Law Enforcement Against Criminal Acts of Using Other People's Voting Rights in Elections

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Abstract

Election law issues can be said to be more complex. In addition to the many categories of problems, the implementation of handling election legal issues also involves many institutions/institutions. The type of research used in this research is normative juridical. The nature of this research is descriptive analytical. As for what is meant by descriptive analytical research is a research that can describe in detail and systematically about the object under study. Secondary legal materials include explanations of primary legal materials in the form of expert doctrine found in books, journals, and websites. The results of the study show that the provisions of Article 533 of Law Number 7 of 2017 concerning General Elections state that “Everyone who intentionally at the time of voting claims to be someone else and/or casts his vote more than 1 (one) time in 1 (one) time, TPS or more shall be sentenced to a maximum imprisonment of 1 (one) year 6 (six) months and a maximum fine of Rp. 48,000,000.00 (forty eight million rupiah)”. Law enforcement against the general election crime is carried out by the Election Supervisory Body (BAWASLU) whose task is to prevent and take action against election violations and election disputes as referred to in Article 93 letter b of Law no. 7 of 2017 concerning General Elections. who then cooperated with the police, one of the tasks of the Indonesian National Police in dealing with criminal acts of general election, namely conducting an investigation of election crimes that were reported to the National Police through Bawaslu, after the report found elements of a general election crime and also if proven the existence of an election crime, a prosecution can be carried out by the Prosecutor's Office, the demands given to the perpetrator of an election crime are in accordance with the violation that contains elements of the criminal act committed.

Keywords: Crime, Suffrage, Election.

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A. Introduction

The Republic of Indonesia is a constitutional state based on Pancasila and the 1945 Constitution which upholds human rights and guarantees that all citizens are equal before the law and government and are obliged to uphold the law and the government with no exceptions. The constitution has mandated that elections must be conducted in an honest and fair manner, as stipulated in the 1945 Constitution Article 22E Paragraph 1. Elections are used as a means and mechanism in a replacement of legislative and executive powers. This replacement is certainly meant for better circumstances. Therefore, in the implementation of the election there must be a guarantee that it will be carried out properly or what is called honestly and fairly. Voters, parties participating in the general election and the people in general must be protected from fraudulent practices such as intimidation, bribery, fraud that will affect the purity of the general election results. Hope for a better state life, of course, does not want fraud in the election, because if the election is won by dishonest or fraudulent means, it will be difficult to expect that the people who become leaders and members of the legislature are people who people who can truly carry out the interests of the people. How important it is to maintain the purity of the election, then a legal basis has been established as a foothold, namely Law Number 7 of 2017 concerning General Elections. In this law, the mechanism has been regulated and there are also rules regarding prohibitions and criminal threats for violators.

The purity of election results is something that cannot be separated from a democratic country, therefore to ensure honest and fair elections it is very necessary to protect the parties participating in the
elections and for the people in general from all intimidation, bribery, fraud, and various practices. Other fraud that will affect the purity of the general election results. In order to protect the purity of the election results, lawmakers have made a number of fraudulent acts in elections a crime. Thus, the law on elections in addition to regulating how elections are held also prohibits a number of actions that can destroy the nature of freedom and justice in elections and threaten the perpetrators with criminal sanctions. At present, most of the countries in the world use indirect democracy or representative democracy.

Compared to problems within the scope of other legal regimes, electoral law issues can be said to be more complex. In addition to the many categories of problems, the implementation of handling election legal issues also involves many institutions/institutions. In Law Number 8 of 2012 concerning Elections for Members of DPR, DPD and DPRD, at least six types of election legal problems are recognized, namely: violations of the electoral code of ethics, violations of election administration, election disputes, election crimes, electoral state administrative disputes, and electoral disputes. The same types of legal issues were also adopted into Law Number 1 of 2015 concerning Stipulation of Perpu Number 1 of 2014 into Law as amended by Law Number 8 of 2015 concerning Election of Governors, Regents and Mayors. The number of types of electoral law problems is also linear with the number of institutions involved in handling them. There are at least nine institutions involved, namely: (1) Honorary Council for Election Organizers (DKPP), (2) Election Supervisory Body (Bawaslu); (3) General Election Commission (KPU); (4) State Police; (5) Prosecutor's Office; (6) State Administrative Court and State Administrative High Court; (7) District Court and High Court; (8) Supreme Court; and (9) the Constitutional Court. Not to mention the involvement of the Broadcasting Commission or the Press Council to oversee the news and advertising campaigns. Thus, there will be at least 10 institutions related to the resolution of electoral legal issues. The many types of problems and the many parties involved show how complex election law problems are, or at least election law issues are designed to be so complex. Let alone to implement it, understanding it also requires extra energy so as not to misunderstand which can be fatal in its implementation. In turn, the implementation of electoral criminal law enforcement also faces various problems, both because the content of the rules is not very supportive or because of enforcement factors and legal culture.

