


Legal Sanctions Against Members Of The District Election Committee (PPK) Who Commit Election Crimes

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Article Info	ABSTRACT
<p>Keywords: Legal sanctions, District Election Committee, Changing the recapitulation of election results</p>	<p>In the context of elections as an implementation of people's sovereignty, election law enforcement is interpreted as a situation where mechanisms are available to safeguard the people's right to vote. So that the electoral justice system is expected to be able to guarantee everyone's right to file a complaint if the party concerned feels disadvantaged as a result of certain actions being taken or not taken by the organizers or parties involved in the election. There were violations committed by members of the District Election Committee (PPK) whose case was decided by the Makassar High Court Number 492/PID.S.PEMILU/2024/PT MKS. The formulation of the problem discussed is: 1) What are the legal sanctions against PPK members who are proven to have changed the recapitulation of vote results from the election? and 2) What is the analysis of the Decision of the Makassar High Court Number 492/PID.S/PEMILU/2024/PT MKS regarding members of the District Election Committee which changed the recapitulation of the results of the calculation of votes in the election? The research method used is a normative juridical method, namely research that prioritizes library data, namely research on secondary data. Secondary data can be in the form of primary, secondary or tertiary legal materials. Based on the results of the research, the author concludes that legal sanctions against PPK members who are proven to have changed the recapitulation of vote results from the election, can be sentenced to prison as proven in the decision of the Makassar High Court Number 492/PID.S/PEMILU/2024/PT MKS which gave the verdict to the defendant DZUL FIQRI Alis ZUL Bin SABER TUPPU mentioned above, was legally and convincingly proven guilty of committing the crime of "PPK Member Who Deliberately Causes Change Minutes of Recapitulation of Vote Counting Results"</p>
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INTRODUCTION

One of the main requirements for the realization of democracy (people's sovereignty) is the existence of an honest and fair general election (election) system (*free and fair election*) This will be carried out well if there are legal instruments that regulate the election implementation process and can provide legal protection for all elements involved in organizing the election.

In the context of elections as an implementation of people's sovereignty, election law enforcement is interpreted as a situation where mechanisms are available to safeguard the

people's right to vote. So that the electoral justice system is expected to be able to guarantee everyone's right to file a complaint if the party concerned feels disadvantaged as a result of certain actions being taken or not taken by the organizers or parties involved in the election. This means that steps are needed effective resolution through impartial courts that can protect and restore violated voting rights

In general, there are two things that become legal problems in the electoral sector, namely legal disputes and election violations. If detailed further, these two things can be divided into six types, namely: (1) election criminal violations (election crimes); (2) disputes in the election process; (3) election administration violations; (4) violation of the code of ethics for election organizers; (5) disputes (disputes) of election results; and (6) other legal disputes. Of the six types of election legal problems, the mechanisms and procedures for resolving election legal problems are usually carried out in different institutions from one another. The institutionalization of this settlement cannot be separated from the amendment of the 1945 Constitution of the Republic of Indonesia (1945 Constitution) which has brought significance to the structuring of democratic life and the rule of law in Indonesia. One of them can be seen in the regulation of elections through law which has shown quite significant developments.

Regarding the election law enforcement framework, it can be seen in Article 6 paragraph 2 in conjunction with Article 247 paragraph (1) of Law Number 10 of 2008 which basically regulates that the Election Supervisory Body (Bawaslu) and its subordinate ranks, namely the Election Supervisory Committee (Panwaslu) at all levels are given the duty and authority by law to receive written complaints from citizens who have the right to vote, election observers and election participants regarding alleged violations in the election. Furthermore, reports of alleged election violations received, Bawaslu and its staff must immediately carry out an assessment before determining the status of the election violations that occurred, whether they are election administration violations, election crimes, election disputes, or election results disputes?

Meanwhile, if the election violation contains elements of a criminal election violation, then the results of the study carried out by Bawaslu and the lower ranks will be forwarded to the Indonesian National Police (Polri) investigators to continue the handling process with the Public Prosecutor. The District Election Committee, hereinafter referred to as PPK, is a committee formed by the Regency/City KPU to organize elections Regional Heads and Deputy Regional Heads at the sub-district level or other designations and are temporary.

PPK Pemilu is a District Election Committee which is responsible for organizing General Elections at the sub-district level. The main task of PPK Election is to organize and supervise the general election process in the sub-district, including the arrangement of polling places, voter supervision and vote counting. Apart from that, the Election PPK also has the authority to resolve disputes that arise during the general election process in the sub-district. Becoming a member of the Election PPK also requires high commitment and dedication in carrying out its duties to ensure general elections in the sub-district it runs smoothly and fairly.

Thus, the Election PPK plays an important role in maintaining the sustainability of democracy at the sub-district level. They have a big responsibility in ensuring that general elections in sub-districts run transparently, fairly and accountably. So, even though the

salaries they receive are quite competitive, their dedication and integrity are very important in carrying out this task. However, sometimes in carrying out their duties, members of the Election PPK make deviations in carrying out their duties, as the author gives the example below.

