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Electoral Offenses as White-Collar Crime: A Case Study

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ABSTRACT

Indonesia is a democratic country whose leaders are elected by society. Unfortunately, there are still some criminal offenses in its implementation. Therefore, this research aims to find out the criminal sanctions applied in the Law against criminal offenses in general elections. The inventory data collection is implemented through empirical research methods through jurisprudence research in the form of court decisions on election offenses and library research. There are two sources in this research, these are (1) primary sources (court decisions on election offenses in accordance with Law No. 7/2017 on general elections); (2) secondary sources (legal journals, various scientific works, books, and documents relevant to the research topic). This research indicated that the criminal provisions in the ius constituendum in the Election Law are still not effective in providing a deterrent effect, as indicated by the high rate of criminal election offenses over the years. In addition, the facts indicated that court decisions on election crimes are generally decided with lenient criminal sanctions, smaller than the criminal provisions in the laws and regulations, which are less than 6 months. Meanwhile, the elements of the criminal offenses are suitable for aggravated sanctions because the perpetrators are organizers and officials. Unfortunately, the average judge considered the purpose of deterrent punishment which emphasizes awareness.

Keywords: *Electoral Offenses, General Election, White-Collar Crime*

INTRODUCTION

After the amendment of the 1945 Constitution, democracy must proceed in accordance with democracy (constitution) as the highest consensus norm in the state. It has logical consequences that although a law has been formed by the legislature and the executive, however, in order to avoid arbitrary power by the majority against the minority, and to maintain the constitutionality of the state in accordance with the 1945 Constitution, judicial review is a must as a manifestation of the balance of power between the branches of state power, and to protect the constitutional rights of citizens due to political policies that have the potential to violate citizens' rights. In addition, Indonesia also adheres to the concept of a welfare state in which the government has an important role in ensuring the welfare of each of its citizens. Therefore, Indonesia conducts general elections in determining its leaders. This election is held to elect members of the House of Representatives; Regional Representatives Assembly (DPD); Regional House of Representatives (DPRD); President and Vice President. Meanwhile, Regional Head Elections are held to elect Governors and Deputy Governors; Regents and Deputy Regents; and Mayors and Deputy Mayors. General elections in Indonesia are to be held based on the principles of direct, general, free, secret, honest and fair by the people who are guided by Pancasila and the 1945 Constitution. Unfortunately, there are still some criminal offenses in its implementation, such as (1) money politics; (2) legal substance constraint, for example inconsistent norms, non-sequential norms related to criminal sanctions, short timelines for handling election crimes, the position of Sub-district Election Supervisors in handling election crimes, and unclear arrangements for perpetrators who do not attend the examination; (3) legal structure constraint; (4) legal culture constraint. The research conducted by Bourveau et al, their research use 2007 French presidential election as a marker of the changing value of political connections, differences in research design. Their research aimed to observe whether political connections affect individuals' propensity to engage in illicit activities in financial markets. They examined the behaviour of public company directors who had relationships with presidential candidates through campaign donations or direct friendships, compared to the behaviour of directors who did not have relationships, before and after the election. They discovered indirect evidence that directors connected to presidential candidates engaged in more illegal insider trading after the election. They found that the purchases by connected directors triggered larger abnormal returns, and that connected directors were more liable to disobey trade disclosure requirements and execute trades closer to major corporate events.¹ Therefore, this research aims to find out the criminal sanctions applied in the Law against criminal offenses in general elections.

¹ Thomas Bourveau, Renaud Coulomb, and Marc Sangnier, *Political Connections and White-Collar Crime: Evidence from Insider Trading in France*, 2016.

LITERATURE REVIEW

General Election

One of the main pillars in every democratic system is the existence of a mechanism of distributing people's opinions through general elections that are held periodically.² Based on Article 1 Paragraph 1 of the Election Law, it states that elections are facilities for people's sovereignty to elect members of the House of Representatives; Regional Representatives Assembly (DPD); Regional House of Representatives (DPRD); President and Vice President. Meanwhile, Regional Head Elections are held to elect Governors and Deputy Governors; Regents and Deputy Regents; and Mayors and Deputy Mayors by direct, general, free, secret, honest and fair under the guidance of Pancasila and the 1945 Constitution.³ In addition, the general election is basically the realization of democratic principles that include the guarantee of the principles of individual freedom and equality, especially in political rights.⁴ Democracy puts people as the owners of sovereignty, which is known as the principle of popular sovereignty. The democratic process is also realized through election procedures to elect representatives and other public officials. The state government formed through these elections is one that emanates from the people, is implemented in accordance with the people's desire and is devoted to the people's welfare.⁵ The government formed through elections will have strong legitimacy from the people. This rationale is an affirmation of the implementation of the spirit and soul of Pancasila and the 1945 Constitution.⁶

