Election violation and election law enforcement in general election in Indonesia

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Abstract

General Elections are the embodiments of the mandate stipulated in the 1945 Constitution of the Republic of Indonesia Article 1 paragraph (2) which affirms that "sovereignty is in the hands of the people and carried out according to the Constitution". The Formulation Document that will be formulated in the research are: (1) What is the violation in the general election? And (2) What is law enforcement in general election. The method used in this study is normative legal research, normative legal research methods or library law research methods are methods or procedures that are used in legal research by examining existing library material. Election violations constitute acts prohibited by the Election Law against election organizers resulting in the imposition of sanctions for violations. The enactment of Law Number 7 Year 2017 on General Elections provides for different types of violations, disputes, criminal offenses and electoral disputes. The crime of elections is a criminal offense punishable by a particular punishment based on the criminal justice system. The purpose of election is to carry out popular sovereignty and the realization of the political rights of the people to produce leaders who will occupy important positions in the government.

Keywords: Election Law Enforcement; Election Violation; General Election

1. Introduction

General Elections (Pemilu), including both Presidential and parliamentary elections; the elections for electing members of House of Representative (DPR), Regional Representative Council (DPD) and Regional House of Representative (DPRD); are the embodiments of the mandate stipulated in the 1945 Constitution of the Republic of Indonesia Article 1 paragraph (2) which affirms that "sovereignty is in the hands of the people and carried out according to the Constitution". The realization of the popular sovereignty is manifested through direct elections as a tool for the people to choose their representatives who will perform supervisory function, channeling the political aspirations of the people, law making as a basis for all parties in the Republic of Indonesia in carrying out their respective functions, and formulate income and expenditure budgets to finance the implementation of these functions.

The Constitution of the Republic of Indonesia in 1945 clearly regulates the implementation of elections. Article 22E of the 1945 Constitution of the Republic of Indonesia as follows:
(1) General Elections are held based on direct, general, free, confidential, honest, and fair principles every five years.

(2) General elections are held to elect members of the House of Representatives, Regional Representatives Council, the President and Vice-President and the Regional House of Representatives.

(3) Participants in the general election to elect members the House of Representatives and members of the Regional House of Representatives are political parties.

(4) Participants in the general election to elect members of the Regional Representative Council are individuals.

(5) General elections are held by a general election commission that is national, permanent and independent.

The Indonesian election law is regulated in the constitution, so it is legally supported. It is also an integral part of the concept of both popular and legal sovereignty used in the context of the Republic of Indonesia. The definition of General Elections in Law Number 7 Year 2017 mentions the positions to be contested. This can be seen in Article 1 point 1 of this Act which reads: "The general election which is then called the election is a means of popular sovereignty to elect members of the People's Legislative Assembly, members of the Regional Representative Council, President and Vice President, and to elect members of the House of Representatives Regional People, which are carried out directly, publicly, freely, confidentially, honestly and fairly in the Republic of Indonesia is based on Pancasila and the 1945 Constitution of the Republic of Indonesia" (Jurdii, 2018).

As an embodiment of democracy, in the International Commission of Jurist, Bangkok in 1965, formulated that "Organizing free elections is one of the six basic requirements for a democratic country representatives under the rule of law ". Then also formulated definition of a democratic government based representative, namely: a form of government in which citizens the state exercises the same rights but through representatives chosen and accountable to them through free election process.

The purpose of election in its implementation has three objectives namely (Huda & Fadhlika, 2019 : 547) :

(1) As a mechanism for selecting government leaders and alternative public policy.

(2) Election as a transfer of conflicts of interest from the community to people's representative bodies through elected representatives or the party wins the seat so that community integration remains guaranteed.

(3) Elections as a means of mobilizing, mobilizing or mobilizing popular support for the State and government by participating as well as in the political process. The purpose of the election in its implementation.

Political participation is a form of the realization of a demoralized state. Countries without political participation from society tend to be authoritarian and centralistic. Political experience during the New Order shows the arbitrariness of the takers political decisions in every policy formulation and program planning. As a result, policies or those that are decided are often not according to needs the community. Political participation of the community is a good form of self-giving form of participation, attendance, ideas, involvement in policy formulation and giving themselves under supervision when the policy is about to be implemented (M.Liando, 2016 : 14).
In democracy, there are participatory values and sovereignty which is upheld and must be exercised by citizens and state instruments at the legislative, judicial and executive levels. Relationship between citizens and state even though it is still a distance but can be facilitated by various institutions and elements of society because of the freedom for all parties to participate and actively in national development both in political development and other fields (Bachtiar, 2014: 12). The community is given space to play an active role and become a part of democratic process. Although substantially, their participation is still inclined procedural and momentum.

