

PRESIDENTIAL ELECTION 2024: ENSURING COMPLIANCE AND ACCOUNTABILITY THROUGH CRIMINAL LAW ENFORCEMENT IN ELECTRONIC ELECTIONS

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Abstract

The integration of digital technology into electoral processes marks a significant transformation in modern democracies, including Indonesia. Electronic-based elections have been implemented to improve the efficiency, transparency, and accessibility of the electoral process. However, this shift has also introduced a range of challenges, such as cybercrime, data leaks, misinformation, and legal ambiguities. The 2024 Presidential Election presents a critical opportunity to evaluate the effectiveness of criminal law enforcement in safeguarding the integrity of electronic elections. This research aims to assess how Indonesia's legal system ensures compliance and accountability in the context of electronic voting. Utilizing a normative juridical approach, the study draws on primary legal materials specifically Law Number 7 of 2017 concerning General Elections and analyzes legal theories, principles, and doctrines relevant to electoral and criminal law. The findings reveal a regulatory gap in the current legal framework, where specific provisions addressing electronic electoral crimes are lacking. Consequently, enforcement efforts rely heavily on general laws such as the Electronic Information and Transactions Law, which are insufficient for addressing the complexity of digital election violations. The study emphasizes the urgent need to revise the Election Law to include detailed criminal provisions related to electronic election offenses, including classifications of violations, enforcement mechanisms, and accountability measures. In addition, the research highlights the positive impact of digital monitoring tools like Siwaslu and Gowaslu, implemented by Bawaslu, in enhancing election. Strengthening these legal and institutional aspects is essential to ensure that the 2024 Presidential Election upholds democratic principles in an increasingly digital landscape.

Keywords: Criminal Law Enforcement, Criminal Law, Electronic Elections

INTRODUCTION

The advancement of technology and information has brought significant changes to all aspects of human life (Wahyudi et al., 2014). This technological development is inseparable from people's lives. Today's technological advancements have become inevitable, and society must adapt to the ever-changing civilization. In the past, people in various parts of the world could only receive and know information about their own country. However, today, technological advancements in receiving information from various countries make the world feel smaller because we can know events in different countries while being in Indonesia (Wahyudi et al., 2014).

In Indonesia, information technology has developed rapidly. According to data from We Are Social, as of January 2023, internet users in Indonesia reached 213 million people, equivalent to 77% of the country's total population (Annur, 2023). The use of technology in Indonesia covers various fields such as education, healthcare, banking, business, and corporate sectors (Kidi, 2018). Remarkably, technology utilization in Indonesia has also extended to the country's democratic system, specifically in the general elections.

The use of technology in elections has also developed rapidly. Various innovations have emerged to utilize technology in elections, such as the General Elections Commission (KPU) providing public access to information about seat allocation, voter lists, candidate data, and profiles of election organizers through the Electoral District Information System (SIDAPIL). Additionally, the public can access information about political parties (parpol) participating in the election using the Political Party Information System (SIPOL) (Perdana et al., 2019). Many technical aspects of elections previously conducted conventionally have now been transformed by KPU into practical methods using technology.

Essentially, the use of technology in elections aims to improve efficiency and provide convenience to organizers, participants, voters, and other related parties in the election process (Azkiyah et al., 2023). However, it cannot be denied that the use of technology also brings many adverse effects and concerns for elections in Indonesia (KOMINFO). Various cases demonstrate the negative impacts of using technology in elections, such as electronic election fraud, data theft, the spread of hoaxes, and other incidents.

According to the National Cyber and Encryption Agency (BSSN), the increased use of technology in Indonesia is aligned with the rise in cybercrime (Sandrawati, 2021). In 2019, KPU experienced a cybercrime incident where 2.3 million voter data entries were leaked and sold by hackers on the dark web (Kusnaldi, 2022). Data server breaches frequently occur at KPU, originating not only from Indonesia but also from other countries (Yani, 2022). Additionally, KOMINFO data indicated that 203 hoax issues related to the 2024 Presidential Election (Pilpres) were identified on digital platforms (KOMINFO, 2024). There was also a fraudulent scheme involving a chain message on WhatsApp containing an Android application file named "PPS PEMILU 2024," intended to breach victims' mobile banking (KOMINFO, 2024).

