

Conference Paper

Indonesian Justice System for Election Crimes

Ujuh Juhana^{1*}, Edi Setiadi², Efik Yusdiansyah³¹Faculty of Law, Muhammadiyah University of Sukabumi²Faculty of Law, Bandung Islamic University³Faculty of Law, Islamic University of Bandung**ORCID**Ujuh Juhana: <https://orcid.org/0000-0002-0184-9730>**Abstract.**

Violations of the criminal provisions in the election law give birth to election crimes. For the occurrence of election crimes, the state is obliged to carry out law enforcement efforts. Law enforcement against election crimes is carried out by legal apparatus authorized by the election law, namely the integrated law enforcement center (gakumdu). The integrated law enforcement center consists of the election supervisory body (Bawaslu), the police, and the prosecutor's office. Election law enforcement is very important, especially in terms of the handling, investigation, prosecution, judicial, and sentencing processes. The law enforcement process is always identical to the current criminal justice system. In law enforcement for election crimes, the characteristics of law enforcement are different from criminal law enforcement in general. The methodology used in this paper uses a descriptive juridical method.

Keywords: criminal justice system, election crime, integrated law enforcement centerCorresponding Author: Ujuh Juhana; email: ujuhjuhana_fh@ummi.ac.id

Published: 4 October 2022

Publishing services provided by Knowledge E

© Ujuh Juhana et al. This article is distributed under the terms of the [Creative Commons Attribution License](#), which permits unrestricted use and redistribution provided that the original author and source are credited.

Selection and Peer-review under the responsibility of the INCLAR Conference Committee.

1. INTRODUCTION

General elections (elections) are the participation of the community or the people as a means to vote, express opinions through votes, and or participate in activities to elect their representatives or leaders. Community participation in the election makes the election a way to determine the course of state administration. Elections are rights owned by the people of a country to continue the process of government and state administration based on the results of the choices of the majority of the people or the people.

The implementation of elections is regulated in such a way as in laws and regulations and with principles based on the principles of direct, general, free, confidential, honest and fair. The regulation is intended so that the implementation of elections can run in an orderly manner, and have a proper and appropriate legal basis.

OPEN ACCESS

The 1945 Constitution has mandated that elections must be conducted in an honest and fair manner, as stated in Article 22 E Paragraph (1). Elections are used as a means and mechanism in a replacement of legislative and executive powers. Therefore, in the implementation of the election there must be a guarantee so that it is carried out properly or what is called honest and fair. Voters, parties participating in the general election and the people in general must be protected from fraudulent practices such as intimidation, bribery, fraud that will affect the purity of the general election results.

For political parties and/or election participants, elections are an arena to show dominance over other people or other candidates to be elected to political positions. To be selected, efforts are made from good efforts or actions, even to bad actions, for example by committing fraudulent or dishonest actions. During this election period, political elites are competing to gain public sympathy in any way, one of which is money politics. Money politics has the potential to be detrimental to the state, because there is a tendency that if it wins votes, there will be efforts to return the previously issued capital. This can lead to acts of corruption. Money politics is very detrimental to the progress of the nation in the democratic system in Indonesia.

To create a clean election, it is very necessary to understand the public's understanding of the dangers of money politics, where the community has an important role in determining the future of their country. However, the public should also not be antipasti or abstain. Because, it will only benefit candidates who are not credible. Because usually, abstentions are carried out by critical people who see no credible candidate. Whereas abstinence will provide opportunities for people who are less or incompetent to win the election contestation.

How important it is to maintain the purity of the election, then a legal basis has been established as a foothold, namely Law Number 7 of 2017 concerning General Elections. This law has regulated how the mechanism and there are also rules regarding prohibitions and criminal threats for violators.

Every citizen who has fulfilled the conditions and has the right to vote, can choose according to his choice, without any pressure and coercion from anyone. Election organizers, including the General Elections Commission, government officials, election participants, election supervisors, election observers, voters, and all related parties must behave and act honestly in accordance with the laws and regulations. Every voter and election participant gets the same treatment, and is free from fraud by any party.

In the event of fraud and blasphemy against the provisions and regulations of the election as regulated in Law no. 7 of 2017, then these actions can be categorized as violations, both administrative violations and criminal violations. An election crime can

be formulated as any action/deed (active/passive) that violates the provisions in the stages of organizing an election and is threatened with criminal sanctions.

