

Legal Problems Of The Misuse Of Electronic Identification Card (E-Ktp) Data In The Indonesian General Election

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Abstract

The Electronic Identification Card (KTP-elektronik) has been developed during the implementation process of e-government in Indonesia. Consecutively, a national population database had been built to provide personnel identification services to the public using a biometric technology. Arguably, the implementation of electronic identification card programme can be seen as a breakthrough in the demographic management in Indonesia. The concept of KTP-elektronik involves the use of an Identity Number (NIK), which is applied nationally as a Single Identity Number (SIN) through the an integrated computer technology and database. The implementation of KTP elektronik aims to ensure legal certainty, to avoid private data duplication, to achieve data security and efficacy in the demographic management in Indonesia. This work applies the normative juridical method This type of research required the collection of secondary data reinforced by obtaining primary data through interviews using the non-random Probability Sampling technique. The preliminary result shows that the regulation regarding the storage and management of population data in KTP-elektronik has been in accordance with the Law Number 24 of the Year 2013 on Amendments to Law No. 23 of 2006 concerning Indonesian Population Administration. This Act regulates, among others, data on physical and/or mental disabilities, fingerprints, description of the iris, signature and other data elements that constitute a person's individuality. The Civil Authority, namely the Directorate General for Civil Registration and Management "Dukcapil" Ministry of Interior, is responsible for recording, storing, managing the access to the citizen data in the internal storage. In the context of the Indonesian Electoral Constellation (Konstelasi Pemilu), there had been many violation cases, such as abusive conduct of falsifying the citizen data to favour a particular candidate or candidates in the General Election. Accordingly, pursuant to Article 206 paragraph (3) of the Law Number 7 year of 2017, this abusive conduct had not constituted a criminal offence. However, this work argues that the abusive conduct violates Article 22E and Article 28D of the Indonesian 1945 Constitution.

Keywords: Electronic Identification Card (KTP elektronik), General Election, Abusive Conduct of Falsification of Personal Data, Law Number 7 of 2017, Article 22E and 28D of the Indonesian 1945 Constitution

1. Background

Indonesia has the most the most populous country in the region of South East Asia and possesses

steady economic growth. It is thus well positioned to play an active role in the Era of the ASEAN Economic Community (AEC), which was

established in early 2015¹. Indonesia's readiness to face the challenges of the AEC was due to a robust information technology infrastructure that held its own against a rapidly growing competition. Ridwan², as quoted by Arturo, said that Information Technology (IT) matches a demand from the industrial community where the need for fast and cheap data processing and communication facilities transcends space and time. This demand from the industrial world must be met through the creation of quality technology products.

Nowadays majority of the undertakings inevitably use and utilize the development of information technology. This reality cannot be denied because every application of this technology facilitates service to the community. According to GR Terry, there are five fundamental roles of information technology in a company, namely³: 1) Operational Function; 2) Monitoring and Control Function; 3) Planning and Decision Function; 4) Communication function; and 5) Interorganizational Function. These five functions are inseparable from the business activities of a corporation. They are all internally carried out by company management in the form of operational, monitoring, planning and decision-making functions. Supriyanto⁴, emphasized that every effort to create competitive advantage in today's very dynamic business and market situation has to make efficient use of information technology.

In the public service sector, the government has introduced to each line of public service a system called e-government. Hasniati⁵ defined the concept of e-government as the use of information and telecommunications technology for efficient and effective government

administration in order to provide transparent and satisfactory services to the public. The World Bank (World Bank) defines e-Government as follows⁶:

“E-Government refers to the use by government agencies of information technologies (such as Wide Area Networks, the Internet, and mobile computing) that have the ability to transform relations with citizens, businesses, and other arms of government.

On the other hand, the UNDP (United Nation Development Program) defines the concept plainly, as follows: “E-government is the application of Information and Communication Technology (ICT) by government agencies.”

With e-government, it is possible to have unprecedented communication and interactions between and among regional governments, between local governments and the central government, between government and society, and between government and the business world. Hence, the application of e-government in the public sector plays a very important role in realizing the government's goal of improving the quality of public services. Arguably, it assists the government carry out its duties and authority as mandated in the fourth paragraph of the 1945 Constitution. This is further clarified in the Decree of the Minister of State Apparatus Empowerment No. 63 of 2003 concerning General Guidelines for the Implementation of Public Services.

