CRIMINAL ACTS HANDLING: THE CONCEPT OF CRIMINAL LAW REFORM

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Abstrak
Data shows that 24 cases in Central Sulawesi in 2019 were all sentenced to prison or imprisonment which is still the favorite type of sanction. How not, even 18 of the 24 cases did not need to serve a period of detention, but underwent various probationary periods, at least 1 month of probation and a maximum of 12 months. However, it needs to be realized that if the imposition of this criminal sanction does not need to be implemented, why should it impose sanctions in the form of conventional punishment, the answer is of course because the legality principle only gives room to the criminal, so it is necessary to have an alternative description of what the maker can use the law in formulating the sanctions for resolving election criminal acts as an effort to redesign the model for tackling election crime in Indonesia, particularly in the Central Sulawesi region. The issue in this research covers criminalization in case study election crimes in Central Sulawesi with the perspective of ius constitutum and alternative punishment in case study election crimes in central Sulawesi from the perspective of ius constituendum. The research method uses normative juridical research methods. The results achieved are that the type of Election Crime as an ius constitutum still uses the conventional system, so to achieve the ius constituendum it is necessary to modify the sanctions in the form of alternative types of sanctions that are more efficient, such as the cancellation sanction as a candidate for candidate in the election contest.

Kata Kunci: Election and Conventional; Redesign; Sanction

FOREWORD

The importance of elections in a democratic country, then elections need laws. In the context of elections, the norms are made aiming to make elections run free and fair or in Indonesian law known as Luber Jurdil (Direct, General, Free, Secret, Honest and Fair). To strengthen compliance with these norms, the Criminal Law imposes criminal sanctions such as imprisonment, imprisonment, fines and additional penalties. Several criminal norms that need to be obeyed in organizing elections. Among them, the prohibition on voting more than once, the prohibition on providing false
information, the prohibition on giving bribes to voters, the prohibition on committing violence in campaigns, the obligation to report campaign funds, the prohibition on involving state officials in the campaign, and so on. In the case of these types of prohibitions, legislators determine that the norm needs to be strengthened by criminal sanctions or sufficient by administrative witnesses or ethical sanctions. Referring to international regulations, the political process in elections must be protected from various election crimes, such as abuse of authority during campaigns, violence, money politics, campaign fraud, and so on.¹ In Central Sulawesi, for this matter, there are several cases of election crime, including the following²:

### Table 1.1 Decisions on Election Crime at the High Court Level 2019 in Central Sulawesi

<table>
<thead>
<tr>
<th>No</th>
<th>Offender</th>
<th>Location</th>
<th>No. Of Decisions</th>
<th>Election Crime</th>
<th>Sanction</th>
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<tbody>
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<td>135/Pid.Sus/2018/PT</td>
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<td>2</td>
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<td>137/Pid.Sus/2018/PAL</td>
<td>Pasal 520 UURI Nomor 7 tahun 2017 tentang Pemilu</td>
<td>Tidak Terbukti melakukan tindak pidana, putusan Bebas</td>
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<td>3</td>
<td>Daing Abd Majid</td>
<td>Kab. Bangga i Laut</td>
<td>130/Pid.Sus/2018/PAL</td>
<td>Pasal 520 UURI Nomor 7 tahun 2017 tentang Pemilu</td>
<td>Penjara 3 (tiga) Bulan, Denda Rp. 5.000.000 (Lima Juta rupiah), pidana penggant i denda 1 bulan Kurungan n</td>
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<td>4</td>
<td>Ihlas L Lapala</td>
<td>Kab. Bangga i Laut</td>
<td>131/Pid.Sus/2018/PAL</td>
<td>Pasal 520 UURI Nomor 7 tahun 2017 tentang Pemilu</td>
<td>Penjara 6 (enam) Bulan, Denda Rp. 2.000.00</td>
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<th>Pasal UURI Nomor</th>
<th>Tahun Pidana</th>
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<td>Pasal 520 UURI Nomor 7 tahun 2017 tentang Pemilu</td>
<td>Penjara 6 (enam) Bulan, Denda Rp. 2.000.000 (Dua Juta rupiah), pidana pengganti denda 1 bulan Kurungan (ket. Tidak perlu dijalani, masa percobaan 1 tahun)</td>
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<td>6</td>
<td>Periyanto Tanus</td>
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7 | Indrawati S | Kab. Bangga i Laut | 133/Pid.Sus /2018/PT PAL | Pasal 520 UURI Nomor 7 tahun 2017 tentang Pemilu | Penjara 6 (enam) Bulan, Denda Rp. 2.000.000 (Dua Juta rupiah), pidana pengganti denda 1 bulan Kurungan (ket. Tidak perlu dijalani, masa percobaan 1 tahun) |

