

**LIMITATIONS ON THE RETROACTIVE VALIDITY OF
MATERIAL CONTENT OF LAWS AND REGULATIONS IN
INDONESIA (JURIDICAL STUDY OF THE GENERAL ELECTION
COMMISSION REGULATION NUMBER 26 OF 2018 IN THE
2019 GENERAL ELECTION OF MEMBERS OF THE
REGULATION REPRESENTATIVE COUNCIL)**

***BATASAN TERHADAP KEBERLAKUAN SURUT PADA MATERI
MUATAN PERATURAN PERUNDANG-UNDANGAN DI INDONESIA
(TINJAUAN YURIDIS TERHADAP PERATURAN KPU NOMOR 26
TAHUN 2018 PADA PEMILU ANGGOTA DPD TAHUN 2019)***

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ABSTRACT

Article 28I paragraph (1) of the 1945 Constitution which contains provisions on the principle of non-retroactivity and Article 1 paragraph (1) of the Criminal Code which contains provisions on the principle of legality, stipulates that retroactive application of material contained in laws and regulations is not permitted. In fact, there are still laws and regulations that are retroactively enforced, such as KPU Regulation Number 26 of 2018 against participants in the 2019 DPD election. Even though its implementation raises problems for election participants, the regulation remains valid and valid. The purpose of this study is to analyze the limitations of retroactive provisions on the material content of statutory regulations in KPU Regulation Number 26 of 2018. This research is a normative legal research by conducting a review of KPU Regulation Number 26 of 2018. The problem approach used is the statutory regulation approach, and the case approach. The results of the study concluded that the contents of the retroactively enforced laws and regulations are still valid and valid as KPU Regulation Number 26 of 2018. However, retroactive provisions must be regulated in a law and if they contain criminal provisions, the criminal provisions are not enforced.

Keywords: Limitations, Retroactive Behavior, Legislation.

ABSTRAK

Pasal 28I ayat (1) UUD 1945 yang memuat ketentuan asas non-retroaktif dan Pasal 1 ayat (1) KUHP yang memuat ketentuan asas legalitas, mengatur bahwa keberlakuan surut (Retroaktif) terhadap materi muatan peraturan perundang-undangan tidak diperbolehkan. Faktanya, masih terdapat peraturan perundang-undangan yang diberlakukan surut seperti Peraturan KPU Nomor 26 Tahun 2018 terhadap peserta pemilu anggota DPD tahun 2019. Meskipun dalam pemberlakuannya menimbulkan permasalahan bagi peserta pemilu, peraturan tersebut tetap sah dan berlaku. Tujuan penelitian ini untuk menganalisis batasan terhadap ketentuan diberlakukan surut (Retroaktif) pada materi muatan peraturan perundang-undangan dalam Peraturan KPU Nomor 26 tahun 2018. Penelitian ini merupakan penelitian hukum normatif dengan melakukan tinjauan terhadap Peraturan KPU Nomor 26 Tahun 2018. Pendekatan masalah yang digunakan adalah pendekatan peraturan perundang-undangan, dan pendekatan kasus. Hasil penelitian disimpulkan bahwa materi muatan peraturan perundang-undangan yang diberlakukan surut tetap sah dan berlaku sebagaimana Peraturan KPU Nomor 26 tahun 2018. Akan tetapi, pengaturan ketentuan retroaktifnya harus diatur dalam Undang-Undang dan apabila memuat ketentuan pidana maka ketentuan pidananya tidak ikut diberlakusurutkan.

Keywords: Batasan, Keberlakuann Surut, Peraturan Perundang-Undangan.

I. INTRODUCTION

Article 28I paragraph (1) of the 1945 Constitution implicitly contains provisions on the principle of non-retroactivity. The principle of non-retroactivity in general means that the provisions of laws and regulations cannot be applied retroactively or cannot be applied to events/events/actions that occurred before the regulation was enacted.¹ Rules relating to the principle of non-retroactivity or the prohibition of being retroactively enforced by a statutory regulation, namely in Article 28I of the 1945 Constitution of the Republic of Indonesia and Article 1 paragraph (1) of the Criminal Code (KUHP).² According to Wirjono, the retroactive prohibition is aimed at upholding legal certainty for the public, who should know what actions constitute a crime or not.³

¹Fetroki Romando, "Asas Non Retroaktif dan Penyimpangannya Dalam Hukum Di Indonesia", *Jurnal Hukum Unair*, 23 Mei 2007, p 9.

