

Fortifying Democracy: Deploying Electoral Justice for Robust Personal Data Protection in the Indonesian Election

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ABSTRACT

Elections stand as a cornerstone of democracy, yet the burgeoning integration of technology and personal data underscores the pressing need for safeguarding individual privacy within the electoral process. This study endeavors to scrutinize the efficacy of the Electoral Justice System in fortifying the protection of personal data throughout the registration, verification, and adjudication phases of political party participation in the forthcoming 2024 elections. Through an empirical juridical methodology, this research delves into the practical application of the Electoral Justice System across diverse national contexts, elucidating its role in mitigating the perils of data misuse and upholding electoral integrity. The findings underscore the imperative of imbuing the Electoral Justice System with structural robustness, substantive fidelity, and a conducive legal culture to ensure the seamless functioning of electoral processes. Additionally, stringent regulations, robust data verification protocols, independent oversight mechanisms, and punitive measures emerge as indispensable facets of effective Electoral Justice System implementation, essential for curtailing infringements of the exploitation of personal data and fostering accountable electoral practices.

Keywords: Election, Electoral Justice System, Political parties

ABSTRAK

Pemilu merupakan landasan demokrasi, namun integrasi teknologi dan data pribadi yang semakin berkembang menggarisbawahi kebutuhan mendesak untuk menjaga privasi individu dalam proses pemilu. Kajian ini berupaya mengkaji efektivitas Sistem Keadilan Pemilu dalam memperkuat perlindungan data pribadi pada tahap pendaftaran, verifikasi, dan adjudikasi partisipasi partai politik pada pemilu 2024 mendatang. Melalui metodologi yuridis empiris, penelitian ini menggali penerapan praktis Sistem Keadilan Pemilu di berbagai konteks nasional, menjelaskan perannya dalam memitigasi bahaya penyalahgunaan data dan menegakkan integritas pemilu. Temuan-temuan ini menggarisbawahi pentingnya melengkapi Sistem Keadilan Pemilu dengan kekuatan struktural, kesetiaan substantif, dan budaya hukum yang kondusif untuk menjamin kelancaran fungsi proses pemilu. Selain itu, peraturan yang ketat, protokol verifikasi data yang kuat, mekanisme pengawasan independen, dan tindakan hukuman muncul sebagai aspek yang sangat diperlukan dalam penerapan Sistem Keadilan Pemilu yang efektif, yang penting untuk membatasi pelanggaran eksploitasi data pribadi dan mendorong praktik pemilu yang akuntabel.

Kata Kunci: Pemilu, Sistem Peradilan Pemilu, Partai-partai politik

INTRODUCTION

General elections, a cornerstone of democracy, demand protection against any oligarchic interests that threaten national stability (Berger, 2017). They represent a pivotal moment in determining the trajectory of a country or region, entrusting leadership roles to individuals capable of steering the nation effectively. Serving as a mechanism for legitimizing power, elections necessitate voters' discernment in selecting leaders who align with their aspirations (Malhotra, 2016). Several essential indicators characterize meaningful elections. These include fostering competitiveness devoid of monopolistic or oligarchic influences, conducting elections periodically by clear legal provisions, ensuring inclusivity and

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equality, refraining from coercion that might impede individuals' freedom to choose, and upholding independence and impartiality in the election process.

The regulation of general elections is stipulated in Law No. 17 of 2017, particularly regarding the threshold for political party participation elucidated in Article 173, paragraph (3). This section delineates the prerequisites for political parties to engage as election participants, a provision contested by newer political entities citing discriminatory treatment compared to long-standing parties. Established parties hold an advantage due to their fulfillment of criteria outlined in the law, contrasting with newer counterparts still in the developmental phase (Law Number 7 of 2017 concerning general elections).

