



REVIEW OF THE NATIONAL LEGAL SYSTEM ON THE MECHANISM OF RESOLVING CRIMINAL ACTS OF REGIONAL HEAD ELECTIONS BASED ON INTER-AGENCY AUTHORITY

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Abstract

An election crime can be formulated as any action/deed (active/passive) that violates the provisions in the stages of election administration and is threatened with criminal sanctions. Many people claim that at this time the election. This research uses normative legal research, with a research approach to legal systematics. Forms of normative legal research. The data of this study consisted of secondary data. Secondary data is data obtained from relevant literature studies in this study. Secondary data is "data sourced from library research related to publications, namely library data listed in official documents. The role of law enforcement agencies with Bawaslu in handling criminal acts of regional head elections in Indonesia is based on the provisions of Article 146 of Law Number 6 of 2020 concerning the Election of Governors, Regents and Mayors, which describes the cooperation between institutions in handling them, namely Bawaslu, the Police and the Attorney General's Office. . The application of criminal sanctions for perpetrators of the General Election of Regional Heads must first meet the criminal elements contained in each criminal article, namely those in Article 177 to Article 198A of Law Number 6 of 2020 concerning the Election of Governors, Regents, and Mayor. After the elements of the article are fulfilled, the perpetrator can be charged with sanctions or criminal responsibility. The national legal system in viewing the inter-institutional authority in the settlement of criminal acts of regional head elections recognizes the position and role of Bawaslu and its staff, namely by forwarding reports of alleged criminal acts that have been studied and proven to be true to the state police of the Republic of Indonesia.

Keywords: *National Legal System, Election Crimes, Inter-Agency Authority.*

1. INTRODUCTION

Elections as an output of democracy, not only limited to being carried out without the readiness of the government and its people. Instead, elections must make the state system in Indonesia go to democratic values. This is because it is the responsibility of the government as a state organizer to create democratic elections. In creating a healthy and democratic election, an institution is needed to organize an activity in the holding of elections (setiawan dan handala, 2020). Based on the institutional aspect, Bawaslu has unique characteristics that can show that Bawaslu is different from most other government institutions, namely the existence of institutions and the function of institutions (Suswantoro, 2016). First, in terms of the existence of institutions means that Bawaslu is the only state institution in the world that has a duty in carrying out supervision in the implementation of general elections. Second, in terms of institutional functions, Bawaslu has its uniqueness that must carry out three functions that are generally carried out by other institutions separately. Fungsi-functions that must be carried out include the function of legislation, where Bawaslu must be able to draft and produce a regulation that will be enforced both internally and externally its inertia; (2) function executive, where Bawaslu must carry out surveillance practices in both the form of prevention and follow-up; and (3) judicial functions, where Bawaslu has the authority to take close action in judicial aspects, such as dispute resolution.

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Thus Bawaslu has an important position in institutional composition in Indonesia, especially in the scope of ownership (Ibbid,2020). Based on this, it is appropriate as the State of Indonesian law upholds the authority that has been given to institutions that are recognized as positions in the laws and regulations, such as Bawaslu. Especially the authority in handling the criminal act of elections (elections) or more specifically is the election of the Regional Head. Of course, in the settlement of the election of the Regional Head, Bawaslu does not play his role but there are other law enforcement agencies in it that are included in the integrated Law Enforcement Center involving the Police agency and the Prosecutor's Office in it. It is known that one of the phenomena of criminal acts that often occur in Indonesia is when the election of regional heads. Electoral crimes can be various and forms, therefore to apply legal consequences to perpetrators, legal breakthroughs are needed that remain by the norm, including synchronization or alignment between law enforcement in resolving criminal cases in the field of elections.

The real form of democracy is the holding of elections. Elections in modern times are an inevitability as a channel of society will. For elections to be a good representative in terms of the will of the people, the principles in the holding of elections must also be formulated by the standards of international elections. The principles of elections established in Indonesia and the basic principles of holding elections have been established in Article 22E paragraph (1) of the 1945 Constitution which covers direct principles, general principles, free principles, secret principles, honest principles, and fair principles that are implemented every 5 (five) years (wahyuningsih, 2013). In a more exclusive arrangement, these principles are outlined in the laws and regulations on elections, both in the form of laws, KPU regulations, Bawaslu regulations, DKPP regulations, and KPU Joint Regulations, Bawaslu and DKPP. (Zainal, 2017). The framework of a democratic country, in the implementation of elections is a very important momentum for the formation of government and the implementation of the next period of the state. Elections, in addition to being a mechanism for the people to elect representatives can also be seen as a process of evaluation and re-establishment of the social contract. One of the juridical consequences of Indonesia's democratic legal system is the selection of leaders in a democratic way. The election of the leader, including the election of leaders in the region or commonly known as the regional head. (Rusmanto,2019). Elections are a state mechanism for electing state leaders (executive) and members of parliament (legislature). The quality and routine of holding elections will determine the level of democracy of a country. Because elections are a consequence of a democratic state, elections are the most basic form of political participation of the people or citizens to determine the government and program by its wishes, at least the government or the program that can be accepted.(Bagja,2020)

In Indonesia today, elections are categorized into several things ranging from presidential, vice presidential, legislative elections, including regional head elections (Kada elections). Regional head elections are one of the important aspects of elections to determine the leaders of regions in Indonesia, both provincial and district/city levels. Of course, in the implementation of the general election of the head of this region there are several problems or problems, be it ranging from administrative violations to criminal violations. Against that, it can be seen that the issue of the election of the head of this region needs to be regulated properly and carefully (Jumhaji, 2021).

