

RECONSTRUCTION OF THE REGULATION ON LAW ENFORCEMENT AGAINST PERPETRATORS OF ELECTORAL CRIMES IN ACHIEVING LEGAL CERTAINTY

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Abstract

This study aims to analyze and reconstruct the regulation of law enforcement against perpetrators of electoral crimes in order to achieve legal certainty. The research method employed is normative legal research using statutory, conceptual, and case approaches. The legal materials consist of primary, secondary, and tertiary sources, which are analyzed qualitatively. The findings indicate that the current regulation of law enforcement for electoral crimes has not fully reflected the principles of legal certainty, justice, and expediency. The weaknesses of these regulations are evident in the substantive regulation of electoral criminal law, the law enforcement mechanisms that have not been optimally integrated, and the overlapping authorities between election management bodies and law enforcement institutions. Therefore, a reconstruction of the regulation of law enforcement for electoral crimes is required, emphasizing the clarity of legal norms, the strengthening of law enforcement institutions, and the harmonization of laws and regulations. The regulatory reconstruction proposed in this study is expected to realize legal certainty in the enforcement of electoral crime laws, while also strengthening the quality of democracy and the implementation of the rule of law in Indonesia.

Keywords: electoral crimes, regulatory reconstruction, legal certainty

Abstrak

Penelitian ini bertujuan untuk menganalisis dan merekonstruksi regulasi penegakan hukum terhadap pelaku tindak pidana pemilihan umum dalam rangka mewujudkan kepastian hukum. Metode penelitian yang digunakan adalah penelitian hukum normatif dengan pendekatan perundang-undangan, pendekatan konseptual, dan pendekatan kasus. Bahan hukum yang digunakan meliputi bahan hukum primer, sekunder, dan tersier yang dianalisis secara kualitatif. Hasil penelitian menunjukkan bahwa regulasi penegakan hukum tindak pidana pemilihan umum saat ini belum sepenuhnya mencerminkan prinsip kepastian hukum, keadilan, dan kemanfaatan. Kelemahan regulasi tersebut antara lain terlihat pada pengaturan substansi hukum pidana pemilu, mekanisme penegakan hukum yang belum terintegrasi secara optimal, serta adanya tumpang tindih kewenangan antara lembaga penyelenggara dan penegak hukum. Oleh karena itu, diperlukan rekonstruksi regulasi penegakan hukum tindak pidana pemilihan umum yang menekankan pada kejelasan norma, penguatan kelembagaan penegakan hukum, serta harmonisasi peraturan perundang-undangan. Rekonstruksi regulasi yang ditawarkan dalam penelitian ini diharapkan mampu mewujudkan kepastian hukum dalam

penegakan hukum terhadap pelaku tindak pidana pemilihan umum, sekaligus memperkuat kualitas demokrasi dan penegakan prinsip negara hukum di Indonesia.

Kata kunci: *tindak pidana pemilihan umum, rekonstruksi regulasi, kepastian hukum*

INTRODUCTION

Indonesia is a democratic country that continuously strives to strengthen the quality and image of its democratic system at the international level. This principle is constitutionally affirmed in Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states that sovereignty is in the hands of the people and is exercised in accordance with the Constitution (1945 Constitution of the Republic of Indonesia, 1945). This provision reflects that the people are the highest authority in the Indonesian constitutional system. The concept of people's sovereignty is in line with the values of Pancasila as the foundation of the state, which directs the administration of national and state life towards the realization of justice, prosperity, and social welfare.

From an international perspective, the International Commission of Jurists (1965) formulated criteria for a democratic state based on the principle of the rule of law at a conference in Bangkok. These criteria include constitutional guarantees of citizens' rights, an independent and impartial judiciary, freedom of expression, free and periodic elections, freedom of association and organization, including the right to express opposition, and the availability of civic education. These principles are important indicators in assessing the quality of democracy in a country.

