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Implementation of Criminal Sanctions against Members of the Electoral Commission of Elections in Indonesia

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Abstract:- The implementation of elections in Indonesia since the old order and the new Order does not reflect the principle of democracy, free, confidential, honest, and fair. They are rearranging the general electoral process to regulate a system of democratic offenses and bring peace to society to make changes. This research aims to know and analyze the application of criminal warrants against members of the General Election Commission (KPU), who conduct elections and to examine the weaknesses in implementing criminal sanctions against members who do the electoral criminal act. The method of approach in this study using statutory access. With the secondary data obtained by conducting literature research of both books, articles, journals relating to elections, and decisions of judges on the subject of votes that have been fixed strength. The data obtained is then analyzed by a qualitative descriptive method. The results of the implementation of criminal sanctions against members of the General Election Commission (KPU) who performed an electoral criminal by the judges are still very mild in the form of soft prison crimes, experiments, and confinement according to article 510 and article 514 of Law No. 7 of 2017 on the implementation of elections.

Keywords:- *Criminal Sanction; Criminal Offense; Election Commission.*

I. INTRODUCTION

The sovereignty of the people as formulated in article 1 paragraph (2) of the Constitution of the Republic of Indonesia year 1945 is in the hands of the people and implemented under the Constitution. The meaning of "sovereignty is in the people's hands" is that people have the sovereignty, responsibility, right and obligation to democratically choose a leader who will form a government to manage and serve all walks of life, and select representatives of the people to supervise the course of government. The realization of the sovereignty of the people carried out through the elections directly as a means for the people to choose his deputy will carry out the function of conducting supervision, channeling the political aspirations of the people, made the law as a foundation for all parties in the unitary Republic of Indonesia in carrying out their functions, and formulates the income and expenditure budget [1].

In the process of conducting regional head elections and presidential elections, there are cases of election criminal offenses carried out by the General Election Commission (KPU). Such as in the province of South Sumatra, Riau, Southeast Sulawesi, South Sulawesi, and many areas in carrying out its duties. Several legal events are considered to be detrimental to society and the State. The country issued a fee or the re-election budget. With this condition, with several violations of criminal acts committed by General Election Commission (KPU) members and chairperson, it is necessary to reconstruct several articles that are directly related, because of the criminal election cases in several regions. Application of sanctions or the imposition of criminal sanctions against the General Election Commission (KPU) members and chairpersons is very mild, not directly proportional to their position with other suspects who are ordinary people. There should be a difference in sanctions between ordinary people; in this case, election participants and election organizers [2].

The imposition of sanctions against the General Election Commission (KPU) members usually imprisonment or confinement. The imposition of sanctions is not much different from the judges' verdict in some areas, namely a maximum of 6 months in prison, with a maximum fine of 10 million or maximum probation of 1 year. It is giving the impression that criminal sanctions against members of the General Election Commission do not cause a positive impact or deterrent effect. The author, in this case, tries to conduct a study as a matter of electoral crime to create a new idea of the law enforcement system in achieving legal justice in society. So the importance of the writer to analyze whether the theory can reach the means of punishment against General Election Commission (KPU) members who make mistakes can be criminalized for the existence of an element deliberately harming society and the state. The purpose of this study is to analyze the application of criminal sanctions for KPU members who carry out Election Crime in Indonesia and to analyze the weaknesses of criminal sanctions against KPU members who commit Election Crimes [3].

II. RESEARCH METHOD

The method used in this study is the statutory approach, with secondary data consisting of primary, secondary, and tertiary legal materials. The material was obtained by doing library research from books and various laws and regulations, and other sources from journals and other material related to the object of this study. The data obtained were then analyzed using qualitative descriptive methods.

III. RESULT AND DISCUSSION

A. Criminal Election Cases in Indonesia

In general, Law Number 7 of 2017 concerning General Elections regulates several articles related to election crimes. Around 66 articles in the Election Law governing various offenses for election crimes. These articles restrict some subjects such as organizers, public officials, participants, and many other issues. The Indonesian Legal Roundtable (ILR) conducted a study to explore the application of electoral criminal provisions during the electoral momentum. According to the results of the study, 2019 cases of simultaneous election criminal acts were found in all regions in Indonesia. "The number is recorded 348 criminal election cases, which have been sentenced in 150 district courts and 28 high courts," The Indonesian Legal Roundtable (ILR) Executive Director Firmansyah Arifin said in a discussion in Jakarta [4].

According to data presented by Firmansyah, when compared to the 2014 election, the number of illegal votes in 2019 increased by 58.3%, he said this number meant a significant amount. Most of the 2019 election criminal cases are related to legislative elections, 13 matters related to election crime. The top five regions with the most cases were in a row, South Sulawesi, Central Sulawesi, North Sumatra, West Nusa Tenggara, and Maluku. Firmansyah also mentioned the stage in which the most election offenses occur is at the campaign stage. At this stage alone, there were 168 cases of electoral crime and then during the voting and counting of 74 cases, the recapitulation of 69 cases, the quiet period of 22 cases, and at the nomination stage as many as 15 cases. In all, 320 cases have been proven and found guilty, at the district court and on appeal. Meanwhile, 28 cases were acquitted or released, 170 cases convicted with conditional or probation, 131 cases were sentenced to prison / detained, and 14 cases were convicted without being attended by the defendant [5].

The research shows that the most number of violations in election crimes are federal money 72 cases, the manipulation of votes 56 cases, voting more than one ballot 46 cases, village heads who are not neutral 30 cases, and campaigning in places of worship 19 cases. The most common actors in Indonesian Legal Roundtable (ILR) research are legislative candidates. Legislative candidates who committed crimes as many as 86 people, as many as 59 people, the success team and supporters as many as 33 people, and village heads as many as 30 people.