The Electronic Identification Card (KTP-el) has been developed in the course of the implementation of e-government in public services in Indonesia. Thus, a national population database has been built to provide

identification services to the public using the biometric system, so that each KTP-el owner can be connected to one nationwide database, and thus each person needs to have only one KTP-el.

The KTP-el program launched by the Ministry of Interior of the Republic of Indonesia in February 2011 had been carried out until around 2019. The proportion of the population of Indonesia that was covered in the KTP-el program have reached 97.21 percent. Only around 5.38 million Indonesians⁷ had not covered by the program. The next question is: where are the population data stored? Are the population data safe? The daily newspaper *Bisnis Indonesia* has published articles about the practice of illegal sale and purchase of KTP-el, family registration numbers and selfies on Facebook. The Director General of Population and Civil Registration, Ministry of Home Affairs, Zudan Fakhurillah acknowledged that the illegal trading of NIK, KTP data and family registration data was rampant on cyberspace⁸. At the same time, the Minister of Home Affairs identified and revealed as many as 2,158 fake blank KTP-el that were traded online in the Duren Sawit area, East Jakarta⁹.

The issuance of KTP-el is indeed susceptible to criminal acts as described above. This should be urgently addressed considering the large number of crimes committed online against personal data. As in the above-mentioned cases, the data in the KTP-el could be misused for the purpose of buying and selling votes in the General Election, including the Presidential election, in the rice fields at Jalan Bojong Rangkong, Pondok Kopi, Duren Sawit in August 2019.

In 2020, a total of 270 local elections were held, including nine gubernatorial contests, 224 elections at the regency level and 37 mayoralty races. Considering the irregularities that prevented many

the Legislative elections and the local elections. It is well known that 2019 was a very political year for the Indonesian people. Fourteen Political Parties contended for votes in a political exercise known as the "Five-Box Election" because it included simultaneously a Presidential election, an election for seats in the House of Representatives, and elections at the regency and city levels.

Before discussing how crimes and irregularities were carried out during the 2019 elections, it may be useful to first look at crimes and irregularities in the 2012 election in the Jakarta Capital Region (DKI Jakarta). The first problem involved voters who were not registered in the Permanent Voters List (DPT): voters who were not registered in the DPT were usually reluctant to go to the polling stations (TPS), even though they could still exercise their voting rights at the polling stations by using their KTP-el.

Another irregularity was the failure to distribute Form C6, which served as a voter's certificate, to the registered voters. In the end, just like voters who were not registered in the DPT, those who were not in possession of Form C6 were reluctant to vote and if they voted their ballots were vulnerable to tampering.

Ahead of the voting in the 2019 Election, many KTP-el cards were not issued by the local offices of the Directorate General of Population and Civil Registration (Disdukcapil). Proof of this was that 2,005 KTP-el cards were found

people from making use of their KTP-el, it is certain that a great many of them were not able to fully exercise their voting rights in the five electoral processes. This, of course, was inconsistent with the principles of democracy. Democracy became hostage to technical and administrative

problems of government. If the number of people who could not exercise their voting rights was indeed large, then the leaders thus elected into office did not really have the mandate of the electorate. Because of the large number of voters who were disenfranchised, elected officials lacked legitimacy. This is a very serious problem in a democratic system, because the pursuit of democracy is a matter of precision when it comes to realizing the principles of popular control and political equality.

2. Statement of Research Problem

Given this background, this work attempts to analyze the following questions: How are the storage and management of population data on KTP-el carried out in Indonesia? And how are regulations implemented regarding the storage and management of population data on Electronic KTPs in order to guard against the misuse of such data in the presidential, legislative and local elections in Indonesia?

