



Jurnal Studi Ilmu Hukum Islam dan Pranata Sosial

journal homepage : [ejournal.iainkendari.ac.id/al-adl](http://ejournal.iainkendari.ac.id/al-adl)

## Analysis of Law Enforcement on Crime of Regional Head Elections in South Konawe Regency

Hasni<sup>1</sup>, Syamsul Bachri<sup>2</sup>, St. Fatmawati<sup>3</sup>

<sup>1</sup>Master of Law Study Program, Postgraduate, Sulawesi Tenggara University, Indonesia

<sup>2</sup>Master of Law Study Program, Postgraduate, Sulawesi Tenggara University, Indonesia

<sup>3</sup>Master of Law Study Program, Postgraduate, Sulawesi Tenggara University, Indonesia

Email : [hasniaishardianti@gmail.com](mailto:hasniaishardianti@gmail.com)<sup>1</sup> [syamsulbachri@gmail.com](mailto:syamsulbachri@gmail.com)<sup>2</sup> [fatmawati@gmail.com](mailto:fatmawati@gmail.com)<sup>3</sup>

### ARTICLE INFO

#### Article History :

Received: 2021-03-11

Accepted: 2021-03-29

Published: 2021-07-31

#### Keywords :

Elections,  
Enforcement,  
Neutrality

© 2021 Al-'Adl. All rights reserved

### ABSTRACT

*This study aims to analyze the enforcement of criminal law in regional head elections in South Konawe Regency and the implications of criminal law enforcement on regional head elections in South Konawe Regency. The location of this research is in South Konawe Regency, precisely at the Bawaslu Office of South Konawe Regency. Based on the results of the study, it shows that the Criminal Law Enforcement in Regional Head Elections in South Konawe Regency is carried out based on regulations related to Regional Head elections. In the material aspect, it refers to the provisions of Law No.1 of 2015 concerning the Election of Governors, Regents and Mayors with the application of the provisions of Article 188 of the Aquo Law, while in the formal aspects it refers to the provisions of the Memorandum of Understanding between Bawaslu RI, Polri, and the RI Prosecutor's Office regarding*

---

*Gakkumdu Center starting at Gakkumdu Center. the stages of reports / findings of alleged criminal acts of election, investigation, first discussion, second discussion, third discussion, transfer of files to decisions and legal remedies. Enforcement of criminal law in regional head elections in South Konawe Regency has implications for regulatory aspects, namely there is still a mismatch between existing legal subjects in prohibition and criminal provisions, in the aspect of law enforcement / organizers there is a lack of synergy between all parties who are members of the Gakkumdu Center, and in cultural aspects the legal awareness is still lacking and aspects of facilities and facilities, particularly those related to financial support in the 2015 regional head elections, do not have operational budget support.*

---

## **A. Introduction**

The Article 1 paragraph (2) of Constitution of the Republic of Indonesia provides that "Sovereignty rests in the hands of the people and is exercised according to the Basic Law". The aforementioned provisions indicate that the Republic of Indonesia places the people as the most important element in the framework of carrying out the life of the nation and state. One of the manifestations of the implementation of people's sovereignty is through general elections which are conducted democratically and civilized through the broadest possible participation of the people based on the principles of direct, general, free, secret, honest and fair. This is explicitly affirmed in Article 22E paragraph (1) of the Constitution of the Republic of Indonesia stipulates that "General elections are conducted directly, publicly, freely, secretly, honestly and fairly every five years". The amendments to the 1945 Constitution have brought about major changes to the Indonesian constitutional system. One of the changes is related to filling the post of regional head. Article 18 paragraph (4) of the 1945 Constitution states that "Governors, Regents and Mayors respectively as heads of provincial, regency and municipal governments are elected democratically".<sup>1</sup>

---

<sup>1</sup>Suharizal, 2011, *Pemilukada Regulasi, Dinamika, dan Konsep Mendatang*, PT Rajagrafindo Persada, Jakarta, p. 26.

The quality of a country's democracy is often measured by the holding of general elections in that country. Therefore, general elections and democracy have a very close relationship with one another. The exercise of people's sovereignty cannot be separated from general elections because general elections are a logical consequence of the adoption of the principle of popular sovereignty (democracy) in the life of the nation and state. The basic principle of democratic state life is that every citizen has the right to actively participate in the political process. Indonesia has a different form of democracy from other countries, democracy that is based on the spirit of the Indonesian nation.<sup>2</sup>The right to vote is one of the constitutional rights of citizens that have been recognized as part of human rights. Article 25 International Covenant on Civil and Political Rights states that every citizen has rights and freedoms without distinction and is limited for any reason to vote and be elected in general elections (Pemilu).<sup>3</sup>

Regional Head Election (Pilkada) is a democratic party of the people in electing regional heads and their representatives who come from proposals from certain political parties, coalitions of political parties or independently and who have met the requirements. The signals of Regional Head Election viewed from a constitutional point of view and the government will produce conditions, one of which will produce a regional government that has direct legitimacy from the community.<sup>4</sup>

Pilkada are a means of exercising people's sovereignty in the regions. This is part of the development of the governance system of the Republic of Indonesia which has undergone various changes. Elections for regional heads such as Governors, Regents and Mayors since Indonesia's independence before 2005 have only been elected through the local Regional Representative Council (DPRD). Since the enactment of Law no. 9 of 2015 concerning the Second Amendment to Law No. 23/2014 concerning Regional Government, regional heads are elected directly by the people through the Election of Regional Heads and Deputy Regional Heads or abbreviated as Pilkada. Direct Regional Head Election is basically a national political process towards a life that is more

---

<sup>2</sup>Abdul Hamid Tome, "Membumikan Pancasila: Upaya Pelembagaan Nilai Pancasila dalam Kehidupan Masyarakat Desa", *Al-'Adl*, Volume 13, Nomor 1, Januari 2020, p. 126.

