

LEGAL ARRANGEMENTS AND ELECTION OVERSIGHT DURING THE COVID-19 PANDEMIC

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Abstract

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In several regencies or cities in Indonesia, simultaneous local elections will be held. However, the implementation of the 2020 regional head elections this time is different from the previous year due to the COVID-19 outbreak that has hit the whole world. The direct election of regional heads certainly has broad implications for the Indonesian constitutional system. The purpose of this research is to explain the factors that cause violations and solutions for handling election campaign violations during the pandemic in Indonesia (Mahapatra & Plagemann, 2019; Nwankwo, 2021). This research was conducted using a normative juridical approach and data analysis using a qualitative descriptive approach. The results of the study concluded that the causes and solutions for campaign violations include substance, structure, and culture. In substance, there are regulatory weaknesses in handling election campaign violations as a contributing factor. The structure as the cause of campaign violations can be seen from the election organizers, in this case, the General Election Commissions and Election Supervisory Body, so the solution must be cooperation between parties related to the holding of regional elections. Therefore, the solution that can be done is socialization to the community and increased supervision of election campaigns conducted by the community.

Keywords: Regional Head Elections, Politics, Campaigns, Campaign Violations, Pandemic Period, Indonesia

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1. INTRODUCTION

The government's efforts to create welfare and justice for its people are carried out as stated in the 1945 Constitution of the Republic of Indonesia. The welfare and justice for the people is achieved

through general elections. It is because elections are a means of people's sovereignty to elect legislative and executive councils, both at the local and national levels, which are carried out directly, openly, freely, confidentially, honestly, and fairly (Ardiansyah, 2017). Through the general election,

the wishes of the people regarding the direction and future policies of the state can be known.

Means of people's sovereignty other than through a general election that is national in nature, there is the implementation of a direct regional head election. Direct regional head elections are a political process that is not only a political mechanism to fill democratic positions but also an implementation of regional autonomy or real political decentralization. This is as stated in the 1945 Constitution of the Unitary State of the Republic of Indonesia in Article 18 paragraph (4), which is clearly written that direct regional head elections are a means of implementing people's sovereignty in the provinces, regencies, and cities within the framework of the Republic of Indonesia based on *Pancasila* and the 1945 Constitution.

In 2020, several regions in Indonesia held regional head elections simultaneously. The simultaneous regional head elections in 2020 were different from the previous ones because, in 2020, there was a COVID-19 outbreak that hit the world. Simultaneous regional head elections are regulated by Law No.6 of 2020 concerning the Stipulation of Government Regulation in lieu of Law (*Peraturan Pemerintah Pengganti Undang-Undang, Perppu*) No.2 of 2020 concerning the Third Amendment of Law 1 of 2015 concerning the Stipulation of Perppu 1 of 2014 concerning the Election of Governors, Regents, and Mayors into law. This regulation is the response of the Indonesian state to the health hazards of its citizens due to the coronavirus pandemic, which cannot be known when it will end.

One of the stages in the regional head election is the implementation of the campaign. The campaign is important in an election because it is a process of political communication carried out by the contestants to get support and a good image from the community. Potential challengers' resources and talents significantly impact voting choices (Plescia, 2018; Simamora, 2011). The campaign can be carried out through limited meetings, face-to-face meetings, dialogues, public debates/open debates between pairs of candidates, dissemination of campaign materials to the public, installation of props, and advertisements for print mass media and electronic mass media. During this pandemic, many political parties are campaigning using social media because they can directly and continuously communicate with voters. More than traditional media, social media can amplify and mobilize political opinion and reach even the most remote geographic areas (Mahapatra & Plagemann, 2019). Moreover, today's Internet technology allows candidates to do much more than what political websites provided about two decades ago. For example, online campaigns through social media allow for the rapid creation and circulation of multimedia content. Indeed, online campaigns are now versatile in their form, be it 7-second to hour-long videos, pdf documents, websites, and mobile apps, or re-shareable gif images (Arisandi, 2019; Ahmed et al., 2017). Features that enable interaction and information sharing, such as the "share" feature on Facebook or the "retweet" feature on Twitter, allow individuals to easily share news and political information with a network of other users, making it a promising tool for democracy and participatory politics (Ahmed et al.,

2018). But with online campaigns like the classic Russian strategy of sowing political and social discord, Russia's disinformation campaign (*dezinformatsiya*) during the 2016 elections specifically promoted divisive content (Agawu, 2018; Velte, 2022). Especially during this COVID-19 pandemic, the 2020 regional head elections are not held openly campaigning but still allow limited meetings; face-to-face meetings and dialogues are limited to a maximum of 50 people attending.

