

UNLAWFUL CRIME MANAGEMENT OF ELECTION

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ABSTRACT

The purpose of this study was to analyze the handling and obstacles in the handling of election crimes in Lombok Island. This study used an empirical legal research method with the research location at the Election Supervisory Board (Bawaslu), West Nusa Tenggara NTB Province with area coverage on the island of Lombok. The approach method used is the statutory approach, conceptual approach and sociological approach.

The handling and handling of election crimes in the West Nusa Tenggara (NTB) Provincial Election Supervisory Board on the island of Lombok was 59 cases. In Bawaslu NTB, there were 11 cases handled, 7 cases for Bawaslu for Mataram City, 12 for Bawaslu for West Lombok Regency, 2 for Bawaslu for North Lombok Regency, 20 for Bawaslu for Central Lombok Regency, 7 for Bawaslu for East Lombok Regency. Of the total 59 cases, 50 cases did not fulfill the elements according to the provisions of Law no. 7 of 2017, while 9 cases have permanent legal force (inkracht). The mechanisms for handling that are: First, investigating preliminary information on alleged election violations in the province. Second, examine and study alleged election violations in the province. Third, submit a criminal investigation to the Gakkumundu Center in this case the Police. Fourth, submit the results of the supervision. Most of the settlements of election crimes in the island of Lombok are not fulfilled by formal and material elements. Prevention constraints: First, legal substance constraints include differences in interpretation of the provisions of election crimes, fulfillment of formal and material elements, time restrictions, minimal administration, management, and election justice arrangements. Second, the obstacle to law enforcement is the lack of understanding of the law, such as a misunderstanding of hand-catching operations in election crimes known as surveillance results in Bawaslu. Third, the society's obstacle is that the community has taken sides with certain candidates who commit violations and are still tolerant of money politics.

Keywords: Prevention, Crime, Election.

INTRODUCTION

The concept of people's sovereignty puts the highest power in the hands of the people. The Indonesian state is a constitutional state with the characteristics of a modern state based on democracy and full sovereignty by the people. General Election is a form of people's political participation in a democratic country, so the honesty and fairness of the implementation of general elections will reflect the quality of democracy (Parulian, 1997).

The Amendment to the 1945 Constitution of the Republic of Indonesia states that sovereignty is in the hands of the people and is exercised according to the Constitution. He also emphasized that the State of Indonesia is a state based on law.

A system of government can be called democratic if it provides regular constitutional opportunities for a peaceful and fair competition to gain political power for various different

groups without removing an important part of the population through violence. The implementation of direct General Elections to elect people's representatives in representative institutions, both central and regional in Indonesia is one of the main agendas of Reform in the political field as a space to provide regular constitutional opportunities for a peaceful and honest competition in an effort to build and realize democracy country (Ubaedillah, 2006).

In the implementation of general elections (Pemilu), nothing can guarantee that all human beings always act honestly and fairly in all aspects of their lives and this is no exception in the context of implementing general elections. It is undeniable that in the implementation of general elections, especially for the election of members of the DPR, DPD and DPRD, various violations are often encountered, both those of an administrative nature and those in the form of election crimes.

Election crime in Indonesia is regulated in Law Number 7 of 2017 concerning General Elections. The law also regulates the Integrated Law Enforcement Center (Gakkumdu) as a center for law enforcement activities for election crimes consisting of elements from Bawaslu, Provincial Bawaslu and/or Regency/Municipal Bawaslu, Indonesian National Police, Regional Police, and/or Police. Resort, and Attorney General's Office of the Republic of Indonesia, High Prosecutor's Office, and/or State Prosecutors (Sugiyono, 2017).

Election crime prevention is one thing which is very important for realizing a clean, honest and fair election (free and fair election). The focus of the problems in this study are: First, how to tackle election crime in Lombok Island. Second, what are the obstacles in overcoming the election crime in Lombok Island.

