

CONFORMITY OF LEGAL SUBSTANCE OF THE ELECTION LAW, GENERAL ELECTION CRIMES, AND THE PRINCIPLES OF CONDUCTING ELECTIONS IN INDONESIA

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Abstract

This study aims to analyze and evaluate the legal substance of legislative election crimes in Indonesia that has accommodated the principles of direct, general, free, secret, honest, and fair based on the 1945 Constitution, to analyze and evaluate the implementation of law enforcement on legislative election crimes in Indonesia in realizing elections direct, public, free, secret, honest and fair in Indonesia, to understand and analyze the ideal concept of upholding the law on criminal acts on legislative general elections in Indonesia in realizing optimal law enforcement on criminal acts on legislative general elections. This type of research is Socio-Legal research, using statutory and conceptual approaches. Research data collected through interviews, literature, and documentation were then analyzed qualitatively. This research shows the results that the legal substance of Law No. 7 Year 2017 concerning Elections which regulates legislative election crimes is incomplete/inadequate so that it has not fully accommodated the principles of holding elections, especially general and fair principles, in addition to the light threat of criminal sanctions regulated so that they cannot have an effective deterrent for violators of legislative election crime provisions, does not create a sense of justice, and does not reflect equality before the law.

Keywords: Legal Substance; Election Crimes, Implementation of Legislative Elections

INTRODUCTION

Democracy is a form of government by the people.¹ The concept of popular sovereignty places supreme power in the hands of the people. Based on Pancasila, the goal of the Republic of Indonesia is to form a just and prosperous society. The State of Indonesia is a constitutional state with the characteristics of a modern state based on people's sovereignty. General elections are a form of people's political participation in a democratic country, so the honesty and fairness of the implementation of general elections will reflect the quality of democracy. The function of law as a tool of social engineering.² Political participation is an activity of civil society (private citizens) which aims to influence decision-making by the government.³ Elections are considered as one of the political institutions that most often shape the political landscape in democratic dynamics and have more variants than other political institutions.⁴ General election is one way to elect representatives of the people.⁵ Election law originates from the 1945 Constitution of the Republic of Indonesia and Pancasila.⁶ General elections in Indonesia as one of the efforts to realize a democratic country must be carried out properly in order to create general elections that are professional and have the credibility that can be accounted for. The

1945 Constitution of the Republic of Indonesia Article 1 Paragraph (2) and Paragraph (3) stipulate that (2) Sovereignty is in the hands of the people and implemented according to the Constitution (3) Indonesia is a state based on law. The consequence of these provisions is the implementation of the concept of people's sovereignty and the concept of a rule of law, while the concept of people's sovereignty means that the state places supreme power in the hands of the people which is carried out according to the Constitution and the concept of a rule of law, namely the administration of the state based on law. Thus, the main and proper source of law which is the basis of elections in Indonesia is democratic values led by wisdom in deliberations/representations, because Pancasila is also the source of all sources of law,⁷ as well as a legal principle in Indonesia, including election law.⁸

The model of harmonization of political party law and election law to create quality elections and an effective presidential government system is carried out by selecting the Tinkering Harmonization model, namely harmonization of law through optimizing the application of existing laws with several adjustments, taking into account efficiency.⁹ In Indonesia, until today there are several general elections, such as the General Election to The House of Representatives (Dewan Perwakilan Rakyat/DPR), Regional People's Representative Assembly (Dewan Perwakilan Rakyat Daerah/DPRD).¹⁰ In the conception of a rule-of-law state, the power to run or organize government must be based on the rule of law or the supremacy of law with the main objective being to realize legal order in the administration of government. For the existence of legal order in the government, then in a rule of law there is a principle of legality, this principle of legality in the field of criminal law is reflected in the provisions of the Criminal Code Article 1 Paragraph (1) stipulating that an act cannot be punished, unless it is based on the strength of the provisions of the criminal law that already exists. As for ensuring the attainment of national goals and objectives as set forth in the Preamble to the 1945 Constitution of the Republic of Indonesia, it is necessary to hold general elections to elect members of the People's Representative Council, members of the Regional Representative Council, President, and Vice President, and to elect members of the Representative Council. Regional People, as a means of realizing people's sovereignty to produce people's representatives and a democratic state government based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