<sup>3</sup>Nurush Shobahah dan Much. Anam Rifai, "Faktor Yuridis yang Mempengaruhi Penambahan Jumlah Daftar Pemilih Khusus Pada Pemilu 2019 di Kabupaten Tulungagung", *AHKAM Jurnal Hukum Islam*, Volume 8, Nomor 2, November, 2020, p. 260.

<sup>4</sup>Laode Harjudin, *Pilkada Eksperimen Kedaulatan Rakyat*, Jawa Pos, 14 Maret 2005.

democratic (people's sovereignty), transparency and responsibility. Apart from that, the direct Regional Head Election indicates a change in local democratization, which is not just a vertical distribution of power between levels of government.<sup>5</sup> Direct Regional Head Elections have provided a new space for the growth of democratization in the regions.<sup>6</sup>

In the implementation of the pilkada, which is an arena for competing for the top leadership in the regions, it does not rule out the possibility of violations, both administrative and criminal. To ensure free and fair regional head elections, protection is needed for voters, for the parties participating in the elections, as well as for the people in general from all fear, intimidation, violations of money politics, violations in voting, falsification of letters, violence and threats in terms of preventing someone from registering as voters, use of state facilities, involvement of the authorities in winning certain pairs, manipulating votes<sup>7</sup> and other fraudulent practices that will affect the purity of the election results.

Since the beginning, Indonesia has had regulations on Pilkada. This shows that Pilkada is very important in the life of the state in Indonesia. However, this ideal condition does not seem to always run smoothly due to anomalies or phenomena that injure the idealistic values of the Pilkada. Various problems that often arise in the implementation of elections and regional head elections in Indonesia hamper the realization of democratic elections. Some of these problems include money politics and black campaigns, professional election organizers, politicization of the bureaucracy, involvement of civil servants, the quality and capability of election participants or political parties, apathy and pragmatism in public political participation, and horizontal conflicts.<sup>8</sup>

In its development, Pilkada criminal regulation has undergone many changes, in the form of an increase in the types of criminal acts to differences in the addition of criminal sanctions. This is due to the fact that Pilkada crimes are increasingly becoming a serious concern because the measure of the success of a democratic country is seen from its success in holding Pilkada. The government

---

<sup>5</sup>Titik Triwulan Tutik, 2010, *Konstruksi Hukum Tata Negara Indonesia Pasca Amandemen UU 1945*, Kencana Prenada Media Group, Jakarta, p. 272.

<sup>6</sup>Fitriyah, "Meninjau Ulang Sistem Pilkada Langsung: Masukan untuk Pilkada Langsung Berkualitas", *Politika Jurnal Ilmu Politik*, Volume 2, Nomor 1, April, 2011, p. 7.

<sup>7</sup>Beriyansyah, 2017, *Penyelesaian Pelanggaran Pemilihan Kepala Daerah Dalam Pandangan Hukum Positif*, Fakultas Syahri'ah, Univeristas Islam Negeri Raden Intan, Lampung, p. 16.

<sup>8</sup>Ratnia Solihah dan Siti Witianti, S., "Permasalahan dan Upaya Mewujudkan Pemilu Demokratis di Indonesia Pasca Reformasi", *Jurnal Bawaslu*, Volume 3, Nomor 1, 2017.

then tightened the legal rules regarding Pilkada by further increasing criminal sanctions for Pilkada criminal offenders with the enactment of Law Number 10 of 2016 concerning Second Amendment to Law Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning Elections. Governors, Regents, and Mayors become Laws.

Problems arise in the election of a regional head, because there are many incidents that lead to criminal acts. According to Article 73 paragraph (2) of Law Number 15 Year 2011 concerning Election Implementation, the institution in charge of overseeing the implementation of the Election is the Election Supervisory Firm (Bawaslu). However, as an effort to maintain the quality of the pilkada, the community as voting rights holders also need to become supervisors in the implementation of the pilkada. Because in the procedure for handling election violations, both Bawaslu Provinsi, PanwasKab./Kota, Panwas Kecamatan, Pengawas Pemilihan Lapangan (PPL), and Pengawas TPS are tasked with receiving reports of violations from voters, election observers, and election participants (pairs of candidates).

The types of violations that can be reported under the Law on Pilkada include violations of the code of ethics of election administrators, violations of election administration, election disputes, and election crimes. Each type of violation has a different substance and procedure for handling. Election crime constitutes a violation or crime against the election provisions as stipulated in the Election Law. The form of election crime, for example, provides untrue information about oneself or another person about something that is needed for filling out the voter list, conducting campaigns outside the predetermined schedule, intimidating and violence against voters, promising and / or giving money. or other material to influence voters.

Law enforcement is also specifically regulated by the gakkumdu center institution which is not known in the KUHAP. The period of law enforcement is much shorter than the provisions contained in the KUHAP. The Gakkumdu Center and the problem of this period of time make law enforcement of regional elections incompatible with justice and material truth (*substantial truth*).

The Election of Regional Heads in South Konawe Regency is also inseparable from various problems of alleged criminal violations, both those originating from findings and reports. In the 2015 Pilkada where the South Konawe Regency Panwas found an alleged violation committed by the State Civil Apparatus (ASN) where during the campaign period, ASN participated in a meeting of one of the Regent and Deputy Regent Candidate Pairs, based on the

decision of the Andoolo District Court the ASN which was legally declared and make sure to commit a Crime "as a State Civil Apparatus Official with deliberate intent to take an action that benefits one of the candidates during the Campaign period" as stipulated in article 188 Jo. Article 71 paragraph (1) of Law Number 1 of 2015 concerning the Election of Governors, Regents and Mayors.

There are 2 things that will be discussed in this research, namely (1) How is the Criminal Law Enforcement in the Regional Head Election in South Konawe Regency? (2) What are the Implications of Criminal Law Enforcement on Regional Head Elections in South Konawe Regency? Thus this study aims to determine the Enforcement of Criminal Law in Regional Head Elections in South Konawe Regency and to determine the Implications of Criminal Law Enforcement on Regional Head Elections in South Konawe Regency.

