

Law Enforcement Against Elections Crime During Electoral Campaign 2019 (Case Study In *Bawaslu* of Banjarmasin City)

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Abstract. Simultaneously in the general election in 2019 in London Election alleged criminal offense, whether it was exposed by the media and is still a byword society is becoming *Bawaslu* obligation to respond. Among them led to the process in *Bawaslu Gakkumdu* of Banjarmasin city whether it is a public report and findings by *Bawaslu* of Banjarmasin own. The cases that occurred not only before the campaign period, even at this stage that this time period campaign legalized legislative candidates for creativity lure the support of the constituency, also saw various criminal cases of elections. Though political parties have been briefed by *Bawaslu* of Banjarmasin about what and things that are prohibited during the campaign period and to explain and analyze: the factors that hinder and solutions for *Bawaslu* of Banjarmasin to enforce laws against criminal acts during the election campaign in 2019. This study is a sociological juridical data obtained in this study were analyzed by inductively qualitative descriptive method. The results of this study are: Factors that inhibit *Bawaslu* of Banjarmasin in enforcing the law against Crime Elections in Future Campaign in London on Election Unison 2019 is a factor of legal norms, budgetary factors, human resource factors and factors of the facility, then the solutions to the barrier is to maximize prevention efforts and strengthen budgeting, HR recruitment and complement facilities of *Bawaslu* of Banjarmasin.

Keywords: Law Enforcement; Election Crime; *Bawaslu* of Banjarmasin.

1. Introduction

General Election means to embody the sovereignty of the people within the framework of the participation of people in running the state government, not only aims to elect representatives who will sit in a consultative institution / representatives, but also a means to realize the preparation of the livelihood of the country imbued with the spirit of *Pancasila* and the Constitution of 1945 in the unitary Republic of Indonesia.³ Etymologically, the origin of the word democracy comes from the Latin, *the demos*, meaning people, and *kratos*, which means governance. May mean that democracy means rule of the people.⁴ What is meant is that a government must get

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³ Achmad Sulchan, 2016 *Perkara Pidana Pemilihan Umum Yang Bernilai Keadilan*, Publising, Semarang, h.10.

⁴ Abdy Yuhana, 2013, *Sistem Ketatanegaraan Indonesia Pasca Perubahan UUD 1945*, Fokusmedia, Bandung, p. 34.

recognition from the people who carried out through the mechanism of elections. A government should also prioritize the interests of the people and put aside personal interests.

The elections to choose representatives and other public officials.⁵ Elections become an important part of the long history of the Indonesian nation trip. Since Indonesia's independence until today, we have repeatedly succeeded in carrying out elections with all the complexities and dynamics that accompany the process. True democratic elections should always involve the people as the highest authority, as the content of the constitution not only as objects but also as subjects of the election in order to ensure the integrity of the organizers and the electoral process.

In 2019, it can not be separated from the height of the political atmosphere in the implementation of the General Election (Election), simultaneously between *Pileg* and presidential elections, in which the peak takes place on April 17, 2019. All the activities and strategies of the political elite to win the support of voters, has graced the news pages of the key issues daily. Starting from the proposing candidates for President and Vice President to the legislative candidates, registration, and enforcement campaigns that do not stop giving the dynamics of the political picture in Indonesia.

Along with the sacred and the height of the event, behind it in the process of execution is also not free from various acts that indicated can harm people and harm the integrity of the elections itself. Acts that enter the criminal is not categorized often heard from the media, which is where it happened because the ambition to win the election is in progress. Criminal offense or also called as the offense is a criminal act in which there is a criminal element or elements of the offense, which must be accounted for by people who perform acts that violate the public order value.

The scope of criminal election is very broad in scope, encompassing all criminal acts that occur in the process of election administration, including ordinary crime during campaigns or financial holding occurring in the equipment purchase tender election. Associated with the types of election violations, Based on Law Number 7 of 2017 on the Implementation of the General Elections, the election violations can be understood that the election violations can be categorized into five (5) types of offenses, namely:

- Election Code violations. This violation is a violation of the ethics Election based oath and / or appointment before stints as Election;⁶
- Election Administrative Violations. As is electoral administrative violations are violations that includes violations of ordinances, procedures, or mechanisms associated with the administration of the election in each phase of the Implementation of the election;⁷
- Disputed election process, namely disputes include disputes that occurred between participants and disputes Participants Election as a result of the issuance of the

⁵ Asshiddiqie, 2012, *Hukum Tata Negara & Pilar-Pilar Demokrasi*, Sinar Grafika, Jakarta, p. 200.

⁶ Act Number 7 of 2017 on organizing the Election, Article 456.

⁷ *ibid.*, Article 460.

