



## PROBLEMS WITH TIME LIMITATION REGULATION IN THE SETTLEMENT OF GENERAL ELECTION OFFENSES

Gaza Carumna Iskadrenda<sup>1</sup>, Edward Omar Sharif Hiariej<sup>2</sup>  
Fakultas Hukum Universitas Diponegoro<sup>1</sup>, Jawa Tengah  
Fakultas Hukum Universitas Gadjah Mada<sup>2</sup>, DI Yogyakarta  
Corresponding email. Author: [gazacarumna@live.undip.ac.id](mailto:gazacarumna@live.undip.ac.id)

Paper received on: 15-08-2022; Revised on: 21-11-2022; Approved to be published on: 24-11-2022

DOI: <http://dx.doi.org/10.30641/dejure.2022.V22.499-512>

### ABSTRACT

The electoral legal framework in Indonesia is designed to be highly complex, which causes several problems. One of them is in the realm of election offenses, considering the establishment of the settlement mechanism is complicated due to the very short time limit. This research aims to identify, examine, study, and discover many regulatory problems that will undoubtedly help law enforcers to settle election offenses in the future. This research falls under the category of normative legal research prioritizing the use of secondary data, including primary, secondary, and tertiary legal materials. Based on the data used, the documentation study/library study technique with tools in the form of written materials as described was used and qualitatively analyzed. The research finding showed that the specialization of the regulation in the form of speedy trial or fast-track judicial process is the root of the problem in the settlement of election offenses, considering the existing problems cannot be separated from it.

**Keywords:** election fraud; electoral crime; electoral justice

### INTRODUCTION

Law Number 7 of 2017 on General Elections, which serves as the legal basis for administering the 2019 Concurrent Elections, is a form of simplification, harmonization, and amalgamation of election regulation previously regulated in three separate laws, namely Law Number 42 of 2008 on General Elections for President and Vice President, Law Number 15 of 2011 on General Election Organizers, and Law Number 8 of 2012 on General Elections for Members of the House of Representatives, Regional Representatives Council, and Regional House of Representatives.<sup>1</sup>

The unification of election regulations, as referred to in Law Number 7 of 2017, can be regarded as a codification in the field of election law,<sup>2</sup> consisting of six books organized as follows:

1. The First Book on General Provisions;
2. The Second Book on Election Organizers;
3. The Third Book on Election Administration;
4. The Fourth Book on Electoral Violations, Electoral Process Disputes, and Election Results Disputes;
5. The Fifth Book on Election Offenses; and
6. The Sixth Book on Closing.

Furthermore, the provisions of the *a quo* law have been enshrined in a variety of legislations, including General Election Commission Regulations (Peraturan Komisi Pemilihan Umum (PKPU)), General Election Supervisory Agency Regulations (Peraturan Badan Pengawas Pemilihan Umum (Perbawaslu)), Election Organizer Honorary Council Regulations (Peraturan Dewan Kehormatan Penyelenggara Pemilu (DKPP)), Constitutional Court Regulations (Peraturan Mahkamah Konstitusi (PMK)), and Supreme Court Regulations (Peraturan Mahkamah Agung

1 *The Law Number 7 Year 2017 on General Elections*. (Indonesia, 2017), para. Consideration letter d and Fourth Paragraph of General Elucidation.

2 Aditya Perdana et al., *Tata Kelola Pemilu di Indonesia* (Jakarta: Komisi Pemilihan Umum Republik Indonesia, 2019), 18; Topo Santoso and Ida Budhiati, *Pemilu di Indonesia: Kelembagaan, Pelaksanaan, dan Pengawasan* (Jakarta: Sinar

Grafika, 2019), 257; Topo Santoso, *Laporan Akhir Analisis dan Evaluasi Hukum terkait Pemilihan Umum* (Jakarta: Pusat Analisis dan Evaluasi Hukum Nasional - Badan Pembinaan Hukum Nasional - Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia, 2020), 34-36.

(PerMA)). The presence of various types of legislation is acknowledged and has binding legal force.<sup>3</sup>

Election regulations have also changed as a consequence of the Constitutional Court's presence<sup>4</sup> which has the authority to conduct a judicial review as its primary authority,<sup>5</sup> *in casu* reviewing law against the 1945 Constitution of the Republic of Indonesia. <sup>6</sup>In this regard, the Constitutional Court plays a critical role<sup>7</sup> in directing or influencing legal policy in Indonesia,<sup>8</sup> in which Constitutional Court Verdicts direct or influence election provisions.<sup>9</sup> Even so, the 2019 Concurrent Election was directed and influenced by a Constitutional Court Verdict.<sup>10</sup>

With such a structure of the legal framework, in general, election law in Indonesia is following and in line with the guidance released by the International Institute for Democracy and Electoral Assistance (International IDEA), which in this context includes international

obligations for elections such as rule of law, the right to an effective remedy, and others.<sup>11</sup>

However, the structure of the legal framework demonstrates that election law in Indonesia is designed to be highly complex, which causes several problems. One of the complexities mentioned is in the realm of election offenses, considering the establishment of the settlement mechanism is complicated<sup>12</sup> due to the very short time limit.

Therefore, the issue to be addressed in this research is "What are the problems with time limitation regulation in the settlement of election offenses?" It aims to identify, examine, study, and discover many regulatory problems that will undoubtedly help law enforcers settle election offenses in the future.

Furthermore, based on the outcome of the Work Meeting of the Legislative Board of the House of Representatives on March 9, 2021, with the Minister of Law and Human Rights and the Bill Drafting Committee of the Regional Representatives Council, one of which agreed to withdraw the Bill on Elections from the list of the National Legislation Program of the Priority Bill of 2021. Accordingly, the electoral legal framework<sup>13</sup> that serves as the

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3 *The Law Number 12 Year 2011 on Legislation Making*. (Indonesia, 2011), para. Article 8.

4 Janedjri M Gaffar, *Hukum Pemilu dalam Yurisprudensi Mahkamah Konstitusi* (Jakarta: Konstitusi Press, 2013), 69.

5 Harjono, *Konstitusi sebagai Rumah Bangsa: Pemikiran Hukum Dr. Harjono, S.H., MCL. Wakil Ketua Mahkamah Konstitusi* (Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, 2008), 126.

