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CRIMINAL LIABILITY FOR FRAUD IN CAMPAIGN FINANCE REPORTS FOR LEGISLATIVE ELECTIONS IN INDONESIA

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ABSTRACT

Article 280 of Law Number 8 of 2012 concerning Reporting Campaign Fund Fraud obscures the norm that only legislative candidates are responsible and not political parties. This represents a country that operates a democratic system, and freedom of speech and writing is guaranteed by the state and the constitution. Freedom of expression is regulated in Article 1 (1) of Law Number 9 of 1998 concerning Freedom of Expression in Public. Campaign funds are the most important key to honest elections and reflect the ugliness of fraudsters who, if fraud occurs in campaign funds, lead to corrupt electoral practices, namely political corruption of the organizers. In 2019, there were allegations of fraud in the reporting of campaign funds for candidate Buleeng Dapi from the Bali National Democratic Party in the 2019 general election. It was Somvir who reported the campaign funds. The results of this research show that responsibility for fraud is based on the principle of vicarious responsibility and administrative sanctions. And the types of sanctions given are criminal sanctions and fines in accordance with Article 334 paragraph (1), paragraph (2), and/or paragraph (3) and Article 335 paragraph (1), paragraph (2), and/or paragraph (3) Law Number 7 of 2017. Keywords: Inconsistency, Position, Corruption

Keywords: Fraud, Criminal, General Election

ABSTRAK

Pasal 280 Undang-Undang Nomor 8 Tahun 2012 tentang Pelaporan Penipuan Dana Kampanye mengaburkan norma bahwa hanya caleg yang bertanggung jawab dan bukan parta politik. Ini mewakili negara yang menjalankan sistem demokrasi, dan kebebasan berbicara dan menulis dijamin oleh negara dan konstitusi. Kebebasan berekspres diatur dalam Pasa 1 (1) Undang-Undang Nomor 9 Tahun 1998 tentang Kebebasan Berekspres d Depan Umum. Dana kampanye merupakan kunc terpenting pemilu yang jujur dan mencerminkan kejelekan para penipu yang jika terjadi kecurangan dana kampanye berujung pada praktik korupsi pemilu yaitu korupsi politik penyelenggara. Pada tahun 2019, terdapat dugaan adanya penipuan laporan dana kampanye caleg Buleleng Dapi dari Partai Nasional Demokrasi Bali pada pemilihan umum 2019. Somvir yang melaporkan dana kampanye. Hasil dari penelitian ini, tanggung jawab atas penipuan didasarkan pada prinsip tanggung jawab perwakilan (*vicarious liability*) sanksi administratif. Dan jenis sanksi yang diberikan adalah sanksi pidana dan denda sesuai dengan Pasa 334 ayat (1), ayat (2), dan/atau ayat (3) dan Pasa 335 ayat (1), ayat (2), dan/atau ayat (3) Undang-Undang Nomor 7 Tahun 2017.

Kata Kunci: Kecurangan, Pidana, Pemilihan Umum

INTRODUCTION

Indonesia is a legal state that upholds the principle of Democracy. Depicting a country that adheres to a democratic system, freedom of speech is guaranteed by the State and the constitution. Freedom of speech is regulated in section 1 paragraph (1) of Law Number 9 of 1998 on Freedom of Public Expression. According to this law, every citizen has the right to express their thoughts by speech, writing, and so on freely and responsibly in accordance with the provisions of applicable laws and regulations. This law is an implementation of Article 28 of the 1945 Constitution of the Republic of Indonesia, which states that the freedom of association and assembly, to express one's thoughts orally and in writing, and so forth, shall be established by law¹.

One of the six basic requirements for a representative democratic state under the rule of law is the holding of free elections. This was formulated by the International Commission of Jurists at its conference in Bangkok in 1965. It went on to formulate a definition of a democratic government based on representation, namely a form of government in which citizens exercise the same rights as their elected representatives and are accountable to them through a process of free elections. The implementation of the government by the people is by electing the people's representatives or national leaders through a mechanism called General Election. So the General Election is one way to elect the people's representatives. As a form of implementation of democracy, the General Election further functions as a forum that filters caons of people's representatives or state leaders who really have the capacity and capability to be able to act on behalf of the people. Elections are meaningful as a means of connecting the political infrastructure with the political superstructure to enable the creation of a government of, by, and for the people².

