



Analysis of Basic Legal Considerations of Judges Against Perpetrators of Vanishing Campaign Props in Tanggamus Regency (Decision Study Number 91 / Pid.Sus / 2018 / PN Kot)

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Abstract

The next general election (election) is a form of democratic life that is the right of every citizen of the Republic of Indonesia. The problem in this study is how is the legal basis of judges judging the perpetrators of Campaign Props in Tanggamus Regency based on Decision Number 91 / Pid.Sus / 2018 / PN Kot and whether the judge's decision against the perpetrators of Campaign Props in Tanggamus Regency is based on Decision Number 91 / Pid.Sus / 2018 / PN Kot has fulfilled a sense of substantive justice? .Approach to the problem is carried out in an empirical juridical way by conducting research directly at the research location by looking, asking questions and hearing from the parties concerned. Data sources obtained by using primary data and secondary data. The procedure of data collection is done by means of library research and field research. Data analysis in this study used qualitative analysis. The results of the research and discussion show that the basis of Judge Considerations in Case Number 91 / Pid.Sus / 2018 / PN Kot defendants have legally and convincingly committed criminal acts and eliminated campaign props and were sentenced to prison for 1 (one) month each. . The judge does not impose a maximum sentence of more than 1 month and 15 days. The suitability of the Judge's decision to impose a criminal offense against the campaign props with the applicable legal provisions. which is lighter than the claim by the Public Prosecutor, which is six months in prison and has fulfilled the elements in the Article. Suggestion, the judge must consider the element or purpose of eliminating the campaign props.

Keywords: Legal Considerations; Actors; Campaign Props

A. Introduction

Currently the Indonesian nation is preparing a democratic party to determine the leader of the Indonesian nation, namely the 2019 presidential election. The presidential election system is directly carried out by the people to end the old system that placed the MPR as the highest institution of power and a state structure with functions including electing the president and vice president.¹

General elections, hereinafter referred to as (elections), are a form of democratic life which is the right of every citizen of the Republic of Indonesia. The term democracy which according to the origin of the word means "the people in power or government by the people (the Greek word demos means the people, kratos / kratein means power / in power)". Election is a means of exercising people's sovereignty which is carried out

¹R. Soesilo, Criminal Code (KUHP) and its Comments Complete Article by Article, PT Karya Nusantara, Bandung, 1983, p. 28

directly, publicly, freely, secretly, honestly and fairly within the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia.²

According to R. Soesilo's opinion regarding elections according to the general law are as follows, "elections according to the general law are for example the election of members of the People's Representative Council, both central and provincial, regency, big city, small town, etc. Anggotakonstituante, village head, village, and so on".³

Election is held every 5 years according to the schedule set by the election organizer, namely the General Election Commission, hereinafter referred to as KPU. In 2014, the Indonesian people again determined who the People's Representative Council (DPR), the Provincial Regional People's Representative Council, hereinafter referred to as (Provincial DPRD), Regency / City People's Representative Council hereinafter referred to (Regency / City DPRD) and Regional Representative Council hereinafter referred to as (DPD) which will represent them in the government system. Election for members of DPR, DPD and DPRD is an election to elect members of DPR, DPD, Provincial DPRD and Regency / Municipal DPRD in the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution of the Unitary State of the Republic of Indonesia.

Since the beginning, Indonesia has had regulations on elections. This shows that elections are very important in the life of the state in Indonesia. However, this ideal condition does not seem to always run smoothly without anomalies or phenomena that injure the idealistic values of the election, since the beginning until the implementation of the last election there are always violations of the electoral norms. Cases that often occur in every election implementation are cases of vote mark-up and / or money politics or other forms of election violations. Inflation of votes or money politics and other forms of election violations is a crime.