As a democratic country, Indonesia holds general elections every five years. Based on constitutional provisions, general elections are held to elect the President and Vice President, members of the House of Representatives (DPR), members of the Regional Representative Council (DPD), and members of the Regional House of Representatives (DPRD) at both the provincial and regency/city levels (Law Number 7 of 2017 concerning General Elections, 2017).

General elections are the main mechanism for channeling the aspirations and sovereignty of the people in a representative democratic system. Democracy, general elections, and the rule of law are three fundamental concepts that are interrelated and inseparable in the administration of state affairs. Democracy provides the basic principle that power comes from the people, while general elections are the operational instrument for realizing this principle. On the other hand, the rule of law provides normative legitimacy and a regulatory framework for the implementation of democracy and general elections to run in accordance with the principles of justice, legal certainty, and benefit. General elections serve as a means of realizing the sovereignty of the people in the Unitary State of the Republic of Indonesia, which is based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

The purpose of holding elections is to form a democratic government, obtain legitimacy from the people, and realize national goals as mandated in the constitution. The implementation of democratic values in every stage of the elections is expected to increase public awareness and political participation in an active and responsible manner.

Legally, the operational basis for the implementation of the 2019 and 2024 elections is regulated in Law Number 7 of 2017 concerning General Elections. In this law, specifically in Chapter V, provisions regarding election crimes are regulated, covering aspects of substantive criminal law and formal criminal law. Substantive criminal provisions regulate 77 types of election crimes spread across 66 articles, from Article 488 to Article 544. Meanwhile, formal criminal provisions are regulated in 11 articles, namely Articles 476 to 487 (Law Number 7 of 2017 concerning General Elections, 2017). These regulations demonstrate the state's commitment to ensuring integrity and fairness in the democratic process through strict law enforcement mechanisms.

METHOD

This study employs a normative legal research method with a descriptive approach to examine and analyze legal issues within a doctrinal framework. Normative legal research, often referred to as doctrinal research, focuses on the study of law as a set of norms or rules that govern human behavior. It emphasizes the analysis of legal principles, statutory regulations, and legal doctrines relevant to the research problem. Rather than relying on empirical field data, this method systematically examines legal texts and authoritative legal sources to construct coherent legal arguments and interpretations.

The descriptive approach applied in this research aims to provide a comprehensive and systematic explanation of the legal framework under study. Through qualitative analysis, the research describes, interprets, and evaluates the existing legal norms, particularly those governing the subject matter of this study. The findings are presented in a structured narrative form to clarify the relationship between legal provisions, principles, and their practical implications.

The data used in this research consist entirely of secondary data derived from library research. These data are categorized into two main types of legal materials. First, primary legal materials include binding legal sources such as constitutions, statutes, regulations, and other official legal documents directly related to the research topic. These materials serve as the principal foundation for legal analysis. Second, secondary legal materials consist of reference books, scholarly journal articles, legal commentaries, and expert opinions that provide theoretical insights and critical interpretations of the primary legal materials. These sources help deepen the analysis by explaining legal concepts, clarifying ambiguities, and supporting doctrinal arguments. Through systematic examination and qualitative analysis of these materials, this study aims to generate a comprehensive understanding of the legal issues examined and contribute to the development of legal discourse in the relevant field.

RESULTS AND DISCUSSION

The Construction of Law Enforcement for Electoral Crimes under the Election Law and the Regional Election Law

Law enforcement concerning electoral crimes constitutes an integral component of Indonesia's constitutional democratic system. Within the framework of the rule of law, law enforcement must ensure legal certainty, justice, and utility, as articulated in both classical and modern rule of law theories (Asshiddiqie, 2010; Dicey, 1959). Law Number

7 of 2017 concerning General Elections and Law Number 10 of 2016 concerning the Election of Governors, Regents, and Mayors serve as the primary normative foundations governing electoral crimes in Indonesia. The Election Law regulates electoral crimes in Chapter XXII (Articles 488–554), encompassing various offenses such as vote-buying (money politics), illegal campaigning, voter list manipulation, and violations of bureaucratic neutrality (Law No. 7 of 2017, 2017). Meanwhile, the Regional Election Law classifies regional electoral crimes as special offenses subject to the principle of *lex specialis derogat legi generali* (Law No. 10 of 2016, 2016). This principle affirms that specific legal provisions prevail over general ones in regulating particular legal events (Purbacaraka & Soekanto, 1983).