The Government of Indonesia in addressing the issues of the regional head elections has established several regulations in the form of laws and regulations that have undergone several changes, which are now regulated in Law No.6 of 2020 on the Establishment of Government Regulations In lieu of Law No. 2 of 2020 on The Second Amendment of Law No.10 of 2016 on



the Third Amendment to Law No.1 of 2015 on the Establishment of Government Regulations In lieu of Law No. 1 of 2014 concerning the Election of Governors, Regents and Mayors into law. As well as several other laws related to the implementation of regional head elections, including Law No. 7 of 2017 on Elections, to see the authority of the Election Commission (KPU) and the Election Supervisory Agency (Bawaslu) as election organizing agencies that have been mandated by the state constitution. In the laws and regulations, a binding rule is made for everyone.

The binding rules are equipped with sanctions that can be imposed on parties who violate including those who commit violations in the field of implementation of regional head elections, from the entire sanction / legal consequences that can be imposed on the perpetrators there are criminal sanctions as well (in the criminal act of Kada Election). The application of criminal sanctions can be done initially if there has been sufficient evidence that has been done by law enforcement in this case the Panel of Judges in the Court and it is proven that there are parties who violate the rules of the election law of the head of the region, it will be imposed due to the law against him. The consequences of the law arise from the existence of a relationship between the subject of law with each other, who agreed to create a legal relationship in harmony with the laws and regulations. A legal relationship is a relationship governed by law (Marzuki,2018). So that based on the imposition of criminal sanctions based on the provisions in Law No.6 of 2020, it can be said that the party in question has been proven to have committed the criminal act of regional head elections. Although previously this election crime has been regulated in general in the Criminal Code, precisely in Article 148 to Article 153 of the Criminal Code. However, due to the regulation of regional head election laws specifically, the imposition of criminal sanctions must also be (*lex specialis*). This is done because the application of criminal law to the perpetrators of regional head election crimes has undergone a renewal of criminal law in material substance and formal substance.

It is understood that efforts to reform the Criminal Code are not only national demands but also international trends. According to Barda Nawawi Arief, the meaning and essence of the renewal of criminal law is closely related to the background and urgency of the renewal of the criminal law itself. The background and urgency of the renewal of criminal law can be viewed from sociopolitical, socio philosophy, sociocultural aspects, or policy aspects (especially social policy, criminal policy and law enforcement policy). This means that the meaning and nature of the renewal of criminal law are also closely related to various aspects of it. This means that the renewal of the criminal law must essentially be the embodiment of change and renewal of the various aspects and policies behind it. (Wahyuningsih,2019) According to Andi Hamzah wrote, the rules of criminal law norms contained outside the Criminal Code can be said to be the law (criminal) or also called criminal law outside codification or noncodification. H.J.A. Nolte made a dissertation, which if discussed Indonesia will become a criminal law in its law. W.P.J. Pompe said that Nolte began with a basic philosophical view and legal history. There is a criminal law partly in the Criminal Code (codification) and partly outside the Criminal Code or within its laws. (Shamsudin,2018)

The criminal act of regional head elections is one of the special criminal acts whose criminal arrangements are outside the provisions of the Criminal Code. This is given the urgency of the implementation of the general sorting of the head of the area itself, so it is no longer relevant to use the provisions of the Criminal Code. The criminal act of regional head elections is also a special rule because the forms of violations of elections themselves have various kinds that can be done by

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various parties including in the settlement of criminal acts. Article 177 to Article 198A Law No.6 of 2020, regulates the provision of sanctions for the perpetrators of electoral crimes. Electoral Crimes can be formulated as any action/act (active/passive) that violates the provisions in the stages of holding elections and is threatened with criminal sanctions. Many people claim that at this time the General Election in Indonesia has been widely tarnished with various types and modes so that it is appropriate that anyone who tarnishes and commits fraud in the election must be acted firmly (Din,2020). After several changes and changes in regulations on the general election of regional heads (Governors, Regents / Mayors), in the end although Law No. 6 of 2020 outlines the criminal acts of elections in it. In the aim of ensnaring the perpetrators of this election crime, the role of various law enforcement agencies is needed in its application both for the police, prosecutors, judges and also Sentra Gakkumdu in Bawaslu each region.

The criminal act of election of regional heads already has been regulated procedures for settlement. But Bawaslu is one of the institutions to solve the criminal election of regional heads through Sentra Gakkumdu as if only as a formality of settlement. Even though its position is important and recognized by existing laws and regulations. It is appropriate for both the police agency and the judiciary to make the results of the Sentra Gakkumdu verdict a reference material in investigating for the police and in making decisions for judges. However, there were many results of an examination of regional head election crimes conducted by Sentra Gakkumdu that was not a consideration for police agencies and judicial institutions in investigating the settlement of regional head election crimes. Based on this, the authority between institutions needs to be studied and thoroughly examined comprehensively through the national legal system, especially based on Law No. 6 of 2020 concerning the Election of Governors, Regents and Mayors. So that basically, the researcher took the title of the research paper "NationalLegal System Review of the Mechanism of Settlement of Regional Head Election Crimes Based onInter-Agency Authority".

Based on the background above, there is a formulation of problems that can be taken in this paper formulated in 3 (three) problems, including the following:

1. What is the role between law enforcement agencies with bawaslu in handling the criminal act of regional head elections in Indonesia?
2. How to apply criminal sanctions for the perpetrators of regional head election crimes?
3. How is the national legal system because of inter-agency authority towards the settlement of regional head election crimes?