This means that the people's power is represented by the People's Representative Body. In our country, one way to elect representatives of the people is through General Elections (Pemilu). The election, which was at the beginning of its preparation for the event, had generated a lot of controversy in the public. Many phenomena do not stop there, the products of legislative candidates that have emerged from each political party lately have also received a lot of criticism and scorn. Awareness of the importance of democracy today is very lacking, this makes many cases of election violations that occur. An election crime can be formulated as any action/deed (active/passive) that violates the provisions in the stages of election administration and is threatened with criminal sanctions. Many people claim that at this time the general election in Indonesia has been tainted with various types and modes so it is appropriate that anyone who taints and commits fraud in the election must be dealt with firmly.1 There are also those who state that the general election has not gone well, because the level of people's participation is still lacking in its implementation, so this is certainly a problem for a democratic country like Indonesia. In Law Number 7 of 2017 concerning Elections, there are 77 election crimes whose stipulations are contained in 66 articles. There are several subjects for election crimes, namely everyone (22 out of 77 election crimes). This is usually called a general offense or Commune, meaning that anyone can commit an offense, and the remaining 55 crimes are offenses propria (crimes whose subject is certain / not everyone).2

The type of research used in this research is normative juridical. The nature of this research is descriptive analytical. As for what is meant by descriptive analytical research is a research that can describe in detail and systematically about the object under study. Secondary legal materials include explanations of primary legal materials in the form of expert doctrine found in books, journals and websites.3 Analysis of legal materials is carried out using qualitative analysis methods used to explain

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legal events, legal materials or legal products in detail to facilitate legal interpretation. Analysis of legal materials is carried out using the content analysis method (content analysis method) which is carried out by outlining the material of legal events or legal products in detail to facilitate interpretation in discussions. This research was conducted using a problem approach, namely by approaching the results of theoretical empirical studies by looking at various opinions of experts, writers and legal and regulatory studies related to problems based on legal principles and formulating legal definitions. The data used in this study comes from secondary data which is supported by primary data as completeness of the data, namely:

Secondary data or library data include: One, Primary legal materials, namely binding legal materials. The primary legal materials used in this research include: a) Undang-Undang Dasar 1945; b) Kitab Undang Undang Hukum Perdata; c)Undang-Undang Nomor 7 Tahun 2017 tentang Pemilihan Umum. Two, Secondary Legal Material; Secondary legal materials are materials that provide an explanation of primary legal materials. The secondary legal materials used in this study are scientific works (law), the results of previous research related to the focus of this research, literature and books written by experts. Three, Tertiary legal materials: Tertiary legal materials are materials that provide meaningful instructions and explanations for primary and secondary legal materials such as legal dictionaries, articles, and others.

B. Discussion

1. Legal Arrangements Related to Election Crimes

Based on Law Number 7 of 2017 concerning General Elections, precisely in Article 1 number 1, it states that "General Elections, hereinafter referred to as Elections, are a means of people's sovereignty to elect members of the People's Representative Council, members of the Regional Representatives Council, President and Vice President, and to elect members of the People's Legislative Assembly, members of the Regional People's Representative Council, which is carried out directly, publicly, freely, confidentially, honestly and fairly within the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia. Furthermore, Article 4 outlines several objectives of holding elections, namely:

1. strengthening the democratic state administration system;
2. realizing elections that are fair and with integrity;
3. ensure consistency in the regulation of the electoral system;
4. provide legal certainty and prevent duplication in election arrangements; and
5. realizing effective and efficient elections.

Until now there is no definition given by the laws and regulations in Indonesia regarding what is called a general election crime. without mentioning at all what is meant by a general election crime. Actually, the absence of a definition of the crime of general election in Indonesian legislation is not unusual. The definition of a criminal act will be seen from the formulation of the elements of a criminal act. The Criminal Code does not provide a definition of the various criminal acts, while the meaning will be known from the formulation of the elements of a criminal act. Likewise with the definition of a general election crime, we will know from the formulation of the elements regulated in the general election law.

