

Criminal Potential at the Campaign in Local Leader Elections in Indonesia

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Abstract— The implementation of Local Leader Election has the potential to lead to criminal acts occurring, especially at the campaign stage. The challenge here is how to formulate an appropriate criminal act with penalties in the regulation. The research method used is normative legal research. This study uses a statutory approach (statute approach). This study aims to analyze the disharmony related to the implementation of Local Leader Election campaigns. This study also seeks to describe the form of criminal acts in Local Leader Election, especially at the campaign stage. The results of this study show two conclusion points. First, there are two regimes of legal products governing electoral campaigns, including regional elections. The first thing meant, is related to the method of implementing the campaign. Second, there are different arrangements in the two legal product regimes regarding the formulation of criminal acts when campaigning in Local Leader Election. Both of these have an impact on the law enforcement process that is less than the maximum.

Keywords: Local Leader, Campaign, Criminal act

I. INTRODUCTION

In the model of modern democracy, elections are the primary means of organizing the state and forming a government. Elections are the embodiment of popular sovereignty and tangible forms of actual participation of the people in supporting the Government of the country. Therefore, the system and implementation of elections is always a significant concern. They measured from the current system and the quality of the election administration. [1]. Mahfud MD said that the relationship with democracy could saw from the relationship between simple. Elections are one of the most tangible forms and ways to implement democracy. If democracy is determined as a government made entirely from the people and approved by the people, then the people's method to regulate the Government is done through general elections. [2].

The election of local leaders in history is a direct mandate from the 1998 reform movement [3]. The dynamics of contemporary Indonesian politics show symptoms of a more substantial development of

democratization initiated by the 1998 change movement, especially in May 1998, which shows that the Indonesian political system has changed. The change marked by the end of President Soeharto's New Order regime, which considered as an authoritarian regime, changed to a democratic government better known as the 1998 reform era through the resignation of President Soeharto on May 21, 1998, after ruling around 32 years since 1966. After Suharto resigned as President, the period of power transition to a democratic system begins [4].

The general election in Indonesia itself is primarily a means of fulfilling the democracy of a country, namely the embodiment of the principle of popular sovereignty as the formulation of Article 1 paragraph (2) of the 1945 Constitution of the Unitary State of the Republic of Indonesia of 1945 [5]. The definition of the general election is regulated in Article 1 number 1 of Law Number 8 of 2012 concerning General Elections of Members of the Legislative Council, the Regional Representative Council, and the Regional People's Representative Council. This provision stated that the general election is a means to carry out the sovereignty of the people carried out directly, openly, freely, and confidentially, justly, and equitably in the Republic of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

Law no. 8 of 2012 regarding General Elections of Election of Members of the Legislative Council, the Regional Representative Council, and the Regional People's Representative Council provide an explanation of the meaning of sovereignty in the force of the people. It means that the people have freedom, loyalty, rights, and commitments to democratically elect a leader who will form a government. This Government is obliged to take care of caring for and serving all levels of society, as well as electing people's representatives to oversee the running of the Government. The realization of people's sovereignty carried out through direct elections. It means to elect representatives who will carry out oversight functions, channel political aspirations, and make laws the basis for the implementation of the state. Furthermore, the people's representatives tasked with formulating an annuity and expense budget to finance the application of these functions.

Direct Local Leader Election has become an integral part of the development of democracy in Indonesia. Consolidation of democracy at the local level believed to

be a crucial part of realizing a more reliable and democratic national level consolidation. The entry of elections as part of the Election legal regime has strengthened the role and function of elections as a central part of the democratization process in Indonesia [6].

The provisions of Article 18 paragraph (4) Constitution of the Republic of Indonesia of 1945 read "Governors, Regents, and Mayors as respective leaders of provincial, regency and city-regional governments elected by the government." This provision was announced later in Law No. 32 of 2004 concerning the Regional Government. The presence of the direct election model is a very appropriate choice in managing Indonesia's transition from the authoritarian era to the era of actual supervision. The quality of the Local Leader Election is getting better after the Constitutional Court ruled that the participation of individual candidates is a necessity. This decision was later strength by the issuance of Law Number 12 of 2008 regarding the Second Amendment to Law Number 32 of 2004 regarding the Regional Government.