In light of these challenges, the establishment of an electoral justice system becomes imperative to ensure fair elections by the law. Surbakti, Supriyanto, and Santoso (2008) underscores the significance of electoral justice as a crucial component in realizing democratic elections, alongside other vital elements such as safeguarding the rights of election participants and ensuring the integrity of election organizers (Mubarok & Al Hadad, 2021). Electoral justice encompasses comprehensive coverage of all election stages, ensuring the smooth and equitable progression of processes, encompassing both systemic and procedural facets. Its primary objective is to forestall and address prolonged election disputes, which pose significant challenges to resolution. While these provisions do not guarantee flawless execution of processes, they serve as preemptive measures to mitigate potential fractures within society, safeguarding the unity painstakingly maintained thus far. Concerns arise over the potential perpetuation of flaws within the electoral system and arrangements, potentially seeding future election controversies and compromising the quality of electoral processes and outcomes.

According to IDEA, electoral justice hinges on three indispensable elements: the prevention, resolution, and provision of alternative resolutions for election disputes beyond designated mechanisms. Effectively realizing electoral justice entails adept management of both criminal and non-criminal dispute prevention or resolution before the electoral proceedings (Joseph & McLoughlin, 2019). As the 2024 election preparations unfold, political parties engage in competition to attract members, a crucial step toward meeting the criteria for qualifying as election participants as outlined in Article 173, paragraphs (1) and (2). How political parties recruit members varies depending on their respective characteristics. However, challenges arise when certain political parties engage in widespread exploitation of individuals' data, disregarding the potential impacts and consequences faced by individuals who unknowingly become party members.

Evidence of extensive exploitation of personal data by several political parties is apparent through the mass registration of members in the Political Party Information System (SIPOL). Moreover, victims of this exploitation extend beyond civilians to include officers of BAWASLU and KPU, as demonstrated during the administrative verification process for political parties participating in the 2024 general election (Rosyidi et al., 2022). The exploitation of personal data is highly detrimental to society, impeding individuals' activities and interests, particularly in administrative matters due to their party membership status. This is corroborated by a provision from the KPU indicating that failure to report personal data exploitation implies tacit acceptance of such practices. Legal incidents have arisen where victims of personal data exploitation have not received adequate legal protection. Remedies are typically limited to returning the personal data to the affected individuals. Consequently, Bawaslu handles complaints and provides recommendations to the KPU, which then imposes administrative sanctions on political parties suspected of exploiting personal data by invalidating the affected personal data during the party's administrative verification. The Election Law currently lacks provisions addressing the legal liability of political parties for exploiting personal data. Addressing these issues necessitates legal protection for the

community and efforts to enhance public trust in political parties, as the exploitation of personal data undermines public confidence in the electoral process and its integrity.

RESEARCH METHOD

The research approach outlined in this study emphasizes the Empirical Yiridis method (Qamar et al., 2017), chosen for its comprehensive examination of legal provisions alongside societal phenomena. By actively engaging in legal research and juxtaposing legal principles with societal realities, this approach aims to uncover factual evidence to address prevailing issues. This method is particularly suitable for scrutinizing the exploitation of personal data by political parties in the context of the 2024 election, as it seeks to bridge the gap between societal ideals and legal safeguards.

The subject and object of the research encompass various entities involved in the electoral process, including political parties, the General Election Commission (KPU), and the Election Supervisory Agency (BAWASLU). The research focuses on examining safeguards, legal remedies, and the concept of legal liability concerning the misuse of personal data by political parties. By delving into these aspects, the study aims to provide insights into enhancing data protection measures within the electoral framework.

Data collection involves both primary and secondary sources. Primary data is gathered through structured interviews with stakeholders such as political party representatives, KPU officials, and BAWASLU informants. Secondary data is collected through library research, encompassing legal documents, journals, books, and other relevant materials. This comprehensive approach ensures a thorough analysis of the research subject from multiple perspectives.

To ensure the accuracy and credibility of the data, the researcher employs triangulation techniques, contrasting interview data with prior observations and comparing the contents of relevant documents with interview outcomes. By triangulating data sources, the study enhances data validity and reliability, minimizing the risk of manipulation or bias. The analytical method involves qualitative analysis, which entails describing and interpreting the data to gain a comprehensive understanding of the research findings. Through these rigorous methods, the study aims to provide valuable insights into the legal and societal implications of personal data exploitation in the electoral context.

