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RATIO LEGIS OF CRIMINALIZATION OF BALLOT PAPER PRINTING COMPANY ACCORDING TO ELECTION LAW

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ABSTRACT

Printing companies play a central role in the exercise of general elections. However, there have been some issues in the number of printed ballot papers not relevant to the quantity requested by the General Election Commission, and this situation is considered election crime. Article 529 of Election Law implies that the printing company concerned may be subject to imprisonment or fines, but the legislation declares that a jail sentence cannot be imposed on the company. Departing from this issue, this research aims to analyze and find the *ratio legis* of criminalization of a printing company responsible for producing ballot papers for general elections. With a normative method and statutory, conceptual, and historical approaches, the research discovers that a lack of inaccuracy of drafters in the making of an academic draft on elections, where the drafters ruled out the notions of experts of criminal law and Supreme Court as delivered in a legislation-making session, seemingly gives Article 529 impunity. That is, the criminal sanction that should be imposed on a printing company following ballot paper manufacturing issues governed in Article 529 of Election Law does not guarantee any legal certainty and democratic general elections with integrity. The sanctions imposed on the company concerned should only be restricted to administrative measures like fines and no incarceration should be involved.

KEY WORDS

Ratio legis, criminalization imposed on company, election ballot paper printing, election law.

Democratic countries with their general elections taking place regularly to elect democratic leaders should also take into account democracy not only in the making of those leaders but also in the tasks they perform.¹ This view is relevant to the mandate implied in Article 6A paragraph (1) and Article 22E paragraph (6) of the 1945 Constitution of the Republic of Indonesia (henceforth referred to as the Constitution) that sets the constitutional foundation of the elections at both executive and legislative levels.² From this mandate was born Law Number 7 of 2017 concerning Elections. Moreover, Constitutional Court Decision Number 14/PUU-XI/2013 on 23 January 2014 set concurrent elections at both legislative and executive levels in 2019.³

Ballot papers, with which people vote for their leaders, are one of the fundamental logistics supporting general election, or it is the only way with which people can actualize their vote. Thus, logistics require high, integrated, and comprehensive accuracy to avert the likelihood of inconsistent rules.⁴ The votes collected are further converted to the seats for which candidates compete to win.

Considering the essence of the ballot papers in this honest and fair democratic process to prevent any likelihood of unfair tendency, Election Law governs criminal sanctions that should be imposed on a printing company intentionally manufacturing ballot papers

¹ Sri Hastuti P, *Pemilu dan Demokrasi Telaah terhadap Prasyarat Normatif Pemilu*, *Jurnal Hukum*, Vol 11, No. 25, Januari 2004, p. 135.

² Ria Casmi Arrsa, *Pemilu Serentak dan Masa Depan Konsolidasi Demokrasi*, *Jurnal Konstitusi*, Vol. 11, No. 3, September 2014, p. 516.

³ Ratnia Solihah, *Peluang dan Tantangan Pemilu Serentak 2019 dalam Perspektif Politik*, *Jurnal Ilmiah Ilmu Pemerintahan*, Vol. 3, No. 1, 2018, p. 81.

⁴ KPU Kota Pontianak, *Laporan Tahapan Logistik Pemilu 2019*, <http://kpu-pontianakkota.go.id/public/assets/images/upload/PPID/Informasi%20serta%20Merta/2019/6%20LAPORAN%20TAHAPAN%20LOGISTIK%20PEMILU%202019.pdf>, accessed on 12 March 2023.



exceeding the quantity agreed upon by General Election Commission (henceforth referred to as KPU) for a particular reason. This issue is governed by Article 529 of Election Law. The printing company concerned could be subject to imprisonment or cumulative fines. Such *Ius constitutum* is an intriguing matter to be studied further since the company as a legal subject can only be entitled to fines as the primary sanction. This condition certainly hampers the implementation of Article 529 of the Election Law.

With statutory, conceptual, and historical approaches, this research aims to delve into the *ratio legis* of criminalization over the manufacturing of ballot papers for the election. The focus of this study is on the effectuation of Article 529 concerning Election, where a company serves as the legal subject on which both imprisonment and fines may be imposed following the violation. Furthermore, this study will look at the system of related legislation through secondary and tertiary materials from books, journals, dictionaries, and others.

There has been a long history in the criminalization of printing companies manufacturing ballot papers in Election Law, and 6 laws govern this matter:

1. Article 44 paragraph (1) of Law Number 12 of 2003 concerning the General Election of the Members of DPR, DPD, and DPRD (State Gazette of the Republic of Indonesia of 2003 Number 37) states:

During the time ballot papers are manufactured, the printing company responsible for the printing is only allowed to produce the papers as many as what has been agreed upon by the KPU, and it has to keep the confidentiality, safety, and security of the ballot papers.