The scope of Election Crimes is very broad in scope, covering all Crimes that occur in the process of holding Elections, including those related to voter lists, campaigns, voting, re-voting, up to the results of the vote tally, regulated in the provisions of General Election Crimes in Law No. 7 Year 2017 concerning General Elections. Based on this, the problem that will be discussed in this paper is the extent to which the legal substance governing the criminal act of legislative general elections in Indonesia is in accordance with the general and fair principles based on the 1945 Constitution.

METHOD

This type of research is socio-legal research¹¹, In addition to researching legal substance, legal norms, and legal principles, it also examines implementation in the field, especially those

related to what is carried out by election officials, such as the General Elections Commission (Komisi Pemilihan Umum/KPU) and its staff, Bawaslu, which includes Integrated Law Enforcement (Penegakan Hukum Terpadu/Gakkumdu) and staff as a party according to the prospective researcher has in-depth knowledge of the problem to be studied, through interviews with questionnaires. Thus this research focuses on the substance of the law and the application of law in the context of its reality in society. The approach used in this research is the statutory regulation approach¹² and the conceptual approach.¹³ In the following, it is stated that according to the theory of the legal system from Friedman, the legal system consists of 3 components, namely consisting of legal substance, legal institutions/apparatus, and legal culture. This section examines legal substance, institutions/apparatus, and legal culture. Research data collected through interviews, literature, and documentation were then analyzed qualitatively.¹⁴

RESULTS AND DISCUSSION

Redbruch, in his thesis talks about the ideals of law (*idea des recht*) which are embodied in three basic values (*grundwerten*), namely justice, benefit, and legal certainty. The reality is that the three basic values are not always in a harmonious relationship with each other, but are opposite each other, contradicting each other.¹⁵ According to Radbruch in Satjipto Rahardjo's book that law is required to fulfill three basic values of law, these three basic values are justice, usability, and legal certainty.¹⁶ Bruggink further defines law as a "conceptual system of legal rules and legal decisions" (*rechtsbeslissingen*), with Bruggink's "system" indicating again that the term refers to "an interrelated whole. In the sense of a "conceptual" system. Therefore the conceptual system is an "image" (*Ontwerp*), which is part of human spiritual life (*geestesleven*). However, the system can be made visually visible by means of language statements or language expressions (*taaluitingen*).¹⁷

The principle of law is the heart of law, which is the spirit and concretization of the point of view of society which contains a philosophy of life and contains human wisdom and how to live together with humans, which was formulated in the opening of the 1945 Constitution of the Republic of Indonesia in articles.¹⁸ Paton in Satjipto Rahardjo¹⁹ argues that the legal principle is the broadest basis for the birth of a legal regulation. Means that the legal regulations can eventually be returned to these principles. The legal principle can also be referred to as the reason for the birth of legal regulations or the *ratio legis* of legal regulations. The legal principle will not exhaust its power by giving birth to a regulation, but will still exist and will give birth to further regulations.

The legal order below must originate from the legal order above which is based on the legal hierarchy.²⁰ The regulation of election processions must not conflict with higher legal regulations which also function as legal principles.²¹ If it turns out to be contradictory, the source of law under it must be defeated.²² Legal principles, Paton in Satjipto Rahardjo²³ call it a means that makes the law live, grow and develop and he also grows that the law is not just a collection of regulations. This is because the legal principle contains values and ethical demands.

