

## THE ELECTION ON NEW NORMAL: IMPLICATIONS OF SUSTAINABLE DEVELOPMENT

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### ABSTRACT

*The government of a country is an absolute thing that must be owned by a country. The process of determining the government leaders of each country that is different from one another, this method can be measured by culture, ideology, and history. However, voting by means is still one of the favorite ways to determine leaders at the national and regional levels. There is nothing wrong with voting by direct voting from the people, in fact most studies agree with the system. However, this will be different during the Covid-19 Pandemic. Many opinions were carried out through the direct popular voting system. However, one side of the General Election aims to be the initial foundation for sustainable development, where the vision and mission of prospective leaders need to be introduced to the public so that from the start, the public can see the capacity and future work programs in the context of sustainable development. While on the one hand there are various kinds of things that must be done by the community, various pro and contra views are born in order to provide arguments against the implementation of the Covid-19 Pandemic election. The new habitual state also provides new solutions to existing concepts in a country, including Indonesia. Therefore, this paper focuses on the issue of renewing the concept of voting as a form of the impact of Covid-19 which has implications for sustainable development. The research was conducted using a normative approach and legal literature approach.*

**Keywords:** Election, New Normal, and Sustainable Development

### INTRODUCTION

The Corona Virus Disease (COVID-19) outbreak that occurs in all countries in the world is currently increasingly rampant. This case of unknown etiology pneumonia or Covid-19 was first detected in Wuhan City, Hubei Province, China on December 31, 2019. It has been almost nine months since the Corona virus / COVID-19 case became a national disaster since March 2020. Pandemics like this have also resulted in a governance crisis and pandemic management policies in various countries in the world.<sup>1</sup> Indonesia as a rule of law in facing the COVID-19 pandemic outbreak has made efforts to prevent this type of infectious disease must be established in a rule or regulation.

Many sectors in human life have been affected by the COVID-19 outbreak. Not only the public health sector has experienced a significant impact, but also many other sectors ranging from education, economy, culture, social, politics, to government. In 2020, Indonesia will indeed hold a democratic party, namely simultaneous regional head elections / regional elections. However, with the current outbreak and the increasing number of Covid-19 cases in Indonesia, it is very influential on the political sector in particular. Given the increasingly rampant covid-19 case, the government issued a policy related to the postponement of regional head elections (pilkada) simultaneously in 2020. Indonesia has an agenda to hold a Regional Head General Election (Pilkada) on September 23, 2020. However, through a Government Regulation in Lieu of Legislation Law (Perpu) Number 2 of 2020 concerning the Third Amendment to Law Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors into Law, the Government of Indonesia decided to reschedule pilkada to be December 9, 2020.<sup>2</sup> This decision certainly caused debate in the community. Responding to the postponement of several stages of regional elections during the COVID-19 pandemic can have various impacts in its implementation, both positive and negative.

Regarding the implementation of general elections in several countries, 55 countries have postponed national or local elections and national referendums. However, there are 21 countries that have not postponed the election, 9 of which have been held in the midst of the COVID-19 pandemic. South Korea became one of the countries that successfully held elections on April 15, 2020 (International Institute for Democracy and Electoral Assistance, 2020). In Indonesia, the scheduling of simultaneous regional elections to be held in December 2020 is considered unrealistic. Due to the fact, until December 2020 the number of positive cases of COVID-19 continues to increase nationally. Many parties are worried that if the regional elections continue in December 2020, it will become a new cluster for the spread of COVID-19. The a fore mentioned considerations give a question mark that how the election mechanism in the new normal condition is carried out, and if the election is a form of sustainable development, then the criminal law must also be able to become an integral part of guarding the implementation of elections that are direct, general, free of secrets, honest and fair then of course criminal law must have its own construction as well, so it is important in this article to discuss these two issues.

<sup>1</sup> W. Mas'udi dan P.S. Winanti, 2020, Dari Krisis Kesehatan ke Krisis Tata Kelola. In W. Tata Kelola Penanganan COVID-19 di Indonesia Kajian Awal, Yogyakarta, Gadjah Mada University Press, hlm 3- 15.

