

Legal Review Of The Criminal Act Of Participating In Changing The Recapitulation Of Votes In The Election (Decision Study Number: 523/Pid.Sus/2019/Pn.Ckr)

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Abstract

General elections are a fundamental pillar of democracy, ensuring the sovereignty of the people through fair and honest electoral processes. The integrity of vote recapitulation is crucial for democratic elections, yet it remains susceptible to fraud and manipulation, undermining public trust and electoral legitimacy. This study examines the application of material criminal law and judicial considerations in Decision Number 523/Pid.Sus/2019/PN.Ckr, a case involving negligence resulting in alterations to vote recapitulation minutes. The research highlights the legal framework, including the sanctions under Law Number 7 of 2017, and explores the challenges in law enforcement due to the complexities of election crimes. Through analysis of the case, the study emphasizes the importance of accountability and consistent enforcement to safeguard electoral integrity and deter future violations.

Keywords :

General elections, vote recapitulation, electoral crime, legal review, judicial considerations

I. Introduction

General Election (Pemilu) is one of the pillars of democracy that is very important as a manifestation of people's sovereignty in a democratic system. Through the Election, the people have the right to elect their leaders and representatives directly, generally, freely, secretly, honestly and fairly. As mandated in Article 22E paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that "General elections are carried out directly, generally, freely, secretly, honestly and fairly every five years." These principles are the fundamental foundation in the implementation of democratic elections (Asshiddiqie, 2015).

In the implementation of the Election, the vote recapitulation stage is a crucial phase that determines the final results of the entire election process. This stage is very vulnerable to various forms of fraud and manipulation that can harm the principles of honest and fair elections. The act of changing the vote recapitulation unlawfully is a form of serious violation that not only violates criminal provisions of the Election, but also threatens the legitimacy of the Election results and public trust in the democratic process (Santoso, 2017).

Election crimes, especially those related to changes in vote recapitulation results, often involve more than one perpetrator who participates in its implementation. The perpetrators can consist

of various parties, ranging from election organizers, candidate success teams, to other parties who have certain interests. The involvement of various parties reflects the complexity of the problems in enforcing election law, especially in revealing and proving criminal acts of participating in changing vote recapitulation results (Gaffar, 2013).

Law Number 7 of 2017 concerning General Elections has strictly regulated criminal sanctions for perpetrators of election crimes, including those who participate in changing the results of the vote recapitulation. Article 505 in conjunction with Article 494 of the Law threatens with a maximum imprisonment of 4 (four) years and a maximum fine of IDR 48,000,000.00 (forty-eight million rupiah) for anyone who intentionally changes the minutes of the vote counting results and/or the certificate of vote counting results (Surbakti, 2019). Although there are clear regulations, handling cases of criminal acts of participation in changing the vote recapitulation still faces various challenges. This cannot be separated from the special characteristics of election crimes which have a short handling deadline, complexity of evidence, and the involvement of various parties with political interests. In addition, the election law enforcement system involving various institutions such as Bawaslu, the Police, and the Prosecutor's Office also requires solid coordination to be able to handle cases of election violations effectively (Fahmi, 2020).

The importance of integrity in the process of counting and recapitulation of votes cannot be separated from efforts to realize democratic elections. Manipulation of the results of the vote recapitulation not only harms election participants and voters, but can also result in the delegitimization of the election results as a whole. This in turn can trigger social conflict and political instability that are detrimental to the life of the nation and state (Surbakti, 2018).

Law enforcement against criminal acts involved in changing the vote recapitulation must be carried out firmly and consistently. This is not only intended to provide a deterrent effect for the perpetrators, but also to restore public trust in the integrity of the election process and results. In addition, professional handling of such cases can be a valuable lesson for improving the election supervision and law enforcement system in the future (Supriyanto, 2016).

