



IMPLEMENTATION OF POSITIVE LEGISLATURE OF THE CONSTITUTIONAL COURT IN ELECTION LAWS AS AN ANTICIPATION OF FAMILY INTEREST CONFLICTS

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Constitutional Court, Family, Elections. The Constitutional Court is one of the institutions in Indonesia, as a democratic country where equality is in the hands of the people and elections are held directly, publicly, freely, secretly, honestly and fairly every five years. Law number 7 of 2017 concerning elections regulates election participants as subjects in the democratic process, to ensure that elections are carried out with integrity and provide equal rights to every citizen. In this case, family involvement in this election is an effort to prevent nepotism and maintain integrity and fairness in the democratic process. This research has a problem formulation related to legal regulations regarding the president's participation in the presidential election campaign with family ties as well as the application of the positive legislature of the constitutional court in the election law to anticipate conflicts of family interest. This research uses normative juridical law. Limiting family involvement in elections through election laws is an important step to prevent nepotism and abuse of political power. The Constitutional Court plays an important role in ensuring compliance with the constitution and providing a clear interpretation of family conflicts of interest.

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A. Introduction

The Preamble to the 1945 Constitution which confirms the basic principles of the Indonesian state as a democratic country, where article 1 paragraph 2 strengthens the principle of democracy by stating that sovereignty is in the hands of the people and is implemented according to the Constitution. This confirms that the highest power in the state is in the hands of the people, which must be exercised in accordance with the rules stipulated in the Constitution, confirming the basic principle of democracy where power comes from the people and is exercised in accordance with agreed regulations. Article 22E paragraph 1 which reads "General elections are held directly, publicly, freely, secretly, honestly and fairly once every five years." Then in article 1 Paragraph 35 of Law number 7 of 2017 concerning Elections "Election participants are political parties

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or combinations of political parties that meet the requirements as intended in this Law and its implementing regulations.”

Election participants, as subjects who have rights and obligations in the democratic process, have an important role (Zahro, 2023). These principles, which must be upheld in the implementation of elections in Indonesia, ensure that elections are conducted with integrity, without fraud, and give every Indonesian citizen the same right to vote without pressure or discrimination. After a strong constitutional foundation that regulates democratic principles in the implementation of elections in Indonesia, according to Law no. 7 of 2017 concerning General Elections, in Origin 1 verse (35), Election campaign is the activity of election participants or parties appointed by election participants to convince voters by offering a vision, mission, program and/or self-image of election participants. Political campaign activities are a form of political communication carried out by a person or group of people or political organizations within a certain time to obtain political support from the community. Campaigns are an important stage in the democratic process (Harahap, 2020). Community participation through direct general elections is an important indicator of democracy towards an active and intelligent society in the modern era.

The president's participation in the presidential election campaign is regulated in Law Number 7 of 2017 concerning Elections. Article 299 Paragraph 1 of Law Number 7 of 2017 concerning Elections explains that the president and vice president have the right to participate in the campaign. In Article 281 Paragraph 1 The relevant law states that campaigns involving the President, Vice President, Ministers, Governors, Deputy Governors, Regents, Deputy Regents, Mayors and Deputy Mayors must comply with the provisions, namely not using facilities in their positions, except for security facilities for state officials as regulated within the provisions of laws and regulations and undergo leave outside the responsibility of the state. However, the president's participation in the presidential election campaign has the potential for abuse of authority as holder of executive power. This is related to the view of Zainal Arifin Mochtar, Constitutional Law Expert, that if the president participates in the presidential election, there will be legal complications because the law regarding elections does not explain in detail and there is potential for abuse of authority or abuse of power for personal interests and certain party members, as well as destroying the president's principle of neutrality.