<sup>2</sup> Peraturan Pemerintah Pengganti Undang-Undang (Perpu) Nomor 2 Tahun 2020 tentang Perubahan Ketiga atas Undang-Undang Nomor 1 Tahun 2015 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2014 tentang Pemilihan Gubernur, Bupati, dan Walikota Menjadi Undang-Undang

## THE IMPLEMENTATION OF THE ELECTION ON NEW ERA AS A FORM OF SUSTAINABLE DEVELOPMENT

Data collected and updated regularly by International IDEA, as can be found on its website entitled “Global Overview of COVID-19: Impact on Elections” shows that, at least 50 countries and territories exist.<sup>3</sup> Faced with the possibility of spreading the virus by holding elections amid the pandemic - have decided to postpone their election. However, some countries and territories have taken tough decisions and opted for the possibly more dangerous path of keeping their elections on schedule. The Republic of Korea is one of those countries that dare to take the risk of holding elections under the threat of the COVID-19 pandemic. The elections held on 15 April 2020 to elect 300 members of the 21st National Assembly (parliament) represent two sides of a crucial test of public trust.<sup>4</sup>

Concurrent General Election of Regional Heads means Election of regional heads which is carried out directly by residents of the local administrative areas who meet the requirements, which are conducted simultaneously in regions in Indonesia. Regional head elections are held simultaneously with the deputy regional heads, which include the Governor and Deputy Governor for the province, the Regent and Deputy Regent for the regency, and the Mayor and Deputy Mayor for the city. There are 270 regions in Indonesia that will hold the 2020 Pilkada. The 2020 simultaneous Pilkada is the fourth batch of simultaneous regional elections for regional heads as the result of the December 2015 election. There are 270 regions that carry out the 2020 simultaneous regional elections, the details are 9 provinces, 224 regencies and 37 cities. The 2020 Pilkada Simultaneously was supposed to be followed by 269 regions, but it became 270 because the Makassar City Pilkada was repeated<sup>5</sup>. The COVID-19 outbreak has also significantly disrupted the methods conventionally used by political parties in campaigning. Large-scale meetings, open speeches, debates, fundraising events with large numbers of participants or even house-to-house campaigns are all campaign methods that require physical closeness and therefore do not comply with the restrictions imposed in the current era of COVID-19. Even though Korea is not under any restrictions on movement on a national scale, a large-scale event, the necessity of maintaining distance and restrictions on human gatherings all apply as the electoral process runs. Existing limitations require political parties to find other ways of campaigning and interacting with voters.

By continuing to hold simultaneous Pilkada 2020 which was initially held on September 23, 2020 and postponed to December 2020, the state should be able to respond to the situation which is manifested in the form of legislation as a constitutional guarantee for the postponement of the 2020 Pilkada. The regulation must be able to act to protect the people and ensure welfare in accordance with the goals of the state stated in the Preamble to the 1945 Constitution of the Republic of Indonesia.

It is inevitable that campaign activities for the 2020 Election will not be as lively as in previous elections. In order to reach voters, political parties and legislative candidates (caleg) are replacing their conventional methods with those using digital technology and the internet, especially video messages that are disseminated via social media, short messages (SMS) and mobile phone applications. Some candidates adopt innovative methods using technology to interact remotely and virtually with their supporters. Other candidates carry out voluntary activities related to the response to COVID-19, such as cleaning the environment around their constituency and watering the streets with disinfectants. In addition, in a more conventional way they sent campaign attributes and information about their platform to voters via pocket books distributed to households.<sup>6</sup> The continued holding of the simultaneous regional elections in 2020 means the implementation of the mandate contained in Law Number 10 of 2016 Article 201 paragraph 6 which can be carried out which reads “Simultaneous voting for the Governor and Deputy Governor, the Regent and Deputy Regent, as well as the Mayor and Deputy Mayor. the 2015 election will be held in September 2020 ”<sup>7</sup>. However, because of the covid-19 pandemic, the regional elections were simultaneously postponed by the issuance of Perpu Number 2 of 2020 concerning the Third Amendment to Law Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning Election of Governors, Regents and Mayors to Become The law, which is contained in Article 201A paragraph (2), namely “The postponed simultaneous voting as referred to in paragraph (1) shall be held on December 2020”, in which the simultaneous postponement of regional elections is still carried out in the same year, namely December. 2020. The simultaneous regional elections must be held, of course, with a strict Health protocol, because the roles and positions of regional heads are needed to synergize and collaborate with the central government to accelerate the handling of COVID-19 and accelerate the post-COVID-19 recovery process.<sup>8</sup>