6 *The 1945 Constitution of the Republic of Indonesia* (Indonesia, 1945), para. Article 24C paragraph (1).

7 Tri Sulistyowati, M. Imam Nasef, and Ali Rido, "Constitutional Compliance atas Putusan Pengujian Undang-Undang di Mahkamah Konstitusi oleh Adressat Putusan," *Jurnal Konstitusi* 17, no. 4 (2020): 701.

8 Harjono, *Konstitusi Sebagai Rumah Bangsa: Pemikiran Hukum Dr. Harjono, S.H., MCL. Wakil Ketua Mahkamah Konstitusi*, 488–489.

9 Gaffar, *Hukum Pemilu Dalam Yurisprudensi Mahkamah Konstitusi*, 72.

10 Rizki Bagus Prasetyo and Febri Sianipar, "The Relevance of the Application of the Presidential Threshold and the Implementation of Simultaneous Elections in Indonesia," *Jurnal Penelitian Hukum De Jure* 21, no. 2 (2021): 268–269, 272–273; *The Constitutional Court Verdict Number 14/PUU-XI/2013* (Indonesia, 2014); *The Academic Draft of the Bill of Law on General Election Administration Year 2016*, 2016.

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11 Topo Santoso, "Catatan atas Draft RUU Pemilu" (Jakarta: Commission II of the House of Representatives of the Republic of Indonesia, 2020), 3 and 9–10; Santoso, *Laporan Akhir Analisis dan Evaluasi Hukum terkait Pemilihan Umum*, 20; Domenico Tuccinardi, "International Obligations for Elections: Guidelines for Legal Frameworks," in *International Institute for Democracy and Electoral Assistance*, ed. Domenico Tuccinardi (Stockholm, 2014), 59–68, 286–287.

12 Khairul Fahmi, "Sistem Penanganan Tindak Pidana Pemilu," *Jurnal Konstitusi* 12, no. 2 (2015): 265–266; Suparto and Despan Heryansyah, "Keadilan Pemilu dalam Perkara Pidana Pemilu: Studi terhadap Putusan Pengadilan," *Jurnal Hukum Ius Quia Iustum* 29, no. 2 (2022): 349.

13 Jesús Orozco-Henríquez, *Electoral Justice: The International International Institute for Democracy and Electoral Assistance Handbook*, *International Institute for Democracy and Electoral Assistance* (Stockholm: International Institute for Democracy and Electoral Assistance, 2010), 200, Electoral legal framework is the collection of legal structural elements defining or influencing an electoral process, the major elements being constitutional provisions, electoral laws, other legislation impacting on electoral processes, such as political party laws and laws structuring legislative bodies, subsidiary electoral rules and regulations, and codes of conduct.

legal basis for the 2019 Concurrent Elections administration, will also *mutatis mutandis* serve as the legal basis for the upcoming 2024 Concurrent Elections administration.

## RESEARCH METHOD

This research, viewed from the standpoint of the data source, falls under the category of normative legal research prioritizing the use of secondary data, including primary, secondary, and tertiary legal materials<sup>14</sup> in the forms of an electoral legal framework, references that discuss the mechanism for settling election offenses, and legal dictionaries, respectively.

Based on the data used, documentation study/library study technique with tools in the form of written materials<sup>15</sup> as described, was used. Considering that this research falls under the category of normative legal research, a specific technique, the most used to conduct a qualitative analysis of the referred to written materials, namely content analysis, was used.<sup>16</sup>

## DISCUSSION AND ANALYSIS

Before discussing numerous regulatory problems, it is important to understand that the mechanism for addressing election offenses pertains to a term referred to as the “electoral justice system (EJS)”, namely:

The set of means or mechanisms available in a specific country (sometimes in a specific local community or even in a regional or international context) to ensure and verify that electoral actions, procedures and

decisions comply with the legal framework, and to protect or restore the enjoyment of electoral rights. An EJS is a key instrument of the rule of law and the ultimate guarantee of compliance with the democratic principle of holding free, fair and genuine elections.<sup>17</sup>

The EJS is inextricably linked to the concept of “electoral justice (EJ)”, which is one of the fundamental components that must exist in the electoral legal framework as stated in the guidance released by the International IDEA, which in this context includes international obligations for elections such as the right to an effective remedy, right to a fair and public hearing, and others.<sup>18</sup>

The concept of EJ has several meanings. In a broad sense, it means:

Ensuring that every action, procedure and decision related to the electoral process is in line with the law (the constitution, statute law, international instruments or treaties and all other provisions in force in a country), and that the enjoyment of electoral rights is protected and restored, giving people who believe their electoral rights have been violated the ability to make a complaint, get a hearing and receive an adjudication.<sup>19</sup>

It is stated in a broad sense, considering the elements or mechanisms that are also broad, as it is stated that:

Electoral justice mechanisms include all the means in place for preventing electoral disputes, as well as the formal mechanisms for resolving them by institutional means and the informal mechanisms or alternative means for their resolution.<sup>20</sup>

Although the concepts of EJ and “electoral dispute resolution (EDR)” are often equated, they are not identical.<sup>21</sup> The concept of EJ is broader

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- 14 Maria S.W. Sumardjono, *Bahan Kuliah Metodologi Penelitian Ilmu Hukum* (Yogyakarta: Universitas Gajah Mada, 2021), 21-23; Soerjono Soekanto, *Pengantar Penelitian Hukum*, 3rd ed. (Jakarta: Universitas Indonesia Press, 1986), 11-12 and 51-52; Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, 16th ed. (Jakarta: Rajawali Press, 2014), 12-13, 33, 38, and 61.
  - 15 Maria S.W. Sumardjono, *Pedoman Pembuatan Usulan Penelitian: Sebuah Panduan Dasar*, 3rd ed. (Jakarta: Gramedia Pustaka Utama, 2001), 36; Mukti Fajar ND and Yulianto Achmad, *Dualisme Penelitian Hukum Normatif & Empiris*, 3rd ed. (Yogyakarta: Pustaka Pelajar, 2015), 160.
  - 16 Sumardjono, *Bahan Kuliah Metodologi Penelitian Ilmu Hukum*, 37.