Legal norms exist in legal regulations in this case statutory regulations as stated by D. W. P. Ruiter in Hamid Attamimi²⁴ that laws and regulations contain 3 (three) elements, namely:

- a) Legals norm
- b) apply out
- c) Generally applicable in a broad sense

Legal norms are most visible in the form of orders and prohibitions, therefore to find out whether there are legal norms or not, orders and prohibitions can be used as a measure. Furthermore, Zevenbergen in Satjipto Rahardjo²⁵ In terminology, legal norms contain 2 (two) things, namely:

- a) Assessment benchmark
- b) Behavior benchmark

The standard for evaluation as referred to above is the law of assessing people's lives, namely by stating what is considered good and what is not good. From this assessment, instructions can then be generated about which behaviors or actions are included in the category that must be carried out and which must be abandoned.

Jazim Hamidi stated that in the field of legal knowledge related to making laws and implementing them, the source of law is something that must be understood, analyzed and generated problems and solutions so that it is hoped that there will be harmony with the development of law needed by the people.²⁶ Based on the various expert opinions mentioned above, it can be stated that the essence of law enforcement is an effort/process of enforcing legal principles contained in statutory regulations, while the nature of law itself is legal principles which contain values. and ethical demands.

The law that will be upheld here is in the form of statutory regulations, including the 1945 Constitution of the Republic of Indonesia concerning general elections, Law No. 7 Year 2017 concerning General Elections. In accordance with the meaning of the word nature mentioned above, namely the essence or core of something, the essence of law, in this case statutory regulations, are legal norms/legal principles, while law is born from legal principles, which contain values.

The constitution that applies in various countries, including in Indonesia, is the Constitution.²⁷The essence of laws and regulations are the values that are in and behind the laws and regulations regarding legislative elections in the framework of realizing legislative elections based on a democratic rule of law. Based on this, the intended values are the value of justice, the value of benefits and the value of legal certainty.

The law that will be upheld here is in the form of statutory regulations, among others, the 1945 Constitution of the Republic of Indonesia concerning General Elections Article 22E of the 1945 Constitution of the Republic of Indonesia confirms that:

“Pemilihan umum dilaksanakan secara langsung, umum, bebas, rahasia, jujur, dan adil setiap lima tahun sekali. dan ayat (6) Ketentuan lebih lanjut tentang pemilihan umum diatur dengan undang-undang” (General elections are held directly, publicly, freely, secretly, honestly and fairly every five years. and paragraph (6) Further provisions regarding general elections shall be regulated by law).

Based on the above provisions, Law Number 7 Year 2017 concerning General Elections was issued, in Article 2 of Law No. 7 Year 2017, which stipulates that elections are held based on the principles of direct, public, free, confidential, honest, and fair. In accordance with the meaning of the word essence mentioned above, namely the essence or core of something, the essence of law, in this case, statutory regulations, are legal norms/legal principles, while the law is born from legal principles, which contain values. . The essence of statutory regulations is the legal principles contained in and behind the statutory regulations regarding legislative elections in the context of realizing legislative elections in a democratic rule of law.

Justice Theory

Aristoteles in Purnadi Purbacaraka²⁸, that justice consists of Distributive justice (giving parts) and Corrective (making improvements) or often called Commutative, namely:

- a) Distributive justice regulates the distribution of goods and awards to each person according to their position in society and requires equal treatment for those who are legally equal.
- b) Corrective Justice is primarily a measure of the technical principles governing the administration of law (law enforcement). In regulating legal relations, it is necessary to find a general standard for dealing with the consequences of an act, regardless of who the person is and whose intention must be assessed according to an objective measure. Punishment must correct the crime, compensation must correct civil errors/irregularities, and returns must correct the profits obtained unreasonably.