RESEARCH METHODS

In accordance with the formulated problems, the type of research used is empirical legal research, which is research that studies and analyzes the application of law and the effectiveness of law in society, legal principles and legal norms that will be applied as rules or norms that are benchmarks for human behavior. appropriately, by reviewing the applicable legal provisions. First, empirical legal research reads and analyzes literature on laws and regulations related to careful legal issues, namely related to provisions on overcoming election crimes, then looking at how to overcome them in Lombok Island (Amiruddin & Zainal, 2014).

The research location is Bawaslu Prov. NTB with an area coverage in Lombok Island, namely in Mataram City, West Lombok Regency, Central Lombok Regency, North Lombok Regency and East Lombok Regency, on the basis of consideration that these locations represent the administrative and geographic areas of the island of Lombok as well as show the integrity of Lombok island culture.

The approaches used in this empirical legal research are the statute approach, the conceptual approach, and the sociological approach (Peter, 2005).

RESULTS AND DISCUSSION

Overview of the Research Location

Voter's overview on Lombok Island

Lombok Island is part of the province of West Nusa Tenggara. The island of Lombok consists of West Lombok Regency, Central Lombok Regency, East Lombok Regency, North Lombok Regency and Mataram City. The total number of villages/wards on the island of Lombok is 598 villages/wards.

Based on Population Projection data for 2010-2020, the population of West Nusa Tenggara in 2018 reached 5,013,687 people. With details, as many as 2,433,731 men and 2,579,956 women, with a sex ratio of 94.33. The largest population is in East Lombok Regency. When viewed according to age groups, the composition of the population of NTB Province is mostly at the age of 5-9 years, namely 501,281 people. The smallest is in the age group 60-64 years. The total population of West Nusa Tenggara Province aged 15 years and over reaches 3,394,438 people (Teguh, 2010).

The number of Permanent Voters List (DPT) in NTB Province in the election for the Governor and Deputy Governor of West Nusa Tenggara in 2018 was 3,511,890 voters while in 2019 the number of DPT for the 2019 Presidential Election was 3,522,679, the number of DPT 2019 in the election for members of the DPR, DPD, DPRD as many as 3,667,253 voters.

The Task of the West Nusa Tenggara Provincial Election Supervisory Agency

Law Number 7 of 2017 concerning General Elections states that the Election Supervisory Body (Bawaslu) is an election management institution that oversees the implementation of elections throughout the territory of the Republic of Indonesia. Then the Provincial and Municipal Bawaslu were also determined. Provincial Bawaslu is the agency that oversees the Election in the province. Regency/City Bawaslu is an agency to supervise the implementation of elections in regencies/cities.

The duties, powers and obligations of Bawaslu are mandated by Law no. 7 of 2017 as stipulated in Article 89 which states that the Supervision of Election Implementation is carried out by Bawaslu consisting of: Bawaslu; Bawaslu Provins Regency/City Bawaslu; District Panwaslu; Kelurahan/Village Panwaslu; Overseas Panwaslu; and TPS Supervisor. The implementation of the task of prevention and prosecution by the Provincial Bawaslu is then regulated in Article 98.

Election Crime Handling in Lombok Island

Handling election violations

Based on data from Bawaslu Prov. NTB, the handling of election crimes in Lombok Island is shown in the following Table 1 (Ramlan et al., 2011).

Table 1 HANDLING ELECTION CRIME AT BAWASLU PROV. NTB LOMBOK ISLAND REGION		
No.	Bawaslu	Total (case)
1	Bawaslu Prov. NTB	11
2	Bawaslu of Mataram City	7
3	Bawaslu West Lombok Regency	12
4	Bawaslu of North Lombok Regency	2
5	Bawaslu of Central Lombok Regency	20
6	Bawaslu of East Lombok Regency	7
	Total	59
Source: Processed based on data from Bawaslu Prov. NTB		