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- 17 Orozco-Henríquez, *Electoral Justice: The International International Institute for Democracy and Electoral Assistance Handbook*, 9 and 200.
  - 18 Tuccinardi, “International Obligations for Elections: Guidelines for Legal Frameworks,” 326–327.
  - 19 Orozco-Henríquez, *Electoral Justice: The International International Institute for Democracy and Electoral Assistance Handbook*, 9.
  - 20 Ibid., 1.
  - 21 Oliver Joseph and Frank McLoughlin, *Electoral Justice System Assessment Guide* (Stockholm:

than the concept of EDR because the latter concept is within the former.<sup>22</sup> Pertaining to the term EJS, the statement is in line with the term “electoral dispute resolution system (EDRS)”, referring to “The legal framework within an electoral justice system that specifies the mechanisms established for resolving electoral disputes and protecting electoral rights”.<sup>23</sup>

The electoral legal framework in Indonesia has recognized the concepts by establishing mechanisms to settle various electoral disputes and violations (electoral disputes) that may arise during an election administration. As written in the Fourth and Fifth Books, election law violations and disputes are classified into six categories of electoral legal problems, namely:

1. Violation on the code of ethics for election organizers (Article 456 to Article 459);
2. Administrative violations on election (Article 460 to Article 465);
3. Electoral process disputes (Article 466 to Article 469);
4. Electoral state administrative disputes (Article 470 to Article 472);
5. Election results disputes (Article 473 to Article 475); and
6. Election offenses (Article 476 to Article 487).<sup>24</sup>

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International Institute for Democracy and Electoral Assistance, 2019), 8.

- 22 Tuccinardi, “International Obligations for Elections: Guidelines for Legal Frameworks,” 260–261.
- 23 Orozco-Henríquez, *Electoral Justice: The International International Institute for Democracy and Electoral Assistance Handbook*, 199.
- 24 Perdana et al., *Tata Kelola Pemilu di Indonesia*, 298–300; Fajlurrahman Jurdi, *Pengantar Hukum Pemilihan Umum* (Jakarta: Kencana Prenada Media Group, 2018), 233–234; Santoso, “Catatan atas Draft RUU Pemilu”, 9; Santoso, *Laporan Akhir Analisis dan Evaluasi Hukum terkait Pemilihan Umum*; Santoso and Budhiati, *Pemilu di Indonesia: Kelembagaan, Pelaksanaan, dan Pengawasan*, 277–278; Khairul Fahmi, Feri Amsari, and Busyra Azheri, “Sistem Keadilan Pemilu dalam Penanganan Pelanggaran dan Sengketa Proses Pemilu Serentak 2019 di Sumatera Barat,” *Jurnal Konstitusi* 17, no. 1 (2020): 6–8; Joseph and McLoughlin, *Electoral Justice System Assessment Guide*, 18–128.

Based on the categories, Santoso defined EJ in the context of Indonesia as:

The method of the state through its institutions in settling the six categories of election violations, offenses, and disputes to fulfill the rights of the aggrieved parties, protect all electoral processes, and impose sanctions on electoral law violators.<sup>25</sup>

According to the author, Santoso’s definition describes EJ in a narrow sense since, if examined closely, it only includes one element or mechanism of EJ, namely “electoral dispute resolution mechanisms (EDR mechanisms)”.<sup>26</sup>

As has been previously said, the electoral legal framework in Indonesia has regulated the EDR mechanism for each of the electoral legal problems, which are surely different from one another<sup>27</sup> and are also settled by different institutions.<sup>28</sup>

In the context of the settlement mechanism of election offenses, in principle, inquiry, investigation, prosecution, and examination of election offenses are carried out under the Criminal Procedure Code,<sup>29</sup> unless otherwise stipulated in the Law Number 7 of 2017 and regulations that regulate it further, *in casu*:

1. Perbawaslu Number 5 of 2018 on Plenary Meetings;<sup>30</sup>
2. Perbawaslu Number 7 of 2018 on Handling of Findings and Reports of General Election Violations;<sup>31</sup>
3. Perbawaslu Number 31 of 2018 on Integrated

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25 Santoso, “Catatan atas Draft RUU Pemilu.”

26 Orozco-Henríquez, *Electoral Justice: The International International Institute for Democracy and Electoral Assistance Handbook*, 10.

27 Jurdi, *Pengantar Hukum Pemilihan Umum*, 233.

28 Ramlan Surbakti, Didik Supriyanto, and Topo Santoso, *Serial Demokrasi Elektoral Buku 15 Penanganan Pelanggaran Pemilu* (Jakarta: Kemitraan bagi Pembaruan Tata Pemerintahan, 2011), 9; Perdana et al., *Tata Kelola Pemilu di Indonesia*, 298.

29 *The Law Number 7 Year 2017 on General Elections.*, para. Article 477 and Article 481 paragraph (1).

30 *The Law Number 7 Year 2017 on General Elections.; The General Election Supervisory Agency Regulation Number 5 Year 2018 on Plenary Meetings* (Indonesia, 2018).

31 *The Law Number 7 Year 2017 on General Elections.; The General Election Supervisory Agency Regulation Number 7 Year 2018 on Handling of Findings and Reports of General Election Violations.* (Indonesia, 2018).

Law Enforcement Centers;<sup>32</sup>

4. PerMA Number 1 of 2018 on Procedures for the Resolution of Local Election and General Election Offenses;<sup>33</sup> and
5. PerMA Number 2 of 2018 on Special Judges for Local Election and General Election Offenses.<sup>34</sup>

Still in this context, the settlement of election offenses is carried out under one roof in an integrated manner by the Integrated Law Enforcement Center (Sentra Penegakan Hukum Terpadu (Gakkumdu))<sup>35</sup> as:

The center for law enforcement activities for election offenses, consisting of elements of the General Election Supervisory Agency, Provincial General Election Supervisory Agency, and/or Regency/City General Election Supervisory Agency, the State Police of the Republic of Indonesia, Regional Police, and/or Resort Police, and the Attorney General of the Republic of Indonesia, High Attorney, and/or District Attorney.<sup>36</sup>

It is intended to equalize understanding and patterns of the settlement of election offenses.<sup>37</sup> Furthermore, a special panel consisting of special judges who are career judges in district court and high court in the general court environment conducts hearings to examine cases of election offenses.<sup>38</sup>

To avoid bias, the mechanism for settling

32 *The Law Number 7 Year 2017 on General Elections.*, para. Article 486 paragraph (11).

