

THE PROBLEMATICS OF LAW ENFORCEMENT AGAINST THE EXECUTION OF ELECTORAL PENALTIES IN INDONESIA

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ABSTRACT

Crimes occur in many ways, one of them in the context of elections in Indonesia. The potential crimes perpetrated by political party supporters in various areas of Indonesia whose law enforcement is not working to the maximum is one of the problems. The problem in this study is first, how do legal provisions relate to law enforcement against electoral crimes in Indonesia? Secondly, the problem of law enforcement against electoral crimes in Indonesia? Third, reconstruction of law enforcement against electoral crimes in Indonesia? The aim of this research is to determine the regulation and legal analysis of the forms of crime black campaigns in accordance with the law. This research uses normative law research with secondary data and processes data from primary, secondary, and tertiary legal materials. The results of the first study are that the legal provisions for electoral offences in Indonesia are regulated in the Law Number 7 of 2017, Criminal Law, and the Law on Electronic Information and Transactions. (ITE). Second, that the Law Enforcement Problems Against Electoral Crimes in Indonesia, i.e. the inadequate application of criminal law in elections, constitutes an obstacle to the increase in the incidence of electoral crimes that have violated the Election Law Number 7 of 2017 and the Penal Code as well as the Information and Electronic Transaction Law. (ITE). Thirdly, it is expected that Indonesia will have a specialized agency that will strictly prosecute electoral criminals. Therefore, it can be concluded that electoral crimes are not maximized due to weak enforcement of electoral law.

Keywords: *General Election; Criminal Prosecution; Law Enforcement; Problematics.*

A. Introduction

The principle of democracy cannot be separated from the basis of the state. A democratic state places the people as the goal of all power. A democratic state prioritizes the interests of the people as the ultimate sovereignty holder. From the point of view of state science, the role and the people are very central. It's because one of the conditions of the state's existence is the existence of the people. Therefore, a democratic state must be organized on the basis of the will and aspirations of the people. When viewed from the point of view of the truth of the organization as a container gathers several people who have a common purpose. Therefore, the same concept is also addressed to a state which is an organization run by its own people, sovereignty in the hands of the people. The sovereignty of the people can be fulfilled when the government exercises democratic trust.

One of the democratic forms of government that can be achieved with the presence of political life especially political parties. The existence of political parties then reveals facts that have become public secrets in the form of democratic party activities such as the General Election of the

Political Party Election, the Legislative Election at the central level and the district level 1 and 2, the election of the Executive Leader starting from the President and Vice-President, the Governor, and the Vice-Governor, the Mayor and his deputy. As a democracy, elections are a measure of the qualification of democratisation that is worthy of a country, although elections aren't the only reference in studying the degree of democratization in countries that have democratic systems.

Realizing that general elections are enacted and implemented entirely by the government without exception. The application of the basic principles of democracy in elections driven by public expectations to realize direct, general, free, secret, honest and fair election contestation.¹ The democratic state framework in organizing general elections is a crucial time for the formation of government and governance of the country in the future. Election is not just a mechanism for the people to elect representatives, it can also be seen as a process of evaluation and training back to the social contract. One of the legal consequences of the rule of law system is that democracy in Indonesia is the democratic election of leaders. Election of a leader includes the election of a regional leader or a leader who is widely known to be the leader in the region. To ensure the election of some aspects such as the Governor, the Chancellor and the Mayor. This activity is carried out in a democratic manner, as stipulated in article 18, paragraph 4, UUD 1945. The sovereignty and democracy of the people, by the people and for the people must be respected as the primary condition for holding elections. Governor, Bupati, and Mayor. People's sovereignty and democracy must be prioritized by implementing the election of governors, governors and mayors directly by the people to make some fundamental improvements to stay as the problem has been implemented so far.

The legal certainty of the election of governors, governors and mayors shall take place democratically, shall be based on the rules of jurisdiction as laid down in article 18, paragraph 4, of the Constitution 1945. The sovereignty and democracy of the people must be optimized and the power must be exalted by the people and for the people. This must be respected as the primary condition for the holding of general elections, to elect the figure of the Governor, the Chancellor and the Mayor is a manifestation of democratic contestation. The reform of law enforcement institutions in an era of democracy recognized as a fundamental foundation, human rights standards cannot be neglected either as a reference to accountability to external parties or as guidelines for internal governance of institutions. The human rights standards referred to are all the rules and provisions contained in

¹ Mohd. Din, Rizanizarli Rizanizarli, and Akbar Jalil, "Model Penegakan Hukum Tindak Pidana Pemilu Di Provinsi Aceh Yang Berkeadilan," *Jurnal Penelitian Hukum De Jure* 20, no. 3 (2020): 289, <https://doi.org/10.30641/dejure.2020.v20.289-300>.

various international human rights instruments, in particular those that are legally binding on States that have ratified them.²

The binding rule is accompanied by sanctions that may be imposed on the party who commits a violation in the field of the general election of the elections of the head of the district, the whole sanction that can be applied to the perpetrators is contained in the criminal sanctions anyway. If the rule of law concerning the general election of the head of the district is not followed or violated, then the law in force must be applied, including in the case of criminal proceedings, whether the perpetrator is an individual or a legal body including its organizing authority. Sanctions or penal and administrative legal consequences. The prosecution of a criminal witness can begin from the beginning when sufficient evidence has been filled and the analysis and confrontation between the means of proof has been carried out so that the file of the case develops from the stage of Inquiry, Investigation, and Prosecution to the filing of the file to the Court to be brought before. If the proof process in the trial has been legitimately proven and convinced of committing a criminal offence in connection with the contestation of the election of the head of the district, then can be convicted by law in accordance with the rules of the laws in force. It is called a legal consequence or legal implication, which arises when there is a relationship between the legal subjects of one with the other, as has been regulated in the rule of law.

At the time of the general election contest, there were many threats, obstacles, challenges, and disturbances that were very dangerous to the social stability of the state, one of which concerned crimes that always threatened national security and order. Society with its conscience can already feel the damage to the order in the state if a certain act is not prohibited. Crime is classified as an act or criminal offense. So that in the community related to general election contestation, criminal acts often occur which are very disturbing. The solution is only criminal law enforcement to reduce the crime rate in the context of general elections in Indonesia.

The practice of fraud in the execution of the election phase, one of which is the campaign. The information gathered by the Authority for the Supervision of Immigration (Bawaslu RI) states that there have been frequently found violations of legitimate and persuasive campaigns based on legal and empirical facts in society. among other things, campaigning before the time set by the General Election Commission. This is indicated by the emergence of billboards with pictures of candidates participating in the general election. In addition, there is a more extreme one, namely campaigning by demonizing other candidate pairs named ethnicity, religion, race, and intergroup (SARA). The violation stems from 3 (three) findings and 12 (twelve) from reports. One of them is the

² Yesaya Andries Rampen, Decky J. Paseki, and Harly Stanly Muaja, "Ratifikasi Perjanjian Internasional Melalui Peraturan Perundang-Undangan Nasional Di Bidang Hak Asasi Manusia," *Lex Privatum* 10, no. 4 (2022): 1–15, <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/42394>.

Black Campaign, due to the lack of socialization of candidates to the public so that they can be exploited by people who want to spread a hoax aimed at undermining the integrity of contestants of the general election. For example, on the contest for the election of the head of district in various regions of Indonesia. Enforcement of the law of the criminal offence of the general election in the preservation of the virtue and dignity of the essence of elections as the distribution of power or legitimacy of the people effectively in guaranteeing the maintenance of the principles of a democratic state.³

The imposition of criminal sanctions on the perpetrators of electoral crimes in particular the Black Campaign or the Black campaign on the basis of criminal provisions. This provision is explained in Law Number 6 of 2020 concerning the Stipulation of PERPPU Number 2 of 2020 concerning Regional Head Elections into law, that in order for the perpetrator to be sentenced, first the person in question has been proven legally and convincingly to have committed a criminal act in the regional head election. Although previously election crimes have been regulated in Articles 148 and 153 of the Criminal Code. However, these regulations are only the *lex generalist* of a set of laws that specifically discuss General Elections, such as Law Number 7/2017 on Elections, and other electoral-related laws.