RESULTS AND DISCUSSION

The Concept of Electoral Justice is the Realization of Ideal Elections

Justice plays a crucial role in the conduct of elections. According to the IDEA framework, Electoral Justice involves ensuring that all election procedures align with established legal norms and providing protection for the voting rights and freedoms of those involved in the electoral process, along with offering legal recourse consistent with existing norms (Stephanopoulos, 2014). In line with this framework, mechanisms and resources must be in place to uphold Electoral Justice, including measures for preventing, resolving, and offering alternative solutions for election disputes outside of predetermined channels. This encompasses rectifying election fraud through the electoral challenge system and imposing sanctions, both criminal and administrative, on individuals engaged in fraudulent activities (Stephanopoulos, 2014).

IDEA emphasizes the importance of comprehensive and binding legal instruments and election dispute resolution mechanisms as measures of justice. While electoral justice traditionally focuses on procedural formalities aligned with legal norms, it's crucial to acknowledge that not all legal norms meet

ethical criteria. Thus, there's a need for comprehensive reforms to ensure electoral justice aligns with ethical principles and norms.

In contrast, Hans Kelsen's (1973) concept of justice is rooted in the compatibility between positive law and legislation. As long as actions conform to existing statutes and regulations, they are deemed just. In the electoral process, justice is not merely a fundamental component but also necessitates legal safeguarding to ensure community protection. Ali (2022) articulated that legal protection pertains to safeguarding individuals' rights enshrined in law, particularly when those rights are infringed upon by others, with the law serving as a mechanism for ensuring such protection.

Legal protection extends beyond addressing human rights violations to encompass governmental actions, both repressive and preventative, aimed at safeguarding the community's rights, as noted by Ali (2022). The concepts of justice and legal protection serve as the foundational framework for this research, as issues arise concerning regulations perceived as unjust to certain groups. Consequently, individuals may act outside established norms, leading to the exploitation of personal data, thereby highlighting causal links within electoral regulations.

Election Strategy in Protecting Election Participant Data

Implementing an electoral justice system represents a proactive measure to safeguard personal data throughout the registration, verification, and determination phases of political party participation in the 2024 election (Lubis et al., 2023). This system is designed to ensure that the entire electoral process, including stages involving personal data, is conducted transparently, fairly, and by the law. Transparency is paramount in the registration process for participating political parties. The electoral justice system aims to guarantee that every step of this process is visible to the public and stakeholders. This entails conducting each stage, from gathering personal data of potential candidates to the verification process, openly (Muttakin et al., 2021). Information of political party registration criteria and requirements must be readily accessible to the public.

Oversight plays a crucial role in ensuring transparency. Bodies such as Bawaslu, NGOs, and concerned citizens must have the ability to monitor the registration and verification stages to ensure that personal data is treated with respect and not exploited. Various platforms and media outlets can be utilized to keep the public informed about developments in the process. The electoral justice system contributes to maintaining the protection of personal data by granting data owners the right to pursue legal recourse in cases of data misuse (Muttakin et al., 2021). This serves as a deterrent for electoral bodies and political parties, compelling them to adhere to data protection regulations and handle personal data with utmost care. In instances of privacy violation or unauthorized use of personal data, affected individuals or groups have recourse to report such incidents to authorities like the KPU and Bawaslu for investigation. Should resolution prove elusive, affected parties can escalate the matter to the judiciary, ensuring robust legal protection for those aggrieved by the misuse or unauthorized disclosure of their data.

Within the electoral context, recognizing human rights and privacy stands as a fundamental aspect of the electoral justice system (Muttakin et al., 2021). This necessitates the respectful and protective treatment of the personal data of political party members and candidates. Safeguarding personal data is imperative to prevent its misuse for political or commercial purposes without explicit consent. Upholding privacy rights entails a steadfast commitment to respecting individual rights through the formulation of policies and practices prioritizing privacy and individual control over personal data (Nandy, 2023). This

includes the establishment of stringent ethical guidelines for political parties in handling the personal data of their members.