Furthermore, the theory of justice from John Rawls, that the main goal for building his theory is to present the concept of justice which generalizes and elevates the social contract theory expressed by Locke, Rousseau, and Kant to a higher level of abstraction. To do this would not regard the social contract as the only way to understand certain societies or to establish certain forms of government. However, the notion that characterizes it is that the principles of justice for the basic structure of society are the goal of the convention.²⁹

As the principle mentioned above appears to be a fair deal on the basis of which those who are wealthier, or more fortunate in their social conditions, who cannot be called deserving of it, can expect the cooperation of others when some scheme is a necessary condition.³⁰ Theoretically, as stated by John Rawls in the theory of justice, dividing justice into two principles, namely the first principle is known as the principle of equal liberty, such as political independence, freedom of opinion, and expression, as well as freedom of religion. While the principle of the two parts (a) is called the principle of difference and in part (b) is called the principle of equal opportunity (equal opportunity principle).³¹

By paying attention to the theory of justice mentioned above, therefore justice must bring positive values in realizing law enforcement against legislative election crimes to be used as a benchmark/reference in determining the direction in carrying out a democratic government system in Indonesia both now and in the future.

Legal System Theory

According to Friedman, the legal system is a system that includes substance, structure, and legal culture. He further explained that these components determine the functioning of a legal system as follows:³²

“The structure of a system is its skeletal framework; it is the permanent shape, the institutional body of the system, the tough, rigid bones that keep the process flowing within bounds. We describe the structure of a judicial system when we talk about the number of judges, the jurisdiction of courts, how higher courts are stacked on top of lower courts, what persons are attached to various courts, and what their roles consist of. The substance is composed of substantive rules and rules about how institutions should behave. Legal culture is the element of social attitude and value. Legal culture refers, to those parts of general culture – custom, opinions, ways of doing and thinking – that bend social forces toward or away from the law and in particular ways.”

The structural component includes various institutions created by the legal system to support the functioning of the legal system, which is the framework of the system itself. As with institutional organization, boundaries of authority and coordination between institutions. Starting from the concept of structural components, it is possible to see how the legal system provides services. If it is related to the law enforcement of legislative general election crimes, then the authority of legislators (in this case the DPR together with the President at the central government level, while the DPRD together with regional heads at the regional level) must really use their authority appropriately so that law enforcement can be effective, namely obeyed by people whose behavior is the target of regulation. Likewise, the implementing apparatus in this case the attached Bawaslu (Gakkumdu), Police and Prosecutors, act to carry out law enforcement as stipulated in Law No. 7 Year 2017 and PerBawaslu No. 31 Year 2018 concerning the integrated law enforcement center (Gakkumdu), so that the legal regulations are effective, thus the criminal process for legislative elections is in accordance with the structure of the legal system itself.

The substance component includes legal norms/legal rules in the form of statutory regulations, which means that the substance component is the result of the legal system. This substance concerns legal norms/rules that apply to certain problems, and patterns of behavior expected of role holders, including the methods and processes that must be met to obtain services from the institution. The legal culture component as stated by Friedman, that the legal culture provides fuel for the motor of justice, which includes all the factors that determine how the legal system obtains its logical place within the cultural framework belonging to the community. Components of legal culture can be interpreted as attitudes and values that are related to law and the legal system, namely attitudes, and values that have a positive or negative influence on

behavior related to law.³³

If it is related to the law enforcement of legislative general election crimes, then this component is meant to be the views/perceptions of the public, especially the implementing apparatus/law enforcement officers of legislative general election crimes.

Legal culture according to the opinion of Friedman³⁴ is the human attitude towards law and the legal system, in other words, it is the social mood and social forces that determine how the law is used, avoided, or misused. There are attitudes and opinions about the law as well as values and attitudes toward the law.

The system is bound by something so that the system is interrelated with one another, remaining consistent as a unit. For this reason, the theory of hierarchy of norms or the theory of legal degrees from Hans Kelsen in Maria Farida is relevant,³⁵ The norms are tiered and layered in a hierarchical arrangement, where the lower norms apply, originate, and are based on even higher norms, and so on until finally this 'regresses' stops at a higher norm which is called the basic norm. (grundnorm) which cannot be traced back to who formed it or where it came from.

