

The Concept of Indefinite Sentence in the General Election Criminal Accountability System in Indonesia

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Abstract

General Elections are a means of popular sovereignty to elect members of the People's Representative Council, members of the Regional Representative Council, President and Vice President, and to elect members of the Regional People's Representative Council, which are carried out directly, publicly, freely, secretly, honestly and fairly in the Unitary State The Republic of Indonesia is based on Pancasila and the 1945 Constitution of the Republic of Indonesia. It is known that based on the latest regulations, the implementation of general elections in Indonesia is regulated in the provisions of Law Number 7 of 2017 concerning General Elections. These laws and regulations not only regulate the systematics of holding general elections but also regulate norms regarding the prohibitions and obligations of each legal subject in holding general elections. This includes criminal law rules that regulate it. So far it is known that the criminal provisions in the General Election Law only adhere to the Indefinite Sentence punishment system, namely that the criminal threat is only regulated to a maximum and there is no minimum criminal threat limit. Such a criminal system brings problems in implementing criminal liability for perpetrators of election crimes from a regulatory perspective. Therefore, it is necessary to look further at the basic concept of criminal liability in general elections, as well as the application of the indefinite sentence concept to general election crimes in Indonesia. The research method used in this research is normative juridical research and the approach is based on legal rules and regulations. Furthermore, the nature of this research is descriptive analysis. The data sources used to conduct this research come from secondary data which uses legal materials in the form of primary legal materials, secondary legal materials and tertiary legal materials. The data collection tool in this research is library research. And finally it will be analyzed using qualitative analysis. Based on the research results, it is known that in principle the criminal provisions contained in general election crimes adhere to the indefinite sentence system, this can be seen in the criminal provisions starting from Article 488 to Article 554 of Law Number 7 of 2017 concerning General Elections which as a whole only outline maximum criminal sanctions and does not specify the minimum criminal sanctions provisions. Law makers should construct the provisions of the criminal system in the General Election Law using an indeterminate sentence pattern or minimum criminal threat. So that there is legal

certainty and legal benefits that can be applied by the Panel of Judges to the electoral crimes that occur.

Keywords: Indefinite Sentence, Criminal Liability, General Elections.

INTRODUCTION

In a democratic country based on law (democratic rule of law), this means that power is limited by law and at the same time states that law regulates all existing instruments of power. In other words, the state establishes law as the basis of its power, and the exercise of that power in all its forms takes place within the framework of the rule of law.

One of the principles of a democratic rule of law is the Indonesian state. The Republic of Indonesia calls itself a rule of law state, Rechtsstaat. This is regulated in the 1945 Constitution. Thus, the mechanisms of individual, community and state life are regulated by law (written or unwritten). This means that both citizens and the government have an obligation to obey the law. Apart from that, it also means that every citizen has the same position before the law and government, and according to Article 27 paragraph 1 of the 1945 Constitution is obliged to obey the law and government without exception. (Sihombing, 2018).

Of course, based on the description above, in Indonesia every action that has legal consequences must be controlled based on applicable legal considerations. This legal aspect has a research basis, namely legal sources that are recognized in a country, in this case Indonesia. This rule applies to all aspects of the country or individual aspects. One of the regulations that guides the implementation of democracy in Indonesia is Election Law no. 7 of 2017 which regulates all standards, values, mechanisms and criminal provisions related to the implementation of elections.

Article 1 point 1 of Law No. 7 of 2017 states: "General elections, hereinafter referred to as elections, are a means of popular sovereignty to elect members of the People's Representative Council, members of the Regional Representative Council, President and Vice President and members of the Regional People's Representative Council, which is carried out directly, open, free, honest and confidential within the framework of the Republic of Indonesia. The 1945 Constitution of the Republic of Indonesia." Parliamentary elections are one way to ensure the continuity of orderly democracy in Indonesia, because everyone must comply with the norms contained therein.

