



Questioning the Criminal Threat Formulation Policy on Electoral Crime

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Abstract. Law Number 10 of 2016 should be formulated differently from other laws, as it pertains to the second amendment to Undang-Law Number 1 of 2015, which stipulates government regulations instead of Law Number 1 of 2014, which deals with the election of governors, regents, and mayors into Law. The enactment of the Law coincides with the conduct of elections, which is not less significant, and the Law's unique nature makes it so that regional head election activities are essentially administrative. The Law is enacted every five (five) years. It is essential to take these specifics into account when forming. Both at the time of application and execution, poorly formulated policies will have consequences. Furthermore, the issue that this tulip will highlight is how the Law's policy was formulated, particularly regarding the inclusion of criminal threats for those who commit electoral offenses. This study uses a normative methodology. It is a qualitative kind of study. Secondary data is what is utilized. Researching the literature is how data is gathered. Presenting the facts in a descriptive format, the analysis is prescriptive. As per the study's findings, *electoral crimes* are defined as administrative infractions or crimes against election provisions. The legal penalties for electoral crimes consist of imprisonment and fines, with no enforcement measures. Election crime resolution is comparatively quick and applies across Indonesia without considering the specific circumstances in each area.

Keywords: Pilgub, Pilbup, Criminal

INTRODUCTION

The Governor, Regent, and Mayor, as the leaders of the provincial, regency, and city local administrations, respectively, are confirmed to have been democratically chosen under the 1945 Constitution's Article 18, paragraph 4. According to Henry B. Mayo, whom Dedi Mulyadi cited, democracy must be founded on a number of norms, including the following: a. peacefully and institutionally resolve disputes; b. ensure peaceful change in a changing society; c. minimize the use of force; d. acknowledge and prudently take into account the existence of diversity in society, which is reflected in the diversity of opinions, interests, and behaviors; and e. ensure the establishment of justice.

The 1945 Constitution, specifically paragraph 18(4), provides the constitutional justification for amending the municipal elections statute. The Regional People's Representative Council is the only direct election mechanism used in regional elections, as stipulated by Law Number 22 of 2014 concerning the Election of Governors, Regents, and Mayors. This makes the law deemed undemocratic. Law Number 1 of 2015 was the foundation for Law Number 10 of 2016, which later amended and supplemented Law Number 1 of 2015 concerning the second amendment to Law Number 1 of 2015 concerning the stipulation of government regulations instead of Law Number 1 Year 2014 on the Election of Governors, Regents, and Mayors, which became law. This was done in order to carry out the mandate of Article 18, paragraph (4) of the 1945 Constitution, especially about Articles 177 through 198's regulation of electoral crimes.

According to the Pemiu Supervisory Agency (Bawaslu) of the Special Capital Region of DKI, 208 reports and conclusions about infractions that took place in the first and second rounds of the 2017 DKI regional election were published. The instance involving voter data stands out among the others. Furthermore, as per Liputan6.com, Jakarta, Muhammad Jufri, the Bawaslu DKI Commissioner, stated at the DKI Bawaslu Office, Sunter North Jakarta, on March 5, 2017 that "of the total classification of alleged reports and findings, there are 79 related cases of voter data, 68 cases of money politics, 40 cases of unannounced and unscheduled campaigns, and 37 black campaigns and Sara." Voter data breaches have become a significant issue, according to Jufri, since the first round of the DKI Regional Elections. In addition to other issues, Bawaslu addressed 64 cases of voter data breaches. Jufri claims that voter data issues accounted for most cases in the first round, with nine occurrences of delayed and unnoticed campaigns. Twenty-three instances of black campaign finance and politics, or 19 occurrences, came next. As per Jufri, the distribution of basic requirements is one of the second round's most significant money politics cases. Forty-five cases in politics, 18 instances in the black campaign, and 15 lawsuits involving voter data came next (Liputan6.com).