2. METHODOLOGY/ MATERIALS

Methodology in legal research can be divided into three, namely: 1. Normative Legal Research; 2. Empirical Legal Research; and 3. Socio-Legal Research. The preparation of this paper uses both socio-legal legal research methods by analyzing statutory rules and norms related to the topic of writing. In addition, several approaches used in writing this article are: the statute approach and the conceptual approach.[1]

3. RESULTS AND DISCUSSIONS

In Law Number 7 of 2017 concerning General Elections, there are 77 election crimes whose stipulations are contained in 66 articles. There are several subjects for election crimes, namely everyone (22 out of 77 election crimes).[2] This is usually called a general offense or commune, meaning that anyone can commit an offense, and the remaining 55 crimes are offenses propria (crimes whose subject is specific/not everyone). Based on the data mentioned by Bawaslu in the 2019 election, it was stated that the alleged violations amounted to 16427 administrative violations, 426 violations of the code of ethics, 2798 criminal violations, and 1518 other legal violations.[3]

Based on this, it is very important how the electoral criminal justice system works in an effort to enforce the law on election crimes. Law enforcement is the process of making efforts to enforce or actually function legal norms as guidelines for behavior in traffic or legal relations in social and state life. Law enforcement as a process is essentially the application of law. Conceptually, the essence of law enforcement lies in the activity of harmonizing the relationship of values outlined in solid rules and attitudes of action as a series of final value translations, to create, maintain and maintain peaceful social life. The conception that has a philosophical basis requires further explanation so that it will appear more concrete.[4]

Juridically and factually, the Criminal Justice System (SPP) as the bearer of law enforcement power, does not take shelter under the same roof of judicial power. The Police and the Prosecutor's Office are two pillars of law enforcement in the function of investigation and prosecution in addition to the Penitentiary as the executor of crimes under the control of Government power. Viewed from the perspective of the constitution, institutionally the three institutions that carry out the Judicial function are

Executive organs and are under the subordination of Executive power. If constitutionally, Judicial Power is recognized as an independent power, of course, the sub-system of implementing Judicial Power in the field of criminal law enforcement must also be under one roof or within the realm of judicial power.[5]

Integrated Law Enforcement, hereinafter referred to as Gakkumdu, is the center for law enforcement activities for election crimes consisting of the Bawaslu, Provincial Bawaslu, and/or Regency/Municipal Bawaslu, the Republic of Indonesia National Police, Regional Police, or Resort Police, and the Attorney General's Office of the Republic of Indonesia. High Prosecutor's Office, and/or District Attorney's Office.[6]

Based on the foregoing, the composition of the electoral law enforcement apparatus consists of the state apparatus, namely the Bawaslu, and the law enforcement apparatus consisting of the Indonesian National Police and the Attorney General's Office. Meanwhile, the purpose of an integrated law enforcement center (gakkumdu) itself, according to Article 186 of Law 7 of 2017 concerning Elections states that the purpose of establishing a Gakkumdu center is to equalize understanding and patterns of handling election crimes.[7]

3.1. ELECTION CRIMINAL ACTION HANDLING

The system for handling a criminal act is known as criminal law enforcement. This policy is known as the criminal justice system. The criminal justice system is a crime control system consisting of the institutions of the police, prosecutors, courts and prisons of convicts. The criminal justice system itself is known as the criminal justice system (CJS).

The criminal justice system is defined as a term that indicates a working mechanism in crime prevention using a basic system approach. Meanwhile, Mardjono Reksodipoetro said that the criminal justice system is a system in a society to deal with crime.

Tackling means here an effort to control crime so that it is within the tolerance limits of society. These provisions include: Investigations, investigations, prosecutions, and examinations of election crimes are carried out based on Law Number 8 of 1981 concerning Criminal Procedure Code, unless otherwise stipulated in this Law.[8] In addition to the Criminal Procedure Code, the procedural law that regulates electoral criminal justice is the Election Law itself, namely Law no. 7 of 2017, the Supreme Court Regulation No. 2 of 2013.[9] as well as the Election Supervisory Body Regulation No. 7 of 2018.[10][11]

In the process of law enforcement, there are two aspects that often conflict with each other, namely aspects of public interest and aspects of individual interests. The

public interest on the one hand requires the creation of social order (social order), while individual interests on the other hand require individual freedom.

3.2. INVESTIGATION

The report is received by the election supervisor, accompanied and assisted by criminal investigators and prosecutors who are members of the Gakkumdu Center. The Election Supervisor asks about the report to be submitted by the Reporting Party by filling it in the form provided. In the event that the report/finding is received (registered), the Election Supervisor shall provide the Report number and provide the Report Receipt Certificate to the Reporting Party. [12]

On the suspicion of a criminal violation, the integrated law enforcement center (gakkumdu) then takes action. Enforcement is a series of processes for handling violations originating from Findings/Reports to be followed up by the authorized agency. The process for handling violations as referred to in this section includes: a. Findings/receipt of Reports; b. collection of evidence; c. clarification; d. as well as forwarding the results of the study on the Findings/Reports to the competent authorities; e. assessment; and/or f. giving recommendations.