The true form of democracy is general elections (Pemilu). Modern elections have become a necessity as a channel for the will of the people. In order for elections to adequately reflect the will of the people, the principles governing the conduct of elections must also be formulated in accordance with international standards for holding elections. The election principles established in Indonesia which are the basic principles for holding elections are regulated in Article 22E Paragraph 1 of the 1945 Constitution. These policies include Direct Policy, General Policy, Free Policy, Secret Policy, Honesty Policy and Fairness Policy, which are implemented every 5 (five)) once a year. In more exclusive regulations, these principles are outlined in election laws and regulations, and

in the form of articles of association, KPU regulations, Bawaslu regulations, DKPP regulations, and combined regulations of the KPU, Bawaslu and DKPP (Perber) (Hoesein & Arifudin, 2017).

Elections are a government mechanism for electing the head of state (executive) and representatives (legislature). The quality and routine of holding elections determines the degree of democracy in a country. Because elections are the result of a democratic country, elections are a basic form of political participation of the people or citizens to determine the government and programs that suit their wishes, at least the government or programs that they can accept. (Bagja & Dayanto, 2020).

It was emphasized that holding elections in Indonesia must of course be based on applicable law, namely Indonesian positive law. Indonesian positive law is a collection of written and unwritten legal principles and rules that are currently in force, generally or specifically binding, enforced or enforced by the Indonesian government or the courts. (Manan, 2004). Because there is a legal requirement to make such a choice, not only does making the choice comply with the rules, but potential violations can result in criminal prosecution.

One way to achieve the objectives of criminal law is through punishment, namely criminalizing a person or group of people who have committed crimes or acts that are contrary to existing norms. One of the principles of punishment is legal protection, namely to achieve the goal of living together in the form of legal protection, carried out by punishing those who hinder the realization of the expected life, so that legal order is achieved. (Esther, 2020).

In relation to criminal sanctions against perpetrators of election crimes in Indonesia, of course they still refer to the criminal provisions of Election Law No. 7 of 2017. Until now, these election crimes have generally been regulated in the Criminal Code, especially in Articles 148-153 of the Criminal Code. However, due to the special provisions of the Election Law, the imposition of criminal sanctions must also be specific (*lex specialis*).

According to Andi Hamzah, criminal norms outside of criminal law can be referred to as stand-alone (criminal) law or also as uncodified or uncodified criminal law. HJA Nolte wrote a treatise which, if translated into Indonesian, would become the Criminal Code in its own law. W.P.J. Pompe said Nolte started from a fundamental philosophical and historical view of law. Some criminal laws are anchored in criminal law (codification), others are outside criminal law or in separate laws (Syamsuddin, 2018).

Election crime is a special crime whose criminal structure is outside the provisions of the Criminal Code. This is due to the urgency of implementing public order, so that the implementation of the provisions of the Criminal Code is no longer important. Parliamentary election crimes are also special regulations, because the forms of election crimes themselves vary and can be carried out by different parties. Including the characteristics of the correctional system contained therein.

Election crimes can be defined in the stages of election implementation as actions/activities that violate regulations (active/passive) and are subject to criminal sanctions. Many people say that the current general elections in Indonesia are rigged in various ways. Therefore, strict action must be taken against anyone who pollutes the

election and commits fraud (Din, 2020). Even if perpetrators of election crimes use criminal provisions, there are still gaps in the implementation of criminal liability in holding elections against perpetrators. On the one hand, this deficiency or weakness is caused by the regulation of the election law itself.

Even though the criminal provisions of the Election Law apply specifically or specifically compared to the Criminal Code, the criminal system used is not much different. It was stated that the criminal provisions of the Voting Law Number 7 of 2017 still include an indeterminate punishment system.

Basically, there are several punishment systems (strafsoort) in criminal law, namely the individual punishment system, alternative punishment system, cumulative punishment system, cumulative alternative punishment system (mixed/combined) and blind/empty punishment system. Likewise, it is only known because of the long-strength design system that there is a special punishment system in the form of a threat of a certain criminal term, a fixed/indefinite punishment system or a maximum punishment system as a threat of a maximum period, then a special punishment system in the form of a certain minimum and maximum sentence threat and a maximum punishment system. undefined as a maximum punishment system that cannot be determined. This is, in particular, criminal policy (discretion) and police mechanisms, which operate at a lower level, for example to determine the amount, type or duration of punishment for certain offenders.