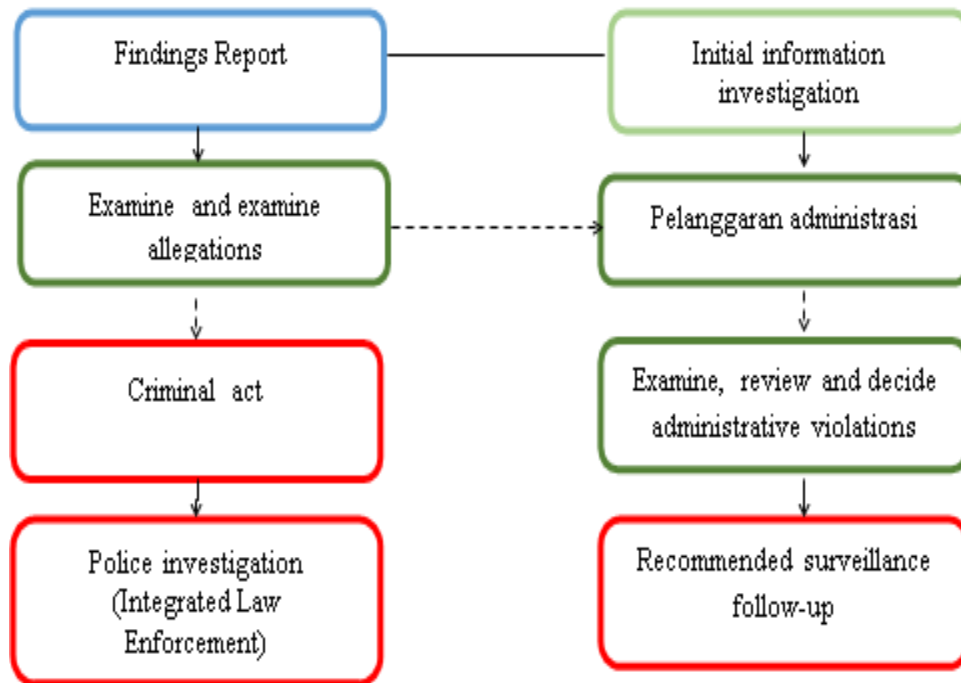
Table 2 mention Election Crime Violations at Bawaslu Prov. NTB Lombok Island Region which is not fulfilled by the elements/terminated and has permanent legal force (Inkracht)

Table 2 ELECTION CRIME VIOLATIONS			
No.	Bawaslu	Total	
		(kasus)	
		Not Fulfilled Elements	Inkracht
1	NTB Province	10	1
2	Mataram City	7	0
3	West Lombok Regency	12	0
4	North Lombok Regency	2	0
5	Central Lombok Regency	14	6
6	East Lombok Regency	5	2
	Total	50	9
Source: Processed based on data from Bawaslu of NTB Province			

The Table 2 above shows the number of election criminal handlers in Bawaslu Prov. NTB on the island of Lombok which reached a total of 59 cases. In Bawaslu NTB, there were 11 cases handled, then Bawaslu Mataram City 7 cases, Bawaslu West Lombok Regency 12 cases, Bawaslu North Lombok Regency 2 cases, Bawaslu Central Lombok Regency 20 cases, Bawaslu East Lombok Regency 7 cases. Of the total 59 cases, 50 cases did not fulfill the elements according to the provisions of Law no. 7 of 2017. While 9 cases have permanent legal force (inkracht).

Mechanism

Law No. 7 of 2017 has emphasized that basically Bawaslu is part of a single system of election management institutions. Bawaslu performs both preventive and enforcement duties. The enforcement mechanism carried out by Bawaslu for the island of Lombok can be described as follows.



Source: Processed based on data from Bawaslu of NTB Province

FIGURE 1
ENFORCEMENT MECHANISM BY BAWASLU NTB PROVINCE

The Figure 1 above shows the Bawaslu's prosecution mechanism for suspected election criminal offenses. Bawaslu submits the results of supervision in provincial areas to Bawaslu on suspicion of violations of the code of ethics of Election Administrators and/or suspected election crimes in provincial areas, and then investigates preliminary information on suspected Election violations in the province. Next is to examine and study suspected Election violations in the province, examine, study and decide on Election administration violations and recommend follow-up monitoring of Election violations in provincial areas to Bawaslu.