Violations in the vote recapitulation process still often occur in the implementation of elections in Indonesia. One case that attracted attention was a case that was decided by the Cikarang District Court with decision number 523 / Pid.Sus / 2019 / PN.Ckr . In this case, five defendants, namely H. AA Surawan Bin H. Juanedi, Muhammad Sofwan, SHI Bin KH. Abu Bakar, Abuy Hasbullah, S.PSI Bin H. Sukardi Wijaya, Supendi Bin Tinggul and Indra Jaya, S. Pd.I Bin Muhammad Yahya were proven legally and convincingly to have committed a criminal act of participating due to their negligence which resulted in the loss or change of the minutes of the recapitulation of the results of the vote count. The defendants were sentenced to 2 (two) months in prison each and a fine of Rp10,000,000 ,- .

The ruling is an important precedent in enforcing criminal law on elections, especially those related to the manipulation of vote recapitulation results. This case shows that the act of changing or eliminating the minutes of vote recapitulation is not always done intentionally, but can also occur due to the negligence of election organizers. However, such negligence must still be criminally accounted for considering its impact which can harm the integrity of the election results.

The criminal sentence in the case reflects law enforcement efforts to provide a deterrent effect as well as a lesson for election organizers. The 2 (two) months imprisonment and a fine of Rp10,000,000 ,- imposed on the defendants is a form of legal consequence for the negligence that has been committed. This decision also emphasizes that every party involved in the election implementation process must carry out their duties with full caution and responsibility.

Based on this background, this study will examine in depth the application of material criminal law and the judge's considerations in decision Number 523 / Pid.Sus / 2019 / PN.Ckr , especially related to the crime of participating in changing the vote recapitulation due to negligence. For this

reason, the author raises the title of the study: "Legal Review of the Crime of Participating in Changing the Vote Recapitulation in the Election (Study of Decision Number: 523 / Pid.Sus / 2019 / PN.Ckr)".

a. Formulation of the problem

The main problems in this research are:

1. How is the application of material criminal law to the crime of participating in changing the vote recapitulation in the election?
2. What are the legal considerations of the judge in issuing a verdict on the criminal act of participating in changing the vote recapitulation in the General Election in decision Number: 523/Pid.Sus/2019/ PN.Ckr ?

b. Research purposes

The objectives of this research are:

1. To find out the application of material criminal law to the crime of participating in changing the vote recapitulation in the General Election.
2. To find out the judge's legal considerations in issuing a verdict on the criminal act of participating in changing the vote recapitulation in the Election in decision Number: 523/Pid.Sus/2019/ PN.Ckr

II. LITERATURE REVIEW

a. Definition of Election

Elections are a process to produce leaders who are fair, have integrity, prioritize the interests and welfare of the community. Conceptually, elections are a means to realize the sovereignty of the people. Through elections, the legitimacy of people's power is realized through the transfer of some of the power and rights of the people to their representatives who sit in government or parliament. (Nabila, 2019).

Elections are held with the aim of electing people's representatives and regional representatives, as well as to form a democratic, strong government and gain the support of the people in order to realize national goals as stipulated in the 1945 Constitution of the Republic of Indonesia. General elections (Pemilu) are a form of political education for the people, which is direct, open, mass, which is expected to improve political understanding and increase public awareness of democracy.

The main purpose of elections is to provide citizens with the opportunity to have their say and choose leaders who will represent them in government. In a General Election, eligible citizens have the right to cast their votes for candidates or political parties of their choice. The election results are then used to determine who will hold political office, whether at the local, regional, or national level. General Elections aim to create a system of government that is based on the will of the people, uphold democratic principles, encourage citizen political participation, and ensure that elected leaders represent the interests and aspirations of the wider community.