Based on the entire series of descriptions above, it is necessary to pay further attention to the concept of criminal punishment, especially for perpetrators of elective crimes, if you follow the concept of an indefinite punishment system, what is certainty and regardless of the benefits of criminal law in the provisions of Law No. 7 of 2017 will be realized or not reversed. Therefore, further research is needed regarding the application of the concept of an unlimited punishment system in the implementation of electoral criminal responsibility in Indonesia.

RESEARCH METHODS

In accordance with the problem formulation and research objectives, the research method used is normative legal research (normative juridical) and the approach is based on legal rules and regulations. Furthermore, the nature of this research is descriptive analysis. The data sources used to conduct this research come from secondary data which uses legal materials in the form of primary legal materials, secondary legal materials and tertiary legal materials. The data collection tool in this research is library research and/or document study and analyzing data and existing laws and regulations. Document study is a study that examines various documents, both those relating to statutory regulations and existing documents. Of course, the literature and legal regulations here relate to the general election system in Indonesia, including the concept of criminal responsibility which adheres to the concept of an indefinite sentence or the concept of maximum punishment.

In the end, the data will be analyzed for this research. Data analysis is the most important and decisive stage in writing a thesis. Through the research process, analysis and construction of the data that has been collected and processed is carried out (Soekanto, 2010). This research uses qualitative analysis, namely data analysis that does

not use numbers, but rather provides verbal descriptions of the findings, and therefore prioritizes the quality of the data.

DISCUSS AND ANALYSIS

General Election System in Indonesia

A system is a unit consisting of elements or elements that interact with each other. The system does not want conflict between system elements. If a conflict occurs, the system resolves it immediately. An open system, namely system elements influence the system, while system elements influence elements outside the system. However, there are also closed systems that cannot be influenced by elements outside the system (Prasetyo & Barkatullah, 2020).

Likewise, the way the Indonesian election legal system works is that the implementation of Indonesian elections must avoid party interference, meaning that parliamentary elections must be carried out according to or according to existing legal channels. The criteria or rules set for holding elections must be implemented by all parties, including the KPU, Bawaslu and political parties participating in the election. So that electoral fairness becomes the basis when conflict occurs in holding elections in Indonesia.

In Indonesia, parliamentary elections are currently classified in several ways, starting with the election of members of parliament for president, vice president and senate elections, including the election of members of parliament for regional heads (pemilu kada). The election of regional heads by the DPRD is one of the most important elections to determine regional leaders in Indonesia, both at the provincial and district/city levels. Of course, there are several problems or obstacles in holding gubernatorial elections, ranging from administrative violations to criminal violations. In this context, it can be said that regional head elections must be managed well and carefully (Jumhadi, 2021).

In introducing a democratic system, post-independence leaders must view the holding of elections (general elections) as a system for regulating the transfer of power. The situation in the 1945s and 1950s was still characterized by war against colonial parties who still wanted to reclaim their colonies, and civil war prevented Indonesia from holding general elections immediately after independence.

Political chaos continues to surround the political elite. At that time, the leaders decided to establish a unitary state called the United Republic of Indonesia. This form did not last long and then Indonesia returned to the form proclaimed by the founding fathers of the nation, the Unitary State of the Republic of Indonesia or the current Unitary State of the Republic of Indonesia (NKRI). After much political agitation, the first elections in Indonesia were not held until 1955. In these elections, members of the DPR (People's Representative Council) and the Constituent Assembly (the term MPR or People's Representative Council) were elected.

In the context of legislation, voting is clearly a decisive issue. The determining factor in choosing constitutional practices is the effort to achieve the goals pursued by the state. Voting in state order is even linked to sovereignty. When the voters are all the people, it is clear that voting activities show that state sovereignty is in the hands of the people.