Like modern countries, Indonesia seeks to realize the concept of people's sovereignty and democracy through the implementation of general elections. With the existence of general elections, the people will be able to participate in determining the direction of a country's government. The aspirations of citizens in these general elections are channeled through elected

¹ Chazawi, 2012 : 120

² Azed, 2019 : 170

people's representatives, who are given the authority by citizens to oversee the running of the government. At the beginning of the independence era, general elections were held to determine the people's representatives who sat in the people's representative institutions. However, in 2004, the era of general elections in 2004 can be called the beginning of the change in the mechanical election system in Indonesia from a closed mechanical system to an open mechanical system. This is because every citizen has the direct right to elect their people's representatives and president³.

General Election is a form of manifestation of people's sovereignty and democracy where the people's representatives who will sit in a people's representative institution also elect the president and vice president including electing the leader who will lead the government (executive). Democracy is a set of rules designed to promote self-government. Democracy comes from the Greek word *dem* which means people, and *kratis* which means to rule. In simple terms, democracy is a form of government that is governed by the people, either directly or through elected representative's.⁴

Elections are an inseparable part of a country that claims the sovereignty of its people. As the principle of sovereignty is stated in Article 1 paragraph (2) of the 1945 Constitution that "Sovereignty is in the hands of the people and is implemented according to the Constitution". This is also fundamentally implied in Pancasila, namely the 4th (fourth) principle which states that "Democracy is led by the wisdom of deliberation/representation". The process of choosing the best sons of the nation to represent the people through a mechanism called elections can be seen as something constitutional. Constitutional for citizens, especially in recognizing the rights of the people to determine the course of their own government organization. Elections are the most basic form of political participation by the people or citizens to determine the government and programs that suit their wishes, at least the government or programs that they can accept⁵.

The word general election which was later shortened to election, and then the word election is very familiar with political issues and changes in leaders, because elections, politics and changes in leaders are interrelated. So

³ Antari, P. E. D. (2018). Interpretas Demokras Dalam Sistem Mekanis Terbuka Pemilihan Umum D Indonesia. *Jurnal Panorama Hukum* : 89.

⁴ Azed, 2019 : 98

⁵ Antari, P. E. D. (2020). Disparitas Pertimbangan Hakim Dalam Penjatuhan Pidana Bag Kpps Dalam Tindak Pidana Pemilu. *Jurnal Analisis Hukum* : 160.

that the elections that are held are not far from political issues related to the problem of changing leaders. In the big dictionary of the Indonesian language, the word election comes from the basic word choose which means carefully choosing, not just taking whatever is liked, looking for or isolating whatever is good, appointing people, candidates. While the word general means concerning all or everything, as a whole, not concerning only the specific (certain) ones.

According to AI Moertopo, general elections are a means available to the people to exercise their sovereignty and are a democratic institution. He stated that theoretically, general elections are considered the most preliminary stage of various series of democratic state life, so that elections are the driving force of the democratic political system mechanism. Changes and changes continue to occur in order to improve the general election system in Indonesia which can fulfill the aspirations of the people. There have been twelve general elections in Indonesia, the last of which was held in 2019 which was based on Law Number 7 of 2017 concerning General Elections.

In order to create a successful general election (election), of course there is something called a campaign from each candidate and political party. Therefore, the campaign has a very large role in the success of the politicians competing in the general election. Of course, general election campaign activities cannot run without funds. In general elections, money can be likened to fuel for party engines and success factors. Money is important because campaigns have an influence on the results of general elections and campaigns will not run without money, although money alone is not enough, as stated by Jacobson, namely: "Money is not sufficient, but it is necessary for a successful campaign. Money is necessary because campaigns have an impact on election results and campaigns cannot be run without⁶".

Campaign funds are the main key in general elections with integrity, where if there is fraud in campaign funding, it will reflect the badness of the perpetrators of the fraud which leads to corrupt practices in general elections or even further, namely political corruption in the administration of government. The campaign funds in question can also be in the form of money, goods, and/or services. Election campaign funds in the form of money are placed in a special account for political party campaign funds participating in the election at a bank. The rule for placing campaign fund receipts in a

⁶ Jacobson, 1980 : 76

special account for political party campaign funds participating in the election at a bank is a good idea according to the author because this will later facilitate the reporting process that will be audited, but according to the author, the rules regarding sanctions must also be added. Election campaign funds in the form of donations in the form of goods and/or services are recorded based on fair market prices at the time the donation is received. Election campaign funds in the special revenue and expenditure bookkeeping and election campaigns are separate from the financial bookkeeping of political parties. Election campaign fund bookkeeping begins (3) days after the political party is determined as an Election Participant and closes 1 (one) week before submission of the report on revenue and expenditure of election campaign funds to the public accounting office (KAP) appointed by the KPU⁷.