According to Andi Hamzah, the rules of criminal law norms that are contained outside the Criminal Code can be referred to as special Criminal Laws.⁴ Criminal offences of possession belong to a special type of criminal offence. This is because this criminal act is regulated separately in a special law called *lex specialist*. The law on special criminal offenses stands alone or outside the codification of the Criminal Code. Some general criminal offenses are still regulated in the KUHP. However, criminal offenses regulated outside the Criminal Code are referred to as special criminal offenses or *lex specialist* and have their own set of laws. In addition, special crimes are said to be special criminal actions because the consequences of these criminal acts have a broad impact on national stability. Therefore, electoral crimes need to be emphasized by laws and regulations that consistently regulate juridical provisions related to criminal acts in electoral contestation. With the advancement of science and technology (IPTEK), the crime of election of the head of the district has also increased in various forms, including in the case of black campaigns. This is very much contrary to the principles of a democratic state that must be well guarded.⁵ As a result of the Internet and social media, black campaign perpetrators do not just do it in person or with the mass media, but now what

³ Carto Carto, Adnan Murya, and Muh. Aripin Nurmantoro, "Analisis Penegakan Hukum Pemilu Dan Pemilihan (Study Penanganan Pelanggaran Di Bawaslu Kabupaten Indramayu)," *Yustitia* 8, no. 1 (2022): 97–106, <https://doi.org/10.31943/yustitia.v8i1.153>.

⁴ Andi Hamzah, *Hukum Pidana Indonesia* (Jakarta: Sinar Grafika, 2019).

⁵ Maria Aprilia et al., "Deskripsi Tentang Tindak Pidana Pemilu Tahun 2019 Di Kabupaten Kupang Provinsi Nusa Tenggara Timur," *Jho Jurnal Hukum Online(Jho)* 1, no. 4 (2023): 58–76.

is often found is black campaigns through social media. Election crimes, including the Black Campaign, were carried out by irresponsible people. This action is done using banners, face-to-face, leaflets, and through the virtual world like social media. (facebook, twitter, whatsapp, messenger, instagram, dan lain-lain). An example of a black campaign that usually occurs is hiring a buzzer to spread hoaxes about an opposing candidate during an election. Today, social media is changing the way people view social life. The difficulty in disclosing various cases, especially regarding General Election Crimes, including black campaigns circulating on social media. This is an obstacle to the organization of general elections. This happens because there is a conflict of interest in it, so that it hampers law enforcement efforts against violations of the law in general elections. The General Election Supervisory Agency (Bawaslu) together with the National Police and the Attorney General's Office of the Republic of Indonesia, which are in one forum, namely Integrated Law Enforcement (Gakkumdu), have not been maximized in carrying out law enforcement duties against perpetrators of general election crimes.⁶ Integrated law enforcement (Gakkumdu) is a special law-enforcement on the criminal aspects of the general election consisting of the Prosecutor's Office, the Police, and the General Election Oversight Body (Bawaslu). In addition, the lack of optimal existing laws and regulations is also considered to be the cause of the many incidents of black campaigns or other criminal acts during the general election period.

Crimes in regional head elections are classified as special criminal offenses whose criminal regulations are outside the Criminal Code. This is due to the urgency of conducting regional head elections. So it is not appropriate to only use the Criminal Code. Articles 117 through 198 of the Law on the Stipulation of PERPPU Number 2 of 2020 concerning Regional Head Elections into law. This regulation regulates sanctions for perpetrators of criminal acts in regional head elections, one of which concerns Election Crimes including black campaigns. These laws and regulations only regulate criminal offenses in regional head elections.

Black campaigning is not only detrimental to one of the candidate pairs who are competing for a position in political office. However, it has the potential to damage the national order, namely national unity. The existence of black campaigns in democracy is a plague that can damage the democratic climate in Indonesia. The more severe impact is the potential to threaten national security and order, which leads to national disintegration.⁷ Not only that, this electoral crime has legally and

⁶ Muhammad Junaidi, "Tindak Pidana Pemilu Dan Pilkada Oleh Sentra Penegakan Hukum Terpadu," *Jurnal Ius Constituendum* 5, no. 2 (2020): 220, <https://doi.org/10.26623/jic.v5i2.2631>.

⁷ Amilin, "Pengaruh Hoaks Politik Dalam Era Post-Truth Terhadap Ketahanan Nasional Dan Dampaknya Pada Kelangsungan Pembangunan Nasional Peserta Program Pendidikan Singkat Angkatan (PPSA) 22 Lemhannas RI Pekerjaan Rumah Presiden Terpilih Di Bidang Politik Yang Perl," *Jurnal Kajian LEMHANNAS RI* 39, no. September (2019): 2016–20, https://www.lemhannas.go.id/images/Publikasi_Humas/Jurnal/Jurnal_Edisi_39_September_2019.pdf.

convincingly violated the norms contained in the 1945 Constitution and the values of Pancasila. The frequent unresolved cases of electoral crimes, especially black campaigns, are a sign that the effectiveness of electoral criminal law enforcement in Indonesia is not going well, or in other words, it is only limited to theory without any certainty in the implementation of the law.

Examining the juridical aspects, that the General Election Commission Regulation Number 23 of 2018 concerning Black Campaigns, the regulation of campaigns on social media is only limited to regulating the registration of accounts belonging to general election participants.⁸ PKPU itu tidak mengatur mengenai penyebaran konten kampanye yang bisa saja dilakukan oleh orang diluar tim kampanye atau oleh orang *buzzer* politik yang bersifat musiman. Usually before a political contestation, buzzers will act to carry out their duties to attack the integrity of other parties that smell of SARA. This is wrapped in the phenomenon of hoaxes and hate speech that easily grows and develops, so that it spreads throughout the world.

The lack of maximum regulation in providing strict sanctions against perpetrators of electoral crimes, especially regarding black campaigns and also the lack of awareness of the optimization of electoral criminal law enforcement are also chronic problems that have the potential to cause undemocratic legal elections. This condition will certainly reduce the aesthetic value of elections as an output of democracy. Based on the above considerations, it will be very interesting to discuss The Problematics of Law Enforcement Against the Execution of Electoral Penalties in Indonesia. So on the basis of this chronology, it is possible to formulate a number of issues, namely, First, the legal provisions relating to the enforcement of the law against the execution of penalties of general elections in Indonesia? Secondly, what is the problem of law enforcement with regard to the execution of electoral penalties in Indonesia? Thirdly, how is the reconstruction of the law enforcement against electoral criminals in Indonesia? The purpose of this research is to answer these problems. This research is a scientific activity related to analysis and construction, which is carried out methodologically, systematically, and coherently.

The novelty of this research is that the criminal law enforcement approach to election crimes needs to be optimized. Election criminal law enforcement is not maximized in Indonesia. Integrated law enforcement (Gakkumdu) is not maximally running due to legal certainty being held hostage by political interests (Conflict of Interest) and the absence of a statutory-level regulatory device governing General Election Criminal Law Enforcement or a special judicial process for election offenses or criminal acts. Therefore, the novelty of this research lies in the proposal or idea to formulate a legal system that handles general election criminal cases. Based on Lawrence M.

⁸ Irwan Hafid, "Kebijakan Kriminal Dalam Mengatasi Kampanye Hitam (Black Campaign) Di Media Sosial," *Jurnal Bawaslu Provinsi Kepulauan Riau* 2, no. 1 (2020): 74–94, <https://doi.org/10.55108/jbk.v2i1.233>.

