



Sanctions for Criminal Acts of Election Violations (analysis of decision number: 71/Pid.Sus/2019/PT PAL)

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Abstract - General elections as a means of democracy in Indonesia still face various challenges, including election violations and crimes. Law No. 7 of 2017 concerning Elections regulates administrative violations, violations of the code of ethics, and election crimes. However, there is still ambiguity in the regulation and classification of election violations and crimes. The case study of the Palu High Court decision Number 71/Pid.Sus/2019/PT PAL shows an example of an election crime in the form of campaigning during the quiet period. The defendant, a candidate for DPRD member, was proven to have violated Article 523 paragraph (1) in conjunction with Article 280 paragraph (1) letter j of Law No. 7/2017 by distributing stickers and promising rice to voters during the quiet period. A similar decision was also found in a 2014 case at the Mamuju District Court. The aim of this research is to find out the legal basis for general election crimes, and also to find out the judge's considerations in decision number: 71/Pid.Sus/2019/PT PAL. These cases illustrate the challenges in enforcing election criminal law, especially regarding illegal campaigning during the quiet period. Clearer regulations and effective law enforcement are needed to ensure the integrity of the election process in Indonesia.

Keywords: Election crimes, Campaigning during the quiet period, Election law enforcement.

I. INTRODUCTION

General Elections (Pemilu) are an important aspect of democracy and must fulfill the principles stated in Article 22E paragraph (1) of the 1945 Constitution, namely Direct, General, Free, Secret, Honest and Fair (Luberr Jurdil) (Amsari, 2022). The democratic process itself is often faced with challenges and tests that require good management so as not to cause division in the nation.

It is not something that is ephemeral, because it has happened and been experienced by various countries in the world. In holding the election, itself, it is necessary to ensure that voters' sovereignty is guaranteed, and also that voters' sovereignty is not damaged due to technical problems or fraud that occurs. Efforts to create a fair election organization are indeed very dependent on various aspects, from planning, implementation, to supervision. The commitment of all parties involved, including organizers, political parties, candidates and voters, in upholding the principles of equality and transparency is also very important to create a fair election environment.

General elections in Indonesia are a reflection of the implementation of the concept of democracy as stated in the 1945 Constitution of the Republic of Indonesia, namely Article 1 paragraph (2) which states that "Sovereignty lies in the hands of the people and is implemented according to the Constitution." General elections are a means to embody the sovereignty of the people in a democratic state (Budiman, 2022).

Elections function to convert the will of the people into positions in the national institutions (Mahendra, 1996)

One of the requirements for implementing a democratic system is the participation of the people in the government process. Democracy must run fairly. The community is also required to have access to the government system by participating in choosing who will be their leader. In a state system where a People's Representative Institution is formed, the will of the people is represented by those who sit in the people's representative institution. General elections (hereinafter abbreviated to Election) directly by the people are a means of realizing people's sovereignty in order to produce a democratic state government based on Pancasila and the 1945 Constitution of the Republic of Indonesia (hereinafter abbreviated to the 1945 Constitution).

Article 1 paragraph (2) of the 1945 Constitution states that "sovereignty lies in the hands of the people and is implemented according to the Constitution". The implementation of direct, general, free, secret, honest and fair elections can be realized if implemented by election organizers who have integrity, professionalism and accountability. Accountability means that every party involved in organizing elections must be responsible for the implementation of their duties and authorities to the public both politically and legally.

Being politically responsible in organizing elections requires every element involved, such as election organizers, political parties and legislative candidates, to provide clear and open explanations to the public regarding their respective roles and functions. They must also outline the reasons behind the decisions and actions they took during the selection process. This aims to ensure that all elements in the election process operate with transparency and can be held accountable to the public. Meanwhile, legal responsibility requires that every party suspected of violating the principles of democratic elections follow the applicable law enforcement process. The process must comply with the principle of presumption of innocence, which states that every individual is presumed innocent until proven guilty through a fair legal process. In addition, the legal process must follow the principle of due process of law, which includes the right to receive fair treatment and the opportunity to defend oneself in accordance with the provisions regulated in the Criminal Procedure Code (KUHAP).. Therefore, one of the important prerequisites in the implementation of elections in a democratic country is that the implementation of elections is carried out by an institution that is independent of the government (Mulyadi, 2019).

