



EXAMINING ELECTION REGULATIONS RELATED TO CANDIDATES EX-CORRUPTOR: CASE STUDY OF AGUSRIN-IMRON'S CANDIDACY IN THE 2020 BENGKULU PROVINCIAL ELECTION

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ABSTRACT

Democracy has mandated elections as a way for the people to choose their leaders. Regulations on Elections have allowed ex-corruptors to nominate at election events. The practice of ex-corruptors nominating as Regional Heads occurred in Bengkulu Province, namely the Agusrin-Imron pair. The Bengkulu Provincial KPU decided that this pair was unqualified for requirements (TMS). Conversely, the Bengkulu Province of Bawaslu decision stated that they were qualified for the requirements (MS). This paper uses a qualitative method of literature study that describes and describes phenomena that occur in a place. The purpose of this study is to find out what are the causes of differences in KPU and Bawaslu's decisions in interpreting the regulations regarding the nomination of ex-corruptors in Bengkulu Province. The results of this study, First, there are differences between the KPU and Bawaslu in interpreting election regulations related to the waiting period for Agusrin as a former corruption prisoner. Second, this regulation is still multi-interpreted, giving rise to conflict relations between election management institutions. So the election regulations must be refined again for the progress of the implementation of elections in Indonesia.

Keywords: Regulation, Former Corruptors, Election Organizers

1. INTRODUCTION

Democracy is often referred to as a system of government that comes from the people, or in short, based on the sovereignty of the people. The real form of a democratic system of government is through elections. A democratic political system can be seen by the most powerful collective decision makers in the system, elected through elections [1]. Therefore, elections become a means to exercise people's sovereignty based on democracy or indirect representation. The decision-making process in the form of public policy does not involve the people directly but is represented by those who have been elected in elections.

Sirajudin said that the way to get substantial democratic consolidation is through the electoral system [2]. This is important because it is a means or tool for the people to show their sovereignty in choosing their representatives to make decisions. The sovereignty of the people, as intended in Article 2 paragraph 1 of the

Constitution of the Republic of Indonesia in 1945, must be realized in a tangible form through direct, general, free and secret elections. To hold such elections, an independent election organizer is needed.

But after the 2019 Simultaneous Elections, various issues will color the Democratic Event every five years in Indonesia. Starting from the issue of political rights of former corruptors to the death of 554 officers from the Election Organizing Group (KPPS), not to mention other problems that arise in its implementation, This ex-corruptor issue arose after the passing of the General Election Commission Regulation (PKPU) Number 20 of 2018 concerning the Nomination of Members of the DPR, Provincial DPRD, and Regency/City DPRD. In this PKPU, it is mentioned that the ban on former convicts of corruption, drug dealing, and sexual crimes against children should be included in the selection of prospective members of the DPR, DPD, Provincial DPRD, and Regency/City DPRD.

One of the phenomena of determining the pair of convicted mantan cases of corruption, among others, occurred in the nomination process of the Governor and deputy Governor of Bengkulu Province in the 2020 simultaneous election event. The KPU of Bengkulu Province determined that the Agusrin-Imron candidate was not eligible (TSM) to participate in the Bengkulu Provincial Election. Agusrin violated the requirements because he was not even five years free purely to be able to participate in the contestation of the regional election.

So this study will look at the practice of election regulation related to candidates for ex-corrupt candidates: case studies of Agusrin-Imron's candidacy in the 2020 Provinsi Bengkulu election.

2. RESEARCH METHOD

This research uses a qualitative approach with this type of literature study research. A qualitative approach is specific research of objects that cannot be researched statically or by means of quantification. Qualitative research produces descriptive data in the form of speech, writing, and observed behavior. Qualitative research is aimed at describing and analyzing phenomena, events, social activities, attitudes of belief, perception, and human thought, individually and in groups [3].

Although it is a study, research with literature studies does not have to go down to the field and meet with respondents. The data needed in research can be obtained from library sources or documents. Search libraries not only for the first step of preparing a research framework but also for utilizing library sources to obtain research data [4].