Regarding the limitation of campaign fund donations originating from donations from other parties, individuals are limited to a maximum of Rp1,000,000,000.00 (one billion rupiah) and campaign fund donations originating from donations from other parties to groups, companies, and/or non-governmental business entities are limited to a maximum of Rp7,500,000,000.00 (seven billion five hundred million rupiah). Meanwhile, regarding the limitation of campaign fund donations for DPDI candidate members originating from donations from other parties, individuals are limited to a maximum of Rp250,000,000.00 (two hundred and fifty million rupiah) and campaign fund donations for DPD candidate members originating from donations from other parties to groups, companies, and/or non-governmental business entities are limited to a maximum of Rp. 500,000,000.00 (five hundred million rupiah). The donor in question must clearly state their identity. The rule to clearly state the identity of the donor is a good idea, but unfortunately this rule is not accompanied by administrative sanctions or criminal sanctions for those who violate it, so there is a loophole for election participants not to carry out this rule seriously.

The limitation of campaign fund donations from individuals and companies is very clear, namely preventing the dominance of certain parties over the availability of campaign funds, so that political parties, legislative candidates and executive candidates if elected to public office, still have independence in making policies and decisions. The independence of public

⁷ Lia, W. (2012). Dana Kampanye Pemilu d Indonesia: Isu Krusial yang Cenderung Terabaikan : 20

officials is very important so that they can work for the interests of their constituents and the people; not to serve certain parties, such as campaign fund donors. If there are campaign fund reports from political parties and DPD candidates that violate the rules regarding campaign fund sources, contribution restrictions and donation prohibitions, they will be easily detected by public accounting firms that have the authority to audit campaign fund reports received by DPD candidate participants in the election. Public accounting firms can ask political parties and DPD candidates to improve their reports. This is possible considering that there are no rules prohibiting public accounting firms from asking political parties and DPD candidate members to revise their reports⁸.

The examiner who then reports the receipt of campaign funds to the KPU certainly knows that there is the receipt and use of illegal campaign funds. However, this does not immediately give the KPU the authority to impose sanctions on political party members and DPD candidate members, because the law requires the KPU to provide an opportunity for political party members and DPD candidate members to return the illegal funds to the state treasury. long. 14 days. Only after that, if the political party and legislative candidate do not comply with the order, they will be sentenced to a maximum of 2 years in prison and a maximum fine of 36,000,000 million rupiah (36 million rupiah).

According to the author's review, the process of avoiding sanctions by returning campaign funds to the state treasury makes the rules for receiving campaign funds seem uncertain. Campaign financial reports prepared by voters, including income and expenditure, must be submitted to an audit institution assigned by the KPU within 15 (fifteen) days after the election. According to the author, the 15 (fifteen) day period that is the right of the audit company to carry out a company audit is very limited so that the validity of the audit results made by the audit company later also needs to be questioned. The audit results are submitted to the KPU, Provincial KPU, and Regency/City KPU within 30 (thirty) days of reporting. The KPU, Provincial KPU, and Regency/City KPU shall notify the Voters/City KPU of the results of their respective campaign fund reviews within 7 (seven) days of receipt of the results of the review by the KPU, Provincial KPU, and Provincial KPU. The KPU, Provincial KPU, Regency/City KPU shall announce the results of the

⁸ Budiarjo. (2008). Dasar-Dasar Ilmu Politik : 33

election campaign fund audit to the public no later than 10 (ten) days after the audit report is received. Unfortunately, the responsibility for reporting to examine campaign finances lies with the election organizers, not the voters. Political actors also have the responsibility to hold the public accountable for their campaign funds. Reporting of political party accounts occurs at every KPU level. This means that the report will be forwarded to the Regency/City and Provincial KPU before being submitted⁹.

Campaign fund reporting by political parties is mandatory for political parties and DPD candidate members, according to the mandate of KPU Regulation Number 17 of 2013 concerning Campaign Fund Reporting Guidelines. The important points that need to be considered by parties are the source of campaign funds, the form and amount of funds, and campaign fund bookkeeping. However, according to the author, it is very unfortunate if Law Number 8 of 2012 concerning the General Election of Members of the DPR, DPD, and DPRD only requires the obligation to report campaign funds to be borne by political parties and DPD candidate members, while there is no obligation for legislative candidates/individuals to report campaign funds.¹⁰ Although this problem has been responded to by the KPU by issuing KPU Regulation Number 17 of 2013 concerning Campaign Fund Reporting Guidelines which requires legislative candidates to make campaign fund reports, this seems useless because the reports made are only required to be reported to political parties and DPD candidate members. The KPU determines a public accounting office that meets the requirements in each province. The requirements in question include: making a written statement on a sufficiently stamped paper that the partner responsible for examining the election campaign fund report is not directly or indirectly affiliated with political parties and DPD candidate members participating in the election, making a written statement on a sufficiently stamped paper that the partner responsible for examining the election campaign fund report is not a member or administrator of a political party. The cost of public transportation services is charged to the revenue and expenditure budgets of 8 countries. In the event that the public accounting office appointed by the KPU in the audit implementation process was found not to have provided correct information regarding the requirements, the KPU canceled the appointment of the public

