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Criminal Law Policies in the Electoral System in Indonesia

Mhd Teguh Syuhada Lubis¹, Rayani Saragih², Ida Hanifah¹, Ismail Koto¹, John Tumba Jacob³

¹Universitas Muhammadiyah Sumatera Utara, ²Universitas Quality Berastagi, ³Adamawa State University (Nigeria)

✉mhd.teguhsyuhada@umsu.ac.id

Abstract

The general election is a significant foundation of democracy in Indonesia, providing an opportunity for the public to choose leaders and shape policies. This research aims to analyze the implementation and impact of criminal law policies on the electoral system in Indonesia. The research method used is normative legal research with a legislative approach, and the primary data sources are legal regulations, using qualitative data analysis techniques to understand the implications of criminal law policies on the general election system in Indonesia. The results show that the implementation of criminal law policies in the electoral system in Indonesia is detailed in Law Number 7 of 2017 concerning General Elections. This law establishes various criminal provisions applicable at each stage of the election process, from preparation and campaign execution to voting and result determination. The impact of criminal law policies on the electoral system in Indonesia is significant. On one hand, these policies play a crucial role in promoting the integrity of election administration through the deterrent effect of criminal sanctions. On the other hand, enforcing criminal election laws is still not optimal, leading to a lack of public trust and the potential recurrence of similar fraudulent practices in the next elections. Therefore, various policy breakthroughs are needed to ensure that future enforcement of criminal election laws is more effective in realizing a high-quality and integrity-driven electoral system in Indonesia.

Keywords: Criminal Law, Elections, Democracy, Law Enforcement, Violations.

Abstrak

Pemilihan umum merupakan fondasi penting dalam demokrasi di Indonesia, yang memberikan kesempatan kepada masyarakat untuk memilih pemimpin dan membentuk kebijakan. Tujuan dari penelitian ini adalah untuk menganalisis implementasi dan dampak kebijakan hukum pidana dalam sistem pemilihan umum di Indonesia. Metode penelitian yang digunakan adalah penelitian hukum normatif dengan pendekatan perundang-undangan, dan sumber data primer berupa peraturan perundang-undangan, dengan menggunakan teknik analisis data kualitatif untuk memahami implikasi kebijakan hukum pidana terhadap sistem pemilihan umum di Indonesia. Hasil penelitian menunjukkan bahwa implementasi kebijakan hukum pidana dalam sistem pemilihan umum di Indonesia dirinci dalam Undang-Undang Nomor 7 Tahun 2017 tentang Pemilihan Umum. Undang-undang ini menetapkan berbagai ketentuan pidana yang berlaku di setiap tahapan proses pemilu, mulai dari persiapan dan pelaksanaan kampanye hingga pemungutan suara dan penetapan hasil. Dampak dari kebijakan hukum pidana terhadap sistem pemilu di Indonesia cukup signifikan. Di satu sisi, kebijakan ini memainkan peran penting dalam mendorong integritas penyelenggaraan pemilu melalui efek jera dari sanksi pidana. Di sisi lain, penegakan hukum pidana pemilu dalam praktiknya masih belum optimal, sehingga menimbulkan kurangnya kepercayaan publik dan potensi terulangnya praktik-praktik kecurangan serupa pada pemilu-pemilu berikutnya. Oleh karena itu, diperlukan berbagai terobosan kebijakan agar penegakan hukum

Introduction

General elections are one of the main pillars of democracy in Indonesia. Through general elections, the people of Indonesia have the right to choose their representatives at various levels of government, ranging from the election of the president, members of parliament, governors, and regents to village chiefs (Alvons, 2018). The importance of fair, transparent, and legitimate general elections in a democratic system is crucial. In Indonesia, elections serve as a significant instrument in implementing the democratic order established since the 1998 reform. General elections allow Indonesian citizens to participate in choosing their leaders and determining the direction of state policies. However, in managing this complex electoral system, there is a need for criminal legal policies to maintain the integrity of elections and prevent acts of fraud and other legal violations.

