

Criminal Responsibility For Crimes Resulting From The Regional Head General Elections

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Abstract: Regional Head Elections are a fundamental manifestation of popular sovereignty at the regional level. They provide an arena for citizens to directly elect leaders who will determine the direction of regional policy. However, the implementation of Regional Head Elections in several regions is prone to fraud, which can undermine the democratic process itself. One relevant case, the focus of this research, is Decision Number 191/Pid.Sus/2024/PN.Met, involving Drs. Qomaru Zaman, M.A., Deputy Mayor of Metro City. The defendant delivered a statement that was deemed an invitation to the public to re-elect him. This case underscores the importance of effective law enforcement against violations committed by state officials in the implementation of regional elections. In this context, the role of the Prosecutor's Office becomes highly strategic as part of the Integrated Law Enforcement Center, working with the police and the Elections Supervisory Agency (Bawaslu). Criminal liability for the perpetrators of election-related crimes in this case has been applied in accordance with the principles of criminal law, specifically the principles of fault, capacity to be responsible, and legality.

Keywords: Criminal Responsibility, Elections, Regional Head Elections

1. Introduction

Democracy in Indonesia constitutes the embodiment of popular sovereignty as guaranteed under Article 1, paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which stipulates that sovereignty is vested in the people and exercised in accordance with the Constitution. The democracy practiced in Indonesia is predicated upon the values of Pancasila, particularly the fourth principle: "Democracy guided by the inner wisdom in the unanimity arising out of deliberations amongst representatives." This value asserts that popular sovereignty is exercised through mechanisms that are civilized, just, and prioritize the principle of deliberation in state decision-making processes (Badaru, 2023).

As a political system grounded in Pancasila, Indonesian democracy positions the people as the holder of supreme power in the administration of the state government. Such sovereignty is construed not merely as the right to directly determine leaders, but also as a principle directing state administration to consistently align with the interests of the people and to be conducted in accordance with the constitution (Vandamme, 2024). Consequently, Pancasila democracy possesses a more substantive dimension; specifically, it guarantees public engagement in every process of state power administration in a manner that is legitimate, constitutional, and just (Setiadi et al., 2023).

One form of implementing said popular sovereignty is through the conduct of General Elections (Pemilu) and Regional Head Elections (Pilkada) on a direct, general, free, secret, honest, and fair basis. General Elections constitute an absolute prerequisite for a democratic state to exercise popular sovereignty. Direct General Elections and Regional Head Elections are intrinsically linked to democracy wherein sovereignty resides with the people (Asnawi & Mulyana, 2018). Literally, popular sovereignty implies that supreme power lies in the hands of the people; thus, the state vests "supreme power" in the people.

Elections serve as the available instrument for society to exercise sovereignty, affording the people the opportunity to elect individuals to occupy specific political offices

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within both the legislative and executive branches of power. In the legislative branch, people's representatives sit in the House of Representatives (DPR) and the Regional Representative Council (DPD), as well as in the Regional Legislative Councils (DPRD), at both the provincial and regency/city levels. In the executive branch, leaders elected directly by the people include the President and Vice President, Governors and Vice Governors, Regents and Vice Regents, as well as Mayors and Vice Mayors (Kilapong, 2020).

Pursuant to Article 1 number 27 of the Pilkada Law, a Pilkada criminal offense is defined as "a criminal act against the provisions as stipulated in this Law relating to the implementation of the election of governors, regents, and mayors." This definition indicates two significant points: a) That the object is the implementation of the Pilkada, not merely general criminal acts; b) That its scope encompasses all actions potentially disrupting the principles of direct, general, free, secret, honest, and fair elections (luber and jurdil)

The Regional Head Election (Pilkada) represents a fundamental manifestation of popular sovereignty at the regional level. It serves as an arena for citizens to directly elect leaders who will determine the direction of regional policy. However, the implementation of Pilkada in several regions is prone to fraud, which may undermine the democratic process itself (Mokoagow, 2016). Consequently, law enforcement is required to handle criminal acts of fraud in Pilkada to realize legal certainty. In order to protect the purity of general elections, which is vital for democracy, legislators have designated a number of fraudulent acts in regional head elections as criminal offenses to guarantee that this process proceeds honestly, fairly, and with integrity; the Indonesian legal system introduces a special category of crime known as Regional head elections criminal offenses (Satria, 2019).