2. Article 18 paragraph (1) of Law number 23 of 2003 concerning General Elections of President and Vice President (State Gazette of the Republic of Indonesia of 2003 Number 93) states:

During the time ballot papers are manufactured, the printing company responsible for the printing is only allowed to produce the papers as many as what has been agreed upon by the KPU, and it has to keep the confidentiality, safety, and security of the ballot papers.

3. Article 230 of Law Number 42 of 2008 concerning General Elections of President and Vice President (State Gazette of the Republic of Indonesia of 2008 Number 176) states:

Every person and/or printing company intentionally manufacturing ballot papers in the quantity exceeding the number as agreed upon by the KPU, as intended in Article 109 paragraph (1), is subject to a minimum of 24-month imprisonment and a maximum of 48-month imprisonment and a minimum Rp. 500,000,000 fine or a maximum Rp. 10,000,000,000 fine.

4. Article 284 of Law Number 10 of 2008 concerning General Elections of the members of DPR, DPD (State Gazette of the Republic of Indonesia of 2008 Number 51) states

Every printing company intentionally manufacturing ballot papers in a quantity exceeding the number as agreed upon by the KPU, as intended in Article 146 paragraph (1) is subject to a minimum of 24-month imprisonment and a maximum of 48-month imprisonment, and a minimum of Rp. 500,000,000 fine or a maximum of Rp. 10,000,000,000 fine.

5. Article 306 of Law Number 8 of 2012 concerning General Elections of the Members of DPR, DPD, AND DPRD (State Gazette of the Republic of Indonesia of 2012 Number 117) especially regarding the printing companies manufacturing ballot papers states:

Every printing company intentionally manufacturing ballot papers in quantity exceeding the number agreed upon by the KPU for a particular purpose as intended in Article 146 paragraph (1) is subject to a maximum of 2-year imprisonment and a maximum of Rp. 5,000,000,000 (five billion) fine.

6. Article 529 of Law Number 7 of 2017 concerning General Elections, State Gazette of the Republic of Indonesia of 2017 Number 182, Addendum to State Gazette of the Republic of Indonesia Number 6109 states:

Every printing company intentionally manufacturing ballot papers in quantity exceeding the number agreed upon by the KPU for a particular reason, as



intended in Article 345 paragraph (1), is subject to a maximum of 2-year imprisonment and a maximum of Rp. 5,000,000,000 (five billion rupiahs) fine.

Soetandyo Wignjosoebroto argues that Law as a legislative product represents a political policy as the embodiment of the idea of a law existing as a standard norm with its power to govern. Furthermore, John Austin calls it “The Command of the Sovereign”⁵. The ground for the emergence of this norm is known as “*ratio legis*”.

Black’s Law Dictionary explains the term *ratio legis* as “the reason or occasion of law; the occasion of making a law; the reason of law as the soul of law”.⁶ Moreover, Adam Dryda elaborates:

“Thus, reflection over the general conceptual content of *ratio legis* may be a window through which practitioners could see the relevance of philosophizing about terms and arguments applied generally in legal practice”.

And *ratio legis* is defined as “the reason (ground) of a written law (a statute), the spirit to be drawn from the law itself (not from external elements), the purpose, the motive which inspired the promulgation of a specific law, as, e.g. *Ratio legis Falcidiaae*...”⁷

In line with the view of Wignjosoebroto, Marzena Kordela viewed that “in the perspective of a legislator’s axiological system, *ratio legis* may be qualified as a value, and also as a legally binding”.⁸

The Legal principle holds its role related to the reasons why a norm is made. G. W. Paton in Satjipto Rahardjo reveals that a legal principle represents “reason” for the emergence of a legal norm or “*ratio legis*” of a legal norm.⁹ The binding force of a legal principle will not run out by forming a legal norm; this principle will remain and keep developing new legal norms. A legal principle as the *ratio legis* of a rule of law serves as a tool that gives life to law, grow, and develop, showing that law is more than just a collection of rules and regulations simply because a principle embraces values and ethical responsibilities.¹⁰

Legal principles represent the fundamental idea that is general and abstract, representing the sole of the birth of laws, which is then solidified as a legal norm. Thus, a legal principle serves as a foundation that shows direction, sets objective and fundamental assessments, and carries values and ethical responsibilities. Within a link, system, principle, norm, and objective, the law serves as guidance, measurement, and criterion for human behavior.¹¹ G. W. Paton argues that “A principle is a broad reason which lies at the base rule of law”.¹²

To understand the *ratio legis* of the criminalization of a printing company assigned to print ballot papers, it is essential to first delve into the legal principles underlying the formation of norms of criminalization of a printing company manufacturing ballot papers to know the philosophical values the norm carries. Peter Mahmud Marzuki opines that *ratio legis* and ontological fundamental is necessary to find out the philosophical value that supports a law. With this, whether or not a philosophical clash takes place between the law concerned and the issue faced can be investigated¹³.