Problems that often arise when holding a democratic party in this case the election of legislative members often cause a problem. The problem that often arises is money politics. One of the election crimes that often occurs is money politics carried out by candidates, campaign teams, and volunteers to get as many voters as possible (Annisa Rengganis, 2020)

Money politics is a practice in which individuals or groups with certain interests provide financial rewards to certain parties to influence the outcome of elections or political decisions. This process often involves bargaining in which financial rewards are offered in exchange for support or votes. Money politics occurs because people often do not fully understand the negative consequences of this practice, which can damage the integrity of the democratic process and reduce political stability, especially in direct elections. The practice of money politics not only undermines the principles of justice and transparency, but also has a negative impact on society as a whole. This creates inequality and corruption in the political process, leading to decisions based not on the public interest but rather on private gain. As a result, this practice hinders the formation of a democratic and civilized society, where political decisions should be taken fairly and based on merit and good policies.

The practice of money politics reflects conditions where money is used to buy political support, including buying voters' votes in the election process. This situation shows that political power can be gained through financial rewards, not based on the competence or quality of the leader. Money politics continues to develop in various regions, damaging the integrity of democracy and creating injustice in the electoral process. In the practice of money politics, opportunities for citizens who have the competence and qualifications to lead are often

overlooked, because position and power are more easily achieved by those who are able to provide financial rewards. This provides benefits to investors or corrupt actors who want to control areas in unethical ways. As a result, money politics not only hinders the election of quality leaders, but also worsens regional governance by strengthening the influence of irresponsible people.

With the rampant money politics during the general election in this case the election of legislative members, from the explanation above, the author is interested in analyzing and discussing which is poured into the form of this written work with the title "implementation of criminal law in the implementation of the 2019 general election, by analyzing a decision with the number: 71 / Pid.Sus / 2019 / PT PAL"

II. METHOD

This writing uses the normative legal research method. This type is normative legal research, namely research that has an object of study regarding legal rules or regulations. Legal research Normative examines legal rules or regulations as a building system related to a legal event. This research was conducted with a purpose to provide legal arguments as a basis for determining whether something whether the event is right or wrong and how the event should be done law. This type of normative legal research can also be interpreted as a technique or review procedures guided by several legal principles and rules law, as well as legal principles relating to the substance of regulations general and specific legislation (Muchtari, 2015). This study also uses an approach through legislation and a conceptual approach. Primary data in this study were obtained from the opinions of scholars. While secondary data were obtained from legislation, books, papers, journal articles related to the topic of this study. This technique aims to describe the phenomenon as comprehensively as possible by collecting data (Abubakar, 2021). In addition, interpretation is also carried out using arguments based on deductive and inductive legal logic.

III. RESULT AND DISCUSSION

Criminal Acts of General Election Violations Based on Statutory Regulations.

General elections are an important means of democracy for the people. In Indonesia, elections have been held several times, especially in the last few years. Changes in the world's political map and demands for democratization from each country encourage governments and politicians to continue to look for the right format for holding elections. This is important so as not to get caught up in momentary interests based on narrow ideology. As a cultural nation, we must ensure that elections are in line with the Pancasila ideology, which has been the nation's commitment since independence in 1945. However, it is also recognized that no matter how good and perfect a democratic system is, we must also return to the ethics and culture of the nation. Election laws have indeed been made, and have undergone several changes, but it cannot be denied that there is still a tendency in the form of violations that have an important legal dimension.

Janardjri M. Gaffar stated that in the provisions of the election law, there are two types of election violations, namely administrative violations and violations containing criminal elements. The resolution of administrative violations is carried out by the KPU. Meanwhile, the resolution of violations containing criminal elements is carried out according to the Criminal Procedure Code with a time limit that the investigation must be carried out within 30 days from the receipt of the report and transferred to the prosecutor within 7 days. The prosecutor must transfer the case to the court within 14 days from the receipt of the files from the investigator. Janardjri further said that in addition to the two violations above, there are also election disputes that do not contain elements of administrative violations and criminal violations. Whether if there is a dispute over the termination of the election results nationally by the KPU, it will be examined and decided by the Constitutional Court. This provision is in accordance with the results of the amendment to the 1945 Constitution which formed the Constitutional

Court, by deciding on PHPU as one of its authorities, as stated in Article 24C paragraph (1).

