

Legal Politics in Handling Election Criminal Cases

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Abstract

The purpose of this study is to determine how legal politics in handling criminal acts of the Election. Where the reform of the system and Election in Indonesia is still felt to be carried out half-heartedly. In practice, handling criminal acts of the Election encounters obstacles, based on data from 2,798 alleged criminal violations of the Election that were registered, then only 380 decisions on criminal cases of the Election are inkracht. The research method uses the deductive reasoning method. Furthermore, the research data is interpreted using a systematic interpretation method, namely interpreting the meaning and then linking one legal norm with another norm that is considered to have a relationship, namely between legal norms that are determined as the main or complementary materials. The results of this study, namely legal politics in handling criminal Elections, are an important factor in forming better Election regulations. In the future, a regulation is needed in the form of an Election Law that is formulated with certainty, clearly, is not open to multiple interpretations and treats all parties equally (impartial principle), then the regulation is needed to form professional, impartial, and independent law enforcers in carrying out the function of enforcing the Election law which is clearly regulated.

Keyword:

Legal Politics, Regulation, Election Crimes

1. INTRODUCTION

The function of elections can be seen from two perspectives (Kartini, 2017), namely from a bottom-up and top-down perspective. From a bottom-up perspective, elections function as: 1) an instrument of political involvement, where every citizen who has the right can be elected as a state official; 2) a tool for compiling a government regime; and 3) a means to control the behavior of rulers and their policies. Meanwhile, from a top-down perspective, elections function as: 1) a means of building legitimacy; 2) an instrument for regular elite consolidation and rotation; 3) a tool for preparing political representation; and 4) a means of political education. The 2019 simultaneous elections proved that Indonesia was successful in holding the elections on April 17, 2019 (Siregar, 2019). This election successfully elected Ir. H. Joko Widodo and KH Ma'ruf Amin as President and Vice President of the Republic of Indonesia, and delivered 575 members of the Indonesian House of Representatives (DPR RI), 136 members of the Indonesian Regional Representative Council (DPD RI), 2,207 members of the Provincial People's Representative Council (DPRD), and 17,060 members of the Regency/City DPRD to Senayan. However, although the implementation of the 2019 Election can be said to be successful, it does not mean that it was without problems or without violations. Until May 28, 2019, Bawaslu recorded 15,052 reports or findings of alleged violations during the 2019 Election. Of that number, 14,462 were direct findings from Bawaslu which was actively conducting supervision.

There were 2,798 alleged criminal violations of the Election recorded, with 582 cases forwarded to investigation. Furthermore, 409 cases were processed to the prosecution stage, and finally there were 380 cases that had permanent legal force (inkracht) related to Election crimes. During the implementation of the 2019 Election, in addition to violations handled by Bawaslu, there were also disputes in the Election process and election result disputes. Handling of Election crimes, violations of the Election administration process, and election process disputes are the authority of Bawaslu. Meanwhile, violations of the Election Organizer's code of ethics are processed by the Election Organizer Honorary Council. For election result disputes, the resolution process is carried out by the Constitutional Court (Satrio, 2016). There are 15 international standards in the implementation of elections (International Standards on Elections) compiled by IDEA (International Institute for Democracy and Electoral Assistance) in 2002, which include: 1) preparation of regulatory framework; 2) selection of election methods; 3) determination of electoral districts; 4) the right to

vote and be elected; 5) election implementing institutions; 6) voter registration and voter lists; 7) access to votes for political parties and candidates; 8) democratic election campaigns; 9) media access and transparency of information and freedom of expression; 10) campaign costs and campaign budgeting; 11) voting process; 12) recapitulation and tabulation of votes; 13) the role of political party and contestant representation; 14) election monitoring; 15) compliance with election regulations and law enforcement.