Considering that in 2020 Indonesia will hold simultaneous regional elections, this simultaneous regional election must be carried out even though it is in the midst of the Covid-19 pandemic outbreak but of course also still applies the Health protocol. One initial consideration is the fact that different countries and regions have different capabilities, infrastructure, tools, approaches, and outcomes to fight the COVID-19 outbreak. Each country or region is, and will forever be, at different stages in their respective resistance until finally defeating this epidemic. One of the implementations of popular sovereignty is by holding general elections. This simultaneous regional election is one of the principals means of channeling citizens' human rights, therefore in the context of

<sup>3</sup> Laman web International IDEA <https://www.idea.int/news-media/multimedia-reports/global-overview-covid-19-impact-elections>

<sup>4</sup> South Korea's coronavirus crackdown a boon for Moon ahead of polls. Retrieved June 14, 2020, from The Jakarta Post website: <https://www.thejakartapost.com/news/2020/05/21/indonesiasteers-clear-of-Covid-19-resolution-politicization.html> diakses 18 Juni 2020.

<sup>5</sup> Ini 270 Daerah yang Gelar Pilkada Serentak 2020”, Detiknews, Minggu 23 Juni 2019

<sup>6</sup> Widyasari, Asita., Dewi, Reyke Anggia., & Rengganis, Viera Mayasari Sri. (2019). Gerakan Politik Pendukung Kotak Kosong: Keterlibatan Civil Society dalam Pilkada Kabupaten Pati Tahun 2017. *Jurnal PolGov*, Vol 1, (No. 1), pp. 89–119.

<sup>7</sup> Pasal 201 ayat 6 Undang-Undang Nomor 10 Tahun 2016 tentang Perubahan Kedua Atas Undang-Undang Nomor 1 Tahun 2015 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2014 tentang Pemilihan Gubernur, Bupati, dan Walikota menjadi Undang-Undang

<sup>8</sup> Yang, Liu., & Ren, Yang. (2020). Moral Obligation, Public Leadership, and Collective Action for Epidemic Prevention and Control: Evidence from the Corona Virus Disease 2019 (COVID- 19) Emergency. *International Journal of Environmental Research and Public Health*, Vol.17, (No. 8), p.2731.

implementing the human rights of citizens, the government should guarantee the implementation of simultaneous regional elections in 2020, moreover the government should ensure that the simultaneous regional elections should not be delayed. much longer. Matters related to the implementation of elections in the 1945 Constitution of the Republic of Indonesia, is one of the bases of everything form of the constitution of the Indonesian nation. This is because political momentum such as the pilkada is an implementation of the constitutional rights of all citizens. Whether they are candidates for election participants or anyone who wants to channel their political rights to vote and be elected.