Friedman's theory, namely the substance of law, this research has a novelty, namely the need for a set of laws and regulations at the level of a law specifically regulating election crimes and at the same time a law on the judiciary of election crimes. It is also proposed to expand the authority of the General Election Supervisory Agency (Bawaslu) as one of the election organizers to determine strict sanctions against perpetrators of election crimes. Although criminal acts are committed by sympathizers or supporting cadres of general election contestants. This aims to provide a deterrent effect and educate cadres of sympathizers to be smart in political competition.

In relation to the legal structure, it is proposed that there should be a strengthening of the role of institutions incorporated in the Gakkumdu such as Bawaslu, the Attorney General's Office of the Republic of Indonesia, and the Indonesian National Police. In addition, an ad-hoc institution is needed to organize a special election criminal court under the auspices of the general court. Regarding the recovery of the legal culture of the community, the proposed solution is the implementation of education to the community through the socialization of smart election participants starting from the top level to the lowest level of society. In addition, within educational institutions, it is proposed that the subject matter of electoral ethics and Indonesian democracy be integrated into school subject matter from elementary to high school. Especially for academics at Colleges it is proposed to include the Law and Ethics of the Indonesian Democratic General Election as compulsory courses throughout the Colleges. This study refers to a previous study entitled Reconstruction of Electoral Criminal Law Enforcement in the Journal of Human Rights of Democracy, Volume 1 Number 1 June 2021 by Mizan Malik S.

B. Research Method

Methodology is procedural in researching and writing scientific papers so that they meet the rules of scientific writing. This research uses a type of normative legal research that studies legal regulations as a juridical aspect. In addition, this research also uses a sociology of law (juridical empirical) approach that examines and measures aspects of the application and enforceability of law in society. Legal research is research carried out through secondary data studies covering primary, secondary and tertiary legal materials. The data is organized in a systematic structure to then be studied and drawn conclusions in order to answer the problems studied. According to Soerjono Soekanto, descriptive research is research intended to provide as much data as possible about humans, conditions or other symptoms.⁹ The data collection technique used in this research is library research. (Library Research). Library research is a technique for conducting research using literary sources such

⁹ Soerjono & Sri Mamudji Soekanto, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Depok: Rajawali Press, 2019), <https://lib.ui.ac.id/detail?id=20439459&lokasi=lokal>.

as books, magazines, journals, and other scientific works relevant to the subject.¹⁰ In addition, legal research was conducted on Election Laws such as Law Number 7 of 2017 concerning General Elections in conjunction with Law Number 7 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2022 on the Amendment to Law Number 7 of 2017 Concerning General Elections. Law Number 6 of 2020 Concerning the Stipulation of PERPPU Number 2 of 2020 into Law Regarding Regional Head Elections. Furthermore, there is Law Number 1 of 1946 concerning Criminal Law Regulations (hereinafter referred to as the old Criminal Code), Law Number 1 of 2023 concerning Indonesian Criminal Law (the new Criminal Code), Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, General Election Commission Regulation (PKPU) Number 23 of 2018 concerning the Implementation of Black Campaigns, KPU Regulation Number 15 of 2023 concerning General Election Campaigns, and other laws and regulations.

C. Result and Discussion

1. Juridic Provisions Relating to Law Enforcement Against Election Criminals in Indonesia

A criminal act is an act or act committed by a person (*Naturlijk persona*) and also a legal body (*Recht persona*) that is contrary to the provisions of criminal jurisdiction which is valid as a fortress of public order. The term "criminal offence" or "electoral fraud" has become more specific, meaning that it relates only to criminal acts that occurred in the process of holding a general election. By definition, the term "criminal offence of general election" refers to a criminal offence committed in or in connection with the conduct of the general election phase.

Criminalization of certain acts as a general election offence is not explained in the Election Act does not specifically define what is meant by a criminal offence in the general election. This law only regulates the forms of acts that are classified as offences and also crimes that are not easy to distinguish from others. This is a deficiency in the law enforcement against criminal acts in the contestation of general elections. Analysis of Act Number 8 of 2012 on the General Election of Members of the People's Council of Representatives, the Regional Council of Deputies, and the Regional People's Council. The law explains that a general election offence is defined as a criminal offence of violation and/or offence against the provisions of the general electoral offence which have been regulated in the General Election Act. The same interpretation is also found in the Law Number 1 of 2015 on the Establishment of Government Regulations to replace the Law Number 1 of 2014 on the Election of Governors, Councillors, and Mayors into the Law. This law has been updated to Law

¹⁰ Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram University Press, 2020).

Number 8/2015 on the Election of Governors, Regents and Mayors. Criminal offenses in general elections are acts or actions related to violations of the prohibited provisions as referred to in Article 69 letter a to letter h of this Law and shall be subject to sanctions in accordance with the provisions of laws and regulations. Article 69 from letter a to letter h explains that a person will be convicted if he/she does several things, including questioning the state foundation Pancasila and the Preamble of the 1945 Constitution of the Republic of Indonesia; Insulting a person, religion, ethnicity, race, class, Candidate for Governor, Candidate for Regent, Mayor, and / or Political Parties; Conducting campaigns in the form of inciting, slandering, pitting political parties, individuals, and or community groups; Using violence threats of violence or advocating the use of violence to individuals, community groups, and or political parties that disturb security, peace, and public order; Threatening and advocating the use of violence to take over power from a legitimate government or commonly known as treason (regulated in the Criminal Code); Damaging and removing campaign props; Using government and local government facilities and budgets.

The Criminal acts in the electoral contestation in Indonesia have harmed the democratic values that have been built for a long time. The general election is one aspect of a democratic culture in which the general election as the implementation of one of the characteristics of national democracy directly involves the people in determining the political direction and policy of the state.¹¹ The Criminal acts in general elections usually relate to fundamental criminal events such as humiliation, pollution of the reputation, hate speech, dissemination of false news or public lies, and issues of security of order and other matters. In principle, the crime is a common crime. However, the thing that makes such acts or crimes considered worthy of being a special crime regulated in a special law (*lex specialist*) is due to their relationship with democratic contestation. Democracy is a fundamental human right of every citizen guaranteed in the 1945 Constitution. This has become a problem in democracy that occurs in society. Before going any further, we must remind ourselves that the word "democracy" comes from two Greek words: *demos*, which means people, and *kratos/cratein*, which means government. So it can be interpreted as the Government of the People. Abraham Lincoln, former President of the United States, explained that Democracy is the Government of the People, by the People, and for the People.

This means that democracy is a government of the people, by the people and for the people. The concept of democracy is a keyword in the field of political science. This is because democracy is currently touted as an indicator of a country's political development. Today's Indonesian democracy is faced with an unfavorable societal culture. The culture of a society that is easy for the sheep and

¹¹ Mizan Malik S, "Rekonstruksi Penegakan Hukum Tindak Pidana Pemilu," *Huma Betang Demokrasi* 1, no. 1 (2021): 113–33, <https://journal.bawaslu.go.id/index.php/HBD/article/view/149/237>.

groups that want to validate various ways by exceeding the limits of obligation. An empirical study related to the problem that emerges in the Indonesian democratic world is the lack of awareness of the entire component of the nation. Awareness in representative democracy does not only treat parliament or the House of Representatives as a state institution that acts on behalf of and at the same time for the people. The Executive and the Judiciary in their respective fields of duty act as representatives of the people.¹² It's just that the people's representatives in the legislature are tasked with establishing various public policy programs as a state framework to tackle the problems of society and the state. The success of the Executive and Judiciary as the mouthpiece of the people mandated by the people and financed by public money must have a significant impact on the people. Especially for the Legislature, it must be able to contribute to the progress of the people and prioritize the interests of the people over personal and group interests.