3. DISCUSSION

3.1 *At a Glance About the Meaning of Corruption*

Corruption comes from the Latin language (corruption or corruptus), which is copied into many languages, such as in Dutch, where corruptive means crime, rot, or honesty [5]. According to Iopa [6], corruption is a criminal offense related to acts of bribery, manipulation, and other acts that harm or can harm the state of the financial economy and harm the welfare and interests of the people.

Klitgaard stated that korupsi is the same as a monopoly of power, or in other words, can be interpreted as a perilaku deliberately making mistakes or dereliction of duty so as not to exercise power in the right way, the main purpose of which is to get personal and class

benefits [7]. Corruption is a common enemy that must be eradicated from the motherland of Indonesia.

3.2 *Conformity of Election Commission Regulation Number 20 of 2018 with Normative Rules of Statutory Formation*

The KPU regulation on the prohibition of nomination of convicted members of the DPR, DPD, and DPRD and regional heads received conflicts from various parties. There are pros and cons in response to this Election Commission Regulation. According to Bambang Soesetyo, the Speaker of the House of Representatives at that time, KPU Regulation No. 20 of 2018 was contrary to the prevailing laws and regulations. Furthermore, he stated that regulations that deprive a person of the right to be elected and that government agencies should not deprive citizens of their rights [8]. Similar reasons were also stated by Refly Harun that the KPU Regulation abolished the constitutional rights of the people deliberately and consciously [9].

Jimly Asshiddiqie [14] argued differently when the Election Commission Regulations had not been promulgated in the State Gazette. According to him, the KPU can self-certify the draft KPU Regulation on the Nomination of Legislative Candidates which is otherwise promulgated by the Ministry of Law and Human Rights. Furthermore, he said, there should be no intervention in the implementation of one of the technical election rules of the government [10].

The strangeness of the PKPU is seen as contrary to the higher rule of law, namely the Election Law. Whereas, three months before the enactment of PKPU No. 20 of 2018, the KPU issued PKPU No. 14 of 2018, which prohibits those convicted of corruption, drug dealing, or sexual crimes against children from running for DPD positions. At that time, there was no debate that corrected the constitutionality side of PKPU No. 14 of 2018.

Bagir Manan [2] said that the first condition in the formation of juridical or normative laws and regulations is the authority of lawmakers. Hukum becomes legal if it is made by an authorized and sourced institution and is based on higher norms [11]. This conclusion that legal norms are not only layered and tiered, but that a country's legal norms are also classified into four major groups. The division of groups according to Hans Nawianski includes: Staatfundamentalnorm, Staatsgrundgesetz, Formell Gesetz, and Verordnung & Autonome Satzung.

Normative rules for the formation of attributes in Indonesia are attributes of the Constitution regulated by Law No. 12 of 2011 concerning the Establishment of Laws and Regulations. The hierarchy of Perundang-

Undang-undang regulations that apply in Indonesia is regulated in Article 7 of the Law on the Formation of Laws and Regulations. While the regulations of the General Election Commission meet the elements stipulated in the provisions of article 8 paragraph 1 of the PUU Law, which includes regulations made by commissions that are at the same level as stipulated by the law.

The KPU, as the organizer of the election, has the attribute authority of the constitution that is national, permanent, and independent. To hold elections, the Electoral Commission has the duties and authorities granted by the Electoral Law. One of the duties and authorities of the KPU is to draft and establish KPU regulations for each stage of the election.

The general election itself consists of 23 stages, including the stages of resolving disputes in legislative elections and the election of the President and Vice President. One of the stages in the election is the preparation of the General Election Commission Regulations and the nomination of members of the House of Representatives, the Regional Representative Council, the Provincial Regional Representative Council, and the District/City Regional Representative Council, as well as the Presidential and Vice Presidential Nominations. So, based on the duties and authorities given by the Election Law, the KPU has qualified for formal or juridical enforcement of the formation of laws and regulations.

Furthermore, the second condition mentioned by Bagir Manan [2] is about the conformity between the form or type of legislation and the material of its content. Any formation of laws and regulations must be based on the principle of forming good laws and regulations, one of which is the principle of conformity between the types, hierarchies, and content of the material. The purpose of this statement is that every law and regulation must really pay attention to the content material that is appropriate and in accordance with the type and hierarchy of laws and regulations.