33 *The Law Number 7 Year 2017 on General Elections.; The Supreme Court Regulation Number 1 Year 2018 on Procedures for the Resolution of Local Election and General Election Offenses* (Indonesia, 2018).

34 *The Law Number 7 Year 2017 on General Elections.; The Supreme Court Regulation Number 2 Year 2018 on Special Judges for Local Election and General Election Offenses.* (Indonesia, 2018).

35 *The General Election Supervisory Agency Regulation Number 31 Year 2018 on Integrated Law Enforcement Centers.* (Indonesia, 2018), para. Article 2 paragraph (1).

36 *The Law Number 7 Year 2017 on General Elections.*, para. Article 1 number 38.

37 *Ibid.*, para. Article 486 paragraph (1).

38 *The Law Number 7 Year 2017 on General Elections.; The Supreme Court Regulation Number 2 Year 2018 on Special Judges for Local Election and General Election Offenses.*

election offenses is briefly presented in the table below:

**Table 1. Mechanisms for the Settlement of Election Offenses**

No.	Stage	Maximum (Working Days)
1.	Submission of Report or Initial Information	7
2.	Inquiry	14
	Preliminary Study or Investigation <sup>39</sup> : Registration or Not	
	First Discussion	
	Election Violation Study	
	Second Discussion	
	Plenary Meeting: Continuing or Terminating	
3.	Investigation and (possibly) Pretrial	14
	Third Discussion: Delegating or Terminating	
4.	Pre-prosecution	(3 + 3)
5.	Prosecution and (possibly) Pretrial	5
6.	Examination at Trial in the First Stage	16
	Examining, Adjudicating, and Deciding	
	Delivering Court Verdict	
	Fourth Discussion: Appealing or Executing Court Verdict	
	Delegating Case Dossiers	
7.	Examination at Trial in the Appeal Stage	10
	Examining and Deciding	
	Delivering Court Verdict	
8.	Execution of Court Verdict	3
Total		75

Processed based on:

Criminal Procedure Code, Law Number 7 of 2017, Perbawaslu Number 5 of 2018, Perbawaslu Number 7 of 2018, Perbawaslu Number 31 of 2018, and PerMA Number 1 of 2018.

The following are some of the identified and analyzed problems with time limitation regulation in the settlement of election offenses:

*First*, to realize EJ, the electoral legal framework must at least consider the availability of sufficient space and time for an EDR mechanism that is carried out surely and fairly, as well as the aspect of adhering to the established election administration schedule so as not to interfere with the stages of election administration. In addition to providing certainty and guarantees of justice

39 It is different from Investigation as stipulated in Criminal Procedure Code. See Article 1 number 33 of the General Election Supervisory Agency Regulation Number 7 Year 2018 on Handling of Findings and Reports of General Election Violations.

for violated voting rights, the determination of the mechanism and timing of the settlement of electoral legal problems must also pay attention to legal certainty in the elections according to predetermined stages. The balance or proportionality of the two in establishing EDR mechanisms will also determine whether the principles of free and fair elections are met.<sup>40</sup>

Table 1. shows that there is a very short time limit in the settlement of election offenses starting from the submission of initial report or information to the execution of the court verdict, which is a maximum of 75 working days (excluding Saturdays, Sundays, and national holidays).<sup>41</sup> This specialization of regulation is known as a speedy trial or fast-track judicial process in the settlement of election offenses, and it has been in effect *mutatis mutandis* since the previous elections.<sup>42</sup>

The *raison d'être* of the very short time limit, on one hand, is that the settlement of election offenses should have been completed before the end of the election administration stage so as not to disrupt the election schedule, and no more problems should arise after that. As a result, the settlement of election offenses is much shorter than the settlement of criminal acts in general.<sup>43</sup> Meanwhile, on the other hand, the very short time limit implies that there are

many unsettled cases. Whereas the settlement of election offenses, like the settlement of criminal acts in general, must seek material truth.<sup>44</sup>

According to Surbakti, Supriyanto, and Santoso, the speedy trial or fast-track judicial process should only be applied to the settlement of electoral administrative violations, electoral process disputes, electoral state administrative disputes, and election results disputes, considering that the settlement of these four electoral legal problems greatly affects the stages of the election. If the completion time is not clearly and firmly defined, the electoral process can stagnate, be delayed, and eventually disrupt the government's operation. Meanwhile, the settlement of election offenses is undoubtedly different because what is sought is material truth.<sup>45</sup> Moreover, the author believes that the speedy trial or fast-track judicial process is the root of the problem in settling election offenses, considering that other problems are inseparable from it.

*Second*, the settlement of election offenses, which is undoubtedly more challenging than the settlement of criminal acts in general, is even more complicated by the speedy trial or fast-track judicial process, which has implications that are many unsettled cases.<sup>46</sup> In general, many unsettled cases are due to the very short time limit stipulated in the electoral legal framework, so those being handled are considered to have lapsed<sup>47</sup> or been dismissed (*gugur*).<sup>48</sup>

Table 1. demonstrates that the time limit in the settlement of election offenses has been implemented since the submission of report stage, which is a maximum of 7 days with the benchmark "since it is known that it happened".<sup>49</sup> Although

40 *The Constitutional Court Verdict Number 18/PUU-XVIII/2020* (Indonesia, 2020).

41 Ratna Dewi Pettalolo, "Penanganan Penindakan Pelanggaran Pemilu oleh Bawaslu berdasarkan Undang-Undang Nomor 7 Tahun 2017 tentang Pemilihan Umum," in *Serial Evaluasi Penyelenggaraan Pemilu Serentak 2019 Perihal Penegakan Hukum Pemilu* (Jakarta: Badan Pengawas Pemilihan Umum Republik Indonesia, 2019), 35–36.

