

The impact of electoral violations on Indonesian democracy

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Abstract: This study will discuss how the violation of the elections to Indonesian democracy is affected. The purpose of this study is to know and analyze how the impact that could be inflicted on the breach of elections to Indonesian democracy, based on the conduct of violation in the elections using various ways to Win the party in the contestation of elections can provide a consequence for the sustainability of the democracy in Indonesia, it is based on the belief that the people of the political parties or individuals who progress through the Independent Elected and judged by extensive community has been in dispute the provisions of the Law No. 7 of 2017 on the general elections, where the statutory provisions provide guidance for the Indonesian people as voters In the national political contestation, in order to carry out the elections based on existing provisions, so that the results of free elections from the category of violation of the elections will make the impact of legitimacy by the public against the outcome Election.

Keywords: Election, violation, democracy.

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I. INTRODUCTION

The unitary State of the Republic of Indonesia refers to the state of law based on Pancasila and the Constitution of the Republic of Indonesia Year 1945 or abbreviated to UUD 1945. The unitary State of the Republic of Indonesia is also referred to as the state law as stated in article 1 paragraph (3) of CONSTITUTION 1945, which reads: "The state of Indonesia is the legal state", it aims to realize the life of the nation is based on the law so that the creation of people who have the same rights in living the life of nation and state.

Embodiment in article 1 paragraph (3) CONSTITUTION 1945, which reads: "State of Indonesia is the state of law ", it is not easy to apply in the life of the nation because of the many issues that must be resolved in order to achieve what is the purpose of the article The.

Under the General Elections Act No. 7 of 2017 concerning the general elections therein there is a delic formulation and a criminal threat to the breach and election crimes, as well as the mechanisms in the settlement of criminal acts to courts entitled to prosecute and misconduct.

The electoral offence is a deed prohibited by the electoral law against electoral organizers which resulted in the enforcement of sanctions against the customer. The crime of elections is a criminal offence threatened with certain penalties based on the criminal justice system. Besides, there are also issues of the State administration related to the decision of the electoral organizers who are detrimental to the citizens so that they can be sued in the State Administrative court (Fajlurrahman Jurdi, 2018).

In theoretical studies, the person is very related to criminal liability, so there are theories in the criminal liability which is who should be responsible for the occurrence of criminal acts (Crime). In addition, it is also seen from the type of evil, then against certain crimes required special handling. There are two types of crimes, namely conventional crimes or known as ordinary crimes (Ordinary crime) such as street crimes, but there is a wide-impact type of crime so called by extraordinary crimes (extra Ordinary crime), such as drugs and corruption (Mohd Din, 2016)

The sense of criminal action is a deed prohibited by a rule of law prohibitions which accompanied by threats (sanctions) of certain criminal, for whoever violates the prohibition. As for Wirjono Prodjodikoro defines that the act of criminal or in the Dutch *Strafbaar Feit*, which is in fact liquid official term in the *Strafwetboek* or the Criminal Code, which is now valid in Indonesia. The term in foreign language is proceeding (Fajlurrahman Jurdi, 2018).

Law enforcement in the context of a criminal justice system often referred to as "penal efforts", is a type of law enforcement that is repressive, while law enforcement is more preventative in the context of "non-penal" lines. ((Arief, 1994)

Criminal countermeasures through the penal line are more focused on the repressive nature after the crime occurs, while the non-penal pathway more focuses on preventive properties before the crime occurs. Because the repressive action can also be seen as a preventive measure in the broad sense, considering the crime prevention efforts through a non-penal pathway is more preventive to the occurrence of evil.

Law enforcement is an attempt to enforce and apply the law and to commit legal action against any breach or deviation of law conducted by the subject of law, either through judicial prosecution or through arbitration procedures. Other dispute resolution or enforcement activities regarding any activity that is legal as a device for the normative method governing and binding of legal subjects in all aspects of a community and state of life is strictly obeyed and actually run as it should. In addition, law enforcement may also involve the action of oppressions against any violation of elections criminal (election) or deviations against electoral legislation through criminal proceedings involving the role of Electoral Supervisory Agency (BAWASLU), General Election Commission (KPU), police, attorney, court and Correctional Institution (LP) and or advocate/lawyer (Suichan, 2014).