General Elections Commission (KPU), General Elections Supervisory Board (Bawaslu), and The Honorary Council of General Election Organizers (DKPP). The positions of these three institutions are strengthened and clarified their duties and functions and adapted to the legal requirements in the conduct of elections. Institutional strengthening is intended to create smooth, systematic and democratic elections. In general, this law regulates election organizers, elections, election violations and election disputes, as well as election crimes.

2. Method

Based on the problems that will be examined by the author, the study in this article uses a doctrinal approach. This study grouped into the normative juridical domain, namely research conducted to obtain information and explanations and data about things that are not yet understood. In how to collect data, look for literature that is solved by reading, reading, and reading various literatures. Normative juridical means solving legal problems and at the same time prescribing what is most needed by legal sources that contain primary legal materials and secondary legal materials. Because of the nature of the research activities carried out with normative research, the library method is the most appropriate.

The normative approach is defined as an approach that is deployed through literary research (library research) by reading, quoting, and analyzing the laws and regulations, and legal theories related to the problems that exist in the study (Soekanto, 2012). It also refers to a study that discusses doctrines or principles in legal science, both in legislation and theory or legal experts’ opinion and the results of previous studies. Meanwhile, statutory approach is an approach that is carried out by examining all laws and regulations relating to legal issues handled (Marzuki, 2009).

3. Election Violation And Election Law Enforcement in General Election

The electoral law enforcement system is a series of regulations that aim to address election legal issues. The legal issues of elections are all legal actions that deviate, contradict, or violate election laws and regulations, including those who have been disadvantaged in the process of election. Democratic election standards require fair elections (free and fair elections) that could be achieved if a legal instrument is available that regulates all election implementation processes; as well as being able to protect the organizers, participants, candidates, voters, monitors and citizens in general from fear, intimidation, violence, bribery, fraud, and various other fraudulent practices that will affect the election results. Therefore, an honest and fair election requires electoral legislation and the apparatus in charge of enforcing the election legislation.

3.1 Election Violation

Election violations are acts that are prohibited by the Election Law against election organizers which results in the imposition of sanctions on violations. Election
crimes are criminal acts that are threatened with certain penalties based on the criminal justice system. In addition, there are also issues of state administration related to the decisions of election organizers that harm citizens so that they can be sued in the state administrative court. The Law Number 7 of 2017 about Elections regulates differently regarding violations, disputes, criminal acts and disputes in elections. As stipulated in the Fourth Book of this law, there are three types of problems in elections, namely: 1. Election violations; 2. Disputes over the election process; 3. Disputes over election results.

1. Violation of the code of ethics for election administrators.

Violations of the code of ethics for election administrators is a violation of the ethics of election administrators who are guided by oath and / or promises before carrying out their duties as election organizers. Violation of the code of ethics is a violation of the moral and ethical principles of an election organizer that is guided by an oath and / or a promise before carrying out the duties as election organizer and the principle of the election organizer that is implemented and determined by the General Election Commission (KPU). The purpose of the code of ethics is to maintain the independence, integrity, accountability and credibility of election organizers. The purpose of the code of ethics is to ensure the implementation of direct, public, free, confidential, honest and fair elections.

In this case, Sardini explained 13 modes the code of ethics violation for election administrators consisting of (Surbakti, Supriyanto, & Santoso, 2011):

a. Vote Manipulation is to reduce, add, or move the vote acquisition from one election participant to another election participant, which are beneficial and / or detrimental to the election participants with each other.

b. Bribery of Officials is the provision of a sum of money or goods or a special agreement to the Election organizer with the intention of fulfilling the interests of the giver or to benefit and / or harm another party in the participation of an election (candidacy).

c. Un-Equal Treatment is treatment that is not equal or biased to election participants and other stakeholders.

d. Infringements of the Right to Vote, are violations of the right to vote for citizens in elections.