⁹ Budiarmo. 2008. Dasar-Dasar Ilmu Politik hlm. 36

¹⁰ Eddy, P. 2007. Negara Kedaulatan Rakyat hlm. 76

accounting office. The canceled public accounting office is not entitled to receive service payments. Furthermore, the KPU appointed a replacement public accounting office to continue the audit of the relevant party's Campaign Fund Report. The rules for sanctions in the end the KPU must appoint a public accounting office should be explained regarding the mechanism, because seen from the existing regulations, the public accounting office itself does not have much time to carry out the audit implementation process. So, if there is any misappropriation of information by the public accounting firm, which will later require the KPU to appoint a new public accounting firm, of course the time required will be short and will hinder the KPU itself ¹¹.

Reporting of campaign finance fraud is also becoming more common in Indonesia. In 2019, Dr. Radar d Bai was suspected of committing fraud in his report on the campaign funds of a member of parliament of Dapi Buleleng in the 2019 Bai National Democratic Party general election. Bawaslu residents, Bai reported a case of alleged election crime. However, Bawaslu did not continue the case because there were differences of legal opinion at the Integrated Law Enforcement Center when it was time for the examination¹².

Based on the background explanation regarding the above problems, the author is interested in conducting a study entitled "Criminal Accountability for Fraud in Reporting Legislative Election Campaign Funds in Indonesia".

RESEARCH METHODOLOGY

This research departs from the normative legal research method, because the nature of this research is a legal problem with ambiguous norms. In addition, this research focuses on the organizers of general elections with the object of fraudulent campaign fund reports in general elections. Furthermore, this research uses legal methods and case methods assisted by searching for primary legal materials and secondary legal sources. Because it examines from the perspective of the law as the highest source of law. The data collection technique for legal document research is to collect data for the research subject, then use literature research technology to study and analyze primary and secondary legal materials. This research uses in-depth interview analysis and research through ideological analysis.

¹¹ Rozali, A. 2009. Mewujudkan Pemilu yang lebih Berkualitas hlm. 77

¹² [www. Radarbali/Doktersomvir.com](http://www.Radarbali/Doktersomvir.com)

RESULTS AND DISCUSSION

Accountability for Fraudulent Election Campaign Fund Reports in Indonesia

Political participation of the community is a form of manifestation of a democratic state, where the community is directly involved in the General Election. In this case, citizens play an important role in selecting state officials who will later regulate the government and the actions they will take later.¹³

General elections (abbreviated as Pemilu) are the process of electing someone to fill a certain political position in Indonesia¹⁴. The positions are varied, starting from the position of president/executive, people's representative/legislative institution at various levels of government, to village head. In a broader context, elections can also mean the process of filling positions such as OSIS chairman or class chairman, although for this the word election is more often used¹⁵. Election is one of the efforts to influence people persuasively (not coercively) by carrying out rhetorical activities, public relations, mass communication, lobbying and other activities. Although agitation and propaganda in democratic countries are highly criticized, in general election campaigns, agitation techniques and propaganda techniques are also widely used by candidates or politicians as political communicators. In elections, voters in elections are also called constituents, and to them the election participants offer their promises and programs during the campaign period¹⁶. In the context of legislative elections, the election mechanism is said to be democratic if it meets several parameters, namely: the existence of honest and fair regional head elections; peaceful rotation of power, open recruitment, and accountability.¹⁷

¹³ Suryadi, "Siasat Politik Perempuan Pada Pemilu 2014", 2017, hlm. 8

¹⁴ Sahabuddin, C., Latief, A., & Anwar, A, "Peran Parta Politik Dalam Pendidikan Politik D Kecamatan Campalagian". 2020, hlm. 39

¹⁵ R.Riyanto, "Peran Ulama Dalam Meningkatkan Kesadaran Pemilih Pada Pemilu Presiden Dan Wakil Presiden R Tahun 2014 D Kabupaten Demak", 2015, hlm. 438

¹⁶ Putra, E.V, "Pemilu 2009 dan Krisis Partisipasi.", 2010, hlm. 4

¹⁷ Nopyandri, "Sosialisas Pendidikan Politik Untuk Siswa Sekolah Pinggiran Kota Jamb Dalam Menghadap Pilkada Serentak Provins Jamb Tahun 2020. Rambideun", 2020, hlm. 22

