study a particular field in particular which will provide directions as to where the researcher will lead Secondary legal materials, secondary legal materials include, namely:
 - a. Expert opinion.
 - b. Political mind.
 - c. Books and the internet.
3. Tertiary Legal Materials
Tertiary legal materials, namely materials that provide information about primary legal materials and secondary legal materials. Tertiary legal materials consist of the following:
 - a. Law Dictionary.
 - b. Various Magazines
 - c. Indonesian Encyclopedia.

Population and Sample

Population

The population in SoerjonoSoekanto's perspective is defined as several people or units with the same characteristics. Departing from this, the population in this study are all members of Commission II, Bawaslu commissioners, KPU commissioners, police, prosecutors, election practitioners, election observers, academics, as well as provincial and district/city DPRD's.

Sample

The sample or population that will be selected as respondents is only limited to a few people who are deliberately selected with the Stratified Proportional Random Sampling system. The samples determined were the Chairperson of Commission II DPR-RI, one Bawaslu commissioner, one KPU commissioner, one KPUD commissioner, and Regional Bawaslu commissioner, and one election observer. Furthermore, the author also circulated a questionnaire to 50 respondents representing elements of the Police, elements of the Attorney General's Office, Election Practitioners and Election Observers, Academics, as well as Provincial and Regency/City DPRD's

⁴Program Pascasarjana Universitas Muslim Indonesia, *PedomanPenulisanDisertasi*, (Makasar, 2020)

⁵Peter Mahmud Marzuki, *Penelitian Hukum*, Edisi Ke-9, (Jakarta: PrenadamediaGrup, 2014), hal. 47.

Data Collection Techniques

In the framework of collecting data from objects to be studied and analyzed, the authors carry out several stages to produce data, while the stages are:

1. Observation
Through this method, the author will directly observe the role of election supervisory institutions in resolving election crimes.
2. Interview
The stages of interviews were carried out by researchers with predetermined sources. This interview was conducted directly based on the substance of the issues raised.
3. The questionnaire is by providing a list of questions that have been prepared in advance and regularly made in a closed form (*closed form*)
4. Documentation
In perfecting data collection, documentation actions related to processes and data that are directly viewed will be used by researchers.

Data analysis technique

Legal data analysis is a method used to examine all available data from various sources. After the primary data and secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials have been collected using the techniques set out above, the systematization of the legal materials is carried out, identifying legal materials following the group of problems proposed in the research. This. Furthermore, interpretation and analysis are carried out with legal analysis in the form of legal arguments supplemented by theoretical studies. The data analysis used in this research is qualitative analysis.

1

III. RESEARCH RESULTS AND DISCUSSION**The Nature of Law Enforcement of General Election Crimes in Indonesia**

Law enforcement and election regulations are essential for free, fair, and credible elections. Election laws and regulations that are upheld will not only show the basic legal framework for elections that are implemented and respected but will also be able to convince voters of the legitimacy of the electoral process. Enforced election laws will also create accountability, warn all parties to comply with the law, act as a deterrent, increase transparency, and generate confidence in and acceptance of election results. There are various kinds of law enforcement from election regulations used in the implementation of elections. Referring to the Election Law, election law enforcement is carried out against election violations which more specifically consist of election administrative violations, election organizer code of ethics violations, process disputes, election state administration disputes, and election result disputes, and election criminal acts.

1. Before discussing the nature of law enforcement for election crimes, it is necessary to mention the terms and definitions of election crimes. In general, the term election crime is the same terminology or is part of a crime in the criminal law regime. Another term for "crime" is "criminal act" or "delict"⁶, which in Dutch is called *strafbaarfeit*. If it is related to elections, it can be termed election offense or election crime. By using the term offense or crime elections, he will be more specific, only related to criminal acts that occur in the process of holding elections.
2. In a sense, the term election crime is intended for acts/crime that occurred in or relating to the implementation of the stages of the election. According to Dedy Mulyadi, an election crime is any person, legal entity, or organization that deliberately violates the law, disrupts, obstructs, or interferes with the general election held according to law. Apart from that, general election crimes can be interpreted as a series of criminal acts committed by subjects within the scope of the stages of the election administration, which are regulated both in the election law and outside the election law.⁴⁷
3. Election crimes, according to Topo Santoso, namely: All criminal acts related to the holding of elections, are regulated in the Election Law as well as in the Election Crime Act.^[5] In Law Number 8 of 2012, election crimes are defined as criminal acts of violation and crimes against the provisions of election crimes as stipulated in the Election Law. Based on this definition, actions/actions that can be considered election crimes are criminalized under the Election Law⁸. Following this definition, it can also be understood that an election crime is a violation of an obligation, in which case the violation is subject to criminal sanctions in the Election Law.