Elections hereinafter referred to as the elections are the means of sovereignty of the people to select members of the House of Representatives, members of the House of Representatives, presidents and vice presidents, and to select members of the Regional Representative Council, which Implemented in direct, public, free, confidential, honest, and fair in the unitary State of the Republic of Indonesia under the Pancasila and the Constitution of the Republic of Indonesia year 1945 (Umum).

The democracy system must be guaranteed that the people are fully involved in planning, organizing, implementing and supervising and implementing power functions. The community jointly conducts democracy by following the elections to obtain leaders, both for legislative and executive.

One of the requirements of the six basic conditions for a representative democracy under the rule of law is the convening of a free elections. It is thus formulated by the International Commission of Jurist in its conference in Bangkok in the year 1965. Further formulated about the definition of a democratic government based on representatives: a form of government in which the citizens exercise the same rights but through their elected representatives and responsible through the free electoral process (Abdul Bari Azed, 2012).

A very close relationship between the elections and democracy can actually be seen in a simple formulation so that some say that elections are one of the most tangible forms and ways to implement democracy. If democracy is defined as the Government of, by, and for the people as Abraham Lincoln stated, then the most appropriate way to determine the government is done through the electoral system (Handitya, Peran Sentra Penegakan Hukum Terpadu (Gakkumdu) dalam Penegakkan Tindak Pidana Pemilu, 2018) (Handitya, 2018).

In order to guarantee the realization of the elections that have the legitimacy of the people of Indonesia so that mandatory implementation of elections to implement well so as to have the impact of democratic progress in aspire by the community. Based on the above, the government issued a new regulation which is a refinement of the previous rules on the general elections of law No. 7 of 2017 on general elections.

Ensure the realization of the elections that have the legitimacy of the people of Indonesia, if the occurrence of violation must be resolved by the party who accept the mandate to prevent such violation, as the breach of elections in 2019, in the completion, it must be differentiated between a violation of ethics and violation of the law if there is no resolution of the breach, the objective of the election that has the legitimacy of the people can not be carried out.

It is interesting for the authors to discuss the impact of the general election on Indonesian democracy, for the authors of many found cases of violation but not in the process until the court, it could have an impact on the quality of the Indonesian.

Based on the above the authors will examine the impact of the general election on Indonesian democracy, so that it can cause the following problems:

1. How is the election impact on Indonesian democracy?
2. How is the difference in the law of ethics and violation in elections?

II. LITERATURE REVIEW

The method of approach to this research is a normative juridical approach with the data type in this research is qualitative consisting of primary data and secondary data, both complementary to each other. Research sources of primary legal materials and secondary legal substances (Marzuki, 2010).

That data obtained by authors will be researched with data analysis techniques conducted through the grouping of data collected and examined carefully so as to find principles based on the framework of the theory that will be guidelines Discussion in this writing. These principles are obtained by interpretation of the legal materials collected and classified based on the problems analyzed in this study, namely through the legal resources of the State CONSTITUTION of the Republic of Indonesia year 1945 and Act No. 7 of 2017 on general elections.

The discussion of this writing is related to the impact of violation of the law of elections to Indonesian democracy, so this method of research is able to answer from the formulation of the problem.

III. THE IMPACT OF ELECTORAL VIOLATIONS ON INDONESIAN DEMOCRACY

Democracy and the law of a nation are actually a reflection of the social life of the nation in question. Thus, it is well worth it when it is said that the law is the function of social history of society. But the law is not a static social building, but it can change and this change happened because of its function to serve the community. The most noticeable changes occurred while the social history of the community was followed and how it seemed to the prevailing laws (Rahardjo, 1986).

The elections hereinafter called the elections are the means of sovereignty of the people to select members of the House of Representatives, members of the House of Representatives, presidents and vice presidents, and to select the members of the Regional Representative Council, which Implemented in a direct, public, free (Fajlurrahman Jurdi, 2018).

The relationship between political parties, elections, and democracy relates to each other. Elections are made concrete from an abstract democracy thesis, while political parties are organisations that are the main elements of elections and democracy. So the three have a symbiotic relationship of mutualism. Between each other strengthens one another. If searched one by one, then:

First, democracy is the government whose power comes from the people, managed by the people for the benefit of the people. That is, the people are sovereign holders.

Secondly, the elections are the means to implement the sovereignty of the people, where the people submit its sovereignty to their representatives in Parliament who will work and fight for their rights.

