

Legal Politics of Witness Protection Guarantee for Reporter of Election Criminal Violations as an Effort to Enforce Indonesian Election Laws

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ABSTRACT

*This study aims to determine the urgency of providing guarantees for the protection of reporter witnesses of election criminal violations in national law. This research is a normative legal research using literature research as the data collection method. The research method used is normative juridical based on statute approach. The results of this study indicate that there is no legal guarantee for the protection of reporter witnesses of election criminal offenses as a form of *lex specialis* of electoral law enforcement in Indonesia. Meanwhile, the guarantee of protection of the reporter's witness is very necessary to maintain the stability of democracy in Indonesia which is characterized by the running of elections according to the principle of LUBER JURDIL. As a result, the author recommends that lawmakers formulate legal products, both in the form of laws and amendments to laws that are able to accommodate the needs of legal protection of reporting witnesses of election criminal offenses.*

1. Introduction

The Constitution has regulated the constitutional rights of citizens to obtain a sense of security and obtain protection from the threat of fear to do or not do something. However, there is currently no legal certainty regarding the protection of reporters of electoral criminal violations. It is feared that this legal uncertainty could spark public passivity to report election criminal violations and increase the potential for election criminal violations in the future. As a result, in addition to reducing the constitutional rights of citizens, it will have a destructive impact on the implementation of democratic state governance.

Elections are a manifestation of the implementation of people's sovereignty, which is an integral part of democratic life and is a mandate of Article 22E of

the 1945 Constitution of the Republic of Indonesia. The procurement of elections is intended to determine who is able to lead and fight for the aspirations of the community as the principle of people's sovereignty adopted by the Indonesian Nation since the beginning of independence. However, there are many things that reduce the implementation of elections, such as the violation of the principles of direct, general, free, secret, honest and fair (LUBER JURDIL) by criminal election violations.

There are many types of electoral criminal offenses, such as violating campaign rules, eliminating other people's voting rights and voting more than once at the polls. However, an election criminal offense that is massively experienced by the community and difficult to detect is the practice of money politics. Money politics, also known as vote buying, is an act of bribery in the form of money or other materials by election participants aimed at influencing the achievement of votes in the community. In the end, the elected candidate is not purely a representative of the community's choice and is not in accordance with the principles of democracy.(Edward Trias Pahlevi & Abdi Amrurobbi, 2020)

Research conducted by the Indonesian Institute of Sciences (LIPI) on voter groups in the 2019 elections, obtained data on 77% of respondents involved in money politics. Burhanuddin et al, also mentioned that in the 2019 election the range of voters involved in money politics reached 19.4% to 33.1%, which exceeded international standards. Even in the 2024 elections, a survey conducted by the Indonesian Political Indicator resulted in 48.4% of a total of 2,975 respondents admitting to receiving bribes from election participants.(Muhamad, 2024) Consequently, Indonesia is labeled as the third most money politics-friendly country in the world. Based on this phenomenon, the basic logic is that such a large percentage of involvement in money politics should also be balanced by the high number of reporting of election crimes related to money politics. Instead, there is a gap between the number of cases of vote buying and the number of reports, both from public complaints and the findings of election supervisors (panwaslu). This is also evident in the fact that only 24 violations related to money politics were convicted out of a total of 7,598 findings of violations nationally in the 2019 elections. (Pandu, 2019) In this case, there is a clear violation of the principle of LUBER JURDIL, especially the principle of freedom.

Based on the above phenomenon, what is problematic is not the reason for the massiveness of money politics, but why people tend to be passive in reporting criminal election violations that occur around them. However, when reflecting on the massive practice of money politics, there are several factors that inhibit passive people from reporting, such as the lack of firmness of laws and regulations, which can be shown by the difficulty of defining the scope of the practice of money politics itself.(Baehaki, 2021) As a

result, violators take advantage of these legal loopholes to achieve their goals. Directly, these legal loopholes also correlate with the difficulty of obtaining witnesses and evidence to be able to raise money politics cases to the court stage. This is exacerbated by the absence of legal guarantees for the protection of reporters of electoral criminal offenses.