Reports of alleged Election Crimes are forwarded by the Election Supervisor to the investigators of the Indonesian National Police at Gakkumdu, in accordance with the level as in the form for forwarding Election Crimes as outlined in the model B.12 form. The report on the alleged Election Crime as referred to in paragraph (1) shall be forwarded to the State Police of the Republic of Indonesia no later than 1x24 (one time twenty-four) hours since it was decided in a plenary meeting based on the study of the Election Supervisor. The forwarding of the Report on the alleged Election Crime shall be carried out no later than 14 (fourteen) days. Forwarding of Findings/Reports of alleged Election Crimes shall be accompanied by a file of Findings/Reports and documents resulting from the handling of violations.[13]

Election Crime Investigators and Prosecutors accompany the Supervisors in receiving reports. In this assistance, the Electoral Crime Investigators and Prosecutors use the format for the completeness of reports/findings of alleged Election Crimes. Assistance is provided for the purposes of: identification, verification and consultation. the reports/findings are received, the Election Supervisor accompanied by members of the Gakkumdu Center shall clarify the reporting parties and witnesses present. Election Crime Investigators carry out investigations after the Provincial Bawaslu or

Regency/Municipal Panwas issues an assignment order to carry out the investigation. The Election Crime Investigator issues an Investigation Order based on a Warrant. [14]

Election Supervisors conduct a study of election violations. In conducting a study of alleged election violations, the complainant, the Reported Party, Witnesses, and/or Experts may be asked for information and/or clarification. Statements and/or clarifications are made under oath and set forth in the Minutes of Clarification. In requesting information and/or clarification, the Election Supervisor must be accompanied by an Election Crime Investigator and a Prosecutor. The result of the election violation review process by the Election Supervisor is in the form of a report/finding review document. Prosecutors provide assistance and monitoring in the process of reviewing election violations and investigations. Election Crime Investigators after carrying out their investigations make a Report on the Results of the Investigation.

Election Supervisors, Election Crime Investigators and Prosecutors at the Gakkumdu Center conduct a second discussion no later than 5 (five) days after the Report/Findings are received by the Election Supervisor. The second discussion was carried out to determine whether the report/finding had met the elements or did not meet the elements of the Election Crime. The discussion referred to is led by the Chief Coordinator of the Gakkumdu Center. The discussion must/must be attended by the Election Supervisor, Election Crime Investigator, and the Prosecutor to discuss the study of the Election Supervisor and the Report on the Results of the Investigation.

The forwarding of the report/finding is accompanied by a case file containing: a. cover letter; b. a letter of assignment to carry out an investigation issued by the election supervisor; c. table of contents; d. reports/findings of alleged Election Crimes; e. study results; f. report on the results of the investigation; g. letter of clarification invitation; h. news of clarification; i. minutes of clarification under oath; j. the minutes of the first discussion; k. minutes of the second discussion; l. list of witnesses and/or experts; m. the list of reported parties; n. list of evidence; o. evidence; and p. investigation administration. Reports/findings are forwarded by the election supervisor to the National Police at the Gakkumdu Center Secretariat. The Election Crime Investigator makes the administration of receiving forwarding reports/findings in the form of: a. police reports with whistleblowers who have reported to the election supervisor; and b. report certificate. The Election Crime Investigator in the Gakkumdu Center coordinates with the Police Service Center to obtain a police report registration number.

The investigation carried out by the Election Crime Investigator at the Gakkumdu Center was carried out after the issuance of the Notification of the Commencement of Investigation by the coordinator of the Gakkumdu Center from the National Police.

Issuance of Notification of Commencement of Investigation (SPDP) as referred to in conjunction with the issuance of an Investigation Order. The Election Crime Investigator submits a Notice of Investigation Commencement and other administrative investigations that have been signed by the Gakkumdu Center Coordinator from the National Police to the Prosecutor. The Election Crime Investigator conducts an Investigation no later than 14 (fourteen) working days as of the forwarding of the report/finding received from the Election Supervisor and/or the Police report is made. Prosecutors at the Gakkumdu Center provide assistance and monitoring of the investigation process.

