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Legal Implication of Black Campaigns on The Social Media in The General Election Process

Ndyia Fatmawati Octarina^a & Hardianto Djanggih^b

^a Faculty of Law, Universitas Narotama Surabaya, Indonesia

^b Faculty of Law, Universitas Tompotika Luwuk, Indonesia

Abstract

This study aims to examine the problems of black campaign on social media in the process of Regional Leader elections. The method used was a normative legal research with a qualitative approach to analyze the phenomena among the objects of the study with a conceptual and a case approach. The result indicates that the legal implication of the black campaign on the conduct of Regional Leader elections is that black campaign is not an option in politics. In addition to comprising detrimental things and violating the norm, black campaign also leads to poor political education for the society and can harm both the objects that are imposed and the black campaigners as this matter can be subject to criminal sanctions as stipulated in the Law of Election and Electronic Information and Transactions. For further research, there is a need for serious handling through criminal law and other facilities so that the implementation of elections to the regions as the actualization of democracy in Indonesia results in more valuable quality so as to create trustworthy Regional Leaders

Keywords: Regional Head Election; Black Campaign; Social Media.

Abstrak

Penelitian ini bertujuan mengkaji permasalahan kampanye hitam melalui media sosial pada pelaksanaan pemilihan umum kepala daerah. Metode penelitian yang digunakan adalah metode penelitian hukum normatif dengan pendekatan kualitatif yang menganalisis fenomena objek kajian dengan pendekatan konseptual (conceptual approach) dan pendekatan kasus (case approach). Hasil penelitian menunjukkan bahwa Implikasi hukum kampanye hitam pada pelaksanaan pemilihan umum kepala daerah bahwa kampanye hitam bukanlah sebuah pilihan dalam berpolitik. Selain mengandung unsur jahat dan melanggar norma, kampanye hitam juga memberikan pendidikan politik yang buruk bagi masyarakat dan dapat merugikan pihak yang dijatuhkan dan juga merugikan pelalu kampanye hitam, karena perbuatan tersebut dapat dikenakan sanksi pidana yang telah diatur dalam Undang-Undang Pemilu dan Undang-Undang Informasi dan Transaksi Elektronik. Rekomendasi penelitian, bahwa perlu adanya penanggulangan serius melalui sarana hukum pidana maupun sarana lain, sehingga pelaksanaan pemilihan umum kepada daerah sebagai perwujudan demokrasi di Indonesia makin baik dan berkualitas sehingga menghasilkan pemimpin daerah yang amanah.

Kata Kunci: Pemilu, Kampanye Hitam, Media Sosial.

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Introduction

General Election (*Pemilu*) is a means for society to participate in determining figures in a certain period (Rohim, 2016). The contribution of citizens in voting and being voted for is a part of political rights (Budijanto, 2016). This is a part of the idea of democracy defined as a power of the people, by the people, and for the people, so the

✉ Corresponding author: hardianto_djanggih@yahoo.co.id

implementation of democratic elections is an important requirement in the management of a state (**Respationo, 2013**).

The implementation of democracy in Indonesia is, by far, not in accordance with the universal election standards and principles. The General Election Commission (*KPU*) and the House of Representatives (*DPR*) have come to a consensus of the renewal on 5 (five) regulations applied in the Regional Leaders Elections in 2018 after a consultation meeting of *KPU* and *DPR*. These *KPU* regulations (*PKPU*) consists of stages, updating data on voters, nominating Regional Leaders, campaign and campaign funds. The first thing stipulated in these regulations is the minimum age for Governor and Vice Governor Candidates, which is 30 (thirty) years old, while the age for Regent or Mayor Candidates along with the Vice Candidates is 25 (twenty-five) years old. The second thing is the standard regulation of campaigns on social media. This was questioned by The Commission II of the House of Representatives, concerning in the attitude of *KPU* that did not regulate this matter because the campaign on social media was not the domain of *KPU*'s regulatory standard due the limited authority of its institutions. *KPU* cannot deal directly with campaign violations on social media (**Rahardian, 2017**).