e. Vote and Duty Secrecy is to openly inform their political choices and ask about their political choices in the Election to other people or voters.

f. Abuse of Power is utilizing positions and their influences, either on the basis of kinship, traditional authority or work, to influence other voters or the General Election organizers in order to obtain personal benefits.

h. Sloppy Work of Election Process, is inaccuracy or irregularities or errors in the Election process.

i. Intimidation and Violence is to commit acts of violence or intimidation physically or mentally.

j. Broken of Breaking of the Law, is taking action or engaging in a violation of law.
k. Absence of Effective Legal Remedies, are mistakes that can be tolerated humanely to the extent that they do not result in damage to the integrity of the implementation of the General Election, as well as the destruction of the independence and credibility of election organizers.

l. The Fraud of Voting Day is an error committed by election organizers on polling day and vote counting.

m. Destroying Neutrality, Impartiality, and Independent or destroying / disturbing / influencing neutrality, impartiality, and independence.

Based on the provisions in Article 22 E of the 1945 Constitution (result Third Amendment) General Election regulating principles are as follows (Winardi, 2009: 153):

a. General elections are held direct, public, free, honest and fair every five years;

b. General elections are held to elect members House of Representatives, Regional House of Representatives, President and Vice President, and Regional Representative Council;

c. Participants in the general election to elect members of the Council People's Representative and members of the Regional People's Representative Council is a political party;

d. Participants in the general election to vote members of the Regional Representative Council are individuals;

e. Elections are held by an election commission general national, permanent and independent.

2. Election administration violations.

According to the Election Law, violations of the Election administration are violations which include procedures and mechanisms relating to the administration of the election in each stage of the implementation of the General Election outside the Election crime and violations of the code of ethics for election administrators. Election administrative violations are violations of administrative provisions (usually concerning criteria and requirements) as stipulated in the electoral law and other regulations. Administrative violations are handled by election supervisors and submitted to the KPU and its staff to be sanctioned. The sanctions would be in the form of verbal reprimand, written reprimand, prohibition on carrying out certain activities, up to write off from the list of election participants or the candidate list.

Election administration violations are violations of the provisions of the Election Law which are not criminal provisions for elections and other provisions stipulated in the KPU regulations. The provisions and requirements under the Election Law could, of course, be in the form of provisions and requirements that are regulated, both in the Election Law and in regulating KPU decisions as implementing regulations of the Election Law.

Therefore, elements of election administration violations can be identified as follows:

a. Violation of procedures, procedures and mechanisms relating to the administration of the implementation of the General Election in each stage of the implementation of the General Election.

b. Those violations are other than election crime and implementation of the Election Organizer code of ethics.
The completion of election administration violations is intended to maintain the independence, integrity, accountability and credibility of election organizers. The completion of this election administration violation aims to ensure the holding of elections directly, publicly, freely, confidentially, honestly and fairly.

3.2. Law Enforcement in General Election

The electoral law enforcement system is a series of regulations that aim to address election legal issues. The legal issues of elections are all legal actions that deviate, contradict, or violate election laws and regulations, including those who have been disadvantaged in the process of election. Democratic election standards require fair elections (free and fair elections) that could be achieved if a legal instrument is available that regulates all election implementation processes; as well as being able to protect the organizers, participants, candidates, voters, monitors and citizens in general from fear, intimidation, violence, bribery, fraud, and various other fraudulent practices that will affect the election results. Therefore, an honest and fair election requires electoral legislation and the apparatus in charge of enforcing the election legislation.

Related to the law of justice, the political line of the 1945 Constitution of the Republic of Indonesia requires us to explore a sense of justice. Written laws or provisions that prevent the upholding of justice can be abandoned through the discovery and creation of law by judges. Article 24D paragraph (1) confirms that everyone has the right to recognition, guarantee, protection and fair legal certainty. So the emphasis is not only on legal certainty but legal certainty that is fair. In this context, it is the country's duty to implement the mandate of the 1945 Constitution of the Republic of Indonesia (Harun, 2016 : 101).

The General Election Commission is the main institution that accommodates elections the process of organizing general elections. In other words, the KPU is a facility provider and infrastructure stages of the election from the preparatory process to the completion of the election. The duties, authorities and obligations of the KPU in organizing elections for members of the DPR, DPD, and Provincial DPRD, and Regency / City DPRD in detail are formulated in article 8 of the Law Number 15 of 2011 concerning Organizing of General Elections.