Based on Hans Kelsen's theory mentioned above, the 1945 Constitution is the highest norm in the Republic of Indonesia, which is the binder of all applicable legal regulations because all laws must be based on and sourced from the 1945 Constitution of the Republic of Indonesia.

The making of laws which are carried out based on the 1945 Constitution of the Republic of Indonesia as a result of the first to fourth amendments, has placed the DPR RI as the legislative body responsible for making laws with the president. The placement of the tasks and authority to make laws in the legislature is part of the implementation of the trias politica which originates from Montesquieu's reflections. Forming laws and regulations must be carried out based on the principles in Article 5 paragraphs (1) and (2) of Law no. 12 of 2011.

Election Crime Legal Norms

As for the legal norms governing Election Crimes, it is contained in Law No. 7 Year 2017 concerning general elections. Specifically in this study, the authors focused on provisions in terms of substance regarding legislative election crimes regulated in Articles 499, 531, 510, 549, and 515.

Several provisions in General Election Commission Regulations (Peraturan Komisi Pemilihan Umum/PKPU) No. 9 Year 2019 concerning changes to PKPU No. 3 Year 2019 concerning Voting and Counting of Votes in General Elections, several provisions of PKPU No. 9 of 2019 are associated with several provisions of Law No. 7 Year 2017 above, namely that voters use their right to vote directly contained in Article 4 to Article 9

If the substance of the provisions in Law no. 7 of 2017 above is analyzed in terms of the possibility of a voter/owner of voting rights, there is confiscation of ballots that will be punched or those that have already been punched in TPS, so that the ballots are not put in the ballot box, and/or replaced with other ballots, and/or plugged in by someone else, it has no settings. So according to the author, there is a vacuum in the legal arrangements in the matter that has been

described. In other words, there is a regulatory vacuum in the substance of the law/legal norms. Likewise, with the substance in PKPU provisions No. 9 of 2019, there is a possibility that prospective voters do not use their votes directly because voters who are not registered in the DPT and DPTb as referred to in Article 6 letter c exercise their voting rights by showing their e-KTP to the KTPS at the time of voting, (Article 9 paragraph (1), may exercise their right to vote if ballot papers are still available as stipulated in Article 6 paragraph (5).

Thus, the provisions of Article 6 paragraph (1) Jo. Article 6 paragraph (5) provides restrictions on voters simply because ballot papers are no longer available, which should not be a barrier for voter owners to directly vote on election day at TPS, simply because of a shortage of ballots that can be prepared by KPS in various ways before the election takes place.

Elections are the implementation of democracy in Indonesia, as well as state legal politics in an effort to get an effective leadership relay.³⁶With elections, people's human rights can be channeled, as well as the right to equality before the law and government.³⁷The existence of these restrictions is a weakness in the regulation of the legal substance of PKPU No. 9 Year 2019 concerning changes to PKPU No. 3 Year 2019 concerning Voting and Vote Counting in General Elections. If the provisions in Article 510 are analyzed, it is stated that deliberately causing another person to lose their right to vote is punishable by a grammatical interpretation, the word deliberately causing it indicates that a person can use various means, both violent and non-violent, which in the end causes another person to lose his right to vote. Likewise, the provisions of Article 511 mentioned above namely the use of violence or threats of violence or the use of power during voter registration prevent someone from being registered as a voter in an election. So in essence an action that causes other people to lose their right to vote.

Whereas Article 512 mentioned above, namely Every member of KPU, Provincial KPU, Regency/City KPU, PPK, PPS, and/or PPLN who does not follow up on the findings of Bawaslu, Provincial Bawaslu, Regency/City Bawaslu, Sub-district Panwaslu, Kelurahan/Village Panwaslu, and /or Panwaslu LN in updating voter data, compiling and announcing temporary voter lists, repairing and announcing temporary voter lists resulting from improvements, determining and announcing fixed voter lists, additional voter lists, special voter lists, and/or recapitulation of permanent voter lists that are detrimental Indonesian citizens who have the right to vote as referred to in Article 220 paragraph (2).