²Article 28I of the 1945 Constitution states that "*Hak untuk hidup, hak untuk tidak disiksa, hak untuk tidak diperiksa, hak kemerdekaan pikiran dan hati nurani, hak beragama, hak untuk tidak diperbudak, hak untuk diakui sebagai pribadi di hadapan hukum, dan hak untuk tidak dituntut atas dasar hukum yang berlaku surut adalah hak asasi manusia yang tidak dapat dikurangi dalam keadaan apapun*", and Article 1 Paragraph (1) KUHP states that "*Tiada suatu perbuatan dapat dipidana kecuali berdasarkan kekuatan aturan pidana dalam perundang-undangan yang telah ada sebelum perbuatan dilakukan*" The two Articles are Articles that contain provisions on the non-retroactive principle.

³Wirjono Prodjodikoro, *Asas-Asas Hukum Pidana di Indonesia*, Jakarta: Eresco, 1969, p 22.

In this regard, there are laws and regulations that are applied retroactively, one of which is the General Election Commission (KPU) Regulation Number 26 of 2018 concerning the Second Amendment to KPU Regulation Number 14 of 2018 concerning Individual Nomination for Regional Representatives Council Members in the 2019 legislative elections. The formation of KPU Regulation Number 26 of 2018 is a form of follow-up to the Constitutional Court Decision Number 30/PUU-XVI/2018 for a judicial review of the phrase "other work" in Article 182 letter i Law Number 7 of 2017 concerning Elections. The formation of KPU Regulation Number 26 of 2018 regarding the amendment to the previous KPU regulations has caused controversy, because the formation of KPU Regulation Number 26 of 2018 was carried out in the midst of the ongoing elections and its formation was considered not to comply with the provisions in the formation of applicable laws and regulations.⁴

The enactment of KPU Regulation Number 26 of 2018 resulted in one of the election contesting candidates whose constitutional rights were impaired by the enforcement of the regulation, who then submitted an application for review of KPU Regulation Number 26 of 2018 to the Supreme Court (MA). In its review, the Court's decision stated that it accepted some of it and stated that KPU Regulation Number 26 of 2018 still has binding legal force and is generally applicable as long as it is not applied retroactively to election participants.⁵ The provisions in KPU Regulation Number 26 of 2018 should not be retroactively applied to participants in the 2019 DPD election in accordance with the Supreme Court's ruling. However, in reality, the provisions of KPU Regulation Number 26 of 2018 remain valid and are retroactively applied to participants in the 2019 DPD election. With this enforcement, it means that retroactive application is allowed as it applies to KPU Regulation Number 26 of 2018, even though the non-retroactive principle and the legality principle prohibit its implementation. This research will discuss the limitations of retroactive effect on laws and regulations by conducting a juridical study of KPU Regulation Number 26 of 2018.

II. METHOD

This research is a normative legal research by conducting a review of KPU Regulation Number 26 of 2018 which is retroactively enforced (Retroactive) on participants in the 2019 DPD election. The problem approach used is the statutory regulation approach, and the case approach. With this approach, the author will analyze the restrictions on retroactive validity in KPU Regulation Number 26 of 2018. The technique of collecting legal materials is carried out by conducting a document study by collecting data in the form of decisions and other legal materials collected and qualified

⁴Tahengga Primananda Alfath, "Eksekutabilitas Putusan Mahkamah Agung Terhadap Pencalonan Anggota DPD", *Jurnal Yudisial* Vol. 12 No. 3 Desember 2019, pp 287-303.

⁵Supreme Court Decision Number 65 P/HUM/2018 concerning Review of General Election Commission Regulation Number 26 of 2018 concerning the Second Amendment to KPU Regulation Number 14 of 2018 Concerning the Nomination of Individual Election Contestants for Members of the Regional Representative Council.

according to their substance and relevance in accordance with the object under study.

III. ANALYSIS AND DISCUSSION

a. Applicability of KPU Regulation Number 26 of 2018

KPU Regulation Number 26 of 2018 is a regulation regarding the Second Amendment to KPU Regulation Number 14 of 2018 concerning Individual Candidacy for Regional Representative Council (DPD) Members in the 2019 legislative elections. The formation of KPU Regulation Number 26 of 2018 is a form of follow-up to the Constitutional Court Decision Number 30/PUU-XVI/2018 on the judicial review of the phrase “other work” in Article 182 letter i Law Number 7 of 2017 concerning Elections (Election Law).⁶ The ruling stated that the article a quo being tested was declared to have no binding legal force on a conditional basis, as long as the phrase “Other Work” is not interpreted to include political party functionaries.