The process of Regional Leaders Election begins with the campaign. It is held for 120 (one hundred and twenty) days. Matters relating to the campaign are regulated in *KPU* Regulation, Number 1 in 2017 concerning with the Campaign, including the list of volunteer fellows of the candidates. *KPU* requires the campaign team to record and register a group of volunteer fellows of the candidates and the campaign team in order to comply with all rules that bind the candidates and campaign team so that the campaign can run well and is in accordance with the fundamental purpose of the campaign, a political education (**Herdiana, 2018**).

The tendency of conventional democracy has changed moderately by exploiting the development of globalization with the use of social media (**Putri & Adiputra, 2017**). The use of social media during a campaign increases uncertainty about one's vote and, eventually, rises the opportunity to change the intention of whom to vote for (**Galais & Cardenal, 2017**).

Like in Norway, Karlsen suggests that the Internet has become a tool to win voters and been used in expansion of interaction with the existing campaign practices (**Karlsen, 2009**). In utilizing campaigns through social media, there were unfair democratic ethics (**Fatimah, 2018**). One of them is black campaign. Black campaign is defined as a campaign that originates from rumors, gossip, and leads to the implementation of a number of propaganda techniques (**Ramadhani, 2018**). Black campaigns can arise because of the lack of socialization of prospective candidates to the community so that they can be used by opposing parties to disseminate untrue information or slander that can damage the integrity of the candidates of the regional leaders (**Febriyan, 2017**). Problems that are often encountered during the campaign period for Election of Regional Leaders (*Pilkada*) are black campaigns by utilizing media space (**Antar, 2014**). Therefore, it can be said that the democratic system of the process

of the General Election for Regional Leaders has not gone well (Djanggih, Hipan & Hambali, 2018). During the practice of black campaigns, on the process of campaigns in East Java in 18 (Eighteen) Districts/Cities and 1 (One) Province, with models of hoax distribution and issues that raised ethnic, religious, racial and intergroup (SARA), there were 1,452 social media accounts potentially disrupting the East Java Election (Beritagar.id, 2019). One of the most visited social media is Facebook (FB), in which, with these conditions, the election contestants use it to campaign (Junaidi, et.al, 2015).

Democracy and media have reciprocal relationships. On the one hand democracy requires the media as a means of political communication, both by the government and by society, while on the other hand the media can only function for the benefit of the wider community in a democratic political system (Simarmata, 2014). Normatively, black campaigns are not recognized in the laws and regulations related to election campaigns. Black campaign is a campaign model using destructive seduction, satire or rumors of the candidates, which become viral among the society in order to create perceptions that are considered unethical especially in terms of public policy (Riswandi, 2009). According to the aforementioned background of the study, the author would like to formulate the question on the legal implications of the black campaign through social media during the process of the Regional Leaders General Election

Discussion

The constitutional foundation for the Election of Regional Leaders (Pemilukada) is listed in the Article 18 verse number (4) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) which stipulates that Governors, Regents and Mayors, each as the Leaders of provincial government, Regency and the City are elected democratically (Saraswati, 2014). Jimly Asshidiqie states that the provisions of Article 18 of the 1945 Constitution contains three types of organs as subjects of regional government law: 1. Regional Government, 2. Leaders of Regional Government called Governor, Regent or Mayor, and 3. Regional DPR (Budiyono, 2015). In contrast, Ibnu Tricahyo suggests that the Provisions of Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia do not mandate the General Election to be carried out directly, because it is merely an interpretation of the "democratically voted" formulated by the legislators, which is implied as "directly voted" (Prihatin, 2015).

The democratic phrase of the provisions of the article should be understood as strengthening of the understanding that Indonesia is a democratic country (sovereignty), which is neither a monarchical state nor authoritarian of the government regime (Melva, 2013). The meaning of "democratic" in the provision by the mechanism of election, which is directly followed up in Law Number 3 of 2004 concerning Regional Government is that The Election of Regional Leaders is regulated in Article 24 paragraph (5), in which the Regional Leaders and the Vices are directly elected in one pair by the people in the area concerned. This formulation was substantially unchanged, and the State

Administrators decided to still mention it in the Law Number 23 in 2014 concerning Regional Government which replaced the Law Number 32 in 2004 (Kristiyanto, 2017).