2. IMPLEMENTATION METHOD

The research uses normative legal research, with a research approach to legal systematics. Forms of normative legal research as Ronny Hanitijo Soemitro puts it include "positive legal inventory, research on legal principles, legal research in concreto, legal synchronization research, legal system research and legal comparison". Normative legal research is also called doctrinal legal research. In doctrinal research, the law is conceptualized as what is written by law in books. While research on legal systematics can be done on certain laws or written laws. This research data consists of secondary data. Secondary data is data obtained from relevant literature studies in this study. Secondary data is "data that is the source of the literature study (library research) related to the publication, library data listed in official documents". Secondary data is sourced from primary legal materials, secondary materials and tertiary materials. Data analysis can be classified into 2 (two) types, which include quantitative analysis and qualitative analysis. Qualitative analysis is



"the analysis of data that does not use numbers, but rather provides a description with the word for the findings, and therefore prioritizes the quality (quality) of the data, not quantity, and in normative legal research the analysis used is qualitative analysis".

3. RESULTS AND DISCUSSION

3.1 The Role between Law Enforcement Agencies with Bawaslu in Handling Regional Head Election Crimes in Indonesia

One of the most basic conditions in a democracy is the existence of an honest and fair electoral system, as well as independent organizers. Thus an honest and fair election can be achieved if there are legal tools available in regulating and conducting elections and regional head elections while protecting organizers, candidates, voters, monitors, and citizens in general from fear, intimidation, violence, bribery, fraud, and various other fraudulent practices that will affect the outcome of the election. Therefore, honest and fair elections require electoral legislation and an apparatus with integrity in charge of enforcing the election laws and regulations. As it is known that elections are conducted through several main stages, and the possibility of disputes or violations is very likely to occur at every stage of the election. This possibility could be due to cheating, errors, as well as election-winning strategies that do not violate the law but lower public confidence. The handling of the criminal act of regional head elections in Indonesia must certainly be based on the applicable criminal provisions, in this case basically by the articles of criminal provisions in Law No. 6 of 2020 concerning the Election of Governors, Regents and Mayors. According to Sri Endah Wahyuningsih argues, that "The source of Indonesia's criminal law development can be from various sources, both taken from the law that lives and develops in society (local wisdom) and from foreign law by conducting comparative studies (international wisdom). Criminal acts are acts/actions that by the rule of law are prohibited and threatened with criminal, where the understanding of actions here in addition to active actions (doing something that is prohibited by law) is also Acts that are passive (do not do anything that is required by law). Criminal acts if associated with elections, it can be termed by-election or electoral crimes. By using the term delik or electoral crime, it will become more specific, namely only related to criminal acts that occur in the process of holding elections. In a sense, the term electoral crime is intended for criminal acts that occur in or are related to the implementation of election stages.

The number of types of electoral law problems (especially regional head elections) is linear with the number of institutions or institutions involved in handling them. There are at least nine institutions involved, namely: (1) The Honorary Board of Election Organizers (DKPP), (2) the Election Supervisory Agency (Bawaslu); (3) The General Election Commission (KPU); (4) The State Police; (5) Prosecutor's Office; (6) The State Administrative Court and the High Court of State Administration; (7) District Court and High Court; (8) The Supreme Court; and (9) the Constitutional Court. Not to mention the involvement of the Broadcasting Commission or the Press Council to oversee the news and advertising of the campaign. So, there will be at least 10 (ten) institutions related to solving electoral law issues.

As previously explained that the criminal act of the election of the head of this region is a special criminal offense that is outside the Criminal Code, so the elements of the criminal act contained in each form of criminal act are certainly different. However, it certainly still has the same principle in the Criminal Code, as long as it is not regulated differently in the Law on the Election of Governors, Regents and Mayors (Regional Head Elections). The specificity of the

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criminal act of the Regional Head Election also resulted in this criminal act has several forms, by the deeds and procedures of the perpetrators who see the reproach of criminal violations in election activities. Criminal law experts generally classify criminal law into two large groups, general criminal and special criminal. Some scholars distinguish it from a delik in the Criminal Code, mak he is called a general criminal. Furthermore, if the delik is regulated in-laws other than the Criminal Code (such as Law No. 6 of 2020), outside the Criminal Code, it is called a special criminal code.

Criminal acts in regional head elections can only be prosecuted if carried out in the context of regional head elections. In a sense, various acts designated as criminal acts in regional head elections can only be prosecuted by the Regional Head Election Act, not the general criminal provisions. This is by the application of the principle *lex specialis derogate legi generali*. According to this principle, all elements of a delik formula exist or are rediscovered in other rules, while the so-called second (special) rule in addition to all the elements of the first (general) rule also contains one or more other elements. To the Regional Head Election, another element in question is that the criminal act occurs to or in the process of holding regional head elections.

Based on the legal aspects of formal, the criminal law of regional head elections is also subject to the provisions applicable in the Criminal Procedure Law (KUHAP). Where, the district court in examining, adjudicating, and deciding the criminal case of Regional Head Election using the Criminal Procedure Law, unless otherwise specified in the Regional Head Election Act. To realize the above for the sake of the implementation of a safe, peaceful, orderly, and smooth Regional Head Election, the handling of reports of violations of regional head elections are handled by the Police of the Republic of Indonesia. The Police of the Republic of Indonesia has the task of securing at every stage of the regional head election so that the regional head election can run safely and smoothly to conduct criminal investigations in regional head elections reported to the Police of the Republic of Indonesia (Polri) through the Election Supervisory Agency (Bawaslu), the Provincial Election Supervisory Committee (Panwaslu), Panwaslu Regency / City, perform other duties by applicable laws and regulations. Bawaslu oversees the stages of holding elections from the village level to the central level and must submit findings and reports related to alleged violations committed by the organizers in the Regional Head Election. Furthermore, criminal investigators in regional head elections are investigators of the Police of the Republic of Indonesia, investigators on criminal acts in regional head elections conducted by a team of criminal investigators in the election of regional heads who have been appointed (investigators are not conducted individually) according to the provisions of applicable law. For handling reports of Violations in Regional Head Elections as stipulated in Law No. 10 of 2016. One of the reports of election violations that was forwarded to the State Police of the Republic of Indonesia (Polri) is a criminal act of general election. The criminal act of general election is any person or legal entity or organization that intentionally violates the law, disrupts, obstructs, or interferes with the course of elections held according to the law. The handling of the criminal act of regional head elections in Indonesia must begin after a report of election violations that are obtained by Bawaslu through the Integrated Law Enforcement Center (Gakkumdu). Therefore, the role of law enforcement agencies in collaboration with Sentra Gakkumdu Bawaslu is important to be aligned to achieve the handling of criminal acts of maximal regional head elections. In Article 146 of Law No. 6 of 2020, it is explained the handling or settlement of the criminal act of regional head elections that there is a cooperation between the institutions,