Moreover, Panji Wasmana, National Technology Officer at Microsoft Indonesia, warned that AI technology could be misused during the 2024 Presidential Election for spreading hoaxes (Eraspase, 2024). R. Haidar Alwis, founder of the Haidar Alwi Institute (HAI), highlighted that foreign interventions through social media and other modern means aim to spread negative propaganda, create chaos, disrupt the 2024 Presidential Election, overthrow the president, and conduct harmful foreign-sponsored actions. Negative propaganda during the 2024 Presidential Election can easily infiltrate and spread in Indonesia due to the large number of internet users and the varied, complex intellectual levels of Indonesian society (Setiawan, 2024).

The use of technology in elections is not exclusive to Indonesia, as many countries also adopt technology in their electoral processes. Research by International IDEA shows that 106 countries have used technology in elections: 60% for vote tabulation, 55% for voter registration, 35% for biometric voter verification, and 20% for e-voting (Zuhri, 2019). However, like Indonesia, technology use in elections is not always smooth, leading some countries like the Netherlands and Germany to revert to conventional methods (Yani, 2022). Nevertheless, Indonesia remains consistent in using technology in its electoral processes.

The main issue with using technology in elections lies in the shortcomings of electoral criminal law regulations. The Election Law (Law No. 7 of 2017) covers around 80 articles on election-related criminal acts but does not comprehensively address electronic election crimes, leading to a legal vacuum in electronic election criminal law (Yani, 2022). So far, electronic election crimes have been prosecuted under the Electronic Information and Transactions Law (Law No. 19 of 2016, amending Law No. 11 of 2008). However, the enforcement of electronic election crimes under this law in 2024 is

inappropriate because the Electronic Information Law is general, while the specific needs (*lex specialis*) of electronic elections in 2024 are increasingly complex (Yani, 2022).

Therefore, Indonesia needs to improve its legal regulations specifically addressing electronic election crimes. As a country utilizing technology in its elections, Indonesia must anticipate the emergence of criminal acts related to electronic elections. Additionally, once the legal provisions for handling electronic election crimes are established, ensuring compliance and proper law enforcement is essential.

RESEARCH METHOD

This research employs a normative juridical approach. The normative juridical approach is a method based on primary legal materials by examining legal theories, concepts, principles, and legislation relevant to this study. The approach uses Law Number 7 of 2017 on General Elections as primary legal material to analyze all laws and regulations related to Criminal Law in Electronic Elections. The theoretical and conceptual approach draws on secondary legal materials from expert perspectives and doctrines in general law and criminal law related to Electronic Elections. Additionally, non-legal materials such as news from print and online media are also used to support this writing.

RESULTS AND DISCUSSION

Ensuring Compliance with the Rules and Procedures of the Presidential Election in the Context of the 2024 Presidential Election Using an Electronic Voting System

The Election held directly by the people is a bridge to create people's sovereignty and aims to establish democracy in the government of this country in accordance with Pancasila and the 1945 Constitution (Rundengan, 2022). This election, held every five years, is conducted by observing the principles of direct, general, free, secret, honest, and fair elections as emphasized in Article 22E of the 1945 Constitution. The 2024 election in Indonesia will again be held simultaneously to elect the presidential and vice-presidential candidates, DPD, DPR, and Provincial and District/City DPRD members (Saputra, 2024). In this simultaneous election, the General Election Commission (KPU) will still use the Electronic Voting System, such as in the stages of Voter Data Update, Vote Collection and Counting, and Vote Recapitulation (Nasruddin, 2024).

In fact, the KPU has established the Election-Specific Application Plan, as stated in the Decision of the General Election Commission of the Republic of Indonesia Number 13/TIK.03/14/2022 on the Map of the Electronic-Based Government System (KPU Decision 13/TIK.03/14/2022). There are 14 applications planned for the 2024 election stages, including: 1) Application for Determination of Election Participants; 2) Political Party Application; 3) Application for Determination of Election Candidates; 4) Voter Data Determination Application; 5) Electoral District Determination Application; 6) Campaign Implementation Recording Application; 7) Campaign Fund Management Application; 8) Election Implementation Recording Application; 9) Vote Counting, Recapitulation, and Election Results Determination Application; 10) Election Logistics Management Application; 11) Election Human Resources Management Application; 12) Case Management Application (complaints function, dispute management function, and legal advocacy function); 13) Big Data Analytics Application; 14) Election Portal and 15) Election Support Application (Yani, 2022).