In implementing the action, Bawaslu decides on findings and reports of suspected election violations or disputes, which can then be followed up by the General Election Commission. Based on the Bawaslu decision, the KPU imposed administrative sanctions and / or temporarily suspended members of the Provincial KPU, Regency / City KPU members, PPLN members, KPPSLN members, and the KPU secretary general who were proven to have committed actions that disrupted the ongoing election implementation stages (Article 13 letter j).

Settlement

The data above shows the number of criminal offenses handled by Bawaslu in the Lombok island region, namely Bawaslu of NTB Province, Bawaslu of Mataram City, Bawaslu of West Lombok Regency, Bawaslu of Central Lombok Regency, Bawaslu of East Lombok Regency, and Bawaslu of North Lombok Regency. These violations show that most of the formal and material elements are not fulfilled based on the provisions of Law no. 7 of 2017, so it cannot be further processed. In addition, it also shows that the settlement of proven crimes is carried out in an integrated manner in the Integrated Law Enforcement (Gakkumundu) which involves elements of the Police in investigations if the act fulfills the element of an election criminal act.

The head of the Integrated Law Enforcement Center (Gakkumdu) Coordinator Ratna Dewi Pettalolo said that the problem of terminating reports and findings that meet formal and material requirements is one of the main problems in law enforcement in the 2019 elections.

The Indonesian Legal Roundtable (2019) revealed that 348 election criminal cases were convicted at the court level, while 320 election criminal cases were convicted of violations in the 2019 elections. If we compare it to the 2014 elections, there was a significant increase, almost 60 percent. To be precise 58.3 percent of the data we have. If 2014 there were 203 cases, in 2019 there were 348. Criminal violations in the 2019 General Election occurred in 34 provinces. Most of them were in South Sulawesi (40 cases), followed by Central Sulawesi and North Sumatra (24 cases together), West Nusa Tenggara (21 cases), as well as Gorontalo, Maluku, and North Maluku (19 each). Most of the election criminal offenses were related to the legislative elections, only 13 cases of election crimes related to the presidential election. Of the 348 criminal cases in the 2019 General Election, 168 election criminal cases occurred at the campaign stage. Then 74 cases took place during the voting and counting of votes, 69 cases were at the recapitulation stage of the vote count, 22 election crimes occurred during the quiet period, and 15 during the nomination process (Indonesian Legal Roundtable, 2019).

The most types of criminal violations in the 2019 Election were money politics, amounting to 72 cases, followed by changing the results of vote acquisition (56 cases), and casting more than one ballot (45 cases), and village heads were not neutral (30 cases).

Election based on Law Number 7 of 2017 concerning General Election is a means of people's 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 is carried out directly, publicly, freely, confidential, honest and fair within the Unitary State. Criminal action is an act that violates the provisions of the aforementioned statutory regulations. provisions concerning election crimes are regulated in Bub II concerning Election Criminal Provisions.

In the Indonesian Criminal Code (KUHP), which is a legacy book from the Dutch colonial period, there are five articles that regulate criminal acts related to election administration (Tongat, 2008).

One of the main pillars in any democratic system is the existence of a mechanism for channeling people's opinions periodically and continuously through general elections. Meanwhile, the understanding of general elections according to Paimin is a political mechanism

to articulate the aspirations and interests of citizens in the process of electing some of the people to become government leaders (Paimin, 2004).

Law Number 7 of 2017 concerning General Elections regulates the Integrated Law Enforcement Center (Gakkumdu) as a center for law enforcement activities for election crimes consisting of elements from Bawaslu, Provincial Bawaslu and/or Regency/Municipal Bawaslu, Indonesian National Police, Regional Police, and/or the Resort Police, and the Attorney General's Office of the Republic of Indonesia, the High Prosecutor's Office, and/or the Public Prosecutor's Office.