Indonesian Legal Roundtable (ILR) has some notes in its research report. According to Firmansyah, the record is like the enforcement of the 2019 election criminal law, which tends to give light sentences and trials. "Trends in verdicts like this are certainly difficult to provide a deterrent effect for the perpetrators," Firmansyah said. One hundred ninety cases were sentenced to 1-3 months, and 170 cases were sentenced to conditional criminal or probation. The most severe sentences are sentenced to 2 years' imprisonment, and none of the election offenders has sentences added by 1/3. Firmansyah said, in the verdict, there were also disparities or differences in decisions in the same case. "The verdict is indeed the authority of the judge, but if there is a difference in the decision, it will become it is own problematic in the criminal law enforcement process. The disparity in decisions shows how severe the judge is in handling criminal election cases", Firmansyah said. He also revealed facts which, according to Indonesian Legal Roundtable (ILR), were odd. For example, in one court, there were different cases, but the sentences were the same, a verdict that did not reach all the perpetrators, a decision that made money politics a matter of summary. In practice, Firmansyah also revealed that there were differences in the application of procedural law to the appellate judge in responding to a free sentence [6].

According to him, there was still uncertainty among the high judges in applying the rules. Most appellate judges accommodate free or loose decisions due to justice because there are no more mechanisms available to examine and decide cases. However, some high judges behave differently point of view that an acquittal cannot be appealed. Also, the arrangement of disqualification of permanent candidates and selected candidates that are incomplete and consistent creates uncertainty in implementation. Especially in the case of a campaign outside the campaign schedule involving Indonesian citizens who do not yet have the right to vote, can it be used as a reason for the cancellation of candidates [7].

Meanwhile, Member of the Election Supervisory (Bawaslu) Rahmat Bagja in the same place said the problematic enforcement of criminal election law in the Gakkumdu Center. In terms of HR and access, there are still different perceptions in interpreting the constituent criminal elements within the Gakkumdu Center environment. Also, there are obstacles from the aspects of the police and the prosecutor's office in the area of expansion that do not yet have district police or prosecutor's office in the local area. It is also difficult to get expert information related to legal opinions in fulfilling the elements of the article on election crime. Then there are also geographical obstacles to the district court, which is faced with a trial time limit. "The obstacle in the Gakkumdu discussion is that the police and the main prosecutor's office are far from the district/city," Bagja said [3].

A member of the Judicial Commission (KY) Sukma Violeta revealed, his party has monitored 24 election cases. The types of evidence observed by Judicial Commission (KY), for example, are related to money politics, the use of

state facilities in campaigns, campaigns at places of worship, and causing voters to be of no value. " Judicial Commission (KY) has monitored 24 election cases, 24 election cases," said Sukma. Meanwhile, Executive Director of the Election Association for Democracy Titi Anggraini rate, in the future, the number of criminal provisions in the Election Law should be reduced. It aims to put the criminal act in the election as *ultimum remidium*. Titi suggested that administrative sanctions be increased because these types of penalties are more feared by by-election stakeholders. "We urge going forward to reduce the provisions of criminal offenses [8].

Discussing legal issues will indeed never be separated from the world fair or justice. Discussing legal issues has become a necessity that the law must contain and guarantee truth. According to Yusuf A.W. in his writings titled Law and Justice, the law cannot be separated from the ultimate goal of state and community life itself, namely justice. Through and with law, individuals or communities can lead a life of justice. Yusuf further stated that a just law is an orderly law and without suppressing the human dignity of every citizen, or in other words, is a law that always serves the interests of justice, order, order, and peace to support the realization of a prosperous and spiritual society. What Yusuf said becomes interesting, because the perspective of truth is not only limited to the awareness of physical well-being but also within. The question is, what kind of justice will support the realization of a prosperous and spiritual society?

Concerning a law that frees true peace and justice will be realized if every community can be free and responsible for expressing what it thinks. Which, in the end, will free him from the constraints that can destroy the legal peace both outwardly and spiritually. According to Setiadi, the criminal law, which is shackling and applies so far in Indonesia, is "pseudo". On the assumption that in the United Nations (UN) congress on The Prevention of Crime and the Treatment of Offenders, it is often stated that the current criminal law system, especially those originating from the colonial period, in general, are out of date and unjust. As well as out of fashion and unreal (outdated and out of time). All of them are "pseudo" and do not originate from cultural values that are rooted in itself. Even there is a discrepancy with the aspirations of the community, which ultimately shackles the community itself and is not responsive to today's social needs [9].

B. Court ruling

Before a judge makes a criminal law ruling, a case has gone through the stages set out in the Code of Conduct of the Criminal Procedure Code. Starting with the investigation conducted by the police and prosecution by the prosecutor, only then will the case that has met the requirements be submitted to the district court. Cases that have fulfilled all the obligations are then heard. In general, the proceedings of the trial are the reading of the prosecutor's indictment. Then the defense can submit their exceptions, the prosecutor studies and responds to the defender's exemption. The judge decides the defense exception, the witness's statement, the defendant's statement, the submission of evidence, the prosecutor's claim, the defense of the defendant, and the judge's decision. Based on the guidelines for the implementation of the Criminal Procedure Code, the judge's decision in a criminal procedural law case can be classified into 3, namely:

- The defendant is acquitted, that is, if the court believes that the results of the trial are tried, the defendant's guilt or the actions charged with him are not proven legally and convincingly.
- The defendant is acquitted of all lawsuits, i.e., if the court believes that the act convicted of the defendant is proven, but the action is not a criminal offense.
- The defendant is sentenced to a criminal sentence, i.e., if the court believes that the defendant is guilty of committing the criminal act charged with him.