Thirdly, the political party is a national organization and formed by a group of Indonesian citizens voluntarily on the basis of the similarities of wills and ideals to fight for and defend the political interests of members, communities, nations and the country, and maintain the integrity of the unitary Republic of Indonesia based on Pancasila and the Constitution of the Republic of Indonesia year 1945 (Fajlurrahman Jurdi, 2018).

Based on the provisions outlined in Law No. 7 of 2017 on the general elections, which broadly classify the qualification of the electoral offence which is a criminal act aimed at each person, which includes:

- a. Deeds remove the suffrage of others;
- b. The deed provides an incorrect description of oneself or any other person relating to the filling of the voters list;
- c. Deeds Menghalang-halangi A person to be registered as voters with violence or with threats of violence by using the powers that exist;
- d. Fraudulent conduct to mislead a person or by forcing or by promising or giving money or materials to obtain support for the nomination of the election participant;
- e. Make a letter or document with the intention to use or send the person to use, or any person who knowingly use a letter or document forged to be a prospective member of the House of Representatives, DPD, provincial DPRD, Regency/city DPRD or candidates President and Vice President;
- f. Conduct campaigns outside of the specified time schedule;
- g. Violate the prohibition of election campaign implementation; Giving or receiving campaign funds exceeds the specified limit;
- h. Disrupt obstructs or interferes with election campaigns;
- i. Provide an incorrect description in the campaign funds report;
- j. Announce survey results or poll results in quiet period;
- k. promises or grants money or other materials to voters so as not to exercise its own right of choice or to have other electoral participants or to use certain means at the time of the poll;
- l. obstructs a person who will make his or her rights or conduct activities that cause disruptions of order and tranquility during the voting implementation;
- m. Deeds that cause the vote of a voter are not valuable or cause a certain election participant to get additional votes or voting of the election participants to be reduced;
- n. Acknowledge himself as someone else at the time of voting;
- o. Vote more than one time or more TPS;
- p. Foil voting;
- q. The employer/employer who does not give the worker the opportunity to vote on the vote except on the grounds that the work cannot be abandoned;
- r. Eliminating the sealed voting results;
- s. Assist voters to notify others of voters;
- t. Due to negligence causing damage or loss of news of the voting event and the calculations and certificates of voting results are already sealed;
- u. Change the voting event news and/or voting results;

- v. Damaging the disturbing or distorting system of information vote calculation results of the election;
- w. Any person or entity that performs a quick calculation and announces the results of a quick calculation on the day/date of the vote;
- x. Any person or institution that performs a quick calculation that does not notify the results of a quick calculation is not an official result of the election.

Regarding election crimes. Topo Santoso mentions that prohibited acts according to the Criminal Code of law are as follows:

First, prevent people from exercising his right in choosing. It is affirmed in article 148 of the Code of Criminal Code which mentions "whoever at the time of election based on the general rules, with violence or violent threats deliberately prevent someone from using the right The choice was freely and undisturbed, threatened with imprisonment of one year and four months."

Secondly, bribery. The Book of criminal law governs this bribery in section 149, which is: "(1) Whoever is held a selection based on the general rules, by giving or promising something, bribing a person so as not to use the right The choice, or Suapaya put on that right in a certain way, is threatened with criminal hippest long nine months or penalties at most four thousand five hundred rupiah; (2) The same criminal is assigned to the electorate, who by accepting the gift or pledge, will be treated to wear or not to use its rights as above."

Third, the deeds of deception. The Code of Criminal Law governs this in section 150 stating: "Whosoever is held in election according to the general rules, doing deception so that the voice of a voter becomes worthless or causes Other person than referred to by the elector to be elected, threatened with imprisonment for a maximum of nine years."

Fourth, claiming to be someone else. It corresponds to the sound of article 151.

Fifth, foil voting or deception (Santoso, 2006).

The provisions of the legislation provide guidance for the implementation and is an Indonesian society as a voter in political contestation, thus providing legitimacy to the outcome of the election, if the general elections were implemented by following or guiding the existing provisions. Namaun If the election results are obtained from the act of offence and the crime of elections then the legitimacy is questionable from the preference.

Seeing the impact of a broad electoral offense, then the actual election violation is not a category or type of ordinary crime, Malainkan extraordinary crimes. Election crimes had hurt democracy and also abused the beliefs given by the people. So in addition to special handling, with law enforcement based on existing rules (Mohd Din, 2016).