Integral to the electoral justice system is the inclusion of an effective and impartial dispute resolution mechanism. This serves to prevent conflicts arising from breaches of personal data in the electoral sphere (Laili & Afandi, 2023). In instances of disputes concerning personal data, the KPU and Bawaslu serve as forums for reaching equitable and enduring resolutions. The presence of a dispute resolution mechanism instills confidence in the electoral system, assuring election participants and the general public that institutions are equipped to objectively address personal data breaches. The electoral justice system fosters the formulation of rigorous guidelines and regulations concerning the protection of personal data in elections. This encompasses directives on the management and secure storage of personal data, as well as protocols for data deletion post-election, accompanied by sanctions for violations committed by political parties or electoral bodies.

In the realm of political party registration, these guidelines offer clear directives on the treatment of personal data belonging to potential candidates and party members, alongside prescribed actions in the event of potential data disclosure or misuse risks (Di Minin et al., 2021). Establishing a robust and effective electoral justice system is paramount to upholding election integrity and safeguarding individuals' privacy. Such measures contribute to cultivating a safer and more trustworthy political landscape for election participants and the public alike. Therefore, policies and institutions supporting a robust electoral justice system are crucial in safeguarding the right to privacy within the political sphere.

Profiteering of Election Participant Data and Its Impact on Election Results

The unethical practice of harvesting personal data from election participants involves certain parties utilizing voters' personal information for their purposes, often without consent or beyond the bounds permitted by law (Rhum, 2020). This practice entails gathering personal details such as names, addresses, dates of birth, and voter ID numbers from various sources, including voter registration records intended solely for electoral purposes. The harvesting of election participant data poses significant threats to individual privacy and the integrity of elections (Andini et al., 2023; Septiadi, 2023). Exploited personal data may be leveraged to target voters with political messaging that contradicts their beliefs, potentially swaying election outcomes unfairly. Moreover, the illegal sharing of voters' data with third parties poses grave risks to data security. Efforts to combat data exploitation entail stringent monitoring of access to voter data, implementation of rigorous privacy policies, and robust law enforcement against violations of personal data laws. Public and voter awareness regarding the dangers of data harvesting is also crucial for safeguarding election privacy and integrity.

To prevent the exploitation of election participant data, several measures can be implemented (Laili & Afandi, 2023):

Firstly, it is imperative to establish comprehensive regulations and laws governing the collection, utilization, and protection of voters' data. These regulations should prescribe stringent standards for the permissible use of voter data, along with severe penalties for infractions. Transparency plays a pivotal role in deterring data exploitation. Political parties, electoral bodies, and data collectors must furnish voters with transparent information regarding the utilization of their data and its intended purposes. This includes obtaining written consent before utilizing voter data.

Additionally, bolstering data security measures is crucial. Voter data should be stored securely, with access restricted to authorized parties only. Regular updates to data security systems are essential to

mitigate the risks of data breaches or misuse. Providing training to election officials and campaign personnel on the significance of data privacy and adherence to pertinent regulations is another effective approach to preventing data exploitation. Raising awareness about the perils of data harvesting and promoting practices to mitigate such risks is imperative for protecting voters' interests.

The next step involves understanding the importance of audits and regular monitoring to oversee the utilization of voter data. This endeavor aims to verify compliance with relevant regulations and detect any infractions that may occur. Establishing easily accessible and secure reporting mechanisms for data breaches is equally essential. Such measures enable voters and concerned parties to report violations to the appropriate authorities promptly.

Enforcement actions against data exploitation necessitate the implementation of stringent sanctions to serve as effective deterrents. The consistent enforcement of sanctions, whether civil or criminal, is crucial for safeguarding voters and holding perpetrators of data exploitation accountable. Achieving this requires collaboration among various stakeholders, including the KPU, Bawaslu, law enforcement agencies, political parties, and the electoral community, to ensure adherence to legal and ethical standards in elections. This collaborative effort could involve the development of joint guidelines of the use of voter data and the prevention of exploitation (Herryani & Njoto, 2022).

It is essential to recognize that preventing the exploitation of election participant data necessitates a multifaceted approach encompassing robust regulations, transparency, data security measures, training initiatives, oversight mechanisms, law enforcement actions, and inter-party cooperation. By implementing these measures, solutions can be devised to prevent and prosecute electoral violations, thereby enhancing the safety of voters' data and safeguarding elections against harmful practices.