42 Surbakti, Supriyanto, and Santoso, *Serial Demokrasi Elektoral Buku 15 Penanganan Pelanggaran Pemilu*, 30; Santoso and Budhiati, *Pemilu di Indonesia: Kelembagaan, Pelaksanaan, dan Pengawasan*, 214; Veri Junaidi, Fadli Ramadhanil, and Firmansyah Arifin, *Evaluasi Penegakan Hukum Pemilu 2014* (Jakarta: Perkumpulan untuk Pemilu dan Demokrasi (Perludem), 2015), 60–61.

43 Ramlan Surbakti et.al., *Serial Demokrasi Elektoral Buku 15 Penanganan Pelanggaran Pemilu*; Santoso and Budhiati, *Pemilu di Indonesia: Kelembagaan, Pelaksanaan, dan Pengawasan*.

44 Santoso, "Catatan atas Draft RUU Pemilu," 19; Santoso, *Laporan Akhir Analisis dan Evaluasi Hukum terkait Pemilihan Umum*, 62.

45 Surbakti, Supriyanto, and Santoso, *Serial Demokrasi Elektoral Buku 15 Penanganan Pelanggaran Pemilu*, 30–31.

46 Santoso, *Laporan Akhir Analisis dan Evaluasi Hukum terkait Pemilihan Umum*, 121.

47 Junaidi, Ramadhanil, and Arifin, *Evaluasi Penegakan Hukum Pemilu 2014*, 20, 45 and 171–172.

48 Eddy O.S. Hiariej, "Pemilukada Kini dan Masa Datang Perspektif Hukum Pidana," in *Demokrasi Lokal: Evaluasi Pemilukada di Indonesia* (Jakarta: Konstitusi Press, 2012), 184.

49 *The Law Number 7 Year 2017 on General Elections*, para. Article 454 paragraph (6).

it is referred to as a report, the author believes this provision is comparable with the provisions related to “delicts whose prosecution can only be carried out or depends on the presence of complaint (complaint offenses (*klacht delicten*))”<sup>50</sup> as regulated in Article 74 paragraph (1) *jo.* Article 97 of the Criminal Code, stating that a complaint can only be filed within 180 days after the “person with the right to complain” becomes aware of a criminal act if he resides in Indonesia, or within 270 days if he resides outside Indonesia.<sup>51</sup>

The time limitation determination, as explained in the Explanatory Memorandum of the Criminal Code (*Memorie van Toelichting (MvT)*) is intended to determine the *vervaltermijn* or a certain period if, within that period, the person entitled to complain does not file a complaint, his right to do so will be invalidated. Another reason is that the person entitled to complain does not have to bear the burden for too long, so that the case can be prosecuted as soon as possible.<sup>52</sup> Meanwhile, although it is not discussed in the Academic Draft of the Law Number 7 of 2017,<sup>53</sup> the author believes the reason is similar to that for establishing a time limit for submitting report, considering the implementation of a speedy trial or fast-track judicial process in the settlement of election offenses. Surely, the time limit for submitting report is much shorter in comparison to the provisions in the *a quo* articles. It becomes a challenge for the reporter to fulfill formal and material requirements of a report.<sup>54</sup>

*Third*, the time limit for settling election offenses should not be applied at the stage of

submitting a report but of inquiry, investigation, prosecution, and examination at trial.<sup>55</sup> The time limit for criminal acts in general and election offenses is compared below:

**Table 2. Comparison of Time Limitation Regulations**

Criminal Acts/ Offenses		In general <sup>56</sup>	Election <sup>57</sup>
Stages	Inquiry	Mutatis mutandis 1, 6, 12, or 18 years <sup>58</sup>	14 working days
	Investigation		14 working days
	Prosecution		5 working days
	Examination at Trial <sup>59</sup> in the		
	First Stage	–	7 working days
	Appeal Stage	–	7 working days
	Cassation Stage	–	

Processed based on:

Criminal Code, Criminal Procedure Code, Law Number 7 of 2017, Perbawaslu Number 7 of 2018, Perbawaslu Number 31 of 2018, and PerMA Number 1 of 2018.

Table 2. shows how contrasting and illogical the time limit for settling election offenses is, compared to the time limit for settling criminal acts in general. For example, the time limit for settling the crime of vote buying<sup>60</sup> as an election offense is determined very strictly and briefly at

50 Eva Achjani Zulfa, *Gugurnya Hak Menuntut: Dasar Penghapus, Peringan, dan Pemberat Pidana*, 2nd ed. (Bogor: Ghalia Indonesia, 2013), 4; P.A.F. Lamintang and Franciscus Theojunior Lamintang, *Dasar-Dasar Hukum Pidana di Indonesia* (Jakarta: Sinar Grafika, 2014), 217; Eddy O.S. Hiarij, *The Principles of Criminal Law in Indonesia* (Yogyakarta: Cahaya Atma Pustaka, 2018), 140.

51 Moeljatno, *Kitab Undang-Undang Hukum Pidana*, 29nd ed. (Jakarta: Bumi Aksara, 2011), 31 and 39.

52 Lamintang and Lamintang, *Dasar-Dasar Hukum Pidana di Indonesia*.

53 *The Academic Draft of the Bill of Law on General Election Administration Year 2016*.

54 Irvan Mawardi and Muhammad Jufri, *Keadilan Pemilu: Potret Penegakan Hukum Pemilu dan Pilkada* (Yogyakarta: Pustaka Ilmu Group, 2019), 92 and 227.

55 Surbakti, Supriyanto, and Santoso, *Serial Demokrasi Elektoral Buku 15 Penanganan Pelanggaran Pemilu*, 31; Santoso and Budhiati, *Pemilu di Indonesia: Kelembagaan, Pelaksanaan, dan Pengawasan*, 215.

56 Moeljatno, *Kitab Undang-Undang Hukum Pidana*, 33.

57 *The Law Number 7 Year 2017 on General Elections*, para. Article 454 paragraph (8), Article 480 paragraph (1), paragraph (4), Article 482 paragraph (1), and paragraph (4).

58 It is said “*mutatis mutandis*” considering that, in principle, the time limitation provision as referred to is different from the time limitation determined at each stage as a specialization of regulation in special criminal law.