## B. Method

This research uses juridical normative and empirical juridical legal research by means of literature study which is guided by books or legal literature, regulations related to the problems discussed in this study<sup>9</sup>. The problem approach used in this study is the *statute approach*, *conceptual approach* and *case approach*<sup>10</sup>. Sources of data used in this study are primary data and secondary data.<sup>11</sup>

## C. Discussion

### 1. Criminal Law Enforcement in Regional Head Elections in South Konawe Regency

In 2015, Indonesia held simultaneous Pilkada consisting of 8 (eight) provinces, 170 (one hundred seventy) regencies, and 26 (twenty six) cities. The South Konawe Regency area is one of the regions that carry out the Pilkada simultaneously in 2015. In the implementation of the Pilkada in South Konawe Regency there are several administrative violations, violations of the code of ethics, and criminal offenses. One of the cases of

---

<sup>9</sup>Philipus M. Hadjon dan Tatiek Sri Djatmiati, 2005, *Argumentasi Hukum (Legal Argumentasi/ Legal Reasoning) Langkah-Langkah Legal Problem Solving dan Penyusunan Legal Opinion*, Gadjah Mada University Press, Yogyakarta, p. 3.

<sup>10</sup>Peter Mahmud Marzuki, 2010, *Penelitian Hukum*, Kencana Prenada Media Group, Jakarta, p. 34.

<sup>11</sup>Abdul Kadir Muhammad, 2004, *Hukum dan Penelitian Hukum*, PT. Citra Aditya Bakti, Bandung, p. 112.

criminal offenses that occurred was related to violations of the neutrality of ASN in the regional elections, in which the State Civil Apparatus (ASN) officials took actions that benefited one of the candidate pairs of regents. The cases can be seen in the table below:

Table 1  
Data on Election Crime Cases in the Regional Head Election of South  
Konawe Regency in 2015

No	Offense	Offender	Description
1	State Civil Servants (ASN) who take actions or decisions that benefit one of the pairs of candidates during the Campaign period	Ahmadi P. (Sekretaris Dinas Koperasi Kab. Konawe Selatan)	Following the campaign of the Candidate Pair for Regent of South Konawe Election Number 1 Asnawi Sukur and Rustam Tamburaka and took an active role in the meeting
2	State Civil Servants (ASN) who take actions or decisions that benefit one of the pairs of candidates during the Campaign period	Rena, S. Sos (Kepala Unit Pengelola Teknis Dinas (KUPTD) Dinas Pendidikan dan Kebudayaan Kec. PalanggaKonsel)	Initiated meetings and ordered the Principals and Teachers to participate in the campaign activities for the Candidate Pair for Regent of South Konawe Election Number 1 Asnawi Sukur and Rustam Tamburaka

Source : Data from the General Election Supervisory Firm for South Konawe Regency

Based on the results of the research, according to Hajarudin<sup>12</sup>, the case started when on November 20, 2015 the Election Supervisory Committee of Palangga District, South Konawe Regency conducted supervision of the face-to-face meeting campaign for candidate pair Number 1 on behalf of Asnawi Syukur and Rustam Tamburaka in Sangi-Sangi Village, Palangga District, South Konawe Regency. After carrying out this supervision, Sitono, as the Chair of the Palangga District

<sup>12</sup>Interview with Hajarudin, S.Pi, 2015 Supervisory Committee Commissioner for South Konawe Regency, Member of the 2015 Gakkumdu Center, South Konawe Regency, on Tuesday, February 16, 2021.

Supervisory Committee, received a report from the supervisor of the sub-district election on behalf of Armin and HirmanLasiru, (members of the Palangga Supervisory Committee) who informed that there would be a meeting for candidate pair number 1 on behalf of Asnawi Syukur and Rustam. Tamburaka at the Duta Inn, Palangga Village, South Konawe Regency. After receiving this information, Sitonoheaded straight to the Duta Inn. Arriving at the Duta Inn, Sitono saw that it was true that there was a meeting at the inn, so Sitono and Hirman Lasiru as members of the the Palangga Supervisory Committee monitors the activities in the inn from outside.

Based on the results of the monitoring, at around 7:00 p.m. the meeting was over, and at that time we saw Nurtiatin going out and coming home, followed by Pence where Pence ordered Nurtiatin to take pictures / photos that were previously taken at the meeting. Then Nurtiatin answered *"God willing, I will delete it"*. Then Ahmadi (Sekretaris Dinas Koperasi Kab. Konawe Selatan) came and said *"You are Nurtiatin Taridala, right!, you are number three, delete that photo"* and Nurtiatin answered *"is there a law prohibiting photos from being taken"*. Ahmadi said *"delete it, said you don't want to delete it"* and Nurtiatin replied that he would delete the photo, while saying *"what is this photo for"*.<sup>13</sup>

Furthermore, Sitono and HirmanLasiru as chairman and members of the PanwascamPalangga reported the incident of a meeting between teachers and school principals in Palangga District with the Candidate Pair for Regent of South Konawe of election number 1 pair AsnawiSukur and RustamTamburaka at the Duta Inn to the General Election Supervisory Committee (Panwaslu) of South Konawe Regency for further processing. Based on these findings, according to Hajarudin, stated that the Gakkumdu center conducted the first discussion where the Palangga Election Supervisory Committee from 20 to 26 November 2015 conducted a search of the chronology of the meeting at the Duta inn that took place on 20 November 2015, by conducting a search of the identity, the address and telephone number of the witness NurtiatinTaridala as well as collecting any possible evidence.

---

<sup>13</sup>Interview with Sitono, as Chairman of the Supervisory Committee for Palangga District, on Tuesday, February 16, 2021.