The General Elections of Regional Leaders, which is conducted simultaneously, is a phenomenon of the development of local democracy in Indonesia which aims to fill political position (Mulyadi, 2018). The year of 2015, in December, is the first batch of the direct and simultaneous elections of Regional Leaders (*Pilkada*) in Indonesia. Since the first Election of Regional Leaders in 2005, there have been various evaluations and criticisms which in the end resulted in the simultaneous Election of Regional Leaders in 2015. This was carried out with the aim in saving state budgets (Kumolo, 2015). Elections or *Pilkada* in Indonesia are a means of democracy for every citizen to vote for candidates whom they believe are capable of running the governance at the national, provincial and district/city levels. General elections in Indonesia are held once every 5 (five) years and are valid for either regional elections or general elections. In the election of the Regional Leaders held simultaneously, there were 2 (two) changes on the Law of Election: Law Number 8 of 2015 concerning with the Amendments to Law Number 1 of 2015 concerning with the Enactment of Government Regulation in Lieu of Law, Number 1 in 2014 about the Election of Governors, Regents and Mayors; and Law Number 9 of 2015 concerning Regional Government. Article 3 of Law No. 8/2015 states that: "Elections are simultaneously held every 5 (five) years in the entire region in the Republic of Indonesia." Article 5 paragraph 1 of Law No.8 / 2015 states that "Elections are held in 2 (two) stages: the preparation and enforcement stages."

Stages of preparation as stipulated in Law No. 8/2015 include the program and budget planning; preparation of regulations for the implementation of elections; organizing planning which includes the establishment of procedures and timetable for implementing the election; establishment of PPK, PPS, and KPPS; establishment of the Election Oversight Committee in Regency/City/District, PPL, and TPS Supervisors; notification and registration of election monitors; submission of a list of potential voters; and updating and compiling the voter list. While the stages of enforcement elections, in accordance with article 5 paragraph 3 of Law No. 8/2015, include the announcement of registration for the Candidate Pair of Candidates and Candidates for the Deputy Governor, pairs of Candidates for Regents and Candidates for Deputy Regents, and pairs of Candidates for Mayors and Candidates for Deputy Mayor; the registration of the candidate Candidates mentioned above; the research of the requirements of candidate pairs; the determination of candidate pairs, campaign implementers; voting; vote counting and recapitulation of vote count results; the determination of elected candidates; the settlement of violations and dispute over election results; and proposing ratification of the appointment of elected candidates.

Based on article 51 paragraph 2 and article 52 paragraph 2 of Law No.8 / 2015 there are provisions related to the election of regional heads and things that underlie the implementation and mechanisms applied in 2015, which are different from the provisions of the previous periods. For instance, there were issues related to a single nomination where there was only one candidate for regional leader, who enlivened the regional election competition. The practice of black campaigns in the General Election is difficult

to avoid where most black campaigns are carried out by successful teams or sympathizers. This is because candidates are difficult to control with their fellows. The main purpose of doing a black campaign or negative campaign is to raise doubts, resentment, and fear so that the support for targeted targets becomes weak but this method is not necessarily effective. Black campaigns will be easier to remember and do than strengthen the candidates' vision and mission. Black campaigns are used by candidates whose winning potential is weak.

According to article 1 number 21 Law No. 8/2015, campaign is an activity to convince voters by offering a vision, mission, and program for Candidates for the Governor and Candidates for Deputy Governors, Candidates for Regents and Candidates for Deputy Regent, and Candidates for Mayors and Candidates for Deputy Mayor. According to article 65 paragraph 1 of Law No. 8/2015, it is said that campaigns can be carried out through limited meetings; face to face meetings and dialogues; open public debate/debate between candidate pairs; dissemination of campaign material to the public; installation of props; print mass media advertisements and electronic mass media; and / or other activities that do not violate campaign prohibitions and statutory provisions. Afterwards, article 66 paragraph 2 of Law No. 8/2015 states that the Regional Government can provide opportunities for the use of public facilities for campaign activities on the Provincial *KPU* and Regency / City *KPU*.