Furthermore, after the process of handling the criminal act of general sorting of the head of the region as outlined above is passed, finally, the settlement will enter at the level of the Court which at the mechanism outlined in Article 147 to Article 150 Law No. 6 of 2020 concerning the Election of Governors, Regents and Mayors. Against the handling of the criminal act of regional heads, elections should indeed be guided by the rules of existing laws and regulations. So basically the handling is always in coordination with the Gakkumdu center (Integrated Law Enforcement) consisting of the Police of the Republic of Indonesia, the Election Supervisory Agency, prosecutors, and also the Court Agency. Therefore the report is only carried out by Bawaslu. Ideally, Sentra Gakkumdu can complete considering the role of the Integrated Law Enforcement Center (Gakkumdu) as an integrated law enforcement center has an important role in handling electoral crimes, the establishment of Gakkumdu intends to equalize the understanding and pattern of handling electoral crimes by Bawaslu, the State Police of the Republic of Indonesia, and the Attorney General's Office of the Republic of Indonesia. Including, in the end, it is not separated from the Court Institution that will examine and adjudicate the criminal acts of regional head elections that begin from the findings of the Gakkumdu Center in Bawaslu each region.

3.2 Application of Criminal Sanctions for Criminal Offenders in Regional Head Elections

Criminal sanctions must first be based on the existing legal basis. Law is a guideline that regulates human lifestyle that has an important role in achieving the goal of peace of life for society. Therefore, the law recognizes the existence of *adagium ibi societates ibi ius*. *Adagium* arises because the law exists because of the existence of society and relationships between individuals in society. The relationship between individuals in society is an essential thing according to human nature that cannot live alone because humans are social creatures, creatures of society (*zoon politicon*). All such relationships are governed by law, all are legal relationships (*rechtsbetrekkingen*). Therefore, in regulating legal relations in society there is a legal codification that has the noble purpose of creating legal certainty and maintaining the value of justice from the substance of the law. Even if it has been codified, the law cannot be static because the law must continue to adapt to society, especially public law. After all, it is in direct contact with the lives of many people and applies in general. Accountability in criminal law is closely related to the responsible ability of a person. If a person or business entity or legal subject commits an act that violates the provisions of the laws and regulations in the criminal domain, it will be imposed on him due to the law in the form of criminal law liability. The application of criminal sanctions on an act has a close relationship with some quite broad things. The ability to be responsible is one element of error that cannot be separated from two other elements of criminal acts. The term in Dutch is *toerekeningsvatbaar*, but Pompe prefers to use *toerkenbaar*. The liability that is at the core of the mistakes referred to in criminal law is accountability according to criminal law. Although actually according to ethics everyone is responsible for all his actions, in criminal law the subject matter is the only behavior that results in the judge dropping the criminal.

Criminal sanctions imposed on election crimes in the Criminal Code can be said to be quite mild when compared to criminal sanctions on other delik in the Criminal Code. In the Criminal Code applies a pattern of threats of a single criminal sanction or contains only one main criminal sanction, namely the prison sentence. The highest prison sentence imposed in the Electoral Code is two years in prison in Article 152. While the lowest prison threat is nine months in Article 150 of the Criminal Code. The criminal act of regional head elections occurred due to the article violated

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in Law No.6 of 2020 concerning the Establishment of Government Regulations in Lieu of Law No. 2 of 2020 on the Second Amendment of Law No. 10 of 2016 on the Third Amendment to Law No. 1 of 2015 on The Establishment of Government Regulations In lieu of Law No. 1 of 2014 concerning the Election of Governors, Regents and Mayors into Law. Violations can vary depending on the perpetrator, how to commit violations and sanctions from such violations. The provisions of the application of criminal sanctions to the perpetrators of the election of the head of the region poisoned at Law No.6 of 2020 are stipulated in Article 177 to Article 198A. If a person is found to have violated Article 177 to Article 198A, then the perpetrator will be subject to imprisonment and/or criminal penalties by the provisions of the criminal articles in Law No.6 of 2020. . The provision of criminal sanctions to the perpetrators of regional head election crimes is inseparable from the principle of criminal liability embraced in the Criminal Code by the Criminal Sanctions on the Election Law. As has been explained that the understanding of criminal law includes provisions about 3 (three) kinds/things, namely as follows:

1. The general rule of criminal law and those associated or in matters relating to the prohibition of committing certain acts is accompanied by a criminal threat to the party who violates the prohibition in question (said to be a criminal offense).
2. 2.Special conditions must be fulfilled for those who violate the rules of criminal law as said initially above so that those who violate it can be punished criminally as threatened.
3. 3.State efforts must and can be made by state equipment if the state enforces or implements the said criminal law.