General elections that have been held many times, but very little has been discussed about the definition of criminal acts of general election, two of which Sintong Silaban provides the definition of criminal acts in general, then applies them in relation to elections. Likewise, Djoko Prakoso did the same thing at length, but later he gave

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8 Ibid., p. 114.
9 Ibid.,
his own definition of a general election crime by stating "any person, legal entity or organization who intentionally violates the law, disrupts, hinders or interferes with the general election being held, according to the law". Of course, this definition is too simplistic and does not clearly describe what general election crimes are because this definition does not limit the legal provisions that are violated. Criminal law, civil law or state administrative law, moreover acts of disrupting, obstructing, or interfering with the course of the general election are only part of the crime of general election. there are many other general election crimes such as voting more than specified, claiming to be someone else, and so on.10

Knowing the definition of a general election crime, we can also look at it from the point of view of its scope. For example, if people ask about what is meant by corruption, it is a bit easier to answer because the acts that are classified as corruption are grouped together. To find out the meaning and scope of corruption, people will be able to refer to the formulation of the elements of several criminal acts in the corruption law, however, this is not the case with criminal acts contained in various non-criminal laws and regulations, such as the banking law, electoral law and so on. In order to be clearer, we can see the example of the latter, namely we take the issue of differences of opinion regarding the term banking crime, among Indonesian legal experts another term is also known, namely criminal acts in the banking sector. Those who use the term crime in the banking sector give the meaning of actions related to activities in carrying out the main business of the bank. Differences of opinion regarding the definition and scope of general election crime also occur as happened in the banking crime above, even among the public the scope of the crime. Election crimes are often seen as too broad to cover all criminal acts that occur in the electoral process, including ordinary crimes (such as traffic violations) that occur during a campaign, for example, or financial fraud that occurs in tenders for the purchase of election equipment.11

Election crimes can simply be said that there are three possible meanings and scopes of election crimes: first, all crimes related to the administration of elections regulated in the election law; second, all criminal acts related to the administration of elections which are regulated both inside and outside the election law (for example in the political party law or in the Criminal Code); and thirdly, all criminal acts that occurred during the election (including traffic violations, abuse (violence), vandalism and so on). Election crimes when viewed from the meaning of Islamic criminal law, are based on prohibited acts or all forms of crime, including fraud. As an example, the author takes an act of a general election crime, namely claiming to be someone else or it can also be called an act that takes the rights of others, besides being regulated in the provisions of the general election legislation, the act of taking the rights of others is also in the Qur'an. Surah Ibrahim verses 42-43 which means "And don't you (Muhammad) think that Allah is heedless of what the wrongdoers do. Verily, Allah gave them respite until the day when (their) eyes widened".

The implementation of the 2019 General Election is regulated by Law Number 7 of 2017 concerning General Elections and the Implementation of the 2019 General Election which is carried out simultaneously based on the decision of the Constitutional Court (MK): Legislative and Executive”. The purpose of holding simultaneous elections is to minimize the huge election costs.12

Although the criminal law is an umtimum remedium (last resort) including in the enforcement of election and election law, there are also controversies in its regulation, especially regarding the regulation of sanctions for election and election crimes. In the provisions for criminal acts of election of Governors, Regents and/or Mayors which have been amended several times, the last being amended by Law Number 10 of 2016 it is clear that criminal sanctions regulate the maximum and minimum including criminal fines, but in the provisions of election crimes as referred to in Law Number 7 of 2017 only stipulates maximum sanctions including fines, even that is relatively very light when compared to the regulation of Election Crime sanctions for actions that are actually the same between the two. One of them is the regulation related to criminal sanctions in the form of "everyone intentionally at the time of voting admits to being someone else". In the provisions of Article 178 A of Law Number 10 of 2016 concerning the Election of Governors, Regents and/or Mayors it is stated that: 'Everyone who at the time of voting intentionally commits an unlawful act admits himself as another person to exercise his

10 Budi saputra, “Penegakan Hukum Dalam Tindak Pidana Pemilihan Umum Oleh Sentra Penegakan Hukum Terpadu (Studi pada Badan Pengawas Pemilihan Umum Kota Bitung),” (Skripsi) Fakultas Hukum Universitas Muhammadiyah Sumatera Utara.
11 Ibid.,
right to vote, shall be punished with imprisonment for a minimum of 24 (twenty four) months and a maximum of 72 (seventy two) months and a fine of at least Rp. 24,000,000.00 (twenty four million rupiah) and a maximum of Rp. 72,000,000.00 (seventy two million rupiah)".