The regulations and requirements regarding the conduct of Regional Head Elections (Pilkada) are stipulated in Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law (Wahyudi, 2017). Provisions regarding criminal offenses, code of ethics violations, administrative conduct, and other administrative matters occurring during the Pilkada are also regulated under said Law. Law enforcement against regional head elections criminal offenses is requisite to protect the dignity and integrity of the election process.

In the implementation of regional head elections, issues are still encountered in its administration, one of which concerns the conduct of state officials. According to Law Number 9 of 2010 concerning Protocol, state officials are defined as the leadership and members of state institutions (Rosadi & Wiliandri, n.d.). Law enforcement is crucial to protect the political rights of citizens and to ensure that the democratic process proceeds in accordance with applicable regulations. The objective of enforcement regarding regional head elections criminal offenses is to protect the purity of the democratic process itself. Criminal sanctions aim not only to penalize the perpetrator but are also designed to fulfill the following functions: a) Maintain the Integrity of the regional head elections: Specifically to ensure that the election proceeds in accordance with the principles of Direct, General, Free, Secret, Honest, and Fair (Luber Jurdil). This is achieved by taking strict measures against criminal violations such as vote buying (money politics), data falsification, or intimidation, thereby preserving the purity of the election process and ensuring that the election results constitute a reflection of the people's will; b) Protect the Constitutional Rights of Voters: Specifically guaranteeing that the citizen's right to vote and to be elected is not obstructed, manipulated, or purchased; c) Provide a Deterrent Effect: Specifically preventing any party (whether voters, candidates, campaign teams, election organizers, or state officials) from committing fraud that may undermine the Pilkada results. This is executed through law enforcement functioning as a stern warning to parties possessing the intent to commit fraud, by means of clear and strict criminal sanctions.

Consequently, this framework serves to realize justice in the regional head elections, both for election participants and for voters who possess the right to obtain justice in the event of fraud during the election administration (Yardi et al., 2024).

A pertinent case constituting the focal point of this research is the matter of Court Ruling Number 191/Pid.Sus/2024/PN.Met involving Drs. Qomaru Zaman, M.A., the Deputy Mayor of Metro. In said case, the Defendant was indicted for contravening Article 71 paragraph (3) juncto Article 188 due to his attendance at a "Basic Food Program Socialization" event organized by the Metro City Social Agency utilizing Regional Revenue and Expenditure Budget (APBD) funds on September 19, 2024, three days prior to the determination of candidate pairs.

In his remarks, the Defendant delivered statements deemed to constitute a solicitation to the public to re-elect him, such as, "We both leave a good historical legacy in this Metro City, it will be even better if we are chosen again," and "Waru Comeback!! Together Us and The Winner!" The Panel of Judges adjudged that said actions satisfied the elements of a criminal offense as they were committed within a prohibited period and utilized government programs for electoral interests. Based on these considerations, the Defendant was sentenced to a fine of Rp6,000,000.00 (six million Rupiah), subsidiary to 3 (three) month of confinement.

Decision Number 191/Pid.Sus/2024/PN Metro, this study has significant theoretical and practical implications, particularly if verbal statements made by public officials in official forums are classified as a form of "action that benefits a candidate pair." Theoretically, this classification broadens the meaning of the concept of action in electoral criminal law from what was originally understood as limited to administrative decisions or the use of authority in writing, to include verbal expressions delivered in an official capacity, thereby confirming the character of Article 71 paragraph (3) of the Regional Election Law as a formal offense that focuses on the act, not the consequence. In practical terms, this has an impact on strengthening the principle of neutrality of active officials, because any verbal statement in an official public space has the potential to incur criminal liability if it contains electoral bias. The urgency of this research lies in its contribution to filling the gap in the study of criminal law in elections, which has so far focused more on administrative violations or criminal acts by election participants and organizers, but has relatively little in-depth analysis of the criminal liability of active state officials for their verbal statements. Thus, this research not only enriches the academic discourse on the limits of mens rea and actus reus in regional election crimes, but also provides an important reference for law enforcement practices to be more adaptive to forms of violations of official neutrality that are non-physical but have a real impact on the justice and integrity of local democracy.