Regional heads and deputy regional heads are not just symbols of government, but governors, mayors or regents have more powerful authority, for example in the field of structuring bureaucratic organizations, human resources, or personnel as well as budget allocations to realize campaign promises to the people who have elected them. The temporary officer or acting (Plt) has very limited authority. This does not allow them to take strategic policies. This means that temporary officials cannot have the authority to make rules which are very important for the implementation of regulations that can solve problems during the COVID-19 pandemic and are also considered ineffective because the authority possessed by interim officials is very limited, so that it will slow down performance.<sup>9</sup>

Another impact that needs to be reconsidered if the implementation of the 2020 elections is postponed is cost overruns. The cost overruns referred to are both from the government and from pairs of candidates for regional heads who have spent a lot of operational costs in carrying out socialization and other preparations for the purposes of the regional head elections. The budget that has been disbursed in 2020 will be wasted because the budget year has passed. By continuing to hold the Pilkada, it cannot be denied that there is a huge potential for generating crowds where the potential for transmission is very high. Pilkada during a pandemic has a big risk. As reflected on the first day of registration of candidate pairs on September 4, many candidate pairs in various areas provoked crowds by conducting convoys that mostly did not pay attention to the Covid Health protocol<sup>19</sup>. What's more, now a number of prospective candidates are also infected with the Corona virus. This certainly makes it even more restless, especially when the regional elections are held, which is feared by the spike in covid-19 cases that could create a crisis that is increasingly troubling for all people. This certainly has the potential to create large clusters, especially in areas that were previously categorized as green zones, so the holding of regional elections could potentially make these areas a red zone if everyone does not have the awareness to continue implementing the Covid-19 Health protocol.

Another disturbed stage is the campaign. In a state of being forced to campaign with all existing restrictions, the scale, reach and impact of the activities of political parties and candidates is significantly reduced compared to previous elections. This makes their interactions with their supporters far from ideal. Despite these limitations, political parties and legislative candidates seem to have accepted the fact that the existing strict restrictions are unavoidable and prevent them from using conventional campaign methods. By continuing to hold the 2020 regional elections, it will certainly raise concerns about the potential for fraudulent practices. For example, there is the potential for money politics that is increasingly prevalent in the midst of a pandemic. The weakening economy has resulted in many residents having difficulty making ends meet. It is feared by voters to elect candidates for regional head without considering good quality just because they are lured by money, which is not even a small amount. In addition, the potential for violations on the day of the simultaneous regional elections in 2020 could potentially occur in three stages of the elections, namely at the stages of voting, counting and recapitulation. Especially at the recapitulation stage, the opening of ballot boxes outside the provisions, voting in the middle of the Covid pandemic uses new things in terms of technology use and there is a fear of abuse in the use of this technology.<sup>10</sup>

It is feared that the simultaneous regional elections in 2020 are predicted to have the potential to lead to people who do not use their voting rights wisely or commonly referred to as Golput (Golongan Putih) for reasons of the health and safety of citizens. Becoming Golput may be the most rational choice considering public health and safety is being threatened in the midst of the very restless situation of the Covid-19 outbreak.<sup>11</sup> The government's decision regarding the implementation of the Pilkada has received protests by several people. What is feared is that if the government continues to implement its policy of continuing to hold regional elections simultaneously, there is a potential risk that public trust in the state will decline. Moreover, the current situation is exacerbated by rampant speculation about collusion and the strengthening of dynastic politics among the government and the rise of money politics because Indonesia's economy is getting worse so that clean and honest Pilkada is difficult to hold.

## THE MONITORING CONCEPT OF THE ELECTION ON NEW ERA AS A CRIMINAL LAW REFORM

The many types of problems and the number of parties involved indicate how complex the election law problem is, or at least the election law problem is designed in such a complex manner. Never mind to implement it, even understanding it requires extra energy so as not to misunderstand which has fatal consequences in its implementation. In turn, the implementation of election criminal law enforcement also faces various problems, both because the content of the rules is not very supportive or because of law enforcement and culture factors.

Such complexity is actually also inherent in election law issues in the realm of election criminal acts. At first glance it may seem simple, but if we dive into it, the regulation and enforcement of election crimes also have certain complexities. Mainly a matter of

<sup>9</sup> This is the Need for Pilkada Organizers during the Covid-19 Pandemic." 12 Juni 2020, <https://republika.co.id/berita/qbs06p354/inikebutuhan-penyelenggarapilkada-di-masa-pandemi-covid19>, diakses 21 Juni 2020.