With the development of time and the demands of society for a better democratic order, Indonesia has undergone several reforms related to the electoral system (Fahrika & Zulkifli, 2020). One significant reform is shifting from the authoritarian New Order-based electoral system to a more inclusive and open one. This change is reflected in various legislative regulations, including Law No. 7 of 2017 concerning General Elections. This law provides a strong legal basis for conducting transparent, honest, and fair elections. However, to maintain the integrity of the elections, there is a need for adequate criminal legal policies.

Furthermore, provisions govern general elections within the Indonesian National Army (TNI) and National Police (POLRI) environments through Law Number 34 of 2004. This law regulates the neutrality of the Indonesian National Army and National Police in general elections. It imposes criminal sanctions on members of the Indonesian National Army and National Police involved in practical politics or not neutral in general elections. General elections in Indonesia have become crucial in the country's democratization process. With a large and diverse number of voters and representatives who will influence the future of the country, general elections require a strong legal framework to ensure that the process is fair and free from fraud (Fajrian Noor Anugrah, 2023).

The importance of Criminal Law Policy in the Electoral System in Indonesia becomes increasingly clear given the various challenges and threats to the integrity of elections. One of the main challenges is the attempt of fraud and manipulation in the form of vote tampering, political bribery, and various other forms of legal

violations that can undermine the democratic process. Therefore, the government and related institutions must have effective legal instruments to address these violations. The existence of criminal law policies in the general election system in Indonesia is aimed not only at addressing violations but also at encouraging active participation of the community in the elections. People will feel more confident to participate if they believe that legal violations will be dealt with firmly and fairly. Therefore, the role of criminal law in elections is to create an environment conducive to healthy and fair political participation (Fahmi, 2015).

In 2024, Indonesia again held simultaneous General Elections (Pemilu) nationwide. In the 2024 elections, enforcing criminal election laws became the primary focus to maintain the integrity and quality of the local democratic event. Following the reform of criminal election law policies in 2021, significant challenges emerged regarding implementing these new rules to prevent political bribery, abuse of power, and intimidation and violence practices conducted by candidates for regional leaders and their campaign teams. The commitment of the government and the General Election Commission (KPU) to enforce strict sanctions against electoral law violations is crucial. On the other hand, active oversight from civil society and non-governmental organizations is also essential to enforce an objective, fair, and transparent legal process following the principles of due process of law. Thus, the quality of democracy in Indonesia is expected to improve after the upcoming 2024 elections (Zarkasi et al., 2023).

Although there are strict criminal legal regulations in general elections, their implementation still has some challenges. One of the main challenges is consistent and fair law enforcement. There have been reports of inconsistent law enforcement regarding election violations in previous general elections. These reports create doubts about the integrity of the general elections and raise questions about the policy of criminal sanctions (United Nations Office on Drugs and Crime., 2011). There are also challenges in clearly defining what falls into the category of criminal violations in general elections.

Several researchers have conducted research of a similar nature. Firstly, Fahmi (2016) states that although criminal law policies play a crucial role in promoting electoral integrity, enforcement implementation faces technical and political obstacles and, thus, is not yet optimal (Fahmi, 2016). Second, Surohmat (2021) states that criminal law enforcement in the field of elections is based on the role of law enforcement institutions led by the Election Supervisory Agency (Surohmat, 2021). Thirdly, Isnawati (2018) states that accountability in voting is inseparable from unsuccessful acts of election (Muridah Isnawati, 2018). The novelty of this article

lies in its proactive and solution-oriented approach, addressing identified challenges in electoral criminal law enforcement and providing contemporary insights into the evolving electoral system landscape in Indonesia.

Research Problems

Based on the explanation in the background above, the problem formulation in this research is: First, "How is the implementation of criminal law policy in the electoral system in Indonesia?" And the second one is, How does criminal law policy impact the electoral system in Indonesia?

Research Methods

In this study, the appropriate research method is normative legal research. This method will allow researchers to examine various legal regulations related to general elections in Indonesia. The approach used is a legal approach, which will focus the analysis on existing legal norms. This study's primary data sources are laws related to general elections in Indonesia, such as the General Election Law, the Criminal Code, and other related regulations. Additionally, government policy documents and court decisions related to cases of election violations will also be significant data sources.