The General Election Commission (KPU) as the organizer of the election followed up on the Constitutional Court's decision Number 30/PUU-XVI/2018 by setting one of the conditions for candidates for DPD members not to act as administrators of political parties at every level by changing KPU regulations Number 14 of 2018 concerning Individual Nomination for Members of the Representative Council The Regions (DPD) became KPU Regulation Number 26 of 2018 concerning the Second Amendment to KPU Regulation Number 14 of 2018. The formation of KPU Regulation Number 26 of 2018 was carried out in the midst of the ongoing elections and was applied retroactively to election participants for DPD members.

In KPU regulation Number 14 of 2018 concerning the Candidates for Individual Elections for Members of the Regional Representatives Council (DPD) prior to the existence of KPU Regulation Number 26 of 2018, it has not regulated the prohibition for candidates for DPD members to come from political party officials because the Election Law has not yet regulated this. It was only after the Constitutional Court Ruling Number 30/PUU-XVI/2018 that it was necessary to amend the KPU regulations governing individual candidates for DPD members.

The changes in these regulations have created a number of problems between the candidates participating in the election and the election organizers. Apart from that, it also has implications for the KPU's decision regarding the determination of the names of candidates for election contestants. As the KPU then issued an amended KPU Decree which determined 813 names of the Final Candidate List (DCT) for DPD members,⁷ previously the number of prospective DPD members who had been

⁶Article 182 letter i Law Number 7 of 2017 concerning Elections states as follows, “*Bersedia untuk tidak berpraktik sebagai akuntan publik, advokat, notaris, pejabat pembuat akta tanah, dan/atau tidak melakukan pekerjaan penyedia barang dan jasa yang berhubungan dengan keuangan negara serta pekerjaan lain yang dapat menimbulkan konflik kepentingan dengan tugas, wewenang, dan hak sebagai anggota DPD sesuai dengan ketentuan perundang-undangan*”.

⁷Election Commission Decree Number 1732/PL.01.4-Kpt/06/IX/2018 concerning Amendments to the General Election Commission Decree Number 1130-PL.01.4-KPT/IX/2018 concerning Determination of the Final Candidate List (DCT) for Members of the Regional Representative Council in 2019.

determined as the Provisional Candidate List (DCS) for the 2019 election was 947.⁸ It turned out that the changes to the KPU regulations and decisions raised problems, especially for DPD candidate members whose names were abolished because of changes in the KPU's decision regarding DCT members of the DPD. Regarding this problem, a judicial review was submitted to the Supreme Court regarding changes to KPU regulations, and submitted a request for a dispute over the election process to The General Supervisory Agency (Bawaslu) and Administrative Court (PTUN) regarding changes to the KPU decision. The results of the judicial review at the Supreme Court in the Supreme Court ruling Number 65P/HUM/2018 stated two things as follows:

- 1) Article 60A KPU Regulation Number 26 of 2018 is declared contrary to Article 5 letter d and Article 6 paragraph (1) letter i Law Number 12 of 2011 concerning Formation of Legislation (UU P3).
- 2) KPU Regulation Number 26 of 2018 is stated to still have binding legal force as long as it is not applied retroactively to 2019 DPD election participants who have participated in the stages, programs and schedules for holding the 2019 election based on KPU Regulation Number 7 of 2017.

Meanwhile, the results of the Bawaslu's examination of KPU Decree Number 1130-PL.01.4-KPT/IX/2018 concerning the Establishment of the Final Candidate List (DCT) for DPD Members in 2019, in the Bawaslu Decision Number 036/PS.REG/BAWASLU/IX/2018 stated the application was rejected in its entirety because it did not have sufficient reasons to be granted. Because the applicant did not accept the decision from the Bawaslu, a legal effort was submitted to the Administrative Court to examine the Bawaslu decision and the KPU decision. The results of the PTUN's examination of the Bawaslu Decision Number 036/PS.REG/BAWASLU/IX/2018 and KPU Decision Number 1130-PL.01.4-KPT/IX/2018, stated that the KPU's decision was null and at the same time ordered the KPU to revoke its decision, and ordered the KPU to issue a recent decision that includes the name of the applicant.⁹

The KPU as the organizer of the election chose to ignore the PTUN Decision and not respond to the Supreme Court decision as in the ruling stated that it should not be applied retroactively to participants in the 2019 DPD member election who have followed the stages, programs and schedule for holding the 2019 election. On the other hand, KPU Regulation Number 26 of 2018 regarding the second amendment to KPU Regulation Number 14 of 2018 which regulates the requirements for individual candidacy for DPD members is still retroactively applied to candidates participating in the election.