<sup>10</sup> Endro, Gunardi, 2017, "Investigating the Meaning of Integrity and Its Opposition to Corruption", Universitas Bakrie, Volume 3, Nomor 1

<sup>11</sup> Budhiati Ida, 2013, "Quo Vadis Procedural Democracy and Elections: A Theoretical Reflection" Jurnal Masalah-Masalah Hukum, Vol. 42, (No. 2).

proof, professionalism of law enforcers, and the bureaucracy of enforcement which are regulated in various laws related to elections. It is the complexity of the problem that will be explored further. In general, the term election crime is the same term or is part of a criminal act in the criminal law regime. Other terms for "criminal offense"<sup>12</sup> is a "criminal act"<sup>13</sup> or "delict"<sup>14</sup> which in Dutch is called strafbaar feit<sup>15</sup> If it is related to an election, it can be termed an election offense or an election crime. By using the term an election offense or criminal act, it will be more specific, that is, it is only related to a criminal act that occurs in the process of organizing the election. In a sense, the term election crime is intended for crimes that occur in or are related to the implementation of the electoral stages.

Based on this definition, an act / action that can be considered as an election crime is an act that is criminalized under the Election Law. In accordance with this definition, it can also be understood that an election crime is a violation of an obligation, in which case the violation is subject to criminal sanctions in the Election Law.<sup>16</sup>

Furthermore, the criminalization of certain acts as election crimes is divided into two groups, namely: offenses and crimes. However, the Legislative Election Law does not specifically define what is meant by a criminal act in the form of a violation and what is the scope / definition of a criminal act. This law only regulates the forms of actions that are categorized as violations and crimes which are difficult to distinguish with certainty. Criminal law functions to support the realization of an honest and fair election. In this context, the importance of regulating election criminal acts can fall into two important things. First, the norms of election criminal acts are aimed at protecting election participants, organizing institutions and voters from various acts of violations and harmful electoral crimes. Second, election criminal norms are aimed at upholding law and community order in the administration of elections.

In connection with the two objectives / important meanings of regulating election criminal acts, it is of course aware that elections are a contestation. Where, of course, all parties will take whatever steps to win the election, including committing violations. These violations can harm other election participants, harm the organizers and the election.

Losses experienced by participants can be in the form of failing to gain seats due to direct fraud by other participants or through unfair attempts through collusion with election organizers. Meanwhile, the losses suffered by the organizers could be in the form of disruption in the process of organizing, the integrity of the election organizers and the administration of the elections which are under their responsibility. Meanwhile, voter losses can occur in the form of a non-occurrence of the process of converting votes into seats according to the voters' will through the voting process carried out by the voters. In order to protect the rights of various parties concerned in the election, criminal law is used as an instrument to maintain it. However, an orderly election administration must be maintained by using criminal law.

In the election criminal law, there are a number of special characteristics contained in the election criminal law. First, in terms of the material law used, election criminal acts are specifically regulated in the Election Law and the Election Law. A number of election crimes have even previously been determined to be general crimes, such as committing violence or threats of violence (Article 293 of the Legislative Election Law), falsifying documents (298 of the Legislative Election Law), committing destructive acts (Article 311 of the Legislative Election Law). However, the regulation of various criminal acts in the Election Law is related to the implementation of elections. Consequently, these crimes can only be prosecuted if they are committed in the context of an election. In a sense, various acts that are designated as election crimes can only be prosecuted in accordance with the Election Law, not general criminal provisions. This is in accordance with the application of the *lex specialis derogat legi generali* principle. According to this principle, all the elements of an offense formulation are found or found again in another regulation, while the second (special) rule in addition to all the elements of the first (general) rule also contains one or several other elements.<sup>17</sup> In relation to elections, another element referred to is that the criminal act occurred in relation to / in the process of organizing the election.