The application of criminal sanctions to the perpetrators of regional head election crimes can be punished with imprisonment and/or criminal penalties by the criminal provisions contained in Article 177 to Article 198A Law No. 6 of 2020. In the rules are also determined the lightest criminal sanctions (minimal) and the most severe criminal sanctions (maximum) that can be imposed on the perpetrators of regional head election crimes. Related to this, the minimum criminal sanctions that can be applied to the perpetrators of regional head election crimes are outlined in Article 187 paragraph (1) Undang No.6 of 2020, which outlines the following: Any person who deliberately conducts a campaign outside the time schedule that has been set by the Provincial KPU and the Regency / City KPU for each candidate is punished with a prison sentence of at least 15 (fifteen) days or a maximum of 3 (three) months and/or a fine of at least Rp100,000.00 (one hundred thousand rupiahs) or at most Rp1,000,000.00 (one million rupiahs). The minimum criminal sanction in the electoral code of the head of the region relates to any person who campaigns outside the schedule of the campaign time that has been set which is at least 15 (fifteen) days in prison. On the contrary, there are also criminal sanctions stipulated in the laws and regulations outlined in several articles including Article 178E, Article 178F, Article 19 paragraph (1) and (2), Article 193A paragraph (1) and (2) and Article 193B paragraph (1) and (2). As one example outlined in Article 193B paragraph (1), it reveals: The Chairman and/or member of Bawaslu Province who violates the obligations referred to in Article 29, is punishable by imprisonment of at least 12 (twelve) months and a maximum of 144 (one hundred and forty-four) months and a fine of at least Rp12,000,000.00 (twelve million rupiahs) and at most Rp144,000,000.00 (one hundred and forty-four million rupiah).

The criminal sanctions are imposed by the head of the chairman and/or bawaslu members who violate the obligations as referred to in Article 29. The maximum prison sanction that can be applied to the perpetrators of regional head election crimes in the article is for 144 (one hundred



and forty-four months) in prison or 12 years in prison, while the maximum fine of Rp. 144,000,000 (one hundred and forty-four million rupiahs).

The application of criminal law adheres to the principle of no criminal without error (geen straf zonder schuld). Although not formulated in law, but embraced in practice. There is no separation between guilt and accountability for deeds. People who commit with mistakes alone are burdened with accountability for the criminal acts they commit. In the past in this case the criminal offense, once embraced understand criminal liability without noticing any errors in the maker. This understanding is also called material action. That is, if the person's actions are in accordance with the deeds in the law, then without paying attention to the guilt on that person, the judge can impose a criminal.

The number of types of problems and the number of parties involved shows how complex the issue of electoral law, or at least the problem of electoral law is designed so complex. Never mind to implement, understanding it also requires extra energy so as not to misunderstand that is fatal in its implementation. In his turn, the implementation of electoral criminal law enforcement also faced various problems, both because the content of the rules was not very supportive or because of law enforcement and culture factors. Such complexity is actually also attached to the issue of electoral law in the realm of electoral crimes. At first glance it may seem simple but if it is watered down, the arrangement and enforcement of the law for electoral crimes also has a certain complexity. Especially the issue of proof, the professionalism of law enforcement, and the enforcement bureaucracy that is regulated in various laws related to elections (regional heads). Therefore, the role of Bawaslu and law enforcement agencies is needed to apply criminal sanctions to the perpetrators of electoral crimes of the head of this region effectively and appropriately.

3.3 National Legal System in View of Inter-Agency Authority on The Settlement of Regional Head Election Crimes

The process of enforcing the election law conducted by the election supervisory agency, the police and the prosecutor's office resulted in an integrated law enforcement agency (Gakkumdu) and concerns aspects of state administrative law, state administrative law, criminal law and civil law, which led to its handling involving judicial institutions, the Constitutional Court, the State Administrative Court and the general judiciary. Thus it is possible that the verdict of the judiciary can be different. For example, the court's decision on the swelling of votes involving election organizers which is clearly also a criminal act of election is not processed criminally. On that basis, the conduct of elections carried out must meet honestly and fairly accompanied by a judiciary that is authorized in deciding the election also equipped with the ability to examine and prosecute it. This is based on the development of the court which can also form a legal principle that must be obeyed and carried out by the election organizers. Eric Barent said the role of the judiciary is not only to resolve ordinary disputes but must also ensure the implementation of electoral principles so that they can be saved from attempts at abuse and violation of the electoral system. Criminal law enforcement is an attempt to uphold the norms of criminal law and all the values that are behind the norm (total enforcement), which is limited by the "area of no enforcement" through criminal event law or other special provisions, to maintain a balance between the interests of the state, the public interest and the interests of the individual (full enforcement).). So that the use of the law can be by the desired so far can be achieved.

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The law enforcement system in the context of the criminal justice system, which is often referred to as penal efforts, is a type of law enforcement that is repressive, while law enforcement in a preventive context is more through non-penal channels. That efforts to fight crime through the penal line are more focused on repressive nature after the crime occurs, while the non-penal path focuses more on preventive properties before the crime occurs. Because repressive measures in essence can also be seen as preventive measures in the broadest sense, considering that efforts to counter crime through non-criminal channels are more preventive for the occurrence of crime.