8 | Frederik Mairi | Kota Palu | 14/Pid/2019/PT PAL | Pasal 521 jo Pasal 280 ayat (1) huruf h UURI Nomor 7 tahun 2017 tentang Pemilu | Penjara 4 (empat) Bulan, Denda Rp. 5.000.000 (Lima Juta rupiah), pidana pengganti denda 2 bulan |
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<th>Nomor Kasus</th>
<th>Nomor UURI</th>
<th>Pasal dan Ayat</th>
<th>Nomor UURI</th>
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<td>Hamsir BE</td>
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<td>Pasal 523 ayat (2) jo Pasal 278 ayat (2) UURI Nomor 7 tahun 2017 tentang Pemilu</td>
<td>Penjara 2 (dua) Bulan, Denda Rp. 5.000.00 (lima Juta rupiah), pidana penggant i denda 2 bulan penjara.</td>
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<td>1 bulan</td>
<td>untuk dijalani, masa percobaan 8 bulan</td>
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<td>Penjara 4 (empat) bulan, Denda 10.000.000 (sepuluh Juta rupiah), pidana penggant i denda 2 bulan, (ket. Tidak perlu dijalani, masa percobaan 8 bulan)</td>
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Seeing the characteristics of the judges in the table above, most of whom provide probationary sanctions and do not need to carry out imprisonment or imprisonment, illustrates that behind the norms made by lawmakers, the value towards the purpose of the punishment is not achieved. The judge gave criminal sanctions solely as legal certainty, but the value of the sanctions did not have any purpose so that the 18 cases mentioned above were only carried out as probationary penalties. This is a big problem, on the one hand the judges are stuck with the formal legality of criminal law and on the other hand, it is not necessary for a decision to have a changing impact on the handling of election crimes. Therefore, it is necessary to have alternative punishment. The redesign in this study was carried out in the concept of Straf Soort, Straf Maat, and Straf Modus of the Criminal System.

The ironic fact that occurs in its application, legislators are often hesitant to determine which norms need to be penalized and which only need to be subject to administrative sanctions. There are not a few norms which are actually sufficient with administrative sanctions, but are given criminal sanctions. If the use of criminal sanctions in the Election Law only follows the trend used by other laws, namely the inclusion of many criminal sanctions, it will certainly result in the existence of justice. Whereas the aim or philosophy of criminal threats is to reduce criminal disparities and is

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<th>No</th>
<th>Name</th>
<th>Kab.</th>
<th>No.</th>
<th>Pasal</th>
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<td>Kab. Toli-Toli</td>
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<td>3 (bulan) Bulan, Denda Rp. 10.000.000 (sepuluh Juta rupiah), pidana penggantian denda 1 bulan kurungan n. (ket. Tidak perlu dijalani, masa percobaan 6 bulan)</td>
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generally shown in criminal acts with heavy criminal sanctions. This is contrary to the hope of reducing the burden on the criminal justice system, reducing the excess occupants of correctional institutions, and reducing the stigmatizing impact of the criminal process.

It is also important to remember that for parties participating in the election process, especially candidates, very heavy sanctions are administrative sanctions such as cancellation of candidates. However, if they are threatened with criminal sanctions, of course they must aim to achieve certain goals (objective theory), such as deterrence. For example, additional sanctions in the form of revocation of suffrage (right to vote or right to vote) for a period of 5 or 10 years.