Several provisions have a criminal threat to voters and a committee of Local Leader Election. Law Number 32 of 2004 contains the prohibited acts in part eight, paragraph seven, from article 115 to article 119 includes Criminal Act for Local Leader Election. It also prohibited acts that were added by Law Number 12 of 2008 concerning the second amendment to Law Number 32 of 2004 concerning the Regional Government. In-Law Number 32 of 2004 there are only 27 forms of acts classified as criminal acts, after the birth of Law Number 12 of 2008, the types of acts classified as criminal acts in the Local Leader Election have also increased by three forms. So that the actions classify into criminal acts in the local elections have increased to 30.

Categorizing the forms of criminal acts in Local Leader Election needs to be explored related to the implementation. Several substantial issues cause problems in terms of handling time. The criminal act of the Local Leader Election still lacks attention in the context of its enforcement. The availability of criminal articles in this provision does not appear to be sufficiently capable of being utilized.

The Local Leader Election organizes with honest, open, and clean. The Government has to protect the voters, the parties who participate in the election, and the general public from all fears, threatening, infiltration, fraud, and other fraudulent practices. It will affect the cleanliness of the election results. To protect the purity of elections, which is so essential for democracy that lawmakers have made several fraudulent acts in elections a criminal offense. The elections law regulating the implementation of the election also prohibits several actions that can destroy the nature of the free and fair election and cautions the perpetrators with penalties [7].

Law Number 1 of 2015 concerning Determination of Government Regulations in place of Law Number 1 of 2014 concerning Election of Governors, Regents, and Mayors become Lawserning the Implementation of Government Regulations to replace the Law Number 1 of

2014 concerning the Election of Governors, Regents, and Mayors into Acts. This legal product also includes Criminal Acts. This legal product was updated in its journey with Law Number 8 of 2015 and finally with Law Number 10 of 2016 as the second amendment.

The facts revealed that the cause of the corruption was allegedly due to the vast campaign costs. This assumption makes sense if the election campaign costs at the district and city level reach tens of billions, while in governor election can reach hundreds of billions. These astonishing costs eventually led to a discourse on campaign cost restrictions. Here it is indeed crucial to precisely regulate the implementation of Local Leader Election. Regulations that are administrative in this context need to be protected by Criminal Acts to guarantee the maximum intent and purpose of the existence of the intended control. It brings up action that categorized Local Leader Election criminals, as well as penalties for the acts than to be examined. The handling mechanism is a maximum benchmark of whether or not Criminal Acts in legal products related to the Local Leader Election. The fact is that the dynamics that have developed in the implementation of Local Leader Election, including the issue of violations of the Law therein, require more detailed regulation in specific provisions governing them. The latest regulation on Local Leader Election, namely Law Number 10 of 2016, cannot separate from the intention to perfect the provisions on governing the election for governor and regent, as well as mayors, regulates matters of conduct classified as criminal acts. It needs to examine the context of its formulation, which substantially has direct implications for the maximum implementation of this legal product itself in the field in its function as a normative basis for the Local Leader Election implementation in Indonesia.

Based on the consideration of this background description, two questions are formulated as the main points of the study, first, what is the basis for regulating the campaign in the Local Leader Election? Second, what conduct forms to classified Local Leader Election criminal acts at the implementation election stage?

II. RESEARCH METHODS

This research is normative legal research that examines the application of the concept of legal norms in lives of the society [8, 9]. The research approach uses a statutory approach and a comparative approach [10]. The legal materials used are primary, secondary, and tertiary legal materials. Primary legal material in the form of laws and regulations relating to general election crime, especially related to the campaign. Secondary legal material in the form of textbooks in the field of law and journal articles related to the discussion. Tertiary legal material in the form of abstract legislation [10]. All of these legal materials, both primary and secondary, are analyzed in an effort to answer the problem statements set.