The judge to get verdict will prove the criminal act on the defendant by seeking confidence whether the defendant committed the act that was charged to him or not—matching the behavior that was charged to him with the articles of criminal law. The search for a judge's conviction is carried out by asking the prosecutors, defense attorneys, witnesses, the accused, and looking at the evidence presented. The judge was sure that if the defendant had committed the alleged act if there was a match between facts from the prosecutor, witnesses, the defendant, or evidence. For example, the prosecutor demanded that the defendant commit premeditated murder, the witness said the defendant had a dispute and threatened the victim. The defendant admitted that he had killed the victim on a plan because he was hurt by knife evidence following the wounds that existed in the body of the victim [10].

After gaining the conviction that the defendant did the act that was charged to him, the judge will match the actions committed by the defendant with the articles in the criminal law. If the defendant's actions fulfill the elements in a criminal law article, then the defendant is declared proven to have committed acts of funds that were charged to him. Judges who believe the defendant did not commit the criminal act charged to him or if the judge sees the defendant's actions do not contain elements of the criminal law article charged with him will decide the defendant with a free ruling. If a defendant is found guilty of committing a criminal act in violation of a particular article, the judge will examine whether the defendant can be declared responsible for the criminal act he committed (crime responsibility). Judges will use articles 44-51 of the Criminal Code, which contains people who are declared unable to take responsibility for their criminal actions [11].

In the series of judges' decisions when issuing a decision on an election crime case, the judge must have an impact on common law in the community. Like criminal cases in the Courts of Palembang, Riau, South East Sulawesi, South Sulawesi, when the verdicts were dropped, the judge must believe the purpose of imposing criminal sanctions with the structure of Strafsoord, Strafmaat, and Strafmodus. This decision will affect the three sets of structures if the imposition of sanctions or the application of

sanctions is not by these principles because every decision will be under the Article or Law that is applied, feasible or appropriate, or capable or not, mild or not. This condition is the judge in applying sanctions must be cautious, especially in handling cases of election crime, especially in punishing the holding of elections such as General Election Commission members or Chairmen [12].

In terms of legal justice in the aspect of applying criminal sanctions against perpetrators of election crimes, the authors compare election violations committed by election participants with election administrators. This case has a permanent legal force, which is a violation of election criminal offenses committed by members of the KPU of South Sumatra (Palembang). Case five Commissioner Members of the Palembang Election Commission, who were sentenced to six months' imprisonment and a fine of 10 million, the defendants were represented by Articles 510-554 of Law Number 7 of 2017. They were named as suspects in connection with the criminal act of organizing an election. They commit a crime that causes others to lose their right to vote, as stated in primary article 554 of Law Number 7/2017 Concerning Elections. That occurred on April 17, 2019, in the Ilir Timur region Palembang [13].

Based on the court's decision above, it is known that legal justice is not evenly distributed in all general elections throughout Indonesia. The application of criminal sanctions does not have a deterrent effect, especially for members of the Election Commission who commit crimes. In the decision of the Palembang District Court, and there are still many courts in Indonesia that punish General Election Commission members, it is proven that committing an election crime has not been able to provide an appropriate sanction. Hence, the author is of the view that the legal reconstruction of the substance of the application of Article 510 and Article 514 should be carried out on Number 7 of 2017.

According to Barda Nawawi Arief, the definition of punishment is interpreted as a process of imposing a criminal sentence by a judge. It can be said that the criminal system includes the entire statutory provisions governing criminal law or operationally concretely so that a person is sanctioned. It means that all laws and regulations regarding substantive criminal law, formal criminal law, and criminal law can be seen as a unified criminal system. Barda Nawawi Arief also stated that the statutory rules are limited to substantive criminal law contained in the Criminal Code. It can be said that all of the provisions in the Criminal Code, both general and specific rules regarding the formulation of a criminal offense, are necessarily a unified criminal system. All statutory rules in the substantive criminal law field consist of general rules and special rules. General rules are contained in the Criminal Code (Book I), and special rules are contained in Criminal Code Books II and Book III, as well as in Special Laws outside the Criminal Code. These special rules generally contain the formulation of individual criminal acts, but they can also contain special rules that deviate from general rules [11].

Many legal theories can strengthen the reasons for imposing criminal sanctions. Imposing legal sanctions in criminal acts of election carried out by judges in the District Courts of various regions in examining and adjudicating cases. There is a tendency for judges to give very light decisions and do not comply with the principles of justice in the community, especially justice in Pancasila. Justice that is seen in Law Number 7 of 2017 in Article regarding election criminal offenses cannot be said to be an adequate legal means in imposing sanctions or applying criminal sanctions against KPU members who commit criminal acts. Because the legal structure in the article still does not provide justice, especially Article 510 and Article 514. This article is routinely used in the prosecution and prosecuting charges in court proceedings because this Article deals directly with General Election Commission Members and Chairperson in conducting Election Crimes [14].

There are several necessary crimes which are often alternatively threatened with the same criminal act. Therefore, the judge can only drop one of the threatened crimes. It means that the judge is free in choosing criminal threats. As for the duration or number of threats, only maximum and minimum threats are determined. It is within these maximum and minimum limits that the judge is free to move to determine the right criminal for a case. However, the freedom of the judge is not intended to allow the judge to act arbitrarily in determining crimes with a subjective nature. In line with Leo Polak's opinion, which states that one of the conditions in the provision of a crime is the severity of the crime must be balanced with the severity of the offense. Criminal severity must not exceed the severity of the offense. It is necessary so that criminals are not unfairly convicted. Then related to the purpose of holding maximum and minimum limits is to give the judge the possibility in calculating how the background of the incident, namely the severity of the offense and the way the offense was committed, the offender's person, age, and the circumstances and the circumstances of the offense done, besides the intellectual or intelligence level [1].

