

PROTECTING CHILDREN FROM NEGATIVE EFFECT OF ELECTION CAMPAIGN IN THE STIPULATIONS OF CHILDREN PROTECTION LAW IN INDONES

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PROTECTING CHILDREN FROM NEGATIVE EFFECT OF ELECTION CAMPAIGN IN THE STIPULATIONS OF CHILDREN PROTECTION LAW IN INDONESIA

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ABSTRACT

Every child has the right to live, grow and develop and has the right to protection from violence and discrimination. This is stated in Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia. One form of protection for children is in the political campaign. Based on Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection in Article 15 letter a, that every child has the right to obtain protection from abuse in political activities. The political activity in question is a campaign in general elections. However, during the general election, there are many cases of exploitation of children in campaign activities. This study used a normative juridical method, with the main resource person being the Election Oversight Body (Bawaslu) Commissioner of Central Java Province. Data analysis was through triangulation, and included descriptive qualitative analytical research. The result of the research is that the laws and regulations do not clearly regulate the parameters of children's involvement in political activities, so this creates obstacles in practice in the field when implementing law enforcement.

Keywords: Children's protection, child involvement, campaign, elections.

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INTRODUCTION

Every child has the right to live, grow and develop and has the right to protection from violence and discrimination. This is stated in Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia. With regard to child protection, based on the considerations of Law No. 3 of 1997 concerning Juvenile Justice, that children are part of the younger generation as one of the human resources who are the potential and successor to the ideals of the nation's struggle, which has a strategic role and has special characteristics and characteristics, requires guidance and protection in order to ensure growth and complete, harmonious, harmonious, and balanced physical, mental and social development.[1,2] To carry out guidance and provide protection for children requires support, both in terms of institutions and legal instruments that are more stable and adequate.[3]

Apart from these laws, in Law No. 23 of 2002 concerning Child Protection in Article 21 states that the state, government, community, family, and parents are obliged and responsible for implementing child protection. Furthermore, in Article 22, the state and government have the obligation and responsibility to provide support for facilities and infrastructure in implementing child protection. Article 23 paragraph (1) states that the state and government guarantee the protection, maintenance and welfare of children by taking into account the rights and obligations of parents, guardians or other people who are legally responsible for children. Article 23 paragraph (2) states that the state and government supervise the implementation of child protection. This Article clearly mandates the government to really pay attention to the lives of Indonesian children, as for the implementation of child protection by the Office of Women's Empowerment and Child Protection. One form of protection for children is in the political field. Based on Law Number 35 of 2014

concerning amendments to Law Number 23 of 2002 concerning Child Protection in Article 15(a), that every child has the right to obtain protection from abuse in political activities. The political activity in question is a campaign in general elections.

Campaign activities are often found in political statements written in provocative language, mutually insinuating, and blaspheming one another by revealing the ugliness or shortcomings of the opposing party, as well as various kinds of tricks to gain people's sympathy and support. Such political campaigns are considered inelegant and uneducative for a civilized society. Thus, such a political campaign should not be given space in a society that still wants harmony and peace. The involvement of children in political campaigns has been discussed in previous studies from various perspectives.[4-7] This paper aims to analyze the children's involvement in the election campaign so that the following issues are identified as how are the arrangements regarding children's involvement in the 2019 General Election campaign in Central Java Province. The difference between this study and previous research, although both focus on children, this study is more on the involvement of children in the election campaign, not on violence against children in all aspects, but specifically on the political aspect.[8-12] In addition, protection against the abuse of the election campaign focuses more on protecting children, not on voters in the election.[13-16]

RESEARCH METHODS

This study used a normative juridical method, with the main resource person being the Election Oversight Body (Bawaslu) Commissioner of Central Java Province. Cross-check data through triangulation, and include descriptive qualitative analytical research. This research stems from a phenomenon in society and then looks for a legal basis

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and expert opinion related to the practice of implementing positive law on problems in society.