The KPU's plan to shift from a conventional election system to an electronic and digital-based system is an innovation that should be supported by all sectors. However, as previously explained, the use of technology in human life is like a double-edged sword. The utilization of technology in elections not only brings positive impacts such as efficiency and effectiveness, but also negative impacts, such as data breaches and the spread of fake news. Additionally, there are various challenges and obstacles for the KPU as the election organizer in ensuring that the electronic voting system for the 2024 presidential election runs properly.

There are several aspects that must be addressed by the KPU to overcome the issues above in order to ensure the successful implementation of future electronic elections, particularly the legal aspects. Referring to the current Election Law, the technical design of the election law still uses the conventional method, with vote counting and recapitulation based on the principle that data from TPS (Polling Station) count results serve as the basic data (Farida, 2022). This shows that from a legal perspective, the presence of electronic voting has not yet received special attention. Considering the KPU's intention to design an electronic-based election system, as stated in KPU Decision 13/TIK.03/14/2022, the current Election Law should be revised to include articles related to the implementation of electronic elections.

The legal articles created should not only focus on the use of technology in elections, but also on the criminal sanctions that must be regulated for the implementation of future electronic elections. Additionally, the law should also regulate accountability and identify the parties responsible for any violations. The KPU also needs to issue regulations related to the technical use of digital technology in electronic elections, as well as other matters that pertain to the technical aspects and use of the electronic voting system.

Apart from legal aspects, there is a sociological aspect that the KPU must address when conducting electronic elections, specifically the understanding of election ad hoc bodies regarding the use of technology. In the election process, the KPU is assisted by ad hoc bodies, as regulated by the General Election Commission Regulation Number 8 of 2022 on the Formation and Working Procedures of Election Ad Hoc Bodies (PKPU 8/2022). The KPU must ensure that human resources (HR) involved in the election ad hoc bodies are individuals who are well-versed in technology.

The presence of ad hoc bodies in the simultaneous election is crucial, as they assist the KPU in organizing the election in Indonesia. The task of the ad hoc bodies is also quite demanding, as they are the ones who directly implement the election on the ground. Given this, the KPU must thoroughly vet each individual who is part of the ad hoc body, with one of the key criteria being their ability to use technology. The success of the KPU's effort to implement electronic elections will not be achieved if the users, in this case, the ad hoc bodies, are not competent in using the technology.

After the KPU selects the individuals for the ad hoc bodies, it must provide training and socialization about their tasks and functions in the organization of electronic-based elections. The KPU must also create legal regulations outlining the technical implementation of electronic elections and provide an electronic voting guidebook to serve as a reference for the ad hoc bodies. This must be done to ensure that election organizers within the ad hoc bodies understand and follow the procedures for conducting electronic elections. Furthermore, this step will help the KPU ensure that the ad hoc bodies are working according to the mechanisms and technical procedures of electronic elections.

Another challenge for the KPU is the availability of internet telecommunication networks in every region of Indonesia. According to data from the Ministry of Communication and Information, the national fiber optic cable network has reached 342,239 km, with 224,453 km being inland and 117,786 km being undersea cable systems (KOMINFO, 2021). Looking at this data, it is evident that the fiber optic network coverage is still low, only covering 36.03% of the 83,216 villages and 63.02% of the 7,175 subdistricts in Indonesia (KOMINFO, 2021). This means that some regions in Indonesia lack sufficient information technology infrastructure, and the presence of blank spots is still significant (Farida, 2022).

In fact, there are many other aspects that the KPU needs to consider when organizing the 2024 Simultaneous Election with an Electronic Voting System. Before ensuring that the electronic election procedures run properly, the KPU must prepare, account for, and address the various aspects involved in implementing the electronic voting system. Once the KPU has addressed these aspects, it can then ensure that the electronic election procedures for the simultaneous election will be conducted successfully.