The Indonesian Penal Code only recognizes general maximums and special maximums and general minimums. The maximum stipulation for imprisonment is 15 (fifteen) consecutive years, for imprisonment for 1 (one) year, and the specified maximum is stated in each sentence of the offense. At the same time, the criminal fine does not have a general maximum. As for imprisonment and confinement, the minimum requirement is one day. The law also regulates the conditions that can increase and reduce crime. The condition that can reduce crime is trial and assistance. Against these two cases, the penalty that is threatened is that the maximum sentence for a crime is reduced by one third, as stipulated in Article 53 paragraph (2) and Article 57 of the Criminal Code. Article 53 Paragraph (2) of the Criminal Code states, "The maximum principal crime for crimes in a trial case is reduced by one third". While Article 57 paragraph (1) of the Criminal Code reads, "In terms of assistance, the maximum principal crime against crime, reduced by one third". In addition to the mitigating provisions, it also regulates the conditions that can add to or

aggravate the crime, namely concurrent, receive, and civil servants. In terms of imprisonment can be increased to a maximum of 20 years, imprisonment to a maximum of 1 year four months, and substitute imprisonment to 8 months [15].

The Criminal Code currently in force in Indonesia does not yet recognize what is called a criminal code guideline. Judges are granted the freedom to choose the character of crime desired when deciding a case, in conformity with an alternative system in the jurisprudence. Furthermore, the judge can also choose the severity of the crime to be imposed, because what is determined by the law is only the maximum and minimum penalties. In this regard, what often causes problems in practice is the freedom of judges to determine the severity of a given crime. It is because the law only determines the maximum and minimum criminal penalties. As a consequence of these problems, a thing called criminal disparity will occur. In description (3) the characteristics of the criminal system in Indonesia, namely *Strafshort*, *Strafmaat*, *Strafmodus*, can explain the reality of the law in assessing the quality of justice in society, especially with violations/election crimes according to Law Number 7 of 2017, where the need to re-arrange or reconstruct the law several articles relating to legal sanctions for General Election Commission members as election administrators [16].

In the order of the existing case concept, that all matters of application or applied to the perpetrators of election crimes, including General Election Commission members are proven guilty and sentenced by the judges are not enough to provide a deterrent effect or justice for the community. However, enough to judge that the judge cannot provide sanctions with a law that is a deterrent effect when regulations have not been adequately regulated. As Article 448 to Article 554 of Law Number 7 of 2017 has described several acts in election crime and has also outlined the classification of institutions or General Election Commission members involved or proven to have committed election crimes, such as Article 510 of Law Number 7 2017 with a beep:

"Anyone who intentionally causes another person to lose his right to vote is liable to a maximum imprisonment of 2 (two) years and a maximum fine of Rp. 24,000,000 (twenty-four million rupiah)."

It can be seen that the above article cannot provide justice for the community, where the article can provide an excellent opportunity for KPU members to commit election crimes. Explanation of the article can be made politically possible repeat actions in each election because the space of criminal sanctions for perpetrators does not provide severe sanctions. In several cases involving General Election Commission members directly in various regions, the average verdict of judges on perpetrators was very mild. At the same time, the legal and social impacts on decisions could give a picture of the Indonesian criminal system, whether the judge's decision could provide justice, authority, ethics, dignity, and others. In this condition, it is known that Article 510, Article 514, which is always used by the Public Prosecutor in prosecuting accused defendants of election violations by the KPU. Then the reconstruction needs to start from a sanction of imprisonment of 2 years to 5 years in prison, a fine of 24 million rupiahs to 240 million rupiahs, and has a minimum sentence of 2 years [17].

The number of election criminal sentences that have been handed down by the court shows that the court has played its role in adjudicating criminal election cases. Although on the other hand, it shows a concern that cases of election crime in the 2014-2019 election are still rife. The extent to which the role of the court works well, and the verdict is valid can be seen from the following analysis:

- *The sentencing of Election Crime Trials*

Trial Sentences for Election Crimes Minor sentences, both in terms of probation or detention, and many of the penalties handed down by judges on election crime cases. A sentence or probation in the concept of punishment is indeed possible to be applied to defendants who are facing a maximum sentence of 1 year in prison. This provision can be seen in Article 14, a paragraph (1) of the Criminal Code mentioned:

"If the judge gives a maximum sentence of one year or a sentence of imprisonment, not including substitute imprisonment, then the judge can also order that the criminal does not need to be served unless there is another judge's decision in the future because the person convicted of a crime before the specified trial period expires, or because the convicted during the trial period does not meet the specific conditions specified in the order."

It means that even if the defendant is found guilty and sentenced to imprisonment, there is no need to be imprisoned or correctional institutions as long as the trial period can improve his behavior. It is motivated by thoughts that want to allow criminal offenders to improve their behavior in society. In addition to that, it removes the impression of the severity of criminal penalties and the existence of revenge. Likewise, with fines, philosophically interpreted as a pastor. Not to compensate, enrich the country, or impoverish actors. The mild probation became the trend of the judges' choice in adjudicating election crime cases. The problem is that light sentences in the form of such trials are given to many election criminal cases that carry a sentence of more than one year.