Fair, free, and transparent elections are essential in maintaining the integrity of a country's democracy. (Sari , 2023). In the implementation of the General Election in Indonesia in accordance with Article 3 of Law Number 7 of 2017 concerning Elections, there are several election principles that must be met. These principles include:

a. Independent

General elections must be held independently by the organizers, namely the General Election Commission (KPU) and the Election Supervisory Body (Bawaslu), in order to maintain neutrality and independence.



b. Proportional

General elections must represent the various interests and aspirations of society proportionally, both in terms of representation of political parties and the general public.

c. Honest

Elections must be carried out honestly, free from cheating, fraud, or manipulation of election results.

d. Professional

Election organizers must act professionally in carrying out their duties and functions, by complying with the established code of ethics and work standards.

e. Fair

Must be implemented fairly without discrimination, ensuring equal opportunities for all General Election participants to compete fairly.

f. Accountable

The organizer must be responsible and accountable for the actions and decisions taken in its implementation.

g. Legal certainty

Must be implemented based on applicable laws, with clear provisions that can be understood by all parties involved.

h. Effective

The implementation of general elections must be effective in achieving the objectives that have been set, including in terms of voter participation, security and election integrity.

i. Orderly

General elections must be carried out in an orderly manner, maintaining order and security throughout the process.

j. Efficient

Implementation must be carried out efficiently, by optimally utilizing available resources.

k. Open

It must be implemented openly and transparently, by providing opportunities for political parties, candidates, and voters to obtain the necessary information about the General Election process. (Sari, 2023).

b. Election Crimes

Election crimes are included in the realm of special criminal law or are often referred to as special criminal acts. According to Teguh Prasetyo, in principle, the terms special criminal law and special criminal acts have no difference between the two. This is because both terms are criminal laws that are outside general criminal law that have deviations from general criminal law both in terms of material criminal law and in terms of formal criminal law. If there are no deviations, then it is not called special criminal law or special criminal act law. (Teguh Prasetyo, 2011).

As a special crime, election crimes have characteristics compared to criminal acts in general. Special characteristics in election crimes are interpreted as characteristics or traits that are common and often occur during the preparation of general elections, the election process and after the general election takes place. Election crimes are usually committed by politicians before gaining power. Politicians carry out illicit practices during elections to influence voters. The most common and striking manifestation of election crimes is direct bribing of voters.

The characteristics of election crimes will provide an overview of how the parties within the scope of the election make strategies so as not to be caught in election crimes during the election. The



results of Wiwik Afifah's research show several special characteristics inherent in election crimes, namely:

1. Transactional politics or better known as vote buying, where political parties or candidates buy voters' votes using money, goods, services, positions or other financial benefits and voters or groups of voters sell their votes to candidates.
2. Buying seats, where individuals or interest groups try to buy nominations to be nominated in the election.
3. Manipulation in election stages and processes
Candidates carry out administrative manipulation during the pre-voting process, calculation, recapitulation process by changing, obstructing or manipulating administrative stages and completeness for the benefit of winning.
4. "Tied" campaign funds make donations to parties or candidates a political investment.
Binding campaign funding, where donors make donations to parties or candidates as political investments. These investors or political loan sharks will later try to use the parties they support to influence public policy for their business or political interests. (Afifah, 2014).

In relation to this election crime, Article 2 letter b of the Supreme Court Regulation (Perma Number 1 of 2018) stipulates that district courts and high courts have the authority to examine, try and decide on election crimes arising from reports of alleged election crimes forwarded by Bawaslu, Provincial Bawaslu, Regency/City Bawaslu and/or Sub-district Panwaslu to the Republic of Indonesia National Police no later than 1 x 24 hours (one time twenty-four hours), since Bawaslu, Provincial Bawaslu, Regency/City Bawaslu and/or Sub-district Panwaslu state that the alleged act or action constitutes an election crime. In Article 476 Paragraph (3), reports of alleged election crimes must be submitted in writing and at least contain the name and address of the reporter, the reported party, the time and place of the incident, and a description of the incident. Then the district court in examining, trying, and deciding on election crime cases uses the Criminal Procedure Code, unless otherwise specified in Law 7/2017.

c. Criminal Act of Participation

The word Participation in the Great Dictionary of the Indonesian Language means the process, method, act of accompanying or including. It is clear that the meaning of this term is that there are two or more people who commit a crime or in other words two or more people take part in realizing a crime. (Kanter, 2002) The meaning of participating (joining, together) in committing a crime (*delict*) can be done by several people together. Participation (*deelneming*) of several people in a criminal act can be cooperation, each of which can be different in nature and form (Sugiarto, 2015).