The Role of Criminal Law Enforcement in Accountability for Violations in Electronic Elections

In general, there are two main objectives of criminal law in society: 1) Preventive Purpose, which is to instill fear in individuals so they are reluctant to commit crimes; and 2) Repressive Purpose, which is to educate those who have committed criminal acts, to encourage them to behave better in society and reintegrate into the community (Chandra, 2022). These objectives of criminal law must also be realized in the conduct of elections. This is because, in the course of elections, various criminal acts will occur in different regions during the election of leaders, and these actions must be processed legally. Moreover, with the current use of an electronic election system, various crimes are emerging from this new mechanism.

One weakness in the current electoral criminal law system is that the regulation of electoral crimes in the Election Law is not comprehensive. Even the provisions concerning electronic electoral crimes are still minimal, with many legal gaps. Furthermore, until now, the legal basis used to handle electronic election-related criminal issues is the Electronic Information and Transactions Law (UU ITE). However, the UU ITE itself is considered *lex generalis* (general law) rather than *lex specialis* (specific law) when dealing with electoral crimes.

Upon closer inspection of the Election Law, 80 articles on electoral crimes only address crimes related to manual and conventional election procedures. Moreover, the provisions for electoral crimes in the Election Law target perpetrators of data falsification in general, such as inputting data manually

or electronically. However, the penalties for specific cases, such as using electronic media, cannot be equated with those for conventional media, as the nature of the crime depends heavily on the medium used, which impacts the severity of the penalty (Yani, 2022).

In addition, the UU ITE used to handle electronic electoral crimes is not entirely suitable. This is because the criminal provisions in UU ITE do not comprehensively regulate specific crimes during election stages, such as the misuse of electronic media during party political verification, the misuse of electronic media during the preparation of the permanent electoral list, and so on. The differences in these stages should not be treated under a single category of electronic electoral crime, as outlined in UU ITE, which covers the creation, modification, deletion, and destruction of information (Yani, 2022).

A concrete example is the crime of hacking into the electronic security system, as stipulated in Articles 30 (1), (2), and (3) of UU ITE. Although this provision can penalize all offenders, including those who breach the electronic election information system, the sanctions for hacking into an information system in a general context cannot be equated with those for breaching an election-related information system, which is a more specific offense (Yani, 2022).

Therefore, lawmakers and those involved in the electoral process need to immediately revise and formulate various articles in the Election Law that address electronic electoral crimes. The clarity of articles regulating electronic electoral crimes in the Election Law will clarify what constitutes such crimes and what forms of accountability should be imposed on the perpetrators of these violations. This will also serve as a warning to election organizers, participants, and all parties involved in the elections to be cautious in the implementation of electronic-based elections.

Effectiveness of Criminal Law Enforcement in Addressing Violations in Electronic Elections

When discussing the effectiveness of criminal law enforcement in elections, it is important to first understand the meaning of effectiveness itself. According to Hans Kelsen, the discussion about the effectiveness of law is closely related to legal validity. Legal validity implies that every individual is bound by the legal norms that determine the expected actions, and they are required to comply with and follow these legal provisions (Siregar, 2018). The effectiveness of law indicates that individuals truly adhere to the legal norms as expected, with the provisions being genuinely enforceable and obeyed (Usman, 2009).

A report in 2019 revealed that there were 2,724 reports or findings of electoral criminal violations, a significant decrease compared to the 6,017 cases of electoral violations in the 2009 elections (Ramdansyah, 2009). Additionally, according to the Head of the Election Law Enforcement Task Force and Director of General Criminal Law at the National Police, Brigadier General Dhuhandani Rahardjo Puro, there was a dramatic decrease in cases during the 2024 elections. It was reported that in the 2019 elections, there were 849 reports or findings related to suspected electoral criminal violations, whereas in 2024, there were only 322 such reports or findings (MABES POLRI, 2024).

From the data above, it can be understood that the presence of criminal law norms and their enforcement in Indonesia's elections has shown a positive direction. This is evident as the reports and findings of electoral criminal violations in each election have decreased, demonstrating that criminal law in elections is becoming more effective. However, regarding electoral crimes involving electronic voting, there is still a need for further study to ensure that the Election Law includes clear provisions to provide clarity about the actions and accountability regarding electronic electoral crimes. This is necessary to prevent legal gaps concerning electronic electoral crimes in Indonesia.

