



Crime of Election in Indonesia Based on Islamic Criminal Law

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Abstract

Election is procedure of implementation of the principle of resident sovereignty for Republic of Indonesia based on Pancasila and the Constitutions of the Republic of Indonesia 1945. During the implementation of election (parliamentary, presidential and local election) crime of election always occur. Numerous offenses that occur are vote selling, manipulation of vote counting and so on. There were 903 cases occurred during 2014 election which was handled by Mahkamah Agung (Supreme Court). While during 2009 election, these were about 627. According to Komisi Pemberantasan Korupsi (commission of anti-corruption) about 3600 members of parliament were affected by these cases. Therefore about 209 members of Governor and District Head are involved in crime of election. This paper is aimed to determine cases in crime of election in Indonesia. This study used case study method, by collecting data from Supreme Court decision related with 2014 election. Instead of cases that the data gained, we also analyzed data based on the concept of Islamic criminal law, hudud, qisas / diyat and takzir and based on Islamic Scholar view. The Results of the study found that, the mistake can be punished by takzir, and others kaffarah for those violating the oath.

Keywords: crime of election, election in Indonesia, Islamic criminal law

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1. Introduction

Among the basic system of Islamic teachings in civic of life and state is shura (consultation). Between people, groups or individuals with a number of other people in life together it should enforce the deliberations in facing and solving the problems together. This is a principle in the life of society and state, and also part of the Shari'a. The deliberations system is included in the provisions of Allah that must be upheld. Leaving deliberations means leaving one facet of Shari'a.

In the Qur'an and the Hadith, there is no clear instruction on how to determine the community leader or the head of the region. Only a hint of a general nature that Muslims seek to address issues of common interest related by consensus. Due to the lack of a standardized system for the appointment and election of the leader then of course in practice there will be a lot of diversity, depending on the conditions that occur at the time [1].

In Islam, the main purpose of every law of syarak revealed by Allah to mankind is to achieve any form of goodness and reject all the ugliness [2]. Among disadvantages in elections are doing everything to get the department's leadership, producing a parliaments and leaders who are not a trusted people, broken promises to the people, do rasuah, bribery, cases immoral, and do ruse to get designation, deception of the people and other etc.

Politic issues is a problem that continues to grow. Al-Quran only establishes the principle of shura. No details about the intricacies of shura in the Quran, including the question of who, what terms and how the appointment of an expert of shura. The details were handed over to humans to regulate it, in accordance with dhuruf (state) disparate communities and developing, including the electoral system experts called a shura, or Parliament at the moment [3].

Since the practice of direct democracy system, Indonesia has conducted four Elections i.e. 1999, 2004, 2009 and 2014. Quality implementation of 1999 and 2004 elections is progressing well, but there is still a problem during the 2009 elections and beyond the elections.

Electoral violations in Indonesia continues to increase from the one election to the next. However, case-infringement case is dealt with by the court damp. In the 1999 elections there were 4290 cases of election violations. In 2004, the legislative and the president elections, cases of violations and crime in the elections increased three fold reaching 13669 cases. Then in the 2009 elections, the number of cases rose to 61561 cases. Once known stem the problem, this should be the case or breach the 2014 elections can be handled well, precisely the opposite effect. In the 2014 elections had appeared more cases violations in legislative elections (parliament) and presidential elections [4]. Case is comprised of infringement cases administration ranked offense in the elections, ethics violations and the enactment of a crime.

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In the Journal of Elections and Democracy, a study conducted by Veri Junaidi [5] find that estimates on the number of cases a crime electoral in 2014 increased compared to 2009 elections, according to the announcement delivered by the Constitutional Court (903 cases compared to 627 cases in 2009). Though the number of candidates (candidates of Parliament member) in 2009, more than those in 2014. Candidate experts Parliament DPR (House of Representatives) in number: 11219, the prospective expert DPRD (Regional Representatives Council) of the Province amounted to 32263 and the prospective expert DPD (DPD) numbers 1116. This is when summed to all be 44 598 people. Whereas in 2014 fewer than in 2009, for aspiring expert DPR 6607 in number, candidate number 21 756 Provincial DPRD and DPD candidates amounted to 945 people, and when the whole thing is summed which 29 308 people [5].