Since the fall of the New Order in 1998, elections have been timed to shake off the nightmares of the past. The General Election Commission (KPU), whose neutrality

is guaranteed by the 1945 Constitution, was delegated to the election management body which was previously under the Ministry of Home Affairs. In the first election of the reform period, namely in 1999, the KPU was dominated by all the political parties (political parties) participating in the election, the number of which at that time was many times the number of New Order political parties. However, the legal policies developed at the beginning of the reform were not good, because there were many conflicts of interest between parties which made the election process difficult, especially determining the results. Therefore, the 2004 election was held by the KPU which was neutral towards the parties participating in the election. Electoral systems were also developed with various modifications, ranging from closed proportional representation (ordinal number system) to open proportional representation (a system where the most votes are cast after passing a certain electoral threshold) and finally to a pure open proportional representation system (without a certain number of voters) .

Despite the various updates and changes that have occurred over the last 20 (twenty) years, the issue of holding elections and receiving election results is still far from expectations. There are those who argue that the election (1999) is seen as fairer than the elections that followed (2004, 2009 and 2014 elections).

With the implementation of democracy with universal suffrage since 2002, now once again the people must decide who according to the will of the people should be the leader of the people. Parliamentary elections are held democratically based on the principles of honesty, justice, freedom and confidentiality. However, 2002 was a difficult time because the appointment of party candidates had both good and bad sides due to the political conditions in the country at that time. a form of renewal. The democratic system was formed in 2003 with Law Number 12 concerning General Elections of Members of Parliament. Based on this decision, general elections for the President, DPR, DPRD and DPD were held in all provincial capitals and municipalities throughout Indonesia in 2004.

Currently, general election regulations refer to Election Law No. 7 of 2017. Election Law No. 7 of 2017 has many differences from the relevant laws that were in effect previously. For example, Law Number 42 of 2008 concerning the General Election of the President and Vice President, Law Number 15 of 2011 concerning the Implementation of General Elections and Law Number 8 of 2012 concerning the General Election of Members of the DPR, DPD and DPRD. The basic difference is that the election of president and vice president as well as the election of members of the DPR, DPD and DPRD, which were previously carried out separately, are now carried out simultaneously.

The form of representative democracy that is maintained for five years is only a procedural requirement for democracy. In the form of a procedural democratic implementation process, it denies the essence of people's sovereignty as the giver of real democratic power. This is because there is an opportunity for fraud to occur in holding general elections. Each party elite fights for victory as political participants in elections in different ways, so that the basis for determining votes is not based on awareness of the will of the people. Universal electoral democracy is nothing other than the mobilization of winning votes through the intervention of political forces in electoral institutions/institutions that have a structural, systemic and mass monopoly of power. (Arrusadi, 2020).

In a representative system, democracy can be understood as a form of popular participation that is channeled through referendums to form representative institutions.

Therefore, this representation mechanism is considered effective because it ensures that the wishes or interests of the community are represented. Therefore, the position and role of parties in the representative system is seen as very dominant.

Holding democratic elections is the dream of every Indonesian citizen. Elections are considered democratic when every eligible Indonesian citizen can vote directly, publicly, freely, secretly, honestly and fairly. Each voter uses their right to vote only once and has the same value, namely one vote. This is often referred to as the “one person, one vote, one value” (opovov) principle. And direct elections are essentially humane because voters have the right to choose directly and according to their conscience, without intermediaries (Arrusadi, 2020).

The electoral system is an important tool for enforcing the law and ensuring the full implementation of democratic principles by holding free, fair and honest elections. The electoral law system is designed to prevent and detect election irregularities, as well as means and mechanisms to correct these irregularities and impose sanctions on those proven to have committed violations. The right to vote includes means and mechanisms available in a particular country, local community or at regional or international level:

- 1) Ensure that all actions, procedures and decisions related to the election process comply with the law;
- 2) Protect or restore voting rights; And
- 3) Enable citizens who believe that their voting rights have been violated to file complaints, attend trials and obtain decisions.

Electoral justice must adhere to certain norms and values so that the election process has greater credibility and legitimacy. These norms and values can be derived from the culture and legal framework of each country (including Indonesia) or from international legal instruments. Electoral systems must function effectively and demonstrate independence and impartiality to ensure fairness, transparency, accessibility, equality and inclusiveness. When a system is perceived as sick and dysfunctional, its credibility is weakened and can cause voters to question their participation in the electoral process or even reject the final election results. Therefore, effective and timely electoral fairness is a key factor in maintaining the credibility of the electoral process.