3. Methodology of Research

This type of research is normative, whose goal is to examine the quality of a norm so that a recommendation is offered in the framework of legal reform. The starting point of the research is on the notion of ensuring the security of KTP-el data in cloud storage to prevent the misuse of population data in Indonesia's political processes. Apart from legal reference materials, primary data were also collected through direct interviews with the Director of Cyber Police Headquarters; the Directorate General of Population and Civil Registration (Disdukcapil) of the Ministry of Home Affairs; the Junior Attorney for Criminal Investigation at the Attorney General's Office and the Honorary Council of Election Administrators (DKPP). These activities were carried out to explore the concept of legal certainty in dealing with irregularities due to misuse of KTP-el data in the presidential, legislative and local elections in Indonesia.

4. Analysis and Discussion

4.1 Arrangements for storing and managing data on the population of e-KTP in Indonesia

The management of digital population data in Indonesia, which is a great improvement over the manual collection of population data, is an integral part of the e-government system. Population data management is inseparable from the

KTP-el procurement program, launched in 2011, which started from recording population data, then storing, managing and having access rights to such data.

The pertinent legislation is Law No. 24 of 2013 Amending Law No. 23 of 2006 concerning Population Administration, in which Article 13 of Law Number 23 of 2006 concerning Population Administration, states:

- 1) Every resident is required to have a Residence Identity Number (Nomor Identitas Kependudukan or NIK).
- 2) The Residence Identity Number (NIK) is valid for life and forever. The government through the implementing agency issues it to each resident after their biodata is recorded.
- 3) A Residence Identity Number (NIK) is included in every official document and is the basis for the issuance of passports, driver's licenses, taxpayer identification numbers, insurance policies, certificates of land rights, and other official documents.
- 4) Further provisions regarding the requirements, procedure and scope of issuance of other identity documents, as well as the inclusion of certificates shall be issued through government regulations.

Government Regulation No. 40 of 2019 concerning the Implementation of Law Number 23 of 2006 concerning Population Administration as Amended by Law No. 24 of 2013 on Amendments to Law No. 23 of 2006 on Population Administration provides a definition of Population Data as structured individual data and/or aggregate data that result from population registration and civil registration activities. Moreover, Population

Documents are official documents issued by the Regency/City Population and Civil Registration Service, which have legal force as authentic evidence resulting from population registration and civil registration services. Furthermore, the meaning of Electronic Identity Card hereinafter abbreviated as KTP-el is a residence identity card incorporating a chip, which is an official proof of identity issued by the district or city office of the Department of Population and Civil Registration.

Relevant to this, Presidential Regulation of the Republic of Indonesia Number 112 of 2013 concerning the Fourth Amendment to Presidential Regulation Number 26 of 2009 concerning Implementation of National Identity Cards Based on Population Identification Number stipulates that ownership of KTP-el by residents is mandatory. Residents who already had non-KTP-el identification cards were given no later than December 31, 2014 to change their identification cards into KTP-el form. This requirement was subsequently reiterated in the Minister of Home Affairs Regulation No. 61 Year 2015 concerning the Requirements, Scope and Procedure for Granting Access Rights as well as the utilization of the Single Identification Number, Population Data and Electronic Residence Identity Card (KTP-el).

In the Minister of Home Affairs Regulation 61/2015, the scope of utilization by user institutions includes NIK, Population Data and KTP-el. The NIK and Population Data have been consolidated and cleaned by the Ministry of Home Affairs, based on the results of population administration services using the Population Administration Information System (SIAM), which connects the service location with the Ministry of Home Affairs Data Center. The Ministry of Home Affairs provides permits for

population data access rights to provincial officials and officers of implementing agencies and users. Likewise, Article 9, Article 10, and Article 11 regulate the use of NIK, Population Data and KTP-el by institutions at the Central, Provincial, and Regency / City levels.

Population data are classified as personal data. The term "personal data" is defined as a collection of information that reveals a person's identity, which contains symbols, codes, numbers, letters or a combination of all of these, which indicate the characteristics of a person whose existence is very concrete¹⁰. Hence, it is important that such existence is protected because it greatly affects national stability. This is because the trust of society in the state depends on the ability of the state to always protect the privacy of its constituents. In addition, personal data such as NIK play a crucial role to the enjoyment of other individual rights, such as the right to social security, to the use of banking services, to participation in elections¹¹.