In practice, criminal liability in electoral offenses does not depend solely on the fulfillment of the objective elements of a crime but also on the presence of fault (*schuld*) as the subjective element (Moeljatno, 2008). Each element of the offense must be proven lawfully and convincingly before the court. If even one element is not proven, the defendant cannot be convicted. This requirement presents a significant challenge, particularly in cases of vote-buying, where proving intent and the causal relationship between the benefit given and the voter’s political choice is often difficult. Based on normative analysis reinforced by evaluations of electoral law enforcement practices during the 2019–2024 period conducted by the Indonesian Election Supervisory Board (Bawaslu), several fundamental issues have been identified, as presented in the following table.

Table 1. Research Findings on Problems in the Enforcement of Electoral Criminal Law (2019–2024)

ASPECT ANALYZED	RESEARCH FINDINGS	IMPACT ON LAW ENFORCEMENT	REFERENCES
REGULATORY FRAMEWORK	Ambiguous formulation of offenses and unclear subject of liability	Difficulties in proof and inconsistent court decisions	Law No. 7 of 2017; Asshiddiqie (2010)
GAKKUMDU COORDINATION	Divergent perspectives among Bawaslu, Police, and Prosecutors	Inconsistent case handling	Bawaslu RI (2024)
FAST-TRACK SYSTEM	Extremely limited time frame	Risk of violating due process of law	Dicey (1959)
VOTE-BUYING CASES	High burden of proving intent	Many cases dismissed or not pursued	Moeljatno (2008)

INTERPRETATION OF OFFENSE ELEMENTS	Lack of uniform interpretation across regions	Legal uncertainty	Purbacaraka & Soekanto (1983)
POLITICAL INTERVENTION	Local political pressure on law enforcement officers	Weakening of institutional independence	Asshiddiqie (2010)
DIGITAL EVIDENCE	Absence of standardized national digital forensic guidelines	Frequent disputes over electronic evidence	Electronic Information and Transactions Law; modern evidentiary theory

Source: Processed from Bawaslu RI (2019–2024) reports and the author’s normative analysis.

These findings demonstrate that the problems in enforcing electoral criminal law are not limited to statutory norms but also involve institutional design and evidentiary methodology. The Gakkumdu Center model, which involves three law enforcement institutions, creates potential fragmentation of authority and differences in interpretation when determining whether cases should proceed (Bawaslu RI, 2024).

Regulatory reconstruction is therefore urgently required through harmonization of the Election Law and the Regional Election Law, refinement of offense formulations to eliminate ambiguity, and expansion of criminal liability to include political parties as legal entities. From an evidentiary perspective, adopting a strict liability approach in vote-buying cases may be considered to reduce the burden of proving *mens rea*, as recognized in the development of modern criminal law theory (Moeljatno, 2008).

Furthermore, strengthening digital evidence standards has become increasingly necessary in modern electoral systems. Standardization of electronic evidence, metadata validation, and integration of information systems among relevant institutions would enhance accountability and transparency in electoral law enforcement. Ultimately, these reforms must aim at achieving substantive justice, ensuring the protection of citizens’ voting rights and safeguarding democratic integrity rather than merely fulfilling procedural formalities.

DISCUSSION

The findings of this study demonstrate that the enforcement of electoral criminal law in Indonesia is structurally, normatively, and institutionally complex. The problems identified are not merely technical deficiencies in statutory drafting but reflect deeper systemic tensions between democratic ideals, the rule of law framework, and the political realities of electoral competition. Therefore, the discussion must be approached from three interconnected dimensions: normative construction, institutional design, and evidentiary methodology.