Thus Article 511 and Article 512 mentioned above relating to the act of preventing someone from being registered as a voter in an election also includes updating the voter list.

Apart from being regulated in Articles 510, 511, and 512 of Law no. 7 of 2017 followed up with PKPU No. 9 of 2019 concerning changes to PKPU No. 3 of 2019 concerning Voting and Vote Counting in General Elections, as stipulated in the provisions of Articles 1, 6, 7, 8 and 9. From the provisions of Articles 510, 511, and 512 of Law no. 7 of 2017 and PKPU No.9 of 2019 Articles 1, 6, 7, 8, and 9, it can be seen that a person can exercise his right to vote if he is 17 years old or called a voter is an Indonesian citizen who is already 17 (seventeen) years or more, are married, or have been married before, and are not prevented from exercising their right to vote and are registered in the voter list or not registered with certain conditions,

including being able to vote if ballot papers are still available as stipulated in Article 9 paragraph (5).

The provisions of Article 9 paragraph (5) can cause a person not to vote because of the unavailability of ballot papers, which in the regulations does not provide space for Polling Station officers (Tempat Pemungutan Suara/TPS) in a certain way to deal with when there are not enough ballots available. Thus, this general election may not materialize in the end due to the problem of a shortage of ballots at TPS where the right to vote for someone who has the right to vote is not registered on the voter list. Thus, there is a weakness in the regulation related to the implementation of general elections, which is no longer general in nature, because of the things mentioned above.

Based on the analysis of the articles mentioned above, using the theories mentioned earlier, namely the theory of the legal system from L. M. Friedman, that the legal system consists of 3 (three) components as cited in the Literature review chapter, namely consisting of legal substance, legal institutions apparatus, and legal culture. This section, according to the title, will examine legal substance/legal norms in addition to institutions/apparatus and legal culture. The theory of law enforcement and effectiveness put forward by Soerjono Soekanto When he explained legal factors, by stating that were the existing regulations regarding the field of law were sufficient? According to Ruiter that the regulation must be general in nature, in the sense that it must not mention who the subject is, meaning it must apply generally to anyone. So in essence the following:

1. In several articles, the provisions specifically regarding the subject are formulated in a limitative manner, namely by mentioning the election campaign organizers and team, so that campaign participants and other people are not included in it. This is contrary to the formulation of legal norms in statutory regulations as stated by D.W.P. Ruiter, as mentioned in the theoretical basis section, which includes that the provisions of the laws and regulations are general-abstract in a broad sense. General is related to the subject, namely anyone/everyone, while abstract refers to objects that are both abstract and concrete.
2. Aspects that are general in nature, are also not fulfilled as the articles in the provisions of Law no. 17 of 2017 and its implementing regulations, specifically those governing voting techniques for voters who arrive late at TPS while those concerned do not have an ID card, but they are allowed to vote according to the provisions as long as the ballot papers are still available/available. This last stipulation is that if ballots are still available/there are still ballots, it may happen that the ballots have run out, then the person concerned cannot exercise his right to vote. According to the author, such a provision constitutes a violation of elections that are general in nature because they are limited only to the unavailability/insufficient ballot papers.
3. The sanctions contained in several articles that have been analyzed are the low threat of criminal sanctions so that in theory criminal law cannot provide a deterrent effect. So that in terms of the theory of criminal law enforcement/criminal imposition, it cannot

achieve the objectives of criminal law theory/imposition of criminal sanctions cannot cause a deterrent effect, while the deterrent effect is one of the objectives of imposing criminal sanctions.