Indonesian society is still easy to commit an act that can threaten the unity of the nation which has the potential to cause national disintegration. The culture of society with the practice of Pancasila has faded, so that people can commit acts that are against the law. As we know that Pancasila has explained the climate of democracy in Indonesia. According to the fourth Precept of Pancasila, it explains that Democracy is led by Wisdom in Consultation/Representation. The explanation of the fourth principle of Pancasila also explains that democracy in Indonesia is something that must be maintained properly. This necessity has implications for Indonesia's status as the axis of world democracy. This is based on the close relationship between the conception of state of law (*Rechtsstaat*) and democracy.

According to Lawrence Meir Friedman's theory, if the substance and structure of the law are good, then the next challenge will be faced with the poor legal culture of society (legal culture). According to Friedman, the problem in the current law enforcement climate lies in the legal culture of society.¹³ So, today people do not want to know and do not want to know about a law that applies in society. So that there are many small-scale and large-scale crimes in society. This can also be done empirically observation study (sociology of law study) in the community. At the General Election stage, problems always occur in democratic contestation in Indonesia even though various anticipatory steps have been taken by the election organizers. One of the problems that occurred in the General Election was one of the indicators in the 2019 General Election and became the subject of

¹² Intan Rachmina Koho, "Oligarki Dalam Demokrasi Indonesia," *Lensa* 15, no. 1 (2021): 60–73, <https://doi.org/10.58872/lensa.v15i1.6>.

¹³ Priyo Hutomo and Markus Marselinus Soge, "Perspektif Teori Sistem Hukum Dalam Pembaharuan Pengaturan Sistem Pemasarakatan Militer," *Legacy: Jurnal Hukum Dan Perundang-Undangan* 1, no. 1 (2021): 46–68, <https://doi.org/10.21274/legacy.2021.1.1.46-68>.

discussion regarding the effectiveness of general election criminal law enforcement.¹⁴ The laws and regulations governing it are in place, but have not been optimally implemented. Article 476 to Article 487 of Law Number 7/2017 concerning General Elections has regulated how the mechanism for handling criminal acts in the 2019 general elections. The problems start from the handling mechanism and special institutions for general election crimes as described in the novelty or ideas in this research. Another problem is the optimization of the implementation of integrated law enforcement tasks (Gakkumdu center). In Election Law Number 7 Year 2017, there are around 67 articles that regulate election crimes. This legislation regulates election crimes far more than the previous regulation, namely Law Number 1 of 2015 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors into law, which has finally undergone changes. As amended by Law Number 10 Year 2016, it only contains less provisions than the previous regulation. Based on the order of Article 486 Paragraph 11, the General Election Supervisory Agency (hereinafter Bawaslu) stipulates a special regulation known as Bawaslu Regulation Number 9 of 2018 concerning the Integrated Law Enforcement Center (Gakkumdu center). This regulation was revised into Bawaslu Regulation Number 31 of 2018 which became an element of equalizing perceptions related to the understanding and pattern of handling general election crimes including Bawaslu, the Police, and the Attorney General's Office of the Republic of Indonesia.

The poor legal culture of the community has led to many problems that occur in society. One of them is the practice of crimes in democracy such as Election Crimes including black campaigns in the general election contestation of a regional head candidate in several regions in Indonesia. Sympathizers of regional head candidates make efforts to win the candidates they support in ways that are against the law, such as committing Election Crimes including black campaigns. Black campaign is a crime in participating in political contestation which includes the act of berating, insulting and demonizing candidates who are opponents in the contestation of general elections. Election Crimes including black campaigns can also occur in the form of threats in the form of terror against other candidate pairs, with the aim of gaining personal benefits. This black campaign is classified as a heinous and immoral act, and does not interpret the noble values of Pancasila, that Indonesia as a democratic country must always prioritize the rights of every citizen in determining their choices and the rights of every citizen to participate in healthy political contestation and free from various unconstitutional efforts. The Constitution mandates that the democratic process run well, full of wisdom, and uphold human rights. The 1945 Constitution as the Groundnorm and also as the

¹⁴ Khairul Amin, M Nazaruddin, and M. Akmal, "Kontestasi Politik Pada Masyarakat Desa (Studi Kasus Pada Pemilu Legislatif 2019 Di Desa Rias Kecamatan Toboali Kabupaten Bangka Selatan)," *JWP (Jurnal Wacana Politik)* 5, no. 2 (2020): 149, <https://doi.org/10.24198/jwp.v5i2.29784>.

constitutional juridical basis becomes the basic reference for the regulations below. The Constitution strongly disapproves of all attempts at criminal acts in general elections, including black campaigns. Article 28 of the 1945 Constitution mandates that every citizen has a full guarantee of freedom in democracy. The freedom of association and assembly, expression of thoughts both orally and in writing, and so on, is regulated by law. This legal basis is a follow-up rule to the 4th principle of Pancasila, which is a democracy led by wisdom in deliberation/representation. Black campaigns as part of election crimes are said to be unlawful and unconstitutional because they are not in accordance with the mandate of the constitution and applicable laws and regulations. The Indonesian Constitution provides for the upholding of human rights, which are fundamental rights possessed by every citizen to vote and be democratically elected. Thus, no one is allowed to commit humiliation, slander, mocking, and degrading the dignity of the contestants of the general election. Regardless of the contestation of the general election, evil acts such as insulting, defamation, and other degrading of human dignity are not permitted and strictly prohibited on the basis of legal and non-legal aspects of ethics and morality. It's because it's not in line with Pancasila's 2nd and 3rd prayers.

Every human being is given the freedom to develop himself following the contestation of the general election without any attempt at corruption and the like. It is called the fundamental rights that have been enshrined in the Constitution of Indonesia. The Constitution legitimizes the freedom for every citizen who has met the objective and subjective requirements to participate in democratic competition in Indonesia. The right of every citizen to elect and be elected in the contestation of general elections is regulated in Article 28C Paragraph 2 of the 1945 Constitution, which reads "Every person has the right to advance himself in fighting for his rights collectively to develop his community, nation and country. Every good citizen is given the opportunity to vote and be elected while not being deprived of their political rights by a judicial authority such as a court. As long as these conditions are met, then anyone has the right to run as a representative of the people in the contestation of general elections.

The Constitution does not allow unconstitutional acts such as criminal practices in electoral contestation. One of the elements in question is the Black Campaign. This black campaign is a despicable act that smells bad, aiming to bring down political opponents with the principle of maximizing all means that are contrary to ethics and morals as well as applicable legal provisions. So that Law Number 7/2017 on General Elections legitimizes the sound of Article 28 of the 1945 Constitution into Article 280 of the Election Law. That the prohibition in a special campaign for the executor, participant, and election campaign team is prohibited from questioning the Pancasila state foundation, the preamble of the 1945 Constitution of the Republic of Indonesia, and the form of the Unitary State of the Republic of Indonesia; Conducting activities that endanger the integrity of the

Unitary State of the Republic of Indonesia; insulting a person, religion, ethnicity, race, group, candidate, and/or other Election Participants; inciting and pitting individuals or the community against each other. Disturbing public order; Threatening to commit violence or advocating the use of violence against a person, group of community members, and/or other election participants; Damaging and/or removing campaign props of Election Participants; Using government facilities, places of worship, and places of education, carrying or using signs and/or attributes other than the signs and/or attributes of the relevant election participants. Promising or giving money or other materials to election campaign participants. The Election Law prohibits such black campaigns. The electoral law has punitive sanctions for violators. Every organizer, participant, and/or Election Campaign team who intentionally violates the prohibition of the implementation of the Election Campaign, namely inciting and pitting individuals or the community against each other as referred to in Article 280 paragraph (1) letter d of the Election Law shall be punished with a maximum imprisonment of 2 (two) years and a maximum fine of Rp 24,000,000 (twenty-four million rupiah).

In addition to Law Number 7 Year 2017 which prohibits Black Campaign, Article 63 of Law Number 10 Year 2016 on Regional Head General Elections (Pemilukada) also explains the prohibition of black campaigns in the contestation of Indonesian elections. Article 63 of the Law explains that the Campaign is carried out as a form of public political education that is carried out responsibly. Responsible is interpreted positively, that campaigns must be carried out to advance the climate of democracy and advance national politics, not the other way around. In addition to this article, Article 65 Paragraph 1 letter e also explains that the campaign must be filled with other activities that do not violate the Campaign prohibition and the provisions of laws and regulations.