Then there are 20 International Obligations on Elections in 2014 by IDEA, namely: 1) The right and opportunity to participate in the public interest; 2) The right and opportunity to vote; 3) The right and opportunity to be elected; 4) Periodic elections; 5) Universal suffrage; 6) Equal suffrage; 7) Guarantee of secrecy in voting; 8) Freedom from discrimination and equality before the law; 9) Equality of rights between men and women; 10) Freedom of association; 11) Freedom of assembly; 12) Freedom of action; 13) Freedom of opinion and expression; 14) Right to security; 15) Openness and right to information; 16) Prevention of corruption; 17) Rule of law; 18) Right to an effective remedy; 19) Right to a fair and public trial; and 20) The state must take the necessary steps to protect rights. If we look closely, these 20 international obligations are considered to be more guaranteeing the implementation of democratic elections compared to the 15 standards in 2002, in these 20 international obligations there are already guarantees in terms of: 1) Right to security (obligation 14); 2) Prevention of corruption (obligation 16); 3) Rule of law (obligation 17); 4) Right to effective remedy (obligation 18); and 5) State must take necessary steps to give effect to right (obligation 20). Furthermore, in the 21 Components of Legislation on Elections (International IDEA 2014), namely: 1) Structure of the legal framework; 2) Electoral system; 3) Electoral boundaries; 4) political parties; 5) Political finance; 6) Election management; 7) Gender equality; 8) Equal opportunities for minorities and marginalized groups; 9) Equal opportunities for persons with disabilities; 10) Electoral observers; 11) Civic and voter education; 12) Voter eligibility; 13) Voter registration; 14) Candidate registration; 15) Media environment; 16) Election campaign; 17) Campaign in the media; 18) Polls; 19) Counting and result management; 20) Electoral justice; 21) Election violations.

On the first point, the legal framework for elections in Indonesia has attempted to adopt democratic standards that are determined to ensure smooth and fair elections. Likewise, on point 20, Indonesia has an electoral justice system, which not only guarantees legitimate election results, but also ensures the integrity of the election results and process as a whole. Meanwhile, electoral offenses can be defined as "an act or omission that is regulated as a criminal offense, usually through election law or general criminal law." Some examples include fraud, coercion, obstruction, falsification of voter registration, and violation of campaign finance provisions. However, based on the description above, public participation in enforcing electoral justice is still relatively minimal. This can be seen from the striking difference between reports received by the public and existing findings. Data related to the handling of criminal election violations in 2019 shows that of the 3,725 findings and reports of alleged election crimes, only 380 cases finally received an inkrah decision. Based on the background above, a problem formulation can be concluded, namely to what extent the electoral justice system in Indonesia can guarantee the integrity of the election results and process, and what challenges are faced in its implementation.

2. RESEARCH METHODOLOGY

By using a qualitative approach (Sugiyono, 2013), data were collected through literature studies, then selected to obtain information relevant to the topic discussed. Furthermore, the data were arranged systematically in legal aspects with a logical sequence. The analysis of this paper was carried out using the deductive reasoning method. The data obtained were then interpreted systematically, namely by interpreting the meaning and connecting one legal norm with another that has relevance, both as the main material and as a complement in this paper.

3. RESULT AND DISCUSSION

Although Indonesia has entered the Reformation era for almost two decades, until now the election system and law in Indonesia have not been prepared comprehensively and coordinated, so that its benefits cannot be felt in the long term. In other words, reforms in the election system and law in Indonesia are still carried out half-heartedly. According to Wirdyaningsih (2019), there are four main problems in resolving criminal election violations, namely: 1) unclear and incomplete regulations in legislation; 2) differences in interpretation between law enforcement officers in Sentra Gakkumdu (investigators and prosecutors) and Bawaslu; 3) unpreparedness, inability, and unwillingness of law enforcement in handling criminal election

violations; 4) lack of effective coordination between election supervisors, investigators, and prosecutors. Fahmi (2019) stated that there are two main problems in enforcing election law, namely regulatory issues and law enforcement itself. Regulatory issues include the uncertainty of the formulation of norms in election law, especially related to the legal aspects of elections. Meanwhile, election law enforcement issues focus on issues in the functions, relationships, and perspectives of each election law enforcement agency. According to Kania (2019), there are two problems in resolving election crimes, namely: 1) regulatory problems in election criminal law, both in terms of material law and procedural law, which hinder the resolution of criminal law enforcement; 2) problems in the classification of election crimes in material law and in the procedural law process that interfere with the resolution of election crimes.