III. RESULTS AND DISCUSSION

A. *Ideality of Campaign Implementation in Local Leader Election*

Local Leader Election from the aspect of urgency is not only closely related to the contest for power but also closely correlated with the exercise of popular sovereignty. Direct Local Leader Election, the people can determine their leaders in their regions so that there is a close relationship between the local leader and the people that can encourage the realization of democratic and participatory local Government [11].

The Local Leader Election is an alternative to respond to the hustle and bustle, rowdy and chaotic, and the imperfect process and results of filling the position of local leader indirectly through the Regional House of Representatives under Law Number 22 of 1999. Direct elections of Local Leader considered as an urgent need to correct all the weaknesses directly in the past election. Direct Local Leader Election is useful for upholding people's sovereignty or strengthening local democracy, both in the government and community circles [12].

After the first period throughout 2005-2008, the elections for Local Leaders entered the second period throughout 2010-2013. From the first period, many lessons learned to improve the implementation of the General Election. But unfortunately, the tight political agenda of the Government and the House of Representatives has caused evaluation of the implementation of the General Election of Local Leader Elections. It has not yet conducted comprehensively involving all stakeholders. Nevertheless, the Government and the Parliament have realized that in the context of improving the quality of the process and the results of the General Election, it is necessary to reformulate the legislation governing the General Election. Therefore, the Law governing Local Leader Election included in the national legislation program [6].

In the national interest, the continuity of the implementation of state government is fundamental. Government democracy is also fundamental. Simamora, in his description, mentioned that the Direct Local Leader Election is one form of implementing democracy to create a more democratic government. Through this system, it expected that people's sovereignty in the government system realized their entirety, bearing in mind that the democratic system is a direct mandate of the 1945 Constitution of the Republic of Indonesia [13].

Apart from many problems that plagued the process of holding Direct Local Leader Election, however, support the urgency of regional elections was so intense. Ahmad Muzani, in his description, mentioned the Direct Local Leader Election would become more productive and ensure the stability of the administration of regional Government because of the local leader as the representative of the Government directly elected by the people and the representation of the local community. It also guarantees the creation of strong local government legitimacy so that effective governance is created [14].

Arif Maulana citing Ari Dwipayana stressed that several reasons used as the basis of the argumentation for establishing a mechanism for Direct Local Leader Election to fill local leader positions. At least, the Direct Local Leader Election seen to have several advantages compared to the political recruitment system through the Regional House of Representatives, including First, the Direct Local Leader Election regulation offers several benefits and at the same time, hopes for the growth, deepening and expansion of local democracy. Second, the political competition allows a more widespread emergence of competing candidates' preferences and allows each candidate to participate in a more open space than the closure that often transpires in representative democracies characterized by unfair competition models, such as practice money politics. Third, the direct election system will present an opportunity for voters to complete their political rights better without being conquered by the interests of the political elite as they appear in the representative democratic system. Fourth, the Local Leader Election immediately enlarges hopes to get aspirational, competent, and high-legitimated leaders. The direct election, it is hoped that the Local Leader Election will be oriented to the people, not to the Regional Representative Council. Fifth, Local Leader Election have strong political legitimacy so that checks and balances in the regions be built; between the local leader and the Regional People's Representative Council. This balance of power will minimize the abuse of power as it appears in a monolithic political format [12].

Judicially, referring to the constitution, the existence of Article 18 of the 1945 Constitution of the Republic of Indonesia, becomes the basis for the recognition of the existence of local government units in Indonesia. In full Article 18 of the 1945 Constitution of the Republic of Indonesia states that "The Unitary State of the Republic of Indonesia divided into provincial regions and the province divided into regencies and cities, which each province, regency, and city have regional administrations which are governed by Law. However, it noted that the actual constitution does not determine with certainty that the technical presentation of the local leader of the region is through election or electing the Regional Representative Council. Regarding this, Article 18 paragraph (4) of 1945 Constitution of the Republic of Indonesia only states that a local leader is democratically elected.