Electoral justice mechanisms include preventive measures and formal and informal ways to resolve election disputes. The broader electoral justice system includes a variety of mechanisms to ensure credible resolution of election disputes. The electoral legal system mechanism includes preventive efforts and efforts to resolve election disputes, which are formal (institutional) and informal (alternative). Various mechanisms are available to resolve election disputes, both remedial and punitive.

General Election Criminal Liability

The parliamentary elections did not go well, because public participation in their implementation was still lacking. For a democratic country like Indonesia, this is certainly a problem in itself. Election Law Number 7 of 2017 lists 77 election crimes whose provisions are contained in Article 66. There are several targets for election crimes, namely anyone (22 of the 77 election crimes). These are often referred to as general or universal crimes, meaning anyone can commit them, and the other 55 crimes are delict propria (crimes related to a particular subject or not to everything) (Din, 2020).

One of the basic requirements for a democratic country is an honest and fair electoral system and an independent organizer. Thus, fair and just elections can be achieved when there are legal instruments to organize and administer elections and local elections while protecting organizers, candidates, voters, observers and citizens in general from fear, intimidation, violence, bribery, fraud and various activities. other fraud. Practices that influence election results are protected. Therefore, honest and fair elections require election laws and regulations and officials who are honest in implementing these election laws and regulations.

As is known, elections take place in several main stages and the possibility of differences of opinion or violations occurring at each stage of the election is very possible. This possibility may be due to fraud. Passes and strategies to win elections that do not violate the law but damage public trust (Gaffar, 2013).

Handling of election crimes in Indonesia must of course be based on the provisions of the applicable criminal law. In this case the principle is "Sources for the development of Indonesian criminal law can come from various sources, both from the laws of living and developing communities (local wisdom) and from studies of foreign republics".

If the violations are related to elections, one can talk about election crimes or election violations. The use of the terms "violations" or "election criminal acts" makes it clear that these are only criminal acts that occur during the implementation of elections. To a certain extent, election crimes are defined as crimes committed during or in connection with the implementation of the election stages.

As explained above, the criminal act of voting is a special criminal act outside criminal law, so that the characteristics of criminal acts contained in each form of criminal act are essentially different. However, it must have the same principles in criminal law, unless otherwise regulated in the election law. The specificity of election crimes also means that these crimes take different forms depending on the actions and procedures of those who observe criminal violations in election activities. Criminal law experts generally divide criminal law into two large groups, general offenses and specific offenses. Some researchers distinguish it from the criminal provisions of the Criminal Code and therefore talk about ordinary crimes. If the offense is also regulated by non-criminal non-criminal law (for example Law No. 7 of 2017), then it is said to be a special offense (Renggong, 2017).

Criminal liability is closely related to a person's ability to hold someone accountable. If a person, company or legal entity commits an act that violates criminal laws and regulations, then they face legal consequences in the form of criminal liability.

The application of criminal sanctions to actions is closely related to several broad issues. Responsibility is an element of error that cannot be separated from the other two elements of crime. In Dutch the term is *toerekeningsvatbaar*, but Pompe prefers to use *toerkenbaar*. The responsibility that underlies the errors referred to in criminal law is criminal law responsibility. Although ethics states that each person is responsible for his or her actions, criminal law is only concerned with the behavior that results in a judge imposing a sentence.

The criminal threat imposed by the Criminal Code for election crimes is quite light compared to other Criminal Codes. The Criminal Code applies a threat model with criminal law or only contains one main criminal sanction, namely imprisonment. For election violations, the maximum penalty stipulated in Article 152 of the Criminal Code is two years in prison. In contrast, the minimum sentence under 150 StGB is nine months (Rahmah et al., 2017).

The imposition of criminal sanctions on perpetrators of election crimes cannot be separated from the principle of criminal responsibility in criminal law, which is in line with the criminal sanctions of the Criminal Code. As has been explained, the definition of the Criminal Code includes provisions on 3 (three) types/items, namely as follows:

1. General rules of criminal law and issues relating to the prohibition of committing certain acts give rise to criminal threats for those who violate the prohibition (an act called a criminal offense).
2. For violations of the criminal law provisions above, special conditions must be met so that the violation is punishable by criminal law.
3. State businesses that are owned and can be carried out by state officials, if the state implements or fulfills the criminal law.