The Election Supervisory Body (*Badan Pengawas Pemilihan Umum, BAWASLU*) supervises the campaign implementation in the 2020 regional head elections in accordance with the health protocol. However, several violations occurred during the 2020 regional head election campaign. Thus, the authors are interested in conveying material regarding the violation of the regional head election campaign during the pandemic period in Indonesia, which includes two problem formulations, namely:

1) *Why do obstacles arise in the implementation of the regional head election campaign during the pandemic period in Indonesia?*

2) *What are the solutions to the obstacles to the implementation of the regional head election campaign in Indonesia that occurred during the pandemic?*

Based on the background description above, this research intends to identify and explain problems regarding regional head election violations during campaigning. So that the problems reviewed by the author do not deviate from the subject matter of the discussion, the authors limit the problems in this study, namely the form of violations and the campaign model in the implementation of regional head elections.

This article focuses more on the violations of the regional head election campaign during the pandemic period. It is different from the article on violations of democratic standards during COVID-19 because the scope is wider and does not focus on the regional head election campaign, even though they both show violations of democratic standards (Edgell et al., 2021; Djuyandi et al., 2019). In addition, Ichsan Kabullah and Fajri (2021) focus more on regional head elections in West Sumatra, while this article is broader focusing on regional head elections in Indonesia. Grauvogel (2016) describes the causes of violations of the presidential, parliamentary, and regional election campaigns in Malawi, while this article focuses on Indonesia.

The structure of this paper is as follows. Section 1 is an introduction section. Section 2 reviews the relevant literature. Section 3 analyzes the methodology used in the research. Section 4 presents the results and discusses factors causing the violation of the regional head election campaign during the pandemic and solutions to the obstacles to the violation of the regional head election campaign during the pandemic. Section 5 is the conclusion obtained from the research.

2. LITERATURE REVIEW

The campaign is one of the important stages in holding elections; at this stage, there is an interaction between contestants and voters (Fatimah, 2018). In the current condition of the COVID-19 pandemic, certainty regarding

implementation, especially regarding certainty related to campaigns that remain within the corridors of the health protocol, is also very necessary. This research attempts to review regulations related to organizing campaigns during a pandemic. This research was conducted using legal research methods, also referred to as empirical legal research (Susanto, 2013). Awareness of the importance of democracy for citizens today is very important. It can be seen from the participation of the Indonesian people, both from the electorate and those elected in implementing general elections held by the central government and local governments (Wardhani, 2018; Asshiddiqie, 2006).

Political campaigning is an education in society that aims to educate voters to become citizens who have awareness in determining political leaders based on rational rather than emotional behavior. In influencing voter behavior, sometimes campaign strategies are carried out through mass gatherings or visiting directly can also be through media such as billboards, posters, flags, pamphlets, advertisements, or mass media, both print and electronic (Chandra, 2014; Djuyandi et al., 2019). It is carried out responsibly. The only political right that people still have is to vote during general elections. According to Tanjung et al. (2020), political culture is the whole of views with politics, such as norms, patterns of orientation towards politics, and views of life in general (Arifin, 2011). Changes in understanding of political campaigns have given rise to new approaches, one of which is political marketing, in other words, political marketing. Furthermore, if we try to understand through an emic approach, then political marketing is understood as the process of selling something so that other people are interested in buying it. If something is related to politics, then the emic understanding of political marketing is a process of selling ideas, ideas, and programs, including self-image, so that other people buy it (Nasution, 1990).

The government's efforts in the reform era should be appreciated, especially its determination to revive the principles of democracy in Indonesia. This commitment is demonstrated by the decision to adopt the direct local election mechanism (*Pemilihan kepala daerah, pemilukada*), which is then regulated in the Law of the Republic of Indonesia No. 7 of 2017 concerning General Elections. This is one step in the policy process of democratization in Indonesia. So that the impetus to carry out direct post-conflict local elections is partly because the democratic mechanism indirectly does not guarantee that people's aspirations are accommodated in choosing their candidate leaders (Simamora, 2011; Pitoska et al., 2018; Saraswati, 2014). But on the other hand, there are crucial problems that are found in almost every region, namely the problem of the stages in the post-conflict local election, namely at the campaign stage. Campaign activities are stages given to all pairs of candidates to socialize the vision, mission, and programs as well as to convince the masses of supporters. In this case, the delivery of messages from each pair of the governor and deputy governor candidates can be delivered in various forms ranging from posters, banners, billboards, speeches, and discussion advertisements, to leaflets (Chandra, 2014).