According to Moeljatno, criminal acts are: "Actions prohibited by a legal rule, which prohibits are accompanied by threats (sanctions) in the form of certain crimes, for anyone who violates the prohibition. It can also be said that a criminal act is an act by a legal rule is prohibited and punishable by punishment, provided that it is remembered that the prohibition is aimed at an act (namely a situation or event caused by a person's behavior), while the threat of punishment is aimed at the person who caused the incident".⁴

In its development, election crime in Indonesia has undergone many changes, in the form of increasing types of criminal acts to differences in the addition of criminal sanctions. This is due to the fact that election crimes are increasingly becoming a serious concern because the measure of the success of a democratic country is seen from its success in holding elections. The government then tightened the legal rules regarding elections by further increasing criminal sanctions for perpetrators of election criminal acts with the enactment of Law Number 8 of 2012 concerning the General Election of the People's Representative Council, Regional Representative

²Miriam Budiardjo, Basics of Political Science, Gramedia Pustaka Utama, Jakarta, 2008, p. 105.

³R. Soesilo, Criminal Code (KUHP) and its Comments Complete Article by Article, PT Karya Nusantara, Bandung, 1983, p. 28

⁴Moeljatno, Principles of Criminal Law, Rineka Cipta, Jakarta, 1993, p. 54

Council, and Regional People's Representative Council, hereinafter referred to as (Election Law) as The latest law on elections for members of the DPR, DPD and DPRD.

Election criminal acts are stated in the 4th (fourth) Election Law which regulates Election Crime, in article 260 of the Election Law states, "Election criminal acts are criminal acts of violation and / or crimes against the provisions of election criminal acts as regulated in This Law ".

The definition of an election crime according to Djoko Prakoso is "any person, legal entity or organization deliberately violates the law, obstructs or disrupts the course of elections held according to law".⁵ One form of violation of election criminal offenses is removing campaign props. Based on Bawaslu Regulation Number 10 of 2015, Article 66 letter g states who removed the campaign props and in Article 187 paragraph (3), the perpetrator of eliminating is subject to a minimum of one month in prison and a maximum of 6 months, with a fine of 100 thousand rupiah to 1 million rupiah.

The head of Pekon was sentenced to prison for 1 month and 15 days for removing the campaign props (APK) of Candidate Candidates for Regent and Deputy Regent of Tanggamus District number 2, Samsul Hadi-Nuzul Irsan (Sam-Ni) in Sumberejo District, Tanggamus Regency. According to the Chairperson of the Lampung Province Bawaslu, Fatikhatul Khoiriyah, said that on Wednesday (30/5/2018) a hearing was held for the decision on the Election Crime Case (TPP) for the disappearance of the Election Campaign Props for the Regent / Deputy Regent of Tanggamus Regency. "It was stated that he had violated the criminal act of the election. The Head of Pekon Tegal Binangun on behalf of Sunardi was sentenced to 1 month and 15 days in prison. And the people of Tegal Binangun on behalf of Edi Gunawan and Sunarno were sentenced to 1 month in prison," said Fatikhatul. As reported by the Chairman of the Tanggamus Regency Panwaslu, Dedi Fernando said,⁶

Election criminal violations of eliminating campaign props occurred in Tanggamus Regency with the issuance of Decision Number 91 / Pid.Sus / 2018 / PN Kot, in which the defendant legally and convincingly committed a criminal act, participated in removing campaign props and was sentenced to imprisonment each for 1 (one) month. The judge did not impose a maximum sentence or more than 1 month and 15 days. Judges must consider the elements or objectives of removing campaign props, if the aim is not to damage or there is no political element then the problem can be resolved through mediation, not necessarily going to the court.

B. Research Methods

This research uses a normative juridical approach and an empirical approach. After the data is obtained, it is analyzed using a qualitative analysis method, that is, after the data is obtained, it is described systematically and concluded by means of inductive thinking so that it becomes an overview of the answers to problems based on the research results.