The criminal justice mechanism for electoral criminal cases which is the criminal justice system includes gradual activities, starting from investigations conducted by the police on the recommendation of the police, then upgraded to investigations by police investigators and then carried out prosecutions by prosecutors, examinations in court by district court judges and the implementation of judge rulings carried out by correctional institutions, and usually there are accompanied by legal counsel advocates/lawyers, so that criminal justice can be interpreted as a process of working several law enforcement agencies. A court ruling of legal force remains one way to achieve the objectives and functions of the law. Because the verdict issued by a legitimate and competent court is a benchmark or basis for a person to ask for his rights that have been violated by others. It is through a fair trial that the law can be applied. The judge's ruling is part of law enforcement. Law enforcement is intended as an attempt to make legal ideas or desires come true. For the sake of realizing these legal ideas or desires cannot be separated from the management aspect, namely a set of activities or processes to coordinate and integrate the use of resources to achieve goals through people, techniques and information carried out based on a particular organizational structure. Therefore, in an organization law enforcement is also covered by people, behavior, facilities and also organizational culture. Therefore, the judge in giving the final verdict must look at various aspects and elements that can affect the content of the verdict to be given. Criminal Act does not define the meaning of "proof". However, the Kuhap provides arrangements regarding the types of valid evidence according to the law as stipulated in the provisions of article 184 paragraph (1) of the Kuhap, therefore the understanding of "proof" refers to expert opinion in the field of criminal event law. Martiman Prodjoamidjojo argues that the process of proof or proving contains the intent and effort to state the truth of an event, so that it can be accepted by reason to the truth of the event. DarwanPrinst argued that proof means that a criminal event has occurred and that the defendant is guilty of doing so, so he must be held accountable.

Against the order to assess or legally analyze the court's decision, must first be seen from various legal points of view. So that the enforcement of electoral criminal law can at least be analyzed by looking at each component in the legal system that directly affects law enforcement. This is one of the parts that must be examined in order to create a good national legal system in order to solve electoral crimes. The authority between institutions with each other in terms of the settlement of regional head elections becomes important to understand, because it concerns the effectiveness of the settlement mechanism itself. Basically, the mechanism of solving electoral crimes is not much different from other criminal settlement mechanisms, which must go through the criminal justice system, ranging from the police, prosecutors, to the judiciary. When the case enters the court it will go through stages such as criminal cases generally, namely through the District Court, High Court and Supreme Court at the Cassation level.

The national legal system in considering the authority between institutions in terms of handling electoral crimes, recognizes the position and role of Bawaslu and its ranks, namely by



forwarding reports of alleged criminal acts that have been reviewed and proven to be true to the state police of the Republic of Indonesia. Furthermore, the investigation process will be carried out by police investigators, and the prosecution will be carried out by the local public prosecutor. To equalize the understanding and pattern of handling electoral crimes, Bawaslu together with the Police and the Attorney General's Office formed an integrated law enforcement center or Gakkumdu Center, including for the provincial and district / city levels. This is in accordance with the provisions of Article 152 Law No.6 of 2020 concerning the Election of Governors, Regents and Mayors, which mentions the following:

1. To equalize the understanding and pattern of handling election crimes, Bawaslu Province, and/or District/City Police, Regional Police and/or Resort Police, and the High Prosecutor's Office and/or The State Prosecutor establish an integrated law enforcement center.
2. Integrated law enforcement center as referred to in paragraph (1) is attached to Bawaslu, Bawaslu Province, and Panwas Regency / City.
3. The operational budget of the integrated law enforcement center is charged to the Bawaslu Budget.
4. The provisions regarding integrated law enforcement centers are regulated by a joint regulation between the Head of the State Police of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, and the Chairman of Bawaslu.
5. The joint regulations referred to in paragraph (4) are established after consultation with the House of Representatives and the Government in a hearing forum whose decision is binding.

It is known in its implementation, Gakkumdu does not run effectively, so the enforcement of electoral criminal law is still weak. This is because the police and prosecutors have different paradigms or different perspectives in the enforcement of election law. As a result, the electoral criminal law provided is not effective enough to reduce the practice of fraud in elections.

The law serves as a protection of human interests. For human interests to be protected, the law must be implemented. The implementation of the law can take place normally, peacefully, but it can also occur due to violations of the law. In this case the law that has been violated must be enforced. It is through law enforcement that this law makes reality. In enforcing the law three elements must always be considered, namely: legal certainty (*rechtssicherheit*), expediency (*zweckmassigkeit*) and justice (*gerechtigkeit*). This becomes important and should be applied by all relevant law enforcement, reminding the special character of electoral crimes, such as the short time of handling, actually requires provisions related to more specific proofs other than those stipulated in the Criminal Act. If only referring to the *Kuhap*, the handling of electoral crimes will be far from effective. Especially to maintain the integrity of honest and fair elections. For this reason, the need for harmony in the handling or settlement carried out by law enforcement agencies be it by the Gakkumdu Center in Bawaslu, the Police agency until the examination and final verdict in the Court.

Weak law enforcement and the many overlapping laws and regulations, resulting in the perpetrators of electoral crimes can freely pitch without any sense of guilt or sin. The barren role of Bawaslu cannot follow up the election criminal case to the Court, resulting in the justice seekers making a lawsuit application to the Constitutional Court, with the proposition of political action of money and so on. This is due to the distrust of justice seekers in law enforcement officials and the general justice system that is less professional in the jurisdiction itself. On that basis there needs to

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CRIMINAL ACTS OF REGIONAL HEAD ELECTIONS
BASED ON INTER-AGENCY AUTHORITY**

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be a boost in strengthening the authority of the court with the establishment of a Special Election Court, so that the problems of electoral crimes can be resolved. Considering that when resolved in the General Court, in this case the District Court, seeing the heavy burden of handling civil and criminal and commercial cases, it is impossible to handle electoral criminal cases properly. Seyogyanya formed a Special Election Court under the authority of the Supreme Court of Indonesia, of course with the format of the judicial system that *Lex Specialis*. The idea of making Bawaslu an institution authorized to adjudicate disputes over the results of elections is not impossible. This is due to the change in the function of Bawaslu who was originally only tasked to be a supervisor of the implementation of elections to have judicial quasi authority in the administration of elections and electoral crimes.