LEGAL ARRANGEMENTS ON CHILDREN'S INVOLVEMENT IN THE ELECTION CAMPAIGN

General election is the entry point for the development of a democratic government.[17] The principle of sovereignty becomes the spirit for every movement of election administration, which is a process of selecting the birth of a leader in the context of the realization of democracy which is expected to be a representation of the people and provide equality in democratic system.[18,19] This is because elections are a series of political activities to accommodate the interests of the people, which are then formulated in various forms of policy.[20,21]

The organizer of general elections in Indonesia is the Election Management Commission (KPU). Election campaigns are to convince voters by offering the vision, mission, program and/or self-image of the election contestants. Basically, the vision, mission, and programs offered are ideas that arise for reasons that will be constructed in the form of messages that can be communicated to the public or audiences. Campaign messages can be ideas from candidates or candidates who want to share with voters. Often times, campaign messages consist of main points that touch on policy issues. These points are summarized into the main campaign ideas, and then repeated simultaneously in order to create a certain striking impression on voters. [22,23]

Election campaigns are part of the political education of the community and are carried out responsibly. However, in fact, the election campaign is the stage where there are the most election violations, one of which is involving children in the campaign. Bawaslu has a report that involving children in campaigns is the most types of violations. This violation was committed by almost all political parties. Several subjects are prohibited from being involved in the election campaign based on Article 280 paragraph (2) of the Election Law. One of them is Indonesian citizens who do not have the right to vote.[24] However, the Election Law does not specify who will participate in the campaign, the Election Law only states that campaign participants consist of the public (Article 273 of the Election Law). However, further provisions can be found in Article 6 of KPU Regulation Number 23 of 2018 concerning the General Election Campaign (PKPU 23) which states that Campaign Participants are Indonesian citizens who have met the requirements as voters. The same thing is also found in Article 1 number 29 of Bawaslu Regulation Number 28 of 2018 concerning Election Campaign Supervision (Perbawaslu 28) which states that Campaign Participants are Indonesian Citizens who have met the requirements as voters. As previously mentioned, the requirements for voting are Indonesian citizens who are 17 (seventeen) years old or more, married, or already married. Thus, children are not allowed to participate in election campaigns in any campaign method.

In addition to criminal sanctions, the Election Law also has action sanctions that can be given by the KPU for campaign implementers who violate Article 280 of the Election Law, in this case also for campaign executives and/or campaign teams that include citizens who do not have the right to vote. These sanctions are the cancellation of a candidate's name from the list and

cancellation of the determination of the candidate as an elected member (Article 285 of the Election Law). The KPU's giving of actions against violations contained in Article 280 of the Election Law cannot be immediately implemented. In giving these actions, there are conditions that must be met first. The conditions for giving an action by the KPU are if there has been a court decision that has obtained permanent legal force against the violation of Article 280 of the Election Law, if there is no judge's decision that has permanent legal force, the KPU cannot carry out such action. Another related rule regarding child protection, Article 15 letter (a) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection regulates the rights of children to obtain protection from abuse in political activities. In addition, Article 76H of the Child Protection Law states that "everyone is prohibited from recruiting or using children for military and/or other purposes and leaving children without life protection".