In this research, the author provides an example of an election violation case related to the presence of a member of the District Election Committee who deliberately made changes to the vote count recapitulation that occurred in the Kambuno area, Noling Village, Bua Ponrang District, Luwu Regency or at least in a place including the court's jurisdiction. Belopa Country. In this case, the defendant is DZUL FIQRI alias ZUL Bin SABER TUPPU (25 years old) who, at the time of his election as a member of the District Election Committee, was legally and convincingly proven guilty of committing a criminal act "by deliberately causing changes in the minutes of the recapitulation of the vote count results" as charged by the Public Prosecutor. The Public Prosecutor is taking legal action to appeal against the Decision of the Belopa District Court Number 31/Pid.Sus/2024/PN Blp dated 5 April 2024. Based on the Decision of the Makassar High Court Number 492/PID.S/PEMILU/2024/PT MKS determines the following : 1) Declare that DZUL FIQRI alias ZUL Bin SABER TUPPU has been legally and convincingly proven guilty of committing a criminal act as alleged by the Prosecutor Public Prosecutor: 2) Sentenced the defendant to imprisonment for 2 (two) months and a fine of Rp. 2,000,000.00 (two million rupiah) with the provision that if the fine was not paid, it was replaced by imprisonment for 1 (one) month. month.

What interests the author's attention in this research are those related to legal sanctions against PPK members who are proven to have made changes to the recapitulation of vote results from the election as well as the analysis of the Makassar High Court Decision Number 492/PID.S/PEMILU/2024/PT MKS regarding members of the District Election Committee who changing the recapitulation of the results of the calculation of vote acquisition in the election. Based on the description above, the author determined the title of this research Legal Sanctions Against Members of the District Election Committee (Ppk) Who Commit Election Crimes. The problem formulation 1) What are the legal sanctions against PPK members who are proven to have changed the recapitulation of vote results from the election? 2) What is the analysis of the Makassar High Court Decision Number 492/PID.S/PEMILU/2024/PT MKS regarding members of the District Election Committee which changed the recapitulation of the results of the vote tally in the election?

METHODS

Types of research What is carried out in this legal research is to use a normative juridical approach method. Normative legal research is research that prioritizes library data, namely research on secondary data. Secondary data can be in the form of primary, secondary or tertiary legal materials. This research includes research on the positive legal provisions in force in Indonesia relating to the application of legal sanctions against members of the Subdistrict Election Committee (PPK) who deliberately change the recapitulation of the vote tally results in the election.

RESULTS AND DISCUSSION

Legal Sanctions Against Ppk Members Who Are Proven To Have Made Changes In The Recapitulation Of The Vote Results Of The Election

1. Election Violations (2024)

In the midst of highly competitive political contestation, the process and stages of the 2024 election were marked by many violations. The applicable regulations are ineffective in prosecuting perpetrators of election violations. Until now, many election violations are still allowed to occur. The process and stages of the 2024 Election are marked by many challenges. One of them is the widespread practice of election violations. This has become a big issue that has sparked public attention. The widespread violations were known from a release published by the General Election Supervisory Agency (Bawaslu). As of January 8 2024 or 36 days before the voting, Bawaslu handled 1,032 alleged violations. The data comes from 703 reports and 329 findings. Seventeen election crimes were processed, mostly forgery and money politics.” From the results of the handling, 322 were declared violations and 188 were declared non-violations. Whereas the rest cannot be registered because they do not meet the formal requirements or material requirements. Based on type, the 322 violations consisted of 50 administrative violations, 205 code of ethics violations, 57 other legal violations, and 10 alleged election crimes. The rise in election violation cases was also reported by the Indonesian National Police's Integrated Law Enforcement Task Force (Gakkumdu). The Head of Gakkumdu Polri, Brigadier General (Pol) Djuhandhani Rahardjo Puro, said that the Gakkumdu Polri Task Force had handled 17 cases of alleged election crimes. A total of 10 cases occurred at the campaign stage and seven other cases occurred at the registration stage.⁵²

The seventeen cases came from 75 reports or findings which were then forwarded to the investigation stage. Most of them were criminal acts of forgery, namely 7 cases, 5 cases of money politics, and 2 cases for campaigning involving prohibited parties. Others are criminal offenses for campaigning in places of worship or education, parties who are prohibited from being on the campaign team, as well as destroying campaign props.

The large number of violations that occur, and there may also be many other incidents that are not reported, will have an impact on the quality of Indonesia's democratic practices which are increasingly declining. Previously, concerns about holding elections that were not clean, honest and fair continued to be in the spotlight along with the credibility and integrity of legal instruments that There have also been doubts recently. This culminated in the Constitutional Court's decision number 90/PUU-XXI/2023, some time ago.⁵ The Constitutional Court's decision allows people under 40 years of age to run as presidential candidates and vice presidential candidates if they have served or are currently serving as regional heads. This decision was seen by various groups as an effort to smooth the nomination of President Joko Widodo's son, Gibran Rakabuming Raka as vice presidential candidate. Campaign display plates (APK) are installed on trees by nailing them on Jalan TB Simatupang. Even though there is a ban on installing APKs on trees in accordance with KPU Regulation (PKPU) Number 15 of 2023 concerning the 2024 Election Campaign article 70, violations are still widespread. This damages the aesthetic value and beauty of the city.