Application of Technology and Data Analysis in Monitoring Electronic Elections

The organizers of the election are regulated in Law Number 7 of 2017 on General Elections, which states that the election organizers consist of the General Election Commission (KPU), the Election Supervisory Body (Bawaslu), and the Election Organizer Honorary Council (DKPP) as part of a unified function for election administration (MABES POLRI, 2024). This means that in Indonesia, the responsibility for organizing elections is not solely burdened on the KPU, but also includes other bodies such as Bawaslu and DKPP, which are also part of the election organizers. In terms of election supervision in Indonesia, the responsible body is Bawaslu. Bawaslu has the authority to adjudicate and oversee the conduct of elections in Indonesia (Maria & Dion, 2022).

Similar to KPU, Bawaslu, as the agency overseeing the election process in Indonesia, also utilizes technology for monitoring the election. One of the ways Bawaslu utilizes technology is by creating digital-based supervision through the Election Supervision Information System (Siwaslu) and Gowaslu. These two technologies use an Android system and were introduced by Bawaslu during the

election supervision process as a reporting application for election violations, making it easier for supervisors, monitors, and the public to report any violations found during the election process (Hafidz et al., 2021).

Siwaslu is a tool used to provide necessary information to monitor the process and results of the voting and determination of election outcomes (Hayati, 2020). Monitoring through Siwaslu involves reporting the results of voting and vote counting, as well as overseeing the process of vote recapitulation, which is done online quickly and consolidated nationally (BAWASLU, 2019). Siwaslu is used by Bawaslu staff, from frontline supervisors such as the TPS (Polling Station) Supervisors (PTPS), Field Supervisors (PPL), Sub-district Supervisors (Panwascam), to the District/City Bawaslu, who directly coordinate the monitoring process. Meanwhile, the Provincial Bawaslu coordinates to ensure the monitoring results uploaded in the system (Hayati, 2020).

This shows that Siwaslu plays a very important role and provides significant benefits to Bawaslu in overseeing the election process. For example, Bawaslu supervisors on the ground no longer need to use conventional methods that are inefficient and ineffective for reporting violations to Bawaslu. Therefore, with this mechanism, the monitoring carried out by Bawaslu will have a positive impact on the organizers or parties involved in the election, encouraging them to be more cautious in following the procedures that have been set.

In addition to Siwaslu, there is Gowaslu, which is a shared portal that connects election supervisors (who have the authority to supervise and receive reports of violations) in an easily accessible manner for election monitors and the public (Hayati, 2020). Unlike Siwaslu, the Gowaslu application is intended to assist the activities of election monitors and the public, including individuals, groups, or organizations that are independent and non-partisan, to collect data, findings, and information about the conduct of elections (Hayati, 2020). Therefore, the coverage of Gowaslu is broader than Siwaslu, and this initiative by Bawaslu allows the public to work together with Bawaslu to monitor and oversee the election process.

The breakthrough made by Bawaslu is something that deserves appreciation and full support from all parties. The utilization of technology in election supervision allows Bawaslu to encourage the organizers and every party involved in the election to better comply with and take responsibility for the existing election laws. The use of technology in election supervision can be carried out by any party, and because of this, anyone who violates election laws can easily be detected, so they must always be careful in their actions.

CONCLUSION

The development of technology and information today is an inevitability. Various sectors have felt the benefits of this technological advancement, ranging from education, health, banking, business, and companies, to even its application in elections. The use of technology in elections in Indonesia has been well-received by both the General Election Commission (KPU) and the Election Supervisory Body (Bawaslu). Both of these electoral bodies have utilized technology in organizing elections in Indonesia.

However, like a double-edged sword, the use of technology in elections also brings negative impacts, such as the spread of hoaxes, personal data theft, and other harmful consequences. These issues have created an additional workload for the government and KPU. Furthermore, from a legal, sociological, and geographical perspective, many areas in Indonesia are not yet fully prepared for this technology.

Despite these challenges, the spirit and determination of KPU Indonesia remain strong, and they continue to make innovations in the use of technology in elections. Therefore, the enthusiasm shown by the KPU and the government in implementing electronic elections needs to be balanced by addressing these challenges. By doing so, the elections, which are expected to be a celebration of democracy in the country, can proceed as intended.

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