The 2017 DKI Governor election findings and claims of purported fraud show that people may not always be deterred from committing illegal conduct by fears of crime, leading one to wonder if the perpetrator is aware of the law. Given the considerations above, the legislators who framed the legislation should be discouraged from becoming "talkative" when incorporating criminal penalties into administrative or constitutional law. Additionally, it is essential to proceed with caution when adding criminal penalties for administrative actions (criminalization). Law Number 16 of 2016's policy formulation, particularly about the legal penalties for administrative

infractions—which this law refers to as crimes or violations of electoral offenses—is problematic in this paper, in addition to the previously mentioned issues.

METHOD

This paper is sourced from normative legal research or literature research or also called doctrinal research, which is research based on secondary data. The specification / type of research is qualitative. Data collection techniques are carried out by literature study. Analyzed prescriptively and presented in descriptive form.

DISCUSSION

Material Criminal Law

Some things that can be recorded based on Articles 177 to Article 198 of Law No. 10 of 2016 include:

1. There are 73 craminated acts; (2) The entire Electoral Crime in these Articles shall be punishable by imprisonment and fines;
2. The inclusion of criminal threats in the form of imprisonment and fines mostly uses the sentence and (imprisonment and fine) and only a small part uses the sentence (imprisonment and/or fine);
3. There is no threat of punishment of an enforcement nature for Electoral Crimes;
4. It did not specify the length of the substitute penalty if the fine was not paid;
5. Inclusion of criminal threats using special minimum and special maximum schemes;
6. Most of the threats of many fines refer to the length of the threat of imprisonment with a size of 1 (*one*) month equal to *one million rupiah*.

Some examples of this are quoted as follows:

- a) For PPS members, KDP members, District/City KPU members and Provincial KPU members who do not *verify* and *recapitulation of* data and voter lists, are threatened with imprisonment for a minimum of 24 (*twenty-four*) months and a maximum of 72 (*seventy-two*) months and a minimum of Rp. 24,000,000 (*twenty-four million rupiah*) and a maximum of Rp. 72,000,000 (*seventy-two million rupiah*) (Article 177B of Law No. 10 of 2016).
- b) A person who causes others to lose their right to vote shall be punished with imprisonment for a minimum of 12 (*twelve*) months and a maximum of 24 (*twenty-four*)

- months and a fine of at least Rp. 12,000,000 (*twelve million rupiah*) and a maximum of Rp. 24,000,000 (*twenty-four million rupiah*). (Article 178 of Law No. 10 of 2016).
- c) Any person who at the time of voting claims to be another person to exercise the right to vote, shall be threatened with imprisonment for a minimum of 24 (*twenty-four*) months and a maximum of 72 (*seventy-two*) months and at least Rp. 24,000,000 (*twenty-four million rupiah*) and a maximum of Rp. 72,000,000 (*seventy-two million rupiah*) (article 178A of Law No. 10 of 2016).
 - d) Any person who at the time of voting votes more than once at one or more polling stations, shall be threatened with imprisonment for a minimum of 36 (*thirty-six*) months and a maximum of 108 (*one hundred eight*) months and a fine of at least Rp. 36,000,000 (*thirty-six million rupiah*) and a maximum of Rp. 108,000,000 (*one hundred eight million rupiah*) (Article 178B of Law No. 10 of 2016).
 - e) Any person who is not entitled to vote at the time of voting to vote 1 (*one*) time or more at 1 (*one*) polling station or more, shall be punished with imprisonment for a minimum of 36 (*thirty-six*) and a maximum of 72 (*seventy-two*) instead and a fine of at least Rp. 36,000,000 (*thirty-six million rupiah*) and a maximum of Rp. 72,000,000 (*seventy-two million rupiah*) (Article 178C paragraph (1) of Law No. 10 of 2016).
 - f) Any person who instructs others who are not entitled to vote to vote 1 (*one*) time or more at 1 (*one*) or more polling stations, shall be punished with imprisonment of at least 36 (*thirty-six*) not and a maximum of 144 (*one hundred forty-four*) months and a fine of not less than Rp. 36,000,000 (*thirty-six million rupiah*) and a maximum of Rp. 144,000,000 (*one hundred forty-four million rupiah*). (Article 178C paragraph (2) of Law No. 10 of 2016).

