TERMINATION ARGUMENTS OF CRIMINAL ACT ON THE GENERAL ELECTION FOR THE MEMBERS OF HOUSE OF REPRESENTATIVES, REGIONAL REPRESENTATIVES COUNCIL, AND REGIONAL HOUSE OF REPRESENTATIVES OF 2014 IN BENGKULU PROVINCE

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ABSTRACT

Criminal Act in General Election is the crime of violation and/or a crime against the provisions of general election criminal act as stipulated in the legislation of Law No. 8 of 2012 on General Election of Members of the House of Representatives, Regional Representatives Council, and Regional House of Representatives of which the form of violations/crimes is stated in article 273 to article 321.

Keywords: Argument, Criminal Act, General Election

INTRODUCTION
Background

In the 2014 legislative election, Bawaslu found a number of violations in large amounts committed by the major parties, ranging from maladministration to criminal act of general election. A number of criminal acts was found in any general election organization both in the level of national and local.

Lack of discipline in society, lack of regulatory clarity, weakness in law enforcement, and the low morality of law enforcer are considered to be the cause of many criminal acts occurred. However, the real interesting and worth to be observed fact is not the cause of many criminal acts that occurred, but the amount of crime that ultimately decided by the court. Based on the data recorded on the General Elections Supervisory Board of Bengkulu Province on the Election of House of Representatives, Regional Representatives Council, and the Regional House of Representatives in 2014 in the province of Bengkulu there are seventy-two criminal acts occurred in 2014 in the province of Bengkulu, there are 67 (sixty seven) cases stopped at the level of the Election Supervisory Board (Bawaslu)/Election Supervisory Committee (Panwaslu), Integrated Law Enforcement (Gakkumdu), and police investigators. That means the percentage of criminal
cases based on the decision of the general election board was only 7.4% of overall criminal act violations.

**Formulation of the Problem**

Based on the background described above, it can formulate the problem in the study of how legal reasons of General Election Criminal Act can stop the process?

**RESEARCH METHODS**

This study was categorized as juridical normative legal approach. Several research approaches in the study were the approach of legislation, case approach which is done by doing research on the cases related to the legal issues. The secondary data sources will include some of the instruments of legal materials, namely primary legal materials, secondary legal materials, which gives a description of the primary legal materials such as books and other supporting literature and tertiary legal materials.

**Results and Discussion**

In essence, the elections are the means available for people to perform their sovereignty in accordance with the principles contained in the Preamble of the 1945 Constitution. Election itself is essentially a Democratic Institute which elect the members of the people's representatives in the People's Consultative Assembly, the House of Representatives, Regional Representatives Council, which in turn served accordingly with the government, set a course of political and state government.\(^1\)

In Indonesia in implementing the General Election there was a board called Election Organizer, which is an institution that holds elections which consists of the Election Commission and Election Supervisory Board as a whole function of holding the elections to choose members of the House of Representatives, Regional House of Representatives, Regional Representatives Council, the President and the Vice President directly by the people, as well as to elect governors, regents and mayors democratically.\(^2\)

Meanwhile, to set the upcoming general elections set in Law No. 8 of 2012 on General Election of Members of the House of Representatives, Regional House of Representatives, and Regional House of Representatives, in which there

\(^1\)http://aboutpengertian.blogspot.com (accessed on Tuesday, December 8, 2015, 02:12 PM).

\(^2\)Law No. 15 of 2011 on General Election Organizer, Article 1 point 5.
is Article 260 which defines the crime of elections as follows:

"General election criminal act is a felony offense and/or crimes against the provisions of the crime of elections as stipulated in this law"

The provisions contained in Article 260 above simply explained that the crime of electoral violations include criminal offenses and/or crimes. The conditions for criminal acts of elections for House of Representatives, Regional House of Representatives, Regional Representatives Council of Provincial and Regional, Representatives Council for District/Town were set out in Chapter XII from Article 273 to Article 321 or consists of 49 articles of criminal provisions, the provisions of the criminal offense were set start from Article 273 to Article 291 and the provisions of criminal act were adjusted from Article 292 to Article 321.