⁸Decision of the General Election Commission Number 1071-PL.01.4-KPT/IX/2018 concerning Determination of the Provisional Candidate List (DCS) of Individuals Participating in the 2019 Regional Representative Council General Election.

⁹Decision of the State Administrative Court Number 242/G/SPPU/2018/PTUN-JKT, concerning disputes over the election process examining the Bawaslu Decision Number 036/PS.REG/BAWASLU/IX/2018 and General Election Commission decision Number 1130/PL.01.4Kpt/06/KPU/IX/2018 concerning Determination of the Final Candidate List (DCT) for members of the 2019 Regional Representative Council, p 83.

Based on the series of legal events described above, this has resulted in legal uncertainty for election administrators and candidates for DPD members. Besides that, there has also been neglect of legal norms, while on the other hand the KPU's stance is a constitutional stance because even though it ignores the legal norms of the Supreme Court and PTUN court decisions, the KPU continues to follow the Constitutional Court Decision Number 30/PUU-XVI/2018. Such an understanding is obtained by referring to the theory of hierarchy/norm pyramid levels put forward by Hans Kelsen which states that the legal system is arranged in stages and levels like a ladder. With the hierarchical rules of the lowest legal norms having to adhere to higher legal norms and the highest legal norms, the relationship between norms governing the actions of other norms is called a super and subordinate relationship in a special context.¹⁰

Based on this theory, if the position of each decision is constructed, both the MK, MA, Bawaslu and PTUN decisions using the theory of levels of norms put forward by Hans Kelsen with adjustments to the hierarchical context of laws and regulations in Indonesia,¹¹ the following results were obtained:

- 1) The Constitutional Court examined the constitutionality of the law in this case, namely Article 182 letter i of Law Number 7 of 2017 concerning Elections against the 1945 Constitution.
- 2) The Supreme Court examined the compatibility of KPU Regulation Number 26 of 2018 with the Election Law and with the Law.
- 3) The State Administrative Court examines election process disputes based on KPU Decisions against the Election Law.
- 4) Bawaslu examines administrative violations based on KPU decisions against the Election Law.

Based on the sequence of testing the legal products above, a hierarchy of the legal products being tested from the highest to the lowest is obtained, the highest being the Decision of the Constitutional Court which tested the Election Law. Therefore referring to the theory of hierarchy/pyramid levels of norms by Hans Kelsen that lower norms may not conflict with higher norms, and higher norms become the basis for determining the validity of lower laws and regulations, the KPU's attitude makes court decisions constitution as the basis for continuing to enforce KPU Regulation number 26 of 2018 is a constitutional stance. Decisions of the constitutional court have a higher object and basis for review in the hierarchy of statutory regulations. Although, on the other hand, the KPU has also ignored the legal norms of the Supreme Court and Administrative Court decisions.

b. Limitation of Retroactive Applicability in KPU Regulation Number 26 of 2018

¹⁰Jimly Asshiddiqie & M. Ali Safa'at, *Teori Hans Kelsen Tentang Hukum*, Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi RI, 2006, p 110.

¹¹Types and Hierarchy of Laws and Regulations in Indonesia in Article 7 paragraph (1) of Law No. 12 of 2011 consists of : a)Undang-Undang Dasar NRI tahun 1945; b)Ketetapan Majelis Permusyawaratan Rakyat; c)Undang-Undang/Peraturan Pemerintah Pengganti Undang-Undang; d)Peraturan Pemerintah; e)Peraturan Presiden; f)Peraturan Daerah Provinsi, dan; g)Peraturan Daerah Kabupaten/Kota.

The enactment of laws and regulations essentially applies at the time of promulgation in the sense that every norm contained in the rules, whether ordering or prohibiting or other types, applies from the time the regulation is promulgated. Retroactive enforcement is the enactment of laws and regulations earlier than when they were promulgated. The prohibition to retroactively enforce a statutory provision in the Indonesian legal system is a form of deviation from the principle of non-retroactivity and the principle of legality.