Regulations for Integrated Law Enforcement Centers, namely:

Article 486

1. To equalize the understanding and pattern of handling election crimes, Bawaslu, the Republic of Indonesia National Police, and the Attorney General's Office of the Republic of Indonesia form the Gakkumdu.
2. Gakkumdu as referred to in paragraph (1) shall be attached to Bawaslu, Provincial Bawaslu and Regency/City Bawaslu.
3. Gakkumdu as referred to in paragraph (1) consists of investigators from the Republic of Indonesia National Police and prosecutors from the Attorney General's Office of the Republic of Indonesia.
4. Investigators and prosecutors as referred to in paragraph (3) carry out their duties full time in handling election crimes.
5. Investigators and prosecutors as referred to in paragraph (3) are temporarily assisted and are not given any other duties from their original institutions while carrying out their duties in Gakkumdu.
6. The agency of origin gives awards to investigators and prosecutors who have completed the tasks referred to in paragraph (4) and paragraph (5) in accordance with the provisions of laws and regulations.
7. Gakkumdu as referred to in paragraph (1) in carrying out its duties is assisted by the Gakkumdu secretariat.
8. The Gakkumdu Secretariat as referred to in paragraph (7) is attached to the secretariat of Bawaslu, Bawaslu Province, and Bawaslu Regency/City.

Counter Measures for the Future

Realizing the main objectives of the state requires an effective and efficient law enforcement effort, because law enforcement is an important stage in maintaining the rule of law as a rule of law. Law enforcement is the process of carrying out an effort to uphold or function legal norms as a guide for actors or legal relations in the life of society and the state. Law enforcement is an effort to bring legal ideas and concepts that are expected by the people to become a reality. Law enforcement is a process that involves many things.

G.P Hoefnagels as quoted by Barda Nawawi Arief describes the efforts to tackle crime by (Arief, 2010):

1. Application of criminal law (criminal law application);
2. Prevention without punishment;
3. Influencing people's views on crime and punishment through mass media (influencing views of society on crime and punishment/mass media).

Law enforcement by means of penal means, also known as law enforcement, is one aspect of community efforts to tackle crime. The penal approach by the legal structure instrument emphasizes repressive activities by applying criminal law, for example in the Police,

namely in the process of investigation, search, confiscation of evidence, arrest and detention of perpetrators, investigation until delegation to the prosecutor (Eddy & Hiariej, 2016).

In addition to penal facilities, there are still known efforts by the community to tackle crime through non-penal means. Non-penal efforts in tackling crime are closely related to kidney efforts. This non-penal effort by itself will greatly support the administration of criminal justice in achieving its goals. Prevention or overcoming crimes must be carried out with an integral approach, namely between penal and non-penal means.

Barda Nawawi Arief is of the view that efforts should be made to control criminal acts should be done carefully, carefully, economically, selectively and limitatively, not to apply a law or sanction as retaliation but as a form of guidance for the accused, using an integrated/systematic approach in crime prevention efforts.

Crime prevention or prevention must be carried out with an integrated approach/policy either by using means (panels) or by non-means (panels). community healing (treatment of society).

In efforts to prevent and control crime, including in the field of criminal policy. Criminal policy is also inseparable from a broader policy, namely social policy, which consists of policies or efforts for social welfare, and policies or efforts to protect society (social defency policy) (Arief, 2007) From that everything in the prevention and overcoming of crime must also support the goals (goals), community welfare or social welfare and protection of society or social defense. However, there is also a very important aspect in it is the aspect of the welfare/protection of society that is Immaterial, especially the value of trust, truth/honesty/justice.

In general, criminal law functions to regulate and organize community life in order to create and maintain public order. Guidance in the field of law must be able to direct and accommodate legal needs in accordance with the people's legal awareness that is developing towards modernization according to the level of development progress in all fields so as to achieve legal order and certainty as infrastructure that must be aimed at improving the development of national unity, as well as functioning as means of supporting the development of modernization and comprehensive development. For this reason, in addition to the main function of criminal law as a tool for prosecution it is also a way to form a pattern of public legal awareness (Moeljatno, 2015).