This case underscores the necessity for effective law enforcement regarding violations committed by state officials during the administration of the Regional Head Election (Pilkada). In this context, the role of the Public Prosecution Service becomes highly strategic as a component of the Integrated Law Enforcement Center (Sentra Gakkumdu) alongside the National Police and the Election Supervisory Body (Bawaslu). Based on the foregoing background exposition, the researcher is compelled to conduct research regarding restitution rights through the writing of a scientific paper with the title issue: "Criminal Liability Regarding Regional Head Election Criminal Offenses (Case Study of Court Ruling Number: 191/Pid.Sus/2024/PN.Met)."

2. Materials and Methods

A normative approach is utilized to analyze legal provisions regulating the prohibition against state officials utilizing authority, programs, and activities to the benefit or detriment of one candidate pair, as stipulated in Article 71 paragraph (3) juncto Article 188 of Law Number 10 of 2016, as well as to examine the conflict of norms with the provisions of Articles 53 through 55 of General Election Commission (KPU) Regulation Number 13 of 2014. This approach further encompasses an analysis of law enforcement theory and criminal liability theory as the conceptual framework.

3. Results and Discussion

Criminal liability is a concept inherent to the perpetrator. Criminal liability addresses the imposition of punishment upon an offender with the intent of determining whether a suspect or defendant may be held accountable for a criminal offense that has occurred. It constitutes the determination of whether a defendant or suspect warrants accountability for said offense. According to Roeslan Saleh, criminal liability is the continuation of the objective reproach existing within the criminal act, which subjectively fulfills the conditions for punishability based on the perpetrator's conduct (Harahap et al., 2021).

An offender cannot be held liable for their faults if they possess grounds for excuse (alasan pemaaf) or justification:

- a. Grounds for Excuse: A defense that eliminates the fault of the defendant who committed the unlawful act; thus, despite the act being unlawful, they cannot be punished due to the absence of *mens rea* (guilt). The basis for excuses includes relative duress/force majeure (*overmacht*), forced defense exceeding limits (*noodweer*) and unauthorized official orders that the perpetrator believed to be valid.
- b. Grounds for Justification: A defense that eliminates the unlawful nature of the act itself, rendering the perpetrator's conduct proper and lawful.

An individual cannot be held criminally liable without the existence of fault. According to Simon, fault is defined as the commission of a criminal offense linked to the capacity for responsibility. Thus, fault exists due to the presence of the perpetrator's capacity to be responsible. According to Moeljatno, to prove the existence of fault committed by a defendant, the elements of criminal liability must include:

- a. Commission of a criminal offense;
- b. Being above a certain age and capable of responsibility;
- c. Acting with intent (*dolus*) or negligence (*culpa*);
- d. The absence of grounds for excuse.

Criminal offenses in Regional Head Elections (Pilkada) also serve to provide a deterrent effect, specifically to prevent any party (voters, candidates, campaign teams, election organizers, or state officials) from committing fraud that damages the Pilkada results. This is achieved through law enforcement functioning as a stern warning via clear and strict criminal sanctions (Seba, 2017). This aims to realize justice in the Regional Head Elections for both participants and voters.

The regulation of handling reports in Regional Head Elections is stipulated in the Law enacting Government Regulation in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law (Longsam et al., 2025). Article 134 essentially explains that the officers receiving reports of election administration violations are the Provincial Election Supervisory Body (Bawaslu), Regency/City Panwas, District Panwas, Field Election Supervisors (PPL), and Polling Station Supervisors (Pengawas TPS). Reports are submitted by Voters, Election Observers, or Election Participants. The time limit for such reporting is a maximum of 7 (seven) days from the time the election violation is known or discovered.

Reports of election violations are categorized as follows:

- a. Code of Ethics Violations by organizers are forwarded by Bawaslu to the Election Organizers Honorary Council (DKPP);
- b. Administrative Violations are forwarded to the KPU, Provincial KPU, or Regency/City KPU;
- c. Election Disputes are resolved by Bawaslu; and d. Election Criminal Offenses are followed up by the Indonesian National Police.

Following the submission of a report, if deemed a criminal matter, it shall be forwarded to the Indonesian National Police no later than 1 x 24 (one times twenty-four) hours after being decided by the Provincial Bawaslu, Regency/City Panwas, and/or District Panwas.

The stipulation of investigation time limits within Election Regulations results in a situation where any Election Criminal Offense discovered after the specified period cannot be prosecuted, thereby allowing the perpetrator to escape criminal liability. The handling of election violations is strictly limited by time; if a report exceeds this limit, it becomes expired (Dian, 2011).