The application of the Criminal Code follows the principle that no crime may be committed without reason (no criminal act may be committed). Although not formulated in law, it is followed in practice. One cannot separate blame and responsibility from actions. Only those who do wrong are responsible for the crimes they commit. Previously, in this case the ideology of the criminal act, criminal responsibility, was observed without the fault of the perpetrator. This understanding is also called the meaning of material activities. This means that if the person's actions are in accordance with the actions stipulated by law, then the judge can impose a crime regardless of the person's fault (Chazawi, 2018).

The imposition of criminal sanctions on perpetrators of election crimes can take the form of imprisonment and/or fines in accordance with the criminal provisions of Law no. 7 of 2017 Article 488-554. These regulations also determine the lightest and most severe criminal penalties for perpetrators of election crimes.

Basically, election crimes arise due to violations of Article 7 of the 2017 Election Law. Violations can vary depending on the perpetrator, how the violation was committed, and the punishment imposed for the violation. The provisions for implementing criminal sanctions against perpetrators of election crimes refer to Articles 488-554 of Election Law No. 7 of 2017, where perpetrators are threatened with imprisonment and/or fines in accordance with the provisions of Criminal Code Law No. 7 of 2017.

Application of the Indefinite Sentence Concept to General Election Crimes in Indonesia

Criminalization of perpetrators cannot be separated from the criminal system that applies in the Indonesian legal system. An important part of the correctional system is the imposition of sanctions. Its existence provides orientation and reflection about what should be used in criminal law as sanctions to control the implementation of norms. On the other hand, punishment itself is the most complex process in the criminal justice system, because it involves many different people and institutions. The imposition of

sanctions in the Criminal Code is not just technical legislation, but is an inseparable part of the content or substance of the law itself, meaning that the subject of punishment, punishment, criminalization and decriminalization in the political stage of legislation must be understood holistically down to the content or substance of the law (Sholehuddin, 2003).

A rational approach must be taken when determining criminal penalties. If based on a rational approach, criminal sanctions policies cannot be separated from understanding the objectives of each criminal policy, namely protecting society to achieve prosperity. Karl O. Christiansen's goal is as a basic requirement:

"The basic requirement for defining adequate means, methods or measures is that the end or end to be achieved is clearly defined." The crime committed or the ultimate aim of the criminal process is to prevent anti-social behavior. Failing that, a reformulation of the prison system or goals is necessary to determine where the two views meet.

Paying close attention to the implementation of the current criminal system, it is necessary to first know the criminal system, such as the double criminal system, namely the type of crime. sanctions of other parties and types of sanctions for the actions of other parties. Both come from different thoughts. Criminal sanctions are based on the following basic ideas:

"Why is there a punishment?" Procedural sanctions differ from the basic idea:

"What's the punishment for?" In other words, criminal sanctions actually respond to crime, while functional sanctions tend to be more active towards the perpetrator. Criminal sanctions focus on offenses committed by someone who engages in suffering in a way that discourages the individual concerned. Action sanctions focus more on efforts to help the perpetrator change. It is clear that criminal sanctions emphasize retribution. It is suffering that is deliberately inflicted on the perpetrator. Meanwhile, sanctions for actions are based on the basic idea of protecting society and educating and caring for perpetrators. As J.E. According to Jonkers, criminal sanctions focus on the offense that is applied to the offense committed, while functional sanctions have a social purpose (Prasetyo & Barakatullah, 2005).

In particular, initially only a single-track system for determining the type of criminal sanctions to be applied. The classical school basically only regulates a single track system, namely uniform sanctions in the form of several types of punishment. In this case, Sudarto explained that the classic flow of crime is revenge and suppressing criminal acts. This school emerged in the 18th century with a non-deterministic understanding of human free will which emphasized the actions of the perpetrator, thus wanting criminal law (*daad-strafrecht*). That is why the school of punishment and the classical punishment system places a lot of emphasis on the act and not on the perpetrator. The punishment system is determined with certainty (certain punishment), meaning that the law does not use mitigating or aggravating factors related to the perpetrator's age, mental condition, previous offenses or special circumstances of the offense/criminal act committed in determining punishment. (Hikmawati, 2011).