For example, in money politics, criminal cases which carry a sentence of 2-4 years and a fine of Rp. 24 -48 million, more convicted with probation. There are at least 29 cases (56%) of 53 cases of money politics convicted with probation. While those convicted in prison / detained, there were 20 cases (37%). The average sentence is between 1 month-1 year, with a fine of Rp. Five hundred thousand to 3 million. Trial sentences were also given in many election criminal cases claiming to be someone else or to vote more than once. There were 25 cases (66%) of 38 cases that were sentenced lightly, and only 11 cases (29%) were sentenced to prison/detention—on average, sentenced to trial 15 days -

6 months and a fine of Rp. 250 thousand - 2 million rupiah. Whereas the threat of a sentence of 1 year six months in prison and fines [8].

Also, in a criminal election case changed the results of electoral votes that were subject to a 4-year prison sentence and a fine of Rp.48 million rupiahs, not a few were sentenced to trial. There were 11 cases (26%) of 53 cases convicted of probation. Even in criminal acts, elections use fake documents/letters, which are punishable by a maximum sentence of 6 years and a fine of Rp. 72 million, of the six highest decisions, it is only given a sentence of 6 months and a fine of Rp. 20 million. Light sentences were common among them because the verdict of the panel of judges did not meet the prosecutors' charges/demands.

At least 113 cases (61%) have lower verdicts than prosecutors demanded. Only 44 cases (24%) were sentenced to exceed the charges, and 27 cases (15%) were convicted the same as the prosecutors' demands. Even though there were cases that were corrected through an appeal decision, only 16 cases (21%) of 73 appeal decisions had sentences that exceeded the decisions of the district court. The remaining 13 cases (17%) were lower than the District Court (PN), 40 cases (57%) were the same as the District Court (PN), and each of the 2 cases was acquitted by the high court and did not provide a deterrent effect. Especially if the perpetrators are legislative candidates, who are expected to be trusted and follow the rules of the game honestly. The Supreme Court, through Circular Letter No. 1 of 2000, requested all judges to "impose a criminal act that is truly commensurate with the crime and not to impose a criminal offense against the sense of justice in the community". There are still many who are given less than the right decisions [4].

- *The disparity in Election Crime Decisions*

Disparities or differences in criminal decisions often bring their problems in law enforcement. The disparity of a criminal is the application of an unequal criminal act to the same criminal act or to a criminal offense whose nature can be compared without a clear justification. Disparity not only occurs in the same criminal act, but in the level of seriousness of a crime, and also in the decisions of judges, both one panel of judges and different for the same case. The disparity in decisions is also found in the decisions of criminal cases elections. For example, Blitar District Court has ruled guilty Harry Patmono, KPPS Chairperson at TPS No.19 in Sugihan, Blitar Regency, with a sentence of imprisonment of 2 years and six months and a fine of Rp. 10 million in confinement for three months. Whereas the prosecutor's demands were only one year and five months and a fine of Rp. 1 million subsidiary three months in prison.

In that case, Harry was found guilty of violating Article 309 jo Article 321 of Law No. 8 of 2012, which states that, "Election Organizer deliberately performs acts which cause certain Election Contestants to get additional votes". He has cast ballots for the Legislative Candidates of the Republic of Indonesia DPR number 2 from the Democratic Party. Nova Riyanti Yusuf as many as 55 and Blitar Regency Legislative Candidates candidate number 6 on behalf of Heni Retna Wizi Suci from the Gerindra Party were also 55 ballots. The act was carried out at polling station 19, namely at the defendant's in-laws' house in Pojok Village, Blitar.

In addition to being proven guilty, other things incriminate the decision, namely his actions harm democracy in elections holding, and the defendant has been sentenced. But not so with Mursyid, Chairperson of KPPS Way Dadi Subdistrict, Sukareme Bandar Lampung. He was proven guilty of changing the votes of candidates for Candidate Number 5. Romi Husin, SH in form C-1, which had a total of 72 votes, was changed to 82 votes, and the number of votes for the Golkar party, which was supposed to get ten votes, was changed to 00. He was only sentenced to 1 month in prison and a fine of Rp 100,000 thousand 1 month. Not much different from Tohir, Chairperson of KPPS 7, Way Laga Sub-district, Sukabumi Sub-District, Bandar Lampung City. He was only sentenced to two months in prison, without having to be served with a fine of Rp. 50,000 per one month for reducing the vote acquisition of candidates in the name of Suwondo from the Golkar Party from 34 to 32 votes. The District Court (PN) / PT Tanjungkarang verdict was very different from the verdict imposed by the Blitar District Court. In another case, Muhammad Syahdan was sentenced to 1-year probation and a fine of Rp. 30 million for his negligence in doing an act that caused a vote to be worthless and caused sure election participants to get additional votes [18].

However, the Election Commission members of the West Lampung Tulang Bawang Regency were more fortunate. He was finally only given a 3-month sentence with six months' trial and a fine of Five hundred thousand rupiahs by PT Tanjungkarang. However, it was proven that he had ordered PPK members and several witnesses to add votes for a Democratic candidate. In the criminal case of money politics, Marwansyah candidate from Democratic Party for the DPRD Solok City was sentenced to six months' imprisonment and a fine of Rp. 24 million for a 3-month subside by District Court (PN) Solok because it was proven to provide Rp. The Solok District Court verdict is the most severe verdict handed down in a money politics criminal case. One of the incriminating judges' decisions was stated in consideration of the decision that the defendant was a member of the Board, and of course, the experience provided sufficient knowledge and awareness. Significant rights and obligations and procedures for conducting campaigns that are allowed and which are prohibited and have criminal threats and legal consequences. Furthermore, what was interesting was conveyed in consideration of the decision:

"... General Election crime is a crime that seriously harms the sense of justice of the community and can damage the democratic state order because the General Election is the only constitutional forum for selecting leaders who will determine where this country will be taken in the future. The hope to get a trustworthy leader is the dream of all the

people, especially that money politics will not only damage the defendant but will damage other citizens who receive the money, in his mind only the principle of who is greater to give, he will be chosen without knowing the vision and mission the leading candidate, and this is a horrible political education. Finally, the goal of realizing the State of Indonesia Fair Prosperous was not achieved, so the effect of punishment on election criminal acts must be prioritized in order to provide a deterrent effect to the Defendant and to other citizens who wish to become leaders. ..."