In modern politics, the most prominent political campaigns focus on general elections and candidates for head of state or head of government. The most obvious example is the election of the president or head of state. We can see each candidate and their supporters campaigning for each other¹⁸. The importance of the campaign can actually be known when we understand the concept of political campaign itself. Political campaign is an organized effort that tries to influence the decision-making process in a particular group. In democracy, political campaign often refers to election campaign, where candidate or candidate leaders are chosen. In some cases in certain countries, there is a term referendum, which is the determination of certain policies that involve the people's vote. If referendum is rarely found in Indonesia, perhaps we can see some examples of referendum in European countries such as England which held the Brexit referendum a few years ago.¹⁹

The definition of campaign based on Law Number 10 of 2008 concerning the General Election of Members of the People's Representative Council, Regional Representative Council, and Regional People's Representative Council in article 1 number 26 is "activities of Election Participants to convince voters by offering the vision, mission, and programs of Election Participants". Campaigns have several types. The General Election Commission (KPU) through decree no. 35 of 2004 regulates all forms or types of campaigns. According to the regulation, there are at least 9 types/forms of campaigns, namely: public debates/open debates between candidates, other activities that do not violate laws and regulations, installation of demonstrations in public places, distribution of campaign materials to the public, distribution through print media and electronic media, broadcasting through radio and/or television, limited meetings, public meetings, and face-to-face and dialogue.

Campaign finance regulations consisting of contribution limits, public financing, and spending limits have different purposes. For example, contribution limits aim to: First, reduce public perception of corruption by reducing the influence of large contributors. Second, make the campaign fundraising process more democratic by forcing candidates to raise money from smaller contributors. Third, increasing contribution limits will increase competitiveness by reducing the burden of fundraising on less able

¹⁸ Fatimah, S, "Kampanye sebagai Komunika Politik", 2018, hlm. 7-9

candidates²⁰. Campaign finance regulations in Indonesia have undergone several changes regarding the sources and limits of campaign fund donations.

Candidate Pairs (who may be assisted by special staff with an accounting background) are required to prepare and submit a Campaign Fund Report to the KPU. The Campaign Fund Report consists of: Initial Campaign Fund Report (LADK) Campaign Fund Contribution Receipt Report (IPSDK) Campaign Fund Receipt and Expenditure Report (LPPDK). The importance of regulations on campaign fund transparency aims to ensure equal, fair competition and no discrimination between election participants. Obstacles in enforcing campaign fund rules.²¹

Campaign funds are the accumulation of costs in the form of money, goods, and services originating from individual candidate pairs or from political parties and donations from parties that are legally valid. Campaign funds are used by election participants to finance their campaign activities. Almost all countries require political parties and candidates to provide political party fund reports based on the law. The reports are submitted to public bodies, parliaments, or special bodies and must be published. The main problem that often arises is that data from local and regional political party organizations are not included. Problems with monitoring and controlling political party funds and campaign funds have encouraged regulatory changes and increased transparency in many countries²².

Political funding as the ongoing (legal and illegal) funding of political party activities and election campaigns (especially campaigns by candidates and political parties, but also third parties)²³. There are two challenges in political funding, namely First, the challenge of the political system. Among them are unequal access to funding for political actors, many interests to influence politics, the entry of illegal funding into politics, political co-optation by business interests, misuse of state resources and the spread of vote buying. Second, there is the challenge of controlling political funding. Such as: legislative incompatibility, lack of political will to control money in politics, the popularity of vote buying, lack of independence from law enforcement

²⁰ Gross, "State Campaign Finance Regulations and Electoral Competition", 2002, hlm. 146-147

²¹ Junaidi, J. "Peran Badan Pengawas Pemilihan Umum dalam penegakan hukum Pemilu (stud penanganan pelanggaran Pemilu pada Sentra Gakkumdu Provins Nusa Tenggara Barat)", 2012, hlm. 39

²² Nassmacher, 2014 : 746-747

²³ Falguera, et.al, 2014 : 2

institutions, bias in the implementation of political funding regulations, and lack of resources to enforce regulations ²⁴. One of the reasons legislators raise the campaign fund contribution limit is so that election participants are honest in reporting the sources of campaign funds received, because the small limit on campaign fund sources will cause candidates or legislative candidates to lie in their campaign fund reports ²⁵.