Commission's decision, the decision of the Provincial Election Commission, and the decision of the Regency / City;⁸ Dispute Election Result (PHPU), covering a dispute between the Election Commission and participants regarding the determination of votes on Elections,⁹ Dispute then is further divided into two types, namely:¹⁰

- Dispute the determination of votes on the election of members of DPR, DPD and DPRD nationally include disputes the determination of votes that may affect the number of seats Participants of the election; and
 - Dispute the determination of votes on Election of President and Vice President of the national vote totals include the determination of disputes that may affect the determination of election result of President and Vice President.
- General Election crime, the act or acts alleged to constitute the crime of Election as referred to in paragraph (1) shall be declared by the Election Supervisory Body, *Bawaslu* Province, *Bawaslu* Regency / City, and / or *Panwaslu* the District after coordinating with the Indonesian National Police, and the Attorney General of the Republic Indonesia in *Gakkumdu*.¹¹

In general, with the mirror of elections in 2014 and 2019, there were some violations that are often carried out during the campaign until a quiet period, among which are:

- Political money (moneypolitic) conducted by the election participants legislators,
- Violation of the campaign, a covert campaign, campaign outside of schedule

Should, the violations mentioned above, can be addressed by the General Elections Supervisory Board (*Bawaslu*) with a maximum and optimal, especially *Bawaslu* day *Bawaslu* different premises in 2014, which authorized *Bawaslu* today is more powerful than the previous political year. General Elections Supervisory Board (*Bawaslu*), based on Law Number 7 of 2017 currently has great authority, not just as a supervisor, judge and executor breaker case.

One function of the General Elections Supervisory Board (*Bawaslu*) is to supervise the phases and prevention of election violations. There *Bawaslu* function is strategically significant, how to avoid potential violations of the election appeared to run the optimal prevention strategies. *Bawaslu* expected to take action decisively, effectively and be the judge of fair elections.

In order to play an effective role, any monitoring reports can be sharper and become legal facts actionable appropriate regulatory mechanisms exist and be able to provide a deterrent effect to efforts to reduce the potential violation so that the goal can be achieved electoral justice. It is principally the responsibility of all of us to play an active role, not only the organizers of the election, such as the KPU, *Bawaslu*, and the Honorary Board of Election, the election for the construction of quality and integrity for the advancement of the nation.

⁸*ibid.*, Article 466.

⁹*ibid.*, Article 473 Paragraph (1).

¹⁰*ibid.*, Article 473 Paragraph (2) and paragraph (3).

¹¹*ibid.*, Article 476 Paragraph (2).

With regard to the handling of criminal cases in unison Election 2019, and the implementation until February 2019, in the province of South Kalimantan, there were 11 cases,¹² *Bawaslu* of which is handled by the city of Banjarmasin. Then the cases related to political money, some of which carried out during the campaign in April as many as 25 cases, of which 22 cases were dealt with by *Bawaslu* RI and 3 cases handled by the Police Department, which of them occurred in the city of Banjarmasin.¹³

Based on the background mentioned above authors, the authors are interested to pour a criminal offense issues of this election campaign, the authors examine and study the problems in a scientific paper titled: "*Crime Against Law Enforcement During Election Electoral Campaign 2019 (Case Study In Bawaslu City Banjarmasin)* ".

The formulation of the problem in research is Any factors that inhibit and solutions General Elections Supervisory Board Banjarmasin to enforce laws against criminal acts during the 2019 election campaign?

Research methods

This study is an empirical law, which means legal research function to see the law in the real sense and examine how the workings of the legal environment of the community. Basically this study is to investigate the relationships of life in the community then empirical legal research methods can be regarded as a sociological juridical research. This sociological juridical research drawn from the facts that exist in a society, corporation or government agency.¹⁴

2. Results and Discussion

As law enforcement generally, there are few factors that have an impact both positive and negative (constraints and obstacles) in law enforcement criminal offense elections. According, *Soerjono Soekanto* there are five (5) factors that influence law enforcement, that is:¹⁵

- Factors Regulation of legislation, the law itself.
- Factors law enforcement, the parties forming and applying the law.
- Factor means or facilities to support law enforcement.
- Community factors, namely the environment in which they may apply or applied.
- Cultural factors, namely as a result of the work, creativity, and a sense that is based on human initiative in social life.

¹²Banjarماسin Post, dated March 3, 2019.

¹³"Case 25 *Bawaslu* Discover Money Politics, Including Banjarmasin and Tapin" www.apahabar.com, Accessed on June 9, 2019.

¹⁴Bambang Sunggono, 2003, the Legal Research Methodology, *PT.RajaGrafindoPersada*, Jakarta, h.116.

¹⁵Soerjono Soekanto, 2012, Factors Affecting Law Enforcement, Jakarta: *Rajawali* Press, p. 12, 34 and 45.

The factors that inhibit *Bawaslu* of Banjarmasin in enforcing the law against the crime of Elections during the campaign in London on Election Unison 2019 According to the Election Supervisory Body Banjarmasin are witnesses related cases handled by *Bawaslu* of Banjarmasin and evidence criminal offenses related to alleged electoral violations.

So it makes a case will inevitably have to be stopped, for example, lack of witnesses to the events alleged violations fact. These factors are factors that witnesses and evidence, could Writer enter in the category of community factors and factor solutions of law. While enforcement by *Bawaslu* of Banjarmasin is doing the maximum and optimal prevention.