Second, from the formal legal aspect, election criminal law is also subject to the applicable provisions in the Criminal Procedure Code (KUHAP). Where, in examining, adjudicating, and deciding criminal cases for elections, the district court uses the Criminal Procedure Code, unless otherwise stipulated in the Election Law.<sup>18</sup> The phrase "unless it is stipulated otherwise in this Law" in Article 262 of Law Number 8 of 2012 is a clause that gives particular specificity to the process of examining alleged election crimes. One of its specificities is the very limited time for investigation, prosecution, and examination by the court. The time limitation in examining and adjudicating election crimes is intended so that the handling of election crimes can provide legal certainty for the stages of election administration. Apart from that, the specificity of election criminal acts is also seen in the limitations of legal remedies for people who are found guilty of committing election crimes. Where, the court's decision can only be appealed and the decision of the appellate court (High Court) has the last characteristic and remembers and other legal remedies cannot be made.<sup>19</sup> Thus, cassation as an ordinary remedy is not available in the examination of election crimes.

<sup>12</sup> The term "criminal offense" is used, among others, by Umar Seno Adji, in Andi Hamzah, Principles of Criminal Law in Indonesia and Its Development., Jakarta: PT. Sofmedia, Jakarta, 2012, h. 119

<sup>13</sup> One of the terms "criminal action" is used by Roeslan Saleh, dalam Andi Hamzah, Ibid

<sup>14</sup> "Delik" is a term commonly used by scholars. This term is generally accepted without debate

<sup>15</sup> Andi Hamzah, Op.cit., h. 120

<sup>16</sup> Topo Santoso, dkk., Election Law Enforcement, Election Practices 2004, Kajian Pemilu 2009-2014, Jakarta : Perkumpulan Untuk Pemilu dan Demokrasi, 2006, h. 89

<sup>17</sup> Andi Hamzah, Op.cit, h. 618

<sup>18</sup> Pasal 262 ayat (1) Undang-Undang Nomor 8 Tahun 2012 tentang Pemilihan Umum Anggota DPR, DPD dan DPRD

<sup>19</sup> Pasal 263 ayat (5), ibid

Regarding what has been stated, by looking at the many deficiencies contained in criminal law as an *ius constitute*, the offer of *ius constituent* in this case is by providing an opportunity for laws that live in society to become the initial concept of the birth of the provision of criminal sanctions for disgraceful acts. a reconciliation can also be made of the meaning and understanding of crimes in election crimes, so that there are clear boundaries to violations that can indeed be resolved through other mechanisms, without merely using criminal sanctions.

Another interesting thing is probation, which in fact is a type of sanction, which often only takes the form of probationary sanctions and does not have an educational effect on the electoral system in Indonesia. As in the case in Central Sulawesi in 2019, data shows 18 out of 24 Election Criminal Cases were given probationary penalties at the high court level.<sup>20</sup>

## CONCLUSION

The necessity of implementing the New Era General Election as a Form of Sustainable Development is to keep considering the positive and negative sides. towards sustainable development, the elections have a very important role. By not holding elections, it will have an impact on the cessation of the government system. For example, a government whose term of office has ended, will be replaced by a temporary official. and according to the prevailing regulations, temporary officers cannot provide policies of an important nature, such as policies regarding finance, or employee transfers. even though in fact, in a situation facing Covid - 19, policies regarding finance, policies regarding employee transfer or employee turnover must be implemented.

In addition, it is also necessary to pay attention to the Supervision of the Implementation of New Era Elections Using Criminal Law Reforms, what must be done is to use the concept of criminal law reform, which in this concept, there is a thought to change the understanding of crime with ordinary election violations and this is to also avoid solving cases. election crimes with less educational sanctions on the upcoming electoral process.

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<sup>20</sup> Andi Intan Purnamasari, Awaliyah, Fidyah Faramita, CRIMINAL ACTS HANDLING: THE CONCEPT OF CRIMINAL LAW REFORM, "Tadulako Master Law Journal, Vol 5 Issue 1, Februari 2021" 5, no. 1 (2021): 14. file:///C:/Users/User/Downloads/17292-52030-1-PB.pdf

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