Local Leader Election is a consequence of the shift in the concept of regional autonomy, the following is a legal review regarding the Local Leader Election according to the laws and regulations, both according to the Law and the implementing rules. Based on Article 56 of Law Number 32 of 2004 it is stated that the local leader elected in a pair of candidates that are carried out democratically based on the principle of direct, public, free, confidential, honest, and fair [15].

In its implementation, one of the core stages of the implementation of the Local Leader Election is the campaign. In the context of the election of a local leader, then based on the definition of Law Number 1 of 2015,

the campaign is an activity to convince voters by offering the vision, mission, and program of the Candidates for Governor, Candidates for Regent, and Candidates for Mayor. Fatimah mentioned that in the campaign, the most significant thing was about the messages delivered by the candidates. Each candidate tried to bring a specific theme or topic to offered to the community [16]. In terms of urgency, the campaign carried out as a form of community political education carried out responsibly, confirmed in Article 63 of Law Number 1 of 2015 [17].

The General Election outside the Local Leader Election, the form of campaign implementation, refers to Law Number 7 of 2017 Concerning Election Implementation. Article 275 states that the Political Parties Campaign may carry out several activities. The election candidates carried out to meetings, distribute to public the election campaign materials, install props in public places, social media ads, print mass media ads, electronic mass media ads, and the internet ads, general meeting, debate between candidate about campaign material, and other activities that do not violate the prohibition of the Election Campaign and the provisions of the legislation.

The campaign method regulated in Law Number 7 of 2017 is in the form of public campaign props by Election Candidate. Campaign Props is an information and socialization media to convince voters through conveying the vision, mission, programs, and self-image of election participants carried out by political parties. Candidates for members of the Legislative Council, the Regional Representative Council, the Regional People's Representative Council, and the Presidential Election Candidates 2019. Campaign Props, as referred to in the Act, can be in the form of billboards or Videotron, banner.

Explicitly, the implementation of the campaign in the context of the election of a local leader is committing to Law Number 10 of 2016 concerning Second Amendment to Law Number 1 of 2015 concerning Establishment of Government Regulations In lieu of Law Number 1 of 2014 concerning Election of Governors, Regents, And the Mayor enhances a Law. Article 65 states that the campaign implemented with: insufficient meetings, face to face meetings and dialogues, public debate between candidates, distribution of Campaign materials to the public, installation of props, print mass media advertisements and electronic mass media, and/or other activities that do not violate the repudiation of the campaign and the provisions of the legislation.

In comparison to the implementation of the campaign under these two provisions, Law No. 7 of 2017 seems to regulate in more detail the form of campaign implementation compared to Law Number 10 of 2016. It can be a problem in the field relating to the implementation of the duties of the Supervisory Agency Provincial and Regency / City Elections. These two regimes of legal products must be harmonized, especially the provisions regarding the form and method of the campaign so as not to cause confusion and debate from

the parties involved and have an interest in carrying out the Local Leader Election campaign.

B. Forms of Criminal Acts in Local Leader Election Campaigns

Criminal liability is an implementation of a person's responsibility to accept any legal risk or consequence that arises as a result of a criminal offense he has committed. This criminal liability requires the ability to be responsible for the perpetrators. In principle, criminal liability is the same as talking about mistakes, which are the fundamental principle in Criminal Law, which postulates that there is no crime without error.

In this context, it is necessary to explore later the forms of acts categorized as general election crime. In general, the Indonesian Criminal Code, which is a legacy from the Netherlands, contains five articles whose substance is the Election Crime without mentioning what is meant by the Election Crime. Topo Santoso gave an understanding of Election Criminal Acts, namely all criminal offenses related to the implementation of the election, which are regulated in the Election Law and outside the Election Law [18].