Cases that lapse due to expired time limits fail to provide a sense of justice for the community. Consequently, perpetrators may evade liability. Although there are variations in reporting deadlines, essentially, the provisions regulate the same restriction the limitation of time for reporting Election Criminal Offenses.

Investigation and prosecution periods that are too brief may result in perpetrators of election crimes evading the legal process. Consequently, under certain conditions, when the police intend to investigate a perpetrator, they may lose the right to prosecute because the investigation period has elapsed (Ritonga & Gani, 2024). For instance, in a case involving two perpetrators where one flees, the police will face difficulties in handling the matter, as there is a strict time limit for handling election crimes.

Criminal Acts in regional elections also have a deterrent effect, namely preventing anyone whether voters, candidates, campaign teams, election organizers, or state officials from committing fraud that can damage the election results. This is done through legal action that serves as a stern warning to parties who have the intention of committing fraud through clear and firm criminal sanctions (FIKRI, 2010). So this can realize justice in regional elections both to election participants and to voters who have the right to obtain justice if fraud occurs in the election administration. By paying attention to these provisions, it is important to understand that the mechanism for handling election violations is not only a matter of criminal norms, but also the procedural flow that regulates who reports, to whom reports are received, and how reports are followed up. The Following is the Procedural Flow for the Settlement of Criminal Offenses in Regional Head Elections:

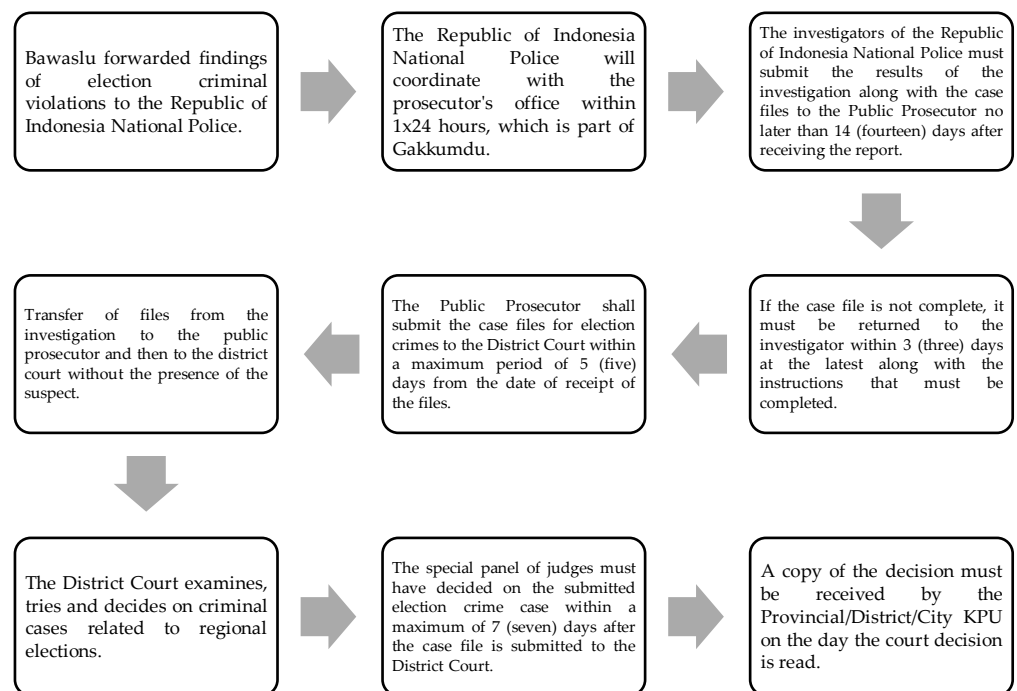


Figure 1. Procedural Flow for the Settlement of Criminal Offenses in Regional Head Elections

If the defendant wishes to file a legal action in the Regional Election Crime Case, the steps that can be taken are as follows:

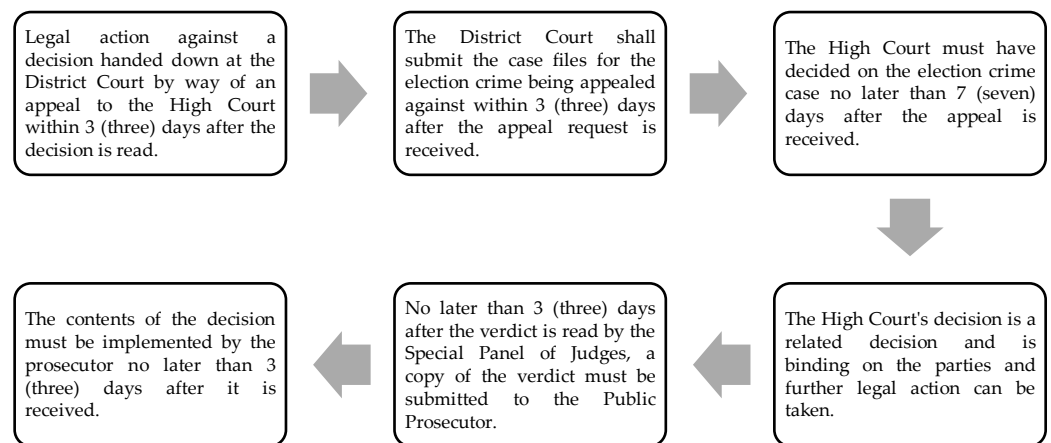


Figure 2. Legal action in the Regional Election Crime Case

In the implementation of Regional Head Elections (Pilkada), criminal liability also attaches to public officials holding structural positions. State officials, including regional heads or deputy regional heads, cannot shield themselves behind their official positions if they commit acts benefiting one candidate pair as prohibited by Article 71 paragraph (3) of Law Number 10 of 2016. The position as an official actually serves as a circumstance aggravante a condition that may aggravate their criminal liability. In this subsection, the researcher will examine the criminal liability of the Defendant Drs. Qomaru Zaman Ma Bin M. Kasiro as a Perpetrator of a Pilkada Criminal Offense in the Case Study of Decision Number 191/Pid.Sus/2024/PN.Met.

This case originated from the "Basic Food Program Socialization" activity organized by the Metro City Social Agency on September 19, 2024, in a government hall within the Metro City area. Said activity was a routine regional government program utilizing Regional Revenue and Expenditure Budget (APBD) funds. However, its implementation coincided with the campaign period for the 2024 Metro City Mayor and Deputy Mayor Election, wherein several active officials within the Metro City Government were suspected of committing actions categorizable as violations of the principle of public official neutrality as stipulated in Law Number 10 of 2016 concerning Pilkada.

During the activity, Drs. Qomaru Zaman Ma bin M. Kasiro, who at that time was still serving as the active Deputy Mayor of Metro, attended and delivered official remarks before the community beneficiaries of the Basic Food Program. In his remarks, the Defendant expressed gratitude for the community's support of the government program, but on the other hand, also mentioned and alluded to one of the Mayor and Deputy Mayor candidate pairs contesting in the 2024 Pilkada. These remarks were subsequently assessed by election supervisors as an indication of partiality by a public official toward a specific candidate pair, thereby potentially providing a political advantage to said candidate pair during the campaign period.

Regarding this event, the Metro City Election Supervisory Body (Bawaslu) received a report from the public and conducted clarification and examination of several parties, including the activity organizing committee, witnesses from the regional government elements, and the Defendant himself. From the results of said examination, Bawaslu concluded that the Defendant's actions had fulfilled the elements of a violation of Article 71 paragraph (3) of Law Number 10 of 2016, which states that "Governors, Deputy Governors, Regents, Deputy Regents, Mayors, or Deputy Mayors are prohibited from making decisions and/or taking actions that benefit or detriment one of the candidate pairs during the campaign period."

The Bawaslu findings were then forwarded to the Integrated Law Enforcement Center (Sentra Gakkumdu), consisting of elements from Bawaslu, the Police, and the Public Prosecution Service, to be followed up in accordance with applicable criminal provisions. After preliminary inquiry and investigation were conducted by Metro Police Resort investigators, the case file was declared complete (P-21) and transferred to the Metro District Prosecution Office to be subsequently submitted to the Metro District Court in the form of Indictment Number: Reg. Perkara Pid.Sus/2024/PN Metro.

In the indictment, the Public Prosecutor assessed that the Defendant, as a public official, had misused his position by committing acts capable of providing an advantage to one of the regional head candidate pairs. The Prosecutor asserted that although the activity was a government program, the presence and statements of the Defendant amidst the community during the campaign period created indirect partiality, and this clearly contravened the principle of neutrality of the State Civil Apparatus and public officials in general elections.