4. CONCLUSION

The role between law enforcement agencies with Bawaslu in handling the criminal act of regional head elections in Indonesia is based on the provisions of Article 146 Law No.6 of 2020 concerning the Election of Governors, Regents and Mayors, which describes cooperation between institutions in handling it, namely Bawaslu, Police and Prosecutors. That the handling was initiated through the Integrated Law Enforcement Joint Center (Gakkumdu) consisting of the Election Supervisory Agency, the Police of the Republic of Indonesia and the State Prosecutor's Office. By carrying out its duties in accordance with community reports or findings directly in the field based on the recommendations of the Election Supervisory Agency (Bawaslu) at the Provincial level and the Supervisory Committee (Panwas) at the Regency / City level which is further forwarded to the police and followed up by the police within a 14-day grace period. If, there is sufficient evidence, the police entrust it to the prosecutor's office and the prosecutor's office must bestow criminal cases in the election for 5 working days. Until finally the handling / settlement of the criminal act of the regional head election will be examined and tried by the District Court Institution which begins from the report of election violations from Bawaslu.

Implementation of sanctions criminal for the perpetrators of the Regional Head General Election Crime Must first meet the criminal elements. contained in each criminal article that is in Article 177 to Article 198A Law No.u 6 of 2020 onn Governor, Regent and Mayor. After the element-The elements of the article are fulfilled, Then the perpetrator can be charged with sanctions or criminal responsibility. Criminal sanctions of regional head elections to perpetrators can be in the form of prison penalties and criminal penalties of fines. In the criminal act of regional head elections also regulated minimum criminal sanctions and maximum criminal sanctions. The minimum criminal sanction in the electoral code of the head of the region relates to any person who campaigns outside the schedule of the campaign time that has been set which is at least 15 (fifteen) days in prison. On the contrary, there are also criminal sanctions against your testimony.m as stipulated in the laws and regulations outlined in several articles including Article 178E, Article 178F, Article 19 paragraph (1) and (2), Article 193A paragraph (1) and (2) and Article 193B paragraphs (1) and (2). Maximum prison sentence aforementioned Which can be applied to the perpetrators of regional head election crimes in the article is for 144 (one hundred and four). seventy-four months) imprisonment or 12 years in prison, while the maximum fine of Rp. 144,000,000 (one hundred and forty-four million rupiah).

The national legal system in considering the authority between institutions for the settlement of electoral crimes of regional heads recognizes the position and role of Bawaslu and its ranks, namely by forwarding reports of alleged criminal acts that have been reviewed and proven to be true to the state police of the Republic of Indonesia. Furthermore, the investigation process will be carried out by police investigators, and the prosecution will be carried out by the local public prosecutor. To equalize the understanding and pattern of handling electoral crimes, Bawaslu together with the Police and the Attorney General's Office formed an integrated law enforcement center or Gakkumdu Center, including for the provincial and district / city levels. This is in accordance with the provisions of Article 152 Law No.6 of 2020 concerning the Election of Governors, Regents and Mayors. But although the integrated law enforcement center has existed in Bawaslu which takes on the roles of other law enforcement agencies such as the Police and Prosecutor's Office, the alignment between the agencies has not been too visible. So that actually

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CRIMINAL ACTS OF REGIONAL HEAD ELECTIONS
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needed a special judicial institution that handles the act of election, especially regional head elections.

REFERENCES

- Adami Chazawi, Criminal Law Lesson: Interpretation of Criminal Law, Basic Elimination, Enforcement & Commemoration, Crime of Complaints, Concompanity & Teaching of Causality,(Jakarta: PT. RajaGrafindo Persada, 2017).
- Alhamdi, R., Sugianto, S., & Siregar, S. (2022). OPTIMIZATION OF SHARIA BANK CUAN IN THE INDUSTRIAL ERA 4.0. *International Journal of Educational Review, Law And Social Sciences (IJERLAS)*, 2(1), 9-20.
- Amiruddin and ZainalAsikin. Introduction to Legal Research Methods, (Jakarta: Rajawali Pers, Jakarta 2014).
- Andi Setiawan and Hilmi Handala. "Bawaslu Network in Handling Simultaneous Election Violations". In *Academia Praja Journal*, Volume 3, Number 2, August 2020.
- Aristo Pangaribuan, et al, Introduction to Criminal Procedure Law in Indonesia,(Depok: Rajawali Pers, 2018).
- Aziz Syamsuddin, Special Crime,(Jakarta: Sinar Grafika, 2018).
- BambangSunggono. Legal ResearchMethods, (Jakarta: PT. RajaGrafindo Persada 2005).
Criminal Code
- Hadi Jumhadi. "Optimization of Election Criminal Law Enforcement in The Election of Regional Heads and Deputy Regional Heads Simultaneously". In the *Journal Justiciabellen*, Volume01, Number 01, January 2021.
- Hanafi, H., Hidayatullah, H., & Tamjidnor, T. (2022). Domestic Violence: Comparison between Islamic Law and Domestic Violence. *International Journal of Social Science, Education, Communication and Economics (Sinomics Journal)*, 1(1), 1-8.
- Hirda Rahmah, Purwoto and Indarja. "Law Enforcement Law No. 8 of 2015 in Central Java Region Reviewed from Criminal Law". In *Diponegoro Law Journal*, Volume 6, Number 2, 2017.
- Janedjri M. Gaffar, Political Election Law,(Jakarta, Constitution Press, 2013).
- Khairul Fahmi, Elections in Democratic Transition: Compilation of Records on the Dynamics of Elections and Elections in the Reform Era,(Jakarta: PT. RajaGrafindos Persada, 2016).
- Khairul Fahmi. "System for the Handling of Electoral Crimes System for The Crime of Election". In the *Journal of the Constitution*, Volume12, Number 2, June 2015.
- Karno, A., Aulia, A., Panorama, M., & Rafli Aldiansya, M. (2022). The Effect of Audit Tenure and Audit Rotation on Audit Quality in Companies Listed on the Stock Exchange. *Sinomika Journal: Publikasi Ilmiah Bidang Ekonomi Dan Akuntansi*, 1(1), 15–36.
<https://doi.org/10.54443/sinomika.v1i1.125>
- L.J. Van Apeldoorn, Introduction to Legal Science, (Jakarta: PT. Pradnya Paramita, 2000).
- Law No. 8 Tahun 1981 concerning the Criminal Procedure Law.
- Law No.6 of 2020 on The Establishment of Government Regulations In lieu of Law No. 2 of 2020 on The Second Amendment of Law No. 10 Of 2016 on The Third Amendment to Law No. 1 of 2015 on The Establishment of Government Regulations In lieu of Law No.1 of 2014 concerning the Election of Governors, Regents and Mayors into Law.
- Law No. 2 of 2002 concerning the Police of the Republic ofIndonesia.
- Law No. 48 of 2009 on Judicial Power.