In the Law on the Formation of Laws and Regulations, there are two types of laws and regulations, namely those inside and outside the hierarchy. The type of legislation stipulated in Article 7 paragraph (1) of the Law on the Formation of Laws and Regulations is a type of tiered regulation. Outside the hierarchy, the opposite types of laws and regulations are governed by the provisions of Article 8 paragraph (1) of the Law on the Formation of Laws and Regulations. The Regulation of the General Election Commission is a regulation that is outside the hierarchy because it is formed by a commission formed by law or on the basis of the order of the law.

As a statutory regulation that includes types outside of the hierarchy, the content of the material must be

known in advance by the level of institutions that form the rules in the structure of state organs. In the implementation of the election, the General Election Commission (KPU) The KPU is an institution established by the constitution to hold elections that are national, permanent, and independent. Asshidiqie (Asshidiqie, 2005) also said that the General Election Commission (KPU) was named as an independent and self-regulatory institution, meaning that the institution is not only an institution that makes regulations that apply in its work area but also implements, supervises, and sanctions parties who violate these rules. The regulations made by the KPU are certainly regulations related to the general election, or rather, regulations that explain the election law. Thus, the content of the KPU provisions must not exceed what is stipulated in the Election Law.

In the formulation of Article 4 paragraph (3) of KPU Regulation No. 20 of 2018 concerning the Proposal of Members of the House of Representatives, Provincial People's Representative Council, and District/City Representative Council, it stated that the selection of candidates must be democratic and open and must not include former convicts of drug trafficking, child sex crimes, or corruption. Then this article is strengthened and clarified again in Article 7 paragraph (1) g of the same KPU Regulation that legislative candidates are never convicted based on court decisions that have permanent legal force and that threaten with imprisonment for a maximum of five years or more.

Both formulations of this article are derivatives that provide legal certainty and an explanation of Article 240 paragraph (1) g of Law No. 7 of 2017 concerning General Elections. So that it has followed the rules in Article 6 paragraph (1) of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations governing the principles in the material content of laws and regulations.

Furthermore, the third sharat according to Bagir Manan [2] must follow certain procedures. The procedure in question is as stipulated in the Law on the Regulation of the Formation of Laws and Regulations: planning, preparation, discussion, approval or determination, and endorsement. In every process of forming laws and regulations, the KPU in making KPU regulations is in accordance with the provisions stipulated in the Law on the Formation of Laws and Regulations, and that each process also involves parties involved in the implementation of elections, including parliament, the ministry of law and human rights. But the weakness contained in the law on the formation of laws and regulations related to the issue is that it does not clearly regulate how the process of socialization of regulations made by the KPU should be regulated. So, based on Jimly Asshidiqie's opinion that the KPU is a

self-regulating body, the KPU can automatically enforce the rules it makes.

The fourth condition, according to Bagir Manan [2], is not contrary to the laws and regulations that are at a higher level. The conformity between the KPU Regulation and higher laws and regulations can be seen in the consideration section of the regulation, namely Law No. 7 of 2017 concerning General Elections. More precisely, based on the provisions of Article 249 paragraph (3) and Article 257 paragraph (3) of the Election Law, which state that further provisions regarding the verification of legislative candidates will be regulated in the regulations of the General Election Commission.

Regarding the substance of the KPU, more details describe the provisions of candidates who cannot participate in election contestation threatened by a criminal for more than 5 years contained in the election law. More fully, the provision contains several elements: (a) never imprisoned; (b) based on the decision of the court which has obtained permanent legal force; (c) committing a criminal offense that is threatened with imprisonment of five (five) years or more; and (d) present to the public. The author sharpens the third element by threatening with imprisonment.

The phrase "threatened" consists of the basic word "threat." It has three meanings when viewed in the large dictionary of Indonesian. First, express the intention of doing something detrimental, difficult, troublesome, or detrimental to the other party. Second, give a sign or warning about the possibility of disaster that will occur. Third, it is expected to happen to someone or something. The exact meaning, if it is associated with the provisions of the previous laws and regulations, is the third meaning. A person who is threatened with imprisonment for 5 years or more is not meant to mean that the sentence imposed must be 5 years or more, but the criminal threat formulated in the legislation is that period of time.