The data collection technique in this research involves document analysis, including collecting and examining relevant legal documents, policies, and court decisions. Furthermore, the researcher will employ a qualitative approach for the data analysis technique. Qualitative analysis will aid in understanding the implications and impact of criminal law policies on the general election system in Indonesia more deeply. With the normative legal research method, legislative approach, relevant data sources, and appropriate data collection and analysis techniques, this study is expected to provide significant insights into how criminal law policies affect the general election system in Indonesia.

Discussion

The Implementation of Criminal Law Policies in the Electoral System in Indonesia

General elections are a vital mechanism in implementing the people's sovereignty, aiming to form a democratic government by the values of Pancasila and the 1945 Constitution. A strong legal framework is required for the elections to be realized transparently and fairly, in accordance with the principles of direct, general, free, secret, honest, and fair (Dewanto, 2017). A critical aspect of that legal framework is the implementation of electoral criminal law, which aims to ensure the integrity and validity of the election process. Article 74 of Law Number 7 of 2017 concerning General Elections (Election Law) stipulates that election crimes refer to

violations of criminal provisions regulated in that law. Furthermore, Chapter XXI of the Election Law provides legal grounds for various criminal provisions related to the entire stages of conducting elections, from the preparation period to the announcement of election results (M. Khaerul et al., 2022).

In preparation for the elections, Article 513 paragraph (1) of the Election Law emphasizes that any individual who intentionally provides false information, whether about themselves or others, regarding the necessary information for voter registration may face a maximum imprisonment of 2 years and a fine of up to IDR 24,000,000.00. This punishment is implemented as a preventive measure to avoid fraudulent practices in the voter data collection and registration process, ensuring the integrity and validity of the election implementation (Nurhalifah & Risal, 2020).

During the campaign period, Article 519 of the General Election Law (Election Law) emphasizes that organizers, participants, and campaign officials of the election who intentionally disrupt, obstruct, or interfere with the course of the election campaign by other election participants can be punished with a maximum prison sentence of 2 years and a fine of up to Rp24,000,000.00. This regulation aims to ensure the smooth running of the election campaign without intimidation or disruption so that the democratisation process can proceed in an orderly and fair manner (Aston & Magnis-Suseno, 2008). These sanctions serve as a legal framework emphasizing the importance of maintaining security and orderliness in the conduct of the campaign for the integrity and transparency of general elections.

In the context of voting and ballot counting, the Election Law establishes several criminal offences to maintain the integrity and validity of the democratic process. One stipulation emphasized is Article 539 paragraph (1), which prohibits any individual from intentionally altering, damaging, or eliminating the results of voting and ballot counting. Violations of this provision can result in a minimum prison sentence of 36 months and a maximum of 72 months, as well as fines ranging from Rp36,000,000.00 to Rp72,000,000.00. The aim is to impose strict sanctions to prevent potential manipulation and violations in the election process (Santoso, 2007).

Furthermore, Article 540 paragraph (3) also plays a significant role in maintaining the integrity of the election. This article prohibits the Election Organizers Group (KPPS) from casting votes more than once during the voting and vote-counting process. Violation of this provision may result in a maximum imprisonment of 1 year and a fine of up to Rp12,000,000.00. With this provision in place, it is hoped to prevent practices of bribery and fraud that may occur during the

vote-counting process, ensuring that the election results reflect the will of the people in a legitimate and fair manner (Karso, 2021).