⁶"Delik" merupakan istilah yang umum dipakai oleh para sarjana. Istilah ini diterimasecara umumtanpaperdebatan.

⁷Dedy Mulyadi, *Perbandingan Tindak Pidana Pemilu Legislatif Dalam Perspektif Hukum di Indonesia*, (Bandung: Refika Aditama, 2013) hal.186-187

⁸Topo Santoso, *Tindak Pidana Pemilu*, Cetakan I, (Jakarta: Sinar Grafika, 2006)

One form of election law enforcement that has long been practiced in the election regime in Indonesia is election crime law enforcement. Contemplating organizing elections which were first carried out in 1955 in Indonesia. Since Indonesia's independence the election regulations, which at that time used Law Number 7 of 1953, had accommodated the form of law enforcement for election crimes.

In Law Number 7 of 1953, arrangements for election crimes are contained in Chapter XV concerning criminal articles, starting from Article 113 to Article 129, so there are 17 articles regarding election crimes regulated in this Law. Substantially, there are four types of these provisions, of which 14 articles contain criminal acts, one article deals with seizing/destroying evidence, one article deals with additional punishment, and one article deals with types of criminal acts. Of the 14 criminal acts prohibited in this law, 12 are categorized as election crimes, while the remaining two qualify as criminal offenses.

Referring to the Election Law that existed at that time, there were 14 types of election crimes, and there were 12 election crimes whose subjects were anyone and a human being. So, legal entities or organizations/parties cannot become subjects. Meanwhile, other subjects that are regulated are only direct election organizers and employers who prohibit their workers from voting. With such provisions, the criminal provisions in this law in no way regulate fraud committed by political parties as eligible participants in 1955.⁹

The regulation of election crimes since the beginning of the implementation of elections in Indonesia shows the vulnerability of the election implementation process to actions that lead to criminal acts that can interfere with the process or results of the elections being held. Therefore, law enforcement for elections through the enforcement of criminal acts is very important in implementing elections in Indonesia. The importance of regulating the law enforcement of election crimes is then always reflected in the regulation of every legal basis for implementing elections in Indonesia to date, which is carried out through Law Number 7 of 2017 concerning General Elections.

In its development, the regulation of election crime instruments has been maintained in support of the holding of elections in Indonesia, even though there have been various changes in the legal basis for elections. It is so important to accommodate election criminal acts in the regulation and implementation of elections because, as part of the electoral management system, the provisions for election crimes are basically to support the realization of honest and fair elections or *fair elections*.

A *fair election* is a form of holding democratic elections with the ability to guarantee fair contestation and uphold equality. Election correlations that are fair in terms of accommodating election crimes in election regulations are based on an election legal framework that is designed based on the principle of impartiality or not benefiting only one of the parties that are currently competing. In this case, the regulation of election crimes in election regulations will protect all parties because law enforcement on election regulations is not selective and in line with the principle of equality *before the law* or the principle of equality before law, which is the basic principle in a rule of law state.

Realizing factually honest and fair elections is done by regulating them through normative rules. As a normative rule that is preventive and repressive, the election regulation governing the existence of qualifications for election crimes is a form of prevention because it contains provisions regarding actions that may not be carried out during the election stages. After all, when this is violated, the act qualifies as a crime. Election.

On the other hand, regulation of election crimes in election regulations also reflects repressive normative rules because, in addition to determining the threat of criminal sanctions for parties who commit violations, the current election regulations also contain law enforcement agencies for election crimes.

Based on such a construction, law enforcement of election crimes is a form of election law enforcement that is punitive or focuses on imposing sanctions. The punitive nature of law enforcement for election crimes will be illustrated by the role of law enforcement for election crimes, both from Bawaslu to the panel of judges who handle election crimes in imposing criminal sanctions on parties who commit election crimes.

Concretely, sanctions against election crimes have also been contained in election regulations indicating that there is a goal of election law enforcement so that elections are held honestly and fairly and are like imposing legal sanctions on perpetrators. Another thing that relates to the law enforcement of election crimes is corrective.