The authority of the Constitutional Court in Article 24C Paragraphs 1 and 2 of the 1945 Constitution of the Republic of Indonesia explains that the Constitutional Court has the authority to review laws against the Constitution, decide disputes over the authority of state institutions whose authority is granted by the 1945 Constitution and decide on the dissolution of political parties and disputes regarding the results of general elections (Rajab, et al., 2023). Implementation judicial review gave birth to a Constitutional Court Decision which was divided into two forms, namely negative legislature and positive legislature. Expanding the authority of the Constitutional Court in issuing decisions, a positive legislature motivated by the motivation of the Constitutional Court as the sole interpreter of constitution in Indonesia to realize

substantive justice contained in every decision. The implementation of the authority of the Constitutional Court in realizing justice through decisions is based on the spirit of the formal legality of the law and the substantive values of the constitution. positive legislature is defined as a new norm established by the Constitutional Court in its decision to find the law so that there is harmony and legal certainty for the interests of the state. Constitutional Court decisions which are categorized as positive legislature including Decision Number 46/PUU-VIII/2010 concerning the Rights and Position of Children Out of Wedlock, Decision Number 102/PUU-VII/2009 concerning the Election of President and Vice President (Pilpres), Decision Number 110-111-112-113/PUU-VII/2009 Concerning the General Election of Members of the People's Representative Council, Regional People's Representative Council. Thus, implementing a positive legislature The Constitutional Court in election law can be implemented to anticipate conflicts of family interest (Chaidir, et al., 2023).

Based on the background above, there are two problem formulations, namely how to regulate the law regarding the participation of the president in the presidential election campaign who has family ties and the implementation of a positive legislature the constitutional court in election law as an anticipation of conflict anticipation of conflict of family interests.

B. Method

The type of research used in this research is qualitative research. The research method used is a normative legal research method. Normative legal research is a research method that uses the interpretation of statutory regulations and literature as library material or secondary material related to the problem being studied. The data source used in this research is secondary data because in this research the data sources are literature, articles, journals and sites on the internet that relate to the research conducted.

C. Result & Discussion

1. Legal Arrangements Regarding the President's Participation in the Presidential Election Campaign with Family Ties

The implementation of general elections (elections) in Indonesia is an implementation of democratic values (Mulyono & Fatoni, 2020). This is very important for the country, so that election supervision is carried out strictly so that it takes place honestly, fairly and transparently through a comprehensive legal framework (Nadir, et al., 2022). The legal framework related to elections is regulated in Law Number 7 of 2017 concerning Elections which is the main legal basis for the implementation of elections as well as election supervision by the General Election Commission (KPU) and the Election Supervisory Body (Bawaslu). The election supervision mechanism by the KPU is internal and aims to maintain the continuity of democracy in Indonesia and to supervise the actions of KPU members, both at the center and in the regions, which are contrary to statutory provisions (Majid, 2023). Apart from Law Number 7 of 2017 concerning Elections, there is a legal framework

that regulates election supervision, namely Law Number 15 of 2011 concerning the Implementation of General Elections for President and Vice President and Bawaslu Regulation Number 11 of 2023 concerning Supervision of General Election Campaigns (Nasution, et al., 2023).

The president's participation in the presidential election campaign is regulated in Law Number 7 of 2017 concerning Elections. Article 299 Paragraph 1 of Law Number 7 of 2017 concerning Elections explains that the president and vice president have the right to participate in the campaign. In Article 281 Paragraph 1 of the relevant law states that campaigns involving the President, Vice President, Ministers, Governors, Deputy Governors, Regents, Deputy Regents, Mayors and Deputy Mayors must comply with the provisions, namely not using facilities in their positions, except for security facilities for officials state as stipulated in the provisions of statutory regulations and undergo leave outside the responsibility of the state which is submitted by the Minister of State Secretary to the KPU a maximum of 7 days before the president carries out the campaign (Permadi, et al., 2022).

According to Zainal Arifin Mochtar, Constitutional Law Expert, if the president participates in the presidential election, there will be legal complications because the law regarding elections does not explain in detail and there is potential for abuse of authority or abuse of power for personal interests and certain party members. The position of the president in elections can refer to Article 8 Paragraph 3 of Law Number 30 of 2014 concerning Government Administration which states that government administration officials are prohibited from abusing their authority in carrying out actions or decisions (Harun, et al., 2018). Forms of abuse of authority include the following: First, the use of the State Revenue and Expenditure Budget (APBN) for campaign purposes by providing social assistance to the community. Second, putting pressure on the State Civil Apparatus (ASN) to support the relevant candidate pairs. Third, a covert campaign involving Presidential and Vice Presidential candidates at the inauguration of a project carried out by the President (Afandi & Afandi, 2018).