The Minister of Home Affairs has the authority to grant the right to access Population Data to provincial officials and executing agency officers and users. Officers and users are prohibited from disclosing Population Data in a way is not in accordance with their authorization. Therefore, agency officers have great responsibility in relation to storing and managing population data as part of state functions.

4.2 Criminal provisions in the Population Administration (Adminduk) Law on misuse of Population Data in KTP-el

A guarantee of security and legal certainty is important to citizens, as it is widely known that from 2011 to 2015, corruption cases were discovered in the Electronic KTP project. The project was named

KTP based on the National Population Identification Number, with the Ministry of Home Affairs as implementer, and slated for a project duration of one year and six months, with a budget of IDR 5.9 trillion. Five consortiums were contracted for the project: PT

Percetakan Negara Republic of Indonesia; PT LEN Industri (technology transfer, AFIS); PT Quadra Solution (data storage hardware and software); PT Biomorf Lone Indonesia; PT Sucofindo; and PT Sandipala Arthaputra. The aggregate contract value was USD 0.30 or IDR 4,000 for the population data of each individual, covering a total population of 257.9 million¹².

During the implementation of the KTP-el Mega Project, several consortiums that were supposed to record and store population data subcontracted the tasks to other companies without the Ministry's approval. For example, the work package for procuring blank electronics for KTP-el, which was supposed to be carried out by Perum PNRI was subcontracted to PT PURA Barutama, PT Trisakti Mustika Grafika, PT Ceria Riau Mandiri and PT Mecosuprin Grafia, PT Sinegri Anugrah Mustrika, and PT Global Priam Media. For its part, PT Percetakan Negara could not integrate the Hardware Security Module (HSM) with the Key Management System (KMS), so it did not meet the specifications for the card/device and data security system¹³.

Article 86 paragraph (1) of the Population Administration Law, provides that the Minister is in charge of giving access rights to officers at the organizers and implementing agencies to enter, store, read, modify, rectify and delete, copy data and print personal data. The Population Administration Law prohibits, apart from mega corruption such as found in the electronic KTP project, the

misuse of population data, whether by officers or by other parties.

The Population Administration Law prohibits illegal access and misuse of personal data or population documents kept in the population administration system. Specifically it prohibits the changing, adding or subtracting without authorization, the data contents of population documents. Violations of privacy and misuse of personal data in the population administration system as well as the deliberate falsification of letters and/or documents conveyed to the Implementing Agency in reporting population matters and important events are punishable with imprisonment and fines.

In addition, Article 94 of the Population Administration Law penalizes any person who, without authorization, intentionally changes, adds, or reduces the contents of data elements in population documents. The Law also penalizes unauthorized access to the population database. Moreover, it penalizes the unauthorized printing, publishing or dissemination of blank personal documents. Officials and officers of organizer and implementing agencies who help in the perpetration of such offenses are also subject to penalties.

Forms of misuse of population data in the KTP-el include data theft, data falsification, data manipulation and data duplication (cloning). According to information from the Directorate of Cyber Crime of the Indonesian National Police Criminal Investigation Agency, from January 2020 to November 2020, there were 39 cases of data/identity theft¹⁴. The Cyber Directorate identifies crimes using KTP-el tools or facilities in Indonesia by investigating and analyzing all data connected to the target's KTP-el cards, then identifying data theft crimes in cloud storage¹⁵.

Puteri Hikmawati,¹⁶ citing the results of research conducted by Politicawave, said that in the period January 28 to February 4 2019, from 1,899,881 conversations on social media with a total of 267,059 accounts, 10 hoax issues were featured in the largest number of conversations. The 10 hoax issues were the Ratna Sarumpaet hoax; government debt of USD 2 billion; 10 boxes of punched ballots; e-Toll transactions linked to debt from China; fake KTP-el from China; Jokowi accused of being a member of the Indonesian Communist Party; Jokowi using the services of foreign consultants; fake Jokowi high school diploma; 10 million foreign workers from China; and Ma'ruf Amin to be replaced by Basuki Tjahaja Purnama.