Even though the imprisonment verdict is still far from the provisions of the Act (maximum two years), from the Solok PN ruling, it reads that there is enthusiasm to provide a deterrent effect for perpetrators of election criminal offenses, particularly money politics. Nevertheless, the spirit of giving a deterrent effect did not emerge from other courts. Muhammad Nizar, a member of the Banten Province DPRD and a candidate for the Banten Province DPRD from the Gerindra Party, gave Rp. 300,000 to witnesses and money assistance (Rp. 3 million) through his success team to several residents. For his actions, he was sentenced by Tangerang District Court to 6 months in prison and a fine of Rp. 10 million (2 months). PT Banten then, in its appeal verdict, instead gave Korting into two months in prison, with consideration of the length of the criminal sentence imposed by PN, which was too severe and did not reflect a sense of justice [19].

Author's analysis can conclude that there are weaknesses in Law Number 7 of 2017, especially Article 510, and Article 514, where this article is always used as a legal reference in every court decision to render a decision against KPU members committing election violations or criminal offenses.

- *The imposition of criminal sanctions in perspective*

There are several necessary crimes which are often alternatively threatened with the same criminal act. Therefore, the judge can only drop one of the threatened crimes. It means that the judge is free in choosing criminal threats. As for the duration or number of threats, only maximum and minimum threats are determined. It is within these maximum and minimum limits that the judge is free to move to determine the right criminal for a case. However, the freedom of the judge is not intended to allow the judge to act arbitrarily in determining crimes with a subjective nature. It is in line with Leo Polak's opinion, which states that one of the conditions in the provision of a crime is the severity of the crime must be balanced with the severity of the offense. Criminal severity must not exceed the severity of the offense. It is necessary so that criminals are not unfairly convicted. Then related to the purpose of holding maximum and minimum limits is to give the judge the possibility in calculating how the background of the incident, namely the severity of the offense and the way the offense was committed, the offender's person, age, and the circumstances and the circumstances of the offense done, besides the intellectual or intelligence level [20].

The Indonesian Penal Code only recognizes general maximums and special maximums and general minimums. The maximum stipulation for imprisonment is 15 (fifteen) consecutive years, for imprisonment for 1 (one) year, and the specified maximum is stated in each sentence of the offense. At the same time, the criminal fine does not have a general maximum. As for imprisonment and confinement, the minimum requirement is one day. The law also regulates the conditions that can increase and reduce crime. The condition that can reduce crime is trial and assistance. Against these two cases, the penalty that is threatened is that the maximum sentence for a crime is reduced by one third, as stipulated in Article 53 paragraph (2) and Article 57 of the Criminal Code.

Article 53 Paragraph (2) of the Criminal Code states, "The maximum principal crime for crimes in a trial case is reduced by one third". While Article 57 paragraph (1) of the Criminal Code reads, "In terms of assistance, the maximum principal crime against crime, reduced by one third". In addition to the mitigating provisions, it also regulates the conditions that can add to or aggravate the crime, namely concurrent, receive, and civil servants. In terms of imprisonment can be increased to a maximum of 20 years, imprisonment to a maximum of 1 year four months, and substitute imprisonment to 8 months. Criminalization can be interpreted as the stage of determining sanctions and also the stage of providing sanctions in criminal law. The word "criminal" is generally interpreted as punishment, while "punishment" is interpreted as punishment. The crime is imposed not because someone has done evil but so that someone who is deemed to have done evil (perpetrators of crime) no longer does evil, and other people are afraid of committing similar crimes [21].

Andi Hamzah expressly defines punishment, is:

"Punishment comes from a legal basis so that it can be interpreted as establishing law or deciding about the law ".

The sentencing system (the sentencing system) is a statutory regulation relating to criminal sanctions and criminalization. Then, in this case: Subekti and Tjitro Soedibyo stated that:

"The criminal is a punishment. Criminal itself is a tool that is a tool to achieve the goal of punishment. The problem of crime is a humanitarian problem and social problems that are always faced by every form of society. Where there is a community, there is a crime. "

Crime is always closely tied to values, structure, and society itself. Therefore, even though humans try to destroy each other's crime, the crime will not be destroyed but only minimized its intensity. Mardjono Reksodiputro said that criminal acts cannot be abolished in society at all, but can only be eliminated to the limit of tolerance. It is because not all human needs can be fulfilled correctly; humans also tend to have different interests between one and another. However, criminal acts also cannot be allowed to grow and develop in society because they can cause damage and disturbance to social order. Moreover, before using crime as

a tool, an understanding of the tool itself is needed. Criminal understanding as a tool is fundamental to help understand whether, with these tools, the predetermined goals can be achieved or not [22].

The application of a criminal sanction is a cause and effect penalty because it is the case, and the effect is the law, the person affected by the consequences will get sanctions either going to prison or other sentences from the authorities. Criminal sanctions are a type of misdemeanor sanctions that are threatened or imposed on an act or perpetrator of a criminal act or criminal offense that can interfere or endanger the legal interest. Criminal sanctions are a guarantor to rehabilitate the behavior of the perpetrators of the crime. Roslan Saleh stressed that crime is a reaction to the offense, and this is a form of misery that is deliberately delegated by the State to the offender. Furthermore, criminal sanctions are related to criminal law, in some legal discussions conducted by experts, that the relationship of sanctions and criminal law is very strongly interrelated, where this relationship answers the main issues in the criminal system [23].