In this campaign, several stakeholders played a role, including the Regional General Election Commission (*Komisi Pemilihan Umum Daerah*, KPUD), political parties, the public, the mass media, the Supervisory Committee, and of course, the local government (Abdullah, 2011). However, the problem at this campaign stage is the many forms of violations in money politics or other black campaigns. In fact, the Law of the Republic of Indonesia No. 7 of 2017 concerning General Elections states that the election campaign is carried out for 21 days and ends until the start of the cooling-off period, which is three days before the voting is held. A campaign like this certainly involves many parties, both from the community as the successful team and from the candidates who nominate or are nominated. In this case, the authors found the fact that several governors and deputy governor candidates in various regions experienced violations during their campaigns (Arisandi, 2019).

During this campaign period, contestants try to influence voters in all kinds of ways, starting from substantive ways by offering work programs, work plans, and issues that will answer problems in society in instant ways that are not elegant through the money approach. Contestants compete to attract people's votes in various modes, which in practice, try to offer money in various forms as compensation for the votes they have to give at the time of voting later (Sjafrina, 2019). It, of course, creates the impression that there is injustice in the campaign system that was carried out during the regional head elections. Furthermore, this matter cannot be separated from the role of the KPUD and the Election Supervisory Committee, which should carry out maximum supervision not only when there is vote inflation and money politics fraud, but at the campaign stage, they should be given the same space to oversee every campaign carried out by candidates for governor and deputy governor in accordance with the provisions and regulations in force (Arifin, 2011).

Contests like this make money a very reliable factor in attracting voters. Candidates with abundant capital have a greater chance of attracting public support. This condition forces candidates to compete to raise funds as much as possible and then becomes an entry point for illicit funds trying to invest their shares, which has the potential to disrupt the policy-making process and decisions of elected officials later (Wardhani, 2018).

The legal umbrella regarding the regulation of campaign funds continues to be evaluated from time to time by the government as a policymaker, and changes are often made in the regional head election laws that are issued. However, on the other hand, the many public responses to the reality of campaign finance arrangements indicate that there is still high public dissatisfaction with the regulations that have been in effect so far (Jatmiko, 2014). According to Surbakti (2015), the regulation of campaign funds in Indonesia not only lacks clear and focused objectives, but the arrangements made contain a lot of legal uncertainty many aspects are not regulated, one arrangement conflicts with another, and arrangements contain double interpretations), but also the implementation and enforcement of these

regulations are very weak. This condition causes frequent misunderstandings and suspicions among *pemilukada* stakeholders (Osemeke et al., 2020).

In line with the public's doubts, several studies and research conducted to see the implementation of campaign finance arrangements in the field have also yielded different results than expected. The campaign finance problems above should not occur when the implementation of campaign finance regulation policies pays attention to the content and context of the policy, as stated by Grindle (1980). Grindle (1980) states that the effectiveness of policy implementation is influenced by policy content which consists of interests affected by the existence of the program, the types of benefits to be generated, the range of changes desired, the position of decision-makers, program implementers, the resources provided, and the context policies consisting of power, interests, and strategies of the actors involved, characteristics of institutions and authorities, compliance, and responsiveness of implementers.

3. RESEARCH METHODOLOGY

This research departs from phenomena that exist in society and then seeks legal basis and expert opinion related to the practice of applying positive law issues in society. In this case, the main problem is finding causes and solutions to violations in regional head election campaigns. This research is a qualitative analytical descriptive study. The methodology used in this study uses normative juridical methods. In essence, the normative juridical method is used to study law which is conceptualized as a norm or rule that applies in society and becomes a reference for everyone's behavior. The data sources used in this study are primary data obtained through interviews with key informants, namely members of the General Election Commission of the Republic of Indonesia and members of the Election Supervisory Board of the Republic of Indonesia. To increase the validity of the data in this study, a cross-test of data was also carried out through triangulation.