In addition, referring to Article 187A of Law Number 10/2016 on Regional Head Elections (UU Pilkada), the giver and receiver of money or other materials that can influence the exercise of voting rights can be threatened with imprisonment or fines. Therefore, it is not uncommon for someone to be afraid to report the practice of money politics because the person concerned is the recipient of the bribe himself. A real situation was experienced by Nuryati and several residents of Sinar Seputih Village, Bangun Rejo District, Central Lampung, who wanted to report the alleged practice of money politics carried out by the Arinal-Nunik candidate pair team in the 2018 Lampung Governor Election.(Kiprah, 2018) They claimed to have been threatened with imprisonment by the Head of the Central Lampung Supervisory Committee (Panwaslu) if the reported candidate pair was proven to have practiced money politics in Sinar Seputih Village as a consequence of receiving money politics. This phenomenon is contrary to Article 28G paragraph 1 of the 1945 Constitution of the Republic of Indonesia, which mandates that everyone has the right to a sense of security and protection from threats of fear to do or not do something that is his or her human right.

Considering some of the situations above, directly or indirectly, the lack of protection for witnesses reporting election violations will hinder the achievement of good government and democratic justice. The fact that the citizen can vote for executive and legislative candidates according to their conscience without incitement to vote for a particular candidate and can contribute to the election monitoring process without fear of intimidation can be degraded by the legal vacuum on the protection of election crime reporters. Therefore, the author wants to answer how is the legal politics of witness protection guarantee for reporter of election criminal violations as an effort to enforce Indonesian election laws?

2. Method

The research method used is normative juridical because the analysis process carried out by the author is related to legal norms contained in statutory regulations (statute approach), such as;

- 1) 1945 Constitution of the Republic of Indonesia,
- 2) Law Number 7 of 2017 concerning Elections (UU Pemilu),
- 3) Law Number 10 of 2016 concerning Pilkada (UU Pilkada),
- 4) the Criminal Procedure Code (KUHAP),

- 5) Law Number 31 of 2014 concerning Witness and Victim Protection (UUPSK), and
 - 6) Bawaslu Regulation Number 7 of 2022 concerning Handling of Findings and Reports of General Election Violations,
- which are then referred to as primary data.

The data collection technique is carried out by collecting all data from the literature review both in the form of primary data and secondary data in the form of books and accredited journals containing legal principles, legal doctrines, legal expert opinions, as well as official government websites. Then the collected data is analyzed in depth using a qualitative juridical analysis method and presented in descriptive-analytical form. (Suyanto et al., 2020) The purpose of qualitative analysis is to analyze data without using numbers, but poured in the form of a description of the words of the research results. (Salim & Nurbani, 2013) Therefore, the author prioritizes data quality rather than data quantity. The research conducted by the author is based on library research by studying various references and previous research results in order to obtain a theoretical basis for the problems to be studied. So as to produce a conclusion and offer as the final result of the research.

3. Results & Analysis

3.1. Problematics of Law Enforcement of Election Criminal Offenses

Soerjono Soekanto explained that the effectiveness of a law enforcement when the substance of law, law enforcement apparatus, legal means, and legal culture can be held in tandem. Even according to Lawrence M. Friedman who states that good law enforcement must fulfill the substance of law, legal structure, and legal culture. (Friedman, 1984) However, law enforcement of election criminal offenses in Indonesia still has obstacles both in regulation and practice. According to Fahmi, there are two problems in Indonesia's electoral law enforcement, from the perspective of regulation and law enforcement. (Fahmi, 2019) The legal analyst of the Central Java Bawaslu, Budi Evantri Sianturi, also explained that there are problems in handling election criminal violations at the Bawaslu level including: (Bawaslu Jateng, 2023)

- 1) The public does not dare to become a reporter of alleged election criminal offenses
- 2) There are no rules related to Bawaslu's authority regarding forced efforts in clarification
- 3) There are no rules in the Election Law regarding the protection of witnesses or parties asked for clarification
- 4) There are no rules related to sanctions for parties who do not fulfill the invitation to clarification by Bawaslu

- 5) There are several articles of the Election Law that are multi-interpretive in nature so that there are several violations that are difficult to charge.

Looking at some of the inhibiting factors above, the main problem of electoral criminal offenses in Indonesia lies in the level of public enthusiasm to report. In fact, people tend to show a culture of indifference or prefer not to report to the authorities when witnessing criminal violations in their surroundings. People tend to tolerate electoral criminal offenses because they are reluctant to deal with the legal process.(Ilham et al., 2023) This was also expressed by Etro Jaya Sinaga and Tabah Maryanah that the reason for the low interest of the community in reporting criminal election violations around them was due to;(Sinaga & Maryanah, 2022)

- 1) material and immaterial losses, and no benefits gained,
- 2) lack of legal protection for the reporter, and
- 3) the phenomenon of election violations that have become inherent and become a tradition in society.