Due to the development of popular justice, the neoclassical school emerged which emphasized their understanding of human free will (the doctrine of free will). Around 1810 he began to think about the need for individual treatment of criminals. The

neoclassical school gives judges the power to impose prison sentences between minimum and maximum limits determined by law. Therefore, the quantitative sentence system was abandoned and the indefinite sentence system was adopted. Regarding the principle of criminal individualization, the essential characteristic of the neoclassical school is the modification of the doctrine of free will and the doctrine of criminal responsibility. Changes include accepting the use of physical, environmental and mental extenuating circumstances, including other circumstances that may have influenced the person's knowledge and intent during the offense.

Regarding criminal sanctions imposed on those who commit crimes. This article uses a maximum criminal threat. This means criminalizing criminal threats. In theory, such criminal sanctions are often referred to as "indeterminate sentences". This is a system where each offense is given its own weight or quality by setting minimum and maximum penalties for each offense.

Law enforcement based on human rights and social welfare has succeeded in developing policy and punishment models that are based on human rights and social welfare while still respecting human rights. It cannot be denied that the principle of punishment is still necessary, considering the nature of the crime, the character of the perpetrator, or other alternative sanctions. The concept of such a view seeks to distinguish between criminal proceedings by criminal justice bodies (criminal procedural law) and the commission of crimes (penology) in correctional institutions or independent institutions that apply the doctrine of indeterminate sentences and indeterminate sentences, which are widely practiced by the UN. member countries. The doctrine of indeterminate sentences or indeterminate sentences can encourage a new understanding of the implementation of punishment according to the views of "relativism" and "utility theory" to find the best option for the implementation of punishment (Simarmata, 2010).

It can be understood that although the concept of indeterminate sentences is a reform of the indeterminate sentence system, there are still many obstacles for court judges to impose criminal sentences on perpetrators. This is one reason why an unclear criminal system gives judges too much freedom. At this stage, the preparation of a certain minimum sentence or death penalty for a certain time begins, so that the judge can no longer freely impose a sentence on the perpetrator, but must comply with the minimum sentence itself.

Based on the objectives and guidelines for judging, what is meant by "Lex specialis derogat legi generali" applies to provisions that deviate from general provisions, meaning that special provisions or regulations override or eliminate general provisions or regulations. It is also used in prisons. This means that the reforms carried out so far in the field of substantive criminal law are adjustments based on developments in criminal law, additions or deductions to existing criminal law or criminal law outside criminal law. Punishment for those guilty in criminal and non-criminal law is not just revenge or suffering, but punishment of criminals. It is hoped that this will greatly influence other people not to do the same thing.

So of course, to see the application of the concept of unspecified punishment to election crimes in Indonesia, you still have to refer to the criminal provisions of the Election Law starting from Articles 488-554 of Election Law No. 7 of 2017. From the

general description of the article and its sections, it shows that the 2017 Election Law follows the current criminal system because it only regulates the maximum amount of imprisonment or fine in the description of criminal sanctions in each section, not the amount. imprisonment or a minimum fine. This allows perpetrators of election crimes to re-commit their crimes, because these perpetrators do not have certainty about the minimum scope of the criminal justice system. This shows that there are still many shortcomings in the application of criminal sanctions based on the provisions of Law no. 7 of 2017, among other things because it follows the concept of an indefinite punishment system.