To address this issue, then we as a generation have to go back to the Islamic law, and re-impose a crime Islamic law. Punishing those who have done wrong behaviour in the election in accordance with the criminal laws of Islam (hudud, qisas and ta'zir) is to realize the security and welfare of the community by way of sentencing in a fair and judicious. The enforcement of Shari'a and Islamic law is to make the criminals and people crowded fear to repeat a crime is wrong behaviour. In addition it aims to return to the governance systems in order to achieve maqasid Islamic Shari'ah and the welfare of society.

2. Definition of Illegal Election

Free and fair election is one of requirement in election system. Free and fair elections can be gained if legal rules governing the formation and ensure the implementation of the electoral process. Simultaneously it is protecting the executors, candidates, voters, observers and citizens in general rather than fear, intimidation, violence, bribery, fraud and practices of unfair that is where it will affect the outcome of the election [6].

If in the general election won by those who perform in ways that are not fair and not reasonable (malpractices), then this will be difficult to declare that leaders, experts Parliament or legislators were elected as the true people's representatives (Topo Santoso, 2005). In order to protect the purity and sincerity in the general election is very important for democracy that the penggubal legislation has made a number of unlawful behavior or any behavior in the election as an act of a crime (Alvon Kurnia Palma, 2013; 2014).

So instead of that, the law on elections that have been made in addition to regulating the procedures for elections and it is also prohibit a number of actions or wrongful conduct that may destroy and spoils nature and fair (free and fair) was threatening the perpetrators with penalties. It is intended that the elections as a means of people's sovereignty can be implemented in a direct, public, free, confidential, honest, and fair based on Pancasila and the Constitution of the Republic of Indonesia Year 1945.

Meaning of wrong behavior in general in this study is the act of a crime in a general election or misconduct has been set up brightly in the Electoral Law and Criminal Code (the Code of Penal Code) and the Code of Criminal Procedure (the Code of Criminal Procedure). Between referral laws is the Law of the Republic of Indonesia Number 8 of 2012 on the Election of Members of the Board of Representatives (DPR), the Regional Representatives Council (DPD), and the Regional Representatives Council (DPRD) [7] and the Presidential Election, the Governor's Election and Election of Regent / Mayor [8].

A crime electoral law expert, Topo Santoso [6] explained that one sense behaviour in any election is the act of a crime in violation of the provisions of the election law which settlement through the courts. The classification of a crime in the act of election includes any person that is, couples in respect of candidates for the election of regional head (governor and deputy and regent and deputy), candidates for legislative elections (Parliament), candidate for the presidential election, Tim Campaign, as well as messenger Jaya General Elections.

3. Forms of Conduct in the Election in Indonesia

According to the Criminal Justice Act and the Electoral Law Indonesia No. 8 In 2012 [9] it is mentioned that there are some forms of action that recognized as wrong behaviour in any election that is:

- a. Giving untrue or lying.
- b. Creating a letter or false documents.
- c. Using a false letter.
- d. Mess up, disturb and obstruct the course of campaign elections.
- e. Bribing and receiving bribes (money politics)
- f. Acts of unfair to mislead someone, by forcing and giving money or other materials to obtain support, or to abstain from voting in selecting participants in the elections.
- g. Deceit which will cause noise invalid voter, or making the person elected.
- h. Cheat by claiming to be someone else in the raffle.
- i. Raffle more than once.
- j. Thwart voting (lottery) has done.
- k. Employers who do not allow their workers to raffle.
- l. Dereliction of its duty officer elections. Violence or threats of violence to deter the threat of someone to raffle.

4. Case of Illegal Election in the Election Parliament Members in 2014.

4.1. Case of Money Politic

Corruption of political issue, so much going on during the general elections in Indonesia. Researcher Political Corruption Division Indonesia (Indonesia Corruption Watch-ICW), Donal Fariz, said ICW noted in the 1999 elections occurred political money practices were 62 cases [10].

Then in the 2004 election increased to 113 cases. In the 2009 election, the number of cases of money politics increased again to 150 cases and in the 2014 elections to the legislative elections, there were 313 cases. Donal expressed that is evidence of election violations, especially political money increasing from election to election.