In this factor, the lack of public participation in law enforcement criminal election so *Bawaslu* of Banjarmasin difficult to process, even a case can be stopped. Likewise with proof, of course, is a description of the officers duly ability. Because according to the author that if any reports or findings of alleged violations, of course, there are legal events, with events such laws then any evidence (other than the witness) can be obtained if the officer who handled the case can work optimally and maximum.

Less than optimal and maximum clerk was not only due to their ability, but can also be caused by other things such as facilities supporting the law enforcement is still inadequate. In fact, if the author filled with data obtained during the study, both observation and documentation, as well as by looking at the obstacles nationally that there are several obstacles that constrain *Bawaslu* and *Gakkumdu* in enforcing the General Election crime, such as: resource constraints human (HR) and budget constraints.

In practice field, there are some difficulties in handling cases of criminal offenses which is due to still existing electoral criminal norms and technical rules that formulation is not clear, giving rise to differences of opinion in the discussion forum at the Center *Gakkumdu*.¹⁶

Author judge, that obstacle law enforcement criminal election in Banjarmasin city, not only limited to witnesses and evidence, but nevertheless other factors such as lack of SDM Secretariat *Bawaslu* of Banjarmasin and facilities are still relatively minimal in order to streamline the law enforcement criminal election in Banjarmasin which is The capital of South Kalimantan province.

When we review his opinions Josep Golstein, then law enforcement can be implemented is law enforcement *actual enforcement*, because it is not a realistic expectation, because the limitations in the form of time, personnel, tools of investigation, funds and so on, all of which resulted in the necessity to do discretion and the rest is called the actual enforcement. Thus, the solution to Authors offer is to

¹⁶Explanation Enforcement Division Coordinator *Bawaslu* Ratna Dewi Pettalolo in the activities of the Technical Working Meeting Law Enforcement Integrated Evaluation Sentra Year 2019di Bali, Wednesday, August 21, 2019. <https://www.Bawaslu.go.id/id/berita/kendala-Gakkumdu-dewi-harap-konsep-ideal-hadapi-pilkada-2020>, Accessed on 19 September 2019.

use all the existing facilities to enforce a criminal offense Election by Election Supervisory Body together *Gakkumdu* Banjarmasin in Banjarmasin.

In addition, the best solution is to strengthen the operational budget, recruitment of human resources, in this case the technical personnel who assist the Commissioner *Bawaslu* and *Gakkumdu* and against law enforcement facilities, of course, this must be completed and reproduced again.

The context of law enforcement, in the context of justice was the fulfillment of the requirements in order to assist the duties and obligations was an attempt to establish justice in the corridors of law enforcement itself, in this case together with *Gakkumdunya Bawaslu* of Banjarmasin.

Related to this writer can pair it with the concept of justice Rawls which he believes that the structure of the ideal society is a fair basic structure of the original society where basic rights, freedom, power, authority, opportunity, income and welfare are met. Rawls argues that the cause of social injustice are situations that need to be re-examined where the principles of justice that can be used to establish a good social situation. The correction of the injustice done by way of refund (call for redress) community in the original position (people on the original position). In its basic position is then made between the original agreement (original agreement) as equal members of society.¹⁷

As to maximizing prevention law enforcement General Election crime committed by *Bawaslu* of Banjarmasin as a solution to problems of limitation law enforcement criminal offense Election by author is solving the problem long term, in the sense that with prevention efforts can end the political events which allegedly it contains the indication of the alleged criminal offense elections. Law enforcement does not just talk the prosecution, but also prevention.

Thus, the maximum prevention that do can be included in the category of law enforcement *full enforcement*, after the scope of criminal law enforcement that is the reduced total no enforcement in the area of law enforcement law enforcement law enforcement to the maximum expected.

3. Closing

3.1 Conclusion

Factors that inhibit *Bawaslu* of Banjarmasin in Enforcing Laws against Crime Elections in Future Campaign in London on Election Unison 2019 is a factor of legal norms related to the crime of election still unclear factor the lack of budget, human resource factors and factors of facilities *Bawaslu* of Banjarmasin city so that one of the implications is the difficulty of finding witnesses and explore the evidence of cases handled by the Election Supervisory Body. The solution implemented is to strengthen

¹⁷Damanhuri Fattah, op.cit., P. 32-33.

these norms by one of the ways is to harmonize the rule of law, increasing the budget *Bawaslu* of Banjarmasin and strengthen the human resources,

3.2. Suggestion

- *Gakkumdu* to Banjarmasin in order to improve the performance, integrity and professional, so that more leverage and more optimal in enforcing the criminal act of the election;
- To the people of Banjarmasin in order to understand the importance of law enforcement Election criminal act so that the democratic party can be held properly, objectively, honestly and fairly. Therefore, the community participation are assisting law enforcement Election criminal act carried out by the Election Supervisory Body Banjarmasin City; and
- To the Academy and the students in order to study the problems of law enforcement in the General Election crime other aspects, and / or examine the same issues in the review of other legal norms.

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Laws and regulations

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