The Role of the KPU and Bawaslu in Overcoming the Problem of Profiting Election Participant Data

Enforcement refers to the process of rectifying errors or violations to their original state. Action against the profiteering of personal data entails efforts to rectify individuals' data recorded as members of political parties or as supporters of DPD (Regional Representative Council) candidates, essentially involving the removal of individuals' data from such records (Buresh, 2021). It's important to note that actions taken may include imposing sanctions on parties found to be intentionally involved in profiteering from personal data. Building upon the previous discussion, should community data still be recorded or newly discovered to be associated with political party membership or minimum support for DPD candidates, affected parties can file complaints with election organizers, namely the KPU (General Election Commission) or Bawaslu (Election Supervisory Agency). Given the electoral context, Bawaslu is deemed more appropriate for receiving public complaints regarding the profiteering of personal data. In fact, on January 7, 2023, the Bawaslu of West Nusa Tenggara Province received reports of data profiteering from Election Supervisors related to minimum DPD voter support, while on January 28, 2023, public complaints regarding personal data profiteering in political party memberships were registered.

Bawaslu has been mandated by law to receive reports of election administration violations from the outset (Febriansyah et al., 2020). However, according to the Election Law, Bawaslu's authority extends beyond receiving reports to making determinations on election administration violations, as stipulated in Article 461, paragraph (1) of the Election Law. Therefore, Bawaslu, acting as the election supervisor at various levels national, provincial, or local is obligated to accept findings from Election Supervisors and complaints from the public regarding political party memberships or minimum voter support. Individuals

submitting complaints receive acknowledgment of receipt and/or other documents confirming that the complaint has been forwarded to the Election Supervisor for further action.

For these grievances, the Election Supervisor is mandated to verify their authenticity by conducting direct inspections concerning the exploitation of individuals' data by those who lodge complaints in Sipol or Silon and documenting the outcomes of these inspections in the Election Supervisor Supervision Report. As outlined in Article 18, paragraph (2) of Bawaslu Regulation no. 5 of 2022 regarding General Election Oversight, hereafter referred to as the Bawaslu Regulation on Election Oversight, it specifies that if the oversight results, as intended in paragraph (1), entail allegations of infractions, the Election Supervisor shall: a. propose corrective measures in the case of administrative errors; or b. record them as indications of alleged infractions. By interpreting the language of this Article, the term "or" qualifies it alternatively, allowing for both interpretations to hold equal weight, thereby enabling a choice to prioritize one action over the other (Deviana et al., 2023).

In deciding which action to take first, recourse can be made to Article 18, paragraph (4) of the Bawaslu Regulation on Election Oversight, which stipulates that if the suggested improvements are not implemented within the designated timeframe as specified in paragraph (3), the Election Supervisor will document the alleged infractions as Findings of the Election. From this provision, it becomes apparent that proposing improvements may precede the documentation of alleged infractions concerning the exploitation of individuals' data. Suggestions for enhancements resulting from initial findings stemming from public complaints and direct inspections in Sipol or Silon, as mandated in Article 18, paragraph (1) of the Bawaslu Regulation on Election Oversight, can be forwarded to the Provincial KPU or the Regency/City KPU, depending on the level of each Election Supervisor. This aligns with the sequence outlined in Article 261, paragraph (2) of the Election Law, which states that in cases where oversight uncovers intentional or negligent actions by members of the KPU, Provincial KPU, and Regency/Municipal KPU, leading to harm or benefitting DPD candidate members, Bawaslu, Provincial Bawaslu, and Regency/City Bawaslu will submit their findings to the KPU, Provincial KPU, and Regency/City KPU, respectively. By this provision, West Nusa Tenggara Province Bawaslu forwarded findings of data exploitation by Election Supervisors with DPD support on January 7, 2023, and lodged a public complaint with the West Nusa Tenggara Province KPU on January 28, 2023.

The Regency/City KPU and/or Provincial KPU are required to take action based on the preliminary findings provided by the Election Supervisor. Subsequently, the Provincial KPU and/or Regency/City KPU will forward the gathered data to the Indonesian KPU for further examination. The Indonesian KPU will scrutinize the data exploitation and, if substantiated, will declare it as Ineligible Support (TMS). Personal data previously categorized as TMS will be removed from the Election Information system and will not be recorded as political party membership or minimum support for DPD voters. In response to these findings and public complaints, the West Nusa Tenggara Province KPU acted upon suggestions for improvement by altering the status of political party memberships to ineligible and designating election supervisor data as ineligible support (Huda et al., 2023).