⁵Djoko Prakoso, Election Crime, CV. Rajawali, Jakarta, 1987, p. 148

⁶[http://poskotanews.com/2018/05/30/terkait-a-crime-election-head-pekon-imprisoned-1-month-15-days /](http://poskotanews.com/2018/05/30/terkait-a-crime-election-head-pekon-imprisoned-1-month-15-days/)

C. Results and Discussion

1. Legal Considerations for Judges Against Perpetrators of Disappearing Campaign Props in Tanggamus Regency Based on Decision Number: 91 / Pid.Sus / 2018 / PN Kot

The judge's decision is the final action of the judge in the trial, determining whether or not the perpetrator is punished, so the judge's decision is a statement from a judge in deciding a case in court and has permanent legal force. Based on the visitation and judicial practice, the Judge's verdict is: "The verdict pronounced by the judge because of his position in criminal proceedings which is open to the public after going through the process and procedural law of criminal procedure generally contains punishment or acquittal or release of all lawsuits is made. in written form with the aim of settling the case.⁷

The judge's decision is basically a work of discovering law, namely determining how according to the law should be in every event involving life in a state of law. Another definition of a judge's decision is the result of deliberation starting from the indictment with everything that is proven in the examination at court. .

A judge's decision is a statement which the judge, as the authorized official, is evaporated in court and aims to end or settle a case or a dispute between the parties. In this definition Prof. Sudikno tried to emphasize that what is meant by the judge's decision is the one that was evoked in front of the trial. The verdict that is evaporated at the trial (uitspraak) must not be different from what is written (verdict). However, if it turns out that there is a difference between the two, then what is valid is what is spoken, because the verdict has been made since it was pronounced.⁸

Election criminal acts are handled by an integrated law enforcement center as regulated in Article 152 paragraph (1) of Law Number 1 of 2015 which determines that "for equating the understanding and patterns of handling Election crimes, Provincial Bawaslu and / or Regency / City Panwas, Regional Police and / or Resort Police, and High Court and / or District Attorney to form an integrated law enforcement center "

Based on the description above, according to the basic researcher, Judge's Consideration in Case Number 91 / Pid.Sus / 2018 / PN Kot the Defendant fulfills the elements contained in the Criminal Code, namely Article 69 letter g Law Number 8 of 2015 in conjunction with Article 187 Paragraph (3) Government Regulation in Lieu of Law Number 1 Year 2014 concerning the election for the Governor, Regent, Mayor Jo Article 55 paragraph 1 of the Criminal Code and proving the defendant guilty of committing the crime with three pieces of evidence according to the Criminal Code. The judge had accordingly punished the defendant because the defendant had fulfilled the element of guilt, namely that the defendant could be responsible for his actions, the

⁷Lilik Mulyadi. Compilation of criminal law from a theoretical perspective and judicial practice. Mandar Forward. 2007. p. 127

⁸Lilik Mulyadi, Op Cit, p. 125

defendant deliberately committed his actions, and there was no excuse for the defendant's actions.

2. Judge's Decision Against Perpetrators of Disappearing Campaign Props in Tanggamus District Based on Decision Number 91 / Pid.Sus / 2018 / PN Kot Has Fulfilled Substantive Sense of Justice

Law Number 8 of 2015 concerning the Election of Governors, Regents and Mayors as the legal basis for implementing regional head elections in Indonesia. one of the contents of which is about the prohibition that is carried out during a campaign, the law in Article 69 states that it is prohibited to:

- 1) Questioning the state basis of Pancasila and the Preamble to the Constitution of the Republic of Indonesia.
- 2) Insulting someone, religion, ethnicity, race, class, Candidate for Governor, Candidate for Deputy Governor, Candidate for Regent, Candidate for Deputy Regent. Conducting campaigns in the form of inciting, slandering, playing against political parties, individuals, and / or community groups.
- 3) Using violence, threats of violence or encouraging the use of violence against individuals, group society and / or political parties.
- 4) Disturb security, peace and order general.
- 5) Threatens and encourages the use of force to take power from the legitimate government.
- 6) Damaging and / or removing Campaign props.
- 7) Use the facilities and budgets of the Government and Local Government.
- 8) Using places of worship and places of education.
- 9) Conduct a parade carried out on foot or by vehicle.
- 10) Conducting campaign activities outside the schedule stipulated by the Provincial KPU and Regency / Municipal KPU.