Furthermore, Kania (2019) also identified several problems in the mechanism for handling election crimes, namely: 1) there is a discrepancy between the election law which refers to the Criminal Procedure Code (KUHAP) and the different settlement mechanisms stipulated in the election law; 2) from the aspect of norms, the regulations in the election law are not clear and comprehensive enough in regulating material and procedural law; 3) the regulations in the election law are more dominated by political interests, which have the potential to ignore the principles of justice; 4) the ambiguity and lack of detail in the material and procedural law related to election crimes lead to interpretive debates that disrupt the implementation of law enforcement. The implication of the unclear boundaries and norms in the Election Law is that there are differences in interpretation between law enforcement officers and Bawaslu, which ultimately disrupts the process of resolving election crimes. Election law enforcement, especially in handling election crimes, aims to ensure that justice is achieved in the Election. Justice, according to Kelsen (2014), is a condition of social order that allows the search for truth to develop optimally. Justice reflects freedom, peace, democracy, and tolerance. Meanwhile, according to John Rawls, justice as fairness emphasizes that free and rational people must have an equal position in efforts to develop their interests, with justice not only covering individual moral concepts, but also ways to achieve that justice. It is important to discuss the legal policy related to the regulation of election crimes. Based on Law Number 7 of 2017 concerning General Elections, there are 77 articles that regulate election crimes. However, the question is whether these sanctions are effective in reducing election crime violations? In addition, can sanctions for election crime violations be enforced effectively?

According to Soerjono Soekanto (Devilla & Tarmizi, 2018), the effectiveness of law enforcement depends on several factors, namely: 1) the substance of the law itself, 2) law enforcement officers, 3) facilities, and 4) legal culture. The main focus in this discussion is the regulation in the Election Law which serves as a guide for implementers in handling election crimes. LJ Van Apeldorn is of the opinion that legal policy is legislative policy that determines the objectives and content of legislative regulations. Meanwhile, according to Satjipto Rahardjo, legal policy is an activity to decide on options regarding the goals and methods used in achieving legal goals in society. Mahfud MD stated that legal policy is a legal policy or official policy direction related to the implementation of law, either through the creation of new laws or the replacement of old laws, with the aim of achieving the ideals of the state. Crime itself is a social problem that can be detrimental and cause victims. Crime has a very broad spectrum, ranging from general crimes to special crimes regulated in various special criminal laws outside the Criminal Code. Crime prevention can be done using non-criminal law means or criminal law tools. Non-criminal law prevention can be carried out through various efforts to prevent and reduce the factors that cause crime, such as increasing economic capacity, education, socialization about regulations, instilling religious values, strengthening social ties in society, and increasing facilities or equipment to prevent crime.

Meanwhile, crime prevention through criminal law can be done by criminalizing an act through legislation, providing threats of punishment, strengthening law enforcement agencies, enforcing the law on crimes that occur, and creating or changing criminal laws. Election crimes according to Law Number 8 of 2012 concerning the Election of Members of the DPR, DPD, and DPRD are defined as violations of the election criminal provisions regulated in the law, with resolution implemented through the courts in the general court environment. The definition of election crimes is not found in Law No. 7 of 2017 concerning Elections, but this definition is explained in Bawaslu Regulation Number 7 of 2018 Article 1 number 31, which states that election crimes are violations and/or crimes against the provisions of the law governing General Elections. Topo Santoso explained that election crimes are active or passive actions that violate norms in the stages of election implementation, which are subject to criminal sanctions in accordance with the Election Law. In Law No. 7 of 2017 concerning Elections, there are 77 articles that regulate election

crimes, with 66 of them related to criminal regulations. When compared to Law No. 8 of 2012, the number has increased, namely 48 articles. Election crimes can be divided into two categories of legal subjects: first, *delik commun*, which means "every person", with 22 crimes; second, *delik propria*, which only applies to certain subjects, such as election organizers, state officials, law enforcers, and others, which includes 55 crimes. Of this number, 23 crimes relate to election organizers, while 13 crimes apply to election campaign implementers, campaign participants, election participants, presidential and vice presidential candidates, and political party leaders. In terms of quantity, more crimes are applied to election organizers compared to other subjects, making them face a large burden of responsibility and many criminal threats. The penalties for election crimes consist of several categories, namely the threat of imprisonment, detention, and fines. Imprisonment and fines can be applied cumulatively.