General and Fair Principles

General Principles and Fair Principles are the principles of holding elections, including legislative elections based on Law no. 7 Year 2017 concerning General Elections. In analyzing these principles, Van Der Viles' theory of legal principles is used, including the principle of equal treatment in law, besides that, Aristotle's theory of justice, especially the theory of cumulative justice. Based on the results of the analysis of whether the legal regulations are sufficient as described above, what will be analyzed from the point of view of the principles are general and fair principles, on the grounds that these two principles from the perspective of the adequacy of regulations are problematic when linked to the principles of holding elections, while the principles of other principles are seen as tolerable in terms of legal principles.

a) General

In general, basically, all citizens who meet the minimum age requirements, namely 17 (seventeen) years old or have/have been married, have the right to vote in general elections. Citizens who are 21 (twenty-one) years old have the right to vote and be elected.

Elections are a way or means to find out the will of the people regarding the direction and policies of the state. It can also be said that the implementation of elections is the implementation of the real system of implementing democracy.³⁸ Elections that are general in nature mean guaranteeing opportunities that apply in its entirety to all citizens who have met certain requirements without discrimination (exceptions) based on references to ethnicity, religion, race, class, gender, regionality, and social status. Likewise, if it is associated with several provisions of Law No. 7 Year 2017 and PKPU No. 9 Year 2019 concerning Voting and Vote Counting.

In the political system, elections have a meaning as a means of connecting the political infrastructure and the political superstructure, thus enabling the creation of government by and for the people.³⁹ Provisions of Articles 510, 511, and 512 of Law no. 7 of 2017 and PKPU No. 9 of 2019 Article 9, it can be seen that a person can exercise his right to vote if he is 17 years old or is called a voter is an Indonesian citizen who is 17 (seventeen) years of age or more, is married, or has been married, and is not hindered exercise their right to vote and are registered in the voter list or not registered with certain conditions, among others being able to vote if ballot papers are still available as stipulated in Article 9 paragraph (5). The provisions of Article 9 paragraph (5) can cause a person not to vote because of the unavailability of ballot papers, which in the regulations does not provide space for TPS officials in a certain way to deal with when there are not enough ballots available. Thus, this general election may not materialize in the end due to the problem of a shortage of ballots at TPS where the right to vote for someone who has the right to vote is not registered on the voter list. Thus, there is a weakness in the regulation related to the implementation of general elections, which is no longer general in nature because of the above.

The state of the regulation in Law No. 7 Year 2017 and PKPU No. 9 of 2019 in terms of general principles has deviated because someone who has the right to vote due to a shortage of ballot papers cannot use his right to vote. This also means that general principles in the administration of elections have not been fully accommodated in legal substance, namely in Law no. 7 of 2017 jo PKPU No. 9 of 2019.

b) Fair

This principle of justice and the theory of justice from Aristotle, as well as theories of punishment, will be used as a reference for analyzing the legal material/substance of several provisions of Law No. 7 Year 2017.

Regarding Article 284 above, there are 3 possible subjects who should be prohibited from promising or giving money or other materials as compensation to election campaign participants, namely:

1. Campaign Participants
2. Other people who are not included in the campaign participants, not included in the campaign implementers, and also not included in the campaign team
3. Candidates for members of the House of Representatives (Dewan Perwakilan Rakyat/DPR) and Regional Representative Council (Dewan Perwakilan Daerah/DPD).

There are 3 (three) parties who can commit a crime but are not strictly regulated, in other words, the regulation is limited (not general in nature), for example in the words of whoever. Such an arrangement is not in accordance with Aristotle's theory of commutative justice, which in essence is that everyone has the same position regardless of who the person is. That means the three subjects who are not regulated should also be regulated/penalized if they violate it like the other people who were threatened above. Thus, everyone gets the same treatment in the same circumstances, otherwise, everyone gets different treatment under different circumstances. However, the three subjects above have the same situation as the campaign team and campaign executors, because what is prohibited by law is promising or giving something, while the three subjects that are not regulated can give and promise something that is prohibited by law. Which also means that the subject has the same conditions that should receive the same treatment. Based on the description above, the legal substance regulated in Article 280 of Law No. 7 Year 2017 contradicts the principle of fairness both in terms of theory and in terms of principles. For example, the principles that have been violated are the principle of not getting equal treatment (the three subjects did not get the same treatment as the campaign team and campaign implementers).