Based on the results of the research, according to Irmadi Raharja, the Gakkumdu Center in South Konawe Regency then conducted a second discussion. In the second discussion, it was attended by the election supervisory commissioner for South Konawe district, investigators and prosecutors who are members of the Gakkumdu Center, South Konawe Regency. Based on the results of the second discussion, it is concluded that the findings of the alleged violation of election crime on November 20, 2015 have fulfilled the elements of an election crime. Therefore, the Gakkumdu center in South Konawe Regency decided to continue the findings at the investigation stage.<sup>14</sup>

Based on the research results, according to Nukram Ibrahim<sup>15</sup>, from the results of the investigation, it was found that on Friday, November 20 2015, at around 09.00 WITA which coincided with the campaign schedule for the Candidate pair for Regent of South Konawe election number 1 pair Asnawi Sukur, S.Sos and Drs. Rustam Tamburaka in Palangga district, there is a person named Rena as a Civil Servant who holds the position of Head of the Technical Service Unit (KUPTD) of the Education and Culture Office of the District Palangga South Konawe Regency contacted school principals in the Palangga District South Konawe Regency. Principals contacted included Sutopo, S.Pd (principal of SDN Kapujaya), Ine Mashuri S.Pdi (Principal of SDN 9 Palangga), Saebi (Principal of SDN 12 Palangga), Hamid (Principal of SDN 17 Palangga), and other school principals, which is in the scope of Palangga District.

According to Nukram Ibrahim, during the investigation process by asking for the testimony of witnesses, namely the principal of the school mentioned above, it was obtained information that Rena had conveyed and ordered the Principals to be present at Duta Inn by bringing teachers to attend a meeting with the Candidate Pair for Regent of South Konawe. Election number 1 pair Asnawi Sukur, S.Sos and Drs. Rustam Tamburaka, which Rena planned to join together with a gathering of teachers in Palangga district. Then the Principals who received orders from Rena's

---

<sup>14</sup>Interview with Irmadi Raharja, Commissioner of the 2015 South Konawe Regency Election Supervisory Committee, Member of the 2015 Gakkumdu Center, South Konawe Regency, on Wednesday, February 17, 2021.

<sup>15</sup>Interview with Aipda Nukram Ibrahim, South Konawe Police Officer, Criminal Investigation Unit, 2015, Member of the 2015 Gakkumdu Center of South Konawe Regency, on Thursday, February 18, 2021.

brother then passed on the order to the teachers in their respective schools to attend the meeting.

In addition, based on the results of an interview with Ade Rasako, based on the results of the investigation, it was found that at the meeting AhmadiPohiwo as a Civil Servant who held the position of Secretary of the District Cooperative and UKM Office of South Konawe Regency attended and played an active role in the meeting. According to Ade Rasako, the investigators then conveyed the results of the investigation in the third discussion led by the Chief Coordinator of the Gakkumdu Center, South Konawe Regency. The third discussion resulted in a conclusion, namely that the case files for alleged election crimes committed by Rena and AhmadiPohiwo were complete and the case was transferred to the Prosecutor as outlined in the minutes of discussion and signed by the Election Supervisor, Investigator and Prosecutor.

After delegating the case to the public prosecutor, the next stage is prosecution. Based on the results of the interview with Marwan Arifin, it was stated that the public prosecutor then prepared an indictment and prepared a plan for prosecution and drafted a warrant. Against the defendants Rena and AhmadiPohiwo, the Public Prosecutor charged Article 188 in conjunction with Article 71 paragraph (1) of 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. The law as amended by Law Number 8 of 2015 concerning the actions of state civil servants by deliberately making decisions and / or actions that designate one of the candidates during the campaign period.<sup>16</sup>

Based on the letter of demands of the public prosecutor, the Andoolo Regent Court issued a decision on December 31, 2015 with number 01 / Pid.S / 2015 / PN Adl, which stated that:

- a. Declared that the defendant Rena was legally and convincingly proven guilty of committing a criminal act as an official of the State Civil Service by deliberately committing an act that benefited one of the candidate pairs during the campaign period.
- b. Sentenced the defendant to a sentence of 1 (one) month imprisonment and a fine of Rp. 2,000,000, - (two million rupiah).

---

<sup>16</sup>Interview with Marwan Arifin, S.H., Kasi Pidum, Regent Prosecutor's Office of SouthKonawe Members of the Gakkumdu Center, SouthKonaweRegency 2015, February 19, 2021.

- c. Stipulates that if the fine is not paid, it will be replaced by a 1 (one) month imprisonment.

Furthermore, against the defendant AhmadiPohiwo, the AndooloRegent Court has also handed down a decision number 02 / Pid.S / 2015 / PN Adl, which stated that:

- a. Stated that the defendant AhmadiPohiwo was legally and convincingly proven guilty of committing a criminal act as an official of the State Civil Service with deliberate actions that benefited one of the candidate pairs during the campaign period.
- b. Sentenced the defendant to a sentence of 1 (one) month imprisonment and a fine of Rp. 1,000,000, - (one million rupiah).
- c. Stipulates that the defendant does not need to serve the sentence, unless later there is another order from the judge because the defendant committed a criminal act before the 3 (three) month probation ends.
- d. Stipulates that if the fine is not paid, it will be replaced by a 1 (one) month imprisonment.

Based on the enforcement of criminal law in the regional head elections that took place in South Konawe Regency in the 2015 simultaneous regional elections as described above, the authors can describe several things related to law enforcement. First, in relation to legal subjects who commit acts prohibited in Law Number 1 of 2015, in this case the legal subject is not general (everyone), but is limited to certain parties, namely every state official, state civil servant official, and village head or other designation / lurah. Based on legal facts regarding the case that occurred in the regional head election in South Konawe Regency in 2015, to be precise, during the campaign implementation on November 20, 2015 which was carried out by candidate pair number 1 who were charged with carrying out prohibited acts, AhmadiPohiwo and Rena. Based on the identities of the two defendants, AhmadiPohiwo and Rena are state civil servants so that based on the provisions of the aquo law, AhmadiPohiwo and Rena qualify as legal subjects as regulated in Article 188 of Law No.1 of 2015.

*Second*, related to acts that qualify as an election crime in Article 188 of Law Number 1 of 2015, namely making decisions and / or actions that benefit or disadvantage one of the pairs of candidates. The provisions of Article 188 of Law Number 1 of 2015 are cumulative / alternative in nature so that whether the act is carried out in the form of decisions and actions or one of them (decision only or action only) which can benefit or

harm one of the pairs of candidates, it can still be said to violate the provisions of Article 188.