However, there is a deficiency in this regulation, namely that it is not clearly explained which crimes are categorized as crimes and which are considered violations. In terms of the elements of error, election crimes can be divided into several categories, namely *delict dolus* (intentionally), *delict culpa* (due to negligence), and *delict pro parte dolus pro parte culpa* (containing elements of intention and negligence). In Law No. 7 of 2017 concerning Elections, there are 42 crimes that clearly use the element of intention or *delict dolus*. In addition, there are several crimes that do not explicitly use the word "intentionally," but can be interpreted as such. For example, Article 491 which includes the element of disrupting, obstructing, or interfering with the course of the election campaign can be considered a *delict dolus*. In addition, there are also four crimes that use the element of negligence or negligence, and Article 550 which includes both elements of intention and negligence can be categorized as a *delict pro parte dolus pro parte culpa*. Law enforcement of General Elections is very important in the implementation of the Election. The main objective of this law enforcement is to achieve electoral justice, which consists of two main aspects: procedural (formal) justice and substantive (material) justice. These two forms of justice are interrelated and cannot be prioritized over each other. If this sense of justice is achieved, the public will have confidence that the Elections carried out have integrity. To overcome the problems in handling criminal acts of the Election, a legal policy is needed that leads to legislative policies for enforcing the Election law. In the academic text of Law No. 7 of 2017 concerning the Election, there are two main objectives to be achieved through the Election: 1) creating a stable government resulting from the alignment between the Presidential election and the legislative election, and 2) providing space for voters to be smarter in choosing.

According to Sera (2019), to face the future elections, a commitment is needed in legal politics to achieve democratic consolidation. Some steps that need to be taken are: 1) building substantive and quality democracy by creating a merit system; 2) creating healthy, democratic, and quality leadership; 3) revising regulations that limit freedom of association and opinion; 4) changing decisions or policies that conflict with the principles of justice and democracy; and 5) realizing three dimensions of democracy, namely: a) civil liberties, b) political rights, and c) democratic institutions. In addition, to realize a stable, dynamic, and targeted political system, Sera proposed several important steps, including: 1) changing the political system that requires high costs into a more affordable system; 2) revising the Election Law so that its implementation is more democratic and low-cost, by setting the Presidential Threshold limit at 7% and the Parliamentary Threshold also at 7%; and 3) revising the Political Party Law to renew the party system, by implementing good party governance and optimizing party funding. According to Lukman (2017), democratic consolidation will be difficult to achieve if the practice of money politics is still rampant. This is because democracy, which is truly based on the principle that sovereignty lies in the hands of the people, can be threatened if democratic values are destroyed by this practice. Money politics is considered a poison that can damage not only society, but also state officials and the legal system. Lukman (2017) also revealed that the causes of money politics can include: 1) low levels of political education in society; 2) public disappointment with parliament which is considered not pro-people, which makes them think that whoever is elected, their fate will not change; and 3) weak law enforcement that is unable to ensnare perpetrators of money politics. To reduce the practice of money politics and realize a better democracy, Lukman emphasized the importance of shared faith in legal politics in the form of procedural guarantees in handling election crimes, namely: 1) easy access to integrative and effective election justice handling procedures; 2) election justice that is free from irrational costs; 3) fast and timely verdicts or handling so that violations can be immediately corrected; 4) the right to receive defense, attend court, and receive fair legal handling; 5) decisions that are implemented in a timely and full manner; and 6) consistent and continuous interpretation and application of the Election Law.

4. CONCLUSION

From the discussion, it can be concluded that legal politics in handling criminal election matters is an important factor in forming a better election regulation. In the future, a regulation in the form of an election law is needed that is formulated with certainty, clearly, is not open to multiple interpretations and treats all parties equally (impartial principle), then the regulation is needed to form professional, impartial, and independent law enforcers in carrying out the function of enforcing election law which is clearly regulated. Finally, the process of enforcing general election law becomes a procedure that is applied continuously, starting from the preparation, implementation, and evaluation stages.

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