Everyone wants criminal law number 10 of 2016 to be followed and upheld. Policy creation should be the first topic of debate in law enforcement. Put another way, the initial query before the application phase is whether or not the formulation policy is considered appropriate. It is sufficient to ask, "What is already good continues what is not good is not haram to be corrected" as the main question. Is there a legal violation? This is a common question that comes up while discussing law enforcement. Law enforcement is nonexistent if there are no legal infractions. Such a debate has to come to an end. Barda Nawawi Arief defines *law enforcement policy* as a set of procedures that include phases for application, legislation, and execution.

According to Satjipto Rahardjo, law enforcement is nothing more than an attempt to uphold abstract notions and ideas that are further developed. Making these notions and ideas a reality is the goal of law enforcement. In another passage, Soerjono Soekanto asserted that applying the Law is a necessary component of law enforcement. As a result, the Act starts to become famous. Law enforcement will commence based on the Act. Opposite to these views, policy creation is recognized as a critical role in law enforcement.

It is necessary to break from the belief that "no law is perfect" when challenging how electoral crime policies are formulated. A law is a political decision made yesterday that becomes operative today or a decision made today that becomes effective tomorrow. Going against this, a good law does not oppose change. It is intended that these modifications will keep the Law applicable to community conditions. Laws could be more flawless. It should not be given up on, however. To depart from the Act is to break the Law, and those who do so will face consequences. The statute book has been updated with the new Law, and the state gazette has notified that it will go into effect on the date it is promulgated.

Election crimes are offenses against the Law's specified provisions on elections in Article 145 of Law Number 10 of 2016. Concerning these limitations, electoral crimes are recognized as criminal offenses under administrative and constitutional Law. Therefore, the acts specified in the Law are administrative acts that will result in criminal penalties if violated. The criminal conviction should be the last resort rather than the first, given the intricacy of the election administration's operations that carry criminal penalties (*ultimatum remedial*). Local election irregularities are a concern of the administration. Thus, rather than becoming the primary target of criminal prosecution in the event of an election violation, the organizer ought to be given the first chance to address the issue.

According to Van den Bunt, whom Andi Hamzah cited, there are three definitions of *ultimatum remedial* in Law:

1. The application of criminal Law only applies to those who break the Law and are morally deemed very severe.
2. The penalties under the penal code are more severe than those under other legal codes.
3. The fundamental knowledge of law violations by administrative personnel.

The purpose of criminal threats in this case stems from the intention of Constitutional Law and Administrative Law to ensure that the entire electoral process is conducted honestly and without fraud, even though this intention is not explicitly stated. Barda Nawawi Arief cited Nigel Walker as cautioning that one of them "should not use criminal sanctions to achieve goals that can be achieved more effectively by using lighter means." Criminal penalties are first intended to serve as a deterrent to dissuade people from committing crimes, and this is the case for both administrative and criminal Law. It is hoped that by following the restriction, there will not be any losses or casualties due to these actions. It appears that this hope will never come to pass. Not a few criminals who seem to know that their acts are forbidden and could result in criminal consequences are used as justification.

It is different to talk about preventing and convicting someone of a crime. When discussing crime prevention, we are discussing human attempts to stop or reduce the number of crimes. Conviction for a crime is an inevitable outcome of someone committing a crime. Does a conviction for a crime have an impact on preventing other crimes? More research will be necessary to provide an answer to this question. Article 178 of Law No. 10 of 2016 offers no other options besides jail time and penalties. The judge would not be happy with such an arrangement. There was nothing he could do but combine jail time and fines. If that is the case, another query that can come up is whether the judge has a right to impose the two main crimes at less than the minimum sentence. According to Law Number 48 of 2009, Article 5 paragraph (1), judges and constitutional judges must investigate, adhere to, and comprehend legal values and a sense of justice that permeates society. Judges can use this clause as a rationale to rule on criminal cases involving elections that fall below the legally prescribed minimum threshold.