Election crimes refer to violations committed in connection with the implementation of general elections, as regulated in the Election Law. Supervision of these criminal acts is carried out by election supervisors, who are tasked with identifying and handling cases of violations. After supervision, reports regarding violations are submitted to the police for further investigation. Then, the case is submitted to court through the prosecutor's office for trial. During the trial process, the judge will examine the evidence and listen to arguments from all parties before imposing sanctions in the form of prison sentences or fines on violators who are proven guilty. Criminal acts in the context of elections include various qualifications, and one of them is election crimes (Khairul, 2015). In Law Number 7 of 2017, election crimes are defined as criminal acts of violation and/or crimes against the provisions of election crimes as regulated in the Election Law. Based on this definition, acts or actions that can be considered as election crimes are acts that are criminalized based on the election law and are subject to criminal sanctions. The importance of regulating election crimes is to protect election participants, organizing institutions and voters and to uphold legal order in society in the implementation of elections (Kartiko, 2009).

Acts referred to as election crimes are divided into two groups, namely: violations and crimes (Hamzah, 2015). However, the Election Law does not specifically define what is meant by a criminal act in the form of a violation and what is the scope/definition of a criminal act. Law No. 7 of 2017 regulates violations differently from criminal acts. Law no. 7 of 2017 concerning elections only mentions the form of violations, it is only explained that election violations are divided into two, namely violations of the code of ethics of election organizers and administrative violations. In violations of the code of ethics of election organizers, it only explains the definition of violations of the code of ethics of election organizers and does not specifically mention violations of the code of ethics of election organizers. Likewise, in administrative violations, it is only explained from the definition of administrative violations and does not specifically mention administrative violations.

The regulation of election crimes is regulated in Articles 488 to 544 in Law no. 7 of 2017 concerning elections. In these articles, only criminal acts and sanctions are mentioned for perpetrators. However, in this article, there is no detailed explanation regarding election crimes and the qualifications of the actions taken are violations or crimes. In addition to the Election Law, election crimes are also regulated in the Criminal Code. In the Criminal Code regarding election crimes, this is regulated in Chapter IV concerning Crimes Against Carrying Out State Obligations and Rights. Here there is a lack of clarity in the regulation between violations of the code of ethics of election organizers, administrative violations and election acts that are not well regulated, resulting in losses for citizens who feel their rights have been violated. So the regulations that regulate must regulate more clearly regarding violations and crimes in election crimes in order to make it easier for people in dispute to determine whether the act committed is a violation or crime in election crimes, so that those in dispute can resolve the problem in the right institution and place.

Basis for Judge's Considerations in Decision Number: 71/Pid.Sus/2019/PT PAL

The 2019 General Election for Members of the DPR, DPD, President and Vice President, and DPRD (2019 Election) has been completed on April 17, 2019. The results were 575 DPR members, 136 DPD members, 2,207 people and a pair of President and Vice President, have been determined by the General Election Commission as participants and/or elected pairs in the 2019 Election. With the end of the 2019 Election, it means that the Indonesian nation has finished realizing the sovereignty of the people to produce people's representatives and a democratic state government. Despite the success in its implementation, the 2019 Election, like previous elections, has never been able to run smoothly. This condition is certainly not a measure of the 2019 Election not being of quality as the 1955 Election which was

considered democratic and peaceful amidst strong primordial ties, (Puspoyo, 2012) In every stage of the election, problems always arise even though various anticipatory steps have been taken by the organizers. One of the problems that occurred in the 2019 Election and is still being discussed by the ranks of the organizers and election observers is the effectiveness of enforcing election criminal law.