Corruption as stipulated in Law No. 31 of 1999 and Law No. 20 of 2001, which provides a sentence of more than five years, even up to the threat of life imprisonment. In narcotics crimes, drug dealers are threatened with imprisonment of more than five years (Chapter XV of Law No. 35 of 2009). For each sexual crime against a child, the child is threatened with imprisonment of at least five (five) years (Article 81 of Law No. 35 of 2014). Thus, it can be said that the KPU Regulation is to clarify some criminal acts that are threatened by criminals older than five years. In addition, some of the criminal acts mentioned in this KPU regulation include the category of extraordinary criminal acts.

3.3 Ex-Corruptor Nomination Case in Bengkulu Provincial Head Election

The case of the ex-corruptor's nomination occurred in the election of the regional head of Bengkulu Province. Historically, there were three candidate pairs who applied to the Bengkulu Provincial Commission, namely the Helmi-Muslihan, Rohidin-Mersyah, and Agusrin-Imron couples. However, after research and examination of the candidate couple's file, the Bengkulu KPU decided that 2 pairs of qualified candidates (MS), namely the Helmi-Muslihan and Rohidin-Mersyah couples, and 1 pair of ineligible candidates (TSM), namely the Agusrin-Imron couple, should be considered.

This case can be divided into two phenomena that occur in connection with elections: First, if viewed constitutionally, the reason for the Bengkulu KPU's determination of the ineligibility (TMS) of the Agusrin-Imron candidate pair through consideration of the General Election Commission Regulation No. 1 of 2020 concerning the Nomination of governors and deputy governors, regents and deputy regents, and/or mayors and deputy mayors.

Ex-convicts are particularly in the spotlight in this case. Ex-convicts can still legally run in elections because the political rights of citizens in elections, including regional head elections (pemilukada), namely the right to vote and be elected, are human rights guaranteed in the 1945 Constitution of the Republic of Indonesia [16]. "Everyone deserves equal opportunities in government," as stated in Article 28 letter D of the 1945 Constitution. But at first, former prisoners could not nominate themselves in elections or elections based on Law No. 8 of 2015.

However, after a judicial review by the Constitutional Court, it issued its Decree No. 42/PUU-XIII/2015 entitling ex-convicts who have finished serving their sentences to run as candidates for regional heads, whether they are candidates for Governor, Regent, or Mayor [17].

In this case, Agusrin was a former convict in a corruption case in 2012. In accordance with this law, it is still given the opportunity to run in the Bengkulu election. But on the other hand, the choice is only in the hands of the people. People can choose and sort out who to choose based on the capabilities and track record of the candidate couple, whether they are ex-convicts or not. In accordance with the principle of integrity in elections, the people choose based on the integrity of a person, and the election organizers also uphold the principle in its implementation.

Second, there is a difference in decisions between the KPU and Bawaslu as the election organizer. Of course, as election organizers who follow the orders of the laws

and regulations, these two institutions must make decisions based on these regulations. The Bengkulu KPU decided Agusrin and Imron were not eligible, then Bawaslu issued a ruling that Agusrin and Imron qualified as a pair of candidates for the election and asked the KPU to cancel the break-up.

There is something interesting in this phenomenon. On the one hand, there is a difference in regulatory interpretation between the KPU and Bawaslu Bengkulu Province. As an election organizing agency, it is required to have integrity in carrying out its duties. Integrity entails carrying out duties honestly, standing firm, and having a strong personality [12]. According to the author, this phenomenon is a battle of justification for the interpretation of regulations between these two electoral institutions. In line with Levin, Mudiwati revealed that of the various empirical phenomena of the implementation of the election, the issue related to election regulation and the concern of many parties [12]. After the ruling issued by Bawaslu Bengkulu, the KPU hastily changed its decision from TMS to MS. There should be a review and re-research related to the issue of the requirements of the candidate couple. It could be that the KPU's decision is correct, or vice versa. So it does not seem to "yes" right and follow Bawaslu's orders just like that.