Constitutionally, retroactive law is not permitted because it is a manifestation of the protection of human rights which cannot be reduced under any circumstances, and by anyone (non derogable rights), as regulated in Article 28I paragraph (1) of the 1945 Constitution of the Republic of Indonesia. However, this right does not stand alone and is side by side with other rights which are also non-derogable rights. If Article 28I paragraph (1) serves as the basis for prohibiting the retroactive application of laws and regulations, then Article 28J paragraph (2) is implicitly a limitation on the non-retroactive principle contained in Article 28I paragraph (1) of the 1945 Constitution.

Based on such provisions, it means that the non-retroactive principle contained in Article 28I paragraph (1) is relative in nature, due to an exception in Article 28J paragraph (2) of the 1945 Constitution. This exception is a consequence of violations of other rights which are also non-derogable, namely the right to life that belongs to every individual. Therefore, a review of Article 28I paragraph (1) and Article 28J paragraph (2) should not be carried out separately because the two articles have relevance, and the further meaning in Article 28J paragraph (2) of the 1945 Constitution actually limits every action and one's actions for the sake of respect for the rights of others. The provisions containing non-derogable rights in Article 28I paragraph (1) are quite controversial provisions because the inclusion of the non-retroactive principle in this article is considered to protect perpetrators of gross human rights violations in the past. Therefore, the waiver of the principle of non-retroactivity or equivalent to retroactive effect may be applied to statutory regulations as the limitation in Article 28J paragraph (2) of the 1945 Constitution is meant to protect human rights.

The retroactive application of a law does not automatically result in a law being contrary to the Constitution and therefore null and void, and such enactment also does not automatically involve violations of human rights. There are at least 3 (three) factors or conditions that must be met in retroactive enforcement:¹²

- 1) The amount of public interest that must be protected by such law.
- 2) The weight of the rights violated as a result of the enactment of such Law is smaller than the public interest which is violated.
- 3) The nature of the rights affected by retroactive law.

Meanwhile, in criminal law, retroactive enforcement is a consequence of the provisions of Article 1 paragraph (1) of the Criminal Code regarding the principle of legality. In Indonesian criminal law the principle of legality states

¹²Human Rights Research Academic Paper, Supreme Court 2003, p112.

that: *No act can be punished unless it is based on the strength of the criminal rules in the legislation that existed before the act was committed.*

The provisions of the article above contain important principles in criminal law which are formulated as, “Nullum Crimen Sine Lege” (No crime without a law), “Nullum Poena Sine Crimine” (No crime without crime), “Nullum Crimen Sine Lege Praevia” (There is no crime without a previous law). In other words, the prohibition on applying Ex Post Facto Criminal Law has the objective of upholding the principle of legal certainty and preventing abuse of power and strengthening the application of the Rule of Law.¹³

With the understanding of the provisions of Article 1 paragraph (1) above, the principle of legality is applied to criminal acts or criminal law, and if it is formulated in norms then retroactive application may be included but must be excluded for criminal provisions if the regulation contains criminal provisions. Therefore, a regulation cannot be imposed on an event before the regulation is enacted in accordance with the principle of legality. Retroactive prohibition is based on the following premise:¹⁴

- 1) To guarantee individual freedom from the arbitrariness of the authorities.
- 2) Criminal is also a psychic coercion (psychologische dwang theory from Anselm von Feurebach). With the existence of criminal threats against people who commit criminal acts, the authorities try to influence the soul of the prospective maker not to act.

If it is associated with the science of legislation in Indonesia by looking for limits to what extent the provisions of laws and regulations can be applied retroactively. Therefore, the retroactive application of the material content of laws and regulations in Indonesia cannot be separated from the basis for the formation of laws and regulations that arise from the principles and values taken from Pancasila as the Staatfundamentalnorm of the Indonesian nation which provides the basis for the realization of good laws and regulations.

If we explore more deeply about the material content of laws and regulations, Article 1 point 13, means that the content of laws and regulations is material contained in laws and regulations according to the type, function, and hierarchy of laws and regulations.¹⁵ Furthermore, Article 5 letter c and in the elucidation states that the principle of conformity between types, hierarchies and content material is that in the formation of Legislative Regulations one must really pay attention to the appropriate content material according to the type and hierarchy of Prevailing Laws.