- Law No. 7 of 2017 on General Elections.
- M. Syamsudin, *New Construction of Hakim Law Culture*, (Jakarta: Kencana, 2015).
- Magdalena Lurenzia Seba. "Juridical Review of The Criminal Act of Regional Head Election". In *The Journal of Lex Administratum*, Volume V, Number 9, November 2017.
- Mhd. Teguh Shauhada. *Law of Proof in Justice in Indonesia*, (Medan: CV. Prima Library, 2021).
- Mohd, Din, et al. "Model for the Enforcement of Criminal Law in Aceh Province Is Fair (The Model for Law Enforcement on Election Crimes in Aceh Province)". In *the Journal of Legal Research De Jure*, Volume 20, Number 3, September 2020.
- Muhammad Junaidi. "Criminal Elections and Elections by the Integrated Law Enforcement Center". In *the Journal of Ius Constituendum*, Volume 5, Number 2, October 2020.
- Peter Mahmud Marzuki, *Introduction to Law*, (Jakarta: Prenadamedia Group, 2018).
- Peter Mahmud Marzuki. *Legal Research*, (Jakarta: Prenadamedia Group 2014).
- Qurrata Ayuni. "The Idea of a Special Court for Disputes over the Results of Regional Head Elections". In *the Journal of Law & Development*, Volume 48, Number 1, 2018.
- Rahmat Bagja and Dayanto, *Law of Dispute Resolution Of Election Process: Concepts, Procedures, and Technology of Its Implementation*, (Depok: PT. RajaGrafindo Persada, 2020).
- Refly Harun. "Reconstruction of Dispute Resolution Authority of Election Results". In *the Journal of the Constitution*, Volume 13, Number 1, March 2016.
- Ronny Hanitijo Soemitro. (1990). *Legal Research Methods and Jurimetry*, Fourth Print, Ghalia Indonesia, Jakarta.
- Ruslan Renggong, *Special Criminal Law: Understanding Delik-delik Outside the Criminal Code*, (Jakarta: Kencana, 2017).
- Rusmanto. "The Role of Investigators in the Criminal Act of Regional Head Election". In *the Legal Journal of UNISSULA*, Volume 35, Number 2, 2019.
- Sanjaya, S., Ammy, B., & Parlindungan, R. (2021). DETERMINANT MODEL OF CORPORATE DISCLOSURE SOCIAL RESPONSIBILITY. *International Journal of Educational Review, Law And Social Sciences (IJERLAS)*, 1(2), 159-170.
- Salim HS and Erlies Septiana Nurbaini. *Application of Legal Theory to Thesis and Dissertation Research*, Jakarta: RajaGrafindo Persada, 2013).
- Sri Endah Wahyuningsih and Rismanto. "Criminal Law Enforcement Policy against Money Laundering In order to Reform Criminal Law in Indonesia". In *the Journal of Legal Reform*, Volume II, Number 1, January-April 2015.
- Sri Endah Wahyuningsih. "Urgency of Renewal of Indonesia's Materiel Criminal Law Based on The Values of Supreme Divinity". In *the Journal of Legal Reform*, Volume I, Number 1, January-April 2014.
- Sudikno Mertokusumo and A. Pitlo, *Chapters on the Discovery of The Law*. (Bandung: PT. Aditya Bakti, 2017).
- Teguh Prasetyo, *Criminal Law*, (Jakarta: Rajawali Pers, 2018).
- Topo Santoso and Ida Budhiati, *Elections in Indonesia: Institutional, Implementation, and Supervision*, (Jakarta: Sinar Grafika, 2019).
- Wahyuningsih Sri Endah, *Principles of Criminal Individualization in Islamic Criminal Law*, (Semarang: Diponegoro University Issuing Agency, 2013).

**REVIEW OF THE NATIONAL LEGAL SYSTEM ON THE MECHANISM OF RESOLVING
CRIMINAL ACTS OF REGIONAL HEAD ELECTIONS
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DOI: <https://doi.org/10.54443/ijerlas.v2i2.223>

- Winda, M., Susanti, P. H., & Trarintya, M. A. P. (2022). The Role of Commitment to Mediate Effect of Motivation on The Performance of Waste Bank Managers in The City of Denpasar. *International Journal of Social Science, Education, Communication and Economics (Sinomics Journal)*, 1(2), 115-130.
- Zainal Arifin Hoesein and Arifudin, *Voter Determination in the General Election System*, (Depok: PT. RajaGrafindo Persada, 2017).