2. Dynamics of Election Implementation in Indonesia

The membership model for election organizers after the New Order was initially formed to fulfill the aspirations of a pro-reform society that was suspicious of the old political forces still entrenched in government institutions. It cannot be denied that President B.J. Habibie, who served at that time, was former Vice President Soeharto and was highly suspected by students and civil society. The incumbent members of the People's Representative Council (DPR) and the People's Consultative Assembly (MPR) are dominated by the Golongan Karya (Golkar) faction and the Republic of Indonesia Armed Forces (ABRI) faction, which are known to be loyal supporters of the New Order regime.

President B.J. Habibie responded to public demands by repealing the package of political laws inherited from the New Order. On February 1 1999, the government issued a package of new political laws, namely; Law Number 2 of 1999 concerning political parties, Law Number 3 of 1999 which is the legal basis for the implementation of general elections and Law Number 4 of 1999 which regulates the composition and position of the MPR, DPR and DPRD. As a consequence of the issuance of Law Number 3 of 1999, the General Election Commission (KPU) has a legal basis for its formation through Presidential Decree Number 16 of 1999. This Presidential Decree regulates the membership of the KPU which consists of delegates from political parties participating in the 1999 Election plus five government representatives. to serve for five years. A total of 53 KPU members, consisting of 48 members representing political parties participating in the 1999 elections plus five government representatives, were finally inaugurated on March 11 1999, chaired by the former Chairman of the General Elections Institute (LPU), Rudini. The KPU members who were appointed immediately worked to make important decisions considering that the time to prepare for the election was only three months. Among the most recent decisions taken by the KPU was to prohibit ministers from campaigning. At first glance, the KPU's fat membership would indicate sluggish performance.

Debates between its members cannot be avoided. Especially with government representatives who don't have the same interests. Because members are all political parties, there is no focus on the independence of the institution because each member supervises each other. The 1999 elections were successfully held in an orderly and peaceful manner. Even though there was a spotlight on the professionalism of the KPU for delaying announcing the results of the 1999 elections, it was announced by President B.J. Habibie.

The 1999 Political Law Package which replaced the 1985 Political Law Package created by the New Order into a new political structure (derutinization) in Indonesia. It limits (constraining) the freedom of old political parties that have more established resources and infrastructure. There have been fundamental changes starting from the KPU membership which is no longer led by the Minister of Home Affairs. This greatly influences the political behavior of the government which is a member of the KPU (*agent*). From then on ABRI's voting rights in elections were revoked, leveling the position of all election participants and mandating the establishment of election supervisors from the center to the sub-districts.

A year later, the KPU was hit by a corruption case in the 2004 election funds which resulted in its members being investigated. However, in the middle of the legal process, Anas

Urbaningrum decided to resign and join the Democratic Party. News spread that Anas's decision was a maneuver to save himself from legal entanglement. As a result of this case, KPU Chairman Nazaruddin Sjamsuddin was sentenced to prison after being found guilty of corruption in providing insurance for KPU employees and managing funds of KPU partners (Tempo, 2005). Member of the Mulyana KPU

W. Kusumah, Rusadi Kantaprawira and Daan Dimara were also involved in corruption in the misuse of election funds. It is suspected that incompetence in financial administration made them entangled in the law. Until the end of the term of office, there were only three KPU members remaining for the 2001-2005 period, namely KPU Chairman Ramlan Surbakti, Chusnul Mar'iyah and Valina Singka Subekti. Approaching the 2009 elections, an election law was issued which separated the rules regarding election organizers from the election law into a separate law, namely Law Number 22 of 2007 concerning election organizers. The KPU membership in this law was reduced to seven people. The number of members in provinces and districts/cities is five people each.

The position of the Election Supervisory Body (Bawaslu) as an election supervisor was regulated for the first time in this law which led to the establishment of this institution in April 2008. This law included new regulations in the article on the requirements to become an election organizer by prohibiting election organizers from holding positions in government. This is an effort to prevent a recurrence of the Hamid Awaludin case.

Election institutions have become more advanced after the emergence of new regulations in Law Number 15 of 2011 concerning General Election Organizers. The requirements for becoming a member of the KPU and Bawaslu are increased by prohibiting marriage between election organizers and prohibiting them from holding political positions. This reflects the case of KPU member Andi Nurpati, who was suddenly appointed as administrator of the Democratic Party in 2010 before officially resigning. This change is urgently needed to maintain the reputation of election management institutions.

Election rules underwent another change when Law Number 7 of 2017 concerning General Elections appeared. The regulation is a combination of three laws at once, namely Law Number 15 of 2011 concerning General Election Organizers, Law Number 42 of 2008 concerning the Election of the President and Vice President, and Law Number 8 of 2012 concerning the General Election of Members of the DPR, DPD, and DPRD. This law includes new regulations where prospective members of the KPU (article 21 letter (k)) or Bawaslu (article 117 letter (k)) are prohibited from being active members of social organizations. Meanwhile, in September 2017, the Indonesian DKPP issued DKPP Regulation Number 2 of 2017 concerning the Code of Ethics and Code of Conduct for General Election Organizers. In which it gives authority to the DKPP to impose sanctions on election organizers who are proven to have violated the Code of Ethics for Election Organizers in the form of; written warning, temporary dismissal and permanent dismissal.