CHILD PROTECTION LAW AND POLITICAL CAMPAIGN

Furthermore, Article 76H of the Child Protection Law has "and/or other" editors, to interpret the meaning of "other" an interpretation can be made of the sound of the article. If there are articles that have vague norms, legal discovery can be made. The legal findings that can be made on these articles are by means of systematic interpretation. Article 76H of the Child Protection Law is related to Article 15 of the Child Protection Law, the link between Article 76H and Article 15 of the Child Protection Law is a consequence of a unitary law that is systematically and mutually related. Thus, anyone who abuses child⁹ in political activities can be subject to Article 76H of the Child Protection¹⁰aw. The criminal threat as stated in article 87 is with a maximum sentence of 5 years and/or a maximum fine of Rp. 100,000,000. Even though this prohibition is regulated, this Law does not definitively regulate child abuse in political activities. In response to this, the Indonesian Child Protection Commission issued a classification of the forms of including prohibited children. This is due to the unclear form of including what is prohibited. Based on KPAI, the forms of inclusion that are prohibited are such as manipulating data on children who are under 17 years old and unmarried so that they can be used as voters; using children's facilities such as day care centers or children's education centers; mobilizing the masses of children by political parties or pairs of candidates; using children as advocates or campaigners to elect a particular candidate or party; presenting children as the main star of a political advertisement; presenting children on the stage of a political party campaign in the form of entertainment; using children to attach the attributes of a candidate pair or party; using children to make payments to adult voters in the practice of money politics; arming children or certain dangerous objects that are endangering to children or other people; forcing, persuading or seducing children to do things that are prohibited during activities; bringing babies or children under 17 years old to the open campaign arena that endangers children; committing acts of violence or which can be interpreted as acts of violence in a campaign, voting, or vote counting (such as a child's head shaved, body sprayed/painted); conducting ostracism, humiliation, intimidation or other discriminatory actions against children whose parents or families are different or are suspected of having different political choices;

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provoking children to be hostile to or to hate certain candidates for regional heads or political parties both in the real world and in cyberspace; involving children in disputes over vote count results.[25]

The Child Protection Law regulates a more general subject element, namely "everyone", which by definition is said to be a person or a corporation. This is different from the Election Law which regulates a more specific subject, namely "each Implementer and/or campaign team". The difference in the regulation of the subject element occurs because of the differences in the origins of the birth of the law. The Election Law aims to ensure that the general election process runs smoothly, which is the responsibility of each campaign executive and/or team. It is different from the Child Protection Law which aims to protect child victims, which is done by everyone so that children can be protected. With the different regulations in the two laws, it is an alternative for law enforcers to enforce laws related to the involvement of children in election campaigns. If the perpetrator of child involvement is the campaign team executor or team, then the Election Law can be used, however, if the perpetrator is someone outside of the campaign team and executor, the Child Protection Law will be used.

Protection of children in Indonesia means protecting the potential of human resources and developing Indonesian people as a whole, towards a just and prosperous society, spiritual material based on Pancasila and the 1945 Law.[26] The responsibility of parents, family, community, government and the state is a series of activities carried out continuously in order to protect children's rights. Thus, the rights of children to live, grow, develop and participate optimally in accordance with human dignity, and to obtain protection from violence and discrimination, for the sake of the realization of children in Indonesia who are of quality, have noble character and prosperity can be realized.

LEGAL MEASURES REGARDING CHILDREN'S INVOLVEMENT IN THE POLITICAL CAMPAIGN

The formation of a good legal system according to Friedman's legal system theory states that there are three elements, namely the legal substance, legal structure and legal culture. Obstacles in implementing regulations regarding children's involvement in the general election campaign can be analyzed from these three aspects.

The background of the emergence of obstacles from the aspect of legal substance is that the law regulating the prohibition of involving children in general election campaigns has several deficiencies in juridical policy formulation. In fact, juridical policy formulation is a strategic tool that plays a central role in changing society both in legal culture and in law enforcement towards legal subjects to comply. These include that the Election Law does not explicitly regulate the involvement of children in campaigns but instead uses the phrase Indonesian citizens who do not have the right to vote. Moreover, the Election Law does not explain the meaning of the phrase "involve", whether it is only participating in campaign activities or taking an active role in the general election campaign. The Election Law emphasizes the perpetrators of the campaign and the campaign team. This means that legal subjects other than the two of them cannot be charged by the Election Law. The Election Law has action sanctions that can be given by the KPU for election campaign implementers for members of national and local parliament who violate Article 280 of the

Election Law. In this case this includes campaigners who include citizens who do not have the right to vote. However, this rule is confusing because the Election Law does not regulate the same sanctions for the presidential and vice presidential candidate pairs, even though the Election Law is an integrated rule between the election of candidates for legislative members and the election for the president/vice president.