The relationship of each participant to the criminal act can have various forms, so this teaching of inclusion is based on "determining responsibility" of the participants for the criminal act that has been committed. Thus, the doctrine of participation or taking part, questions the role or relationship of each participant in the commission of a criminal act, the contribution or what is given by each participant, so that the criminal act can be carried out/completed (*voltooid*), as well as their responsibility for the contribution/ that help. (Prasetyo, 2014).

The relationship between participants in the completion of a crime can be various: (a) jointly committing a crime; (b) a person has the will and plans a crime, while he uses another person to carry out the crime; (c) only one person carries out the criminal act. In this way, participation occurs if several or more people are involved in a criminal act or there is more than one participant in carrying out the criminal act. Therefore, the doctrine of inclusion is based on determining the responsibility of each participant for their respective actions in carrying out a criminal act (accountability for the contribution made by each participant in carrying out the criminal act). (Siku, 2015).



In the process of enforcing criminal law, Article 55 paragraph 1 point 1 of the Criminal Code is often used, which is commonly used in handling a crime that occurs and involves more than one perpetrator. In the study of criminal law related to Article 55 of the Criminal Code, it is theoretically known as *deelneming* or participation. In this context, *deelneming* is something related to a criminal event where the perpetrator is more than one person, so that the role and responsibility of each perpetrator of the criminal act must be sought. Forms of participation are contained and explained in Articles 55 and 56. Article 55 concerns the group called *mededader* (called participants or makers), namely:

- a) The one who does (*plege r*);
 - b) The person who orders the action (*doen plegen*), the person is called the person who orders it (*doenpleger*);
 - c) Those who participate in carrying out (*medeplege n*), the person is called the participant maker (*medepleger*); and
 - d) Those who deliberately advocate (*uitlokke n*), the person is called the advocate (*uitlokke r*).
- and article 56 concerning *medeplichtige* (assistant makers).
- a) Providing assistance during the commission of a crime; and
 - b) Providing assistance prior to the commission of the crime (Chazawi, 2012).

III. RESEARCH METHODS

Types of research

This study uses the type of normative legal research or library legal research. Normative legal research is a research conducted by examining library materials or secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. This study emphasizes speculative-theoretical steps and normative-qualitative analysis by examining the rules, norms, and regulations related to criminal acts that also change the recapitulation of votes in the Election through library *research*.

Problem Approach

This study uses a statute approach *and* a case approach. The statute approach is carried out by reviewing all laws and regulations related to the legal issue being handled, especially regulations related to election crimes and participation. While the case approach is carried out by reviewing the decision of the Cikarang District Court Number: 523 / Pid.Sus / 2019 / PN.Ckr to examine the legal considerations used by the judge in deciding the case.

Source of Legal Material

This study uses three types of legal materials, namely primary legal materials consisting of laws and regulations such as the Criminal Code, Law Number 7 of 2017 concerning General Elections, and the Decision of the Cikarang District Court Number: 523 / Pid.Sus / 2019 / PN.Ckr; secondary legal materials that provide explanations regarding primary legal materials such as law books, law journals, legal research results, scientific articles, and doctrines of criminal law and election law; and tertiary legal materials that provide instructions or explanations for primary and secondary legal materials such as the Law Dictionary, the Big Indonesian Dictionary, the Law Encyclopedia, and *Black's Law Dictionary*.