An important element during the electoral process is the building of people's trust ahead of the election. If the people do not feel freely involved in managing political choices, they receive adequate information according to their needs and objectives, as their right to vote is respected; the electoral process becomes insignificant. Candidates must have the same opportunity to win votes at a "*fair level of competition*". Furthermore, candidates must also feel involved in the process and respect the election results. In this way, elections have become so close as transitional activities that take place before and after the elections.

Elections must be carried out effectively and efficiently based on the principles. Elections are carried out based on the principles of direct, general, free, confidential, honest and fair as stated in Article 2 of Law Number 7 Year 2017 concerning General Elections.

Constraints on Election Crime Management in Lombok Island

Based on the results of the research, the obstacles to overcoming election crimes in Lombok Island include 3 (three) aspects, namely legal substance constraints, law enforcement constraints and community constraints. Shown briefly in the following Table 3 (Soerjono, 2015).

Table 3 CONSTRAINTS ON ELECTION CRIME MANAGEMENT IN LOMBOK ISLAND		
NO.	SCOPE	DESCRIPTION
1	Legal Substance	There are different interpretations of the provisions on election criminal acts.
		The issue of fulfilling the formal elements in the provisions
		Time-limited handling of election crimes. This will be used by criminals caught by stalling for time so that the investigation process is hampered and ultimately not completed
		There are still separate rules between general elections and regional head elections, so there are still inconsistencies in making regulations.
		Issues of administration, management and electoral justice are less of a concern for legislators. So that there are often inconsistencies between articles. In Law Number 7 of 2017, there are article 280 paragraphs 4 which states that of the ten campaign prohibitions only four are referred to as criminal acts. But Article 521 states that the ten prohibitions in campaigning are criminal acts if they are violated.
2	Law enforcer	There is still a lack of legal understanding, such as a misunderstanding of hand-catching operations (OTT) in election crimes known as the results of supervision at Bawaslu.
3	Public	Community siding with certain candidates who commit violations or are not neutral in seeing the problem, or partiality for violations committed by those who are supported. Apart from being pragmatic, money politics is still considered normal.
Source: Processed based on data from Bawaslu of NTB Province		

The three issues of law enforcement on election criminal law are intertwined in such a way that law enforcement on cases of alleged election criminal offenses is not handled properly. If you look at the issue of legal substance, election law problems can be said to be more complex than other fields of law. In addition to the many problem categories, the implementation of handling election legal problems also involves many institutions/institutions (Lamintang & Franciscus, 2014).

The many types of election law problems are also linear with the number of institutions involved in handling them. The many types of problems and the many parties involved indicate the complexity of the election law problems. In turn, the implementation of election criminal law enforcement also faces various problems, both because of the content of the regulations that is not very supportive as well as due to enforcement and community factors. Such complexity is actually also inherent in election law issues in the realm of election crimes. If investigated, the

regulation and enforcement of election crimes also have certain complexities. Primarily a matter of proof, the professionalism of law enforcers, and the bureaucracy of enforcement which are regulated in various laws related to elections (Sianturi, 2002).

There are several challenges faced by law enforcement officials in implementing Law number 7 of 2017 concerning General Elections, such as:

1. The number of criminal provisions which at first glance consists of 67 (Sixty-Seven) articles, actually consists of 98 (Ninety-Eight)) criminal provisions even 134 (One Hundred and Thirty Four).
2. Structurally, examining the existing criminal provisions requires your own discernment, especially because the regulations are not adjusted to the stages of holding the general election.
3. Another foresight that is needed is that the majority, or at least 44 (Forty-four) of 77 (Seventy-seven) outside the provisions of Article 554 include provisions outside the regulation in the second chapter of this fifth book that will make law enforcement officials have to explore nearly 600 (Six Hundred) articles in 317 (Three Hundred and seventeen) pages in Law number 7 of 2017 concerning General Elections.