The corrective intended by the author is not to correct every criminal election act and then divert it into other forms of violation so that the criminal act is not continued in the criminal justice process. Still, the corrective form is intended to be a matter of improvement in the process or regulation of Election regulations specifically also regulates the law enforcement of election crimes.

⁹Topo Santoso dan Ida Budhiati, *Pemilu di Indonesia (Kelembagaan, Pelaksanaan, dan Pengawasan)*, (Jakarta: Sinar Grafika, 2019) hal.40

As explained in the background section, the ineffectiveness of law enforcement on criminal acts committed by Gakkumdu is because only a small portion of the findings and reports on election crimes received favorable decisions. *Craft* from the court, then this actually shows that there are various problems in practice, so the practice of law enforcement on election crimes should be improved with the aim of law enforcement on election crimes regulated in election regulations to be more effective at the implementation level.

The importance of regulating election crime can be reduced to two important things, namely: *First*, the norms of election crimes are aimed at protecting election participants, implementing agencies, and voters from various acts of detrimental election violations and crimes. *Second*, the norms of election crime aim to uphold the rule of law and society in the administration of elections.

The two important purposes or meanings in regulating election crimes in each Election Law are based on the condition that the implementation of elections is a competition to get the most votes from the public. It doesn't matter when each competing participant (in this case, the election participant) carries out each stage following the existing provisions. However, it will be different when the Election participants carry out various methods, which are a form of violation and action. Law, especially criminal acts, harms many people, starting from other participants and organizers to society in general.

Any criminal provisions formed for legal purposes must reflect the purpose of drafting laws, including the Election Law, which is intended to provide every effort to prevent violations, corrupt practices, illegal practices in elections, and rules regarding election lawsuits. These various actions, if there are no means for solving and enforcing them, will have a detrimental impact on the community. Therefore the existence of criminal law in the Election Law shows that there are steps in protecting losses for all parties in the election contestation as well as ensuring that elections are carried out with honesty and integrity.

Losses experienced by participants can be in the form of the failure of the person concerned to obtain a seat due to fraud by other participants directly or through unfair efforts through collusion with election organizers. Meanwhile, the losses experienced by the organizers could be in the form of disruption to the implementation process, the integrity of the organizers, and the administration of elections, which are their responsibility. Meanwhile, the loss of the community as voters can occur in the form of the non-occurrence of the process of converting votes into seats according to the will of the voters through the voting process carried out by the voters. In order to protect the rights of various interested parties in elections, criminal law is used as one of the instruments to maintain it. Therefore, the orderly holding of elections must be maintained by using criminal law.

The existence of violations and actions that harm other parties, including the public, in the election process that occur from election crimes committed by certain parties actually affect the principle of people's sovereignty. The principle of popular sovereignty is the philosophical foundation of the election itself. Elections place the people as the main point of primary sovereignty (*primary sovereignty*)¹⁰. In line with this, elections are needed as a mechanism for realizing the principle of people's sovereignty. Through elections, the people will not only choose people who will be their representatives in administering the country but also choose programs that will become state policy in the next government. Therefore the election of people's representatives and the implementation of a government in accordance with the people's choice are the objectives of the election.

In essence, the right to vote and the right to be elected are basic rights for every citizen within a democratic rule of law state. One aspect of democratic elections formulated by the International Institute for Democracy and Electoral Assistance (International IDEA) is the right to vote and be elected.

This discussion of the right to vote and the right to be elected means that the legal framework must ensure that all citizens who meet the requirements are guaranteed to be able to participate in every election without discrimination. The guarantee that every citizen can use the right to vote and be elected is so important that the 1945 Constitution regulates this right as a citizen's human rights that are guaranteed and protected by the constitution. Therefore, law enforcement on criminal acts, in addition to containing regulations on the right to vote and vote in election regulations, is also a form of protecting the right to vote and be elected in the election process as a mandate from the 1945 Constitution.

The right to vote and be elected is, in fact, also in line with honest and fair elections, as explained by the author in the previous section, which is the principle of holding elections in Indonesia. This principle of honesty implies that elections must be carried out according to the rules to ensure that every citizen has the right to vote as he wishes while at the same time placing the votes of voters in the same position as a form of representation of their votes which may not be manipulated by various actions that lead to the type of election crime.