Law No. 10 of 2016 does not provide alternative punishments if fines are not paid. There are two solutions, in the author's opinion, if the Law does not specify a substitute penalty for nonpayment of the fine. First, courts have the authority to decide how long a person would be imprisoned for failing to pay fines, as stated in Law Number 10 of 2009's Article 5 paragraph (1). Second, reinstate the Criminal Code's requirement for the duration of incarceration instead of penalties (KUHP). Under the guidelines of Criminal Code Articles 103 and 30, the maximum period of detention instead of unpaid penalties for crimes for which the duration is not specified is six (six) months of the numerous fines that refer to the length of the threat of jail, which is outlined in Law Number 10 of 2016 at one (1) month's worth of Rp. 1,000,000,- (one million rupiah), it appears less common, albeit justifiable.

Formil Criminal Law

As per the provisions of Law No. 10 of 2016, Provincial Bawaslu, District/City Panwas, Resort Police, High Prosecutor's Office, and District Attorney's Office shall establish an integrated law enforcement center (Poskkumdu Center) in order to establish parity in the comprehension and methods of addressing electoral offenses. A joint regulation was issued by the chairperson of the Republic of Indonesia's General Election Supervisory Board, the head of the country's National Police, and the country's attorney general in response to Article 152 of Law No. 10 of 2016. numbered November 21, 2016, Number: 013 / JA / 11/2016, Number: 14 of 2016, and Number: 011 of 2016 about the Integrated Law Enforcement Center in the General Election of Governor and Vice Governor, Regent and Vice Regent, and Mayor and Vice Mayor etc.

The Gakkumdu Center's treatment of electoral offenses aims to centralize their execution under one roof, focusing on legality, equality before the law, and presumption of innocent standards. The Gakkumdu Center's relocation is based on the following principles: fairness, equality, justice, clarity, speed, simplicity, minimal cost, and legal practicality. The Gakkumdu Center was established to handle electoral crimes as efficiently and optimally as possible. The first discussion, review of election breaches; the second discussion, plenary; the third discussion, prosecution, and receiving reports/findings are the stages of relations and work procedures in managing election acts, as stated in Articles 15 to 28 of the joint rule.

Review I

After identifying and verifying the results, talks were held to identify and gather evidence, as well as identify publications that might be related to the events that were reported or discovered. Election crime investigators, prosecutors, and the supervisor of elections all signed the minutes of conversation, which profited from the meeting's outcomes. The election supervisor reviewed the infractions resulting from the discussion. For clarification or to be questioned, the Election Supervisor may call reporters, witnesses, experts, and whistleblowers. The prosecutor and the election crime investigator are present when the information request is made under oath.

Study of electoral violations

A report or discovery study document that summarizes the findings of the Election Pangawas' review of the election violations. While they examine electoral infractions and carry out investigations, prosecutors accompany and observe. Following the inquiry's completion, the Electoral Crime Response investigators submit their findings.

Review II

After receiving the report and conclusions, the Election Supervisor at Gakkumundu Center holds conversations with the Election Crime Investigator, Prosecutor, and Election Supervisor five (five) days later. In order to ascertain whether the report and its conclusions have satisfied or not the requirements of electoral crime, discussions are held. A prosecutor, election supervisor, and election crime investigator were present during the discussion, which the chief coordinator of the Gakkumndu Center facilitated. If the report and findings satisfy the criteria for electoral crime, the meeting's decision must determine whether to proceed with the investigation stage; if not, the report and findings are set aside. The Election Supervisor, Election Crime Investigator, and Prosecutor have signed the minutes of the conversation that resulted from this discussion.