The case trial was then held at the Metro District Court by presenting the Defendant, witnesses from the Social Agency, event organizers, and community elements. In the trial, it was revealed that the socialization activity was financed by the 2024 APBD and should have been neutral and unrelated to practical political activities. However, facts in the trial demonstrated that the Defendant's statements in the event contained political content and could be interpreted as a form of support for one candidate who was also the incumbent in the Metro Pilkada.

The Panel of Judges assessed that based on evidence in the form of Official Reports, photo documentation, as well as witness testimonies, the Defendant's actions had fulfilled the elements of the act stipulated in Article 71 paragraph (3) juncto Article 188 of Law Number 10 of 2016, because said act was committed during the campaign period and provided a political advantage to one specific candidate pair.

After undergoing a series of examinations, the Panel of Judges then considered that although the activity was not directly intended for campaigning, the substance of the remarks and the capacity of the Defendant's position as an active public official rendered his actions unlawful. The act was also deemed to exceed official authority because it was committed outside the context of official duty implementation and had the potential to disrupt the principles of justice and neutrality in the regional democratic process.

Finally, based on legal facts and the results of proof in the trial, the Panel of Judges declared that Drs. Qomaru Zaman Ma bin M. Kasiro was legally and convincingly proven guilty of committing the criminal offense as stipulated in Article 71 paragraph (3) juncto Article 188 of Law Number 10 of 2016. The Judge imposed a light fine on the Defendant, with the consideration that the Defendant was polite in court, cooperative, and had not been previously convicted. Nevertheless, the Defendant's actions were considered to still injure the principle of neutrality of public officials and serve as an important lesson for state administrators not to utilize their authority for political interests.

In this research, the application of the elements of criminal liability may be elaborated as follows:

a. Commission of a Criminal Offense

According to Moeljatno, a criminal offense constitutes an act prohibited by a rule of law, wherein said prohibition is accompanied by the threat of criminal sanctions for whoever violates it (Rahawarin, 2022). This definition is rooted in the principle of legality as stipulated in Article 1 paragraph (1) of the Criminal Code (KUHP), namely that "No act shall be punished unless by virtue of a statutory penal provision existing prior to the commission of the act." This principle asserts that a person cannot be punished if their act was not regulated and threatened with punishment by law beforehand (SATOTO, 2024).

Regarding the case of Court Ruling Number 191/Pid.Sus/2024/PN Metro, the prohibited act is explicitly regulated in Article 71 paragraph (3) of Law No. 10 of 2016 concerning Pilkada, which states that "Governors, Deputy Governors, Regents, Deputy

Regents, Mayors, or Deputy Mayors are prohibited from making decisions and/or taking actions that benefit or detriment one of the candidate pairs during the campaign period."

The Public Prosecutor submits a requisition for sentencing, the substance of which is as follows:

- a) To declare the Defendant, Drs. Qomaru Zaman, M.A. Bin M. Kasiro, guilty of committing the criminal offense of "A Deputy Mayor using authority, programs, and activities that benefit or detriment one of the candidate pairs, either in their own region within a period of 6 (six) months prior to the date of determination of candidate pairs until the determination of the elected candidate pair," as stipulated and subject to punishment under Article 71 Paragraph (3) in conjunction with Article 188 of Law Number 1 of 2015 regarding the Enactment of Government Regulation in Lieu of Law Number 1 of 2014 regarding the Election of Governors, Regents, and Mayors into Law, in accordance with the Public Prosecutor's Indictment.
- b) To impose a sentence upon the Defendant, Drs. Qomaru Zaman, M.A. Bin M. Kasiro, of a criminal fine in the amount of Rp 6,000,000.00 (six million Rupiah), subsidiary to 3 (three) months of confinement.
- c) To charge the court costs to the Defendant in the amount of Rp 2,000.00 (two thousand Rupiah).

In the case of Court Ruling Number 191/Pid.Sus/2024/PN Metro, the Defendant's action of attending and delivering remarks at the APBD-funded "Basic Food Program Socialization" was proven to be formally unlawful because it directly violated Article 71 paragraph (3) of Law Number 10 of 2016. Materially, said act also contradicted the principles of justice and public official neutrality, as the position held should be utilized for the public interest, not to provide political advantages to specific parties.