Based on the article above regarding what matters are prohibited in the campaign, in general there are 11 points regarding what things are prohibited in the campaign which are stipulated by Law Number 8 of 2015 concerning Elections for Governors, Regents and Mayors.

Judicial power is an independent power in this provision which implies that judicial power is free from all interference from the extra-judicial powers, except for matters as stated in the 1945 Constitution.

Freedom in exercising judicial authority is not absolute because the judge's duty is to uphold law and justice based on Pancasila, so that his decisions reflect the sense of justice of the Indonesian people. Then Article 24 Paragraph (2) affirms that: judicial power is exercised by a Supreme Court and judicial bodies under it in the general court, religious courts, military courts, state administrative courts, and by a constitutional court.⁹

Freedom of judges also needs to explain the position of judges who are impartial (impartial judge) Article 5 Paragraph (1) of Law Number 48 Year 2009. The term impartiality here must not be literal, because in making a decision the judge must take the right side. In this case it does not mean impartial in the consideration and judgment. More precisely the formulation of the Shrimp Law Number 48 of 2009 Article 5

⁹Andi Hamzah. 2015. KUHP and KUHP. Rineka Cipta. Jakarta, p. 94.

Paragraph (1): "The court shall judge according to the law without discriminating against people".¹⁰The District Court in examining, adjudicating and deciding election criminal cases shall be based on the Criminal Procedure Code as referred to arranged in Law Number 8 Year 1981 except for the procedural law rules which are specifically regulated in Law Number 10 Year 2008. In case this specifically is the proceedings are faster than ordinary / general crimes.

A faster proceeding process is certainly something that is needed in election criminal cases, especially the types of election crimes that affect the results of the election participants' votes. Election criminal cases hearings will also be chaired or examined by special judges that the arrangement is still to be further regulated by the Supreme Court. Based on the latest news, the Supreme Court has prepared special judges to handle criminal cases in the election later.

The District Court investigates, adjudicates and decides election criminal cases within 7 days from the time the case files are submitted by the Public Prosecutor. If the decision of the District Court is filed for an appeal, the application for appeal must be submitted within 3 days after the decision is read out. The District Court submits the Case file to the High Court within a maximum period of 3 days after the appeal is received. Election criminal cases at the appeal level are examined, tried and decided within 7 days after receipt of the appeal. The decision of the high court is the last decision and is binding and there is no other remedy. This means that the decision of the high court is a decision that has permanent legal force after it is read.

Furthermore, court decisions on election criminal cases that affect the results of the vote acquisition of election participants must have been completed 5 days before the KPU determines the election results nationally. The Court's decision must be followed up by the KPU, Provincial KPU and Regency / Municipal KPU where a copy of the decision must be received by the KPU, Provincial KPU and Regency / Municipal KPU on the day the judgment is read out. Based on the results of the KPU study which is supported by sufficient preliminary data, violations containing criminal elements are forwarded to investigators to be resolved through general courts.

The removal of campaign props is also a form of criminal offense against Law Number 8 of 2015 concerning Amendments 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 into Laws. - Laws that can be subject to criminal sanctions in accordance with Article 187 Paragraph (3), which states that: "Anyone who deliberately violates the provisions on the prohibition of campaigning for the implementation of the Regent / Mayor election as referred to in article 69 letter g, letter h, letter i, letter j shall be sentenced to imprisonment for a minimum of 1 (one) month or a maximum of 6 (six) months and / or a fine of at least Rp 100,000.00 (one hundred thousand rupiah) or a maximum of 1,000,000.00 (one million rupiah) ".