Now, election management institutions (KPU and Bawaslu) have become career institutions that have well-organized legal rules and codes of ethics. Changes in electoral rules since 1999 that were empowering turned out to contain weaknesses that made them experience, as Giddens said, obsolescence (obsolete). Thus inviting violations by election organizers (agents).

The mistakes made by the organizers prompted the election law to continue to be revised along with its derivative regulations. The results can be seen in that for almost a decade (2010-2020) no KPU member has been sanctioned for violating the law or being permanently dismissed by the DKPP. However, this did not last long after KPU member for the 2017-2022 period, Wahyu Setiawan, was arrested by the Corruption Eradication Commission (KPK) in 2020. Wahyu was suspected of accepting bribes from political party members regarding interim changes in DPR members.

3. Definition and Types of Election Fraud

Based on General Election Supervisory Agency Regulation Number 7 of 2022 concerning Handling Findings and Reports of General Election Violations, election violations are actions that conflict with, violate, or are not in accordance with the laws and regulations governing elections. There are various forms of election violations. Referring to Law Number 7 of 2017 concerning General Elections, in general there are three forms of election violations, namely violations of the code of ethics, administrative violations and election crimes.

Violation of the code of ethics is a violation of the ethics of election organizers regarding oaths and promises before carrying out their duties as election organizers. This violation was handled by the Election Organizer Honorary Council (DKPP). The decision is in the form of a written warning, temporary dismissal, permanent dismissal or rehabilitation which is decided at the DKPP plenary meeting.

Administrative violations are violations that include violations of procedures, procedures or mechanisms related to administration at every stage of election implementation. Election administrative violations are handled by Provincial Bawaslu and Regency/City Bawaslu. Resolution of election administrative violations in the form of: administrative improvements to procedures, procedures or mechanisms in accordance with statutory regulations; written warning; not included at certain stages in the implementation of elections; and other administrative sanctions according to law.

Meanwhile, election criminal offenses are criminal acts of violations and/or crimes against the provisions of election crimes as regulated in the law governing elections. Election crimes are handled by Bawaslu together with the Police and Prosecutor's Office who are members of the Integrated Law Enforcement forum/institution (Gakkumdu).

Based on articles 488 to 553 of the Election Law, it is stated that there are at least 77 acts that constitute election crimes. These actions include: campaigning outside the election schedule, providing false information on campaign finance reports, installing campaign props that do not comply with regulations, using government facilitation or budget for the campaign, falsifying voter data, thwarting voting, voting more than once, forcing someone voting, money politics, manipulating voting results, and even partiality of state officials towards election participants.

Regarding the subject of election crimes, there were 16 recorded subjects of criminal acts, including every person, group, company, non-government business entity, village head or other designation, chairman and members of KPPS/KPPSLN, members of PPS or PPLN, members of the KPU, members Provincial KPU, Regency/City KPU members, PPK members, implementing members and/or campaign teams, campaign participants, election participants, District Panwaslu, Subdistrict/Village Panwaslu, overseas Panwaslu, Supervisors TPS, Bawaslu members, Provincial Bawaslu members, Regency/City Bawaslu members, leaders of political parties or combinations of political parties, presidential and vice presidential candidates, state officials, judges, chairman or members of the BPK, governors, senior deputy governors and/or BI deputy governors and directors , commissioners, supervisory board, and/or BUMN/BUMD employees.

4. The basis for election violations is in PPS and PPK

Based on the experience of the 2004 Election, the basis for election violations was in the Voting Committee (PPS) and the District Election Committee (PPK). For this reason, Bawaslu will prepare strategic steps to anticipate this. According to Bawaslu Chairman Nur Hidayat Sardini after the inauguration of the 13 Province Panwaslu at the Santika Hotel, Jakarta, the basis for election violations was in the PPS and PPK. That's why we will place the spearhead of supervision there

According to Nur Hidayat, the violations occurred in the voting process, vote counting, vote recapitulation, and even the delivery of ballot papers from polling stations (TPS) to PPS and from PPS to PPK. During the journey of the ballot papers from the TPS to the PPS and then to the PPK, there were ballot papers that were marked in the middle of the road.

According to him, the potential for violations at the PPS and PPK levels is influenced by weak supervision in the field. Limited number of personnel is the main factor. For each PPS there is only one Field Supervisory Committee (PPL) person. Even though on average each PPS consists of 8 TPS. That means one PPL person must supervise 8 polling stations. So he had to go back and forth from one polling station to another.

That's why the supervision he carried out was not optimal. According to Nur Hidayat, to anticipate this, Bawaslu will place PPL in a polling station whose geographic position is in the middle between other related polling stations, making it easier for monitoring. This PPL will also have its capacity strengthened so that the supervision it carries out can be effective. Apart from that, Bawaslu will also coordinate with independent election observers so that their distribution at polling stations can be more effective, so that there is no overlap in observers at one polling station.