IV. DISCUSSION RESULTS



1. Application of Material Criminal Law to Criminal Acts of Participating in Changing the Recapitulation of Votes in Elections

The application of material criminal law to the crime of participating in changing the recapitulation of election votes is an important aspect in law enforcement. This application must take into account the elements of the crime regulated in various laws and regulations, both in the Criminal Code (KUHP) and in Law Number 7 of 2017 concerning General Elections. The act of changing the recapitulation of votes can be qualified as a crime of falsification of letters as regulated in Article 263 of the Criminal Code and also as a special election crime regulated in the Election Law.

The crime of forgery of documents in Article 263 of the Criminal Code stipulates that "Anyone who makes a false document or falsifies a document that can give rise to a right, obligation or debt relief, or which is intended as evidence of something with the intention of using or ordering another person to use the document as if its contents were true and not forged, is threatened if such use can cause a loss, due to forgery of the document, with a maximum imprisonment of six years." This provision is the basis for general law (*lex generalis*) in handling cases of forgery of documents, including forgery of vote recapitulation minutes. Meanwhile, special provisions (*lex specialis*) regarding the crime of changing the vote recapitulation are regulated in Article 505 in conjunction with Article 494 of Law Number 7 of 2017 concerning General Elections. This article stipulates that any person who, due to negligence, causes the damage or loss of the minutes of the recapitulation of the results of the vote count and/or the certificate of recapitulation of the results of the vote count to be punished with imprisonment for a maximum of 1 (one) year and a maximum fine of IDR 12,000,000.00 (twelve million rupiah).

In the context of participating (*deelneming*), the application of material criminal law must pay attention to the provisions in Articles 55 and 56 of the Criminal Code which regulate participation in criminal acts. Article 55 paragraph (1) of the Criminal Code stipulates that those who commit, order, and participate in committing the act shall be punished as perpetrators of the crime. This provision is the basis for determining the role and responsibility of each perpetrator in the criminal act of changing the recapitulation of election votes.

The elements of a criminal act that must be considered in the application of material criminal law to cases of participating in changing the vote recapitulation based on Article 263 of the Criminal Code are:

First, the element of "Making fake letters or falsifying letters". In the context of vote recapitulation, this element is fulfilled when the perpetrator makes fake recapitulation minutes or changes the contents of existing minutes. Second, the element "Which can give rise to a right, obligation or debt relief, or which is intended as evidence of something". The vote recapitulation minutes are official documents that serve as evidence of the vote counting results and can give rise to rights for candidates who get votes. Third, the element "With the intention of using or ordering others to use the letter as if the contents were true and not falsified". This element shows the perpetrator's intention to use the fake document as a valid document. Fourth, the element "Can cause harm". Changes to the vote recapitulation can be detrimental to various parties, including election participants, voters, and the democratic system as a whole.

Meanwhile, based on the Election Law, the elements that must be considered are:

1. The "Everybody" Element
2. Element "Due to his negligence"
3. Element "Resulting in damage or loss of recapitulation minutes"
4. The Element of "Participation"

lex specialis derogat legi generali applies, where special provisions in the Election Law will override general provisions in the Criminal Code. However, in certain cases where elements of intent

and forgery can be proven, Article 263 of the Criminal Code can be applied simultaneously through the concept of concurrent criminal acts (*concursum*).

The application of criminal sanctions in criminal acts also changes the vote recapitulation must pay attention to the purpose of punishment, both from the aspect of retaliation (*retributive*) and prevention (*preventive*). The sanctions imposed are not only intended to provide a deterrent effect on the perpetrators, but also to prevent similar crimes from occurring in the future and protect the integrity of the election process.

Law enforcement against election crimes, especially in terms of participating in changing the vote recapitulation, is an important part of efforts to maintain people's sovereignty and the integrity of the democratization process. The application of appropriate and consistent material criminal law will contribute to the realization of honest, fair, and democratic elections.