Criminal Offenses in General Election

Criminal offense is derived from the Dutch term, *strafbaar feit* which means criminal acts. Criminal offenses in general election means a criminal act committed by legal subjects, both individuals and entities, in which there is a violation of norms that can be applied to criminal sanctions in accordance with the provisions of laws and regulations concerning general elections. In the Constitution and the current Election Law, there is no detailed and clear explanation regarding the definition of electoral offenses, but we can find it in the opinions of experts and academics regarding this matter. Based on Law No. 8/2012, electoral offenses are defined as criminal offenses and/or crimes against the provisions of electoral offenses as

² Jimly Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara*, 11th ed. (Jakarta: Rajawali Pers, 2019).

³ Menteri Hukum dan Hak Asasi Manusia, *Undang-Undang Republik Indonesia Nomor 15 Tahun 2011 Tentang Penyelenggara Pemilihan Umum* (Jakarta, 2011).

⁴ R. Siti Zuhro, "Demokrasi Dan Pemilu Presiden 2019," *Jurnal Penelitian Politik* 16, no. 1 (2019): 69–81.

⁵ Sidi Ahyar Wiraguna and Zudan Arief Fakrulloh, "Legal Reforms in Indonesia Related to 'Presidential Threshold' of Presidential Candidate in Law No. 7/2017 Concerning General Elections," *Ius Positum (Journal of law theory and law enforcement)* 2, no. 2 (2023): 58–69.

⁶ Achmad Edi Subiyanto, "Pemilihan Umum Serentak Yang Berintegritas Sebagai Pembaruan Demokrasi Indonesia," *Jurnal Konstitusi* 17, no. 2 (August 19, 2020): 355, <https://jurnalkonstitusi.mkri.id/index.php/jk/article/view/1726>.

stipulated in the Election Law.⁷ Electoral offenses are divided into 2 groups, offenses and crimes. Offenses are regulated in Articles 273 to 291 of Law No. 8/2012. Meanwhile, criminal acts are regulated in Article 292-Article 321 of Law No. 8/2012.⁸

Electoral Offenses as White-Collar Crime

White-collar crime is a crime in which the offender comes from high society with a high socio-economic class by violating laws related to their work.⁹ White-collar crime is not based on the act but rather on the characteristics of the perpetrator.¹⁰ The definition of white-collar crime is regulated in Law No. 31/1999 Article 3 on the Eradication of Corruption which states that every person who, with the aim of benefiting himself or herself or another person or a corporation, abuses the authority, opportunity or means available to him or her because of his or her position or position which may harm the state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and/or a fine of at least IDR 50,000,000 (fifty million rupiah) and a maximum of IDR 1,000,000,000 (one billion rupiah). Several factors caused the occurrence of white-collar crime, such as (1) non-transparent government administration, (2) vulnerability of socio-economic conditions, (3) poor management and supervision, (4) law enforcement that is not firm and effective, (5) human nature.¹¹

There are four characters of white collar crime according to Joann Miller which are generally recognized by anyone who commits crimes behind their position and power, such as (1) organizational occupational crime, (2) government occupational crime, (3) professional occupational crime, (4) individual occupational crime.¹² In general, white-collar crime is characterized as difficult to trace because it is committed by strategic officials who have the power to draft laws and make important decisions. Another characteristic of this crime occurs in a closed environment, so it becomes a patronage system. The ignorant and resigned condition of society makes this crime more fertile among officials and more detrimental to the people. The simplest difference between white-collar crime and blue-collar crime is the type of perpetrator. Eradication of various crimes in government agencies must begin with white-collar crime, not blue-collar crime.

⁷ Menteri Hukum dan Hak Asasi Manusia, *Undang-Undang Republik Indonesia Nomor 8 Tahun 2012 Tentang Pemilihan Umum Anggota Dewan Perwakilan Rakyat, Dewan Perwakilan Daerah, Dan Dewan Perwakilan Rakyat Daerah* (Jakarta, 2012).

⁸ Khairul Fahmi, "Sistem Penanganan Tindak Pidana Pemilu," *Jurnal Konstitusi* 12, no. 2 (2015): 264–283.