Meanwhile, in a harmonious context, apart from the principle of honesty, the principle of fairness also relates to the right to vote and be elected. The fair principle referred to by this writer relates to the law enforcement of election crimes resulting from law enforcement actions against any action that affects the

¹⁰FajlurrahmanJurdi, *Pengantar Hukum Pemilihan Umum*, (Jakarta: Kencana, 2018), hal. 18.

exercise of the right to vote and to be elected by every citizen. For example, when a person is about to exercise his right to vote to elect a candidate for his representative, any form of money politics that could affect his right to vote must be dealt with strictly through law enforcement on election crimes. This is intended in addition to maintaining the purity of the voter's voice will also provide justice for the candidate to be elected to protect their rights when the process of voting for the chosen candidate is carried out.

The existence of actions that will interfere with or even hinder the realization of the implementation of the principle of people's sovereignty, including actions that qualify as criminal acts, is actually a form of disturbance and violation of people's sovereignty. Thus, the law enforcement of election crimes is intended to strengthen the position of people's sovereignty through the process of holding elections.

So elections can become a vehicle for the manifestation of people's sovereignty, and the results are truly a form of people's sovereignty, and the results are truly a form of the will of the people, one of which is emphasized is the existence of justice in the implementation of elections. The choice of the election system and administration must consider which system best reflects justice.

Electoral justice itself is a guaranteed mechanism in a country to:

- a) Ensure that every action, procedure, and decision related to the process of holding elections is by laws and regulations.
- b) Protect or restore the rights of citizens related to elections
- c) Provide an opportunity for citizens who believe their rights related to elections have been violated to file charges, submit their cases to be heard, and accept decisions regarding these cases.

The election justice system is an important instrument for upholding the law and fully guaranteeing the application of democratic principles through the implementation of free, fair, and honest elections. The election justice system was developed to prevent and identify irregularities in elections, as well as a means and mechanism for correcting these irregularities and imposing sanctions on perpetrators of violations. Furthermore, election justice can be achieved through the following seven mechanisms:

1. An effective complaint system and response mechanism to such complaints.
2. Supervision of each stage of the Election in order to prevent violations of Election provisions
3. Justice in the form of punishment for someone who is proven to have violated election administration provisions or for someone who has been proven to have violated criminal election provisions.
4. Restorative justice is justice in the restoration of rights or correction of legal action.
5. Electoral justice is obtained through the implementation of other alternative mechanisms that are informal
6. Procedural justice is good in the form of execution of *due process* and realizing restorative justice.
7. The right to obtain an effective remedy in all stages of the election administration.

Thus, the importance of upholding criminal law in the implementation of elections as outlined in the form of election regulations and then implemented at the practical level becomes very important apart from the aim of strengthening people's sovereignty as well as in the framework of realizing fair elections.

Electoral justice is an instrument used to ensure the legitimacy of democracy and the credibility of elections. An election is said to be democratic when in its implementation it has put the meaning of election justice as the main spirit in the holding of elections. Whichever electoral system is used in an election, the most important thing to understand is that elections are a mechanism born to provide legitimacy to democratic power.

The election justice system needs to follow certain norms and values so that the election process is more credible and has high legitimacy. The election justice system must be seen as operating effectively and demonstrating independence and impartiality to realize fairness, transparency, accessibility, equality, and inclusivity. The broader electoral justice system includes mechanisms to ensure a credible resolution of election issues.

Indonesia, as a constitutional state which is also a developing country, must ensure the presence of justice through guarantees of legal certainty as one of the ways. It is important to note that the legal system in a developing country which is characterized by the strong domination of religious or other traditions and the dominance of political intervention, makes legal certainty difficult to provide. Therefore it takes courage to break the legal system out of such a model.

To ensure fair elections, protection is needed for voters, election participants, and the people from all kinds of force, intimidation, bribery, and other fraudulent practices that will affect the purity of election results. To protect the purity of the election, which is very important for democracy, legislators have made ²eral fraudulent acts in elections a crime. Under these conditions, the placement of the criminal law section in the election regime through the Election Law reflects a form of embodiment of fair elections that will be realized in every election.

Placing justice as a means of control is a very important part of improving the quality of the implementation of democracy because justice in democracy will emphasize the function of togetherness and work in the context of the public interest and ensure the presence of equal and balanced opportunities in various political competitions from the national to the local level.

1
Based on the description above, the author reaffirms that the law enforcement of election crimes in Indonesia is very important in every election in Indonesia. The importance of upholding criminal law, as seen from the form of regulations in the Election Law, actually implies guaranteeing the implementation of elections as the legitimacy of the principle of people's sovereignty, which forms the basis for holding elections. Furthermore, the importance of upholding criminal law in the implementation of elections in Indonesia is also intended to create fair elections, in which all parties must feel that the stages of the election are fair and there are no acts of election crime violations that interfere with the elements of election justice.