The use of appropriate criminal sanctions, the criminal law can play a role in protecting the democratic process, especially elections from various irregularities. Even so, the use of criminal sanctions must still be careful. Based on the aforementioned thoughts, this research raises the title of Election Crime Management through the Concept of Criminal Law Reform. This research is projected to be able to find an effective model in overcoming election crime as an effort to reform criminal law, so that in the future it is hoped that there will be an effective model in handling election crime.

METHODS

Referring to the title and problem formulation, this research uses empirical research methods, or according to Sudarto it can be categorized as normative juridical legal research in a broad sense, namely Sudarto in Barda Nawawi Arif, dividing the Normative Juridical method into two juridical meanings in meaning and method. Juridical in the broad sense. Juridical method in the narrow sense is the use of methods that only see the logical or anti-logical, or in other systematic ways, within the whole set of norms. In fact, what is seen is not only based on software alone, but also primarily seen from the importance of the social effect of ordering norms, (law), so that it is seen from the social background that this method can only be seen as less juridical, namely juridical. in a broad sense. The method used is to use a literature approach.

The source of data is where the data is obtained. Sources of data in normative legal research are only obtained from secondary data sources. Secondary data sources, namely data obtained from literature or literature that has something to do with the object of research.

DISCUSSION

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**The Election Crime handling through the Concept of Criminal Law Reform**

By using the term an election offense or criminal offense, it will be more specific, that is, only related to criminal acts that occur in the process of organizing the election. In a sense, the term election crime is intended for crimes that occur in or are related to the implementation of the electoral stages. The term election crime is the same term or is part of a criminal act in the criminal law regime. Another term for "criminal offense" is "straftbaarfeith" or delict.4

The factors that influence failure in law enforcement is due to obscure or unclear legal norms and administrators who lack integrity. The legal system includes the substance, structure, and legal culture, along with a description of each element, 3 namely first, the substance of the law is the rules, norms and patterns of human behavior within the system. The definition of substance is not only limited to written law, but also laws that live and apply in society; second, the legal structure is one that is institutionalized into cross-law, such as the first instance court, appeal and cassation, as well as an integrated criminal justice system; Third, legal culture is the attitudes and values related to law, which are related to legal behavior with the institution, both positive and negative.5 So on the basis of these provisions, the redesign of the electoral crime prevention model through the concept of criminal law reform. In addition, it is also necessary to pay attention to the effectiveness of the implementation of criminal sanctions.

1. **The effectiveness of conviction in the criminal act of case study elections in Central Sulawesi from the perspective of ius constitutum**

Regarding election crimes that occurred in Central Sulawesi, it was found that:

- Election criminal acts are always resolved through conventional sanctions, namely imprisonment, imprisonment and fines.

- Data shows that 24 cases in Central Sulawesi in 2019 were all sentenced to criminal imprisonment or confinement, even 18 of the 24 cases did not have to serve their terms of detention, but served varied lengths of probation, namely the lowest one month probation and the highest 12 months.

- The emergence of a trial sanction in which the imposition of sanctions shows that it is not implemented Sanctions are considered very low and even provide

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opportunities for the same crimes to be committed by other individuals.

- If you look at the characteristics of judges in the table above, most of whom give probationary sanctions and do not need to carry out imprisonment or imprisonment, it illustrates that behind the norms made by lawmakers, the value towards the purpose of punishment is not achieved. The judge gave criminal sanctions solely as legal certainty, but the value of the sanctions had no purpose so that the 18 cases mentioned above were only carried out as probationary penalties. This is a big problem, on the one hand the judges are stuck with the formal legality of criminal law and on the other hand, it is not necessary for a decision to have a changing impact on the handling of election crimes. Therefore, it is necessary to have alternative punishment

The data shown based on the results of the research is that the election punishment is less than optimal as a consequence of the offense committed. Long process that went through in.