On the matter of the fake KTP-el, even a member of the Commission on General Elections (KPU), Arief Budiman, made an emphatic comment¹⁷:

"There are two reasons put forward by Arief. The first reason is that people who exercise their voting rights are those registered in the final voter list (DPT). The second reason, people who have exercised their voting rights are marked with black ink on their little finger. If you want to be a little critical, Arief's two reasons are even confusing. These two reasons for Arief emphasized that fake e-KTPs are very likely to be used to cheat Pilkada."

The misuse of the population data on the KTP-el mentioned above is an example of the theory of illegal acts (*wederrechtelijk*) in the context of criminal law. An act that is punishable is an act stipulated in statutory regulations as a criminal act, and the act must be against the law (*onrechtmatige handeling*) or contrary to the law that lives in

society (living law), unless there is justification. The criminal act has to be committed intentionally or due to negligence, and this negligence has to be expressly stipulated in the statutory regulations.

4.3 Irregularities through the misuse of KTP-el data in the Presidential, Legislative and Local Election systems as stipulated in the General Election Law

Indonesia is a country that adheres to democracy. This understanding is clearly illustrated constitutionally and fundamentally in the Preamble of the 1945 Constitution, paragraph IV which, among other things, emphasizes one of the foundations of the state, which reads: "Population led by wisdom in deliberation/representation." Article 2 paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that "sovereignty is in the hands of the people and is exercised according to the constitution." Sovereignty of the people means the supreme power is in the people, but by no means are all citizens entitled to take part in the government, the judiciary and even in the issuance of regulations. However, sovereignty of the people also means that any government action should be based on the consent of the people.

In this study, sovereignty of the people means that the people have sovereignty, responsibility, rights and obligations to democratically elect leaders who will form the government to manage and serve all levels of society, and to elect the people's representatives who will oversee the running of the government. The right to vote is a fundamental right of all citizens without exception. The state guarantees the protection of the rights of its citizens who meet the requirements to be registered as voters through legal regulations in the form of guaranteed voting

rights¹⁸.

The realization of people's sovereignty is carried out through direct general elections as a means for the people to elect representatives who will carry out the supervisory function, fulfill the people's political aspirations, and pass laws to serve as guidance for all parties in the Unitary State of the Republic of Indonesia. The General Elections (Pemilu) to elect members of the legislature (DPR) and the head of the executive (President) are the most concrete manifestations of a country that adheres to democracy. Therefore, the holding of democratic elections is an essential element in a democratic state¹⁹. Essentially an election is a process of political competition to win the support of the owners of sovereignty (the people) so that the persons thus elected will represent the people's sovereign mandate, and so that the election winners can legitimately exercise political power in the state.

Democratic elections in a democratic country are very important considering the objectives of the election itself, namely: (a) opening up opportunities for a change of government as well as a moment to test and evaluate the quality and quantity of popular support for the government in power on the basis of its successes and shortcomings, (b) as a means of absorbing the dynamics of the people's aspirations to be identified, articulated and aggregated over a certain period of time, and (c) the most important thing is to test the quality of the implementation of the people's sovereignty itself²⁰. Thus basically the right to vote is a basic form of participatory democracy²¹. Furthermore, the principle of fairness forms the basis of the regulations and implementation of elections.

Law No. 7 of 2017 on General Elections provides that the principle of fairness means that in the holding of elections, every voter

gets the same treatment, and is protected from fraud by any party. That means all citizens who meet the requirements for the right to vote must be treated equally. Moreover, Article 28D Paragraph (1) of the 1945 Constitution guarantees: Everyone has the right to recognition, guarantee, protection and legal certainty that is just, as well as equal treatment before the law. Article 27 paragraph (1) of the 1945 Constitution stipulates, "All citizens shall have the same position before the law and government and are obliged to uphold the law and government without exception."