From a normative perspective, the ambiguity in the formulation of electoral offenses constitutes one of the most fundamental obstacles in law enforcement. The Election Law and the Regional Election Law contain numerous criminal provisions; however, several

articles lack precise definitions regarding the subject of liability, the scope of prohibited conduct, and the elements constituting criminal acts. In criminal law theory, the principle of legality (*nullum crimen sine lege certa*) requires that criminal provisions be formulated clearly and unambiguously to prevent arbitrary interpretation. When offense formulations are vague, law enforcement officers face interpretative difficulties, and courts may produce inconsistent decisions. This condition undermines legal certainty, which is a central pillar of the rule of law as emphasized by Dicey (1959) and further contextualized within the Indonesian constitutional framework by Asshiddiqie (2010).

The ambiguity in offense formulation also directly affects the burden of proof. Criminal liability requires the fulfillment of both objective and subjective elements, including the existence of fault (*schuld*). As Moeljatno (2008) explains, criminal responsibility cannot be imposed solely on the basis of an unlawful act; it must also be accompanied by culpability. In electoral crime cases, particularly vote-buying, proving subjective intent becomes exceptionally difficult. The prosecution must establish not only that material benefits were given but also that they were intended to influence voters' political choices. The causal nexus between the benefit and electoral behavior is often intangible, especially when transactions occur informally or indirectly through intermediaries.

This evidentiary challenge explains why many vote-buying cases are dismissed or fail to proceed beyond the investigation stage. The high evidentiary threshold, combined with strict procedural timelines under the fast-track system, creates a paradox: while electoral justice requires swift resolution to maintain electoral integrity, excessive acceleration may compromise due process. The limited timeframe often restricts investigators' ability to gather sufficient evidence, examine witnesses comprehensively, and conduct forensic analysis. Consequently, the principle of due process of law—central to classical rule of law doctrine—is at risk of being subordinated to procedural efficiency.

Institutionally, the Gakkumdu Center model introduces another layer of complexity. The integrated law enforcement center involving Bawaslu, the Police, and the Prosecutor's Office was designed to promote coordination and streamline case handling. However, the findings indicate that divergent institutional perspectives frequently lead to inconsistent decisions regarding whether cases meet the threshold for criminal prosecution. Each institution operates under different organizational cultures, priorities, and interpretations of evidentiary sufficiency. While Bawaslu may view a case as substantively problematic from an electoral integrity standpoint, law enforcement officers may evaluate it strictly under conventional criminal law standards.

This fragmentation reveals a structural tension between administrative electoral supervision and criminal prosecution. Electoral violations often contain both administrative and criminal dimensions. When coordination mechanisms are not harmonized, cases may stagnate or be terminated prematurely. Such inconsistency undermines public trust in electoral justice institutions and reinforces perceptions of selective enforcement.

Political intervention further exacerbates institutional fragility. Local political pressure on law enforcement officers can influence investigative decisions, particularly in highly

competitive regional elections. Although independence of the judiciary and law enforcement institutions is constitutionally guaranteed, practical realities demonstrate that institutional autonomy is vulnerable to informal political networks. This condition weakens the integrity of law enforcement and contradicts the fundamental principle of impartial adjudication within a democratic state.

The lack of uniform interpretation across regions also contributes to legal uncertainty. Electoral laws are applied nationwide; however, regional disparities in legal reasoning and evidentiary assessment create unequal treatment before the law. The principle of equality before the law, central to both classical and modern rule of law doctrines, demands consistent application of legal norms. When identical conduct yields different judicial outcomes in different jurisdictions, the legitimacy of the legal system is called into question.

Another critical dimension revealed by the findings is the growing significance of digital evidence. Modern electoral campaigns increasingly rely on digital platforms, social media, and electronic transactions. Consequently, electoral crimes frequently involve electronic communications, digital transfers, and online disinformation. However, the absence of standardized national digital forensic guidelines leads to disputes over authenticity, admissibility, and evidentiary weight. Courts may differ in assessing metadata validity, chain of custody procedures, and digital reconstruction methods. Without clear standards, electronic evidence becomes vulnerable to challenge, further complicating prosecution efforts.