Based on legal facts in a case that occurred in the regional head election in South Konawe Regency in 2015, to be precise during the implementation of the campaign on November 20, 2015 which was carried out by candidate pair number 1 which was carried out at Duta Inn, AhmadiPohiwo and Rena inns where as state civil servants officials has taken an action that benefits one of the candidate pairs, namely candidate pair number 1 on behalf of Asnawi Syukur and RustamTamburaka. The form of action taken by Ahmad Pohiwo and Rena which benefited candidate pair number 1 was to gather teachers from civil servant elements, non-permanent teachers (GTT) and principals of elementary school levels in Palangga District to participate in the campaign for candidate pair number 1 so what carried out by AhmadiPohiwo and Rena in accordance with the actions prohibited under the provisions of Article 188.

*Third*, related to the sanctions imposed by the panel of judges on the defendants. Based on the article charged to the two defendants, namely being charged with Article 188 in conjunction with Article 71. Based on the provisions of article aquo, the formulation of sanctions that can be imposed is imprisonment for a minimum of 1 (one) month or a maximum of 6 (six) months and / or a fine of at least Rp. 600,000.00 (six hundred thousand rupiah) or a maximum of Rp. 6,000,000.00 (six million rupiah). Based on the decision number 01 / Pid.S / 2015 / PN Adl with the defendant Rena and the verdict number 02 / Pid.S / 2015 / PN Adl with the defendant AhmadiPohiwo, the panel of judges at the court of first instance sanctioned Rena with 1 imprisonment ( one) month and a fine of Rp. 2,000,000, - (two million rupiah), a subsidiary of 1 (one) month in prison. Meanwhile, the defendant Ahmadi Pohiwo was sentenced to imprisonment for 1 (one) month in which the defendant did not need to serve the sentence, unless later there was another order from the judge because the defendant had committed a criminal act before the probation period of 3 (three) months ended and a fine. in the amount of Rp. 1,000,000, - (one million rupiah), a subsidiary of 1 (one) month in prison. Based on the aquo decision, the sanctions imposed on the two defendants are in accordance with the formulation of sanctions in Article 188 in conjunction with Article 71 of Law Number 1 Year 2015.

## 2. Implications of Criminal Law Enforcement on Regional Head Elections in South Konawe Regency

The main problem in overseeing general elections or supervising regional head elections is law enforcement itself, one of which is criminal law enforcement. The principle of democracy is one of the characteristics of the rule of law. One indicator of a rule of law is the success in enforcing the law. It is said to be successful because the law that has been regulated, should have been and is due, carried out and obeyed by all elements of society. The absence and inadequacy of law enforcement can have implications for the credibility of the formers, implementers of the rules and the people who are affected by the rules themselves, so that all elements will be affected. For this reason, law enforcement is important.

However, in the field, law enforcement is not as beautiful as described by the legal and regulatory theories that have governed it. There are more than one law enforcement problems and in order to be able to discuss law enforcement more deeply and to be clearer about the problem, it is necessary to pay attention to what factors can affect the effectiveness of law enforcement. The main problem of law enforcement lies in the factors that influence it. These factors are legal factors, law enforcement factors, facilities or facilities factors, community factors and cultural factors<sup>17</sup>.

Based on the description of the explanation above which states that law enforcement will have implications for the credibility of the formers, implementers of the rules and the people who are affected by the rules themselves, so that all elements will be affected. Likewise in the context of criminal law enforcement in regional head elections it will have implications for all parties / elements related to regional head elections both in terms of the substance of rules / regulations governing regional head elections, law enforcers / administrators of regional head elections as well as community culture exposed to the rules themselves. Based on this, the author will analyze the implications of criminal law enforcement on the Regional Head election in South Konawe Regency which will be described based on each element related to the Regional Head election.

*First*, the rule or law factor itself. The law that is meant is a law or written regulation that is generally accepted and made by the Government.

---

<sup>17</sup>Soerjono Soekanto, 2004, *Faktor – Faktor yang Mempengaruhi Penegakan Hukum*, PT. Raja Grafindo, Jakarta, p. 8.

The legal factor in question starts with the problematic law itself. Law enforcement derived from this Law is due to, among other things, the unclear meaning of the words in the Law which will result in confusion in the interpretation and application. Besides that, it is unclear in the words used in the formulation of certain articles.

Regarding the regulatory or legal factors in regional head elections in South Konawe Regency, namely related to the substance / regulations governing the election of Regional Heads regulated by Law of the Republic of Indonesia Number 1 of 2015 concerning the Election of Governors, Regents and Mayors who have experienced several times change. Based on the analysis carried out by the author related to the regulations governing the election of Governors, Regents and Mayors, legal problems were found, one of which was related to the object of research that the author studied. This legal problem is described from the formulation of Article 188 which refers to the provisions of Article 71 of the Aquo Law relating to customary arrangements or legal subjects. Based on the provisions of Article 71 paragraph (1) of the Aquo Law, there are different things when describing the legal subject with the provisions of Article 188. The provisions of Article 71 paragraph (1) legal subjects are State Officials, regional officials, officials of the State warden apparatus, members of the TNI / POLRI, Village Head or other designations / lurah. Whereas the provisions of Article 188 as provisions for the formulation of the offense limit the legal subject to be limited to every state official, state civil servant official, and village head or other designations / lurah.

Based on this, according to the author, in the event of an act prohibited by the provisions of Article 71 paragraph (1), the provisions of the sanctions contained in Article 188 can only be imposed on legal subjects contained in Article 188, namely every state official, official of the state civil apparatus, and the head. Village or other designation / lurah. This ambiguity will have implications for the criminal law enforcement process in the Regional Head election, where criminal law enforcement, especially the provisions of Article 188 of the aquo law cannot be enforced against regional officials, and members of the TNI / POLRI who violate the provisions of Article 71 paragraph (1) of the law aquo. Meanwhile, the facts that occur in the field of regional officials and members of the TNI / POLRI are vulnerable or may violate the prohibition provisions contained in Article 71 paragraph (1).

