LEGAL IMPLICATIONS OF CONSTITUTIONAL COURT DECISION NUMBER 65/PUU-XXI/2023 CONCERNING IMPLEMENTATION OF CAMPAIGNS IN PLACES OF WORSHIP AND EDUCATION

IMPLIKASI HUKUM PUTUSAN MAHKAMAH KONSTITUSI NOMOR 65/PUU-XXI/2023 TENTANG PELAKSANAAN KAMPANYE DI TEMPAT IBADAH DAN PENDIDIKAN

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ABSTRACT

Campaigns leading up to elections are often carried out by various political parties. However, there are rules that must be obeyed when campaigning, one of the rules is that it is not permissible to campaign using educational facilities as stated in Article 280 paragraph 1 letter h of the Election Law. Recently, there was a Constitutional Court Decision Number 65/PUU-XXI/2023 regarding a request for legal uncertainty regarding the Explanation of Article 280 paragraph (1) letter h of Law Number 7 of 2017 concerning General Elections. This legal uncertainty is caused by a contradiction between norms and explanations, giving rise to chaos in the field. The method used in this research is normative juridical by conducting a literature study. The data used is secondary data, which is data that already exists. The conclusion of this article is that prohibiting campaigning in educational settings is not part of limiting the human rights of every election participant. Where the Court still maintains the provisions of Article 280 paragraph (1) letter h regarding the prohibition of campaigning through government facilities, places of worship and places of education by interpreting exceptions as still necessary and included in the body of Law no.7 of 2017 as a separate norm. The aim of the court to unite the exception provisions in the body of Article 280 paragraph (1) letter h is to create legal certainty in law enforcement for election violations.

Keywords : Campaigns, Places of Worship, Education
ABSTRAK

Kata Kunci : Kampanye, Tempat Ibadah, Pendidikan

I. INTRODUCTION
Democracy is a form of government system in which political power is held by the people or citizens directly or through representatives they elect. The term "democracy" comes from ancient Greek, where "demos" means "people" and "kratos" means "power" or "government".¹ In a democratic system, the people have the right to participate in political decision making, either through general elections, referendums, or other participation mechanisms. The basic principle of democracy is popular sovereignty, where government is carried out in accordance with the will of the majority while respecting the rights of minorities.²

The implementation of people's sovereign participation, namely elections, requires a mechanism or flow of implementation to minimize violations of democratic values. The most important thing in the implementation of elections must be based on the Luberjurdil principles of "Direct, Public, Free, Secret, Honest and Fair". One of the things that is very busy with the

participation of people's sovereignty is the "Election Campaign Period". The election campaign period refers to General Election Commission Regulation (PKPU) Number 23 of 2018 concerning General Election Campaigns: "a campaign is the activity of election participants or other parties appointed by election participants to convince voters by offering a vision, mission, program and/or image. Election Contestants themselves".\(^3\)

The form of the election campaign is based on the statement of the UDHR charter which contains the principle of holding elections as a means of conveying the wishes of the people as the basis of government authority. Article 29 of the UDHR mentioned the limiting conditions which became known as the Rights Limitation Clause which was also later regulated in the Covenant on Civil and Political Rights.\(^4\) However, freedom to campaign in this election certainly has limitations so that it does not conflict with the principles of fairness in holding elections.

Recently, there was a Constitutional Court Decision No. 65/PUU-XXI/2023 regarding a request for legal uncertainty regarding the Explanation of Article 280 paragraph (1) letter h of Law No. 7 of 2017 concerning General Elections. The object of this request is that there is an incompatibility between the norms in Article 280 paragraph (1) letter h "using government facilities, places of worship and places of education". However, there is a contradiction in the explanation of Article 280 paragraph (1) letter h that "Government facilities, places of worship and places of education can be used if election participants are present without election campaign attributes at the invitation of the person in charge of government facilities, places of worship and places of education ".

Based on the petition submitted by the applicant that there is a “contradiction in terminis’’ between the norms of Article 280 paragraph (1) letter h of Law no. 7 of 2017 with its explanation a quo, within the limits of reasonable reasoning, according to the Petitioners, has caused loss of constitutional rights as voters and/or as candidates for members of the DKI Jakarta Provincial DPRD, because it has resulted in legal uncertainty regarding the prohibition on campaigns from using government facilities, places of worship and Places of Education”. The legal uncertainty in prohibiting campaigns from using government facilities, places of worship and places of education is contrary to Article 22E paragraph (1) of the 1945 Constitution and Article 28D paragraph (1) of the 1945 Constitution. Therefore, the author will analyze the legal implications. Constitutional Court Decision Number 65/PUU-XXI/2023 concerning Implementation of Campaigns in Places of Worship and Education.\(^5\)

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\(^4\) Pengurangan dan pembatasan HAM- Prisma HAM [https://prisma.kemenkumham.go.id/pengurangan-dan-pembatasan-ham](https://prisma.kemenkumham.go.id/pengurangan-dan-pembatasan-ham)

II. METHOD

This research is included in the type of normative legal research, namely research carried out by examining library materials. The approach used in this research is conceptual and statutory. The conceptual approach is by studying the views and doctrines of experts in legal science. The approach used is a conceptual approach, a statutory approach and a case approach to the Constitutional Court Decision Number 65/PUU-XXI/2023 regarding the request for legal uncertainty regarding the Explanation of Article 280 paragraph (1) letter h Law Number 7 of 2017 concerning General Elections.