If the president's partiality towards one of the pairs of candidates for President and Vice President is manifested in the form of certain policies, actions and decisions, it will violate the provisions of Articles 282 and 283 of Law Number 7 of 2017 concerning Elections. Article 282 of Law Number 7 of 2017 concerning Elections explains that state officials are prohibited from making decisions and/or taking actions that benefit or harm any of the election participants during the campaign period. Article 283 of the relevant law emphasizes that state officials are prohibited from holding activities that lead to bias against election participants before, during and after the campaign period (Amalina, 2022).

According to Anna Erliyana, Professor at the Faculty of Law, University of Indonesia, abuse of presidential authority is measured through motivation or reasons for making decisions and actions. Abuse of presidential authority in the implementation of a presidential election campaign would have the potential to violate bureaucratic neutrality. Violations of bureaucratic neutrality are supported by

several internal and external factors, including bureaucrats' partiality in the presidential election due to their ties, kinship between the president and the presidential or vice presidential candidate pair on the basis of the same biological descent, having internal motivation to perpetuate power and exists vested interest in the form of the interest in maintaining certain positions in the political realm, the intervention of political elites, and the involvement of political parties in certain policies to benefit the parties concerned (Adnan, 2023). Therefore, it is necessary to have ethical standards that should be applied regarding neutrality in ruling out abuse of presidential authority when carrying out presidential elections.

Neutrality is any form of free action or non-involvement in an interest that is not within the purview of the President (Sutrisno, 2019). The President is expected to be able to apply the principle of neutrality by not actively or passively taking sides with the candidate pairs for President and Vice President in the presidential election, as well as prioritizing services free from political interests to the community. Max Weber and Hegel expressed their thoughts regarding the ideal form of bureaucratic neutrality, namely Hegelian bureaucracy and Weberian bureaucracy (Muzaqqi, 2019). The Hegelian bureaucracy openly views that the bureaucracy must act politically as a liaison between the state and the people and be neutral from political interests (Thoha, 2017). Meanwhile, the Weberian bureaucracy is a bureaucracy that was formed neutrally from political power, so that it does not interfere with the government bureaucracy as a formal organization, and prioritizes service to the people as the country's rulers change (Surur, 2019).

2. Application of the Constitutional Court's Positive Legislature in Election Laws to Anticipate Conflicts of Family Interest

In the study of legal theory checks and balances or balancing checks become relevant because the Constitutional Court acts as a supervisor or examiner of the validity of laws made by the legislative body. With this examination mechanism, the Constitutional Court can ensure that the laws passed do not violate democratic principles and fundamental rights (Nelda & Admiral, 2023). Application positive legislature and the Constitutional Court in the Election Law can describe how the Court uses its powers to balance and ensure that the Election Law not only complies with correct legislative procedures, but also the constitutional principles that underlie a healthy democracy. Thus, theory checks and balances becomes important in promoting a balance of power between the legislative and judicial bodies in a democratic political system.

Limiting family involvement in elections is an effort to prevent nepotism or the use of political power for personal or family interests. Although the right to vote and be elected is a constitutional right guaranteed in the 1945 Constitution, certain limitations are necessary to maintain integrity and fairness in the democratic process (Hoesein, 2023). One form of restriction is the prohibition on family members of candidates from running in the same election. This aims to prevent the concentration of political power in the hands of one family or certain interest group which could lead to abuse of power or unhealthy political domination. In addition, some election

laws may also regulate conflicts of interest that may arise if family members are involved in the election process. Restrictions on family involvement in elections are regulated in several related laws, among others Law Number 7 of 2017 concerning Elections and Law Number 10 of 2016 concerning Regional Elections.