2. Legal Considerations of Judges in Handing Down Decisions on Criminal Acts of Participating in Changing the Vote Recapitulation in Elections in Decision Number: 523/Pid.Sus/2019/ PN.Ckr

The election crime case with case number 523/Pid.Sus/2019/ PN.Ckr decided by the Cikarang District Court is a real example of the implementation of law enforcement in maintaining the integrity of the democratic process in Indonesia. This case involved members of the West Cikarang District Election Committee (PPK) who were suspected of committing a crime in the form of negligence that resulted in the loss or change of the minutes of the recapitulation of the vote counting results. The legal process carried out reflects the seriousness in enforcing election regulations in accordance with Law Number 7 of 2017 concerning General Elections. In the law enforcement process, this case began with the supervision stage carried out by the Bekasi Regency Election Supervisory Body (Bawaslu). Bawaslu carries out its supervisory function on all stages of the election implementation, especially in the vote recapitulation process at the sub-district level. Bawaslu's success in finding alleged election crimes in the form of the loss or change of the minutes of the recapitulation of the vote counting results shows the effectiveness of this institution's role as a supervisor in identifying potential election violations early on.

After the alleged crime was discovered, the Bekasi Regency Bawaslu took further steps by reporting the findings to investigators. This action is a form of synergy between the election supervisory agency and law enforcement officers in handling election crime cases. The reporting carried out by Bawaslu is an important entry point in the process of disclosing and prosecuting alleged election crimes. In the prosecution stage, the Public Prosecutor used an alternative indictment strategy by submitting two articles, namely Article 504 or Article 505 of Law No. 7/2017 concerning General Elections. The use of this alternative indictment shows the prosecutor's caution in formulating the indictment, considering the complexity of election crime cases which often have interrelated elements.

During the trial at the Cikarang District Court, the panel of judges conducted a thorough examination of the evidence and witness statements from both parties. The results of the examination resulted in a verdict that the defendants were proven legally and convincingly guilty of committing a crime as regulated in Article 505 of Law No. 7/2017 in conjunction with Article 55 paragraph (1) 1 of the Criminal Code. The panel of judges chose to apply Article 505 which regulates negligence, not Article 504 which regulates intent. In its verdict, the panel of judges imposed a lighter sentence than the prosecutor's demands. The defendants were sentenced to 2 months in prison and a fine of IDR 10 million, with the provision that if the fine was not paid it would be replaced with 1 month in prison. This verdict was lighter than the demands of the Public Prosecutor who demanded a 3-month prison sentence. The imposition of this lighter sentence reflects the judge's consideration of mitigating

factors, such as the defendants' background as election organizers who likely did not have malicious intent in carrying out the act.

The verdict can be seen as an effort to balance the strictness of law enforcement with the principles of justice and humanity. Although the sentences imposed are lighter, this verdict still provides a deterrent effect on the perpetrators and serves as a lesson for other election organizers. Overall, the law enforcement process in this case has reflected the implementation of the election criminal justice system in accordance with Law No. 7/2017.

This case is an important example of how the election criminal justice system works in dealing with violations that occur during the election process. Although there is still room for improvement and increased effectiveness, the handling of this case shows the seriousness of the various related institutions in maintaining the integrity of the democratic process and ensuring that any violations in the implementation of the election can be processed legally fairly and transparently.

V. CONCLUSION

The application of material criminal law to criminal acts also helped change the recapitulation of election votes referring to Article 263 of the Criminal Code as *lex generalis* and Article 505 in conjunction with Article 494 of Law No. 7/2017 as *lex specialis*, taking into account the elements of criminal acts and the provisions of inclusion in Articles 55 and 56 of the Criminal Code. This is reflected in Decision Number 523/Pid.Sus/2019/ PN.Ckr, where the panel of judges applied Article 505 of Law No. 7/2017 which regulates negligence by imposing a prison sentence of 2 months and a fine of Rp10 million, lighter than the prosecutor's demands, reflecting consideration of mitigating factors and efforts to balance the firmness of law enforcement with the principles of justice and humanity in maintaining the integrity of the election process.

There is a need for more intensive training and capacity building for election organizers, especially PPK members, to minimize the occurrence of negligence in managing election result documents that can affect the integrity of the democratic process.

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