59 The time limitation at the Stage of Examination at Trial as referred to is the time limit in “examining, adjudicating, and deciding” *an sich*. It means that it excludes time limits in appealing, delivering dossiers, and others.

60 Nowadays, vote buying is still non-legal definitions of crime/social definitions of crime.

each stage, regardless of the “measurement of the severity of the criminal sanction (*strafmaat*)”,<sup>61</sup> and without the possibility of “cessation (*stuiting*)” and “suspension (*schorsing*)”.<sup>62</sup> Meanwhile, when compared and adjusted to the provision of “time-lapse of criminal prosecution (*verjaring van de strafvervolg*)” in Article 78 paragraph (1) of the Criminal Code as applied to criminal acts in general, the time limit in settling the crime of vote buying as an election offense punishable by the lightest imprisonment (the longest is 2 years)<sup>63</sup> is *mutatis mutandis* 6 years.

The provisions, enacted in the spirit of expediting the settlement of election offenses, have undoubtedly created loopholes for the conduct of various election offenses that cannot be properly handled by law enforcers. It is surely ironic and not expected in a democratic election process because it will mean mere certainty. Whereas people do not face justice by perpetrators not being prosecuted for election offenses, ensuring that their actions will be repeated in the next election. In short, these provisions undermine the principles of free and fair elections.<sup>64</sup>

Accordingly, there is an adage that says *summum ius, summa iniuria* (the highest law is the greatest injustice), which means:

The more laws fulfill the requirements as definite rules and eliminate as much uncertainty as possible, the more precise and sharper they formulate and establish

legal rules, the greater the possibility of the suppression of justice.<sup>65</sup>

Therefore, the time limit needs to be extended even though it will allow the ongoing settlement of election offenses after all stages of the election have been completed.<sup>66</sup> To make it more reasonable, the time limit for settling election offenses can be considered<sup>67</sup> adjusted to the time limit for settling criminal acts in general, as presented in Table 2.

*Fourth*, as noted in the preceding problem, election offenses should preferably be processed even after all stages of the election have been completed.<sup>68</sup> Nonetheless, there is a provision in Article 484 paragraph (1) of the Law Number 7 of 2017 (as well as Article 3 paragraph (11) of the PerMA Number 1 of 2018) that states:

Court verdict on cases of election offenses that, according to this Law, may impact the vote acquisition of the Election Participants, must be accomplished no later than 5 (five) days before the General Election Commission determines the election results nationally.<sup>69</sup>

In reality, the provisions mentioned have caused numerous cases of election offenses currently being processed to lapse or dismiss (*gugur*).<sup>70</sup>

It is re-emphasized that, on one hand, the provisions are intended to ensure that the election offenses are rapidly resolved so that the participants can directly perceive the implications during the ongoing election stage.<sup>71</sup> However, on the other hand, these provisions will allow many perpetrators

61 Marjanne Termorshuizen-arts, *Kamus Hukum Belanda-Indonesia*, 2nd ed. (Jakarta: Djambatan, 2002), 401; N.E. Algra and H.R.W. Gokkel, *Kamus Istilah Hukum Fockema Andreae Belanda-Indonesia* (Bandung: Bina Cipta, 1983), 544.

62 Moeljatno, *Kitab Undang-Undang Hukum Pidana*, 34; Hiariej, *The Principles of Criminal Law in Indonesia*, 435-442; Zulfa, *Gugurnya Hak Menuntut: Dasar Penghapus, Peringan, dan Pemberat Pidana*, 29-31.

63 *The Law Number 7 Year 2017 on General Elections*, para. Article 521 jo. Article 280 paragraph (1) letter j or Article 523 paragraph (1) jo. Article 280 paragraph (1) letter j.

64 Surbakti, Supriyanto, and Santoso, *Serial Demokrasi Elektoral Buku 15 Penanganan Pelanggaran Pemilu*, 31-32; Santoso and Budhiati, *Pemilu di Indonesia: Kelembagaan, Pelaksanaan, dan Pengawasan*.

65 Algra and Gokkel, *Kamus Istilah Hukum Fockema Andreae Belanda-Indonesia*, 553.

66 Santoso, *Laporan Akhir Analisis dan Evaluasi Hukum terkait Pemilihan Umum*, 120-121.

67 Mohd. Din, Rizanizarli, and Akbar Jalil, “Model Penegakan Hukum Tindak Pidana Pemilu di Provinsi Aceh yang Berkeadilan,” *Jurnal Penelitian Hukum De Jure* 20, no. 3 (2020): 296.

68 Junaidi, Ramadhanil, and Arifin, *Evaluasi Penegakan Hukum Pemilu 2014*, 47.

69 *The Law Number 7 Year 2017 on General Elections*; *The Supreme Court Regulation Number 1 Year 2018 on Procedures for the Resolution of Local Election and General Election Offenses*.

70 Surbakti, Supriyanto, and Santoso, *Serial Demokrasi Elektoral Buku 15 Penanganan Pelanggaran Pemilu*, 15; Santoso and Budhiati, *Pemilu di Indonesia: Kelembagaan, Pelaksanaan, dan Pengawasan*, 213.

71 Santoso, *Laporan Akhir Analisis dan Evaluasi Hukum terkait Pemilihan Umum*, 121-122.



of election offenses to escape, even further until the President and Vice President and members of the legislature are elected through a fraudulent process that violates the law.<sup>72</sup> Surely, it is not in accordance with the issuance of Chapter II on Electoral Criminal Provisions in the Fifth Book of the Law Number 7 of 2017.