The non-compliance of IPPDK by the majority of political parties is due to the weak sanctions for political parties that violate it. Campaign fund audits are only in the form of compliance audits to assess the conformity of campaign fund reporting with laws and regulations. The audit engagement used by KAP in implementing campaign fund audits is an attestation engagement that refers to the Public Accountant Professional Standards (SPAP), especially the Attestation Standards (SAT) 500 concerning Compliance Attestation. In carrying out the audit, the Public Accountant will design and carry out audit procedures to obtain adequate assurance regarding the compliance of the Candidate Pair's assertions.²⁶

Campaign finance regulations do not provide sanctions for parties or candidates who fail to obtain votes and report campaign funds by ignoring the principles of accountability and voter empowerment. They should take administrative action in the form of prohibiting them from participating in the next election. If this does not happen, the effectiveness of the transparency principle will be further eroded, corrupt practices in government will ultimately persist, and public trust in politicians and parties will continue to decline. If observed further in accordance with the provisions stipulated in Article 13 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. The definition of corruption is explained using these articles, where corruption is formulated into 30 types and then grouped into seven types of corruption. One of them is the behavior of bears.

Based on the 11th International Anti-Corruption Conference (IACC) in Seoul, Korea, on 25 to 28 May 2003, with the theme of different cultures, shared values, several conclusions were made, including (Herman, 2019: 118-

²⁴ Ohman, M. "Political party financing and equal participation of women in Kenyan electoral politics: A situation overview". 2015. hlm. 20

²⁵ Salabi, 2018, hlm. 1

²⁶ KPU, "Modul Dana Kampanye", 2019, hlm. 50-58

119): In the IACC review of political party financing and election corruption, it is clear that political parties cannot be ignored in financial reform. Political parties must be involved in internal reform efforts, practice transparency and demonstrate a commitment to ethical standards. The IACC acknowledges that politicians are facing increasing difficulties in financing campaigns, and that reform efforts are unlikely to succeed if election costs are not reduced.

In addition, Article 26 of the United Nations Convention Against Corruption, 2003, it is emphasized ²⁷ that contracting States must take the necessary steps to determine the responsibility of legal entities involved in committing crimes prohibited by this Convention. Liability for these entities may be criminal, civil or administrative. In practice, each participating country must ensure that the responsible legal entity is subject to effective, proportionate and disproportionate preventive and non-criminal sanctions, including fines.

To overcome doubts about the mechanism in enforcing legal entity accountability, the Supreme Court stipulated the Regulation of the Supreme Court of the Republic of Indonesia Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations. The existence of regulations on criminal liability for legal entities is a step in law enforcement that can be implemented against political parties, as a legal consequence that has been mutually agreed upon and is believed to be neutral, impartial and objective.²⁸

As formulated in Article 4:

Paragraph (1): Corporations can be held criminally responsible in accordance with the provisions of corporate crime in the law governing corporations.

Paragraph (2): "In imposing criminal penalties on corporations, judges can assess the corporation's fault as in paragraph (1) among others:

- a. The corporation can obtain benefits or advantages from the criminal act of corruption or the criminal act is committed for the benefit of the corporation
- b. The corporation allows the criminal act to occur, or
- c. The corporation does not take the necessary steps to prevent, prevent greater impacts and ensure compliance with the provisions. Criminal Liability of Political Parties as Legal Entities in Criminal Acts of Corruption avoids the occurrence of criminal acts.

²⁷ Herman, 2019 hlm. 122

²⁸ Moeljatno, 2010, "Teori-Teor dan Kebijakan Hukum Pidana", hlm. 32

In relation to the development of legal science, especially laws outside the Criminal Code concerning perpetrators of criminal acts, not only individual humans, but also corporations or legal entities are subject to it. A corporation, which comes from the word *corporate*, is a body that has a group of members and these members have their own rights and obligations, which are separate from the rights and obligations of each member, as stated by Mulad and Dw Priyatno²⁹. Therefore, corruption committed by members/managers of political parties is not only individually accountable to the administrators/members of the political party. However, it is criminally accountable to the political party, which obtains benefits/advantages from the crime.

In the development of modern legal science today, one form of criminal liability for political parties as legal entities is the doctrine of vicarious liability. This doctrine was first introduced in the United States and England, countries with a common law legal system, which is based on the doctrine of superior respondeat (*Vicarious Liabilities*), which is also called vicarious liability. In the common law system, this doctrine explains the relationship between employees and employers or between the principal and the principal, with the adage *qu facit perium facit per se*, meaning that someone who acts through another person is considered as an act carried out by himself. In the *Black's Law Dictionary*, *vicarious liability*, is defined as indirect legal responsibility, the employer's responsibility for the actions or mistakes made by the worker, or the principal's responsibility for the agent's actions in a contract (blacks_law.enacademic.com, 2018). Of course, this doctrine is contrary to the principle of criminal punishment which requires *Actus Reus and Mens Rea*, which are imposed on individual humans who have thoughts, wills and physical limbs in committing criminal acts, which have been the formula for the norms of the Criminal Code so far.