The Panel of Judges assessed that the Defendant's act fell into the category of unlawful conduct from both formal and material perspectives because it was committed during the campaign period, utilized state facilities, and created partiality toward one candidate pair.

- a. First Element: Status of the Official The Panel of Judges assessed that the first element reading "Governor or Deputy Governor... and Mayor or Deputy Mayor" in the indicted article was fulfilled. Based on trial facts, the Defendant Drs. Qomaru Zaman, M.A. legally held the position of Deputy Mayor of Metro based on the Decree of the Minister of Home Affairs of 2021. The Judge then referred to Law Number 20 of 2023 concerning the State Civil Apparatus, which affirms that the positions of regional head and deputy regional head are included in the category of state officials. Thus, the Defendant's status legally meets the qualification as a state official as intended in Article 71 paragraph (3) of Law Number 10 of 2016. Based on this description, the Panel of Judges concluded that the first element was proven legally and convincingly.
- b. Second Element: Misuse of Authority The Panel of Judges then assessed the second element of the indicted article reading "intentionally using authority, programs, and activities that benefit or detriment one of the candidate pairs... within six months prior to the date of determination of the elected candidate pair," which encompasses two main aspects: the nature of the act (intentionally using authority, programs, and activities) and the consequence of the act (benefiting or harming one candidate pair).

First, the Judge assessed the phrase "benefit or detriment" as a formal offense, not a material offense. This means the criminal offense is considered complete at the moment the prohibited act is committed, without the need to prove the existence of a tangible consequence, such as whether a specific candidate pair actually obtained electoral advantages. Thus, the existence of intent and the committed action are sufficient to declare this criminal element fulfilled.

Second, the Panel of Judges considered that the Defendant attended the "Basic Food Program Socialization" organized by the Metro City Social Agency on September 19, 2024. Said activity was an official regional government program financed through the Metro City Regional Revenue and Expenditure Budget (APBD). The Defendant's presence at the

event was in his capacity as Deputy Mayor of Metro. Thus, the action was categorized as the use of government authority and activities prohibited by law.

Third, the Judge assessed the content of the Defendant's remarks based on video recording evidence and linguist testimony. The Defendant was proven to have delivered several sentences with nuances of solicitation and political promises, *inter alia*: "We both leave a good historical legacy in this Metro City, it will be even better if we are chosen again"; "Who dares to point a finger like this? I suit Mr. Qomaru! Dear God, it's done sir, this election is finished, it's finished, winning this"; "God willing, with us you will be better, better, better for a good Metro City"; as well as "Waru comeback, together us and the winner, suitable? Waru comeback means wanting to serve the community again." According to the Judge, these sentences substantially contained meanings of solicitation and promises potentially influencing public choice. The Judge also concurred with the linguist stating that the words "with us" functioned as an explicit invitation to the audience to choose the speaker. Therefore, the panel concluded that the Defendant's speech directly benefited one candidate pair, namely himself.

b. Above a Statutory Age and Capable of Bearing Responsibility

The capacity for responsibility (*toerekeningsvatbaarheid*) is a psychological and juridical prerequisite for a person to be held criminally liable (Sholahuddin et al., 2023). According to Moeljatno, a person is deemed capable of responsibility if they possess the ability to understand the nature of their actions and to determine their will in accordance with legal consciousness. This provision is also reflected in Article 44 paragraph (1) of the Criminal Code (KUHP), which states: "Whosoever commits an act for which they cannot be held responsible due to defective development of their mind or disturbance due to disease, shall not be punished."

This provision implies that not every person who commits a criminal act may be punished, as criminal law applies only to those who are psychically and juridically capable of responsibility. A person is deemed incapable of responsibility if they are in certain conditions that render them unable to comprehend the act committed or unable to control it. From the formulation of Article 44 of the KUHP, key points can be elucidated as the basis for determining the existence or non-existence of the capacity for responsibility: (Jumhadi, 2021)

- a) The existence of a mental defect from birth;
- b) The existence of a mental disturbance due to disease.

Thus, Article 44 of the KUHP affirms that the capacity for responsibility is psychological and moral in nature. Punishment must not be imposed upon a person who is medically or psychologically incapable of understanding their actions. Conversely, for a person who is conscious, understands the consequences of their actions, and possesses free will, criminal liability remains fully attached (Ramadhan, 2019).