Election organizer oversight is carried out by the Election Supervisory Board hereinafter abbreviated as Bawaslu. Bawaslu is tasked with supervising the holding of elections in the context of prevention and enforcement of violations for the realization of elections democratic. The composition of the Bawaslu consists of the Provincial Bawaslu, the Election Oversight Committee Regency / City (Regency / City Panwaslu), District Election Supervisory Committee (Panwaslu District), Field Election Supervisor (PPL), or Overseas Election Supervisor. The Election Organizer Honorary Board (DKPP) is the body in charge deal with violations of the conduct code of election organizers and is a unity of function election organizer. The main task of the DKPP agency is the authority to handle violation of the election code of conduct (Fifi, Syafrudin, Eka, & Mirza, 2018 : 52).

Furthermore, the criminalization of certain acts as an election crime divided into two groups, namely: violation and crime. It is just, the Legislative Election Law does not define what is approved definition crime of crime. This law only stipulates the forms of acts which are categorized as difficult and difficult with each other difficult to be determined. Then, what exactly is the process for holding elections supported by election legal instruments? What things underlie Why is this instrument important? As
part of the regulatory system holding general elections, holding election elections sustain the realization of honest and fair elections (Khoirul, n.d. : 267). In that context, meaning is important Election negotiations can be reduced to two important things. First, the norm to participate in elections held to protect participantselections, organizing bodies and elections from various election implementations and adverse elections. Second, the election norms Given to uphold the law and society in the administration the election.

Criminal acts must be resolved by the criminal justice system (SPP). In general, SPP consists of components: police - prosecutor-court (general). In special crimes, this component may be different. For example in the case of corruption consisting of: police / prosecutors / Corruption Eradication Commission (KPK) - prosecutors / KPK - courts (general / corruption); in fisheries cases, the police / PPN / The Indonesian NAVY - fisheries ad hoc prosecutors.

In the context of enforcing violations of election administration, and election crimes need to be made to simplify the system. Law enforcement and electoral dispute resolution in order to realize effective election law enforcement which has become a major problem. So the focus is to note that the resolution of administrative and criminal violations is processed through one door through Bawaslu where in the context of administrative violations, Bawaslu has the authority to receive complaints, investigate suspected violations, hear and determine whether a violation has occurred or not, and establish sanctions if proven temporarily to deal with criminal election violations, Bawaslu became investigators and prosecutors because of alleged violations of election crimes (Seac, 2018 : 83).

Election implementation in Indonesia there are still various kinds of violations committed by various parties, so there is a need for supervision from various parties. Election supervision conducted by the Election Supervisory Body (Bawaslu), both the Central Bawaslu, Provincial Bawaslu, Regency / City Panwaslu, District Panwaslu, Field Oversight, and Overseas Election Oversight must be independent, honest, fair. For this reason, constraints in the electoral law enforcement authority in accordance with the law regulate election supervisors only as intermediaries, namely receiving and forwarding election violation reports (Sulchan, 2014 : 350).

The principle must be understood that Election law enforcement is an instrument important to uphold election justice. System election law enforcement must be effective thereby guaranteeing free, fair and fair elections honest (Chrisdanty & Wahyulina, 2014). Repression of campaign violations legislative elections are conducted by election supervisors as a gatekeeper on duty to supervise and follow up in every violation that occurs in each stage of the election included as well campaign stage.

The problem of election criminal law enforcement can at least be divided by looking at each component in the legal system that directly influences law enforcement. Lawrence M. Friedman considered that the success or failure of the law was upheld depending on the three components of the legal system. First, the legal substance. The legal substance is the rules, norms, and real human behavior patterns that are in the system. Second, the legal structure (legal structure) or the structure of the legal system. Friedman called it a framework or parts that persisted or parts that gave some form and boundary to the whole. The existence of a legal structure is very important, because no matter how good legal norms are, if not supported by good law enforcement officials, law enforcement and justice are only in vain. Third, legal culture. Legal culture is opinions, beliefs, habits, ways of thinking, and ways of acting, both from law enforcers
and from citizens about the law and various phenomena related to law. To realize the principle of supremacy of law, law enforcement by law enforcement agencies such as the Judiciary, Police, Prosecutors' Office, Corruption Eradication Commission must run and function in accordance with the principles and objectives of the establishment of law enforcement agencies (Sugiharto, 2016 : 109).