5. Regulation of Qualifications for Election Criminal Violations

The qualification regulations for criminal violations in General Elections as regulated in several articles in Law Number 7 of 2017 concerning General Elections include: Article 202 Deliberately, when voting, promises money or other materials to other voters so that they do not exercise their right to vote or vote for a particular pair of candidates or use their right to vote in a certain way so that their ballot is invalid.

Article 203

Deliberately providing false information about oneself or others regarding something

required to fill in the voter list.

Article 204

By violence or threats of violence or by using the power available to him at the time of voter registration, prevent someone from being registered as a voter in the Presidential and Vice Presidential Elections according to this Law.

Article 205

Failure to follow up on Bawaslu's findings in carrying out verification of the correctness and completeness of administration of Candidate Pairs as intended in Article 26 paragraph (3).

Article 206

Deliberately not announcing and/or not correcting the Provisional Voter List after receiving input from the public and Candidate Pairs as intended in Article 29 paragraph (3) and paragraph (4).

Article 207

Not following up on the findings of Bawaslu, provincial Panwaslu, district/city Panwaslu, sub-district Panwaslu, Field Election Supervisors, and Overseas Election Supervisors in preparing and announcing the Temporary Voter List, improving the Temporary Voter List, determining the Permanent Voter List, which is detrimental to Indonesian citizens who have the right to vote as intended in Article 32 paragraph (2).

Article 208

Deliberately making decisions and/or taking actions that are beneficial or detrimental to one of the candidates or candidate pairs during the campaign period

Article 212

Deliberately making decisions and/or taking actions that are beneficial or detrimental to one of the candidates or candidate pairs during the campaign period.

Article 213

Deliberately conducting a campaign outside the time schedule set by the KPU for each pair of candidates as intended in Article 40.

Article 214

Not giving a worker the opportunity to vote at the polls, except for the reason that the job cannot be abandoned.

Article 239

Deliberately destroying or removing sealed voting results.

Article 240

Deliberately not giving a replacement ballot only once to a Voter who receives a damaged ballot and does not record the damaged ballot in the official report as intended in Article 117 paragraph (2).

Article 241

Deliberately informing other people of the Voter's choice as intended in Article 119 paragraph (2).

Article 242

Because his negligence resulted in the loss or alteration of the minutes of the

recapitulation results of the vote tally and/or the vote count certificate.

In the event that the criminal act as intended in paragraph (1) is committed intentionally.

Article 243

Deliberately, through negligence, causes damage or loss of minutes of voting and vote counting and/or certificates of vote counting results that have been sealed.

Article 244

Deliberately changing the minutes of the vote count results and/or the vote count result certificate.

Article 245

Deliberately resigning after the determination of the candidates for President and Vice President until the first round of voting.

Deliberately withdrawing the candidate and/or pair of candidates determined by the KPU until the first round of voting is carried out.⁷⁸

Article 246

Deliberately withdrawing after the first round of voting until the second round of voting. Deliberately withdrawing the candidate and/or pair of candidates that have been determined by the KPU until the second round of voting is held.

Article 247

In the event that the district/city KPU does not determine re-voting at the TPS as intended in Article 165 paragraph (3) while the requirements in this Law have been fulfilled.

The chairman and members of the KPPS who deliberately do not implement the district/city KPU's decision to carry out re-voting at the TPS.

In the event that the organizers of the Presidential and Vice Presidential Election commit criminal violations of the Presidential and Vice Presidential Election as intended in Article 202, Article 203, Article 204, Article 208, Article 223, Article 224, Article 227, Article 232, Article 233, Article 234, Article 235, Article 236, Article 237, Article 239, Article 241, Article 243, Article 244, and Article 248, the criminal sanctions for those concerned are increased by 1/3 (one third) of the criminal provisions stipulated in these articles.⁸¹ Notes :

- a. The nature of punishment for election criminal violations in Law Number 42 of 2008 is cumulative, namely a combination of imprisonment and fines.
- b. Law Number 42 of 2008 concerning the Election of the President and Vice President adheres to the principle of minimum and maximum penalties, meaning that when imposing penalties, both imprisonment and fines, they cannot be less than the minimum penalty and cannot be more than the maximum penalty.
- c. So that each Head of District Court supervises and monitors in an orderly manner the resolution of criminal violations in the Presidential and Vice Presidential Elections, and reports the obstacles faced by the Panel of Judges in handling the resolution of criminal violations in the Presidential and Vice Presidential Elections.

Analysis Of Makassar High Court Ruling Number 492 / Pid.S / Pemilu / 2024/Pt Mks On Members Of The District Election Committee Which Changed The Recapitulation Of Vote Calculation Results In The Election

a. Election organizers who change the recapitulation can be punished

Based on article 551 of Law No. 7 of 2017 concerning Elections, members of the KPU, provincial, district/city KPU, sub-district election committee (PPK), and/or voting committee (PPS) who intentionally cause the loss or change of the results recapitulation minutes "To count the votes obtained, you will be subject to a criminal sanction of two years and a fine of IDR 24 million,"

Then, sanctions can be imposed under Article 505 of Law Number 7 of 2017 concerning members of the KPU at the provincial, city and district levels, PPK and PPS who commit negligence which results in the loss or change of the minutes of the recapitulation of the vote tally results. They can also be subject to one year's imprisonment and a fine. IDR 12 million.