⁹ Petter Gottschalk and Lars Gunnesdal, "White-Collar Crime Research," in *White-Collar Crime Research. In: White-Collar Crime in the Shadow Economy* (Palgrave Pivot, Cham, 2018), 1–14.

¹⁰ Topo Santoso and Eva Achjani Zulfa, *Kriminologi*, Cetakan 17. (Depok: Rajawali Pers, 2017).

¹¹ Kendry Tan, "Tinjauan Kriminologis Terhadap White Collar Crime Di Indonesia," *Indonesia Journal of Criminal Law* 4, no. 1 (2022): 133–143.

¹² Fransiska Novita Eleanora, "White Collar Crime Hukum Dan Masyarakat," *Forum Ilmiah* 10, no. 2 (2013): 242–251.

White-collar crime is aimed at state officials and officials, blue-collar crime is aimed at crimes committed at the lower levels of society with low quality and quantity.

Criminal Sanctions for White-Collar Crime in General Election

Law enforcement in the criminal justice system aims to overcome every crime so that people's lives become safe, peaceful and controlled. Each component of the criminal justice system (police, prosecutors, courts and correctional institutions) is required to cooperate or commonly known as integrated criminal justice system. In general, crimes committed by white-collar crime convicts are committed without using violence, but accompanied by fraud, misdirection and concealment of crimes of trickery or through various efforts to circumvent regulations. Law enforcement that is not firm and effective is also a contributing factor to the increasing cases of white-collar crime in Indonesia. In Law No. 7/2017 on general elections only mentions forms of violations in elections, such as code of ethics violations and administrative violations. Each of these violations has different sanctions for offenders. Violations of the election organizers' code of ethics are violations committed by organizers when performing their duties as election organizers. In this case, if there is an act of violation of the code of ethics, sanctions will be imposed, such as (1) written warning, (2) temporary dismissal, and (3) permanent dismissal for election organizers. In contrast to administrative violations, which are related to procedures, procedures, or mechanisms related to administration in each phase of organizing elections. In addition, the regulation only explains the definitions of the two violations and does not specifically explain the two violations in the election.¹³ Electoral offenses are regulated in Articles 488-544 of Law No. 7/2017 on elections. The articles only mention criminal offenses and the imposition of sanctions on perpetrators and do not explain in detail about election crimes and the qualifications of the actions committed are violations or crimes. In addition to the Election Law, this election crime is regulated in Chapter IV regarding crimes against performing state obligations and rights.

RESEARCH METHODOLOGY

The inventory data collection is implemented through empirical research methods through jurisprudence research in the form of court decisions on election offenses and library research. There are two sources in this research, these are (1) primary sources (court decisions on election offenses in accordance with Law No. 7/2017 on general elections); (2) secondary sources (legal journals, various scientific works, books, and documents relevant to the research topic). Data analysis is conducted through descriptive juridical analysis method, by describing

¹³ I Gusti Bagus Yoga Sastera, I Made Minggu Widyantara, and Luh Putu Suryani, "Sanksi Pidana Terhadap Pelaku Tindak Pidana Pemilu Di Indonesia," *Jurnal Konstruksi Hukum* 1, no. 1 (2020): 192–196.

the real situation and synchronizing all primary and secondary data in an integrated and systematic approach to all matters related to the research topic. Based on the result of literature study obtained, then processed and analyzed qualitatively to obtain descriptive data.

RESULT AND DISCUSSION

The effectiveness of criminal sanctions in their application in achieving the objectives of punishment, which are retributive or retaliation, deterrence or awareness and restitution or compensation, therefore it needs to be tested through various analyses of the direct impact on the perpetrator's personality, the level of crimes and violations that occur and the social impact on society in general. Based on the consideration of increasing levels of election crimes and violations, it becomes an indicator of the low deterrent effect as a direct impact on the perpetrators and the low public awareness in general of their importance for honest and fair elections. There are 3 case studies on criminal acts in general elections that will be used as a comparison and analyze that the provisions of criminal sanctions are still not effective, such following below:

1. A Case Study with Decision Number: 64/Pid.Sus/2019/PN.Slk

The Solok District Court, examined and tried the case, and rendered the following decision against the defendant:

Name : Junita Pgl. Nita
Birth Place : Solok
Age/Birth Date: 53 years old / June 20, 1965
Gender : Female
State : Indonesia