Factors causing the difference in verdicts between the KPU and Bawaslu Bengkulu include First, there is a difference between the KPU and Bawaslu in interpreting Agusrin's waiting period as a former corruption convict. If in Bawaslu, use parole while the KPU is finished serving a prison term. Regulations that discuss the requirements of candidacy in elections and elections should not cause multi-interpretation because this is a requirement. If multi-interpretation opens debates continuously related to the requirements of the candidate pair,

The second factor is that this kind of regulation raises the possibility of a conflict relationship between the KPU as a technical-administrative organizing agency and Bawaslu as the election supervisory body. Analysis of this case shows the occurrence of conflicts based on the framework of the concept of cooperation between these two institutions.

According to the author, the difference in decisions is due to the difference between maintaining institutions and disrupting institutions. This difference in institutional work is possible due to the loose relationship between the two, mainly due to the non-deterrence of the recommendations produced by Bawaslu on the one hand. But on the other hand, in this context, not being determinative of the supervisory function actually opens up opportunities to see inequality in the nomination. Fury Ayunindya mentioned the number of cases of conflict between these two institutions, both at the central level

and at the regional level, which will certainly hinder the smooth process of the election [13].

The third factor is due to interest. Everyone has different interests. As a pair of candidates, Agusrin and Imron are very ambitious to run, even though they are labeled as former convicts in corruption cases. The couple is still insistent that he is qualified because he still has a strong chance of winning the Bengkulu election [14].

On the other hand, the KPU and Bawaslu also have their own interests. KPU with administrative and technical implementation tasks is certainly interested in maintaining the implementation of pilkada smoothly and in accordance with the rules. And likewise, with Bawaslu as an election supervisory body that is also responsible for problems, irregularities, and violations of the election, both in terms of candidates and organizers.

This case can have a very big impact on various parties, including election organizers, candidates, and the public. From the perspective of the election organizers, this case has an impact on the disintegration of the election. The election organizers seem to have a disagreement regarding the requirements of the election nomination, which is actually final and not multi-interpreted anymore. Through this case, public confidence in the election organizers has decreased. As the organizer of the election, he wants to uphold the integrity mentioned above.

Election organizers must organize and build strong relationships and unite thoughts in interpreting applicable regulations. If the electoral process is hampered by the conflict of the election organizers themselves, then this will hamper and even destroy the expectations of all parties in the general election and elections carried out based on the principles of direct, public, free, confidential, honest, and fair [13].

Then, from the candidate's side, this regulation will have an impact on the openness of the opportunities for former criminals in the election nomination and election. Former criminals can run in this election, which is a dilemma in itself. On the one hand, the state avoids corrupt government organizers, but on the other hand, by restricting one's political rights, it can violate the country's constitution.

Finally, in terms of elections, As mentioned above, the quality of elections is also closely related to regulations that boil down to the quality of election organizers. The hope of all parties in the general election and elections is that this election runs smoothly and is carried out based on the principles of direct, public, free, confidential, honest, and fair. However, if communication between the election organizers is not

immediately addressed, then these expectations will not become a reality.

4. CONCLUSION

Democracy has mandated elections as a way for the people to choose their leaders. In the course of an election, regulations often change due to demands from various parties on the grounds of the political rights of citizens who have the right to vote and be elected. So departing from there, there was a change in the terms of nomination that had previously been convicted of corruption, drugs, and sexual crimes were prohibited, but after the mk test was allowed,

In the formation of laws and regulations, this regulation has already qualified. First, the law becomes legal if it is made by an authorized and sourced institution and is based on a higher norm. Second, pay attention to the hierarchy of applicable laws and regulations so that the regulation does not conflict with the laws and regulations that are at a higher level. Third, the conformity between the form or type of legislation and the material of the content. Fourth, the necessity to follow certain procedures ranging from planning, preparation, discussion, approval or determination, and endorsement.

Then, in the case of the nomination of ex-corruptors in the election of the regional head of Bengkulu province, there are several things that cause differences in decisions. First, there is a difference between the KPU and Bawaslu in interpreting Agusrin's waiting period as a former corruption convict. If in Bawaslu, use parole while the KPU is finished serving a prison term. Second, this kind of regulation raises the existence of conflict relations between the KPU as an administrative technical organizing agency and Bawaslu as the election supervisory body. And third, interests. Through this regulation, voters need to exercise sensitivity in making their choices. Because all decisions are in the hands of voters in choosing former corruptors as election winners.

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