The position of *ratio legis* governed in the legislation lies in the consideration part, briefly elaborating the underlying main principle of why legislation is created.¹⁴ This

⁵ Soetandyo Wignjosoebroto, 2002, *Hukum: Paradigma, Metode dan Dinamika Masalahnya*, Jakarta: ELSAM-HUMA, p. 18.

⁶ Henry Campbell Black, 1986, *Black’s Law Dictionary*, 4st, St. Paul Minn: West Publishing Co., p. 977. In Kiki Kristanto, I Nyoman Nurjaya, Abdul Madjid & Prija Djatmika, *Ratio Legis Regulation of the BPS as the Only One Authorized State Institution Declaring Country Financial Damages in the President of 23 Paragraph (1) Change Constitution of the 1945 Constitution*, *International Journal of Multicultural and Multireligious Understanding*, Vol. 7, Issue 2, March 2020, p. 523.

⁷ Adam Dryda, 2018, *The Real Ratio Legis and Where to Find It*, in Verena Klapstein, Maciej Dybowski (Eds), *Ratio Legis: Philosophical and Theoretical Perspectives*, Poland: Springer International Publishing, p. 3; 13.

⁸ Marzena Kordela, *Ratio Legis as a Binding Legal Value*, in Verena Klapstein, Maciej Dybowski (Eds), *Ratio Legis: Philosophical and Theoretical Perspectives*, 2018, Poland: Springer International Publishing, p. 19.

⁹ Satjipto Rahardjo, 2000, *Ilmu Hukum*, Bandung: Citra Aditya Bakti, p. 45.

¹⁰ *Ibid.*

¹¹ Wirjono Prodjodikoro, 1989, *Asas-asas Hukum Pidana Indonesia*, Bandung: Eresco, p. 66.

¹² *Ibid.*, p. 72.

¹³ Peter Mahmud Marzuki, 2011, *Penelitian Hukum*, Jakarta: Kencana Prenada Media, p. 133-134.

¹⁴ Maria Farida Indrati Soepranto, 2002, *Ilmu Perundang-undangan: Dasar-dasar dan Pembentukannya*, 5th Edition, Yogyakarta: Kanisius, p. 108.



consideration contains philosophical, sociological, and juridical considerations put in order. In addition, the *ratio legis* of the norm concerning the criminalization of printing companies regarding the production of ballot papers for elections can also be investigated from academic drafts and sessions where the discussion of the formulation of election law took place.

The academic draft of a bill concerning general elections was signed by the Directorate General of Politics and General Government on 2 September 2016. Point t discussing criminal provision mentions that the legal subject of violation or crime in general elections involves a person, a member of PPS or PPLN, a member of KPU, Provincial KPU, KPU in Regency/Municipality, and PPS, Village Head or similar, PNS, a member of Indonesian Armed Forces (TNI) and Indonesian National Police (POLRI).¹⁵ The part of the legal subject does not mention printing companies responsible for printing ballot papers, while, in reality, producing ballot papers in quantity exceeding the number agreed upon is an issue.¹⁶

A company as a corporate entity has the authority to print ballot papers and is qualified as a legal subject. From the perspective of KPU, “every person” has the likelihood to be a perpetrator or a subject committing a general election-related crime. This condition is not congruent with the Regulation of KPU stating that printing companies producing ballot papers are subject to criminal sentences.¹⁷

Furthermore, the formulation of the bill concerning general elections was held by a special committee of DPR RI from 27 October 2016 to the final session on 20 July 2017 under the agenda “Decision-Making II in Parliamentary Session of DPR RI, resulting in Bill on General Elections.

The Third Hearing Session taking place on 18 January 2017 concludes that, regarding the formulation of criminalization of general election-related cases,¹⁸ Election Law governs violations subject to criminal sanctions notwithstanding the position not as a criminal law. Harkristuti Harkirisnowo argues that the formulation of criminal law in Election Law is intended to:

1. Guarantee the purity of democratic electoral processes;
2. Protect the integrity of political processes;
3. Assure effective, transparent, and ethical-political competition;
4. Prevent the likelihood of criminal offenses;
5. Rehabilitate defendants;
6. Settle conflict;
7. Recover balance;
8. Promote peace in society;
9. Set defendants free from the guilty feeling.