Meanwhile, in the provisions of Article 533 of Law Number 7 of 2017 concerning General Elections, it is stated that "Everyone who intentionally at the time of voting claims to be someone else and/or casts his vote more than 1 (one) time at 1 (one) TPS. or more shall be sentenced to a maximum imprisonment of 1 (one) year 6 (six) months and a maximum fine of Rp. 48,000,000.00 (forty eight million rupiah)". Taking into account the two arrangements above, it is clear that there is a disparity regarding the provisions of criminal sanctions. Although in a different context between the Election and the General Election there are also different arrangements, namely Law Number 10 of 2016 and Law Number 7 of 2017, but criminal acts tend to be the same. The difference in the level of criminal sanctions is also very influential on the Court's Decision in the provision of imprisonment and fines between the same crime in the Election and the General Election.

Bawaslu as the agency tasked with overseeing elections has also issued legal regulations. Bawaslu Regulation No. 7 of 2018 concerning Handling of Findings and Reports of General Election Violations and Bawaslu Regulation No. 31 of 2018 concerning the Integrated Law Enforcement Center. In Bawaslu Regulation Number 7 of 2018 concerning Handling of Findings and Reports of General Election Violations. In Chapter I, the General Provisions section of Article 1 number 25 of this PerBawaslu states, "Findings of Violations, hereinafter referred to as Findings, are the results of the supervision of Bawaslu, Provincial Bawaslu and/or Regency/City Bawaslu, Sub-district Panwaslu, Kelurahan/Village Panwaslu, LN Panwaslu, and/or TPS supervisors at every stage of the implementation of elections that contain allegations of violations".

Furthermore, Article 1 number 26 PerBawaslu No. 7 of 2018 also regulates the definition of the report. According to PerBawaslu, reports are direct reports of Indonesian citizens with voting rights, election contestants, or election observers to Bawaslu and/or Regency/Municipal Bawaslu, Sub-district Panwaslu, Urban/Village Panwaslu, LN Panwaslu, and/or TPS Supervisors at each stage of implementation. Elections. On that basis, the source of information from the report is an external party outside Bawaslu institutionally. According to PerBawaslu, people who have the right to report alleged election violations include Indonesian citizens who have the right to vote, election observers, or election participants. At the stage of submitting the report, the reporters as mentioned above can be accompanied by a proxy who has received a power of attorney from the reporter. Both are reports and findings. To follow up or not to follow up on findings or reports of alleged violations, no later than 7 working days after receipt and registration. Article 17 PerBawaslu No. 7 of 2018 regulates the duration of handling findings and reports of alleged election violations. Bawaslu at each stage in deciding to follow up or not to follow up on findings or reports of alleged violations, no later than 7 working days after being received and registered. If the findings or reports require additional information regarding follow-up, then additional information and the study are given a maximum period of 14 working days after being received and registered. Furthermore, in the process of reviewing findings and reports of alleged violations, Bawaslu at all levels can clarify the complainant, the reported person, or the party suspected of being the perpetrator of the violation, witnesses, or experts for their statements to be heard. The information is stated in the clarification report as well as the clarification report form. Article 18 point 3 PerBawaslu No. 7 of 2018 states that clarification and/or requests for information are carried out by Bawaslu, Provincial Bawaslu, Regency/City Bawaslu, Sub-district Panwaslu, and LN Panwaslu and/or a designated clarification team. In Article 1 of the Regulation of the General Elections Supervisory Agency (Bawaslu) of the Republic of Indonesia Number 31 of 2018 concerning Integrated Law Enforcement Centers, Gakkumdu is the center of law enforcement activities for election crimes consisting of elements of the General Elections Supervisory Body, Provincial Election Supervisory Body, and/or General Election Supervisory Body. Regency/City, State Police of the Republic of Indonesia, Regional Police, and/or Resort Police, and Attorney General of the Republic of Indonesia, High Prosecutor's Office and/or District Attorney's Office.13

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2. Law Enforcement Against Criminal Acts of Using Other People's Voting Rights in Elections