According to the Gakkumdu Center SOP, the handling of election criminal acts is carried out through 3 (three) stages, namely (Handitya, 2018 : 348): a) Acceptance, review and delivery of reports / findings of alleged election crimes to the Election Supervisory, b) Follow-up of the Gakkumdu Center to reports / findings of alleged election crime, c) Follow-up of the Election Oversight of the recommendations of the Gakkumdu Center.

To build an electoral law enforcement system, to complete and reinforce the material of legislation, it is also important to increase the work effectiveness of electoral law enforcement officers, namely: KPU, provincial KPU and regency / city KPU as election organizers who are authorized to impose sanctions against perpetrators of election administration violations; second, Election Supervisory Body, Provincial Election Supervisory Body, District Election Supervisory Board / The City, and / or the District Supervisory Board as supervisors who are authorized to ensure the existence of election violations and resolve non-election election disputes; third, The Honorary Council of General Election Organizers (DKPP) which has the authority to impose sanctions for violating the code of ethics of election administrators; fourth, the Constitutional Court has the authority to resolve disputes over election results; and fifth, the ranks of the police, prosecutor's office, and judicial institutions, each of which has the authority to investigate, prosecute, and sentence.

In enforcement of criminal acts general election, we should also refer to the philosophy of law enforcement in a way general. But this law enforcement has not can be implemented maximally, where strongly influenced by 3 (three) things, namely (Irfandi, 2013 : 1):

a. Legal Substance

In order to improve the substance, There are several actions that need to be on criminalization and there is that in decriminalization. Election Crime must be stated explicitly in laws, what things are considered an election crime general, must be constructed in a concrete article. Sanctions should be using criminal penalties minimum. Detailed description of the process handling violations of election rules.

b. Legal structure

Action Handling Mechanism General Election penalties should be subject on the mechanism of handling criminal acts in general, include: the initial stage (pre adjudication), the inspection stage ahead adjudication and stages implementation of decisions (post adjudication). General election crime must be confirmed not a crime / offense complaint. Therefore there is or does not exist the person / community member who reports, if law enforcement officers (especially investigators) see indications of violations the law (election crime), must immediately deal with suspected acts the criminal.

Criminal Investigation general election at the adjudication stage,must be examined by a designated judge and specially educated by the Chief Justice as a judge of criminal offenses general election. Time period handling election criminal offenses
general, from an early stage, pre adjudication, the inspection stage ahead adjudication must be given time limit, with a reason for the process the judiciary does not interfere with the stages of the process holding general elections.

c. Legal culture

The implementation of general elections is many violations occurred conducted by parties participating in the election. The violation occurred in the stages of the general election. On the campaign stage happened several violation, namely the existence of money politics that is clearly visible on the screen conducted a campaigner. So as distribution of goods to participants campaign.

4. Conclusion

The electoral law enforcement system is a series of regulations that aim to address election legal issues. The legal issues of elections are all legal actions that deviate, contradict, or violate election laws and regulations, including those who have been disadvantaged in the process of election. The problem of election criminal law enforcement can at least be divided by looking at each component in the legal system that directly influences law enforcement. First, the legal substance. The legal substance is the rules, norms, and real human behavior patterns that are in the system. Second, the legal structure (legal structure) or the structure of the legal system. Third, legal culture. Legal culture is opinions, beliefs, habits, ways of thinking, and ways of acting, both from law enforcers and from citizens about the law and various phenomena related to law.

Law enforcement is needed in elections to create justice in the holding of elections. To build an electoral law enforcement system, in addition to completing and strengthening laws and regulations, it is also important to improve the work of electoral law enforcement, namely: first, the KPU, provincial KPU and regency / city KPU as questionable election administrators. opposing elections that are canceled by the election administration; secondly, Bawaslu, provincial Bawaslu and district / city Panwaslu as supervisors to ensure successful elections and resolve non-election disputes; percent, DKPP who canceled the penalty for changing the election code of ethics; Finally, the Court will complete the election results; and cancel, the ranks of the police, prosecutors and courts, each of which are disputes, indictments and convicts.

References