3.2. Legal Loopholes in the Guarantee of Protection for Witness Reporters of Election Crimes

The right to report election criminal violations needs to be supported by legal guarantees for the protection of reporters of election criminal violations. The protection of reporter witnesses of electoral violations is one of the obstacles to upholding electoral law in Indonesia. This is because there are no explicit rules that protect the reporter during the case handling process. Just like other criminal offenses, Bawaslu as the main actor in preventing and cracking down on election violations should provide a sense of security to reporters and informants of alleged election violations. Not only Bawaslu, but lawmakers should initiate the formation of regulations related to the protection of witnesses reporting election crimes.

Currently, the guarantee of protection for witnesses reporting election criminal offenses is still under the umbrella of Law Number 31/2014 on Witness and Victim Protection (UUPSK). This is because the Election Law, such as Law Number 7 of 2017 concerning Elections and Law Number 10 of 2016 concerning Pilkada, does not specifically formulate the protection of reporters of election criminal violations. There are five principles of witness-reporter protection according to UUPSK, including;

- 1) respect for human dignity,
- 2) a sense of security,
- 3) justice,
- 4) non-discrimination, and
- 5) legal certainty

Meanwhile, the rights of reporting witnesses that must be protected by the state are limited to two things.(Gunawan & Meliana, 2024) *First*, the right to protection of personal, family, and property security and freedom from all forms of threats relating to testimony that will, is, or has been given. *Second*, the protection to give testimony without pressure. The state must position itself to guarantee both with the aim of preventing interventions against reporting witnesses that could influence testimony before the court.

However, the UUPSK, which is the main legal instrument for criminal witness protection in general, does not concretely mention the protection of witnesses, victims or reporters of electoral criminal offenses. Article 5 of the UUPSK has specifically defined witness and victim protection only for crimes of gross human rights violations, corruption, money laundering, terrorism, trafficking in persons, narcotics, psychotropic drugs, sexual crimes, and other criminal acts that can threaten a person's life. Witness reporters of electoral criminal offenses are explicitly excluded from the subjects protected by the UUPSK. Thus, the strength of the UUPSK to guarantee the protection of whistleblowers is quite weak.

3.3. Legal Politics of Witness Protection for Reporters of Election Crimes

Political Law according to Soedarto is a state policy through authorized state bodies to establish the desired regulations which are expected to be used to express what is contained in society and to achieve what is aspired to.(MD, 2012) Legal politics can also be defined as a legal policy that applies by making new legal regulations or replacing old legal regulations to achieve state goals as stated in the preamble of the 1945 Constitution. The politics of law must also be built in order to carry out the values contained in the body of the 1945 Constitution. Legal politics is related to legal dynamics when changes occur in the legal system. Therefore, in this study, legal politics is defined as a policy that can be used as a basis for determining the direction of national legal development in order to achieve the aspired Indonesian state.

Witness protection is something that is commonly guaranteed by a country that proclaims itself as a state of law. In accordance with the will of the founding fathers of the Indonesian nation so as to produce the concept of the rule of law as Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which has values including the recognition of respect for human rights. The state also has the obligation and responsibility to protect the human rights of citizens without exception (equality before the law). The concept of protection is in line with Philipus M. Hadjon's view that legal protection refers to the government's preventive and repressive efforts to protect citizens' human rights.(Hadjon, 1987)

The Criminal Procedure Code (KUHAP) emphasizes that making a report is part of everyone's rights. This is regulated in Article 108 paragraph (1) of KUHAP which states that "every person who experiences, sees, witnesses, or becomes a victim of a criminal offense has the right to report or complain". Furthermore, Article 108 paragraph (2) of the Criminal Procedure Code also explains that reporting can become an obligation when a known criminal act can threaten the peace, public security, life, or property of a person.