Therefore, the speedy trial or fast-track judicial process used in the settlement of election offenses needs to be reviewed because it appears as if it is just a matter of losing or winning and tends to ignore the censurability of the offenses committed. Whereas, supposedly, election offenses can still be prosecuted even after all stages of the election have been completed.<sup>73</sup>

*Fifth*, there is no significant specialization in the settlement of election offenses pertaining to pretrial provisions. The only relevant provision in the electoral legal framework is Article 30 of the Perbawaslu Number 31 of 2018 which states that:

In the event that there is a pretrial petition, either investigation or prosecution stage, the Election Supervisor, Investigator, and/or Public Prosecutor shall provide assistance and monitoring.<sup>74</sup>

With such provisions, this pretrial subject reverts to the general provisions of the Criminal Procedure Code, including Constitutional Court Verdicts that direct or influence it.<sup>75</sup>

The absence of significant specialization creates a problem if a pretrial petition is granted. In the event that the termination of investigation or the termination of prosecution is declared invalid, the investigation or prosecution must be continued.<sup>76</sup> Meanwhile, in the event that the

determination of the suspect is declared invalid, a re-investigation can still be conducted according to the ideal and correct legal rules,<sup>77</sup> namely provided at least two means of proof that do not have to be new and are still related to the previous evidence.<sup>78</sup>

It becomes a problem because the electoral legal framework has regulated the time limit for the settlement of election offenses in such a tight and short manner that if a pretrial petition is granted as previously stated, the follow-up settlement will be difficult, or impossible since the time limitation has most likely elapsed.<sup>79</sup> Therefore, it is possible to consider a specialization like time-lapse suspension until the pretrial verdict is imposed.

*Sixth*, Article 482 paragraph (5) of the Law Number 7 of 2017 stipulates that “The verdict of the high court ... is the final and binding verdict and no other legal remedy can be taken”,<sup>80</sup> *in casu* cassation or reconsideration.<sup>81</sup> The specialization of regulation in the settlement of election offenses such as this one has been recognized *mutatis mutandis* since the previous elections.<sup>82</sup> A similar

72 Santoso and Budhiati, *Pemilu di Indonesia: Kelembagaan, Pelaksanaan, dan Pengawasan*, 214.

73 Santoso, *Laporan Akhir Analisis dan Evaluasi Hukum terkait Pemilihan Umum*, 22.

74 *The General Election Supervisory Agency Regulation Number 31 Year 2018 on Integrated Law Enforcement Centers.*, para. Article 30.

75 Muhammad Fatahillah Akbar, “Pengaruh Putusan Mahkamah Konstitusi di Bidang Pengujian Undang-Undang terhadap Sistem Peradilan Pidana Indonesia dengan Perubahan KUHAP,” *Jurnal Konstitusi* 16, no. 3 (2019): 474–475, 479–481, and 484.

76 *The Law Number 8 Year 1981 on Law of Criminal Procedure*. (Indonesia, 1981), para. Article 82 paragraph (3) letter b.

77 *The Constitutional Court Verdict Number 21/PUU-XII/2014* (Indonesia, 2015); *The Law Number 8 Year 1981 on Law of Criminal Procedure* (Indonesia, 1981).

78 *The Constitutional Court Verdict Number 42/PUU-XV/2017* (Indonesia, 2017); Compare to Article 2 paragraph (3) of the *Supreme Court Regulation Number 4 Year 2016 on Prohibition on Reconsideration of Pre-Trial Verdict* (Indonesia, 2016).

79 Santoso, *Laporan Akhir Analisis dan Evaluasi Hukum terkait Pemilihan Umum*, 122–123; Jaharudin Umar et al., “Praperadilan dalam Penanganan Tindak Pidana Pemilu Tahun 2019: Studi Kasus di Provinsi Gorontalo,” in *Serial Evaluasi Penyelenggaraan Pemilu Serentak 2019 Perihal Penegakan Hukum Pemilu*, ed. Ahsanul Minan (Jakarta: Badan Pengawas Pemilihan Umum Republik Indonesia, 2019), 72–73, 75, and 77.

80 *The Law Number 7 Year 2017 on General Elections.*, para. Article 482 paragraph (5).

81 *Ibid.*, para. Elucidation of Article 482 paragraph (5).

82 *The Law Number 10 Year 2008 on General Elections for Members of the House of Representatives, Regional Representatives Council, and Regional House of Representatives* (Indonesia, 2008); *The Law Number 42 Year 2008 on General Elections for President and Vice President*; *The Law Number*

provision in previous election regulation, *in casu* Law Number 8 of 2012, has ever been judicially reviewed and decided on the Constitutional Court Verdict Number 9/PUU-XIV/2016 dated July 10, 2017.

In the legal considerations of the *a quo* verdict, the Constitutional Court states that the resolution of election offenses without going through cassation and reconsideration is consistent with the speedy trial or fast-track judicial process.<sup>83</sup> It also states that the legal remedy in the resolution of election offenses that is limited to the appeal stage, as referred to, is a special provision adapted to the election stages that lead to the fulfillment of the state agenda so that a quick resolution is required. It is because the resolution process can disrupt the state agenda, which has the potential to cause problems in the life of the nation and state. Thus, the limitation aforementioned can be justified legally.<sup>84</sup>

This special provision, however, raises the question of whether the acquittal (*vrijspraak*)<sup>85</sup> and the dismissal from all legal proceedings (*onslag van alle rechtsvervolging*)<sup>86</sup> verdicts in the settlement of election offenses can be appealed.<sup>87</sup> In this regard, it is necessary to explain the relationship between the *lex generalis* and the *lex specialis*. Mertokusumo explained, “*Lex generalis* is a general law that is generally accepted and is the basis, while *lex specialis* is a special law that deviates from the *lex generalis*. *Lex generalis* is the basis of *lex specialis*”.<sup>88</sup>

Furthermore, in the context of criminal law, Santoso explained the relationship between the two:

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8 Year 2012 on General Elections for Members of the House of Representatives, Regional Representatives Council, and Regional House of Representatives. (Indonesia, 2012).