Based on the results of the research, interviews with Awaluddin AK, during the implementation of the regional head election to be precise the election for the Governor of Southeast Sulawesi in 2018 in South Konawe Regency, there was an incident where 3 (three) unscrupulous members of the DPRD of South Konawe Regency without applying for a campaign permit first according to the provisions of the regulation legislation conducting a campaign for one of the pairs of candidates. The act is basically a form of action that benefits one of the pairs of candidates<sup>18</sup>.

Based on the provisions of Article 71 of the Law concerning the Election of Governors, Regents and Mayors which states that State Officials, regional officials, officials of the State guard apparatus, members of the TNI / POLRI, Village Heads or other names / lurah are prohibited from making decisions and / or actions that are profitable or detrimental to a pair of candidates, then the DPRD member as one of the regional officials based on the provisions of the Law on Regional Government has clearly committed a campaign violation.

However, based on the author's description above, regional officials who make decisions and / or actions that benefit or disadvantage one of the pairs of candidates cannot be sentenced to punishment because the legal subject desired in the formulation of the offense in Article 188 does not accommodate the legal subject as referred to in Article 71. Provisions The sanctions contained in Article 188 can only be imposed on legal subjects in a limitative manner, namely every state official, official of the state civil apparatus, and village head or other designations / lurah.

The legislators have formulated limitatively the legal subjects referred to, as regulated in Article 71, namely State Officials, regional officials, State warden apparatus officials, members of the TNI / POLRI, Village Head or other designations / lurah. However, in the formulation of offenses stipulated in Article 188, the legal subjects that can be subject to criminal sanctions are limited to state officials, state civil servants, and village heads or other designations / lurahs. This shows that the lack of law enforcement has implications for the credibility of the regulators.

*Second*, the factor of implementing the rules or enforcing the law. In the context of criminal law enforcement in regional head elections, the

---

<sup>18</sup>Interview with Awaluddin AK, Commissioner of Bawaslu of South Konawe Regency Year 2019, Chief Coordinator of the Gakkumdu District Center. South Konawe Year 2019, on Saturday, February 20, 2021.

parties involved in criminal law enforcement are members of the Integrated Law Enforcement Center (Gakkumdu), which consists of Bawaslu, the Police and the Attorney General's Office. In the context of criminal law enforcement in the Regional Head election, the legal problem that occurs is the lack of synergy among law enforcement officers who are members of the Gakkumdu Center so that the implication is that law enforcement cannot be maximized.

In the process of handling election criminal cases conducted by the Integrated Law Enforcement Center there are at least several processes that require synergy of law enforcers who are members of the Gakkumdu center. Synergy can be assessed in the first discussion process, the second discussion process, and the third discussion process. Based on the description of the law enforcement process above which requires synergy of all elements that are members of the Gakkumdu center. However, the fact is that sometimes what happens is a disagreement between election supervisors, investigators and prosecutors is the cause of the inadequate enforcement of criminal law in regional head elections. In practice, disagreements between election supervisors, investigators and prosecutors usually occur when the second discussion is conducted to determine whether the report / finding fulfills the elements or does not fulfill the element of an election crime. If one of the parties states that it does not fulfill the element of an offense in an act that is suspected of being a criminal election, the conclusion of the discussion will decide to stop the handling of the report / finding. At this stage, of course, the same synergy and enthusiasm are needed in the efforts to handle election crime.<sup>19</sup>

Coordination or synergy between law enforcers who are in the Gakkumdu center is a common problem in Indonesia, where the understanding of the interpretation and perception between law enforcers who are in the Gakkumdu Center is a challenge in enforcing the law on election criminal acts. Often there is no common understanding so that in the process of handling cases of election criminal acts, many stop and do not continue to investigations, prosecutions and court hearings. In analyzing a case, each institution has its own beliefs that come from their respective

---

<sup>19</sup>Interview with Awaluddin AK, Commissioner of Bawaslu of South KonaweRegency Year 2019, Chief Coordinator of the Gakkumdu Center of South Konawe Regency Year 2019, on Saturday, February 20, 2021.



agencies so that it is necessary to carry out an analysis so that the understanding in handling election crimes becomes one thought.<sup>20</sup>

Apart from the positive value of the role of the Gakkumdu Center (Integrated Law Enforcement) by the election organizers, there are various weaknesses in the process and the role of Gakkumdu in carrying out its duties and authorities. These include the problem of regulations which require that the decision of Gakkumdu be unanimous between Bawaslu, the Attorney General's Office and the Police. In addition, the existence of dissenting opinions (differences of opinion) in Gakkumdu's decision is only a note in the decision, where it can be enforced that the Bawaslu input decision can be overridden by the Police or the Prosecutor's Office. The condition of such regulatory problems certainly needs to be taken seriously so that in the future there will be no problems in the implementation and role of regional election criminal enforcement through the Gakkumdu Center so that the pilkada is more dignified.<sup>21</sup>

As explained above, the lack of maximum law enforcement can have implications for the credibility of the implementers of the rules, one of which is the judge as a party whose role is very decisive when a decision is expected to be born in an effort to realize the objectives of the law itself. However, in practice the judge's decision does not provide a deterrent effect on the perpetrators of an election crime, in this case the state civil apparatus committing an act of benefit to one of the pairs of candidates. As described above, in case number 02 / Pid.S / 2015 / PN Adl with the defendant AhmadiPohiwo, the panel of judges only sentenced the defendant to probation.

According to the author, the judge's decision not only did not give a deterrent effect (special prevention) to the perpetrator but also did not provide general prevention as the purpose of the crime itself. This can be seen in the implementation of the regional head election in South Konawe Regency in 2020. Based on the results of the research, in the implementation of the campaign for the election of the district head of South Konawe Regency in 2020, there was another criminal act of election,

---

<sup>20</sup>Mohd. Din, Rizanizarli dan Akbar Jalil, "Model Penegakan Hukum Tindak Pidana Pemilu di Provinsi Aceh yang Berkeadilan", *Jurnal Penelitian Hukum De Jure*, Volume 20, Nomor 3, September, 2020, p. 295.