Harkirisnowo also views criminal law as a punitive style of social control and social structure representing social reaction when violations of current norms take place. Thus, the formulation of law must represent the values and structure of society and symbolic reaffirmation of violations of “collective conscience”, and the punishment imposed by the state on legal objects as criminals must be based on clear rules of law. Punishment should result in the consequence of suffering or something unpleasant.

To highlight the existence of criminal law, Herbert Packer opines that criminalization takes place when the public view a particular conduct as a threat to society, and this conduct is not wished to exist by the majority of the people. Therefore, deciding whether conduct is deemed to be a criminal offense is congruent to impose punishment and does not leave any burden of cost to the criminal court system.

Illicit conduct must be judged fairly without discriminating against any parties concerned by law enforcers, and there is no other optional and reasonable punishment but

¹⁵ *Academic Draft of Bill concerning General Elections, the Ministry of Home Affairs, 02 September 2016, p. 328.*

¹⁶ *Ibid, p. 331.*

¹⁷ *Regulation of General Election Commission Number 1 of 2019 concerning Security of Ballot Papers in Printing Company and Distribution to General Election Commission/Independent Commission of Elections at Regency/Municipality in General Elections, Article 1 point 17.*

¹⁸ *Brief Report of Special Committee for Bill Drafting concerning General Elections 18 January 2017.*



the criminal sentence to settle the issue concerned. It is necessary that the formulation of criminal punishment be made clear and consistent, addressed to those violating the law to give deterring effect by the judicial body through litigation.

When a criminal sanction is or is not necessary refers to the harm principle, as introduced by John Stuart Mill in his book *On Liberty*. This principle implies that freedom is restricted to the intervention of or coercion from the state to prevent a person from harming others.

The idea of Harkirisnowo about corporate liability argues that corporates as criminal legal subjects and as legal persons are entitled to their rights and obligations as natural persons. In this case, the criminal sanctions that may be imposed involve:

- Basic punishment:
 - 1) The imposed fine lower than the fine in the prosecution;
 - 2) The maximum fine imposed refers to the following categories:
 - (a) Category 1 : 10 million rupiahs;
 - (b) Category 2 : 50 million rupiahs;
 - (c) Category 3 : 150 million rupiahs;
 - (d) Category 4 : 500 million rupiahs;
 - (e) Category 5 : 2 billion rupiahs;
 - (f) Category 6 : 15 billion rupiahs.
- Additional Criminal Punishment:
 - (a) Forfeiture of certain property;
 - (b) Permanent closure of company;
 - (c) License revocation.
 - (d) Judicial declaration.
- Sanctions imposed on corporates may not involve torture as imposed on individuals, social community services, civil and political right revocation, and so on;

Furthermore, in the session of Bill drafting attended by the Special Board of Committee on 14 December 2016 with consultation agenda among the members of a special committee of the Supreme Court of Indonesia, regarding the *ratio legis*,¹⁹ the Supreme Court argued that jail sentence over corporate crime as in the Bill concerning General Election was not appropriate. The most representative sanctions to be imposed on corporate are fines since they are congruent with criminal code procedure.

The 19th Working Meeting, part XVII concerning Voting Instruments, discussed printing companies prohibited to manufacture ballot papers in a quantity exceeding the number agreed upon by the KPU.²⁰ The remaining ballot papers have to be destroyed and this act must come with a written statement witnessed by the KPU, General Election Supervisory Agency (Bawaslu), and POLRI. This meeting also revealed the use of conversion of ballot papers from several political parties such as PDI Perjuangan, Golkar, Gerindra, Demokrat, PAN, PKB, PPP, PKS, Nasdem, and Hanura. Following the promulgation of the Election Law, the conversion of ballot papers was formulated to bring about fair calculation. This implies that the number of votes gained is parallel to the number of seats taken. This calculation method has placed ballot papers as the primary voting instrument, requiring complete and assertive legal instruments to guarantee accountable and fair elections that may result in high representativeness and prevent the likelihood of injured positions that are supposed to represent the members of the public.

The session of the Special Committee of Drafters for the Bill concerning General Elections above revealed that the formulation of law made by criminal legal experts suggested fines be imposed as a basic sanction with the amount a level higher than that declared in the prosecution against an individual, and an additional sanction implying that the company concerned cannot be punished by the sanction as imposed on a person. This legal expert's notion is relevant to the view of the Supreme Court expecting the fine to be imposed on such a corporate crime that spoils an election.