The entire Article includes Article 148 to Article 152, the Criminal Code. In Article 148, Anyone at the election based on general regulation, violence, or threat with force deliberately prevents someone from voting freely and is not disturbed; it threatens imprisonment with the most one year and four months. In Article 149 states that any person who on the occasion of an election held under a general regulation by gift or promise bribes somebody either not to exercise his franchise or to exercise it in a specific manner shall be punished by a maximum imprisonment of nine months or a maximum fine of three hundred Rupiahs. Second verse, the same punishment or penalizing shall apply to the voter by gift or promise, lets himself to bribed to exercise or not exercise his rights mentioned above. This Article completes Article 149.

Article 150 of the Criminal Code state that any person who, on the election time held by virtue of general statute, commits a deceitful act by which the vote of a voter becomes null and void, or a person other than the one intended by the voter is designated, shall be punished by a maximum imprisonment of nine months. Meanwhile in Article 151 of the Criminal Code determined that Any person who, deliberately giving himself out for another, takes part in an election held by virtue of general regulation, shall be penalized by a maximum imprisonment of one year and four months. Furthermore, in Article 152 of the Criminal Code state that any person who, on the election time held by virtue of general regulation, deliberately frustrates voting that has taken place or commits a deceitful act which causes to the different voting result than obtained through the voting papers handed in legally or through the professionally documented votes, shall be punished by a maximum imprisonment of two years.

The application of criminal penalties in criminal offenses in the Criminal Code tends to be lighter when compared to criminal penalties in other crimes in the Criminal Code. The pattern applies the threat of a single criminal penalties or only contains one primary criminal punishment, namely imprisonment. The highest prison sentence handed down in the Election Crime Act in the Criminal Code Act is two years in prison in article 152 while the lowest penalty of imprisonment is Nine months in Article 150 [19].

Of the entire articles of the Criminal Code, there are no provisions that specifically regulate criminal acts when conducting campaigns in general elections. The basis of reference to the current general election is regulated in Law Number 7 of 2017 concerning General Elections. Acts that classified as Criminal Acts in Elections regulated in Article 488 through Article 554 of Law Number 7 of 2017 concerning General Elections.

If it follows Law Number 32 of 2004, as lastly amended by Law Number 12 of 2008, special provisions regarding the criminal requirements of the Local Leader Election are specified. In-Law Number 12 of 2008, in particular Article 115, several Criminal Acts have been added. The types of acts that threatened with criminal punishment regulated from Article 115 to Article 119. In the regulation, there are at least 38 types of acts that regulated as criminal acts in this context.

In its development then the presence of Law Number 1 of 2015 concerning the Establishment of Government Regulations In lieu of Law Number 1 of 2014 concerning of Governors of Regents and Mayors Election into Acts regulates further acts which threatened with criminal penalties at several stages of the Local Leader Election. There are 39 types of actions determined as criminal acts in the provisions of this Law.

In the development of Law Number 1 of 2015 concerning Arrangement of Government Regulation in lieu of Law Number 1 of 2014 concerning the Governors, Regents, and Mayors Election to Act has been revised through Law Number 8 of 2015 amendments to Law Number 1 of 2015 experienced a change again with the advent of Law Number 10 of 2016 concerning Second Amendment to Law Number 1 of 2015 concerning the Establishment of Government Regulations in lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Acts. In this last legal product, there are at least 40 types of actions categorized as criminal acts in the Local Leader Election.

While specifically for the campaign stage, many acts can be subject to criminal penalties based on existing regulations. Potential crimes in the rally campaign include the involvement of officials, state civil servants, the army and police, the use of government facilities and government budgets, the involvement of children in campaign activities, and the spread of ethnic, religious, racial, and intergroup issues. Apart from that, Article 70 of Law Number 10 of 2016 states that the candidate campaign prohibited from involving officials of State-Owned Enterprises / Regional-Owned Enterprises, state

civil apparatuses, police officers, and soldiers, leader of the village, and the servant in the village follow the campaign.