The parameters in the democratic election standards according to Robert

A. Dahl are first, inclusiveness, meaning all adults must be included in the election; second, equal vote, meaning that every vote has the same rights and values; third, effective participation, meaning each person has the freedom to express his choice; fourth, enlightened understanding, which means that in expressing political choices accurately, everyone has a strong understanding and ability to decide their choice; and fifth, final control of the agenda, meaning that elections are considered democratic if there is room to control or oversee the course of the elections²². Thus free and fair election can be seen as the realization of democratic and just citizens' right to vote²³. Technically, a form of guarantee for voters to be able to exercise their right to vote is the availability of an accurate voters' list. This is because a requirement for voters to be able to exercise their right to vote is to be registered in the voters' list. If voters are registered in the voters' list, on polling day they are guaranteed to be able to exercise their voting rights.

The General Election Commission (KPU) for the 2001-2007 period carried out Continuous

Population and Voter Registration (P4B) not only for the holding of the General Elections for the Members of the House of Representatives (DPR), Regional Representative Council (DPD) and Regional People's Representatives Council (DPRD) and the 2004 Presidential and Vice-Presidential Elections but also for the holding of elections for regional heads and deputy regional heads since 2006. The civil registry system is voter registration based on civil registration to record names, addresses, nationality, age and identity numbers of individuals.

In other words, in this system, population data as the basis for a voter list requires data-sharing agreements. Based on this voter registration model, the Commission on General Elections (KPU) is obliged to use voter data provided by government agencies in charge of population administration. The General Election Law requires the use of this registration system not only because the Commission on General Election (KPU) is obliged to compile a Provisional Voters List from the List of Potential Voters (DP3) but also because every voter is required to have a Residence Identification Number (NIK). Therefore, the government's responsibility in providing high quality population data has implications for the determination of the voter list by the KPU.

The leakage of population data in the KTP-el as stated earlier, was a grievous threat to the principles of a democratic state, especially if the misuse of data on the population in the KTP-el was aimed at favoring individual candidates in the presidential, legislative and local elections. The Director General of Population and Civil Registration (Disdukcapil) himself has admitted that currently, population data storage is carried out in internal storage by the Ministry of Home Affairs, not stored in cloud storage by a third party. This internal storage of data, in fact, creates vulnerability to theft, forgery and duplication. It can be done by state civil servants within

the Ministry of Home Affairs. It could also have been done during the recording of the KTP-el project, which involved various consortiums and ended with the discovery by law enforcement authorities of corruption in the project.

The advantages obtained by entrusting population data to cloud storage are: First, data is stored on the server centrally. Cloud technology allows users to store data centrally on one server based on the services provided by the cloud storage service provider itself. In addition, users also do not have to bother providing infrastructure such as data centers, storage media and others because everything is available virtually. Another advantage is data security. User data security can be achieved through facilities provided by cloud storage service providers such as technology platform guarantees, ISO guarantees, personal data security guarantees, and others. Besides high flexibility and scalability, cloud technology offers flexibility with easy data access at any time or place provided the user is connected to the Internet. In addition, users can easily increase or decrease data storage capacity without the need to purchase additional equipment such as hard drives. Even one of the world's leading IT practitioners, the late Steve Jobs said that buying physical memory to store data such as hard drives is useless if data can be stored virtually via the internet.

The Population Administration (Adminduk) Law and the Electronic Information and Transactions (ITE) Law do not regulate the storage and management of population data. Ironically also, in Indonesia there is no legal provision on Personal Data Protection. In other countries, recording, storing and managing population data is regulated by a separate law, namely the Personal Data Protection Law and there is also an institution that carries out supervision, investigation, and enforcement of personal data protection provisions.

Due to this legal vacuum, misuse of population data has become a trend and is practiced widely before a general election. The theft and duplication of population data can be a massive and structured threat if the acts of leakage, theft and duplication are intended to favor particular candidates in the presidential, legislative and regional elections. In the 2019 Presidential Election, one of the charges in the lawsuit before the Constitutional Court against the election results was fraudulent acquisition of votes through the use of multiple KTP-el cards. The author believes that in the wake of simultaneous local elections in December 2020, there will be many lawsuits or election disputes as a result of the counting of invalid votes or electoral fraud using the KTP-el facility.