Plenary Meeting

Decisions made by the Supervisor of Elections in a plenary session were based on the outcomes of the discussion. The plenary meeting will decide whether the results and report are moved to the inquiry stage or discontinued. The complaints manager notifies the complainant in writing, along with the cause for the termination if it chooses to be terminated. The Chairman of the Bawaslu RI, the Chairman of the Provincial Bawaslu, or the Chairman of the District/City Panwas signs a Duty Warrant, which the Election Supervisor issues to carry out the Investigation if it is decided to proceed to the Investigation stage. A police report, in which the whistleblower reports to the supervisor, and a report proof letter are the forms that the Election Crime Investigator administers after receiving forwardings and findings. After receiving complaints and results from the Election Supervisor and Police, election crime investigators work on their cases within a maximum of fourteen (14) working days. Attorneys at the Gakkumdu Center support and oversee the investigation process.

Review III

The Election Crime Investigator presented the investigation findings during the third discussion, which was facilitated by the Chief Coordinator of the Province/District/City Gakkumdu Center. The Election Supervisor, Election Crime Investigator, and Prosecutor joined the discussion as it was happening to go over the investigation's findings. The case was finally transferred to the prosecutor due to the outcome of the third discussion. Election Crime Investigators, Prosecutors, and the Supervisor of Elections signed the minutes of discussion that contained the outcomes of this third session. At the latest, within 14 (fourteen) working days after receiving the report/findings from the Election Supervisor and the Police report, the Election Crime Investigator forwards the case file and the investigation's findings to the prosecutor. The public prosecutor must send the case file to the Election Crime Investigator at the Gakkumdu Center with directions on what needs to be done to complete it if the investigation's results are not complete by three (3) days. It takes the Election Crime Investigator three (3) working days from the date of file receipt to return the case file to the prosecutor. It just takes one (1) time for the prosecutor to return files to the criminal investigator. The Election Crime Investigator presents the suspect and evidence to the prosecutor once the case file is received and deemed complete.

Prosecution

Once the case file is received from the Election Crime Investigator and the Gakkumdu Central Supervisor signs the transfer cover letter from the Prosecutor's element according to the level, the Public Prosecutor must submit the case file to the District Court within five (five) working days. The Gakkumdu Center Supervisor will receive reports from the Public Prosecution regarding the indictment, indictment, and prosecution plan based on the level. Level-appropriate submissions of the indictment were made to the Supervisor of Elections and the Gakkumdu Center Coordinator of the National Police. The Gakkumdu Center Trustees received a report from the prosecution after the court's decision was read. The Gakkumdu Center receives a report from the Trustees regarding the Prosecution aspect. To advocate for legal remedies or follow up on court decisions, the Gakkumdu Center holds conversations no later than once every twenty hours, or 1x24. After the verdict is read, the Public Prosecutor files an appeal, which must be remembered within three (3) days.

The Public Prosecution files a counter-memory appeal if the accused files an appeal against the Court's decision. The Election Crime Investigator and Election Supervisor may accompany the Prosecutor at Gakkumdu Center when they carry out the legally binding verdict, which must be executed within three (3) days of receiving it. The settlement of electoral crimes is based on Law Number 10 of 2016, specifically Articles 146 through 150. 1. The National Police Investigator submits the case file and investigation results to the Public Prosecutor no later than 14 (14) days after receiving the report; 2. If the investigation's results are incomplete, the General Investigator returns to the National Police investigator with instructions to be completed within 3 (three) days; 3. The investigator must return the completed file to the General Investigator by 3 (three) days after receipt; 4. The Public Prosecutor submits the case file to the District Court 5 (five) days after receiving the case file; 5. The District Court uses the Code of Criminal Procedure (KUHAP) in examining, trying, and rendering decisions in cases involving electoral crimes 6. A special assembly will examine electoral crimes; 7. The district court will investigate, try, and rule on election crimes seven (7) days after the case file is submitted; 8. If a court decision is appealed, it must be done three (3) days after the judgment is read; and 9. The District Court will send the case file of the bandig application to the High Court for three (3) days after the appeal is received. 10. Within seven (7) days of the banduing diterma application, the High Court must review and rule on the appeal; 11. The High Court's ruling is final, binding, and unassailable; 12. Three (3) days after the verdict is read, the appeal decision must be delivered to the Public Prosecutor; 13. Five (5) days must pass before the Provincial KPU and District/City KPU announce the election results before the Court rules on a criminal case that, by the law, may influence voters' ballots. The Court's ruling must be followed up by the Provincial KPU and the District/City KPU. The Province KPU, District/City KPU, and the election participants must have received copies of the decision in order for them to be read.