The third discussion conducted by the Election Crime Investigator presented the results of the investigation. In this third discussion, it was led by the Chairperson of the Coordinator of the Provincial/Regency/City Gakkumdu Center Coordinator. The third discussion was carried out during the investigation process. The third discussion was attended by the Election Supervisor, Election Crime Investigator, and the Prosecutor to discuss the results of the investigation. The third discussion resulted in the conclusion of delegating the case to the Prosecutor. The results of the third discussion are stated in the minutes of discussion signed by the Election Supervisor, Election Crime Investigator and the Prosecutor.

The Election Crime Investigator submits the results of the Investigation along with the case file to the Prosecutor no later than 14 (fourteen) working days as of the forwarding of the report/finding received from the Election Supervisor and/or the Police report is made. In the event that the results of the investigation are incomplete, within a maximum period of 3 (three) working days the public prosecutor returns the case file to the Election Crime Investigator in the Gakkumdu Center accompanied by instructions on what must be done to complete it. The Election Crime Investigator returns the case file to the Prosecutor no later than 3 (three) working days from the date of receipt of the file. The return of case files from the Prosecutor to the Election Crime Investigator is only carried out 1 (one) time.

Submission and return of investigation results and case files is carried out at the integrated law enforcement center. After the case file is received by the Prosecutor and declared complete, the Election Crime Investigator submits the suspect and evidence to the Prosecutor.

3.3. PROSECUTION

The Public Prosecutor shall transfer the case file to the District Court no later than 5 (five) working days from the time the case file is received from the Election Crime Investigator

and a cover letter for the delegation signed by the Gakkumdu Center Trustee from the Prosecutor's Office according to the level. The Public Prosecutor prepares a plan of indictment and a letter of indictment. The Public Prosecutor shall prepare a plan of prosecution and make a letter of claim. The Public Prosecutor shall report the planned indictment and indictment and/or the plan for the claim and the letter of demand for the Supervisor of the Gakkumdu Center from the Prosecutor's Office according to the level. The indictment as referred to in its copy is submitted to the Coordinator of the Gakkumdu Center from the National Police and Election Supervisors according to level. After the court's decision was read out, the public prosecutor reported to the Advisor of the Gakkumdu Center from the Prosecutor's Office. The results of the report from the Gakkumdu Center Advisor from the Prosecutor's Office are then reported to the Gakkumdu Center. The Gakkumdu Center conducts a discussion no later than 1 x 24 (one time twenty four) hours after the Court's Decision is read to take a stance to take legal action or follow up on the court's decision. The discussion referred to is attended by coordinators from the Election Supervisory Committee, coordinators from the Police, and Coordinators from the Prosecutor's Office according to levels. The Public Prosecutor submits an appeal and a memorandum of appeal no later than 3 (three) days after the verdict is read.

In the event that the defendant makes an appeal against the court's decision, the Public Prosecutor makes a counter memorandum of appeal. The prosecutor at the Gakkumdu Center implements a decision that has permanent legal force no later than 3 (three) days after the decision is received by the prosecutor and can be accompanied by an election crime investigator and election supervisor. The provisions on the authority to prosecute criminal acts in this election are abolished because they have expired in accordance with the provisions of Article 78 of the Criminal Code.

3.4. ELECTION CRIMINAL JUDGMENT

After the completion of the investigation conducted by the investigators of the election law enforcement center (gakkumdu), the next stage is to enter the judicial stage. Regarding the procedure (procedural law) for electoral criminal justice, the Supreme Court issued Supreme Court Regulation no. 2 of 2013 concerning Procedures for Settlement of Election Crimes. This electoral criminal court has the authority to examine, hear, and decide on election crimes. This stage is the operation of the electoral criminal justice system, which is carried out by the Public Prosecutor and Judges of the Election Criminal Court.[15]

Examinations carried out by judges in electoral criminal justice have special characteristics in accordance with the Supreme Court Regulations, including: the examination time for the District Court level is limited to only 7 (seven) days and can even be carried out in a marathon and examinations can be carried out at night. In the event that an appeal is filed to the High Court, only 7 (seven) days to examine it at the appeal level. The decision of the High Court is the final and binding decision and no other legal remedy can be taken.

The panel of judges who examine cases of election criminal violations are special judges who are career judges at the District Court and High Court based on the decision of the Supreme Mahakamh. Where these special judges are proposed by the Head of the District Court and the High Court to the Supreme Court.[16]

3.5. CRIMINATION

The final decision which already has permanent legal force (inkracht) from the General Election Criminal Court Decision, is then executed by the prosecutor no later than 3 (three) days after the verdict is read by the Court. In the criminal justice system, the execution of the decision (execution) is carried out by the prosecutor (executor) in accordance with the decision, in the case of a punishment for restricting freedom (confinement or imprisonment) then it is carried out in a correctional institution and in accordance with the laws and regulations regarding correctional facilities.