In determining the election results in Indonesia, Article 555 paragraph (1) of the Election Law plays a crucial role in preventing potential fraud committed by members of the National, provincial, and district/city General Election Commission (KPU). The article explicitly states that any member of the KPU who intentionally alters the vote count or fails to take action on findings by the Election Supervisory Body (Bawaslu) that could potentially alter the vote count may be subject to criminal charges. The possible penalties include imprisonment ranging from 36 to 72 months, and fines ranging from IDR 36,000,000.00 to IDR 72,000,000.00. With this provision, the Election Law imposes significant sanctions as a preventive measure to ensure the integrity and validity of the election results (Satria, 2019). The sanction imposed by Article 555 paragraph (1) aims to maintain the public's trust in the electoral process and avoid fraudulent practices that could undermine the legitimacy of election results. Therefore, this article serves not only as a punishment for wrongdoers but also as a preventive measure encouraging election organizers to carry out their duties with full integrity and fairness (Badoh & Dahlan, 2010). With this provision, it is hoped that the election organizers can act by the rules and not be involved in manipulative actions that could harm the democratic process and public trust in the electoral institution.

Chapter XXI of the Election Law describes the special criminal provisions applicable to general elections in Indonesia. One prominent article is Article 557 of the Election Law, which explicitly states that election offences not regulated in that law will be subject to the provisions stipulated in the Criminal Code (KUHP) and other statutory regulations. Thus, the Election Law provides a solid legal foundation, acknowledging the applicability of the Criminal Code as a general criminal law book relevant to addressing offences beyond the scope of electionspecific regulations (Santoso & Budhiati, 2018). This provision illustrates the synergy between election criminal law and general criminal law in upholding justice and legal order. Although the Election Law regulates criminal acts related to the election process in detail, recognition of the Criminal Code provides flexibility for law enforcement to address criminal acts not specified in that law (Widayati, 2011). Therefore, the legal system of Indonesia ensures that not only election crimes receive attention, but also general crimes that can occur in the context of general elections, creating a comprehensive foundation for effective law enforcement.

Based on several electoral criminal provisions that have been regulated, it is clear that the law aims to encourage the integrity and quality of the conduct of General Elections (Elections). Implementing criminal sanctions in the law becomes the last resort or *ultimum remedium* to enforce the law so that the Elections can

optimally reflect the sovereignty of the people. However, in practice, implementing electoral criminal provisions still faces various obstacles and challenges (Pratiwi et al., 2016). The presence of implementation obstacles indicates that further efforts are needed to ensure the effectiveness of law enforcement and to achieve the goals of electoral integrity better.

Based on Perludem's research conducted from 2012 to 2019, the data indicates that only 34.73% of the total cases of electoral crimes were successfully pursued to the trial stage, while the remaining 65.27% came to a halt at the investigation level (Husin et al., 2021). The primary factors contributing to the low law enforcement figures involve various issues, such as the limited number of investigative personnel, coordination challenges among relevant institutions, and difficulties in meeting the burden of proof to complete the investigation and prosecution process. As a result, the suboptimal enforcement of the law against electoral violations not only undermines the integrity of the democratic process but also hinders effectiveness in deterring potential legal infractions (Putra, 2020).

In order to realize democratic values in elections (General Elections), various efforts are needed to improve the enforcement of criminal election laws in the future. These efforts involve enhancing the clarity and effectiveness of electoral criminal laws, ensuring that the penalties imposed are commensurate with the level of violations that occur. Additionally, it is essential to strengthen cooperation between law enforcement agencies, election organizers, and civil society to ensure transparency, accountability, and integrity in the electoral process. Strengthening education and legal awareness related to elections are also crucial aspects so that the public can understand the consequences of criminal law violations in the context of general elections (Sutarno, 2022).

In addition to referring to the specific criminal provisions in Chapter XXI General Election Law, greater authority should also be granted to the Election Supervisory Board (Bawaslu) to actively and effectively oversee the handling of electoral crimes. The granting of this authority is aimed at minimizing the potential for political intervention in law enforcement related to general elections.

As the leading sector playing a central role in election supervision, Bawaslu should be more proactive and autonomous in responding to and following up on electoral violations (Rosidin et al., 2021). By granting greater authority to the Bawaslu, it is hoped that the handling of election crimes will become more transparent, fair, and free from political influence that could compromise the integrity of the democratic process in Indonesia.