Based on the act of offence in elections using various ways to win the party in the contestation of elections can provide a consequence for the sustainability of the democracy in Indonesia, it is based on the belief that Parties to a political party or an advanced individual through an independent track elected and assessed by extensive community has contributed to the provisions contained in the Law No. 7 of 2017 on general elections.

1. The difference between the violation and legal crimes in elections

According to international standards, the legal framework must regulate sanctions for violation of electoral law. Many countries have created rules of electoral offenses in their electoral laws. Any criminal provisions established for legal purposes should reflect on the purpose of drafting legislation. For example: "Any attempt to prevent violation, corrupt practices, and illegal practices in elections, and the rules of electoral action.

The context of the Election criminal act, still applies the general principle in criminal law, the principle of legality. Where an election criminal act can be referred to as a criminal offence when it is governed by the law. This principle reads, "Nullum delictum nulla poena sine praevia lege poenali. That is, no criminal deed without the provisions of the law first set it. " The principle is formulated by Anselm von Feuerbach very well as follows: nulla poena sine lege (no criminal without criminal provisions by law); Nulla poena sine crime (no criminal without criminal deeds); nullum crimen sine Poena legali (no criminal deeds lawlessly under the law) (Fajlurrahman Jurdi, 2018).

The sense of criminal action is a deed prohibited by a rule of law prohibitions which are accompanied by threats (sanctions) of a certain criminal, for whoever violates the prohibition. As for Wirjono Prodjodikoro defines that criminal acts or in the Dutch Strafbbaar Feit, which is actually an official term in the Strafwetboek or the Criminal Code, which is now valid in Indonesia. The term in foreign language is delict (Fajlurrahman Jurdi, 2018).

In his book Adami Chazawi states that the term criminal is derived from the term known in the Dutch criminal law, "Strafbbaar Feit", but there is no explanation of what is meant by the Feit Strafbbaar. Therefore, the legal experts try to give the meaning and content of the term.

While the Lamintang (Lamintang, 1992) also formulated the fundamentals of criminal acts of three traits. Wederrechtjek (in violation of the law), Aan schuld te Wijten (has been deliberately or not intentionally),

and strafbaar (punishable). Moelyatno mentions that criminal acts consist of five elements. It is behaviour and consequences. The circumstances that accompany the deed, the additional state of criminal liability, elements against subjective law, and elements against the law are objectively (moeljatno, 2002).

At least there are proceeding elements consisting of two basic elements, namely:

1. Subjective subject matter the basic principle of criminal law "there is no punishment if there is no mistake" the error referred to here is deliberately (dolus) and the corruption (culpa).
2. The objective element of the Human Action Act and the omission Act are active deeds or positive deeds.

The omission is an act of inactivity or a negative deed. In other words is silence or let. As a result of human deeds. Eliminate, damage, harm the interests retained by the law. For example, life, body, independence, title, honour, etc.

1. Circumstances of the situation when the deed is done and the situation after the deed against the law.
2. The nature can be punished and the nature against the law. (Fajlurrahman Jurdi, 2018)

Evil is divided into two points of view namely the viewpoint in a juridical and sociological standpoint. Seen from a juridical standpoint, crime is a behavioral act contrary to the law. As for the sociological point of view, the notion of evil is a deed or behavior that besides harming the sufferer, also very detrimental to the community is the loss of balance, tranquility, and order.

Crime is a crime that violates the law and violates social norms, so that people oppose it. In social contexts, crime is a social phenomenon that occurs at every place and time. This suggests that crime is not only an issue for a particular society that is both local and national, but it is also a problem faced by all people in the world, in the past, present, and in the future, so that Can be said that evil as a universal phenomenon (Arief, 1994).

According to Bonger, the meaning of evil is seen from a formyl corner (according to the law) is a deed by the people (in this case the state) was given a criminal. Furthermore, he also said that if it is more in review, a crime is a part of acts contrary to morality (Bonger, 1981). From the notion that Bonger expressed, he concluded that evil is a very anti-social act that has gained the challenge of realizing the state of suffering (punishment or action) (Bonger, 1981).

Mulyana W. Kusuma said that evil is a name or stamp given by people to assess certain deeds, as deeds of evil. Thus, the perpetrator is referred to as criminals. The sense is derived from the nature of value, so it has a very relative understanding, which is dependent on the person who gave the judgment (Kusumah, 1984).