If you look at it, the deadline for solving electoral crimes is 56 days, with the following details:

Deadline for Resolution of Electoral Crimes

No	Polri	Attorney	District Court	High Court	Implementation of the Decision
1	14 (fourteen) days the results of the investigation are transferred to the Prosecutor's Office	5 (five) days The D.A. shall spill matters to the State Court	7 (seven) days the District Court examines the case after it has been assigned by the Prosecutor's Office	The High Court hears and decides the appeal case no later than 7 (seven) days after the appeal	The Court's decision shall be implemented no later than (three) 3 days after the judgment is read

2	3 (three) days the Prosecutor's Office returns incomplete files		Appeals are filed (three) 3 days after the verdict is read	The appeal decision must be submitted to the Prosecutor's Office after (three) 3 days the verdict is read	Court decisions that may affect the vote must be completed (five) 5 days before the KPU determines the election results
3	3 (three) days the investigator submits the corrected file to the Prosecutor's Office		After filing an appeal, the District Court submits the file to the High Court no later than 3 (three) days		
Sum	20 days	5 days	13 days	10 days	8 days

As the Act requires, an extraordinary Assembly must review instances involving electoral crimes. Comprising professional judges from the District Court and High Court, the special panel is specially assigned to investigate, try, and refer cases about election crimes. Appeals Court rulings determine the appointment of particular judges. Unless there is no longer a service tenure of more than three (3) years in a particular court, a special judge must have served as a judge for at least three (3) years. Examining, trying, and ruling on other cases is not required of particular judges. A mastery of Elections is required of notable judges. The Supreme Court Rules govern further provisions about extraordinary judges. It makes sense that electoral offenses take so little time to resolve. The deadline is changed to accommodate the time-bound nature of elections. Is the genuine Indonesian situation taken into account in this time frame? Indonesia is more than just Jakarta. Indonesia consists of more than only its metropolises, where rapid advancement is feasible.

CONCLUSION

1. Ultimum remedium applies to including criminal offenses in statutes that are not strictly criminal, such as Law Number 10 of 2016. Criminal law's role as a last resort has not been seen in Law Number 10 of 2016. Imprisonment and fines for administrative offenses remain prioritized over criminal threats under Law Number 16 of 2016. Then, the minimum and maximum sentence lengths are always considered when calculating the acceptable value. As stated in Law No. 10 of 2016's sections 177B, 178, 178A, 178B, 178C paragraph (1), 178 paragraph (2), the nominal value of the fine for the sentence of one (one) month in jail is unique. It is equivalent to Rp1,000,0000 (one million Rupiah).
2. An Integrated Law Enforcement Center (Sentra Poskumdu) was established in line with Article 152 of Law Number 10 of 2016, and its members include the District Attorney's

Office, Provincial Bawaslu and District / City Panwaslu, Regional Police, and District / City Resorts, as well as the High Prosecutor's Office. Optimizing the efficiency and efficacy of electoral crime handling is the goal of the Gakumdu Center. Reports and findings are sent to Panwas, and within 1x24 (once every twenty-four) hours of the election supervisor receiving them, Prosecutors and Investigators affiliated with Gakumdu provide support to locate, confirm, and refer to reports and results. Prosecutors, Election Crime Investigators, and the Supervisor of Elections sign Minutes of Discussion stating that the identification results are rigorously discussed to identify the violated articles and gather evidence.

3. Settlement with criminal law is still prioritized when formulating policy on electoral crimes. A fine and/or imprisonment are part of the criminal threat. If the fine is paid, a substitute penalty is explained. The criminal justice system follows a general maximum and a unique minimum. Only 56 (fifty-six) days are available to solve cases of election crime.

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