Article 10 paragraph (1) of Law Number 12 of 2011 regulates content material in legislation, as the article states as follows:

Content material that must be regulated by law contains:

- 1) Further arrangements regarding the Provisions of the 1945 Constitution of the Republic of Indonesia.
- 2) Order of a law to be regulated by law.
- 3) Ratification of certain international agreements.

¹³D. Schaffmeister, N. Keijer, & E.PH Sitorius, *Hukum Pidana*, translation J.E. Sahetapy, Yogyakarta: Liberty, 1995, p 5.

¹⁴*Ibid.*

¹⁵Law Number 12 of 2011 concerning Formation of Legislation as amended by Law Number 13 of 2022

- 4) Follow up on the decision of the Constitutional Court.
- 5) Fulfillment of legal needs in society.

Referring to these provisions, it can be understood that regarding the validity of retroactively imposed statutory content material, the said content must be regulated by law which contains further arrangements regarding the provisions of the law which will be retroactively applied.

This is also in line with Article 28J paragraph (2) of the 1945 Constitution resulting from the second amendment, which also states that: "...in exercising their rights and freedoms, each person must comply with the restrictions set by law...". This provision clearly states that Article 28J paragraph (2) of the 1945 Constitution is a limitation on the non-retroactivity principle as stipulated in Article 28I paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Based on the above review, it also applies to the content material of laws and regulations that are retroactively applied, they remain valid and permissible as long as the retroactive regulations are regulated directly in the relevant laws and regulations or are regulated directly in laws and regulations of a higher level.

Besides that, regarding criminal provisions as content material, further understanding is contained in Article 15 paragraph (1) of Law Number 12 of 2011 which stipulates that content material regarding criminal provisions can only be contained in: a) Laws; b) Provincial Regulations; or c) Regency/City Regional Regulations. Based on these provisions, it means that laws and regulations that will contain content regarding criminal provisions may only be contained in the three laws and regulations.

Accordingly, the provisions in Number 156 Appendix to Law Number 12 of 2011, if there is a strong reason to enact legislation earlier than when it was promulgated (Retroactive), pay attention to the following matters:¹⁶

- 1) New provisions related to criminal matters, whether the type, severity, nature or classification, are not also enforced
- 2) Details regarding the effect of retroactive provisions on existing legal actions, legal relations and certain legal consequences are contained in the transitional provisions.
- 3) The start of the entry into force of Legislation is determined no earlier than when the draft Legislation becomes known to the public, for example, when the draft Legislation is listed in the National Legislation Program, Prolegda, and other drafting Legislative Regulations.

With such a regulation, it means that retroactive application of the material content of the law is permitted provided there are strong reasons for retroactive application and must pay attention to several things as written above.

Based on the description regarding the limitations of retroactive application of laws and regulations, if you look at the retroactive validity of KPU Regulation Number 26 of 2018 against candidates for DPD members in 2019. KPU Regulation Number 26 of 2018 is also in accordance with the limits of its application, namely as follows:

¹⁶Number 156, *Ibid.*, pp 86-87.

- 1) Referring to Law no. 12 of 2011 concerning the Establishment of Legislation, in Article 10 paragraph (1) of Law Number 12 of 2011 it can be understood that the material content of statutory regulations that are applied retroactively remains valid and permissible as long as the retroactive regulations are regulated directly in Laws at a higher level or in the relevant laws and regulations. The formation of KPU Regulation Number 26 of 2018 itself is a form of follow-up to the Constitutional Court Decision Number 30/PUU-XVI/2018, thus its formation is regulated directly by higher norms.
- 2) Apart from that, for the material content of laws and regulations which contain criminal provisions, the criminal provisions are not enforced because the non-retroactive provisions stipulated in Article 1 paragraph (1) of the Criminal Code, KPU Regulation Number 26 of 2018 are completely does not contain criminal provisions, so this limitation has also been fulfilled.

IV. CONCLUSION

Based on the results of the discussion that has been carried out by analyzing the applicability of KPU Regulation Number 26 of 2018 on candidates for DPD members in 2019 it can be concluded that, limitations of retroactive application in the material content of laws and regulations, that is, to laws and regulations that apply the retroactive principle, retroactive provisions must be regulated in a higher-level law or in the relevant laws and regulations. Then, if the contents of the laws and regulations will contain criminal provisions, then the criminal provisions are not be followed in order.

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