One of the campaign prohibitions is spreading hoax content, content containing insults, diatribes, curses and narratives that undermine the dignity of one of the opposing candidate pairs in the General Election contestation. Furthermore, the next legal basis that prohibits black campaigns is Law Number 8/2015 concerning the Election of Governors, Regents, and Mayors. Precisely in Article 64, it explains that the delivery of Campaign material is carried out in a polite, orderly, and educational manner. Meanwhile, Article 65 Paragraph 1 letter g explains that the campaign must be filled with other activities that do not violate the Campaign prohibition and the provisions of laws and regulations. The above rules clearly prohibit the existence of the Election Crime of Black Campaign in the world of democracy, especially general election contestation.

Furthermore, in the internal regulations of the Government Regulation Number 15 of 2023 specifically in Article 1 Paragraph 18 it is also stated that the Election Campaign is the activity of an Electoral Participant or other party appointed by an Election Participant to persuade the electorate by offering the vision, mission, program and/or image of the Elections Participant. Therefore, the

elections must be conducted in a positive climate that educates and can build a more advanced democratic climate.

When associated with criminal responsibility, the elements of black campaign perpetrators can be classified as a common offence of disgrace, disorder of public order. It is regulated by Law Number 1 of 2023 on the Code of Criminal Law, Articles 242 and 243 on the insult that can trap perpetrators of pollution of the good name through the practices of criminal prosecution of general elections of black campaigns. (Black Campaign). In addition, Article 433 Paragraph 1 of Law Number 1 Year 2023 on the Indonesian Criminal Law, explains that every person who verbally attacks the honor or good name of another person by alleging a matter with the intention that it becomes public knowledge, shall be punished for defamation with a maximum imprisonment of 9 (nine) months or a maximum fine of category II. Furthermore, Article 2 explains that if the act as referred to in Paragraph 1 is committed by writing or drawing which is broadcast, shown, or affixed, it shall be punished with imprisonment of 1 (one) year and 6 (six) months or a maximum fine of category III. Paragraph 3 The acts referred to in Paragraph 1 and Paragraph 2 shall not be punished if they are committed in the public interest or out of self-defense.

In addition, criminal offenses in elections can also be correlated with the Electronic Information and Transactions Law (ITE) as an effort to enforce and protect against black campaigns. Article 27 paragraph (3) of Law Number 19/2016 on the Amendment to Law Number 11/2008 on Electronic Information and Transactions, states that anyone is prohibited from distributing, transmitting, making accessible electronic information and/or electronic documents containing defamation and/or libel. Article 27 Paragraph (3) also regulates defamation. Perpetrators who are charged with this article will be punished with a maximum imprisonment of 4 years and/or a maximum fine of Rp750,000,000.00 (seven hundred and fifty million rupiah). Therefore, election contestants, success teams, and sympathizers of one candidate pair are not allowed to distribute and transmit electronic information containing insults or defamation. This is classified as a complaint criminal offense, meaning that the criminal offense can be followed up by reporting or complaints by law enforcement officials if it is complained about or reported by the victim concerned directly.

The laws and regulations related to criminal offenses in elections are part of positive law as mentioned above, but have not been maximally implemented. Democracy should be safeguarded and maintained by maximizing the implementation of the rule of law as described above. This is the task and role of the study of the sociology of law in testing the empirical validity of a rule or statement of law. The purpose of judging has been to match the sound of the rules textually and contextually with the empirical facts in the field. The Black Campaign is a phenomenon that is due to the culture of Indonesian democracy that is not mature in thinking and acting. So that those who are there may think

how to get the seat of leadership, regardless of how they can get it or not. The next reason is the lack of maximum supervision by Bawaslu in monitoring the entire ownership activity. Then it is recommended to consume the fruits to be eaten. However, the process was abandoned without a solution.

So that what is in his mind is how to get a leadership seat, regardless of whether the methods of obtaining it are good or not. The next cause is the lack of maximum supervision carried out by Bawaslu in monitoring all electoral activities. When findings of violations of the Election Law are obtained and recorded for further processing. However, the process was abandoned without any resolution.

Therefore, until now the optimization of the implementation of administrative and criminal electoral punishment has not gone well as theoretically explained. This is due to the influence of political power in law enforcement in Indonesia. The law is carried out only to smooth out the ruler's policies. This is a serious problem in the state. Not maximizing law enforcement on electoral violations, especially the existence of Election Crimes including black campaigns, has the potential to cause conflicts among the community which have a broad impact on the disintegration of the nation and damage the image of democracy in Indonesia

2. The problem of law enforcement against the execution of electoral penalties in Indonesia

Talking about problems, it will talk about problems that will become obstacles to the implementation of a policy. In developing countries such as Indonesia, the main problem of law enforcement is the quality of people who carry out the law, not the legal system itself. As a result, the role of people who carry out the law occupies a central and strategic position in problems related to the maximum or not law enforcement. The accountability of law enforcement agencies is closely related to the issue of transparency of law enforcement.

Law Number 28/1999 on General Principles of Good Governance sets out several principles for state administration that are clean and free from corruption, collusion, and nepotism.¹⁵ The purpose of this foundation is to ensure that state maintenance can bring about state maintenance capable of carrying out its functions and duties in a truly responsible manner. This law legitimizes the role of law enforcement agencies must always be based on the general principles of good governance.

During the reform period, good governance was a major topic in various government policy discussions. The social and economic well-being of the country is achieved as a matter of urgency. In

¹⁵ Anugerah Yuka Asmara and Rudiarto Sumarwono, "Understanding the Complex Relationship Between Good Governance and Economic Growth in Indonesia During the Reform Era," *BISNIS & BIROKRASI: Jurnal Ilmu Administrasi Dan Organisasi* 27, no. 2 (2021), <https://doi.org/10.20476/jbb.v27i2.11219>.

the last few decades, the more commonly used term is "good governance" which means government clean from all violations of the law. First, the change from ordinary government to good government. It shows that this principle must be applied to all parts and systems of state administration, not just government in the narrow sense, that is, executive.¹⁶ Law enforcement officers must have skills that are in line with the expectations of the public, because law enforcing is the main focus of the community, and law-enforcement officials must have the capacity to communicate, understand, and interact with the target group. (masyarakat). Law enforcement officers are also expected to be able to perform their roles according to community needs. In addition, to encourage the participation of the wider community, law enforcement officers must have the ability to utilize certain components of traditional patterns. In addition, to set a good example to the community, law enforcement groups must be able to choose the right time to apply new legal standards or principles.

Some issues relating to law enforcement can not be ignored from the fact that the functioning of the law is largely dependent on the harmonious relationship between the law itself and the law-enforcement agencies, facilities, and the society it governs. The discrepancy on one of the elements, the legal culture, is a chronic problem today. Based on Friedman's theory of the legal system, it is argued that the problem of law enforcement from ancient times was on the human legal culture influenced by the varied minds of human minds. There are humans who obey the rules and feel relieved when they break the rules. But not a few people feel that the violation of the law is a normal thing in their lives. This is a challenge in law enforcement.