Basic Consideration of Judges in Case Number 91 / Pid.Sus / 2018 / PN Kot The defendant fulfills the elements contained in the Criminal Code, namely Article 69 letter g Law Number 8 of 2015 in conjunction with Article 187 Paragraph (3) Government Regulation in lieu of Law Number 1 Year 2014 concerning the election for the Governor, Regent, Mayor Jo Article 55 paragraph 1 of the Criminal Code and proving the

¹⁰*Ibid*, p. 95.

defendant guilty of committing the crime with three pieces of evidence according to the Criminal Code. The judge had suitably punished the defendant because the defendant had fulfilled the element of guilt, namely the defendant could be responsible for his actions, the defendant deliberately committed his actions, and there was no excuse for the defendant's actions.

The judge saw the things that incriminated the defendant in the case, namely the defendant's act of removing information that should have been known by the public regarding the vision, mission and programs of the candidate who will lead the community. And the defendant took other people's belongings. According to the judge's consideration, mitigating matters were the Defendant acknowledging the clearness of his actions so as to facilitate the trial process. The defendant still hopes to continue and finish his studies, and hopes to be an example for his class and the defendant has never been convicted.

Election crime is a criminal act of violation and / or crimes against the provisions of election crimes as regulated in this Law. Violation of a criminal act is an act which is punishable by a criminal sanction in the Election Law. For example, the crime of election is deliberately eliminating the voting rights of others, preventing others from voting and changing the results of the votes.

The settlement of election criminal offenses is carried out through courts within the general court. Law enforcers who play a role in resolving election crimes are the police, prosecutors and courts. In the implementation of elections, the Police have the duty and authority to carry out investigations into reports or findings of election criminal acts received from election supervisors and submit case files to the public prosecutor at a specified time. The public prosecutor has the duty and authority to hand over election criminal case files submitted by investigators or the National Police.

Election criminal cases are settled by the general court, at the first level by the district court, at the appellate level and finally by the high court. District courts and high courts examine, hear and decide election criminal cases using the Criminal Procedure Code (KUHP), plus several special provisions in the election law. Examination is carried out by special judges, namely career judges who are specifically appointed to examine, hear and decide election criminal cases. There is no other legal remedy for the decision of the high court.

The suitability of the Judge's decision in imposing a crime against the perpetrator of removing campaign props with the applicable legal provisions in the case of removing campaign props is a special crime and a two-month imprisonment is imposed which is a lighter charge than the demand by the Public Prosecutor, namely six months in prison and has fulfill the elements in the Article. The accountability of the perpetrators of election crimes eliminating the Campaign Props (APK) based on the Decision Number 91 / Pid.Sus / 2018 / PN Kot. namely Article 69 letter g Law Number 8 of 2015 in conjunction with Article 187 Paragraph (3) Government Regulation in Lieu of Law Number 1 of 2014 concerning the election of Governors, Regents, Mayor Jo Article 55 Paragraph (1) of the Criminal Code and proves the defendant guilty of committing this crime with three pieces of evidence according to the Criminal Code. The judge had suitably punished the defendant because the defendant had fulfilled the element of guilt, namely the defendant could be responsible for his actions, the defendant deliberately committed his actions, and there was no excuse for the

defendant's actions. The suitability of the Judge's Decision in Passing Crime Against Perpetrators Removing campaign props with Applicable Legal Provisions The case of removing campaign props is included in the Special Crime and a two-month imprisonment is imposed which is a lighter charge than the demand by the Public Prosecutor, namely six months in prison and has fulfill the elements in the Article.

The defendant lost the campaign props, including minor theft, because there was no violence or took items during a natural disaster. But why the defendant cannot be sentenced in accordance with Article 364 of the Criminal Code because there is a *lex specialis derogat lege generalist* principle, so what applies is Article 69 letter g of Law Number 1 of 2015 concerning Application of Government Regulations in Lieu of Law Number 1 of 2014 concerning Election of Governors, Regents, and Mayor, because the general criminal law overrides the special criminal law.

Regarding the settlement of election criminal offenses, it has also been described and regulated in detail in Law Number 8 of 2012 in chapter XXI, fourth part, paragraph 2 Articles 261, 262, 263, 264, and Article 265.