Furthermore, acts prohibited according to Article 280, paragraph 1 of Law Number 7 of 2017 include:

- a. questioning the Pancasila foundation, Constitution of the Republic of Indonesia of 1945 in the opening part, and the Unitary State of the Republic of Indonesia;
- b. conduct activities that endanger the integrity of the Unitary Republic of Indonesia;
- c. insulting someone, religion, ethnicity, race, class, candidate and/or other Election Contestants;
- d. instigating and pitting individual or community sheep;
- e. disturbing public order;
- f. threaten to commit violence or advocate the use of violence against someone, a group of community members, and/or other Election Contestants;
- g. damage and/or eliminate campaign props of Election Contestants;
- h. use government facilities, places of worship, and places of education;
- i. bring or use image marks and/or attributes other than the image marks and/or attributes of the relevant Election Contestants; and
- j. promising or giving money or other material to participants in the Election Campaign [20].

From the formulation above, the categories of acts classified as criminal acts include:

1. the act of insulting someone, religion, ethnicity, race, class, candidate, and/or other Election Contestants;
2. threatening to commit violence or advocating the use of force on a person, group of community members, and/or other Election Contestants;
3. damage and/or eliminate campaign props of Election Contestants;
4. bring or use picture marks and/or attributes other than the image marks and/or attributes of the Election Contestants concerned;
5. carry or use picture marks and/or attributes other than the image marks and/or attributes of the relevant Election Contestants.

Therefore, there are five forms of acts categorized as criminal acts based on the affirmation of Article 280, paragraph 4 of Law Number 7 of 2017. Criminal Acts relating to violations of Article 280 paragraph 2 regulated in Article 493 where each implementing agent and/or Election Campaign team violates the prohibition as referred to in Article 280 paragraph (2) shall be liable to a maximum imprisonment of 1 (one) year and a maximum fine of Rp. 12,000,000.00 (twelve million rupiah) [20].

In the context of the implementation of Local Leader Election whose legal basis is Law Number 10 of 2016, what is meant by election crime is to include violations or crimes against the Election provisions. The fact is that

Law Number 10 of 2016 unregulated in detail in the form of acts such as the regulation of Article 280 paragraph 1 of Law Number 7 of 2017. It clearly a matter related to the compliance of election participants as well as in the implementation of supervision by the election supervisory body.

Due to such conditions, it is clear that this legal imbalance affects the quality of holding regional elections. Revisions to the Law on Local Leader Election absolutely necessary to be added, and then special arrangements regarding prohibited acts and special Criminal Acts at the campaign stage added. Revisions can be made by referring to Law Number 7 of 2017 Concerning General Elections.

IV. CONCLUSION ..

The basis for regulating the campaign in the Local Leader Election is explicitly referring to Law Number 10 of 2016, the second amendment to law number 1 of 2015 concerning the Establishment of Government Regulations In lieu of Law Number 1 of 2014 concerning Governors, Regents and Mayors Elections become a law. Apart from these provisions, the general implementation of General Elections currently refers to Law Number 7 of 2017 concerning General Elections. From the conditions of the existing regulation, the different regulations by these two legal products regarding campaign implementation in general elections and the context of Local Leader Election can cause problems in terms of law enforcement. It can be institutionally difficult for the work of the Provincial Election Supervisory Agency, as well as the Regency / City level. Obviously, this is something that needs to be improved to harmonize the two legal products.

There are five forms of acts classified as criminal acts at the campaign stage if they refer to the provisions of Law Number 7 of 2017. While specifically in Law Number 10 of 2016, this matter in the implementation of Local Leader Election does not get specifically regulated and detailed. So that in the context of implementation, especially the supervision of the holding of Local Leader Election this has the potential to be a complicated issue for participants and organizers of general elections. The legal products of Law Number 10 of 2016, explicitly regulating Local Leader Election, must thus be revised and harmonized with the provisions of Law Number 7 of 2017.

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