The interaction between electoral criminal law and the Electronic Information and Transactions framework illustrates the broader challenge of normative harmonization. Overlapping regulatory regimes require coherent interpretation to avoid conflicts and evidentiary loopholes. Harmonization is therefore not merely a legislative technicality but a prerequisite for effective law enforcement in the digital era.

Given these multidimensional challenges, regulatory reconstruction becomes imperative. Harmonization between the Election Law and the Regional Election Law would eliminate inconsistencies in offense definitions and procedural mechanisms. Clarifying the subject of criminal liability is particularly important. Currently, individual actors are the primary focus of prosecution, while political parties as legal entities are rarely held accountable. Expanding corporate criminal liability to political parties could strengthen deterrence and address systemic vote-buying practices that operate through organized networks rather than isolated individuals.

From a doctrinal standpoint, consideration of strict liability in specific electoral offenses, particularly vote-buying, deserves serious examination. In modern criminal law development, strict liability has been applied in regulatory offenses where protecting public interest outweighs the necessity of proving *mens rea*. Electoral integrity, as a fundamental democratic value, arguably justifies a modified evidentiary approach. By shifting the burden of proof regarding intent in narrowly defined circumstances, enforcement could become more effective without entirely abandoning fairness safeguards.

However, adopting strict liability must be approached cautiously. Criminal law remains the ultimum remedium, and excessive relaxation of fault requirements risks undermining fundamental rights. Therefore, strict liability should be limited to clearly defined situations where objective conduct inherently threatens democratic integrity and where procedural safeguards remain intact.

Institutional strengthening is equally essential. Enhancing the professionalism and independence of the Gakkumdu Center requires standardized operating procedures, joint training programs, and integrated case management systems. Shared digital databases and coordinated forensic resources would reduce interpretative fragmentation and improve evidentiary consistency. Transparency mechanisms, including public reporting and independent oversight, could further mitigate political intervention.

The fast-track procedural model also requires recalibration. While timely resolution is crucial in electoral disputes, procedural deadlines should not compromise thorough investigation. Extending investigative timelines within reasonable limits, particularly for complex cases involving digital evidence, would enhance substantive justice without sacrificing electoral certainty.

Ultimately, the reconstruction of electoral criminal law enforcement must be oriented toward substantive democratic protection rather than mere procedural compliance. Elections are not solely technical mechanisms for transferring power; they embody the constitutional expression of popular sovereignty. Therefore, criminal enforcement in the electoral context carries symbolic and systemic significance. Weak enforcement erodes public confidence and incentivizes manipulation, while fair and consistent enforcement reinforces democratic legitimacy.

In conclusion, the study's findings confirm that electoral criminal law enforcement in Indonesia requires comprehensive reform encompassing normative clarity, institutional harmonization, evidentiary modernization, and strengthened independence. The interplay between law and politics cannot be eliminated entirely, but it can be structured through clearer rules, transparent procedures, and accountable institutions. Only through such integrated reform can Indonesia fully realize the constitutional mandate of popular sovereignty within a genuine rule of law framework.

CONCLUSION

Based on the results of the study, two conclusions can be drawn. *First*, the regulation of law enforcement for election crimes in Indonesia has not yet fully realized legal certainty. This is due to disharmony between the Election Law and general criminal law, unclear authority between election law enforcement agencies, differences in the interpretation of criminal elements, and the suboptimal role of the Gakkumdu Center due to sectoral egos and the influence of political interests. This condition is exacerbated by a low democratic legal culture, so that election law enforcement has not been effective. *Second*, the reconstruction of the enforcement of election crime laws is an urgent necessity to ensure legal certainty and the quality of democracy. This reconstruction must be carried out comprehensively through the renewal of legal substance, institutional strengthening

particularly of the Gakkumdu Center and the development of a legal culture among officials and the public.

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