¹⁹ Brief Report of Special Committee for Bill Drafting concerning General Elections 14 January 2016.

²⁰ Brief Report of Special Committee for Bill Drafting concerning General Elections 13 July 2017.



Thus, there has been a mismatch between the formulation of the academic draft and the expectation implied in the formulation of the bill regarding General Elections conducted by the Board of Special Committee of DPR RI with Legal Experts of the Supreme Court of Indonesia as well as political parties. The academic draft does not recognize a company as a legal subject. In the session of bill drafting, the liability of a company as a corporate entity is recognized, indicating that the formulation of the norm governing the printing of ballot papers was not thoroughly and accurately performed.

At least, setting the norm over the printing company as a corporate entity responsible for the printing of ballot papers should elaborate on the printing company as a corporate entity. In terms of liability, there should be guidance of doctrines for corporate liability, including vicarious liability doctrine, identification doctrine, strict liability, or combined doctrine as in line with the notion of Remy Sjahdeini, arguing that this doctrine serves as a basis for splitting responsibility between corporate and its manager and regulating if something can be deemed to be a corporate act and/or individual act committed by the manager and/or the person in charge, or if the liability following the conduct should be the responsibility of the manager/the person in charge, the corporate, or should it be taken as a joint responsibility that both the corporate and the manager/the person in charge have to take.

Recalling that the election crime only takes place during an election every five years and there is a time limit spent to deal with the case by enquirers, the regulation of optimizing the resolution to the case related to the corporate should be formulated, especially in the matter of specific procedure of the criminal law as the guideline of accelerating the handling of the case performed by Integrated Law Enforcement Center (Sentra Gakkumdu).

Moreover, it is necessary to delve further into what sort of crime is punishable by the corporate or the manager/the person in charge of the company or for both the corporate and its manager/the person in charge, and whether the crime can be qualified as an extraordinary crime injuring the democracy of elections. General elections serve as the main pillars representing the expectation of the members of the public in a democratic state.²¹

The formulation of the norm regulating printing companies assigned to manufacture ballot papers for elections is governed in Article 529 of Election Law stating "Every printing company intentionally manufacturing ballot papers in quantity exceeding the number agreed upon by the KPU for a particular reason, as intended in Article 345 paragraph (1), is subject to the maximum of 2-year imprisonment and a maximum fine of Rp. 5,000,000,000 (five billion rupiahs). This norm does not involve the elaboration of the procedural law that specifically applies to crime in general elections. Consequently, this Article cannot be enforced since its substance is incomplete.

If studied based on the provision of Law of the Republic of Indonesia Number 12 of 2011 concerning Legislation Making as amended in Law of the Republic of Indonesia Number 15 of 2019 concerning the Amendment to Law Number 12 of 2011 concerning Legislation Making, which adopted the *stufenbau* theory, Article 529 of Election Law fails to appropriately implement the legislation-making principle. Article 5 of the Law concerning Legislation making mentions a norm that is applicable with its clarity of formulation. Article 6 of Law concerning Legislation Making explains that the substance of the legislation must represent the legal certainty principle. Inaccuracy in legal knowledge about the making of the current legislation can contribute to the defect of a rule of law made either in a material or procedural manner.²²

CONCLUSION

General elections that regularly take place represent the nature of a democratic state. The elections at both executive and legislative levels have been constitutionally assured under the 1945 Constitution. The involvement of all parties, including the printing companies, taking part in the success of the elections is paramount. To support a direct, public,

²¹ Nur Hidayat Sardini, 2011, *Restorasi Penyelenggaraan Pemilu di Indonesia*, Bali: Fajar Media Press, p. 1.

²² Maria Farida, et.al, 2008, *Laporan Kompendium Bidang Hukum Perundang-Undangan*, Jakarta: Departemen Hukum Dan Hak Asasi Manusia RI, Badan Pembinaan Hukum Nasional Pusat Penelitian Dan Pengembangan Sistem Hukum Nasional, p. 2.



confidential, honest, and fair election, intentionally printing ballot papers in a quantity exceeding the number agreed upon by the KPU for a particular reason by printing companies is subject to a maximum of two-year imprisonment and an RP. 5,000,000,000 fine. This policy is not relevant to the legislation, considering that a corporate can only be subject to fines imposed as an administrative sanction, not a criminal sentence. The drafting of an academic draft for election law has ruled out the views of legal experts and the Supreme Court, as discussed in a session of legislation formulation. That is, Article 529 of Election Law cannot be applied and fails to meet the legal certainty principle according to the principle of good legislation formulation.

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