Another problem is the very limited time for investigation, prosecution and examination by the court. The time limitation in examining and adjudicating election crimes is actually intended so that the handling of election crimes can provide legal certainty for the stages of election administration. Apart from that, the specificity of election crimes is also seen in the limitations of legal remedies for people who are found guilty of committing election crimes.

Election criminal law enforcement does not only involve law enforcement officials in the ordinary criminal justice system, but also involves election management institutions, in this case Bawaslu and its staff. Investigation of suspected election crimes must first be with a report/recommendation from the District / City Supervisory Agency and District/City Panwaslu. In this mechanism, allegations of election violations must first be reviewed by Bawaslu and its staff. Where, if the results of the election supervisor's study conclude that there is an alleged election crime, then the results of the study along with the recommendation of election supervisors are forwarded to police investigators. Because they involve a number of institutions in handling election crimes, for the purpose of equating the understanding and patterns of handling election crimes by Bawaslu, the Police and the Attorney General's Office, organized and formed an integrated law enforcement center (Sentra Gakumdu), where this institution serves as a place to unify views among institutions involved in handling election crimes. Examination of criminal cases is handled by a special panel established in district and high courts. In which, special judges in election criminal cases must have certain conditions and qualifications whose appointment is determined based on the Decree of the Chief Justice of the Supreme Court of the Republic of Indonesia.

Election criminal norms are aimed at protecting election participants, administering institutions and voters from various detrimental electoral acts and crimes. Second, the norms of the criminal act of the judiciary are aimed at upholding law and community order in the implementation of elections. In connection with the two objectives/important meanings of the election criminal act, it is of course very aware that elections are a contestation. Where, of course, all parties will take whatever steps to win the election, including committing violations. Such violations can only harm other election participants, harm the organizers and also the election.

Losses suffered by participants can be in the form of failing to get seats due to direct fraud by other participants or through unfair attempts through collusion with election organizers.

While the losses experienced by the organizer could be in the form of disruption to the implementation process, the integrity of the organizer and the implementation of the election is under their responsibility. Meanwhile, voter losses may occur in the form of a non-occurrence of the process of converting votes into seats in accordance with the voter's will through the voting process conducted by the voters. In order to protect the rights of various parties interested in the election, criminal law is used as an instrument to maintain it. However, an orderly election administration must be maintained by using criminal law. In addition, as part of the criminal law, the provisions of election penalties are also aimed at enforcing law and order and society. As Remmelink argued, criminal law is not aimed at itself, but is aimed at upholding the rule of law and protecting the legal community.

CONCLUSION

Management of election crimes in Bawaslu Prov. NTB on the island of Lombok is 59 cases. In Bawaslu NTB, there were 11 cases handled, then Bawaslu Mataram City 7 cases, Bawaslu West Lombok Regency 12 cases, Bawaslu North Lombok Regency 2 cases, Bawaslu Central Lombok Regency 20 cases, Bawaslu East Lombok Regency 7 cases. Of the total 59 cases, 50 cases did not fulfill the elements according to the provisions of Law no. 7 of 2017, while 9 cases have permanent legal force (*inkracht*). The handling mechanism carried out by the Bawaslu of the Lombok island region is: First, investigating initial information on suspected Election violations in the province. Second, examine and study alleged election violations in the province. Third, submit a criminal investigation to the Gakkumundu Center in this case the Police. Fourth, submitting the results of the supervision. Most of the settlements of election crimes in the island of Lombok are not fulfilled by formal and material elements, so they cannot be further processed.

Obstacles in overcoming election crimes in Lombok Island, namely: First, legal substance constraints include differences in interpretation of the provisions of election crimes, fulfillment of formal and material elements, time restrictions, minimal administrative arrangements, management and election justice. Second, the obstacle to law enforcement is the lack of understanding of the law, such as a misunderstanding of hand-catching operations in election crimes known as the results of supervision at Bawaslu. Third, the community's obstacle is that the community is taking sides with certain candidates who commit violations and are still tolerant of money politics.

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