Article 63 paragraph 1 of Law No.8 / 2015 stipulates that the campaign is a manifestation of community political education that is carried out responsibly. In the campaign, each candidate pair is required to submit a vision and mission compiled based on the Provincial Regional Long Term Development Plan or District / City Long Term Plan verbally and in writing to the community accompanied by procedures for delivering polite, orderly and educative campaign material such as those regulated in article 64 of Law No. 8/2015. Article 69 of Law No. 8/2015 states that,"During the campaign, it is prohibited to:

- a. Challenge the fundamental state of Pancasila and the opening of the 1945 Constitution of the Republic of Indonesia;
- b. Insult someone, religion, ethnicity, race, class, candidate for governor, candidate for vice governor, candidate for regent, candidate for vice regent, candidate for mayor, candidate for vice mayor, and / or political party;
- c. Conduct campaigns in the form of inciting, defaming, pitting political parties, individuals and / or community groups;
- d. Use violence, threats of violence, or encourage the use of violence to individuals, community groups, and/or political parties;
- e. Intrude the security, peace and public order;
- f. Threaten and advocate the use of violence to take power from a legitimate government;
- g. Damage and/or eliminate the campaign props;
- h. Use the facilities and budget of the government and regional government;
- i. Exploit the places of worship and places of education;
- j. Conduct marches carried out on foot and / or by vehicles on the highway; and/or
- k. Conduct campaign activities which are out of the schedule set by the Provincial *KPU* and Regency / City *KPU*."

Black campaign according to Wirdyaningsih is a phrase that is not defined in detail. This term is used in Indonesia to mention activities that are also known as negative campaigns in an attempt to overthrow political opponents (Law, 2014). According to the provisions of article 69 letter c Law No. 8/2015, it was explained that acts such as black campaigns in the form of incitement, slander, and bringing into conflict are prohibited and can be subject to criminal. Article 187 paragraph 2 Perppu No. 1/2014 jo. Article 69 letter c Law No. 8/2015 stipulates that the threat of sentence for black campaigners at the time of the campaign may be subject to imprisonment of at least 3 (three) months or a maximum of 18 (eighteen) months and / or a fine of at least Rp. 600,000.00 (six hundred thousand rupiahs)) or at most Rp. 6,000,000.00 (six million rupiah). Negative campaigns referred in the Election Law are related to violations of the code of ethics of election administrators, violations of election administration, electoral disputes, and election crimes (Hukum. UI, 2016). Black campaign can be done through the distribution or dissemination of information on mass media such as pamphlets, copies of articles, and others, which contain negative information from the opposite sides that are shared among the public. Spread can be done by a success team or sympathizers from one of the potential partners (Law, 2014). Nowadays, Promotion of ideas, ideas, and work programs has spread to cyberspace. Discussions, frontal debates and black campaigns have been out of control and often occur on various social media (Saleh, 2018). Social media are the result of developing communication media through internet network. The internet stands for interconnected network, bringing changes in communication (Budiyono, 2015). So, the internet has an extraordinary ability to bring political change in a country and is able to revolutionize the political system, from authoritarian to democratic (Holik, 2010).

Black campaigns generally have a negative impact. This can be found in Propaganda content which is one of the interesting topics, because until now. Politicians and opinion leaders understand the media as one of the strong aspects in influencing voters (Sutanto, 2014). The campaign process is not impossible for sympathizers to support the candidate pair that they favor, including a black campaign aimed at bringing down the image of their competitors. Black campaign is one of the triggers of conflict in an election administration. This of course is considered to be detrimental to the community, especially for potential partners who will be dropped.