The Black Law Dictionary states that Criminal Law is the body of law defining offenses of the community at large, regulating how suspects are integrated, changed, and tried and established punishment for convicted offenders. Soedarto defines criminal law as a rule of law that binds to an act that fulfills certain conditions in the form of criminal consequences. Meanwhile, Simons defines Criminal Law is:

- The entire prohibition or order in which the state is threatened with misery is a "criminal" if it is not obeyed
- Overall rules that specify the conditions for a criminal prosecution, and,
- Overall provisions which provide the basis for criminal conviction and application.

According to Soedarto, criminal law can be viewed from a theoretical perspective which includes three main problems, namely:

- prohibited acts,
- The person who commits the prohibited act,
- The criminal is threatened with the violation.

This view is not much different from the view of Wihem Sauher, known as *Trias Sauher*, stating that there are three basic understandings in criminal law, namely *unrecht*, error and criminal. Also, treatment for those who have already done bad deeds. Thus, criminal law is the provisions that govern and limit human behavior in negating violations of the public interest.

In the field of law, there is an adage that the law must be strengthened by sanctions. Sanctions to strengthen legal norms are criminal sanctions as the last stronghold. That is, criminal sanctions are only used if other legal sanctions such as administrative sanctions and criminal sanctions are felt to be unable to maintain or strengthen existing legal norms. It is known as the "*Ultimum Remedium*".

The description above shows the position of the goal of punishment is one of the crucial keys in the execution of the crime itself. It can also be said that criminal convictions must reflect the purpose of punishment. The importance of attention to purpose punishment is also apparently paid attention to by the drafters of the new KUHP by formulating it explicitly, about the purpose of criminalization in book-1 of the Criminal Code Bill. Article 51 book-1 of the 2005 Criminal Code Bill states that:

- Criminal aims
- Prevent criminal offenses by enforcing legal norms to protect the community
- Socialize the convicted person by holding coaching so that he becomes a right and useful person
- Resolving conflicts caused by criminal acts, restoring balance, and bringing a sense of peace in socializing.
- Freeing guilt on the convict
- Criminalization is not intended to demean human dignity.

In some criminal sanctions against perpetrators, it can also be implemented the purpose of imposing sanctions, depending on the type of criminal sanctions aimed at the perpetrators. Related to the imposition of criminal sanctions on KPU members in several cases in various regions in Indonesia, this makes a fair reflection to be analyzed regarding the imposition of sufficient sanctions that cannot provide a deterrent effect. In the purpose of punishment, not only is the objective to be deterred, but there are sanctions related to moral or psychological burdens on the perpetrators so that the perpetrators or potential perpetrators do not commit anymore or do not develop the crime. As in the delicts in election crimes, there is an implied article to be used as material for discussion, surgery, study regarding the weakness, or lack of proper sanctions against the application of Article 510 of Law Number 7 of 2017 [3].

Article 510

Every person who intentionally causes others to lose their right to vote is liable to a maximum imprisonment of 2 (two) years and a maximum fine of Rp. 24 million.

In the article above, it is possible to have a structural crime in the current political arena. Related to the above article, the political potential in winning the votes of candidates can occur with a variety of modus as follows: There are at least five modus operandi that results in the loss or loss of a person's voting rights and being subject to criminal sanctions.

- First, the election organizers at the polling station level do not give C6 forms or invitations to use their voting rights to the public for any purpose whatsoever. With the intention of not neutral or because of unprofessional performance, which results in the loss of one's suffrage.
- Second, in the case of updating voter data, where the people who have the right to vote are not registered on the provisional voter list, then process it. However, because the voters' data collection system is often not updated, their names are still not listed in the DPT, and their voting rights are lost.

- Third, companies or business actors who do not dismiss their employees and do not allow employees to vote. Then the business actor violated the criminal election law.
- Fourth, the abstention provocation, both in the real world and in other media by certain elements that provoke the public not to exercise their right to vote, may also be subject to election crimes. "Because even if it were to be abstentions, it is a personal political right".
- Fifth, intimidation for not trusting the election and political system of the Republic of Indonesia. According to him, there is a small portion of Indonesian people who are indicated as distrustful of the system prevailing in the Republic of Indonesia, including the electoral democracy system. "If you intimidate other people or appeal to other people, you can be charged with election crimes".

With the explanation of Point above, especially points 1 and 2 can be used as a tool or means by members of the KPU or election organizers to eliminate voting rights, especially with political interests. This condition occurs when the violation, Article 510 of Law Number 7 of 2017, is accommodated as a punishment knife for the perpetrators. Penalties for perpetrators, according to this article, cannot measure sanctions entirely appropriate and appropriate, precisely in the development of criminal law and the current criminal system, it cannot provide quality sanctions for perpetrators. From the quality of the sanctions, it can be seen that the length of imprisonment of the perpetrators and a large number of fines are minimal for the perpetrators [8].

IV. CONCLUSIONS

- Criminal sanctions against members of the Election Commission who commit an election crime have not been fair because the judge decided the case by imposing light criminal sanctions. Based on Article 510 and Article 514 of Law Number 7 of 2017 concerning the Implementation of Elections, the judges measure because the article and the prosecutor's demands are very mild, so the judge decides the crime against the perpetrators with six months' imprisonment and Rp. 10,000,000 of fine. Thus the ending is that regulations in Articles 510, 514 have a punitive function not provided a sensory faculty of justice for community and land.
- Weaknesses of criminal sanctions against members of the General Election Commission who carry out election crimes today can be seen in the imposition of sanctions. Starting from the type of criminal sanction or called *Strafsoort*, the type of sanction and followed by the length of the criminal sanction *strafmaat*, where the duration of criminal sanctions on average six months in prison and a fine of Rp. 10,000,000 (ten million rupiahs). Furthermore, there are criminal sanctions for confinement and probation, contained in each decision in various court comparisons in the regions.