III. ANALYSIS AND DISCUSSION

Basically, the principle of holding elections is to implement people’s sovereignty as regulated in the 1945 Constitution. Article 22E paragraph (1) of the 1945 Constitution of the Republic of Indonesia contains seven election principles, namely: direct, general, free, secret, honest, fair and periodic. The existence of a campaign helps people to be able to actively choose and cast their vote on the vision, mission and programs designed by the candidate pairs. This campaign is communication between candidate pairs and their people so that satisfaction in democracy can be felt on a massive scale. If we look at the current conditions with the presence of the Constitutional Court Decision Number 65/PUU-XXI/2023, it will certainly have legal implications for all of us, one of which is related to campaigns in places of worship and education.

The use of places of worship and education is a place that is prohibited during the implementation of the campaign for any campaign participant or campaign team. Elucidation of Article 280 paragraph (1) letter h, based on reasonable reasoning, it is certain that it will result in constitutional losses for the Petitioners as voters and/or as candidates for members of the DKI Jakarta Provincial DPRD, namely the emergence of legal uncertainty in the campaign prohibition from using government facilities, places of worship, and School. This legal uncertainty occurs because there is a conflict between the Explanation of the Article and its main material (contradiction in terminis).

The nature of this contradiction in terms can be seen where Article 280 paragraph (1) letter h has expressly prohibited without exception and without conditions campaigns using government facilities, places of worship and places of education, but in the Explanation it actually excludes it on condition that it is invited by the person in charge and without campaign attributes. The existence of 2 (two) provisions that regulate differently (although the Elucidation Article is not a norm but contains a formulation of norms) has resulted in legal norms becoming uncertain. If we analyze that the provisions in Article 280 paragraph (1) letter h of Law Number 7 of 2017 are not clearly

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regulated. This lack of clarity gives rise to doubts and gives rise to conflicting norms. Differences in the explanation of the article and the main material will cause chaos and will not be in line with the objectives to be realized from the application of the rules that are already in effect. The problems that occur in Article 280 paragraph (1) letter h of Law NO.7 OF 2017 are not based on a conflict of norms, but rather differences in the application of law and law enforcement, resulting in injustice in the implementation of elections. This is a legal dilemma, where in campaign norms in government facilities, education and places of worship something is prohibited but in the explanation it can be allowed with exceptions without using campaign attributes. Of course, the uncertainty between norms and explanations can be misused by some parties who have high power, such as incumbents who will run for re-election using government facilities on the pretext of not campaigning.

If we examine more deeply, there is an example of a campaign violation in the use of government facilities, namely H. Subarna, one of the incumbent candidates for DPR RI members in the legislative elections on April 17 2019. This violation was where H. Subarna used the recess period to campaign by distributing materials. T-shirts and calendars in the Center present Performance and Development material in front of residents. From this case, it will happen again if the norms and explanations in Article 280 paragraph (1) letter h are maintained and not tested by the Constitutional Court. In fact, the principle of holding elections must be carried out fairly (fairness). The definition of fairness in the administration of elections is "equal treatment of election participants and voters, without any privileges or discrimination against certain participants or voters". Therefore, in order to avoid preferential or discriminatory treatment, the applicant submitted a petition to the Constitutional Court to straighten out the ideal implementation of elections as described in the Constitution.

In the Constitutional Court's decision Number 65/PUU-XXI/2023 regarding the unconstitutionality of Article 280 paragraph (1) letter h of Law Number 7 of 2017 'That "equal treatment" in the context of guaranteeing fair principles in elections by allowing campaigning in government facilities, places of worship and places of education, previously that was prohibited based on the provisions contained in the General Election Commission Regulation (PKPU) Number 15 of 2023 concerning Campaigns. In its consideration, the Court still maintains the provisions of Article 280
paragraph (1) letter h regarding the prohibition of campaigning through government facilities, places of worship and places of education by interpreting that exceptions are still necessary and are included in the body of Law No. 7 of 2017 as a separate norm.

The aim of the court to combine the exception provisions in the body of Article 280 paragraph (1) letter h is to create legal certainty in enforcing the law on election violations. According to Gustav Radbruch, he put forward 4 (four) basic things related to the meaning of legal certainty, namely; First, that law is positive, meaning that positive law is legislation. Second, that law is based on facts, meaning it is based on reality. Third, that facts must be formulated in a clear way so as to avoid errors in meaning, as well as being easy to implement. Fourth, positive law must not be easily changed.

IV. CONCLUSION

In principle, elections are a means of implementing popular sovereignty based on democratic values. After the changes, the 1945 NRI Constitution contained a number of principles that would animate or become the spirit of holding democratic elections. The organization of the campaign is based on the principles of fairness and is free from intervention by any party. The existence of a campaign helps people to be able to actively choose and cast their vote on the vision, mission and programs designed by the candidate pairs. This campaign is communication between candidate pairs and their people so that satisfaction in democracy can be felt on a massive scale. Election campaigns are part of community political education and are carried out responsibly. The meaning of responsibility in campaign activities as limits to not experiencing loss or injustice to other election participants. Prohibiting campaigning in educational venues is not part of limiting the human rights of every election participant. Where the Court continues to maintain the provisions of Article 280 paragraph (1) letter h regarding the prohibition of campaigning through government facilities, places of worship and places of education by interpreting that exceptions are still necessary and are included in the body of Law No. 7 of 2017 as a separate norm. The aim of the court to combine the exception provisions in the body of Article 280 paragraph (1) letter h is to create legal certainty in enforcing the law on election violations.

In order to carry out scientific activities in the field of education, it would be appropriate to carry out outreach activities by election participants without having to use campaign attributes.

REFERENCE


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