On the other hand, there are inconsistencies between the Population Administration Law and the General Election Law in their respective provisions concerning misuse of population data. As stated earlier, in the Population Administration Law there are penalties and fines administered on persons who commit theft, falsification and duplication of population data in KTP-el, including those committed by implementing officials and corporations. However, this is not the case in the regulations of the General Election Law. On the leaking, falsification, and/or duplication of population data for the purpose of obtaining votes in the election systems in Indonesia, the General Election Law has no clear regulation. Article 520 of the General Election Law, provides a regulation on "intentionally making fake letters or documents with the intention of using or ordering people to use, or any person who deliberately uses fake letters or documents to become candidates for candidates for DPR, DPD, Provincial DPRD, Regency DPRD, to become a Candidate Pair for President and Vice President ..."

Article 520 is addressed to

candidates who falsify their identity for purposes of the election constellation. Article 260 paragraph (3) of the General Election Law, provides that "In the event that evidence of false data is found or data deliberately duplicated by a prospective DPD member candidate in relation to the minimum voter support requirements document, the prospective DPD member candidate is subject to a reduction in the minimum number of voter support by 50 (fifty) times the finding of evidence of false data or duplicated data." In conjunction with Article 264 of the Election Law, which regulates document falsification or the use of fake documents in the administrative requirements of prospective candidates and/or candidates for DPD members, the Commission on General Election (KPU) and Provincial KPU will coordinate with the Indonesian National Police to follow up in accordance with the provisions of laws and regulations. Regarding violations such as falsifying, duplicating and/or cloning population data for illegal voting, the General Election Law has no provision stipulating these as criminal acts.

This legal inconsistency could easily lead to a situation of many electoral disputes in which candidates claim fraud as a result of the counting of invalid votes or invalid voter registration, or also because of irregularities in the voting process. As a political observer the author is concerned about such a possibility, noting that from the first time elections were held in Indonesia in 1955 until now, elections, whether presidential, legislative or local, have always been marred with fraudulent votes. For example, from June 2005 to June 2007 local elections were held in 303 regions, consisting of elections for governors and deputy governors (15 provinces); elections for regents and deputy regents (242 regencies); and elections for mayors and deputy mayors (46 cities). In the wake of these elections, 169 election results were challenged in

court, including the results of seven gubernatorial contests, 132 regency elections, and 21 mayoralty races.

The Supreme Court and the High Court generally do not accept lawsuits challenging election results. Of the 169 cases of complaints against local election results, only two lawsuits were accepted by the High Court, namely the lawsuit against the determination of the results of the local election in Depok City and the lawsuit on the results of the local elections in Mappi Regency, Papua Province²⁴. Likewise, in the 2009 Election, there were 42 instances of disputed results of elections for the House of Representatives (DPR) and the Regional People's Representative Council (DPRD), leading to 627 electoral lawsuits from all political parties participating in the election. Of these 68 were accepted, 398 were rejected, 107 were not accepted, and 27 were withdrawn. There were also six decisions to recount and two re-votes. For the presidential and vice-presidential election there were two cases, while the DPD Member Election had 28 cases²⁵.

Especially in the Constitutional Court Decision Number 20/Law XVII/2019, the deliberations were only based on Article 348 paragraph (9); Article 348 paragraph (4) Article 210 paragraph (1); Article 350 paragraph (2); and Article 383 paragraph (2). The author realizes that it is necessary to conduct a judicial review at the Constitutional Court on Article 260 paragraph (3) of the General Election Law, which is contrary to Article 1 paragraph (3) of the 1945 Constitution and Article 22E paragraph (1) of the 1945 Constitution. Another step, in response to the formulation the third problem of this research dissertation, would be crafting of regulations that take into account the provisions in Law No. 15 of 2019 concerning Amendments to Law No. 12 of 2011 concerning the Formation of Laws and Regulations. The Government is called upon to

immediately issue regulations related to the technical implementation of the use of KTP-el in the election system in Indonesia.

At least, as a step towards improving legislation, which is the basic idea of the author here, criminal sanctions that are now provided in the Population Administration (Adminduk) Law should now be included in the General Election Law, as a way of improving Article 520 in conjunction with Article 260 paragraph

(3) in conjunction with Article 264 of the General Election Law. These ideas and thoughts are based on the concept of responsive theory by Phillippe Nonet and Philip Selznick, in a work titled "Law and Society in Transition towards Responsive Law." According to Nonet and Selznick, there has always been tension between the two approaches to law, namely freedom and social control. Nonet and Selznick call the freedom approach a low-risk view of law and order. This view emphasizes how much legal stability contributes to a free society and how risky is a system based on civil authority and obligation.