There are a number of criminal cases which were discontinued on General Election of Members of the House of Representatives, Regional Representatives Council, and Regional House of Representatives in 2014. The cases are heterogeneous and have argued that termination vary both in the Center of Integrated Law Enforcement (Gakkumdu), the Election Supervisory Committee (Panwaslu), Police Investigator, and the General Attorney. To be more regular, researcher described some representative sample of cases that discontinued at any stage along with the legal arguments and the analysis of the researcher.

1. Cases stopped at the Election Supervisory Committee (Panwaslu)
Termination of the case at the stage of the Election Supervisory Committee (Panwaslu) had been occurred on 9 April 2014 concerning the falsification of documents. The case occurred in South Bengkulu and recently reported onJune 5, 2014. The case of fraudulent documents was reported by Seputra Warman who reported some of the names that forged the identity (family card and ID card) in order to obtain votes.

a. The legal basis for criminal prosecution
Falsification of documents was classified as crime, and twice voting was classified as election violation. In Article 298 of Election Law states that:

"Any person who knowingly makes false letter or document with intent to use or get someone to use, or any person who
deliberately use false letter or documents to be candidates for members of DPR, DPD, Provincial DPRD, Regency/Municipal DPRD or prospective participants for Election as referred to in Article 64 and Article 74 shall be punished with imprisonment of 6 (six) years and a maximum fine of Rp72,000,000.00 (seventy two million rupiah)".

Based on the criminal provisions set forth in Article 298, the elements consist of:

a) Each person;

b) Deliberately;

c) Makes false letter or document with intent to use or get someone to use, or any person who deliberately use false letter or documents to be candidates for members of DPR, DPD, Provincial DPRD, Regency/Municipal DPRD or prospective participants for Election as referred to in Article 64 and Article 74.

b. Arguments of termination of the case

Analyzing the argument of termination of the above cases, the researcher specifically looked at the expiry of the crime. The principle of *lex specialis derogat lex generalis* which specifically puts aside the general rules, was put forward on expiry in the case, in which the expired provisions in the Election Law was put forward in comparison with the Criminal Code (KUHP).

Law of Election outlines the provisions of the limitations of time, especially the reports to be submitted to the Election Supervisory Committee (Panwaslu) within seven (7) days, obviously the fact illustrates how vulnerable the cases are to become expired, including cases that require serious treatment, it can be proven by strong witnesses, and disturb the public.

With the enforcement of the principle of *lex specialis derogat lex generalis* in the above case, the reasons of expiry can be used to eliminate a case including a case of document falsification.

2. Cases that were stopped at the Center of Integrated Law Enforcement (Gakkumdu)

Based on the finding Receipt No. 026a/TM/PILEG.BKL/III/2014, dated on March 28th, 2014, at 04.00 a discussion was held on the criminal
indication of election violation on the form of black campaign conducted against Demokrat Party, PKS and Golkar Party.\textsuperscript{3} Associated with the termination of the case, the Election Supervisory Committee (Panwaslu) have three opinions, that (1) Findings or alleged violation had not met the material and formal requirements (2) There is no direct witnesses of the findings (3) The findings/reports provided had not met the elements of election violations. The Police Department argued that the found leaflets were inadequate evidence to make a criminal offense. The Prosecutor concluded that there was no reported to be checked. So the conclusion was that the case was stopped, because the object in question was only in the form of leaflets that do not include the identity of the manufacturer or at least people/agencies responsible for alleged black campaign.

\textbf{a. The legal basis for criminal prosecution}

The viral of leaflets vilify electoral participants are part of the action of black campaign that pertained to a crime in the Election Law. Regarding the issue, Election Law determines some conditions, namely:

Article 86 paragraph (1) letter c, d, and e, which states:

(a) Insulting someone, religion, ethnicity, race, class, candidates, and/or other electoral participants;
(b) Inciting and pitting individual or community;
(c) Disturbing public order.

Article 299, which states:

"Every executive, participants, and officials of Election Campaign who intentionally violates the ban on the implementation of the Election Campaign referred to in Article 86 paragraph (1) letter a, b, c, d, e, f, g, h, or the letter i shall be punished with imprisonment of 2 (two) years and a maximum fine of Rp24,000,000.00 (twenty four million rupiah)".