During the implementation of the 2019 Election, Bawaslu has received 2,724 reports or findings of election crimes, much less than the 2009 Legislative Election which saw 6,017 cases of criminal violations throughout Indonesia (Ramdanyah, 2009). Considering that Law No. 7 of 2017 has specifically regulated the types and severity of threats and how criminal acts in the 2019 Election should be handled, from the start there should have been no concerns about the effectiveness of law enforcement against perpetrators of criminal acts in the 2019 Election.

However, seeing the small number of reports of election crimes that continue to the level of investigation, prosecution, and examination in court until the issuance of a final and binding decision (*inkracht van gerwisjder*), it proves that the handling of election crimes in the 2019 Election has not been effective even though there is a coordination channel between law enforcers in the *Sentra Gakkumdu* forum. In this case, the problem that exists is the implementation of the campaign during the campaign quiet period. In accordance with Article 1 Number 36 of the General Election Law, the quiet period is a period that cannot be used to carry out general election campaign activities. The quiet period according to Article 167 paragraph (4) of the Election Law is a stage of the Election organizers, the stages of which include :

- a. program and budget planning and preparation of implementing regulations for the Implementation of Elections;
- b. updating of Voter data and preparation of Voter lists;
- c. registration and verification of Election Participants;
- d. determination of Election Participants;
- e. determination of the number of seats and determination of electoral districts;
- f. nomination of President and Vice President and members of the DPR, DPD, provincial DPRD, and district/city DPRD;
- g. Election Campaign period;
- h. Quiet Period;
- i. voting and voter counting;
- j. determination of Election results; and
- k. taking of the oath/pledge of the President and Vice President and members of the DPR, DPD, provincial DPRD, and district/city DPRD.

Furthermore, the prohibition regarding the quiet period can be seen in Article 278 paragraph (2) which states, During the quiet period, the implementers, participants and/or Presidential and Vice Presidential Election Campaign teams are prohibited from promising or giving rewards to voters for:

- a. not using their voting rights;
- b. choosing a Candidate Pair;
- c. choosing a certain Election Participating Political Party;
- d. choosing a certain DPR, provincial DPRD, and district/city DPRD candidate; and/or
- e. choosing a certain DPD candidate.

Furthermore, when discussing violations in general elections, in this case the election of legislative members, the author refers to decision number: 71/Pid.Sus/2019/PT PAL.

Sit matter:

That the defendant HAMSIR, BE as a Permanent Candidate for Member of the Regional People's Representative Council (DPRD) of Palu City in the 2019 General Election (Pemilu) for Electoral District (DAPIL) 2, North Palu District and Tawaeli District on Sunday, April 14, 2019 at approximately 16.30 WITA or at least at a certain time during the quiet period in April 2019 or at least between April 14, 2019 and April 16, 2019, at Jl. Kayu Maboko Rt 002/011, Pantoloan Boya Village, Tawaeli District, Palu City or at least at

another place that is still included in the jurisdiction of the Palu District Court. That at the time and place as described above, initially the defendant as a participant in the 2019 Palu City Regional People's Representative Council (DPRD) Election or Legislative Candidate (CALERG) from the Hanura Party with Serial Number 1 for Electoral District 2 (two) North Palu District and Tawaeli District had provided campaign materials in the form of stickers to the defendant's trusted person, namely volunteer witness HAMID.

That initially witness HAMID asked witness ARLIN for help to register residents by attaching campaign materials in the form of stickers on the windows or doors of residents' houses. On that basis, witness ARLIN distributed the stickers by registering residents around witness ARLIN's residence or those in DAPIL 2 who had the right to vote by promising to get rice from the defendant for recipients of the stickers who wanted to support and vote according to what was on the sticker, namely choosing the defendant in the General Election on April 17, 2019. Witness ARLIN's method of registering residents was by attaching stickers to each door or window of a resident's house by informing the residents as a condition for being registered and for residents whose houses were attached to the stickers, the residents would receive rice assistance from the defendant. After that, witness ARLIN through witness HAMID provided a list of names that had been recorded on the stickers were distributed to the defendant.