<sup>21</sup>Muhammad Junaidi, "Pidana Pemilu Dan Pilkada Oleh Sentra Penegakan Hukum Terpadu", *Jurnal Ius Constituendum*, Volume 5, Nomor 2, Oktober, 2020, p. 224.

namely ASN who committed an act or decision that benefited one of the candidate pairs. In the aquo case, the head of the sub-district was involved in winning the candidate pair for regent of South Konawe. The perpetrators were Ivan Ardiansyah (Head of Palangga District), Ahmad Ruanto, (Head of Palangga Urban Village), Lanay (Head of Landono District). In addition to this case, data from the South Konawe Regency Election Supervisory Firm, Data on Regional Head Election Violations in 2020 in the implementation of the election campaign for the regent of South Konawe Regency in 2020, there was also an election crime involving a village head who committed an act that violated Article 188 of Law No. 1 of 2015. The actions of the defendants then received a judge's verdict at the Andoolo Regent court which legally and convincingly committed a criminal act as an official of the State Civil Apparatus by deliberately committing an act that benefited one of the candidate pairs during the campaign period as regulated in Article 188 of Law Number 1 Year 2015.

Based on the results of the research above, it illustrates that the verdict of the judge who made the verdict of the criminal who committed a criminal act in 2015 did not actually have a deterrent effect (general prevention) on others from committing similar crimes, namely acts of neutrality of ASN in elections regional heads who take actions or decisions in favor of one of the candidates.

*Third*, the facilities and facilities. Without the existence or support of adequate facilities or facilities, it is not easy to enforce the law properly, which includes, among other things, highly educated and skilled human resources, good organization, adequate equipment, adequate finance, and so on. If these things are not fulfilled, then it is difficult for law enforcement to achieve its objectives.

Based on the results of the research, an interview with Reni Susilawati stated that the facilities and facilities especially related to financial or budget support owned by election organizers, especially in the gakkumdu center, South Konawe Regency in the 2015 regional head election did not have operational budget support. Unlike the case in the 2020 regional head elections, the Gakkumdu center in South Konawe Regency already has operational budget support for handling election crimes. Based on data from the Bawaslu of South Konawe Regency, budget support for the implementation of regional head elections in South

Konawe Regency in 2015, budget support is 6.5 billion rupiah, meanwhile in 2020 it will increase to 17.9 billion rupiah<sup>22</sup>.

Based on the data above, the lack of budget in the implementation of the Regional Head election in South Konawe Regency in 2015 has implications for supporting infrastructure in the implementation of criminal law enforcement in the Regional Head election. The lack of supporting infrastructure for the Regional Head Election in South Konawe Regency will have implications for law enforcement that does not run smoothly. However, the increased budget support for the regional head elections of South Konawe Regency in the 2020 election has good implications in the course of criminal law enforcement. Although basically this large budget support is still considered insufficient when compared to the area based on the number of sub-districts and the number of population or the obligatory voting in South Konawe Regency<sup>23</sup>.

*Fourth*, the community factor. From a social and cultural point of view, Indonesia is a plural society with many ethnic groups with a variety of different cultures. According to Awaluddin AK, in the context of regional head elections in South Konawe Regency, to ensure and improve community compliance with existing regulations, Bawaslu and Panwas in South Konawe Regency always provide counseling, socialization and education to the community regarding the rules for regional head elections. Especially regarding actions that are categorized as violations in regional head elections as a form of external encouragement so that the public obeys the prevailing regulations. However, in the holding of regional head elections in South Konawe Regency there are still conditions that cause incentives to take negative actions or are contrary to statutory regulations, namely taking various ways so that the nominated candidate wins the regional head election. This is related to the bad assumptions about political practices and politicians. Andi Setiadi in his book *"False Expectations Politics"* states: *"politics is not about truth, but about interests. Politics is not about who "produces" what, but about who "gets" what. That is why,*

---

<sup>22</sup>Interview with Reni Susilawati, S.E., M.M., Coordinator of the Bawaslu Secretariat of South Konawe Regency in 2020, on Saturday, February 20, 2021.

<sup>23</sup>Interview with Muammar, S.P., Commissioner of Bawaslu of South Konawe of the Year 2019, on Saturday, February 20, 2021.

there emerged a political adage that was so popular against politics, "*No friend or foe is eternal, there is only eternal interest*".<sup>24</sup>

*Fifth*, the cultural factor. Culture, according to Soerjono Soekanto, has a very large function for humans and society, namely to regulate people so that people can understand how they should act, act, and determine their attitudes when dealing with other people. Basically, culture includes the values that underlie applicable law, which values are abstract conceptions of what is considered good (so that it is followed) and what is considered bad (so that it is avoided).

Based on this description, if it is related to criminal law enforcement in the regional head election in South Konawe Regency, this also has implications for the community itself as the party affected by the regulation. The implication of the enactment of the Law on the Election of Governors, Regents and Mayors for all Indonesian citizens is that there is legal certainty that underlies the regulations regarding the holding of regional head elections. One of the optimal arrangements will prevent and overcome problems that will arise as a result of behavior or acts of erosion of democracy or violations in regional head elections, especially election crimes.

In that context, it is appropriate for the public to be demanded to understand which actions are prohibited or not allowed and which actions are permitted and required based on the provisions of the aquo law, so that criminal law violations related to the election of the Regional Head in South Konawe Regency do not occur again. This is in accordance with the legal principle of *nemo ius ignorare censetur*, which means that everyone is considered to know the law or law.