4. RESULTS

4.1. Factors causing a violation of the regional head election campaign during the pandemic

Sovereignty in the hands of the people is one of the characteristics of a democratic state system. Indonesia, as a democratic country, has made this happen by holding general elections. General elections are divided into national elections and regional elections. The national general election is the election of the president, members of the legislature, and the Senate. Meanwhile, the regional general election is the implementation of the election of regional heads and deputy regional heads. Get an idea of strengthening the democratic system at the local level, one of them being through simultaneous local elections in the implementation of elections, whether presidential, legislative, or regional head elections are usually prone to violations or fraud.

One of the stages in the general election that has a great potential for the occurrence of many violations is the implementation of the campaign. Election campaigns are activities of election participants to convince voters by offering the vision, mission, and programs of election participants. The implementation of the general election is not only a consequence of separating people into winning and losing camps, the campaign that precedes election day also affects the way people view election justice. Seeing active and competitive campaigns encourages positive perceptions of the legitimacy of elections (Wolak, 2014). Election campaigns should be carried out with the principle of responsibility and are part of public political education.

In 2020, the COVID-19 pandemic was happening all over the world, including in Indonesia. In 2020, it was also scheduled to hold regional head elections in several cities/districts throughout Indonesia simultaneously on September 23, 2020; however, the 2020 simultaneous regional head elections have been officially postponed to December 6, 2021, due to the COVID-19 pandemic. The postponement was made in light of the spread of COVID-19, which has raised fears that holding in-person voting will further spread the virus, which creates a further burden on voters, and therefore voter turnout is likely to decline (Nwankwo, 2021). The following are regional data that will take part in the 2020 simultaneous regional head elections.

During the campaign stage during this pandemic, it was carried out for 71 days, from September 26, 2020, to December 5, 2020. The General Election Commission (*Komisi Pemilihan Umum*, KPU) divided the campaign period for regional head candidate pairs into three phases. The campaign's first phase is limited meetings, face-to-face meetings, dialogue, dissemination of campaign materials to the public, installation of props, and/or other activities. In the second phase, the KPU will hold a public or open debate between pairs of candidates as part of the regional head candidate campaign. In the final phase, the KPU will open a campaign through mass media, print, and electronic, on November 22, 2020, to December 5, 2020. Then, the quiet period and the cleaning of the props will be held on December 6-8, 2020. Voting and vote counting at polling stations will be held on December 9, 2020.

The campaign for regional head elections during the current COVID-19 pandemic is certainly different from the implementation of regional head election campaigns in previous years. The rules for implementing the regional head election campaign in 2020 are getting stricter, one of which must pay attention to health protocols according to government regulations. Although several rules have been determined regarding the implementation of the campaign in accordance with government recommendations, violations can occur. Election campaign violations are a form of election administrative violations. Election administration violations are violations of the provisions of the Election Law No. 7 of 2017, which are not electoral criminal provisions, and of other provisions stipulated in KPU regulations. In several areas throughout Indonesia, several violations occurred during the campaign. The occurrence of

several campaign violations can be analyzed based on a legal system approach. A legal system is a unit consisting of elements that interact with each other and work together to achieve the goals of the unit. The legal system consists of three sub-systems, namely the legal substance sub-system, the legal structure sub-system, and the legal culture sub-system. The legal substance includes legal material, which includes statutory regulations. The legal structure concerns law-implementing institutions, the authority of institutions, and personnel (law enforcement officers). Meanwhile, legal culture concerns the behavior (law) of the community. These three elements influence the success of law enforcement in a society (state), which synergize with each other to achieve the goal of law enforcement itself, namely justice.

If viewed from the legal substance, the factor causing campaign violations is the absence of regulations regarding the handling of violations, such as the rules regarding the imposition of sanctions and the time limit for handling violations of the regional head election. In the case of violations during the campaign, the election law only states that the report which constitutes a violation is submitted to the KPU. At the same time, there are no clear rules regarding how the KPU resolves this administrative violation and how long it will take the KPU to resolve it. In contrast, in the case of the settlement of election crimes, the law provides rules or mechanisms ranging from reporting, investigation, and prosecution, to trial (at least the time limit is determined), as well as the settlement of election crimes which also provides rules regarding time limits, even the stages of dispute resolution.