The application of the concept of vicarious liability was initially only used in civil law. However, in criminal law it is a new thing because it deviates from the principle of fault that has been adopted so far. Finally, in line with existing developments, this concept began to be applied to criminal cases³⁰. Based on the principle of vicarious liability explained by the author which is widely developed in cases committed by corporations, but this

²⁹ Mulad & Priyatno, 1991, hlm. 18-20

³⁰ Bawole, 2018, "Analisis Hukum Terhadap Bentuk Pertanggungjawaban Pidana Berdasarkan Konsep Strict Liability Dan Vicarious Liability", hlm. 19-20

doctrine can also be used in the context of individual criminal liability. So the doctrine of vicarious liability is used in cases involving other actors in a crime (even though the other actors did not commit the crime). The development of this concept is supported by court decisions which are then followed by subsequent court decisions, which basically adhere to the principle of precedent which is *stare decisis*. Rapid developments regarding vicarious liability have occurred in countries that adhere to the common law system, especially in England and the United States. The developments in these two countries have also been followed by other countries that adhere to different legal systems, namely the civil law system including Indonesia. Indonesia is influenced by this concept, although it does not explicitly acknowledge the application of the concept of vicarious liability, but it can be implicitly interpreted from the provisions of legislation and in the practice of law enforcement through court decisions.

There are 2 (two) important conditions that must be met in order to be able to apply a criminal act with the concept of vicarious liability, namely:³¹

- a. There must be a relationship, such as an employment relationship, between an employer and an employee.
- b. The criminal act committed by the employee or worker must be related to the scope of their work.

The principles that must be met so that the concept of vicarious liability can be realized are as follows:

1. Principle of Delegation This principle relates to giving permission to someone to manage a business.
2. The worker's action is the employer's action. The principle in the words *selling is the actus reus*.

Based on the terms and principles above, it can be concluded that not all actions of workers or employees are the responsibility of the employer, but only actions that are related to the job can apply this concept. The main reason for implementing a criminal liability system without fault is to protect society because for certain crimes it is very difficult to prove the existence of an element of fault.

³¹ Bawole, 2018, "Analisis Hukum Terhadap Bentuk Pertanggungjawaban Pidana Berdasarkan Konsep Strict Liability Dan Vicarious Liability", hlm. 20

If it is associated with the provisions of the Republic of Indonesia Law Number 2 of 2011 concerning Amendments to Law Number 2 of 2008 concerning Political Parties, especially in chapter v (six) concerning the rights and obligations of political parties, article 13 letters d and f which reads: Political parties are obliged to :

- a. Upholding the supremacy of law, democracy, and human rights
- b. Making the general election a success.

Where political parties are also responsible if there is fraud in campaign fund reports, because there could be other parties involved in the fraud without involving the legislative candidates who are involved in the criminal act of fraud. Starting from the incompetence of the Public Accounting Office (KAP), and the naughty political party. Therefore, the author wants the responsibility for the fraudulent campaign fund report not to be as if all forms of errors that occur are not only charged to individuals, but there are other parties involved. The placement of political parties as legal entities, which can be held accountable for criminal acts committed, is not solely based on the legal understanding (creation or formation of laws)³².

The implementation of accountability that occurs related to election crimes, one of which is fraud. The author explains one example of the form of accountability from the form of election violations, fraud or corruption in several countries. The first is the country of Turkey, which stipulates the dissolution of political parties by the Constitutional Court for criminal acts that violate the constitution in Turkey. For several former Yugoslav countries, there are rampant crimes committed by political parties, such as violent crimes, political corruption, tax evasion, election fraud. Even for political parties that are opposed to the ruling government, they are involved in acts of terrorism, treason, espionage in order to achieve the desired political goals³³. In Indonesia itself, accountability for violations against political parties is regulated in the Republic of Indonesia Law Number 2 of 2011 concerning Amendments to Law Number 2 of 2008 concerning Political Parties, Article 40 paragraph (2) and paragraph (3) which reads:

³² Hasibuan, 2020, "Faktor-faktor yang mempengaruhi intens whistleblowing: Stud empiris pada Kantor Akuntan Publik DK Jakarta.", hlm. 88

³³ Marsavelsk Alexander, 2018 hlm. 6)

Paragraph (2) Political Parties are prohibited:

- a. To carry out activities that are contrary to the 1945 Constitution of the Republic of Indonesia and laws and regulations or
- b. To carry out activities that endanger the integrity and safety of the Unitary State of the Republic of Indonesia.