Thus, black campaign in the form of misdirection of opinion has legal basis for convicted therefore the perpetrators may be punished in accordance with the legislation in force.

\textsuperscript{3} Participants discussant in this case is: Chairman of Supervisory Violations Division of Bengkulu City, General Crime Section Chief, Chief of Police Criminal Investigation Unit of Bengkulu City,
b. Analysis of argument of termination of the case

A criminal act must meet the elements of the offense such as: threatened with punishment by law, actions contrary to the law, committed by the guilty person, and that person is deemed responsible for his actions.

Even if the prosecution object was a real (in the form of leaflets), but still cannot meet the terms of punishment. Actus reum (delictum) or crime as a condition of sentencing objective—which was black campaign leaflets, not in line with the mens rea or criminal liability as a condition of sentencing subjectively-offender of black campaign leaflets.

3. Cases were stopped at the Police Investigator

Based on the Decree No. S. Tap/16.b/V/2014/Reskrim, issued by the Indonesian National Police Resort of Bengkulu Utara, dated on May 13th, 2014, has terminated the investigation on behalf of the suspect Ridhuan, a civilian who lives in the village of Pal 30, Lais District, North Bengkulu. Ridhuan alleged to have committed the violation in purpose in a quiet period by promising or giving money or other materials to voters directly or indirectly to choose certain parties participating in the general election.

The legal basis for criminal prosecution

Indeed promised some money on the quiet period is a form of criminal offense. In Article 301 paragraph (2) states that:

"Every executive, participant, and/or officer of elections campaign who is deliberately during the quiet period promising or giving money or other material to voters directly or indirectly referred to in Article 84 shall be punished with imprisonment of 4 (four) years and fine of not more than Rp48,000,000.00 (forty-eight million rupiah).

With reference to the criminal provision formulated in Article 301 paragraph (2), it may be known that the elements are:

1) Every executor, participant, and/or officer of Election Campaign;
2) Deliberately;
3) During the quiet period promising or giving money or other material to voters directly or indirectly referred to in Article 84.
Corresponding the elements, the subject of law which can be snared by the criminal provisions of Article 301 paragraph (2) are individuals who qualify as campaign organizer, participants of the campaign, and campaign officials. Referred legal subjects may be subject to criminal provisions under Article 301 paragraph (2) for intentionally doing an act that is prohibited during quite period of election by the provisions of Article 84. Labeled as deliberately, because the real perpetrators have adequate knowledge and realized that he was prohibited from doing an act contrary with the substance of Article 84, but he still commit a prohibited act to realize the goals and objectives.

Talking about the substance of Article 84, the researcher found it cannot be separated with the provisions of Article 83 paragraph (3) which contain provisions about quiet period which is three days prior to the polling takes place. During the quiet period, then in accordance with the provisions of Article 84, the campaign actors, the campaign participants and / or campaign officials are prohibited to promises or rewards to voters for:

1) Abstain from voting;
2) Using their voting rights by choosing electoral participants in a certain way so that the ballot is not valid;
3) Selecting certain political parties participating in the General Election;
4) Choosing a particular Regional Representatives Councils (DPD) candidate.

The campaign actors, campaign participants and / or campaign officers, as the subject of election law proved to deliberately violate the prohibition specified in Article 84 and may be charged under the provisions of Article 301 paragraph (2) with imprisonment of 4 (four) years and a fine of Rp48,000,000.00 (forty eight million).

Some legal subjects contained above, refer to the provisions stipulated in Article 86 paragraph...
(3) are banned from participating as the executor of Election Campaign. Therefore, to maintain the norms or prohibitions for participating as implementers of Election Campaign for the eight categories of legal subjects, then according to the provisions set forth in Article 86 paragraph (3) they are banned from participating as executor of Election Campaign. Therefore, to maintain the norms or prohibitions for participating as executor of election campaign, then the criminal provisions of Article 300 provides criminal sanctions in the form of imprisonment for a period of 2 (two) years and a maximum fine of Rp24,000,000.00 (twenty four million) for the offenders. However, for someone who qualifies as village chief and the village officials can not be included as legal subjects that can be punished under Article 300.

a. Analysis of argument of termination of the case

Legal arguments of termination of the above cases is that based on the results of the investigation of suspects, witnesses, expert witnesses, and evidence, it turns out that the events of violation presupposed to the suspect was over the expiry time of the investigation process so that the case was terminated by operation of law.