Moreover, the ineffectiveness of Bawaslu in addressing electoral crimes can be attributed to its limited authority and resources. Bawaslu's current mandate may need to provide more power to take decisive actions against those responsible for election violations. Additionally, inadequate resources, in terms of personnel and technology may hinder Bawaslu's ability to conduct thorough and timely investigations. Strengthening Bawaslu's authority and providing the necessary resources can enhance its effectiveness as an independent body responsible for overseeing and ensuring the integrity of the electoral process. This strengthening, in turn, would contribute to a more robust and accountable electoral system in Indonesia. Several factors hinder the effectiveness of GAKUMDU (Election Result Dispute) in addressing election violations. The time is limited, and the challenge of cooperation because it must go through the discussion of three institutions, namely Bawaslu, the Police and the Prosecutor (Yuliawati, 2021).

Massive socialization efforts are needed among the public to strengthen the implementation of criminal law provisions in General Elections (Elections), especially regarding the practices of money politics. This socialization aims to ensure that the public has a deep understanding of the applicable regulations so that they are not easily provoked or involved in legal violations. Through this approach, it is hoped that the public can become active agents of change in safeguarding the integrity of the elections and realizing democratic values. Effective socialization efforts not only support law enforcement but also play a crucial role in shaping public awareness of the importance of clean and fair participation in the democratization process (Fransisca et al., 2023).

The Impact of Criminal Law Policies on the Electoral System in Indonesia

The criminal law policy plays a crucial role in supporting the integrity of implementing elections in Indonesia. With the existence of criminal sanctions stipulated in Law Number 7 of 2017 concerning General Elections, all phases of the election are expected to proceed with honesty, justice, and compliance with legal norms. The implementation of criminal law in the context of elections is expected to create a deterrent effect for those involved in fraudulent actions while also serving as a mechanism to protect the constitutional rights of citizens (Satria, 2019). The overall policy formulation of criminal election law shows significant development from one period to the next. This development is reflected in the increasing detail and firmness of regulations related to election crimes based on fundamental election principles such as direct, general, free, secret, honest, and fair. For example, Article 74 of Law No. 7 of 2017 stipulates that election crimes include violations of criminal provisions related to elections regulated in that law. Furthermore, in Chapter XXI, these regulations detail Election Crimes, covering various stages from

preparation to the announcement of election results as a preventive measure against potential fraud (Muridah Isnawati, 2018).

Furthermore, Chapter XXI also details electoral offences at various stages, including preparation, campaign execution, voting and counting, and determining election results. With the formulations of these articles, theoretically, almost all crucial stages in the conduct of elections have been regulated to reduce the potential for fraud. These arrangements reflect legislative efforts to strengthen the integrity and transparency of the general election system, in line with an awareness of the importance of maintaining the authenticity and trust of the public in the democratic process (Muridah Isnawati, 2018). Therefore, the formulation of election criminal law not only follows the development of the times but also seeks to respond to the complex dynamics in every general election.

Although there have been efforts to implement criminal law in the context of elections, the reality still shows a low level of effectiveness. Data from the Election Supervisory Agency (Bawaslu) for 2017-2022 indicates that only about 30% of election violation cases have resulted in criminal prosecution (Murjani & Sagama, 2022). The majority of cases are halted during the investigation and prosecution stages, influenced by various technical factors that hinder the law enforcement process. The impact of this is the low deterrent effect of criminal law in elections, making it insufficient in preventing practices such as political bribery and various forms of fraud that can undermine the integrity and fairness of the electoral process (Simanjuntak, 2017).

The minimal enforcement of criminal law related to elections significantly impacts the level of public trust in the integrity of the electoral process. This phenomenon creates legal uncertainty and gives the impression that the conduct of elections does not effectively safeguard the justice and cleanliness of the democratic process (Mega et al., 2023). In this context, strong and thorough law enforcement against electoral violations is crucial to rebuilding public trust in the integrity and validity of election results, ensuring that every violation has appropriate consequences.