REFERENCES

[1]. L. Tibaka and R. Rosdian, "The Protection of Human Rights in Indonesian Constitutional Law after the Amendment of the 1945 Constitution of The Republic of Indonesia," Fiat Justisia, vol. 11, no. 3, pp. 268–289, 2018.
[2]. J. V. Henderson and A. Kuncoro, "Corruption and local democratization in Indonesia: The role of Islamic parties," J. Dev. Econ., vol. 94, no. 2, pp. 164–180, 2011.
[3]. M. F. Aminuddin, "Electoral System and Party Dimension Assessment in Democratic Indonesia," J. Ilmu Sos. Dan Ilmu Polit., vol. 20, no. 1, p. 1, 2017.
[4]. K. Pistor, "The value of law," Theory Soc., 2020.
[5]. A. X. Fellmeth, "Civil and criminal sanctions in the constitution and courts," Georgetown Law J., vol. 94, no. 1, pp. 1–66, 2005.
[6]. A. G. Herdiansah, W. S. Sumadinata, U. Padjajaran, and U. Padjajaran, "Indonesia' s political culture in the new digital age: A preliminary discussion Budaya Politik Indonesia di era digital Baru : Suatu diskusi pendahuluan," pp. 378–389, 2012.
[7]. T. Chandra, "Impacts of Indonesia's 2014 Presidential Election towards Stock Priceso Indonesia Stock Exchange," Int. J. Bus. Manag., vol. 10, no. 7, pp. 172–183, 2015.
[8]. T. L. Cherry, "Financial penalties as an alternative criminal sanction: Evidence from panel data," Atl. Econ. J. vol. 29, no. 4, pp. 450–458, 2001.
[9]. S. E. Wahyuningsih, "The implementation of criminal sanction to the actors of corruption in Indonesia," vol. 2, pp. 161–165, 2017.
[10]. J. M. T. Sumalla and P. Hernández-hidalgo, "International Journal of Law, Crime and Justice Victims of child sexual abuse: Understanding their need for justice," Int. J. Law Crime Justice., vol. 54, no. June 2017, pp. 11–20, 2018.
[11]. S. E. Wahyuningsih, "The Development of the Indonesian Criminal Code Derived from The Yudicial Pardon Value In Islamic Law," vol. 11, no. 2, 2017.
[12]. S. Isra, Yuliandri, F. Amsari, and H. Tegnan, "Obstruction of justice in the effort to eradicate corruption in Indonesia," Int. J. Law, Crime Justice, vol. 51, pp. 72–83, 2017.
[13]. A. Alfada, "The destructive effect of corruption on economic growth in Indonesia: A threshold model," Heliyon, vol. 5, no. 10, p. e02649, 2019.
[14]. T. H. E. Implementation, O. F. Criminal, S. To, T. H. E. Actors, O. F. Corruption, and I. N. Indonesia, "The implementation of criminal sanction to the actors of corruption in Indonesia," vol. 2, pp. 161–165, 2017.
[15]. C. S. Allely, S. Kennedy, and I. Warren, "A legal analysis of Australian criminal cases involving defendants with autism spectrum disorder charged with online sexual offending," Int. J. Law Psychiatry, vol. 66, no. June p. 101456, 2019.
[16]. S. E. Wahyuningsih, N. Adi, and M. Iksan, "The role of scientific testimony in the process of investigation of crime in Indonesia," pp. 97–103, 2018.

[17]. R. A. Wibowo, "When anti-corruption norms lead to undesirable results: learning from the Indonesian experience," Crime, Law Soc. Chang., vol. 70, no. 3, pp. 383–396, 2018.
[18]. Y. Jang, D. Kim, J. Park, and D. Kim, "International Journal of Law, Crime and Justice Conditional effects of open-street closed-circuit television (CCTV) on crime: A case from Korea," Int. J. Law Crime Justice., vol. 53, no. March, pp. 9–24, 2018.
[19]. P. Lussier, N. Deslauriers-Varin, J. Collin-Santerre, and R. Bélanger, "Using decision tree algorithms to screen individuals at risk of entry into sexual recidivism," J. Crim. Justice, vol. 63, no. March, pp. 12–24, 2019.
[20]. I. de Vries, A. Farrell, V. Bouché, and D. E. Wittmer-Wolfe, "Crime frames and gender differences in the activation of crime concern and crime responses," J. Crim. Justice, vol. 66, no. December 2019, p. 101651, 2020.
[21]. M. Button, D. Shepherd, and D. Blackbourn, "International Journal of Law, Crime and Justice 'The iceberg beneath the sea,' fraudsters and their punishment through non-criminal justice in the 'fraud justice network' in England and Wales," Int. J. Law Crime Justice., vol. 53, no. March, pp. 56–66, 2018.
[22]. A. Paula and C. Seixas, "International Journal of Law, Crime and Justice Alcohol and violent behavior among football spectators: An empirical assessment of Brazilian' s criminalization," vol. 51, pp. 34–44, 2017.
[23]. A. Maksum and Surwandono, "Suffer to survive: The Indonesian illegal worker's experiences in Malaysia and Japan," J. Soc. Res. Policy, vol. 8, no. 1, pp. 101–123, 2017.