In the matter of Decision Number 191/Pid.Sus/2024/PN Metro, the Defendant, Drs. Qomaru Zaman M.A. bin M. Kasiro, is deemed to satisfy the element of capacity for responsibility. The Defendant is a public official who is physically and mentally sound, highly educated, and serving as the Deputy Mayor of Metro, carrying out governmental duties and responsibilities normally. No indication was found of mental defect, mental disorder, or other psychological conditions that eliminated his consciousness when committing the act.

Furthermore, as a state official, the Defendant possesses sufficient legal knowledge (legal consciousness) to understand the prohibition as stipulated in Article 71 paragraph (3) of Law Number 10 of 2016 regarding Regional Head Elections. Said prohibition clearly forbids state officials from using their authority, programs, or activities to benefit one of the candidate pairs during the campaign period (Rahayu, 2022). The Defendant consciously attended the basic food program (*sembako*) socialization event and made politically charged statements; therefore, it can be concluded that he understood the legal significance of his actions and the potential consequences arising therefrom.

c. With Intent (Dolus) and Negligence (Culpa);

Capacity for Responsibility (Toerekeningsvatbaarheid) is a psychological and juridical prerequisite for a person to be held criminally liable. According to Moeljatno, a person is said to be capable of responsibility if they possess the ability to understand the meaning of their actions and to determine their will in accordance with legal consciousness. This provision is also reflected in Article 44 paragraph (1) of the Criminal Code (KUHP), which states: "Whosoever commits an act for which they cannot be held responsible due to defective development of their mind or disturbance due to disease, shall not be punished" (Gusmansyah, 2018).

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Consequently, the Defendant is considered fully legally responsible, because at the time of committing the act he was in a state of consciousness, possessed the ability to distinguish between right and wrong conduct, and was able to control his will. There were no circumstances that eliminated his capacity for responsibility as intended in Article 44 of the KUHP.

4. Conclusions

Criminal liability regarding the perpetrator of the Regional Head Election offense in this matter has been applied in accordance with the principles of criminal law, specifically the principle of culpability (*geen straf zonder schuld*), the principle of capacity for responsibility (*toerekeningsvatbaarheid*), and the principle of legality (*nullum crimen sine lege*). The Panel of Judges assesses that the perpetrator has committed an act satisfying the elements of the criminal offense as stipulated in Article 71 paragraph (3) in conjunction with Article 188 of Law Number 10 of 2016, because they consciously attended a government activity that potentially provided an advantage to one of the candidate pairs during the campaign period. The element of intent (*dolus indirectus*) is proven, as the perpetrator knew of the legal prohibition yet persisted in committing said act. Furthermore, there exist neither justifying grounds nor excusing grounds capable of eliminating their criminal liability. Thus, the perpetrator is proven legally and convincingly guilty and may be held

criminally liable individually. This decision affirms that holding public office cannot serve as a ground for the elimination of punishment, and instead constitutes an aggravating circumstance because the violation was committed by a state official who ought to remain neutral. In the context of constitutional democracy, this article concludes that the neutrality of public officials is not merely a matter of government ethics or moral propriety, but has been transformed into a binding legal principle with legal consequences. Decision Number 191/Pid.Sus/2024/PN Metro shows that violations of neutrality are no longer understood as mere ethical deviations from office, but are classified as criminal acts if they meet the elements specified by law. By placing the verbal statements of public officials in official forums as a form of “actions that benefit candidate pairs,” this ruling reinforces the legal construct that the use of official authority—including through verbal expression—is part of the actus reus of election crimes. This is in line with the principle of the rule of law (*rechtstaat*), which requires that every exercise of public power be subject to the law in order to guarantee justice, equality in political contestation, and protection of the people’s right to vote. Normatively, this ruling has important implications for the practice of governance during campaigns, especially for officials who are still in office. Government programs funded by the state or regional budgets must be understood as instruments of public service that must be carried out neutrally and free from electoral content, whether direct or covert. Public officials can no longer hide behind the excuse of routine duties or spontaneous remarks to justify their political involvement, because the legal standards established through this ruling demand a heightened duty of care in every action and statement during the campaign period. Thus, the normative implication is the establishment of a precedent that confirms that the misuse of government programs for electoral interests has the potential to result in criminal liability, while also serving as a preventive warning for state officials to maintain neutrality as a legal obligation for the sake of the continuity of honest and fair democracy. This section is not mandatory but can be added to the manuscript if the discussion is unusually long or complex.

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