3.6. ROLE OF ADVOCACY

The role of advocate is in every process in the criminal justice system. In the Criminal Procedure Code (KUHAP), the role of a legal advisor has existed since the investigation process to the rehabilitation process in a correctional institution. An advocate is a person whose profession is to provide legal services, both inside and outside the court, who meet the requirements based on the provisions of the law.

Advocates as legal advisors play a role in ensuring that the rights of suspects, defendants and convicts are not violated. Advocates act as a counterweight to the coercive measures provided by law to law enforcement. The role of this advocate becomes important. The absence of a legal advisor in the criminal justice process allows the occurrence of violations that affect the outcome of court decisions.

The legal services of an advocate are services provided by an advocate in the form of providing legal consultation, legal assistance, exercising power, representing,

accompanying, defending, and taking other legal actions for the legal interest of the client. Therefore, an advocate or legal advisor not only needs to be present but also has the competence to properly defend the rights of suspects, defendants and convicts, especially in assisting and providing legal advice in cases of criminal acts of general election.

4. CONCLUSION AND RECOMMENDATION

The electoral criminal justice system is a legal mechanism that is implemented based on statutory regulations to carry out the process and implementation of law enforcement, especially against election crimes. This mechanism is implemented through the legal sub-system established by legislation, ranging from investigations, investigations, examinations in court and sentencing of crimes. The fundamental difference from the electoral criminal justice system, apart from the shorter procedural law, is also the formation of a legal apparatus, namely an integrated law enforcement center, a panel of judges and legal remedies that only reach the level of appeal.

References

- [1] Fitriana ZM, Maeyangsari D, Wahyudi E. Implementasi Prinsip Partisipatif dalam Pengelolaan Keuangan Desa (Studi Kasus di Desa Jabung, Kabupaten Lamongan). *J. Dedik. Huk.* 2021;3(1).
- [2] Santoso T. Politik Transaksional, Korupsi Politik dan Kampanye Hitam pada Pemilu 2019 dalam Tinjauan Hukum Pidana. *Fac. Law UI*; 2019.
- [3] https://www.Bawaslu.go.id/sites/default/files/hasil_pengawasan/DATA%20PELANGGARAN%20PEMILU%20TAHUN%202019%204%20NOVEMBER%202019-dikompres.pdf
- [4] Soekanto S. Faktor Yang Mempengaruhi Penegakan Hukum. Jakarta: Raja Grafindo Persada; 1916.
- [5] Pujiyono, "Reconstruction of the Indonesian Criminal Justice System in the Perspective of Independence of Judicial Power," *J. Leg. Probl.* 2012;41(1).
- [6] Undang-Undang Nomor 7 Tahun 2017 tentang Pemilihan Umum.
- [7] Setiadi E, Kristian, Sistem Peradilan Terpadu dan Sistem Penegakan Hukum di Indonesia. Jakarta: Kencana Prenada media, 2019.
- [8] Undang-Undang Nomor 8 Tahun 1981 tentang Hukum Acara Pidana.

- [9] Peraturan Mahkamah Agung Nomor 2 Tahun 2013 tentang Tata Cara Penyelesaian Tindak Pidana Pemilu.
- [10] Reksodiputro M. Hak Asasi Manusia dalam Sistem Peradilan Pidana, Pusat Kehakiman dan Pelayanan Hukum. Jakarta: Pusat Kehakiman dan Pelayanan Hukum UI, 1994.
- [11] Peraturan Badan Pengawas Pemilu Nomor 7 Tahun 2018 tentang Penanganan Temuan dan Laporan Pelanggaran Pemilu.
- [12] Budhiati I. Pemilu di Indonesia, Kelembagaan, Pelaksanaan dan Pengawasan. Jakarta: Sinar Grafika.
- [13] Atmasasmita R. Sistem Peradilan Pidana. Bandung; 1996.
- [14] Tahir H. Proses Penegakan Hukum yang Adil dalam Sistem Peradilan Pidana di Indonesia. Yogyakarta: Laksabang Presindo; 2010.
- [15] Peraturan Bawaslu Nomor 31 Tahun 2018 tentang Pusat Penegakan Hukum Terpadu.
- [16] “Peraturan Bersama Badan Pengawas Pemilihan Umum (Bawaslu), Kepolisian Negara Republik Indonesia dan Kejaksaan Agung Republik Indonesia. NOMOR 14 TAHUN 2016; NOMOR 01 TAHUN 2016; NOMOR 013/JA/11/2016. Tentang Pusat Penegakan Hukum Terpadu.”