From this perspective, Nonet and Selznick regard law as a very important element of social order, as it rules out other sources of control because these sources cannot be relied on to save society from arbitrariness. The original idea of repressive law is that a certain legal order could be in the form of explicit injustice. The existence of law does not guarantee justice, let alone substantive justice. A rule of law is said to be responsive if the law acts as a means of responding to social needs and public aspirations in accordance with its open nature. This type of law emphasizes openness to accepting social changes in order to achieve justice and public emancipation.

In addition, the idea of carrying out a judicial review of the Constitutional Court on Article 260

paragraph (3) of the General Election Law, which is contrary to Article 1 paragraph (3) of the 1945 Constitution and Article 22E paragraph (1) of the 1945 Constitution and/or the establishment of a government regulation on technical implementation of the use of KTP-el in the Election System in Indonesia would lead to the achievement of legal certainty. The characteristics of a rule of law include:

1. Recognition, respect and protection of human rights, which are rooted in respect for human dignity.
2. The validity of the principle of legal certainty. The rule of law aims to ensure that legal certainty is manifested in society. Law aims to realize legal certainty and high predictability, so that the dynamics of life together in society are 'predictable.' The principles embodied in or related to the principle of legal certainty are as follows:
 - a. The principles of legality, constitutionality and the rule of law;
 - b. The principle of law establishing various sets of regulations on how the government and its officials carry out government actions;
 - c. The principle of non-retroactivity of legislation, which means that before a law becomes binding, it must

- d. first be properly promulgated and announced;
 - d. The principles of justice that is free, independent, impartial, rational, fair and humane;
 - e. The non-liquet principle, in which judges may reject a case because the statutory reason does not exist or is not clear; and
 - f. The constitutional and legal guarantees on the protection of human rights.
3. The enactment of Equality (Similia Similibus or Equality before the Law), which means that in a rule of law, the Government may not give preference to certain people or groups of people, or discriminate against certain people or groups of people.
 4. The principle of democracy, under which everyone has the same rights and opportunities to participate in government or to influence government actions.
 5. The notion that government and its officials must carry out their mandate as public servants in the context of realizing public welfare in accordance with the objectives of the state concerned.

5. Conclusion

From the discussion above, conclusions can be drawn on the two

questions posed, namely relating to the provisions of law on the storage and management of population data in KTP-el in Indonesia, and the absence of provisions governing the storage and management of population data in KTP-el, both in the Population Administration (Adminduk) Law and in the Law on Electronic Information and Transactions (ITE). So far, the population data is kept in internal storage managed by the Ministry of Home Affairs Directorate General on Population and Civil Registration (Disdukcapil), not in cloud storage managed by third parties. Population data is therefore very much susceptible to misuse. So far, the leakage of population data from KTP-el could be due to malfeasance by civil servants at the Ministry of Home Affairs or it could also be due to wrongdoing by personnel of consortiums involved in the mega-project on KTP-el. In connection with the implementation of regulations regarding the storage and management of population data in KTP-el, particularly on the misuse of such data in the presidential, legislative and local elections in Indonesia, there are inconsistencies and legal gaps regarding the misuse of population data on these e-KTPs. According to the Population Administration (Adminduk) Law, this form of abuse is a criminal act, whereas according to the General Election Law, in the context of general elections using false or deliberately falsified population data to increase the votes acquired by one of the pairs of candidates, it is not a crime. The misuse of population data, such as forgery, duplication and cloning of data can only be sanctioned with a reduction of twice the number of the affected votes for the respondent candidate. That the misuse of population data in the KTP-el is not deemed an act of election crime that merits due penalties will only lead to disputes over the results of elections, including presidential, legislative and local elections. This is specially so in the wake of the simultaneous local elections in December 2020.

Such dynamics do not reflect legal certainty in the workings of a democratic state.

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