As one evidence of corruption in the election is the Banten High Court decision No. 1 / PID.PEMILU / 2014 / PT.BTN who have dropped a guilty verdict against suspect: H. Ahyan Affandi Bin Marbawi has been legally proven guilty of committing a crime because that is deliberately corruption the day of the draw promise and give money or other material to voters to exercise their voting rights in order to draw him.

After getting solid evidence, the High Court decided the State Banten and sentenced four months and fined Rp. 36,000,000 (thirty six million rupiah) to suspect.

4.2. Case of officer members which found embezzled Election Vote Count Results

Cases of election officials who neglect its duty by misappropriating and embezzling election results occur in legislative elections in 2014. In addition to neglect its duty as officers or executive, they also deliberately participated in vote-buying (raffle). The form of behavior is wrong amend the results of the election, or spoils the official report (report) the outcome of elections, as well as move the count results of the election district level, or add or subtract the election results [5].

The officers have also been doing a crime by violating the oath and the promise they say. Them before performing the task oath and promise. Promise and oath they refer to Act No. 15 of 2011 [11] on the implementation of the election.

The rules of the oath and the promise subject to Article 54 of Law No. 15, 2011 [11] is mentioned that before duty of all members of the executive officer of the oath and the promise of elections. Oath or promise uttered is as follows:

For the sake of Allah (God), I swear / promise: That I will fulfil the duties and obligations as a member of PPK / PPS / KPPS / PPLN / KPPSLN as well as possible in accordance with the laws and regulations based on the Pancasila and the Constitution of the State Republic of Indonesia Year 1945. That to me in performing their duties and authority will work in earnest, honest, fair, and accurate member election for the success of the House of

Representatives, Regional Representatives Council, and the Regional Representatives Council / election of President and Vice President / election governors, regents and mayors, establishment of democracy and justice, as well as the interests of the Republic of Indonesia rather than personal or group interests.

Directories results from the Supreme Court decision of the Republic of Indonesia (2015) mentioned that there were 37 decisions rather than the whole court in Indonesia on this a crime [12]. One decision is Decision No. 01 / PID / Sus / 2014 / PN DPK. That is, a decision Depok District Court against Drs. Atmayasa.

Legitimately proven guilty of committing a crime together with intentionally changing the minutes of voting (report) and counting (sweepstakes) or have ordered others to do so. Judges who adjudicate these cases sentenced four months and pay a fine of IDR 1.000.000,- (one million rupiah) to suspect.

4.3. Cases of Giving False Testimony or edict and Lying

Between one behaviour that was included in the act of a crime other elections in Indonesia which is the case giving edicts and false testimony. Many people who want to occupy office as expert of Parliament (House of Representatives) has justified the means, although with deceptive, or give testimony untruthful evidence. Even that is unfortunate is that it applies to the Islam parties based on Islamic religion.

Assessor try out to take one case of incorrect behaviour of giving false testimony is namely Decision No. 39 / Pid.B / 2013 / PN. RNI. That is, a decision of the District Court sentenced the respondent Ranai: Zainadi Bin Muhammad Bin Muhammad stated suspect, Zainadi has been legally proven guilty of committing a crime intentionally election wearing a letter or false documents to become candidate member of the House of Representatives (Parliament expert) district level.

With this, the judge punishes wrong with a prison sentence of 2 (two) months and a fine of IDR 5.000.000, - (five million rupiah) subsidiary 1 (one) month imprisonment.

5. Views of the Islamic Criminal Law in the Crime of Elections in Indonesia

5.1. Cases of Money Politics

One of the principles in Islam is emphasized to his people to do good deed and reject all the ugliness and the damage. It is intended that mankind live in safety and peace on an earth based on the principle of maqasid al-shari'ah. Indeed, achieving any form of goodness and reject badness is a first aim in every syarak law. Allah s.w.t has mention in the Qur'an Surah Al-Hajj verse 41 which means:

“Those who, should We establish them in the land, will keep up prayer and pay the poor-rate and enjoin good and forbid evil; and Allah’s is the end of affairs”.