Apart from the specific criminal provisions stipulated in Chapter XXI of the Election Law, deficiencies in law enforcement also create the potential for the recurrence of fraudulent practices in the next general elections. The lack of law enforcement provides a loophole for election criminals not to feel intimidated or deterred due to minimal or inadequate consequences (Putra, 2020). This situation can undermine the integrity of the democratic process and weaken public trust in the electoral system (Utami, 2019). Therefore, efforts to enhance the effectiveness of

law enforcement against electoral violations are crucial to prevent the recurrence of unlawful actions and maintain long-term democratic stability.

In the context of further impact, the enforcement of Article 557 of the Election Law, which refers to the Criminal Code (KUHP), not only affects the law enforcement process but can also undermine the foundations of democracy and the constitutional responsibility of conducting honest and fair general elections as mandated by the reform. By allowing electoral offences not covered by specific laws to be subject to the provisions of the Criminal Code, there is an open opportunity for practices that damage the integrity and quality of the electoral system (Santoso & Budhiati, 2018). Therefore, optimal enforcement of criminal election laws is crucial to maintain the integrity of democracy and ensure that the electoral system operates with honesty and fairness, according to the principles of reform that form the basis of Indonesia's political system.

Elections are a crucial pillar of democracy, and valid results play a key role in maintaining the integrity of the political system. When election violations occur, it can damage the legitimacy of the results and trigger a series of complex consequences. The impact of election violations on legitimacy is reflected in the increased legal demands and disputes over the results (Saifulloh & Riska Answendy, 2023). Voters or candidates who feel aggrieved tend to file lawsuits to question the validity of the electoral process (Klein, 2017). This tendency not only creates political instability but also places responsibility on election oversight institutions and the judicial system to ensure fair and valid decisions.

The impact of election violations can also be observed in invalid election results. When violations occur, the election process can be distorted, producing outcomes that do not reflect the true will of the voters. This result erodes the legitimacy of the elected government and can foster distrust in the democratic process among the public (Marien & Marc Hooghe, 2011). Moreover, international institutions and partner countries may doubt the credibility of an election in the presence of structured violations (Pahlevi, 2011). Therefore, election violations not only threaten the sustainability of a country's democratic system but can also harm diplomatic relations and global reputation. In evaluating the impact of election violations on valid results, it is crucial to note that public trust is a critical aspect. If the public loses confidence in the integrity of the election, it can open the door to greater political instability. Therefore, decisive measures to address and prevent election violations are essential to ensure that election results remain valid and fairly represent the will of the people.

Conclusion

The implementation of criminal law policies in the electoral system in Indonesia is detailed in Law Number 7 of 2017 concerning General Elections. This law establishes various criminal provisions at each stage of the electoral process, from preparation and campaign execution to voting and result determination. The goal is to maintain the integrity and transparency of the electoral process, ensuring that it unfolds honestly and fairly in line with the principles of popular sovereignty. However, in its implementation, the enforcement of criminal electoral laws still encounters several technical and political challenges that hinder the optimal achievement of deterrent effects. The impact of criminal law policies on the electoral system in Indonesia is quite significant. On one hand, these policies play a crucial role in promoting the integrity of the electoral process through the deterrent effect of criminal sanctions. However, on the other hand, in its implementation, the enforcement of criminal law in elections is still not optimal, leading to a decrease in public trust and the potential recurrence of similar fraudulent practices in the next elections. Therefore, various policy breakthroughs are needed so that in the future, criminal law enforcement can be more effective in realizing a higher quality and more integrity-driven electoral system in Indonesia.

Based on the research findings, it is recommended that the Indonesian government make improvements and strengthen the implementation of criminal law policies in the electoral system. Concrete steps need to be taken to address technical and political obstacles hindering the enforcement of criminal electoral laws in order to achieve optimal deterrent effects. Coordination between relevant institutions should be enhanced, the capacity of law enforcement officials should be increased, and the active involvement of civil society in monitoring the election process is necessary. Additionally, updating and clarifying the definitions of violations in Law Number 7 of 2017 can also enhance the effectiveness of criminal law enforcement. By implementing these policy breakthroughs, it is hoped that Indonesia can ensure more effective enforcement of criminal electoral laws, ultimately building a higher-quality, transparent electoral system that enhances public trust and reduces the potential for recurring electoral fraud practices in the future.

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