Tabel 1. Elements of Article 108 paragraph (1) of KUHAP Relating to the Right to Report Election Criminal Violations

Elements	Related to the Reporting of Election Criminal Offenses
Everyone (Setiap orang)	All citizens who have the right to vote, election participants, and election observers.
Experiencing, seeing, witnessing and or being a victim of an event that is a criminal offense (mengalami, melihat, menyaksikan dan atau menjadi korban peristiwa yang merupakan tindak pidana)	Experiencing, seeing, witnessing firsthand the existence of criminal election violations.
Eligible (berhak)	It has the same interest to be protected by law, related to the constitutional rights of citizens. As a citizen with integrity, it is natural to reject the existence of criminal election violations, even though it is not an obligation to report them.
Make a report or complaint (mengajukan laporan atau pengaduan)	In the case of criminal election violations, the reporter has the right to make a report up to 7 days after the knowing of the violation. The reporter is also allowed to represent the reporting to a legal advisor who is appointed with a special power of attorney (surat kuasa khusus).
To the investigator either orally or in writing (kepada penyidik dan atau penyidik baik lisan maupun tertulis)	Every reporter has the opportunity to report election criminal violations that he knows to election supervisors (bawaslu) who are members of the Gakkumdu orally or in writing.

Source: processed from various sources

There is no definitive definition of whether an election criminal offense is a criminal offense that must or must not be reported. However, massive

electoral criminal violations, especially those that are structured, systematic and massive (TSM), are corrosive to the implementation of democracy in Indonesia. This interpretation indirectly means that election criminal violations can have a negative impact on national peace and security. Dede Sembada also specified several types of electoral criminal offenses that have the potential to disrupt the peace and order of direct elections so that they need to be aware of them. (Suhendi, 2020)

The implementation of elections is the identity of a country that characterizes itself as a democratic country. This is also expressed in the form of Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which describes Indonesia as a country that upholds the principle of people's sovereignty. Its existence also needs to be maintained, with efforts to prevent and eradicate the rampant pre-election election criminal violations. The realization can be by forming regulations regarding the protection of reporters of election criminal violations.

Witnesses reporter of election criminal violations are susceptible to intimidation and threats because their testimony will disadvantage the violator who is also an election participant. It is important for the reporter to obtain legal certainty of the reporter's protection from the early stages of reporting to post-trial. This is also a consequence of Bawaslu Regulation Number 7 of 2022 concerning Handling of Findings and Reports of General Election Violations which explains that every Indonesian citizen who has the right to vote has the right to report any criminal election violation that he knows.

The guarantee of protection for reporter witnesses of electoral criminal offenses is a *lex specialis* from the protection of reporters of other criminal offenses. This is important considering that the entire electoral law enforcement process is specifically designed, starting from the substance and legal structure. However, the basis of the "legal politics" of the guarantee of protection of reporter of electoral criminal offenses is the same as the legal politics of the UUPSK, which is formed on the basis of providing a sense of security and providing protection to witnesses and victims of criminal acts from threats, fear, which affect the emergence of truth in the law enforcement process. (Julianto, 2020) Thus, every reporter in both general and special crimes such as electoral crimes, is eligible for the same protection from the state.

The legal vacuum associated with the guarantee of protection of exposure to criminal elections makes law enforcement often find it difficult to find clarity about a crime when the victim is threatened both physically and psychologically. In fact, the legal and available tool of evidence in the trial process was witness testimony that also served as an reporter. (Iksan, 2012)

Thus, guaranteed protection of the electoral criminal reporter was urgently needed in the criminal justice system of the election.

Consequently, in response to the regulation that regulates the protection of election violation, it is felt that it would be necessary for a lawmaker to produce a legal product both of the law and of the changes of the law to be able to accommodate the issues outlined above. In line with the view of Lawrence m. friedman that the law is not just a series of prohibitions or commandments, but rules that are capable of supporting, enhancing, regulating, and serving how to achieve a goal, the more democratic state of Indonesia. (Friedman, 1984)

4. Conclusion

Regulations related to the protection of whistleblowers and witnesses of electoral criminal offenses have not been explicitly regulated in the electoral law. This has implications for the low level of public participation in becoming a reporter or witness in handling electoral criminal violations. Several electoral laws such as Law Number 7/2017 on General Elections or Law Number 10/2016 on Pilkada and their derivative regulations only regulate reporting mechanisms and procedures without any guarantees that can convince someone to become a reporter. Likewise, the UUPSK does not explicitly make the reporter of election criminal violations a protected subject. Based on some of these things, the state should provide solutions through some legal politics that guarantee legal certainty regarding the protection of reporter of election violations in the form of laws and amendments to laws. The formation of these regulations is expected to be able to accommodate the problem of the many criminal election violations in Indonesia as well as change the legal culture of the community to be more concerned with the Indonesian electoral system. As a result, elections as the spirit of a democratic country can run fully according to the principle of LUBER JURDIL.

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