In politics, every party involved must be based on good ethics, morals, and also avoid using black campaigns. Publication for a black campaign in the midst of this globalization era can not only be done with print media or electronic media but also through social media. The rapid development of social media and its large number of users has become one of the means for hoax news as a form of black campaign to develop rapidly and widely. So, the use of a good language style is important to avoid black campaigns (Subahnan, 2016).

Elections through direct elections have been "robbed" of the people because of money politics and black campaigns (Munaf, Chaidir, Syed Zakaria & Arifin, 2016). Black campaigns are common in various countries, including Indonesia in each election (Yusri & Adlin, 2012). The practice of black campaigns is carried out by contestants by attacking

their opponents using tendentious words, starting from political party policies, and concepts offered (Ida, 2014). Basically the campaign aims to bring down political opponents with absurd things and cannot be justified. The essence of the black campaign is actually building a bad perception on the community of candidates who are political opponents so that the results of the perceptions that are raised make the people accept "unanimously" the contents of this campaign, without processing the contents of this black campaign. The ultimate goal is certainly to have an impact on voting in elections (Dodu, 2017). Black campaign is a campaign that contains allegations without being based on facts and is a slander or what we commonly call hoaxes or false news. Whereas negative campaigns are campaigns that contain disclosures of facts deficiencies regarding a candidate or party that are delivered honestly and relevantly. The majority of parties using black campaigns are parties that have no basis and facts, disclosure and irrelevance are expressed regarding political parties and their leaders (Budiman, 2014).

The use of black campaigns is not an implementation of the use of effective communication as a basis for effective campaign implementation. The first thing that must be understood in a campaign is that the campaign must always adhere to the normative rules that govern the implementation of the campaign. In elections, the campaign is regulated in Law No. 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Establishment of Government Regulations in lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors to become Acts. Black campaign is regulated in article 187 paragraph 2 of Law No. 8 of 2015 concerning Amendments to Law No. 1 of 2015 concerning Determination of Government Regulation in lieu of Law No. 1 of 2014 concerning the Election of Governors, Regents and Mayors into Laws; and article 70 paragraph 1 of the General Election Commission Regulation No. 7 of 2015 concerning the election campaign of the Governor and Deputy Governor, Regent and Deputy Regent and / or Mayor and Deputy Mayor.

Any violations that occur during the campaign period can be dealt with in accordance with applicable regulations. The existence of Law Number 8 of 2011 concerning Information and Electronic Transactions (ITE Law) also became a regulation to then load the threat of sanctions for black campaigners. ITE Law in anticipation of the adverse effects of utilizing technological advancements. Actions that attack the legal interests of individuals, the public or the interests of the State law (cybercrime) by utilizing ITE technological advances are a bad side of technological progress (Djanggih & Hipan, 2018).

Black campaign is an effort to bring down political opponents through issues that are not known for certain truth. Social media such as Twitter, Facebook, Path and so on, if proven to contain content of humiliation and/or defamation against someone, can be subject to the provisions of article 27 paragraph 3 of the ITE Law: "Everyone intentionally and without rights distributes and/or transmits and/or makes access to Electronic Information and/or Electronic Documents that have content of insult and/or defamation." Jo. the provisions of article 45 paragraph 1 of the ITE Law regulate concerning,

"Everyone who fulfills the elements referred to in Article 27 paragraph (1), paragraph (2), paragraph (3), or paragraph (4) shall be sentenced to imprisonment for a maximum of 6 (six) years and/or a maximum fine of Rp1.000,000,000.00 (one billion rupiah)."

According to Article 249 paragraph 4 of Act Number 8 of 2012 concerning General Elections, it is regulated that every new campaign violation can be acted upon if there is a complaint or reporting in advance to the General Election Supervisory Agency regarding the alleged violation or negligence in carrying out an election with an expiration date of only 7 (seven) days since it was known. Based on the provisions above, it can be seen that if an investigator carries out an action which is included in a black campaign, sanctions can be imposed based on the complaint offense and is a form of personal responsibility.