According to the Panel of Judges, the defendant has fulfilled the following elements:

- 1) The defendant is an election officer;
- 2) The element that the election campaign participant intentionally promises or offers money or other material as a reward;
- 3) Aggravating circumstances; no aggravating circumstances were found for the defendant;
- 4) Mitigating circumstances; the Defendant behaved politely; the Defendant has never been convicted; the Defendant was cooperative and facilitated the trial; and the Defendant regretted his actions and promised not to reoffend;
- 5) This criminal punishment is not an act of retaliation but psychological guidance to prevent the Defendant from repeating his actions in the future;

- 6) Due to all of the above considerations, the Panel is of the opinion that the appropriate sentence to be imposed on the Defendant is probation (voorwaardelijke veroordeling), as stated in the amended decision below because it is considered more just and proportional to his actions, and in line with the objectives of punishment.

Judgement:

- 1) The Defendant Junita Pgl. Nita as mentioned above has been legally and persuaded to be guilty of committing the crime of “intentionally as a participant in an election campaign, providing other materials in exchange for direct election campaign participants” as stated in the first alternative charge;
- 2) Defendant is sentenced to 3 (three) months imprisonment;
- 3) It shall be stipulated that such punishment need not be served unless there is a judge’s decision which determines otherwise due to the fact that the Convict commits a criminal offense before the end of probation period of 6 (six) months;
- 4) Impose a fine against the Defendant of IDR 8,000,000 (eight million rupiah), provided that if the fine is not paid, it shall be substituted with confinement for 1 (one) month.

Presiding Judge: Aldarada Putra, S.H.

The Panel of Judges members: Zulfa Nur Fitri, S.H.

Afdil Azizi, S.H. Mkn.

The Registrar Substitute: Yustika Rini, S.H.¹⁴

2. A Case Study with Decision Number: 283/Pid.B/2014/PN.KIS

The Kisaran District Court, examined and tried the case, and rendered the following decision against the defendant:

Name : Thompson Sitanggang
 Birth Place : Panai Tongah
 Age/Birth Date: 58 years old / June 10, 1956
 Gender : Male
 State : Indonesia

The defendant was assisted by his legal counsel

According to the Panel of Judges, the defendant has fulfilled the following elements:

- 1) The defendant is an election officer;

¹⁴ Mahkamah Agung Republik Indonesia, *Putusan Nomor:64/Pid. Sus/2019/PN.Slk* (Indonesia: Direktori Putusan Mahkamah Agung Republik Indonesia, 2019).

- 2) The element that due to negligence results in the loss or alteration of recapitulation report of vote counting results and/or certificate of vote counting results;
- 3) There are several aggravating and mitigating circumstances, such following below:
 - a. Aggravating Circumstances, such as the actions of the defendant may be detrimental to other legislative candidates.
 - b. Mitigating Circumstances, such as the defendant was polite during the trial which facilitated the examination, the defendant confessed his actions, the defendant regretted his actions, and the defendant has never been convicted of a crime.

Judgement:

- 1) Declare that the Defendant, Thompson Sitanggang has been legally and convinced guilty of the crime committed;
- 2) Impose a prison sentence of 2 (two) months and a fine of IDR 1,000,000 (one million rupiah);
- 3) The sentence does not need to be served by the Defendant;

Presiding Judge: Arsul Hidayat, S.H.

The Panel of Judges members: Lusiana Amping, S.H., M.H.

Zefri Mayeldo Harahap, S.H.

The Registrar Substitute: Buyung Hardi, S.H.¹⁵

3. A Case Study with Decision Number: 70/Pid/2014/PT.Tjk

The defendant is the chairman and members of the PPK (Sub-district Election Committee) who have committed an electoral offense, that is, the deliberate addition of votes to certain election participants.

Judgement:

- 1) The defendant was proven valid and convinced guilty of committing the crime of “intentionally adding votes to certain election participants.”
- 2) Sentencing the defendants to 3 (three) months imprisonment, and a fine of IDR 500,000 (five hundred thousand rupiah), provided that if the fine is not paid, it will be substituted with 1 (one) month imprisonment.

¹⁵ Mahkamah Agung Republik Indonesia, *Putusan Nomor: 283/Pid.B/2014/PN.KIS* (Indonesia: Direktori Putusan Mahkamah Agung Republik Indonesia, 2019).