That based on the Regulation of the General Election Commission of the Republic of Indonesia Number: 7 of 2019 concerning the third amendment to the Regulation of the General Election Commission Number 7 of 2017 concerning the stages, programs, and schedule for the implementation of the 2019 Election, where the campaign period begins on September 23, 2018 to April 13, 2019, while starting from April 14, 2019 as stated in the attachment to the Decision is entering a quiet period until April 16, 2019.

The defendant's actions are as regulated and threatened with criminal sanctions under Article 523 paragraph (1) Jo Article 280 paragraph (1) letter j of the Republic of Indonesia Law Number: 7 of 2017 concerning General Elections. After reading the criminal charges filed by the Public Prosecutor which are in essence as follows:

1. Declaring that the Defendant HAMSIR, SEr, has been proven legally and convincingly guilty of committing the crime of "Violating the prohibition of election campaigns during the quiet period" as regulated in violation of Article 523 paragraph (2) Jo Article 278 paragraph (2) of Law of the Republic of Indonesia Number 7 of 2017 concerning General Elections;
2. A criminal sentence to the Defendant HAMSIR, BEr, with a prison sentence of 4 (four) months, with an order for the Defendant to be detained, in addition the Defendant is also charged with paying a fine of Rp. 10,000,000,- (ten million rupiah) and if the fine is not paid then it will be replaced with a substitute/subsidiary sentence of 3 (three) months imprisonment.

Based on, a copy of the decision of the Palu District Court Number: 214 / Pid.B / 2019 / PN Pal (Election) dated May 27, 2019, the verdict of which is as follows: 1. Declaring Hamsir, BEr, above, proven legally and convincingly guilty of committing a criminal act of an election participant who intentionally during the quiet period gave money or other material rewards to voters as in the primary indictment; 2. Sentencing the Defendant therefore to imprisonment for 2 (two) months and a fine of Rp. 5,000,000.00 (five million rupiah) with the provision that if the fine is not paid it is replaced with imprisonment for 2 (two) months; 3. Determining that the imprisonment imposed on the Defendant does not need to be served unless there is a Judge's decision stating that the Defendant is proven guilty of committing a crime before the end of the 4 (four) month probation period; 4. Stating the evidence in the form of: - 2 (two) sacks of 5 (five) kg rice; Confiscated for the state; - 1 (one) sheet of Campaign Material in the form of a Sticker showing the HANURA Party Logo No. 13 and a Photo of the Palu City DPRD Candidate a.n. HAMSIR, BEr. Serial Number 1 Electoral District 2, North Palu District and Tawaeli District; - 6 (six) sheets of used sacks for wrapping 5 (five) kg of packaged rice; Confiscated to be destroyed; - 1 (one) sheet of five-one advertising note for the

purchaser of 25 (twenty-five) boxes of voters cards dated February 24, 2019 in the name of Mr. HAMSIR, BE; - 4 (four) copies of the Decree of the Indonesian General Election Commission Number: 309/PL.01.1- Kpt/03/KPU/IV/2018 concerning the Second Amendment to the Decree of the General Election Commission Number: 58/PL.01.1Kpt/03/KPU/II/2018 concerning the Dertermination of Political Parties Participating in the General Election of Members of the DPR, Provincial DPRD and Regency/City DPRD in 2019, dated April 13, 2018; - 3 (three) copies of the Decree of the Indonesian General Election Commission Number: 59/PL.01.1-1- kpt/03/KPU/II/2018 concerning the Dertermination of the Serial Number of Participating Political Parties.

The author also wants to provide an example of a previous case regarding an election crime that occurred in 2014 which has been decided by the Mamuju District Court, with decision number 75/Pid.B/2014/PN.Mu, stating that the defendant Akhmad Irfan Bin H.Muh. Arif Hasan was proven guilty of committing a crime as in the indictment, namely "intentionally during the quiet period promising or giving money or other material rewards to voters directly or indirectly" as regulated and threatened with criminal penalties in Article 301 Paragraph (2) of Law of the Republic of Indonesia Number 08 of 2012 concerning the Election of Members of the DPR, DPD, and DPRD; Sentencing the defendant to imprisonment for 6 (six) months with a probationary period of 1 (one) year and a fine of Rp. 1,000,000,- (one million rupiah) subsidiary to 1 (one) month in prison.