Should KPU officials act on the recommendations for improvements derived from the initial findings, the Election Supervisor must inform the complainants that their grievances have been addressed. However, if the recommendations for improving the initial findings are not implemented by KPU officials within the specified timeframe, the election supervisor is authorized to document the failure to address the exploitation of personal data as an indication of alleged administrative violations by Bawaslu Regulation Number 7 of 2022 concerning the Handling of Findings and Reports of General Election

Violations and Bawaslu Regulation Number 8 of 2022 concerning the Resolution of Administrative Violations in General Elections.

If the administrative handling of election violations based on decisions made by Bawaslu or Provincial Bawaslu is not acted upon, there exists a final recourse, which is to escalate the incident as a suspected election crime, as outlined in Article 520 of the Election Law. This article stipulates that individuals who intentionally fabricate or utilize forged documents with the intention of candidacy for various political positions, including members of the DPR, DPD, provincial DPRD, district/city DPRD, or candidacy for the President and Vice President, are subject to a maximum imprisonment of six years and a fine of up to IDR 72,000,000. Additionally, Article 544 of the Election Law specifies that individuals who intentionally engage in unlawful acts by falsifying voter data and lists are subject to a maximum imprisonment of six years and a fine of up to IDR 72,000,000.

Interpreting the scope of the term "every person" in these articles indicates that they can be applied to any individual who, based on evidence and facts, is found to have engaged in data exploitation (Altman et al., 2021). This applies whether the perpetrator is affiliated with political parties, prospective election candidates, or members of the public who are not part of the election organizing body. Furthermore, if election organizers are implicated in data exploitation incidents, the penalty may be increased by an additional two years of imprisonment.

Article 520 and Article 544 of the Election Law are considered as a final recourse after the submission of improvement suggestions and the documentation of suspected violations of election administration. This is primarily due to the inclusion of the term "deliberately" in these articles, which necessitates proof of intent. According to Moeljatno, intent is characterized by knowledge, which signifies a connection between an individual's mind or consciousness and their actions. Deliberation entails a closer psychological association with an action (whether forbidden or necessary) compared to negligence. Consequently, the criminal liability for an offense is significantly greater when it is committed intentionally rather than negligently. While the Criminal Code does not explicitly define intent (*dolus*), explanatory notes (*Memorie van Toelichting*) suggest that intent involves "desiring and realizing" the occurrence of an action and its consequences. In this context, intent is defined as "willing and realizing," indicating that an individual who acts intentionally must both intend and realize the action and/or its consequences. Essentially, intent denotes the will (desire) to execute an action driven by the fulfillment of desire. In simpler terms, intent in these articles can be established when efforts to propose improvements and/or document suspected violations of election administration are disregarded.

The imposition of criminal penalties in electoral matters is regarded as a last resort by the *ultimum remedium* principle in criminal law. *Ultimum medium* signifies that if a case can be addressed through alternative avenues such as civil law or administrative law, those avenues should be pursued before resorting to criminal law. Aside from being prosecuted under election criminal law, which entails reporting to Bawaslu, acts of personal data exploitation can also be subject to punishment under other statutes, such as Article 263 of the Criminal Code (KUHP), which generally pertains to document falsification, and Article 67 of Law Number 27 of 2022 concerning Personal Data Protection, which specifically addresses the misuse of individuals' data for specific purposes.

CONCLUSION

The exploitation of individuals' data by political parties engaged in electoral processes represents a regulatory oversight. The misuse of personal data from election participants poses a significant hazard to

both personal privacy and security, as well as to the integrity of the electoral process. Collaboration among political parties, election participants, and governmental authorities is imperative to safeguard personal data and uphold the fairness and security of elections. Enhancing awareness, providing education, and implementing robust cybersecurity protocols are essential strategies for averting the exploitation of personal data in democratic electoral procedures.

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