When viewed from the legal structure, there are weaknesses in the organizers of the regional head election, in this case, the KPU and the BAWASLU, which seem to lack coordination. If violations are found during the regional head election campaign, KPU, provincial KPU, and regency/municipal KPU are authorized to follow up on reports from the BAWASLU, provincial Election Oversight Committee (*Panwaslu Pengawas Pemilu*), and regency/municipal Election Oversight Committee according to their level. Specifically, online campaigns, advertising platforms, and political advertisers should provide information to governments, researchers, and civil society for audits and tools to monitor advertising campaigns efficiently as a key component of democratic oversight (Crain & Nadler, 2019).

Reports of campaign violations can also be submitted by Indonesian citizens who have the right to vote; election observers; or general election contestants in writing to the BAWASLU, provincial Election Oversight Committee, regency/municipal Election Oversight Committee, sub-district Election Oversight Committee, field election supervisors, and overseas election supervisors, including the name and address of the reporting party; the reported party; the time and place of the incident; and a description of the incident. However, in reality, reports of violations during the campaign, which should have been resolved quickly, could not be carried out because the process of forwarding reports from the election supervisor to the KPU/KPUD was not immediately processed, and

decisions and actions were given. It is because in addition to not specifying the types of violations explicitly and their sanctions by law, this also occurs because there is no special unit in the KPU/KPUD that receives, processes, and imposes administrative sanctions so that the results of supervision from the BAWASLU cannot be followed up quickly.

In terms of legal culture, the factors that cause campaign violations are the culture of the participants in the regional head election and voters, such as campaigns outside a predetermined schedule, the actions of the campaign team of pairs of candidates that harm other pairs of candidates, even the neutralization of the State Apparatus is not implemented as intended. It should be, and of course, what happens a lot is that violations of Health protocols are ignored by both regional head election participants and their voters. Participants and voters in the implementation of the general election are very influential, especially during the campaign period.

4.2. Solutions to the obstacles to the violation of the regional head election campaign during the pandemic

Violations that occurred during the regional head election campaign during this pandemic solutions or solutions should be found to address all the violations that occurred. When viewed from the legal system related to the causes of violations of the regional head election campaign, several solutions can be found. In terms of legal substance, there is a regulatory weakness in handling violations of the regional head election campaign as a causative factor, so the solution is to formulate a new Regional Head Election Law, which regulates at least related to handling violations of the regional head election campaign as regulated regarding the imposition of sanctions and deadlines for handling violations of the campaign.

As for the legal structure as the cause of campaign violations, it can be seen from the effectiveness of the respective authorities between the KPU and the BAWASLU as the organizer of the regional head election, which has not been effective in overcoming campaign violations that occur due to lack of coordination, so the solution must be cooperation between parties involved in the implementation of the regional head election so that violations that occur are quickly resolved. The factor causing the violation of the regional head election campaign is seen in terms of its legal culture, namely from the thoughts of the candidate pair and the team to win the regional head election, by all means, especially if there is political violence, in this case, holding power, winning it, or protesting how that power was won and involving the use of any force with the intent to harm or threaten to use violence to injure people or property involved in the electoral process, this can be prevented through outreach to the public (Garber, 2020). The gradual change in people's mindsets, starting with socialization, aims to make the public aware of the prohibition on the implementation of the 2020 regional head election campaign during the pandemic. Besides that, the solution is to increase the supervision of the regional head election campaign by the community.

5. CONCLUSION

It can be concluded that the causes and resolution of campaign violations can be seen through the legal system, namely in terms of legal substance, legal structure, and legal culture. In terms of legal substance, there are regulatory weaknesses in handling election campaign violations as a contributing factor, so the solution is to formulate a new local election law. As for the legal structure as the cause of campaign violations, it can be seen from the KPU and the BAWASLU that they have not coordinated optimally so the resolution must be in collaboration with parties related to the implementation of the regional head election campaign. Factors that cause violations of the local election campaign are seen from the legal culture,

that the thoughts of the candidate pair and the team won the local election by all means so that the solution is to socialize to the community and increase supervision of the local election campaign by the community. This research is important for the future to minimize campaign violations in the upcoming regional head elections by identifying the causes of campaign violations. The limitations of this research are in the data sources used, namely only through interviews with members of the General Election Commission of the Republic of Indonesia and members of the Election Supervisory Board of the Republic of Indonesia. It is also necessary to explore how the causes of this campaign violation are in front of the public so that the solutions obtained are more efficient.

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