1 IV. CONCLUSION

1. The nature of law enforcement for general election crimes in Indonesia based on election regulation number 7 of 2017, from the results of the research, has not shown that there are steps in protecting all parties in the election contestation while at the same time not being able to realize honest elections, have integrity and justice.
2. Position (legal standing) The Bawaslu institution at the Sentra Gakkumdu has proven to be ineffective and consistent with the construction of the Criminal Justice System in Indonesia.
3. The factors that influence the handling of election crimes in Indonesia are: *First*, Legal Substance, Election Law, and the regulatory structure that gives authority to each institution that handles election crimes, which are still not regulated in detail and rigidly. *Second*, regarding Legal Structure Factors, Bawaslu institutions do not have the competence and jurisdiction as criminal law enforcers. *Third*, Legal culture, the culture of the people who are still unfamiliar with election law, the level of understanding and compliance of the community with the law enforcement of election crimes is still very low, and the culture of money politics.

V. SUGGESTION

1. Improvement or reformulation of election regulations, namely narrowing down the formulation of criminal acts (delict) contained in the Fifth Book (Chapter II) of Law Number 7 of 2017 concerning Elections.
2. There is a need for separating institutional powers that specifically deal with election crimes. The construction of handling election crimes is fully under the authority of 4 (four) sub-systems consisting of police agencies, prosecutors, courts, and correctional institutions) according to the construction of the criminal justice system integrated *criminal justice system*.
3. Bawaslu maximizes prevention and strengthens supervision which focuses more specifically on handling matters related to election administrative violations, handling process disputes, and election result disputes.

REFERENCES

- [1]. Abbas, Syahrizal. Mediation in the Perspective of Sharia Law, Customary Law, and National Law. Jakarta: KencanaPredana Media Group, 2009.
- [2]. Abbas, Syahrizal. Mediation in the Perspective of Sharia Law, Customary Law, and National Law. Jakarta: KencanaPredana Media Group, 2009. Quoted in Folberg and A. Taylor. Mediation; A Comprehensive Guide to Resolving Conflict Without Litigation. Cambridge: Cambridge University Press, 1884.
- [3]. Ahmad, Azhar Bashir. Islamic Marriage Law. Jakarta: PT RajaGrafindoPersada, 1995.
- [4]. Ali, Mohammad Daoud. Islamic law. Cet. 17; Jakarta: PT. RajaGrafindoPersada, 2012.
- [5]. Amriani, Numaningsih. Alternative Mediation for Settlement of Civil Disputes in Court. Jakarta: PT. RajaGrafindoPersada, 2001.
- [6]. Bisri, Miss Hassan. Religious Courts in Indonesia. Jakarta: RajaGrafindoPersada, 1998.
- [7]. Boulle, Laurence. Mediation: Principle, Process, Practice. Sydney: Butterworths, 1996.
- [8]. Dewi, Gemala (ed.). Civil Procedure Code of Religious Courts in Indonesia. Jakarta: KencanaPredana Media, 2006, Cet. 2nd
- [9]. Emerson, Joni. Alternative Dispute Resolution Out of Court: Mediation Negotiation, Conciliation and Arbitration. Jakarta: Gramedia Pustaka Utama, 2001.
- [10]. Al-Habsyi, M. Baqir. Practical Fiqh; According to the Qur'an, Sunnah, and Scholars' Opinions. Part. 2. Bandung: Mizan, 2002.
- [11]. Hamid, Zahri. Principles of Marriage Law. Cet. 1. Yogyakarta: Cipta Development, 1987.

Meyke M. Camaru, et. al. "The Nature of Law Enforcement of General Election Crimes in Indonesia." *IOSR Journal of Humanities and Social Science (IOSR-JHSS)*, 28(2), 2023, pp. 37-43.

The Nature of Law Enforcement of General Election Crimes in Indonesia

ORIGINALITY REPORT

8%

SIMILARITY INDEX

10%

INTERNET SOURCES

6%

PUBLICATIONS

2%

STUDENT PAPERS

PRIMARY SOURCES

1

iosrjournals.org

Internet Source

4%

2

www.ijbel.com

Internet Source

3%

3

sister.untagsmg.ac.id

Internet Source

2%

Exclude quotes On

Exclude matches < 2%

Exclude bibliography On