For example, Bawaslu DKI Jakarta is intensifying supervision of vote recapitulation to prevent fraud during the 2024 elections. Bawaslu DKI is still closely monitoring vote recapitulation. From these regulations, it is clear that there must be no manipulation of vote recapitulation for either the presidential election (pilpres) or legislative election (pileg).

b. Procedures for Resolving Election Crimes

- i. Article 317 paragraph (2) of Law Number 7 of 2017 concerning General Elections is the legal basis for Bawaslu/Provincial Bawaslu/Regency/City Bawaslu in the context of supervision to forward findings and reports regarding election criminal violations to the National Police of the Republic of Indonesia;
- ii. Furthermore, in Article 476 of Law Number 7 of 2017 concerning General Elections, it is stated that Bawaslu/Provincial/Regency/City/District Panwaslu Reports are carried out in a maximum period of 1 x 24 hours to the National Police of the Republic of Indonesia with prior coordination with elements of the Prosecutor's Office and the Police who are members of Gakkumdu;
- iii. The Republic of Indonesia State Police investigator must submit the results of the investigation along with the case files to the Public Prosecutor no later than 14 (fourteen) days after receiving the report;
- iv. If according to the Public Prosecutor the file is not complete, then within a maximum of 3 (three) days it will be returned to the Investigator accompanied by instructions on what must be completed by the Investigator;
- v. The Republic of Indonesia State Police investigator completes the file in accordance with the instructions from the Public Prosecutor no later than 3 (three) days and must have submitted the case file back to the Public Prosecutor;
- vi. Furthermore, the Public Prosecutor submits the election crime case files to the District Court within a maximum period of 5 (five) days after receiving the case files from the Investigator;
- vii. The process of handing over files from the Investigator to the Public Prosecutor to the District Court above can be carried out without the presence of the suspect;

- viii. The District Court in examining, adjudicating and deciding election criminal cases uses the Procedural Law Code Criminal law (KUHP), unless otherwise specified in Law Number 7 of 2017 concerning General Elections;

Legal Remedies in Election Crime Cases

- a. The legal remedy against the decision handed down by the District Court is by filing an appeal to the High Court within a maximum period of 3 (three) days after the decision is read;
- b. The District Court must hand over/send the election criminal case files for which the appeal is requested within 3 (three) days after the appeal request is received;
- c. Within a maximum of 7 (seven) days after the appeal file is received, the High Court must decide on the election criminal case;
- d. The decision of the High Court is the final decision and is binding on the parties and no further legal action can be taken;
- e. No later than 3 (three) days after the decision is read by the Special Panel of Judges, a copy of the decision must be delivered to the Prosecutor The general and contents of the decision must be implemented by the Prosecutor no later than 3 (three) days after it is received;

c. How to Access Sirekap to See the 2024 Election Results

After the voting process in the general election or 2024 Election, the vote counting or recapitulation process will be carried out. Recapitulation or counting is carried out to calculate the number of votes obtained by each candidate or political party in a general election. The calculation process will be carried out in stages at various levels, starting from manual calculations from polling stations (TPS) to the national level. The results of the vote count will be recorded by KPPS on form C1.

The ballot box and other administrative documents are then handed over by each KPPS to the Subdistrict Election Committee (PPK) to continue the recapitulation at the subdistrict level. Then it will continue at the city/district level, provincial level, and finally at the national level by the Indonesian KPU.⁸⁴ Based on the principle of openness, the KPU will use an Electronic Recapitulation Information System or Sirekap to publish the counting results in the 2024 Election. In the 2019 Election, the system used is the Election Vote Counting Information System (Situng) which functions to publish the counting results.

Reporting from Tempo Newspaper, Sirekap is an information technology-based application tool as a means of publishing vote counting results and the process of vote counting results as well as an internal tool implementation recapitulation of election vote counting results. This understanding is based on KPU Decree Number 66 of 2024. Based on the KPU's decision statement, the Sirekap application is divided into two types. The first is the mobile version which is used by members of the voting management group or KPPS to count or recapitulate the vote results at each polling station. Sirekap Mobile is used as the main data source contained in Form C.Results-KWK.

The second version is Sirekap Web which is used by sub-district election committees or PPK and city/district to provincial KPU members. The Sirekap website is used to collect and aggregate data from all main sources. When using the Sirekap application, all paper

documents will be converted into digital documents. The C1 form that will be uploaded in Sirekap will be scanned into a digital document. The scanning mechanism will be carried out at the sub-district and district levels. Data on the results of the recapitulation or vote count can be accessed by the public by accessing it via the election2024.kpu.go.id page. The public can see transparently the vote acquisition data for each presidential candidate along with the C1 form that has been uploaded.