Thus, black campaigns are not an option in politics. Black campaigns contain evil elements and violate norms, both community norms and religious norms. Black campaigns also provide political education that is bad for society. Efforts to Eliminate all the ways that underlie the choice of the form of black campaign show the still bad moral and faith of a politician who does this. With the existence of black campaigns it can affect the image of prospective candidates from certain political parties (**Turistiati, 2016**). To prevent the occurrence of black campaign violations, the role of campaigners, campaign officers, and campaign participants is nothing but an embryo of violations in campaigning (**Ramadhani, 2015**).

The aim of the black campaign carried out through social media in the form of vilifying other pairs of candidates is to prevent or eliminate public support for other candidates so that they do not become winners in the Regional Leader Election and expect the candidate pair to be the winner. Black campaigns often do not appear on the surface in the form of the utterances of campaigners on the pulpit but through social media, or the spread of rumors by word of mouth. Therefore the news is very quickly spread among prospective voters and may be unknown to the candidate pair or sympathizers.

The phenomenon of black campaigns through social media is the effect of the growth of the internet in Indonesia which has grown rapidly (**Jati, 2016**). With these developments, many predict that social media will be beneficial for political and social events (Lim, 2014). So, Prevention of the phenomenon of black campaigns through social media, it is expected that the use of social media properly as a means of campaigning in the implementation of the General Election is a tool to nurture its constituents and maintain relations with constituents. By carrying out these various functions, it is expected that the use of social media can be correlated with increasing voter participation. Although in the Indonesian context, many other factors influence the level of community political participation, social media as a form of progress in political communication and the high quantity of its use in Indonesia are expected to be one of the variables that contribute to increasing voter participation (**Alami, 2013**).

The process of campaigns on social media is more easily monitored in terms of supervision, compared to the process of face-to-face campaigns. However, Election

Supervisory Institution (*Bawaslu*) must have its own way to overcome campaign violations on social media. As for violations relating to black campaigns on social media, the handling uses criminal prosecution involving the police. As an effort that can be done to prevent and overcome the black campaign on the implementation of the General Election, all parties must take a role, both *KPU*, *Bawaslu*, Regional Government, Community Leaders, Religious Leaders, Universities, and law enforcement officers (*Polri*) in accordance with their respective authorities. The *Pemilukada* organizers (*KPU* and *Bawaslu*) need to carry out intensive counseling, so that the community understands what is and cannot be done. Likewise, the Regional Government to maintain regional conduciveness, needs to carry out counseling in the midst of the community in their respective regions, whether done independently or cooperating with other parties, namely religious leaders, community leaders and Universities and other institutions.

The solution to the problem of black campaigns through social media on the implementation of the General Election can be handled well, there is a need to overcome through legal means (criminal law) and other facilities so that the process of General Elections of Regional Leaders in Indonesia results in more valuable quality, promoting trustworthy regional leaders (Endri, 2014). The use of social media to carry out campaigns can be done by paying attention to the appropriateness of campaign content, so that it can avoid black campaigns which can lead to conflict between the candidate pairs of candidates and sympathizers.

Conclusion

The form of the Black Campaign through social media in the implementation of the Regional Leaders Election is to discredit other candidates, which have the implications for preventing or eliminating community support for other candidates. Black campaigns also provide political education that is detrimental for the community and can harm either the victims or the black campaigners themselves. Consequently, these actions can be subject to criminal sanctions as stipulated in the Election Law and Electronic Information and Transaction Law. The use of social media to carry out campaigns can be done by paying attention to the propriety of campaign content, so that it can avoid black campaigns which can lead to conflict between the candidates and sympathizers.

Suggestion

The existence of these phenomena requires a serious response through legal (criminal) and other facilities. Another important factor for the prevention of black campaigns is the role of the Campaign Team of each candidate pair in terms of structured appeals not to practice the black campaign. Thus, the process of the Regional Leaders Election as a manifestation of democracy in Indonesia results in more valuable quality and produces trustworthy regional leaders. In addition, it is expected that the organizers of Regional Leaders Election (*KPU* and *Bawaslu*) need to carry out intensive

counselling as the society understands what is permissible and prohibited in the use of social media in the process of the General Election..

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