Cases stopped at the Court

a. Case Description

Case that was discontinued at the court was the case of campaign violations in limited meeting. Concretely there has been a division of goods in the form of a scarf and a prayer rug (prayer rugs) allegedly committed by Warita, a Legislative Candidate of Local House of Representatives (DPRD) of Bengkulu Province. The case occurred in the city of Bengkulu, precisely in RT 02, Timur Indah Village, Singgaran Pati District, on March 31st, 2014.

b. The legal basis for criminal prosecution

The act of promising or giving money or goods / other materials
to the participants of the campaign or voters formulated in Article 301 may be classified into three forms of criminal provisions, namely: campaign actors promise and give money/other materials to the participants of the Election (Article 301 paragraph [1]), giving money/material on the quiet period (Article 301 paragraph [2]), and giving money/other materials during the polling was held (Article 301 paragraph [3]). As for the legal basis which can be imposed for cases stopped at the court was the provision contained in Article 301 paragraph (1). In Article 301 paragraph (1) states that:

"Every executive of election campaign that intentionally promising or giving money or other materials as reward to Election Campaign participants directly or indirectly as referred to in Article 89 shall be punished with imprisonment of 2 (two) years and a maximum fine of Rp24,000,000.00 (twenty four million rupiah)".

Individuals who were qualified as participants of the campaign can be charged under criminal provisions of Article 301 paragraph (1) if it is proven that their actions meet the elements that have been formulated. The referred act was intentional promising or giving money or other items as a reward to the participants of election campaign, either directly or indirectly as referred to in Article 89 explicitly states that a proven executive election campaign who promise or give money or other items as rewards to participants of Election campaigns either directly or indirectly to:

1) Abstain from voting;

2) Using their voting rights by choosing electoral participants in a certain way so that the ballot is not valid;

3) Selecting certain political parties participating in the General Election;

4) Selecting particular member candidates for DPR, Provincial DPRD, Regency/Municipal DPRD;
5) Choosing particular member candidates for DPD is subject to sanctions as stipulated in the law. Thus, the executive of election campaign proven to be violating the provisions of Article 89 will be sanctioned or subject to criminal sanctions under the provisions of Article 301 paragraph (1).

c. Analysis of argument of termination of the case
Termination of the case in the court is that the Reported could not be found during the investigation was conducted. So the case becomes outdated.
The expiry of criminal prosecution is a generality that had been long applied with the term of *omnes actiones in mundo infra certa tempora habent limitationem*. It means each case have a deadline to put forward.\(^4\)

**CLOSING**

**Conclusion**

1. There are a variety of arguments against termination of handling and prosecuting criminal offenses in the General Election of Members of the House of Representatives (DPR), Regional Representatives Council (DPD), and the Regional House of Representatives (DPRD) in 2014. The terminated cases in the Central of Integrated Law Enforcement (Gakkumdu), the Election Supervisory Committee (Panwaslu), Police Investigator, and the Court are based on a number of different reasons. Several arguments of termination of the cases, among others are:

a. Findings or alleged criminal act have not yet met the material and formal requirements so it is not considered as criminal offense of the election;

b. The findings or a criminal act have no sufficient evidence;

c. Expiry time of the investigation and criminal prosecution;

**Suggestion**
Noting the number of criminal offenses in the election which the

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process was stopped due to expired period of time of investigation, so the extra time and the handling of criminal prosecutions in the elections will be a good alternative solution to reduce fraud offense in the next General Election with the existence of Law or the rules that govern them without disturbing the electoral process at a later stage.

DAFTAR PUSTAKA


Undang Undang No. 15 Tahun 2011 tentang Penyelenggara Pemilihan Umum.