Indonesian Election Supervisory Authority Regulation Number 9 of 2018 on the Integrated Law Enforcement Centre has been last amended to the Basel Regulation Number 31 of 2018 concerning the integrated law enforcement centre.¹⁷ Based on these regulations, the Gakkumdu authority to carry out law enforcement against Bawaslu's criminal acts. Gakkumdu has not maximally carried out the main tasks and functions that have been given. Based on the results of observations during the 2019 Election stages, the Bawaslu of Lima Puluh Kota Regency handled 10 (ten) alleged election crimes, but 7 (seven) cases were forwarded by the Bawaslu of Lima Puluh Kota Regency to the local Gakkumdu. However, the other 3 (three) could not be processed because they did not meet the formal and material requirements. So it was instructed to perform a report repair by completing the file, but it was not completed. So some of the alleged electoral crimes reports were dismissed. Then only one report remains to be processed until the stage of investigation, prosecution, until the

¹⁶ Muhammad Solikhudin and Moh. Zainullah, "The Formulation of Good Governance Fiqh for Indonesia as a Welfare State," *Al-Qisthu: Jurnal Kajian Ilmu-Ilmu Hukum* 20, no. 2 (2022): 166–81, <https://doi.org/10.32694/qst.v20i2.1718>.

¹⁷ Fery Chofa Syafrizal, "Problematika Tindak Pidana Pemilu Tahun 2019 Oleh Sentra Penegakan Hukum Terpadu Di Kabupaten Lima Puluh Kota," *Universitas Muhammadiyah Sumatera Barat* 1 (2023): 89–102.

appeal to the court and decided by a fixed-force judgment. (*Inkracht van gewijsde*). So that the remaining six cases have been discontinued and stopped at the local Gakkumdu's second trial. From these events it is clear that law enforcement related to criminal acts in the elections is not going well. In Indonesia in recent years, the news in the media is tragic. It is based on a number of surveys conducted by the Indonesian Survey Institute (LSI) stating that 56,0 percent of the public said they were dissatisfied with the law enforcement in Indonesia. While only 29.8 percent stated that they were satisfied with law-enforcement processes in Indonesia, the remaining 14.2 percent did not respond or abstained. A phenomenon that illustrates how low the rule of law is in the eyes of the general public.

The substance, structure, and culture of law must be aligned with each other. The three elements are a unity that supports each other.¹⁸ Therefore, the substance of the law is good, the legal structure is also good, but the legal culture of the society is very bad, then this becomes the problem. The legal substance of the general election in Indonesia has been regulated in the Act Number 7 of 2017 on the General Election as well as other legislative regulations. The law establishes a mechanism for conducting good and democratic general elections on the basis of direct, general, free, secret, honest, and fair elections. It also regulates the rule of law when a crime occurs in a general election. The rule actually still has weaknesses when it is associated with the topic of discussion of this research, which relates to criminal acts in contestation of the election.

Weaknesses in the Election Act Number 7 of 2017 and other regulations on general elections are the lack of explicit sanctions and mechanisms of legal action for the public when a general election offence is found. The rule should include a mechanism of legal action, such as special judicial proceedings against perpetrators of crimes in disputes over the election of the law. Therefore, a regulation is needed that affirms the birth of special justice. It aims to preserve the dignity of the general election as an opportunity to elect people's representatives and leaders in executive power ranging from the central government to the district or city.

In General Election Law Number 7 of 2017 in Article 94 Paragraph 2 letter c explains that in prosecuting violations of the General Election as referred to in Article 93 letter b, Bawaslu is tasked with Receive, examine, and review allegations of election violations; Investigate allegations of election violations; Determining alleged election administrative violations, alleged violations of the code of ethics for organizing elections, and or alleged election crimes; and deciding on administrative election violations. Article 95 letter g of the Election Law explains that Bawaslu has the authority to request information materials needed from related parties in the context of preventing and prosecuting administrative violations, violations of the code of ethics, alleged election crimes, and disputes over

¹⁸ Maya Indrasti Notoprayitno and Faridah Jalil, "Legal Culture Perspective in Implementation of Inclusive Education in Indonesia," *Advances in Social Science, Education and Humanities Research* 388, no. Icese (2019): 122–27.

the election process. Article 98 Paragraph 2 of the Election Law explains that in the context of taking action against election violations as referred to in Article 97 letter a, the Provincial Bawaslu is tasked with submitting the results of supervision in the provincial area to Bawaslu of the Republic of Indonesia for alleged violations of the code of ethics of election organizers and / or alleged election crimes in the provincial area. In addition, investigating initial information on alleged election violations in the region, examining and reviewing alleged election violations in the region, then examining, reviewing and deciding on election administration violations. The Provincial Bawaslu is also tasked with recommending follow-up supervision of election violations in the provincial area to Bawaslu of the Republic of Indonesia. When examined, this is certainly not optimal in reducing the number of election violations and crimes in Indonesia. This existing regulation is only an appeal and recommendation. It is also not binding and coercive as the results of investigations in law enforcement carried out by other law enforcement agencies such as the Police, Prosecutors, and Judges. In addition, the final decision is only owned by Bawaslu of the Republic of Indonesia regarding the occurrence of alleged violations and election crimes. The Provincial Bawaslu only submits the results of the investigation and recommends relevant follow-up to be carried out by Bawaslu of the Republic of Indonesia.

In fact, in the context of the implementation of Bawaslu's authority in the process of handling administrative violations and criminal acts of elections that are structured, systematic and massive (TSM), it is still a problem that cannot be overcome. Although the case has been resolved by Bawaslu, in practice, administrative violations and election crimes that occur in TSM still lead to the authority of the Constitutional Court of the Republic of Indonesia. This is a problem related to the ineffectiveness of law enforcement against violations of the Election Law in the implementation of elections, which is considered to be something that must be resolved. If taking legal remedies related to alleged violations and criminal acts of elections only revolves around the Constitutional Court, then it can be considered that it is not optimal and ineffective. Indeed, law enforcement against violations and criminal acts of elections is given full authority to the election organizers to decide and adjudicate related cases that occur.¹⁹ Material law problems have become a problem until now. This lies in the provision of sanctions for canceling election participants, that the authority of the Provincial Bawaslu in deciding administrative violations, and criminal acts in general elections in a structured, systematic, and massive (TSM) manner which substantively lies in testing the act of promising or giving money or other materials to influence voters and criminal acts that cause security disturbances in the community.

¹⁹ Abdurrahim;Haerani, "Alur Dan Proses Penegakan Hukum Terhadap Tindak Pidana Pelanggaran Pemilu Berdasarkan Undang- Undang Republik Indonesia Nomor 7 Tahun 2019 (Studi Di Bawaslu Kabupaten Lombok Barat," *Unizar Recht Journal* 1, no. 4 (2022): 430–40, <https://e-journal.unizar.ac.id/index.php/urj>.

In practice, the formulation of electoral violations involves giving money in order to affect voters is only a stage of inspection that is not exclusively in the administrative sphere but requires an inspection approach in criminal law. It relates to the elements of gratification, bribery, and other related criminal acts. The criminal proof process is again a problem related to the existence of political money. This is because the practice of giving money is judged to have no evidence to reinforce the presumption of criminal political money in the stage of the general election contestation.

The weaknesses that are also problematic are the non-optimal roles and functions of election administrators such as the Election Supervisory Agency (Bawaslu) and the General Election Commission (KPU) in providing legal certainty against violators of election laws. When there are reports from the public regarding alleged violations of election stage regulations, they cannot be followed up comprehensively. This has been a problem in organizing elections to date. This is likely due to the hostage taking of interests between one another. Another term says that there has been a conflict of interest between the parties participating in the general election.

On the other hand, proving criminal law is also very complicated if one of the election equipment, namely campaign props, is damaged by unknown people (OTK). Campaign props such as billboards and banners are affixed in public places, so it will cause vulnerability to be damaged by irresponsible people. This is very difficult to prove if it is related to the destruction of the goods of a legal subject. So, criminal proof can be carried out if there are 2 (two) sufficient evidence in accordance with Article 184 of the Criminal Procedure Code (KUHAP), namely witness testimony evidence and instructions, for example. Therefore, proof in criminal procedure law can be fulfilled. Unlike the case with the condition of campaign props that are displayed in places that are rarely passed by the public and there is no CCTV as evidence of clues, this will make it difficult to prove the crime.