According to the Panel of Judges, the defendant has fulfilled the following elements:

- 1) Judges cannot impose such punishment unless there are at least two valid pieces of evidence;
- 2) The basic philosophical consideration of the judge is that it is appropriate and fair if he is sentenced to a conditional sentence to provide life lessons for him;
- 3) There are several aggravating and mitigating circumstances, such following below:
 - a. Aggravating Circumstances, such as the actions of defendants as election officers have damaged the implementation of democracy.
 - b. Mitigating Circumstances, such as The defendant admitted his actions and has never been convicted; the defendant has family responsibilities; and the defendant was polite during the trial.

The Chamber of Judge: F.X. Supriyadi, S.H. (Judge of the Tanjung Karang District Court.¹⁶

Based on the analysis of the three cases studies above, it can be determined that there are several statements regarding electoral offenses, such as following below:

1. The perpetrators have the same position, that is, as election officials.
2. The sanctions applied are very light, both to individual perpetrators and groups.
3. Judges' considerations always prioritize the criminal objective of deterrence or awareness, whereas election crimes and violations have a multidimensional impact, which should be applied to the criminal objective of retribution, appropriate retribution that provides a deterrent effect.
4. Loose legal considerations and avoidance of legal rules stating that perpetrators who come from elements of authorized officials must get criminal sanctions more than ordinary people, including in electoral offenses.
5. It indicates that in general, law enforcers still consider crimes and/or violations of electoral offenses to be ordinary crimes, and ignore the dangers of the impact they have on the decline in the moral quality and dignity of the nation.

¹⁶ Selvi Yuliyanti, "Pertanggungjawaban Pidana Atas Pelanggaran Pidana Pemilu Legislatif 2014 (Studi Putusan Nomor 70Pid.2014PT.TJK.)," *Fiat Justisia: Jurnal Ilmu Hukum* 10, no. 1 (2016).

Based on the empirical facts above, it is stated that the electoral criminal sanctions applied have not provided a deterrent effect, and also answered the questions of many academics, election observers and justice seekers, as perceived by researchers on the effectiveness of electoral criminal sanctions applicable in this country. Therefore, it is important for researchers to find solutions and new legal innovations in realizing direct, general, free, secret, honest and fair elections, through the formulation of new criminal sanctions in achieving the objectives of fair and civilized punishment, in which the objectives of retributive/retribution, deterrence/awareness and restitution/compensation can be achieved proportionally and provide a deterrent effect. There are many examples of election violations and other election fraud lawsuits, however, it is always difficult to implicate political elites or high-ranking state officials, the cases always disappear over time, therefore the operator level is always the suspect or “sacrificed” for election crimes. According to the Details of Violation Data and its Handling at the General Election Supervisory Board Level in the 2014 Elections, in which there were several reports of election violations committed by political elites, 66 reports of election violations were recorded, and there were 25 reports of violations committed by political elites and corporations, whose follow-up was that the case was terminated because no legal violations were found. Meanwhile, in General Election Supervisory Board Level in the 2019, there are no details of violations, therefore it cannot be traced to the reported parties, the cases involving political elites and corporations, and the verdicts.

CONCLUSION AND SUGGESTION

Conclusion

Election crime is divided into two categories, white-collar crime and blue-collar crime. The simplest difference between white-collar crime and blue-collar crime is the type of perpetrator. Eradication of various crimes in government agencies must begin with white-collar crime, not blue-collar crime. White-collar crime is aimed at state officials and officials, blue-collar crime is aimed at crimes committed at the lower levels of society with low quality and quantity. The criminal provisions in the *ius constituendum* in the Election Law are still not effective in providing a deterrent effect, as indicated by the high rate of criminal election offenses over the years. In addition, the facts indicated that court decisions on election crimes are generally decided with lenient criminal sanctions, smaller than the criminal provisions in the laws and regulations, which are less than 6 months. Meanwhile, the elements of the criminal offenses are suitable for aggravated sanctions because the perpetrators are organizers and officials. Unfortunately, the average judge considered the purpose of deterrent punishment which emphasizes awareness.

Suggestion

Electoral offenses are extraordinary crimes. Therefore, it is required to implement a specific law whose handling must also be extraordinary, not equated with ordinary criminal offenses. Furthermore, the sanctions must also be special and effective in providing a deterrent effect. It is required to review the legal sanctions for electoral offenses, which only emphasize the main criminal sanctions in prison and fines, to become a combined criminal sanction between corporal punishment, fines and administrative sanctions in the form of revocation of rights.

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