In Surat Luqman Ayat 17 mean:

“O my son! keep up prayer and enjoin the good and forbid the evil, and bear patiently that which befalls you; surely these acts require courage;”

Islamic Criminal Law divided in to three parts. There are hudud, qisas / diyat and Takzir. Hudud is crimes in threatened with punishment had, that is the punishment stipulated by law and the rights of Allah. Whereas Qisas and Diat is jarimah punishable by qisas and diyat. Qisas and diyat a punishment that has been set by syarak. Which became different is hudud is the right of Allah. While the qisas and diyat is the right of individuals (human). And takzir also be a crime punishable by takzir that is, the punishment has not been established by syarak and regulated by leader or judges [13].

In Islam, there are some terms related to the use rights and taking property without right or the improper ways namely: risywah, ghasb, ikhtilas, sariqoh, hirobah and ghulul. Although differing in meaning but has the same purpose as above [1].

Cases of money politics or vote-buying (right to vote) in the context of Islam belongs to the category of corruption (risywah). Even the act is equated to accept and take something that is not right.

Etymologically, the word comes risywah than Arabic "رشوة", "رشوة", "رشوة" which masdar should read "يرشوا" aimed wage, reward, or bribe commision (Ibn Manzur).

The terminology also, risywah is something that was given in order to realize the benefit or something given with the aim of confirming the vanity or blame correct [14].

As for some basic of risywah or hadith about risywah used as basis in determining the law against risywah is:

نَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُ قَالَ : لَعَنَ الرَّاشِيَّ وَالْمُرْتَشِيَّ فِي الْحُكْمِ

Mean: “Rasulullah S.A.W cursed the people who bribe and are bribed in legal trouble”. (Al-Hakim, 1997)

And the hadith narrated by Tsauban which means:

The curse of Allah (inflicted) to those who bribe and the one who bribed, and people connect, that is, a person walking in between.

Legal actions agreed upon by scholars risywah is haram, especially risywah that there are elements that justify or blame the wrong and should it right. Although there is some scholarly opinion justify such as al-Qurtubi [16] and al-Maghrobi [17] who teach tradition risywah in the book Bulugh al-Maram which allow risywah for the goal to the good or benefit of such refuse injustice, disadvantage and and injustice, But almost all scholars such as al-Shafi Syaokani, Imam Yahya, al-Mansur Billah, Abu Ja'far, and Dhahabi, forbids risywah absolutely and even argue that risywah offender is considered wicked.

In this case, the reviewer agrees with the opinion of Muhammad Nurul Irfan and Syamsul Anwar are based on

the opinions of al-Syaokani and scholars who explicitly prohibit corruption. Especially in the context of the Indonesian people who are trying hard prevent corruption whose influence greatly undermine the entire fabric of the nation [14].

Regarding the appropriate penalties against money politics, vote-buying in elections, a crime under the laws of Islam, it is included in the law takzir, because not included in qisas and hudud. In general, punishment of takzir is not clear yet, detailed, and yet the light of the Qur'an on the implementation of the sentence. Takzir terms than in terms of the sentence imposed is upon those who do wrong and immoral or unimportant person to an obligation that is not stipulated punishment in the Koran and the Hadith or the penalties imposed upon those who commit a crime that has been assigned penalty, but not sufficient condition to carry out the sentence [18].

In the opinion of the reviewer of the penalty imposed by the court in Indonesia to political cases of money, vote-buying or corruption has also correspond to the elements takzir punishment. In which all decisions are determined by judges who adjudicate cases in accordance with the case-dose rather than harm it caused the mistake or behaviour. Both imprisonment and fine imposed against the perpetrators of any such behaviour in order to give conviction in order not to repeat those mistakes.

5.2. Case of Members of Election Who Neglect Its obligations and Breaking Oaths

The nature of the mandate is a very noble trait in Islam. Muslims are required to practice this noble trait. The nature of the mandate that is, properties that can be trusted. Someone who has the nature of the mandate entrusted to him whatever he will be responsible for the mandate given. Even the prophet Muhammad S.A.W. as an example and role model Islamic community also got a degree as those who mandate that is the title of al-Amin.

Regarding the trust of Allah the Exalted says in the Qur'an, Surah Al-Baqarah verse 283. Which means:

“And if you are upon a journey and you do not find a scribe, then (there may be) a security taken into possession; but if one of you trusts another, then he who is trusted should deliver his trust, and let him be careful (of his duty to) Allah, his Lord; and do not conceal testimony, and whoever conceals it, his heart is surely sinful; and Allah knows what you do.”