However, the convenience offered by the Sirekap application is still in the experimental process where the risk of fraud is very likely to arise. There are many complaints about this application, such as the conditioning of the "add votes" menu for candidate pairs with serial number 02. This menu can only be accessed to add or change the votes for candidate pairs with serial numbers 01 and 03. This application is also quite vulnerable to cyber attacks and threatens data security inside it. Cyber attacks can be DDos or distributes denial of service which will burden the service. With this attack, the KPU will be paralyzed and KPPS members will not be able to access the application.

At the beginning of making the Sirekap application, it seemed that Dadan and the supplier vendor were not very well known. This causes mode risk *fraud*. According to, *The Institute of Internal Auditor* (IIA) which is a well-known auditor organization in the United States, *fraud* or fraud is an action characterized by an element of intent.

d. Composition of District Election Committee Members and Their Duties

Referring to General Election Commission Regulation Number 8 of 2022, the sub-district election committee or PPK is a committee formed by the district/city KPU to carry out elections at the sub-district level. The composition of PPK members consists of 1 chairman who is also a member, and 4 members. The chairman of the KPK is elected by PPK members; while the duties of PPK members are:

- i. Carry out all stages of holding elections at the sub-district level as determined by the KPU, Provincial KPU and Regency/City KPU;
- ii. Receive and submit the voter list to the Regency/City KPU;
- iii. Carry out and announce the recapitulation of the election vote count results for members of the People's Representative Council, members of the Regional Representative Council, President and Vice President, members of the Provincial Regional People's Representative Council, as well as members of the Regency/Municipal Regional People's Representative Council in the sub-districts concerned based on the minutes of the vote count results in TPS and attended by Election Contesting witnesses;
- iv. Conduct evaluations and make reports at each stage of election implementation in the work area;
- v. Carrying out outreach on the implementation of elections and/or related to the duties and authority of the PPK to the public;
- vi. Carry out other tasks assigned by the KPU, Provincial KPU and Regency/City KPU in accordance with the provisions of statutory regulations;
- vii. Carry out other duties in accordance with statutory provisions.
- viii. Receive additional voter lists from PPS and submit additional voter lists to the

- Regency/City KPU;
- ix. Receive and submit the Pantarlih name list report;
 - x. Verifying and recapitulating support for individual candidates for Regional Representative Council members;
 - xi. Submitting a recapitulation of the return of voting notification letters from PPS to the Regency/City KPU;
 - xii. Prepare minutes and certificates of recapitulation of vote counting results;
 - xiii. Submit minutes and certificates of recapitulation of vote counting results to election participant witnesses, Subdistrict Panwaslu, and Regency/City KPU; And
 - xiv. Prepare and submit a budget implementation accountability report to the Regency/City KPU no later than 2 (two) months after the voting

Procedures for Resolving Election Crimes

- a. Article 317 paragraph (2) of Law Number 7 of 2017 concerning General Elections is the legal basis for Bawaslu/Provincial Bawaslu/Regency/City Bawaslu in the context of supervision to forward findings and reports regarding election criminal violations to the National Police of the Republic of Indonesia;
- b. Furthermore, in Article 476 of Law Number 7 of 2017 concerning General Elections, it is stated that the Report of Bawaslu/Provincial Bawaslu/Regency/City/Subdistrict Panwaslu shall be made within a maximum period of 1 x 24 hours to the National Police of the Republic of Indonesia with prior coordination with elements of the Prosecutor's Office and Police who are members of Gakkumdu;
- c. The Republic of Indonesia State Police investigator must submit the results of the investigation along with the case files to the Public Prosecutor no later than 14 (fourteen) days after receiving the report;
- d. If according to the Public Prosecutor the file is not complete, then within a maximum of 3 (three) days it will be returned to the Investigator accompanied by instructions on what must be completed by the Investigator;
- e. The Republic of Indonesia State Police investigator completes the file in accordance with the instructions from the Public Prosecutor no later than 3 (three) days and must have submitted the case file back to the Public Prosecutor;
- f. Furthermore, the Public Prosecutor submits the election crime case files to the District Court within a maximum period of 5 (five) days after receiving the case files from the Investigator; The process of handing over files from the Investigator to the Public Prosecutor to the District Court above can be carried out without the presence of the suspect;
- g. The District Court in examining, adjudicating and deciding election criminal cases uses the Criminal Procedure Code (KUHAP), unless otherwise specified in Law Number 7 of 2017 concerning General Elections;
- h. Regarding procedural law in examining, adjudicating and deciding election criminal cases, the Supreme Court has issued Supreme Court Regulation (Perma) Number 1 of 2018 Procedures for Resolving Election and General Election Crimes;
- i. Trials of election criminal cases are carried out by a special Panel of Judges, where in

accordance with these provisions, the Supreme Court has also issued Supreme Court Regulation (Perma) Number 2 of 2018;

- j. The Special Panel of Judges must decide on election crime cases filed no later than 7 (seven) days after the election crime case files are transferred to the District Court, where the trial of election crime cases can be carried out without the presence of the defendant;
- k. In the provisions of Article 3 paragraph (2) of Supreme Court Regulation Number 1 of 2018 concerning Procedures for Resolving Election and General Election Crimes, it is stated if deemed necessary can convene at night so that the time limit for settling the case can run as it should;
- l. Regarding election criminal cases/cases which according to Law Number 7 of 2017 concerning General Elections can affect the vote acquisition of election participants must be resolved no later than 5 (five) days before the KPU determines the results of the national election, and regarding such decisions the KPU/KPU Provinces/Regencies/Cities are obliged to follow up on the Court's decision;
 - i. In cases of election crimes as referred to above, a copy of the decision must be received by the Provincial/Regency/City KPU/KPU on the day the court decision is read out;