By Moeljatno (moeljatno, 2002), There are two points of view in differentiation between wickedness and transgression: firstly, there is a qualitative difference between crime and transgression. In this view, the crime is "Rechtsdelicten", which is the deeds that, although not specified in the law, as a criminal act, have been perceived as onrecht, as an act contrary to the Ordinance of the Law. The other breach is "Wetsdelikten", which is a referment that the nature against the new law can be known after the decisive wet. Secondly, it says that there is only a quantitative distinction (the weight or lightness of a criminal threat) between crime and offense.

According to Moeljatno, the differences between crimes and offences are as follows:

1. Criminal imprisonment only be planted on crimes.
2. If faced with crime then the form of error (intentional or mischief) is required there, must be proved by the prosecutor, whereas if facing violation it is not necessary. In connection with that evil is distinguished also in the evil that dolus and culpa.
3. Attempts to commit violation cannot be punished (article 54 of the criminal CODE). Also the Pemaian on the offence is not sentenced (article 60 CRIMINAL code).
4. The Tenggang expires, both for the right to determine and the right of criminal roadway for violation is shorter than the crime of each other is one year and two years.
5. In the case of Concurcus in different pipetting for violation and crimes. The criminal kumulatio is easier than heavy criminal. (moeljatno, 2002 (moeljatno, 2002))

There are many types of violation that occur related to the electoral administration, which is categorized as:

1. Administrative violation. In the electoral law in the case of an administrative offence is a violation of the provisions of the electoral law which is not included in the electoral criminal provisions and other provisions stipulated in the KPU regulations, thus all Violation, except those that have been designated as criminal acts, are included in the category of administrative violation. For example, not eligible to be an election participant, using government facilities, places of worship and educational venues to campaign, do not report the campaign's initial funds, election monitors violate obligations and restrictions.
2. The election criminal act, which is an action in the electoral law, is threatened with criminal sanctions. As an example of the election criminal act is to deliberately eliminate the suffrage of others, blocking others from giving voting rights and changing the outcome of sound.

3. The dispute of the election result is a dispute between the KPU and the electoral participants regarding the determination of the number of voting results nationwide. Disputes about sound outcomes as intended only against the calculation of the acquisition of voting results can affect the acquisition of the election participant's seat (Mulyadi, 2012: 383-418). (Mohd Din, 2016)

As a social creature, humans always have two sides going hand-in-hand, the negative side and the positive side. The negative side is evil as the bad attitude of human behaviour, while the positive side is a devout attitude that is obedient to the recognized and prevailing norms in society. In this regard, it is clear that crime is a phenomenon of human life and society, therefore it cannot be released from space and time. Crime is a human matter of social reality, which is why Musababnya are poorly understood. It happens anywhere and anytime in the Association of Life. The rise and fall of crime depends on the circumstances of society, political situation, economics, culture, and so forth. Dealing with a broad and profound symptom, which is nested as a disease in the society's body, thus endangering at least life inflicts harm (Fajlurrahman Jurdi, 2018) (Fajlurrahman Jurdi, 2018).

IV. CONCLUSION

Provisions of Law No. 7 of 2017 on general elections. To provide instruction in the basis of the basic democracy, where the people have the sovereignty to determine who is entitled to be chosen based on conscience, but on the way Elections in Indonesia experienced a wide range of issues and cases of fraud that is done both by the person of the enforcement and the perpetrators of the public as an election offence.

As the results of the elections are derived from the act of infringement, the public will not give legitimacy for the election of the political party or the individual, because not without the reason of the community will not trust, where the product Democracai does not reflect the basic ideals of democracy.

Seeing the impact resulting from the electoral offense is very influential in the society, it should be better to handle the elections, with the abandonment of ordinary criminal acts being a tremendous criminal act, so that Between the deeds and condemnation received by the transgressor, in order for the implementation of democracy in Indonesia can run in accordance with the expectations and provisions of the General Elections Act.

Changes in legislation required to adjust the development and needs of the community, in order to improve the quality of democracy in Indonesia.

The category of the type of violation that occurs related to the electoral administration, in the form of administrative violation and general election disputes, while the crimes in the elections include criminal acts committed in the form of Acts of evil in the implementation of elections in which the category of crime where the article element in the provisions of legislation has been fulfilled by the person and deed.

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