Sajipto Rahardjo, in Dedi Mulyadi’s book, stated that law enforcement is a series of processes in describing values, ideas, and ideals that are quite abstract, and become reality in the purpose of law. The purpose of law or legal ideals is to create moral values, such as justice and truth. These values must be able to be realized in real reality. Law enforcement is an activity to harmonize the relationship of values that are spelled out in the form of law in the form of statutory regulations. Law enforcement is the application of criminal law (procedures) in resolving criminal cases. In the criminal law literature in western countries (America) the term law enforcement as referred to, is better known as "Criminal Justice System" is the system by which society first determines what will constitute a crime and then identifies, accuses, tries, convicts, and punishes those who violated the criminal law". This means that the criminal justice system is a system where society first determines what constitutes a crime and then identifies charges, tries, and punishes those who violate the criminal law. From the description it is clear that law enforcement as a process, it is clear that it must be a unified process of implementing the application of law, this means that as a law enforcement process it must consist of several stages starting from the investigation and investigation of crimes, arrests, detentions, preliminary examinations, prosecution, and judiciary and finally the implementation in correctional institutions.

Law enforcement in criminal acts of general election is the same as the use of criminal law, in connection with the use of Von Feurbach's criminal law with his theory "Psychologische Zwang" which states that criminal threats have a psychological effect. This means that criminal threats against people who commit a crime can frighten everyone who does it. So in someone there is psychological pressure which is a means of penalizing, in principle, must go through the following steps:

1. Formulation of criminal law norms containing substantive, structural, and cultural aspects.
2. Application by law enforcement agencies.
3. Execution by implementing officials.

Law enforcement against the general election crime is carried out by the Election Supervisory Body (BAWASLU) whose task is to prevent and take action against election violations and election disputes as referred to in Article 93 letter b of Law no. 7 of 2017 concerning General Elections. The position of the Integrated Law Enforcement Center (Gakkumdu) is as a center for law enforcement activities for election crimes consisting of elements of the General Elections Supervisory Body (Bawaslu), the Police and the Prosecutor's Office, where the Integrated Law Enforcement Center (Gakkumdu) is to function in terms of handling election crimes. Law Number 7 of 2017 concerning General Elections and Regulation of the Election Supervisory Body (Perbawaslu) Number 31 of 2018 concerning Integrated Law Enforcement Centers (Gakkumdu). Integrated Law Enforcement Center with the aim of equalizing understanding and patterns of handling election crimes between Bawaslu, the Indonesian National Police, and the Attorney General's Office of the Republic of Indonesia. Further provisions regarding this Integrated Law Enforcement Center will be regulated based on a mutual agreement between the Head of the Indonesian National Police, the Attorney General of the Republic of Indonesia, and the Chairperson of Bawaslu, previously. The Integrated Law Enforcement Center is the beginning of handling general election crimes that determine the direction and purpose of reports and allegations of general election crimes, therefore

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the Integrated Law Enforcement Center is expected to work effectively and efficiently so that its objectives can be achieved.

C. Conclusion

The provisions of Article 533 of Law Number 7 of 2017 concerning General Elections state that "Everyone who intentionally at the time of voting claims to be another person and/or casts his vote more than 1 (one) time at 1 (one) TPS or more. shall be sentenced to a maximum imprisonment of 1 (one) year 6 (six) months and a maximum fine of Rp. 48,000,000.00 (forty eight million rupiah)". Law enforcement against the general election crime is carried out by the Election Supervisory Body (BAWASLU) whose task is to prevent and take action against election violations and election disputes as referred to in Article 93 letter b of Law no. 7 of 2017 concerning General Elections. who then cooperated with the police, one of the tasks of the Indonesian National Police in dealing with criminal acts of general election, namely conducting an investigation of election crimes that were reported to the National Police through Bawaslu, after the report found elements of a general election crime and also if proven the existence of an election crime, a prosecution can be carried out by the Prosecutor's Office, the demands given to the perpetrator of an election crime are in accordance with the violation that contains elements of the criminal act committed.

The regulation of election crimes should be disseminated more massly, in order to provide reluctance for election actors to cheat in conducting elections in Indonesia. Law enforcement related to election crimes by using other people's voting rights is appropriate and carried out properly by the institutions involved in it.

References

Saputra, Budi, “Penegakan Hukum Dalam Tindak Pidana Pemilihan Umum Oleh Sentra Penegakan Hukum Terpadu (Studi pada Badan Pengawas Pemilihan Umum Kota Binjai)”, (Skripsi) Fakultas Hukum Universitas Muhammadiyah Sumatera Utara.