Articles relating to the prohibition of involvement of candidates' family members in the same election can be found in the regulations regarding candidates and the election process. Although there is no article that specifically regulates restrictions on family involvement in elections in the 1945 Constitution, the election law and other related laws provide a legal basis for holding elections that are transparent, fair, and free from nepotism or abuse of political power. The text of Law Number 7 of 2017 concerning Elections and Law Number 10 of 2016 concerning Regional Elections is as follows: Law Number 7 of 2017 concerning Elections in Article 1 paragraph (1): "General elections are the implementation of the people's right to directly elect members of the People's Representative Council, Regional Representative Council, and the President and Vice President." and Article 207 paragraph (2): "Candidates for members of the DPR, DPD, DPRD, and candidates for President and Vice President candidates, candidates for DPD members and regional head candidates in one general election may not be members of blood families and/or siblings up to the second degree of family in "straight and lateral lineages include in-laws, sons-in-law, siblings and half-siblings of the President and Vice President, Ministers, Governors, Deputy Governors, Regent and Deputy Regent, as well as Mayor and Deputy Mayor." Furthermore, Law Number 10 2016 concerning Pilkada: Article 5 paragraph (1): "Regional head elections are regulated by law to elect one pair of regional head and deputy regional head candidates who come from the ranks of the people who have the integrity and capacity to be elected by the people.", Article 56 paragraph (1): "Candidate pairs in the regional head election are regulated in law and come from layers of the people who have the integrity and capacity to be elected by the people.", Article 67 paragraph (1): "Candidate pairs must not have family relations consanguinity or same blood up to the fourth degree whether in the upward, lateral or downward lineage, including in-laws, sons-in-law, siblings and half-siblings.", and Article 70 paragraph (1): "Prospective couples must not have blood family relations. or married to the second degree whether in the upward, lateral or downward line of descent, including in-laws, sons-in-law, siblings and half-siblings of the president and vice president, ministers, governors, deputy governors, regents and deputy regents, as well as mayors and deputy mayor."

Thus, limiting family involvement in elections through Law Number 7 of 2017 concerning Elections and Law Number 10 of 2016 concerning Regional Elections is an important step in realizing an election process that is more transparent, fair and free from nepotism or abuse of political power. Through these regulations, it is hoped that integrity and justice in the democratic process can be maintained, as well as being able to strengthen healthy democratic principles and prevent abuse of political power in government. Application positive legislature may the Constitutional Court (MK) in the context of elections refer to decisions or legal

interpretations issued by the Constitutional Court to ensure compliance with existing legal rules and maintain integrity as well as justice and human rights. The Constitutional Court (MK) has important authority in reviewing the constitutionality of election laws and providing clear interpretations of provisions relating to family conflicts of interest. One of the authorities that the Constitutional Court has is judicial review of the Constitution, generally speaking judicial review. Understanding judicial review in system practice common law as well as in general judicial practice in Indonesia, including examinations at the appellate, cassation and judicial review levels. Therefore, to understand more specifically the authority and process of judicial review of the Constitution, it is often referred to as constitutional review. This process and authority always begins with an application and will end in a decision. The Constitutional Court's decision in the process of judicial review of the Constitution is a written opinion of the Constitutional Judge, which ends and resolves the dispute raised regarding the interpretation of the constitution.

Law Number 24 of 2003 concerning the Constitutional Court is a law that regulates the Constitutional Court in Indonesia. Several important articles in the Law relating to the process and authority of the Constitutional Court in reviewing the constitutionality of election laws as well as providing clear interpretations of provisions relating to family conflicts of interest include: Article 51 regulates the authority of the Constitutional Court to carry out testing of laws against the Constitution. Article 52 explains that the Constitutional Court's decision is final and binding on all parties. Article 24 paragraph (2) regulates the conditions that must be met to submit an application judicial review to the Constitutional Court. Article 24C explains that the Constitutional Court has the authority to decide disputes over the authority of state institutions whose authority originates from the Constitution. Article 24 regulates the process for resolving disputes over general election results by the Constitutional Court.