2. **Alternative punishment in criminal case study election in Central Sulawesi, ius constitutendum perspective**

The most important part of the Criminal Code of a nation is the criminal system, because the criminal system will reflect the socio-cultural values of the nation. Imprisonment is one type of crime (strafsoort) in the criminal system of every Criminal Code in countries in the world today, although this type of crime has been criticized by many experts because of questioning its usefulness and effectiveness in tackling crime.\(^6\)

Criticism of imprisonment is also related to the negative consequences arising from the implementation of the crime in which apart from the deprivation of liberty there are also negative consequences in the form of: deprivation of normal sexual life which results in deviant sexual behavior in the form of homosexuality, masturbation and masturbation, deprivation of the convict's business life which results in for the socio-economic life of prisoners, the occurrence of an evil stamp for the prisoner after he / she has finished serving the sentence will complicate the interaction of the person concerned with the community, as well as the degradation and decrease in the degree of human dignity due to his life experience while in prison. The different treatment of white collar crime convicts who receive a "luxurious" place with perfect facilities, compared to "blue collar crime" convicts with what they are, with a narrow and crowded place,
causing imprisonment to become a controversial type of crime.\textsuperscript{7}

Alternative Criminalization in Election Crime Case Studies in Central Sulawesi Perspective of Ius Constituendum:
- If the probation punishment is still imposed by the judge on the perpetrators of election violations, the punishment imposed needs to be accompanied by non-corporal punishment, for example social sanctions.

The Chart of Alternative Models of Election Crime Criminalization

Based on the chart above, the alternative models for election crimes offered in this study include:

1. **Strafsoort:** Social sanction type of criminal sanction, where the type of sanction focuses more on the purpose of punishment and provides a social deterrent effect.

2. **Strafmodus:** It is necessary to have guidelines in the implementation of non-criminal social sanctions. Because the types of criminal acts of social sanctions in general have not been regulated in the general provisions of criminal law, by him

\textsuperscript{7} Ibid.

\textsuperscript{8} Ibid.
specifically if this sanction is applied it is necessary to pay attention to the guidelines for its implementation.  

3. Strafmaat: The duration of the sentence must be regulated, because in general the rules in Indonesia regarding sanctions are only the maximum general, this applies to all types of sanctions, therefore there needs to be a special minimum rule made, to avoid disparities in criminal law. In the election law this has been in effect, where the criminal provisions provide limits on the duration of the sentence starting from the minimum limit to the maximum limit. For example in Article 187 A of the Election Law Number 10 of 2016 concerning SECOND AMENDMENT TO LAW NUMBER 1 OF 2015 CONCERNING THE ESTABLISHMENT OF GOVERNMENT REGULATIONS IN LAW NUMBER 1 OF 2014 CONCERNING ELECTION OF GOVERNORS, REGENTS AND MAYORS TO BE LAWS state that:

Article 187A (1): Every person who deliberately commits an act against the law promises or gives money or other materials as a reward to Indonesian citizens either directly or indirectly to influence voters not to exercise their right to vote, uses their right to vote in a certain way so that Voting becomes invalid, electing a certain candidate, or not selecting a certain candidate as referred to in Article 73 paragraph (4) shall be punished with imprisonment of at least 36 (thirty six) months and a maximum of 72 (seventy two) months and a fine of at least IDR 200,000,000.00 (two hundred million rupiah) and a maximum of IDR 1,000,000,000.00 (one billion rupiah).

The existence of the shortest and longest provision is a positive pattern to be followed by the election law. Because this provision will reduce disparity in criminal sanctions.

CLOSING

Conclusion

1. Types of Election Crime based on ius constitutum still use the conventional system, so the use of prison sanctions is still a favorite. Even at the sentencing stage, most criminal sanctions are probationary in nature.

2. For the ius constituendum, it is necessary to modify the sanctions from corporal phunisment to non-corporal phunisment where there is a need for changes both in terms of strafsoort, strafmaat, and strafmodus.

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**Recommendation**

1. There needs to be a redesign of the Electoral Regulations.

**REFERENCE**


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