Article 261

- 1) Investigators from the State Police of the Republic of Indonesia submit the results of their investigations together with the case files to the public prosecutor no later than 14 (fourteen) days after receipt of the report.
- 2) In the event that the results of the investigation are incomplete, within 3 (three) days the public prosecutor returns the case file to the Investigator of the State Police of the Republic of Indonesia along with instructions on what to do to be completed.
- 3) The investigator of the State Police of the Republic of Indonesia within 3 (three) days from the date of receipt of the files as referred to in Paragraph (2) must have submitted the case files back to the public prosecutor.
- 4) The public prosecutor delegates the case files as referred to in Paragraph (1) and Paragraph (3) to the district court no later than 5 (five) days after receiving the case file Article 262

The defendant lost the campaign props, including minor theft, because there was no violence or took items during a natural disaster. But why the defendant cannot be sentenced according to Article 364 of the Criminal Code because there is a *lex specialis derogat lege generalist* principle, so what applies is Article 69 letter g of Law Number 1 of 2015 concerning Application of Government Regulations in Lieu of Law Number 1 of 2014 concerning Election of Governors, Regents , and the Mayor, because the general criminal law overrides the special criminal law.

Justice is generally defined as an act or fair treatment. While fair is impartial, impartial and side with the right. That means everyone must be protected and obey the existing laws indiscriminately. Justice is basically abstract in nature, and can only be felt by reason and thoughts and the rationality of each individual society. Justice is formless and invisible, but its implementation can be seen in the perspective of seeking justice. In giving a decision on a criminal case, the judge's decision should contain clear reasons and considerations. The enactment of the Criminal Procedure Code becomes the guidance for judges in making appropriate decisions and must be accounted for.

Substantive justice is defined as justice provided in accordance with substantive legal rules, regardless procedural errors that has no effect on the plaintiff's substantive

rights. This means that what is formally-procedurally correct can be blamed materially and substantially violating justice. On the other hand, what is formally wrong can be justified if it is materially and substantially fair (judges can tolerate procedural violations as long as they do not violate the substance of justice). In other words, substantive justice does not mean that judges must always ignore laws that do not provide a sense of justice and guarantee legal certainty. This means that judges are required to have the courage to make decisions that are different from the normative provisions of the law, so that substantial justice is always difficult to achieve through judges' decisions, because judges and court institutions will only provide formal justice.

Based on the description above, it can be analyzed that the suitability of the Judge's Decision in imposing a crime against the perpetrator of eliminating campaign props with the applicable legal provisions in the case of removing campaign props in accordance with substantive justice is the imposition of two months imprisonment which is a lighter charge than the demand by the public prosecutor is six months imprisonment and has fulfilled the elements in that article. Because the defendant removed the campaign props including into minor theft due to the absence of violence or taking goods in the event of a natural disaster.

D. Conclusion

Based on the results of research and discussion, several conclusions can be drawn as follows

- a. The basis for the Judge's consideration of the perpetrators who disappeared from the Campaign Props in Tanggamus Regency based on Decision Number 91 / Pid.Sus / 2018 / PN Kot is that the defendant fulfills the elements contained in the Criminal Code, namely Article 69 letter g of Law Number 8 of 2015 in conjunction with Article 187 Paragraph (3) Government Regulation in Lieu of Law Number 1 Year 2014 concerning the election for the Governor, Regent, Mayor Jo Article 55 Paragraph (1) of the Criminal Code and proving the defendant guilty of committing the crime with three pieces of evidence in accordance with the Criminal Code. The judge had accordingly punished the defendant because the defendant had fulfilled the element of guilt, namely that the defendant could be responsible for his actions, the defendant deliberately committed his actions, and there was no excuse for the defendant's actions.
- b. The suitability of the Judge's Decision in imposing a crime against the perpetrator of removing campaign props with the legal provisions applicable to the case of removing campaign props in accordance with substantive justice is the imposition of two months imprisonment which is a lighter charge than the demands by the Public Prosecutor, namely six months in prison. and have fulfilled the elements in the Article. Because the defendant lost the campaign props, including minor theft, because there was no violence or took items during a natural disaster.

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