Apart from that, there are also implementing regulations for Law Number 24 of 2003 which provide more detail regarding the process and mechanism for reviewing the constitutionality of laws by the Constitutional Court. Thus, the Constitutional Court has a very important role in ensuring that election laws comply with democratic and constitutional principles, as well as in providing a clear interpretation of provisions relating to family conflicts of interest. These important steps are to maintain integrity and fairness in the general election process and to prevent abuse of the law political hopes in government.

Strengthen the role of election supervisory institutions in implementing positive legislature or positive legislation in the context of elections in Indonesia. One of the main aspects discussed in this research is the challenges and obstacles faced by Bawaslu in carrying out its duties as an election monitoring institution. These challenges include limited resources, political interference, and pressure from various interested parties (Pamungkas & Yudha, 2020). Even though it has sufficient authority to carry out supervision, the implementation of this task is often hampered by external factors that affect the independence and effectiveness of Bawaslu. There

are several steps that can be taken to strengthen Bawaslu's role in implementing a positive legislature. One of them is increasing partnerships and cooperation with other related institutions, including the General Election Commission (KPU), law enforcement officials and civil society. It is hoped that this cross-institutional collaboration can increase the effectiveness of supervision and law enforcement related to election violations. Apart from that, it is important to provide adequate resources for Bawaslu, both in terms of personnel, budget and technology. With sufficient support, Bawaslu is expected to be able to carry out its duties more efficiently and effectively in supervising the implementation of elections.

Strengthening the role of election monitoring institutions in implementing a positive legislature is an important step to ensure integrity, transparency and fairness in the election process. Several efforts that can be made to achieve this include giving election supervisory institutions greater authority, ensuring the provision of adequate resources, maintaining independence, providing training and education for their members, and increasing cooperation and coordination with other related institutions. The number of laws and articles that regulate the role of election supervisory institutions in Indonesia include Law Number 7 of 2017 concerning Elections, Law Number 10 of 2016 concerning Regional Elections, Law Number 15 of 2011 concerning the Implementation of Presidential General Elections and Vice President, Law Number 8 of 2012 concerning the General Election of Members of the DPR, DPD, Provincial DPRD, and Regency/City DPRD, Law Number 24 of 2003 concerning the Constitutional Court, and Law Number 10 of 2016 concerning Legislative Regulations Invitation. These laws and regulations provide an important legal basis and framework for election supervisory institutions in carrying out their duties.

D. Conclusion

General elections in Indonesia are not just a political process, but are also a real manifestation of the democratic values that are upheld. Strict supervision of the election process is the key to ensuring honesty, fairness and transparency in its implementation, which is supported by a comprehensive legal framework which is mainly regulated in Law Number 7 of 2017 concerning Elections. The important role of the General Election Commission (KPU) and the Election Supervisory Body (Bawaslu) in maintaining the integrity of the election process cannot be ignored, especially in monitoring actions that are contrary to legal provisions. Even though the law regulates the president's involvement in presidential election campaigns, the potential for abuse of authority is still wide open, such as using the state budget or putting pressure on civil servants. This invites the risk of violating bureaucratic neutrality, which should be avoided through the application of strict ethical standards. It is hoped that the principle of neutrality in leading presidential elections can be a guide for the president, where this principle refers to the thoughts of Max Weber and Hegel regarding an apolitical and neutral bureaucracy. Therefore, maintaining integrity and neutrality in the general election process is important to ensure a healthy and strong democracy in Indonesia.

Limiting family involvement in elections through election laws is an important step to prevent nepotism and abuse of political power. The Constitutional Court plays an important role in ensuring compliance with the constitution and providing a clear interpretation of family conflicts of interest. Apart from that, strengthening the role of election monitoring institutions such as Bawaslu is also needed to ensure integrity, transparency and fairness in elections. Thus, it is hoped that these efforts can increase public confidence in the election results and strengthen the principles of healthy democracy in Indonesia. The importance of partnerships between institutions and the provision of adequate resources must also be considered to increase the effectiveness of supervision and law enforcement related to election violations.

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