The Election Law as the legal umbrella for the implementation of general elections in Indonesia should have a sound juridical policy formulation. Because in relation to the involvement of children in general election campaigns that are subject to criminal sanctions, the Election Law is a lex specialist of existing legal regulations, namely the Child Protection Law. Basically, election crimes can be divided into 2 categories, namely Special and General. Special election crimes are all criminal acts related to elections and during the holding of elections as regulated in the Election Law, while general election crimes are all criminal acts related to elections and also at the time an election is held and its resolution is carried out through the General Court.[27]

Involving children in political campaign activities is included in the category of special election crimes because the action is related to elections and the resolution of the case is carried out by a special panel of judges as stipulated in the Election Law. In addition, Election Supervisors cannot forcibly summon the parties needed in the clarification process. The clarification process at the election supervisors is not a pro justitia process that can force call parties who do not want to attend when asked for information. Election supervisors only have the authority to invite (non-binding invitations). Parties invited for questioning were frequently absent. Thus, election supervisors do not have sufficient information to forward an incident of violation to the competent authority.

The fundamental difference between political education and the exploitation of children in political campaigns. It is clear, that the steps taken by parents and election participants if they are not related to accommodating children's opinions and protecting children's rights in politics, then nothing more than child exploitation in politics. There are 5 things that are used as guidelines for politicians and parents regarding children's involvement in the general election campaign, including that children need to be protected from manipulation. They cannot be the target of election campaigns. Children have the right to be informed properly on politics. They need to be supported in understanding the role of politics and party politics in shaping public life. So, children should not be used for political purposes since they are not public figures: use of their personal data and images may violate their rights and best interest. Lastly, children have civil rights and are entitled to participate in issues of public life that concern them.[28]

By looking at the reasons why children are in the middle of a campaign, it is actually easy to know which party is involved. If a child appears on the campaign stage with the aim of attracting the masses, his existence is certain because he was deliberately involved by the political party concerned, so that the political party can actually be prosecuted using the Election Law. If he is together with his parents, it should be suspected that the child was deliberately invited by the parents, so that the parents could also be sued by the Child Protection Law. However, deficiencies are still found that have hampered the

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implementation of the prohibition on children's involvement in the general election campaign. Supposedly, every policy contained in the form of a rule of law must be able to solve problems by identifying the root of the problem itself. The author argues, the lack of public understanding of child protection during the general election campaign by including them in these activities needs to be addressed. The juridical formulation in the Election Law needs to be improved by providing clear legal rules and granting complete authority to law enforcers so that they can implement the law without half measures. In that way, the implementation of the prohibition on the involvement of children in the general election campaign can be carried out properly and children get their rights to be fully protected.

CONCLUSION

The law on child protection in election campaigns is contained in the provisions of Article 280 paragraph (2) letter k of the Election Law which prohibits involving Indonesian citizens who do not have the right to vote. Referring to the provisions of the Election Law, to be able to say as voters are Indonesian citizens who are already 17 (seventeen) years old or more, are married, or have been married. Based on this provision, children are classified as Indonesian citizens who do not have the right to vote, so they may not be involved in the election campaign through any method. This constitutes an election violation which is included in the criminal election violation. Sanctions for each election campaign organizer and/or team who include children (Indonesian citizens who do not have the right to vote) in the election campaign can be punished with imprisonment of up to 1 (one) year and a maximum fine of Rp. 12 million. In other legal regulations specifically related to child protection, article 15 letter (a) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2003 concerning Child Protection regulates the rights of children to obtain protection from abuse in political activities. So, there should be socialization of the regulations to both the relevant officials and the community so that a legal culture can be created not to include children in political activities.

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Ethical Clearance

This research was ethically approved by Faculty of Law, Universitas Diponegoro, Semarang, Indonesia

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Conflict of Interests

There are no conflict of interests

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