The criminal threat formulation system currently contained in the Criminal Provisions Article 7 of the Law (2017) is a criminal threat formulation system whose degree is uncertain. Although the system of formulating endless criminal threats is a system built by modern criminal law as a respect for the freedom of judges on the one hand and the individualization of punishment on the other hand, the system of formulating endless criminal threats theoretically has several weaknesses, namely:

1. By simply stating the maximum penalty that can be imposed, for example in the sentence structure of Article 488-554 of Law No. 7 of 2017, the judge's freedom to impose a penalty is very high. This freedom can lead to criminal differences. In fact, the emergence of procedural differences in judges' decisions gives rise to enforcement problems such as: b. an attitude of disobedience to the law and other things that actually harm the objectives of the police itself. Apart from that, election crimes are crimes that are classified as very serious, with very broad and complex implications. Seeing this reality, it is counterproductive to give judges so much freedom to make decisions that the verdict could be different.
2. A system of formulating maximum criminal threats creates problems when there is a difference between the maximum criminal threat and the specified penalty. This contradiction gives the impression that criminal threats are not authoritative, so that the psychology of coercion is difficult to implement in the context of prevention in general. In particular, one of the aims of formulating criminal threats is to create a general deterrent effect (to society).
3. The maximum criminal formulation system which creates a very broad criminal threat in Indonesian criminal law, starting from a general penalty of at least one (one) day to a special maximum penalty, can open up opportunities for collusion or collusion by police officers, especially judges. Thus, this maximum system also has very serious legal consequences in relation to criminal prosecution. Because, theoretically and empirically, one of the factors that really determines the effectiveness of law enforcement is the content of the law itself, so that if the content of the law is not good in this context, it is because of the possibilities offered by the law in terms of terms. criminal field, is very large, then hypothetically, theoretically, effective criminal prosecution can hardly be expected.

Regarding the description above, there is no reference that can serve as a guide for judges to decide on the amount of punishment, so that the judge's subjectivity is the only criterion. In particular, due to the large gap between legally established maximum and minimum scales. The feared abuse of power in the presence of such discretion based

on the legal guarantee of the independence of judges in criminal cases (including election crimes) has become so apparent that many countries have developed new policies to establish mechanisms to guide judges in evaluating the level of punishment imposed, in order to minimize the problem of imposing sanctions. criminal (Achjani, 2011). One possible solution is to translate the construction of legal provisions from the perspective of the criminal system into appropriate laws, in this case of course Law 7 of 2017. The easiest reformulation of laws is to change the criminal system which originally used a non-violent criminal system. limited to an unlimited punishment system.

An indeterminate penal system is a penal system that is not based on a fixed unit of time, but rather that the imposition of sanctions determines certain "time intervals", for example. The minimum sentence is 3 (three) years and the maximum is 6 (six) years. In this case, the convict must serve a prison sentence of 3-6 years, the length of which depends on the convict himself. On the positive side, this is thought to result in the convict behaving well and fulfilling all the duties and responsibilities assigned to him. The convict tries to obtain his release as quickly as possible, taking into account the minimum period specified in the decision given to him (Achjani, 2011).

From the entire description above, it is clear that the penal system that must be followed in implementing criminal liability for perpetrators of election crimes is based on Law no. 7 of 2017 and follows the current penal system concept which has many weaknesses. Therefore, the application of criminal liability to the perpetrator is not the case. Therefore, it is the right solution if the provisions of Indonesia's universal elective punishment system are changed to an unlimited punishment system so that the criminal responsibility of the perpetrator is guaranteed, both with a maximum sentence that can be imposed and a minimum sentence that allows the perpetrator not to avoid the appropriate punishment for his actions.

CLOSURE

Conclusion

In principle, the criminal provisions contained in general election crimes adhere to the indefinite sentence system, this can be seen in the criminal provisions starting from Article 488 to Article 554 of Law Number 7 of 2017 concerning General Elections which as a whole only outline the maximum criminal sanctions and actions determine the minimum criminal sanctions provisions. Therefore, legislators should look at socio-political conditions when formulating the threat of criminal sanctions in a law so that it does not appear out of date but looks at the needs and developments in the lives of the people who are the target of implementing the law so that it can be up to date. The author proposes that in the future, the criminal threats in the election law be revised and then constructed using an indeterminate sentence pattern or a special minimum criminal threat. Through this model, legislators have determined specific minimum and maximum criminal limits that can be imposed by judges. The consideration is that apart from being able to provide legal certainty because the minimum criminal threat is clearly known, it can also provide a deterrent effect as one of the objectives of imposing a penalty. This is in line with the deterrence effect theory which emphasizes that criminals do not repeat

their actions (special prevention), as well as so that other people do not commit similar crimes as general prevention.

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