Legal Remedies in Election Crime Cases

- a. The legal remedy against the decision handed down by the District Court is by filing an appeal to the High Court within a maximum period of 3 (three) days after the decision is read;
- b. The District Court must hand over/send the election criminal case files for which the appeal is requested within 3 (three) days after the appeal request is received;
- c. Within a maximum of 7 (seven) days after the appeal file is received, the High Court must decide on the election criminal case;
- d. The decision of the High Court is the final decision and is binding on the parties and no further legal action can be taken;
- e. No later than 3 (three) days after the decision is read by the Special Panel of Judges, a copy of the decision must be delivered to the Public Prosecutor and the contents of the decision must be implemented by the Prosecutor no later than 3 (three) days after it is received;
- e. Sanctions Against District Election Committee Members Who Change the Recapitulation of Pamilu Voting Results Based on Makassar High Court Decision Number 492 / PID.S / PEMILU / 2024 / PT MKS
 - i. Belopa District Court Decision Number 31/Pid.Sus/2024/PN Blp dated April 2 2024, Amar, in full as follows:
 - 1. Declaring that the defendant DZUL FIQRI eyebrows ZUL Bin SABER TUPPU was legally and convincingly proven guilty of committing a criminal act "because he deliberately caused changes in the minutes of the recapitulation of vote tally results as stated in the single indictment;
 - 2. The defendant was therefore sentenced to imprisonment for 2 (two) months and a fine of Rp. 2,000,000.00 (two million rupiah) with conditions if If the fine is not

paid, it will be replaced by imprisonment for 1 (one) month.

- ii. Makassar High Court Decision Number 492 / PID.S / PEMILU / 2024 / PT MKS is as follows: Received an appeal request from the Public Prosecutor at the Luwu District Prosecutor's Office, Changing the Decision of the Belopa District Court Number 31/Pid.Sus/2024/PN Blp dated 2 April 2024, which was requested to be appealed, simply regarding the qualifications of the act criminal and ordering the defendant to be detained, so that the complete order reads as follows:
 1. Declare that the defendant DZUL FIQRI eyebrows ZUL Bin SABER TUPPU as mentioned above, has been legally and convincingly proven guilty of committing the crime of "KDP MEMBER WHO DUE TO DELIBERATION CAUSES TO CHANGE THE MINUTES OF THE RECAPITULATION OF THE VOTE COUNTING RESULTS" as in the single indictment of the Public Prosecutor;
 2. Sentence the defendant to imprisonment for 2 (two) months and a fine of IDR 2,000,000.00 (two million rupiah) provided that if If the fine is not paid, it will be replaced by imprisonment for 1 (one) month.

CONCLUSION

Legal sanctions against PPK members who are proven to have changed the recapitulation of vote results from the election, can be sentenced to prison as proven in the decision of the Makassar High Court Number 492 / PID.S / PEMILU / 2024 / PT MKS which gave the decision to the defendant DZUL FIQRI eyebrows ZUL Bin SABER TUPPU mentioned above, was legally and convincingly proven guilty of committing the criminal act of "a PPK MEMBER WHO DUE TO INTENTIONAL CAUSES A CHANGE MINUTES OF THE RECAPITULATION OF THE VOTE COUNTING RESULTS" as in the single indictment of the Public Prosecutor; Sentenced the defendant to imprisonment for 2 (two) months and a fine of Rp. 2,000,000.00 (two million rupiah) with the provision that if the fine was not paid, it was replaced by imprisonment for 1 (one) month. Analysis of the Decision of the Makassar High Court Number 492 / PID.S / PEMILU/2024/PT MKS regarding members of the District Election Committee who changed the recapitulation of the vote tally results in the election, has gone through the process at the District Court in examining, adjudicating and deciding election criminal cases using the Criminal Procedure Code (KUHP), unless otherwise stipulated in Law Number 7 of 2017 concerning General Elections; Regarding procedural law in examining, adjudicating and deciding election criminal cases, the Supreme Court has issued Supreme Court Regulation (Perma) Number 1 of 2018 Procedures for Resolving Election and General Election Crimes; Trials of election criminal cases are carried out by a special Panel of Judges, where in accordance with these provisions, the Supreme Court has also issued Supreme Court Regulation (Perma) Number 2 of 2018. It is recommended that the members of the Election Committee, especially the PPT, pay attention to being more careful in carrying out their electoral duties because in law enforcement it should be the PPK members who deliberately change, destroy and/or eliminate the minutes of voting and vote counting and/or certificates of counting results. Suara was sentenced to 3 years with a fine of IDR 36 million; Because elections are the gateway in the implementation of a democratic system that will determine

leaders at the Regency/City, Provincial and National (President) levels, it should be Selected members of the General Election Committee who have integrity and state-mindedness.

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