3. Reconstruction of the law enforcement against the perpetrators of electoral penalties in Indonesia

a. John Rawls' Theory of Justice

According to John Rawls, the Principle of Greatest Equal Liberty is the principle of justice. This principle includes, among others, the freedom to take part in political life, freedom of speech, freedom of belief (adherence to one of the world's religions), freedom to be oneself, freedom from arbitrary arrest and detention, and the right to retain private property.²⁰ The other principle consists of two parts: the difference principle and the principle of fair equality of opportunity. The difference principle means that social and economic differences should be measured so as to provide the greatest benefit to the disadvantaged. The term socioeconomic differences refers to inequalities in one's

²⁰ Matthias Katzer, "Rawls' s List of Human Rights and Self-Determination of Peoples," 2022, 1–18.

prospects for the basic elements of well-being, income and authority. While the term most disadvantaged refers to those who have the least opportunities and authority. The principle of equality of opportunity implies that socio-economic inequalities should be organized in such a way as to open bridges and social positions for all under conditions of equal opportunity. People with the same skills, competencies and motivation can enjoy the same opportunities.

General elections are often decorated with fraudulent practices and criminal efforts that befall the parties involved in the electoral contestation. These crimes lead to the occurrence of criminal acts that are contrary to the applicable law. Crimes that occur are caused by aspects of legal substance that are too weak and legal structures that include law enforcement agencies that do not carry out their duties optimally. So that all forms of violations or crimes are considered commonplace so that the material criminal law is not maximally enforced. In addition, the vacancy of a special institution that handles justice for perpetrators of electoral crimes is considered to be the cause of many cases of electoral crimes not being enforced. So it is proposed that the novelty in this research is the need for a special court institution to try the perpetrators of general election crimes.

Based on the reasons mentioned above, it is also necessary to have a firm policy from general election organizers such as the General Election Supervisory Agency (Bawaslu) and the General Election Commission (KPU) in synergy with the judicial power institutions to make a breakthrough regarding penalties for perpetrators of criminal acts in general election contestation in the form of revocation of the right to participate in general election contestation in the year according to the *tempus delicti*. This must also be supported by legality strengthening. As a state of law, all state administration policies, including efforts to strengthen the essence and existence of Bawaslu and KPU of the Republic of Indonesia to enforce the law against perpetrators of general election crimes, must certainly be equipped with a strong legal basis.²¹

Prime legality must be based on the 1945 Constitution. The Indonesian Constitution mandates that the law be enforced properly. Based on these provisions, in the administration of the state, especially in organizing democratic parties such as general elections, it must be carried out properly as well. The implementation and supervision of the implementation of general election contestation activities must be upheld by all components of the nation, especially the organizers of the general election, including the integrated law enforcement center (hereinafter referred to as Gakkumdu). Bawaslu and KPU of the Republic of Indonesia must have a stand and firmness in carrying out their main duties and functions as organizers of general elections.

²¹ La Ode Dedihasriadi and Edy Nurcahyo, "Pancasila Sebagai Volkgeist: Pedoman Penegak Hukum Dalam Mewujudkan Integritas Diri Dan Keadilan," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 9, no. 1 (2020): 142, <https://doi.org/10.24843/jmhu.2020.v09.i01.p10>.

The Indonesian Constitution mandates the enforcement of legal certainty with the principle of Equality before the law, so in the contestation of elections called as a means to give birth to leaders in the scope of executive power and representatives of the people in the scope of legislative power. Therefore, the mechanism to give birth to leaders and representatives of the people should be taken by constitutional channels. So that by itself if the process of the birth of people's leaders and representatives of the people legally and prioritize the existing legal principles, it will provide its own goodness for the people. The concept of thinking obtained is based on the saying that leaders born from a bad process will also have a bad impact on society and government.

On the other hand, the substance of the law includes existing laws and regulations that are unable to accommodate the problems that occur in the scope of society. So that violations and crimes, especially in general elections, are rampant. This condition requires Bawaslu and the KPU of the Republic of Indonesia to make a breakthrough, namely for the success team, sympathizers, or even election participants to be proven legally and convincingly to have violated administrative law as described in General Election Law Number 7 of 2017 in conjunction with other related General Election Commission Regulations (PKPU RI). Therefore, firm steps must be taken in the form of revoking the right to participate in the general election that year. In addition, if the success team, sympathizers, or even election participants are proven legally and convincingly to have committed an election crime as described in Law Number 7 of 2017 concerning General Elections, they must be brought to the realm of a special election trial as the idea in this study. If a person or a group of success teams, sympathizers, or even general election participants is suspected of committing a criminal offense so that it is decided by a judicial institution to be guilty, then it is appropriate to be deprived of their political rights, namely to vote and be elected at the general election contestation event in that year's edition according to the *tempus delicti* (time of the criminal offense).

b. Gustav Radbruch's Theory of Justice

Gustav Radbruch, a German criminal law expert, argued that the real purpose of law is the achievement of the three objectives of law, namely justice, benefit and legal certainty.²² Achieving these three goals is something that is difficult to achieve. Therefore, there must be at least one that is prioritized. If justice is not achieved, then at least legal expediency must be achieved. Legal expediency is a goal with the existence of law that measures the level of benefit of the existence of the law in society. Society is the main target in the application of law. Philosophically, the purpose of law

²² Febby Mutiara Nelson and Esther Melinia Sondang, "Striking a Balance Between Legal Certainty, Justice and Utility To End the Clash Between Bankruptcy and Criminal Proceedings in Court Decision No. 11/Pdt.Sus-Gugatan Lain-Lain/2018/Pn.Jkt.Ps and No. 3 K/Pdt.Sus-Pailit/2019," *Journal of Indonesian Legal Studies* 6, no. 1 (2021): 185–98, <https://doi.org/10.15294/jils.v6i1.45979>.

is the achievement of justice. Justice can be obtained, it will guarantee other legal objectives to be achieved. If legal benefits are obtained, then certainty and justice are not necessarily achieved. Likewise, if certainty is achieved, justice and legal expediency cannot be achieved. However, achieving justice will automatically achieve legal certainty and expediency.

The three objectives of the law, namely the achievement of justice, utility, and legal certainty, have equally important positions within the framework of the national legal system. Achieving these three elements is very difficult. Therefore, according to Immanuel Kant's opinion in a postulate of his time, namely "*summum ius, summa iniuria, summa lex, summa crux*", which means a dilemma for various parties to prioritize justice or legal certainty.²³ This is because when striving for justice is to be achieved, it will conflict with legal certainty. Therefore, authority is given to law enforcers to prioritize which element first. However, Gustav Radbruch in the Radbruch Formula argues that the hope of achieving the three elements of justice, expediency and legal certainty is something that is very difficult to happen. Of course there will be conflicts of interest in the community. Therefore, at least the law in society must be able to achieve the elements of legal expediency and justice. If it prioritizes legal expediency, then the nature of law that is beneficial to society is ideal. This is because the law is beneficial to society as the main target of the birth of law on earth is society. Markus Tullius Cicero once expressed the link between law and society. According to Cicero, "*Ubi Societas ibi ius*" which means that where there is a society (humans as social beings) there will definitely be a law born. Therefore, the law comes from the people or the community and the benefits should also be felt by the community.

Black Campaign is one part of Criminal Acts in General Elections (Black campaign) studied from juridical and empirical aspects, it appears that the act is an unconstitutional act and has violated the Election Law. Article 28 of the 1945 Constitution mandates that every citizen has a full guarantee of freedom in democracy. Freedom of association and assembly, expression of thoughts both orally and in writing, and so on, are regulated by law. This legal basis is a follow-up rule to the 4th principle of Pancasila, which is a democracy led by wisdom in deliberation/representation. The Constitution mandates that the democratic process run well, full of wisdom and uphold human rights. The 1945 Constitution as the Groundnorm and also as the constitutional juridical basis becomes the basic reference for the regulations below. The Constitution does not recognize black campaigns.