This premise is the basis for Muslims to maintain the trust of others, what is more trustworthy from the government administrators mandated by state or country.

Election cases for officials who neglect its duty as it has been reviewed above. So that they should carry out their duties as well as possible. They must work honestly and do not make mistakes and fraud. Moreover, the election officials they have sworn by Allah to perform tasks will be to work in earnest, honest, fair, and accurate in order election is success.

In Islamic law. People who violates his oath will be punished kaffarah. Named by kaffarah because covering sin for those who violate the oath [19]. Kaffarah punishment is required to be paid in case of infringement. It is based in the Surah al-Maidah verse 89 which means:

“Allah does not call you to account for what is vain in your oaths, but He calls you to account for the making of deliberate oaths; so its expiation is the feeding of ten poor men out of the middling (food) you feed your families with, or their clothing, or the freeing of a neck; but whosoever cannot find (means) then fasting for three days; this is the expiation of your oaths when you swear; and guard your oaths. Thus does Allah make clear to you His communications, that you may be Fateful.”

This verse describes the person who violates his oath may choose to pay kaffarah between feeding ten poor people, or giving the cloth, or free a slave (servant). But if he cannot do so, then the punishment is kaffarah by fasting tree days.

Instead of the above, the reviewer to conclude which the election officials who deliberately make mistakes, dishonest, lying over the benefit of an individual or group, it can be have violated his oath. In fact they may be subjected to double punishment, and the punishment that is kaffarah and takzir because they have buying and selling the vote.

Regarding the penalties contained in the electoral law in Indonesia. The officers who neglect its duty and violating his oath only imposed prison sentences or fines. However kaffarah not regulated by law. Here the reviewer hopes that the judges should be able to implement Islamic law on offenders oath. Other expectations of Parliament can hopefully experts renew the rules by entering kaffarah penalties against election officials who violate the oath.

5.3. Cases of Giving False Testimony and Lying

Provide information and false testimony is the same thing as lying, cheating or lying. In this case, many Indonesian people are able to be liar in order to get the seat of Parliament.

In Islam, lying for the benefit is included despicable act. Various religions in the world are forbid its followers to be liar or lie to anyone. Because it will give negative impact. Allah s.w.t mention in Surah Ghafir (40) verse 28: Which mean:

“And a believing man of Firon’s people who hid his faith said: What! Will you slay a man because he says: My Lord is Allah, and indeed he has brought to you clear arguments from your Lord? And if he be a liar, on him will be his lie, and if he be truthful, there will befall you some of that which he threatens you (with); surely Allah does not guide him who is extravagant, a liar.”

In case giving any information or false declaration, such as false identity, false of school certificate, education and all information related with self-declaration is false. It is included in case any crime of elections in Indonesia because it is opposite with the principles of the Indonesian elections that is free and fair. Certainly with beginning is wrong in choosing a leader and people's representatives like lying and cheating then it will be generated bad leader.

Giving false document may be classified as a form of crime in any one election. This will cause harm and injustice to the community and nation. Then the penalties imposed on those who do crime is imprisonment or a fine.

Islam is not explained in detail about the penalty imposed on a liar. Regarding for the liar al-Quran and al-Sunnah has mentioned, but the penalties are not described. Punishment for liar is not including the hudud and qisas punishment, except into takzir punishment. And the judge who will decide the punishment be gradual [18].

6. Conclusion

To create fair elections and justice for achievement good governance it will be required to create great effort. Reducing crime of election in Indonesia, because these will create fair and justice leader. So Islamic Law can be applied.

Tree cases has shown above there are money political case, careless officer from his duty and giving false document shown which numerous resident in Indonesia affected these cases. Whereas in Islam has also explained the behaviour of wrongdoing, such actions, including actions that are forbidden by Allah and moral harms Muslims. Indeed, when the crowded Muslim community who do the wrong behaviour then another denomination will assess the negative to the Muslims and would be a bad example for the entire community.

Today the penalties imposed against any violations in elections that have been decided by the judge, in the courts have the same as the element of punishment in the crime of Islamic law, the punishment is takzir. The punishment for liar decided by a judge how to use words polite, and the punishments gradually. Other than that punishment in violation of the oath, should be punished by kaffarah and double punishment for the transgressors.

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