Regarding Article 280, there are two legal subjects that are not regulated in that article, namely:

1. Candidates for Members of the DPR/DPRD/DPD
2. Other people

There are 2 (two) parties who can commit a crime, but it is not strictly regulated, in other words, the regulation is limited (not general in nature), for example, in the words of whoever. Such an arrangement is not in accordance with Aristotle's theory of commutative justice, which in

essence is that everyone has the same position regardless of who the person is. That means the two subjects who are not regulated should also be regulated/penalized if he violates the same as the other people who have threatened above. Thus, everyone gets the same treatment in the same circumstances, otherwise, everyone gets different treatment under different circumstances. However, the two subjects mentioned above have the same situation as the campaign team and campaign executor, because what is prohibited by law is promising or giving something, while the two subjects that are not regulated can give and promise something that is prohibited by law. Which also means that the subject has the same conditions that should receive the same treatment.

Based on the description above, the legal substance regulated in Article 280 of Law No. 7 Year 2017 contradicts the principle of fairness both in terms of theory and in terms of principles. An example of the principles that were violated, namely the principle of not getting equal treatment (the three subjects did not get the same treatment as the campaign team and campaign implementers).

It is stipulated in Article 493 in the form of imprisonment for a maximum of 1 (one) year when viewed from the criminal law, this regulation is too light on the threat of sanctions, this can be compared to theft whose penalty is regulated in the Criminal Code Article 362 which carries a maximum penalty of five years. Theft is taking the property of another person which means harming another person while promising or giving something to someone else chooses a certain candidate basically harming other people who are in accordance with what will be chosen based on that person's conscience but because there is a promise or gift than the other person not selected. However, the loss is not as real as theft but the aspects of the loss are essentially the same, so the threat of 1 (one) year in prison is not worth the act he committed. In other words, it does not fulfill the condition that in the same circumstances the same legal treatment will be received, and different conditions will receive different treatment.

In addition, in Article 524 the threat of imprisonment for a maximum of 2 (two) years in paragraph (1) and 1 (one) year and 6 (six) months in paragraph (2) is compared to the criminal threat in Article 535 which should be the same as the penalty of 4 (four) years considering that the actions are similar. Judging from the theory of criminal law, this rule carries too light a penalty, so from the theory of imposing criminal sanctions, the penalty given cannot create a deterrent effect because it is too light compared to the actions and effects they cause. From the above analysis of the principle of fairness, it can be seen that provisions as legal material/legal substance of Law No. 7 Year 2017 contradict the principle of fairness as one of the principles in organizing legislative general elections.

CONCLUSION

The legal substance governing legislative election crimes in Indonesia has not fully accommodated the direct, general, free, confidential, honest and fair principles based on the 1945 Constitution. This reflects from the substance/material of Law No. 7 Year 2017 concerning Elections where the legal norms in the substance/material of the regulations are inadequate/incomplete, so they have not fully accommodated them, especially as general and

fair. In addition, the threat of criminal sanctions that are regulated is too light so that they cannot create a deterrent effect for violators of the legislative election crime provisions, do not fulfill the community's sense of justice, and do not reflect equality before the law, namely that in the same circumstances they receive legal treatment. The same one. So that it is necessary to amend regulations that are sufficient/complete in material to accommodate the principles of holding elections, namely the principles of direct, general, free, confidential, honest, and fair so that the realization of legislative elections that implement the direct principle of general, free, honest and fair.

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