In general, whether the law is upheld or not, will "only" be seen from the formal aspect alone, namely whether the act of being born of a citizen is in accordance with what has been stated in the article of law or not. Sociology examines this obedience problem, is it only limited *to comply* or *to conform with the law*, or, furthermore, *to obey*. It is said that further obedience than just *compliance* will determine the uprightness and meaning of the law to uphold an orderly life in the long term. It is said that the strength of the sanctions will only guarantee conformity, while ensuring

---

<sup>24</sup>Ahmad Parlindungan, "Analisis Penegakan Hukum terhadap Tindak Pidana Politik Uang dalam Pemilihan Kepala Daerah ditinjau dari Undang-Undang Nomor 10 Tahun 2016, *Journal of Education, Humaniora and Social Sciences* (JEHSS), Volume 2, Nomor 2, Desember 2019, p 337.

"inner and outer obedience" requires further efforts than being limited to police action which will only concern conformity.<sup>25</sup>

#### **D. Conclusion**

Criminal Law Enforcement in Regional Head Elections in South Konawe Regency is carried out based on regulations related to Regional Head elections. In the material aspect, it refers to the provisions of Law of the Republic of Indonesia Number 1 of 2015 concerning the Election of Governors, Regents and Mayors with the application of the provisions of Article 188 of the aquo law, while in the formal aspects it refers to the provisions of the Memorandum of Understanding between Bawaslu, Polri, and the Attorney General's Office regarding the Gakkumdu Center starting at the stages of reports / findings of alleged criminal acts of election, investigation, first discussion, second discussion, third discussion, transfer of files to decisions and legal remedies. Enforcement of criminal law in the election of the Regional Head in South Konawe Regency has implications for regulatory aspects, namely that there is still a mismatch between existing legal subjects in prohibition and criminal provisions, in the aspect of law enforcers / organizers there is a lack of synergy between all parties who are members of the Gakkumdu Center, and in the cultural aspects of the community related to regional head elections, legal awareness is still lacking as well as aspects of facilities and facilities especially related to financial or budget support owned by election organizers, especially in the gakkumdu center, South Konawe Regency.

Suggestion in enforcing criminal law against election crimes is that the Government and the House of Representatives need to re-regulate strictly related to legal subjects that can be held accountable for acts or decisions that benefit or disadvantage one of the pairs of candidates considering that currently based on law The election of regional heads, regional officials and TNI / Polri officials cannot be held responsible for the crime because they are not included in the legal subject desired in the formulation of the offense.

---

<sup>25</sup>Junaidi, "Peran Hukum dalam Membangun Kesadaran Hukum Masyarakat", *Al-'Adl*, Volume 12, Nomor 2, Juli, 2019, p. 239-240.

## Bibliography

### Books

- Beriyansyah, 2017, *Penyelesaian Pelanggaran Pemilihan Kepala Daerah Dalam Pandangan Hukum Positif*, Fakultas Syahri'ah, Univeristas Islam Negeri Raden Intan, Lampung.
- Marzuki, Peter Mahmud, 2010, *Penelitian Hukum*, Kencana Prenada Media Group, Jakarta.
- Muhammad, Abdul Kadir, 2004, *Hukum dan Penelitian Hukum*, PT. Citra Aditya Bakti, Bandung.
- Soekanto, Soerjono, 2004, *Faktor – Faktor yang Mempengaruhi Penegakan Hukum*, PT. Raja Gravindo, Jakarta.
- Suharizal, 2011, *Pemilukada Regulasi, Dinamika, dan Konsep Mendatang*, PT Rajagrafindo Persada, Jakarta.
- Tutik, Titik Triwulan, 2010, *Konstruksi Hukum Tata Negara Indonesia Pasca Amandemen UU 1945*, Kencana Prenada Media Group, Jakarta.

### Journals

- Fitriyah, “Meninjau Ulang Sistem Pilkada Langsung: Masukan untuk Pilkada Langsung Berkualitas”, *Politika Jurnal Ilmu Politik*, Volume 2, Nomor 1, April, 2011.
- Hadjon, Philipus M. dan Tatiek Sri Djatmiati, 2005, *Argumentasi Hukum (Legal Argumentasi/ Legal Reasoning) Langkah-Langkah Legal Problem Solving dan Penyusunan Legal Opinion*, Gadjah Mada University Press, Yogyakarta.
- Junaidi, “Peran Hukum dalam Membangun Kesadaran Hukum Masyarakat”, *Al-'Adl*, Volume 12, Nomor 2, Juli, 2019.
- Junaidi, Muhammad, “Pidana Pemilu Dan Pilkada Oleh Sentra Penegakan Hukum Terpadu”, *Jurnal Ius Constituendum*, Volume 5, Nomor 2, Oktober, 2020.
- Parlindungan, Ahmad, “Analisis Penegakan Hukum terhadap Tindak Pidana Politik Uang dalam Pemilihan Kepala Daerah ditinjau dari Undang-Undang Nomor 10 Tahun 2016, *Journal of Education, Humaniora and Social Sciences (JEHSS)*, Volume 2, Nomor 2, Desember 2019.
- Rizanizarli, Mohd. Din dan Akbar Jalil, “Model Penegakan Hukum Tindak Pidana Pemilu di Provinsi Aceh yang Berkeadilan”, *Jurnal Penelitian Hukum De Jure*, Volume 20, Nomor 3, September, 2020.

Solihah, Ratnia dan Siti Witianti, S., "Permasalahan dan Upaya Mewujudkan Pemilu Demokratis di Indonesia Pasca Reformasi", *Jurnal Bawashu*, Volume 3, Nomor 1, 2017.

Tome, Abdul Hamid, "Membumikan Pancasila: Upaya Pelembagaan Nilai Pancasila dalam Kehidupan Masyarakat Desa", *Al-'Adl*, Volume 13, Nomor 1, Januari 2020.

Shobahah, Nurush dan Much. Anam Rifai, "Faktor Yuridis yang Mempengaruhi Penambahan Jumlah Daftar Pemilih Khusus Pada Pemilu 2019 di Kabupaten Tulungagung", *AHKAM Jurnal Hukum Islam*, Volume 8, Nomor 2, November, 2020.

### Newspaper

Laode Harjudin, *Pilkada Eksperimen Kedaulatan Rakyat*, Jawa Pos, 14 Maret 2005.