83 The Constitutional Court Verdict Number 9/PUU-XIV/2016 (Indonesia, 2017).

84 Ibid.

85 The Law Number 8 Year 1981 on Law of Criminal Procedure.

86 Ibid., para. Article 191 paragraph (2).

87 Ibid., 176.

88 Sudikno Mertokusumo, *Mengenal Hukum: Suatu Pengantar* (Yogyakarta: Cahaya Atma Pustaka, 2012), 166.

Some of the provisions of the criminal law differ from those in the Criminal Code, so the more special ones will be used, namely the provisions contained in special laws. Likewise, if there are provisions of procedural law in special laws that differ from the provisions in the Criminal Procedure Code, which is a general criminal procedure, the special provisions will apply. In cases not regulated in the special laws, it shall refer to the general provisions in the Criminal Code and the Criminal Procedure Code.<sup>89</sup>

Thus, in the relationship between the Criminal Procedure Code as a *lex generalis* and Law Number 7 of 2017 as a *lex specialis*, this issue raises at least two opinions as follows:

1. Unappealable. The argument is, even though Article 482 paragraph (2) *jo.* paragraph (1) of the Law Number 7 of 2017 as *lex specialis* essentially states that court verdict can be appealed,<sup>90</sup> but there are no specific provisions in the *a quo* law regarding which types of court verdict can be appealed. The specific provision referred to is contained in its *lex generalis*, *in casu* Article 67 of the Criminal Procedure Code, which states:

The defendant or public prosecutor has the right to appeal against the verdict of the first stage, except for the acquittal verdict, dismissal from all legal proceeding verdict pertaining to inaccuracies in the application of the law, and court verdict in the quick examination procedure.<sup>91</sup>

By reverting to the general provisions in the Criminal Procedure Code, the type of appealable court verdict in the settlement of election offenses is a condemnation verdict (*veroordeling*)<sup>92</sup> *an sich*.

2. Appealable. The argument is that in the Law Number 7 of 2017 as *lex specialis*, there are no specific provisions excluding certain types of appealable court verdict. It means that, in *a contrario*, any type of verdict (condemnation, acquittal, or dismissal from all legal

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89 Topo Santoso, *Hukum Pidana: Suatu Pengantar* (Depok: Rajawali Press, 2020), 236.

90 The Law Number 7 Year 2017 on General Elections., para. Article 482 paragraph (2) *jo.* paragraph (1).

91 The Law Number 8 Year 1981 on Law of Criminal Procedure.

92 Ibid., para. Article 193 paragraph (1).

proceedings) can be appealed. Firmly, based on the principle of *lex specialis derogat legi generali*,<sup>93</sup> this is the specialization of the regulation in the settlement of election offenses.

*Seventh*, the implementation of a speedy trial or fast-track judicial process, which is the root of the problem in settling election offenses as described by the author so far, continues to face challenges, particularly in regions with specific geographical conditions<sup>94</sup> such as the archipelago.<sup>95</sup> It is a significant challenge considering that two-thirds of Indonesia's territory is the ocean. Not to mention that one-third of Indonesia is divided into thousands of islands.<sup>96</sup>

The provisions providing a very short time limit for settling election offenses should consider the geographical conditions of certain regions of Indonesian territory, riddled with obstacles.<sup>97</sup> As a result, special provisions are required to exclude the speedy trial or fast-track judicial process in regions with specific geographical conditions.<sup>98</sup> According to the author's research, there are only two laws in the settlement of criminal acts that provide exceptions to the time limit for regions with specific geographical conditions, namely Law Number 35 of 2009 on Narcotics<sup>99</sup> and Law Number 18 of 2013 on Prevention and Eradication of Forest Destruction.<sup>100</sup>

## CONCLUSION

Based on the discussion, it is possible to conclude that the specialization of the regulation in the form of speedy trial or fast-track judicial process is the root of the problem in the settlement of election offenses. It is due to the fact that the existing problems cannot be separated from it. These problems include the very short time limit at the stages of submitting report, investigation, prosecution, and examination at trial; cases of election offenses that may impact the vote acquisition of the Election Participants must be accomplished no later than 5 (five) days before the General Election Commission determines election results nationally; pretrial petitions granted in the event of termination of investigation, termination of prosecution, and determination of suspects being declared invalid; a legal remedy against acquittal (*vrijspraak*) and dismissal from all legal proceeding (*onslag van alle rechtsvervolging*) verdicts; as well as the absence of exceptions to the time limit for the regions with special geographical conditions.

## SUGGESTION

The author's suggestion in this research is to eliminate provisions that apply speedy trial or fast-track judicial process in the settlement of election offenses. If it is to be maintained, changes must be made to these provisions so that speedy trial or fast-track judicial process in the settlement of election offenses do not become the root of the problem as it is now. Changes essentially can be made by extending the time limit for the settlement of the election offenses and allowing them to be processed even after all stages of the election have been completed.

## ACKNOWLEDGMENT

Praise and gratitude to Allah SWT, God Almighty, for His presence, blessings, and gifts so that this research can be completed and published properly. The author would like to gratefully acknowledge and thank Prof. Edward O.S. Hiarij (Prof. Eddy) for his contributions and for allowing this research to be published together. The author would also like to thank his family and friends,

93 Edward Omar Sharif Hiarij, "Asas Lex Spesialis Systematis dan Hukum Pidana Pajak," *Jurnal Penelitian Hukum De Jure* 21, no. 1 (2021): 2–4.

94 Santoso, *Laporan Akhir Analisis dan Evaluasi Hukum terkait Pemilihan Umum*, 117, 123.

95 Thomas T Wakanno and Astuti Usman, "Efektifitas Penegakan Pidana Pemilu di Wilayah Kepulauan: Studi Kasus di Kabupaten Maluku Barat Daya," in *Serial Evaluasi Penyelenggaraan Pemilu Serentak 2019 Perihal Penegakan Hukum Pemilu*, 2019, 86–88, 92–96, and 99–100.

96 Harun Husein, *Penyelenggaraan Pemilu Serentak 2019* (Jakarta: Komisi Pemilihan Umum Republik Indonesia, 2019), 2.

97 Wakanno and Usman, "Efektifitas Penegakan Pidana Pemilu di Wilayah Kepulauan: Studi Kasus di Kabupaten Maluku Barat Daya," 96.

98 Santoso, *Laporan Akhir Analisis dan Evaluasi Hukum terkait Pemilihan Umum*, 117.

99 *The Law Number 35 Year 2009 on Narcotics* (Indonesia, 2009), para. Article 88, Article 92 paragraph (1), and paragraph (2).

100 *The Law Number 18 Year 2013 on Prevention and Eradication of Forest Destruction*. (Indonesia,

2013), para. Article 40 paragraph (4) and paragraph (5).

who cannot be named individually, for their constant support and prayers.

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