Black Campaigning is one part of Criminal Acts in General Elections that is prohibited by the Indonesian Election Law and several other related regulations. This practice cannot be tolerated because it has the potential to cause chaos in the country. In principle, it is true that justice, according

²³ Anita Afriana, Agus Mulya Karsona, and Sherly Ayuna Putri, "Passive Judge Shift In Civil Judges In Indonesia: Regulation And Relevance Of Legal Currency," *NVEO: Natural Volatiles & Essential Oils* 8, no. 6 (2021): 1506–13.

to John Rawls, is the principle of Greatest Equal Liberty. This freedom leads to the principle of human rights owned by every human being. However, freedom wrapped in the framework of human rights is something that is not justified. This is because the basic rule of human rights, Law Number 39/1999 on Human Rights, states that human rights are fundamental rights possessed by every human being since they were born on earth that cannot be contested by anyone and for any reason. However, in the law there is an Exception clause. It allows the application of human rights principles, but it is not allowed to conflict with the human rights of others or the wider community. Therefore, if the perpetrators of black campaigns or perpetrators of other election crimes spread information containing SARA that cornered one of the regional head candidate pairs or committed other election crimes prohibited in the Election Law, they can be prohibited and held legally accountable. If you make an effort to insult other people with the argument of human rights, then automatically, other people's human rights are also sacrificed which does not reflect a sense of social justice as expected.

Law enforcement against perpetrators of election crimes in Indonesia has not been maximally implemented. This is considered to be caused by law enforcement being held hostage by the existence of political interests in it (Conflict of Interest). Election crime is a phenomenon caused by the immature culture of Indonesian democratic society in thinking and acting. Law enforcement can be carried out administratively or criminally. This administrative threat is in the form of sanctions in the form of administration, for example given a written warning, and up to removal from the general election participants. If the threat is criminal, the Election Law is also the legal basis for imposing punishment on someone who commits a crime. Juridically, Indonesia has rules to ensnare the perpetrators of criminal acts in the electoral contestation. In addition, the perpetrators of electoral crimes can certainly be associated with other Special Crimes such as Law Number 1 of 2023 concerning Indonesian Criminal Law and Article 27 paragraph (3) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, stating that anyone is prohibited from distributing, transmitting, making accessible electronic information and / or electronic documents containing insults and / or defamation.

Therefore, until now, the implementation of punishment administratively and criminally is not running well as explained theoretically. Therefore, it can be concluded that the type of law that applies in Indonesia specifically related to the topic of Election Crimes including black campaigns in the contestation of General Elections in Indonesia is the repressive type of law. This is because the repressive type of law is very weak in its application when it comes to the authorities (stake holders). This law only applies sharply to ordinary people, and not to rulers. Incidents of violations of the rules of the general election stages often occur in the community. However, law enforcement against the event did not run optimally.

The reconstruction of proper law enforcement can generally be explained that law enforcement against election crimes in Indonesia is not running properly. This problem is caused by the hostage of law enforcement interests oriented towards legal certainty and legal positivism with political conflict of interest. Everyone who has a spirit of nationalism and love for their country will feel hurt if law enforcement in their country is not maximized. This is also the case in the contestation of general elections which is a stage for a democratic party within the framework of the Indonesian rule of law. This reconstruction is intended to provide a solution or novelty in this research so that it is useful for many people. Regarding the problem of not maximizing the implementation of criminal law contained in the Special Election Law Number 7 of 2017 along with other related laws and regulations, it can be proposed that strengthening be carried out based on Lawrence Meir Friedman's theory related to the elements of forming a legal system that are well known.

Lawrence Meir Friedman proposed three elements in the legal system Substance, Structure, and Legal Culture, all of which are interrelated. Speaking of the system, then we'll talk about the close relationship as a unity that supports each other.²⁴ Regarding the substance of the law, the scope of the legislation relating to the criminal offence of the general election is still not sufficient to accommodate the crime committed in the community. So we need to perfect the regulations to give legal certainty to all parties. The solution relates to the substance of the law and the legal structure that needs to be strengthened, one of which is the renewal of the regulation along with the expansion of the scope of regulation of legislation related to criminal acts in general elections which involves a successful team, sympathizers, and even contestants of the general election deemed necessary to be realized. In addition, a law should be issued that legitimizes the establishment of a specialized agency dealing with alleged crimes in contesting general elections. The authority of this agency is, among other things, to receive files, examine, and terminate cases of criminal offences of general election on the basis of the presumption of innocence. The power of the judge's verdict must be final and binding. The word "final" in the Official Dictionary of Indonesian is meant to be the end of a series of tests, while binding means negotiating. Based on the previous literal meaning, the end, and the bond are interrelated like the two sides of the coin. Practically, the sentence means the end of the process of inspection, with the power to tighten or merge all wills and cannot be rejected. This condition is supported by the Black's Law Dictionary theory which explains that the final word means no further legal effort by the court making a new decision to determine the things being tested.²⁵ Binding means an obligation to obey it without exception. The power of the judge's verdict must subsequently

²⁴ Farida Pahlevi, "Pemberantasan Korupsi Di Indonesia Perspektif Legal System Lawrence M. Friedman," *El-Dusturie* 1, no. 1 (2022), <https://doi.org/10.21154/eldusturie.v1i1.4097>.

²⁵ Heru Sugiyono, Heru Suyanto, and Rosalia Dika Agustanti, "The Law of Arbitration Rules That Are Final and Binding," *Indonesia Law Review* 10, no. 3 (2020): 360–73, <https://doi.org/10.15742/ilrev.v10n3.655>.

suspend his participation in the contestation of the general election in the year in accordance with the delicti of the criminal event. It is regarded as a grand solution to addressing the various problems related to alleged electoral crimes that are taking place in the community.

D. Conclusion

The first, the nature of Indonesia as a state of law as described in Article 1 Paragraph 3 and Article 27 Paragraph 1 in conjunction with Article 28 Paragraph 1 of the 1945 Constitution fundamentally regulates the legal certainty of a criminal offense or crime. Article 280 paragraph (1) letter d of Law Number 7/2017 on General Elections which regulates the prohibition of practicing General Election Crimes. Furthermore, Law Number 1 Year 2023 on the Criminal Code, Articles 242 and 243 on defamation can ensnare the perpetrators of defamation through the practice of Election Crimes. In addition, it can also be correlated with the Electronic Information and Transactions (ITE) Law. as an Enforcement and Protection Effort from Black Campaigns. Article 27 paragraph (3) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, states that anyone is prohibited from distributing, transmitting, making accessible electronic information and / or electronic documents containing insults and / or defamation. Internal regulations, namely KPU Regulation Number 15 of 2023, precisely in Article 1 Point 18, which mandates election organizers, especially the KPU to discipline each election participant to campaign wisely and sportingly.

The second, the problem of law enforcement against perpetrators of electoral crimes in Indonesia is not going well, due to the problems arising from aspects of substance, structure, and culture of the law of the Indonesian people who no longer adhere to the existing rules. So there's so much crime and crime in this country. Criminal action in the contestation of the Indonesian General Election is a phenomenon that is due to the culture of democracy in Indonesia that is immature in thinking and acting. Therefore, to date, neither the maximum execution of punishment, either administratively or criminally, has not gone as well as theoretically described.

The third, reconstruction of appropriate law enforcement can generally be explained that law enforcement against election crimes in Indonesia is not running properly. This problem is caused by the hostage of law enforcement interests oriented towards legal certainty and legal positivism with political interests alone (political conflict of interest). Therefore, a new breakthrough must be made as a solution to overcome the problem, namely the institutional strengthening of election organizers such as Bawaslu and the General Election Commission related to the authority to cancel the participation of election contestants for perpetrators of election crimes. If the success team, sympathizers, and election contestants commit election crimes, they must be held juridically accountable. In addition, a judicial

institution is needed to examine and decide cases related to election crimes. The strength of the decision is final and binding.

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