Defendant Akhmad Irfan Bin H.Muh.Arif Hasan, on Sunday, April 6, 2014, at around 18.00 WITA or at least at another time in April 2014, at the Defendant's house in the Landi area, Rangas Village, Simboro Islands District, Mamuju Regency, or at least at a place that is still included in the jurisdiction of the Mamuju District Court, the Defendant as an Election participant from the Prosperous Justice Party (PKS) with serial number 12 (twelve) for Electoral District Electoral District I (one) Mamuju Regency intentionally during the quiet period promised or gave money or other material rewards to voters directly or indirectly.

In this decision, the judge tried the defendant AKHMAD IRFAN Bin H. MUH. ARIF HASAN who has been proven legally and convincingly guilty of committing the crime of "Conducting a campaign during the quiet period"; Sentencing the defendant above to a prison sentence of 4 (four) months; Determining that the sentence does not need to be served, unless later there is a judge's decision that determines otherwise, because the defendant committed a crime before the end of the 10 (ten) month probation period, and a fine of Rp. 1,000,000, - (one million rupiah) and if the fine is not paid must be replaced with imprisonment for 1 (one) month; 4. Determining evidence in the form of: • Rp. 50,000, - (fifty thousand rupiah) money worth Rp. 8,150,000, - (eight million one hundred and fifty thousand rupiah). With this previous decision, it is confirmed that election crimes, in this case campaign violations carried out during the election quiet period, have been carried out by someone who took part in direct general election contests, both in legislative elections and regional head elections.

IV. CONCLUSION

The implementation of elections as an instrument of democracy in Indonesia continues to change along with changes in the global political paradigm and demands for democratization. Although laws have been made that regulate elections and their violations, there is still a tendency for violations that require legal handling. Election crimes, which are divided into violations and crimes, are regulated in Law Number 7 of 2017 concerning Elections. However, the lack of clarification in the definition and regulation of violations, crimes, and election crimes in the regulations causes ambiguity in handling cases and can harm citizens who feel their rights have been violated. Therefore, regulations governing election crimes need to be clarified to facilitate case handling and ensure fair and effective law enforcement.

Although the 2019 Election was successful and produced democratic representation and government, issues related to the effectiveness of election criminal law enforcement are still a focus of attention. Although there are regulations

governing the types of violations and sanctions that must be applied, the low number of reports of election crimes that continue to the investigation, prosecution, and trial stages in court shows that the handling of these cases has not been effective. One of the main problems is violations that occur during the campaign quiet period, where campaign implementers, participants, and teams are prohibited from giving rewards to voters to influence election results. Law enforcement against these violations needs to be improved in order to ensure fairness and integrity in the implementation of future elections.

The following are recommendations for improving the legal system related to election crimes in Indonesia: Clarification of Definitions and Provisions: Revise Law Number 7 of 2017 concerning Elections to provide clearer and more detailed definitions regarding election violations, crimes and criminal acts. More specific arrangements will reduce ambiguity and simplify the process of handling cases and protect the rights of citizens. Improved Inter-Agency Coordination: Strengthen coordination between election supervisors, police, prosecutors and courts.

Implementation of a more efficient reporting system and standard procedures for handling election crime cases can increase the effectiveness of investigations, prosecutions and trials in court. Strengthening Enforcement of Campaign Quiet Period Laws: Enforce rules prohibiting giving rewards to voters during campaign quiet periods with stricter sanctions. Increased oversight and law enforcement in this period is important to maintain the integrity of elections and prevent manipulation of results. Education and Training: Provide better training for election supervisors, law enforcement and other related parties regarding the application and enforcement of election criminal laws. This education can help them understand and deal with violations more effectively.

Increase Transparency and Accountability: Create a transparent and accountable public reporting mechanism regarding election crimes. This will strengthen public confidence in the electoral system and ensure that cases of misconduct are not overlooked. By implementing these recommendations, it is hoped that the electoral system in Indonesia can be more effective in dealing with criminal acts and ensuring a fair and transparent democratic process.

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