Paragraph (3) Political Parties are prohibited:

- a. Receiving from or giving to foreign parties donations in any form that is contrary to laws and regulations;
- b. Receiving donations in the form of money, goods, or services from any party without stating a clear identity
- c. Receiving donations from individuals and/or companies/business entities exceeding the limits stipulated in laws and regulations
- d. Requesting or receiving funds from state-owned enterprises, regional-owned enterprises, and village-owned enterprises or with other names or
- e. Using the faction in the People's Consultative Assembly, the People's Representative Council, the Provincial People's Representative Council, and the Regency/City People's Representative Council as sources of funding for Political Parties.

The sanctions imposed in violation of political parties are regulated in the Republic of Indonesia Law Number 2 of 2011 concerning Amendments to Law Number 2 of 2008 concerning Political Parties in the following provisions:
Paragraph 47

(1) Violations of the provisions as intended in Article 2, Article 3, Article 9 paragraph (1), and Article 40 paragraph (1) are subject to administrative sanctions in the form of refusal of registration of Political Parties as legal entities by the Department.

(2) Violations of the provisions as intended in Article 13 letter h are subject to administrative sanctions in the form of a warning by the Government.

(3) Violations of the provisions as intended in Article 13 letter are subject to administrative sanctions in the form of termination of assistance from the State Revenue and Expenditure Budget/Regional Revenue and Expenditure Budget until the report is received by the Government in the relevant fiscal year.

(4) Violation of the provisions as intended in Article 13 letter j is subject to administrative sanctions in the form of a warning by the General Election Commission.

(5) Violation of the provisions as intended in Article 40 paragraph (3) letter e is subject to administrative sanctions determined by the body/institution tasked with maintaining the honor and dignity of the Political Party and its members.

Paragraph 48:

(1) Political parties that have legal status and violate the provisions of Article 40 paragraph (1) shall be subject to administrative sanctions in the form of freezing of management by the district court.

(2) Violations of the provisions referred to in Article 40 paragraph (2) shall be subject to administrative sanctions in the form of temporary freezing of the relevant Political Party according to its level by the district court for a maximum of 1 (one) year.

(3) Political parties that have been temporarily frozen as referred to in paragraph (2) and commit violations of the provisions referred to in Article 40 paragraph (2) shall be dissolved by a decision of the Constitutional Court.

(4) In the event of a violation of the provisions referred to in Article 40 paragraph (3) letter a, the management of the Political Party concerned shall be punished with imprisonment for a maximum of 2 (two) years and a fine of 2 (two) times the amount of funds received.

(5) In the event of a violation of the provisions referred to in Article 40 paragraph (3) letters b, c, and d, the management of the Political Party concerned shall be punished with imprisonment for a maximum of 1 (one) year and a fine of 2 (two) times the amount of funds received.

(6) Violations of the provisions referred to in Article 40 paragraph (4) shall be subject to administrative sanctions in the form of temporary freezing of the management of the Political Party concerned according to its level by the state court and its assets and shares shall be confiscated for the state. (7) Violations of the provisions as referred to in Article 40 paragraph (5) shall be subject to sanctions in the form of dissolution of the Political Party by the Constitutional Court.

Paragraph 49 :

(1) Any person or company and/or business entity that provides donations to a Political Party exceeding the provisions as referred to in Article

35 paragraph (1) letter b and letter c shall be punished with imprisonment for a maximum of 6 (six) months and a fine of 2 (two) times the amount of funds donated.

(2) Political Party administrators who receive donations from individuals and/or companies/business entities exceeding the provisions as referred to in Article 35 paragraph (1) letter b and letter c shall be punished with imprisonment for a maximum of 1 (one) year and a fine of 2 (two) times the amount of funds received.

(3) Donations received by a Political Party from individuals and/or companies/business entities exceeding the provisions as referred to in Article 35 paragraph (1) letter b and letter c shall be confiscated for the state.

Based on the description of the research related to the accountability that has been explained by the author above, if there is fraud and it is associated with the concept of crime. This is included in deliberate crime and negligence or negligent crime (*Dolouse en culpose delicten*). Intentional crime (*dolouse delicten*) is the occurrence of a criminal act because it is done intentionally. Related, Explanation of the Criminal Act of Fraud and Its Elements Negligence crime (*culpose delicten*) is the occurrence of a criminal act due to negligence (*culpa*).

Unlike civil law where responsibility can be transferred to another party, in criminal law this cannot be done. Each individual is responsible for what he does. This responsibility cannot be transferred to other people, including his family. The word participation (*deelneming*) means the participation of one or more people when another person commits a crime³⁴.

Its responsibilities also differ as follows: :

1. Public Accounting Firm (KAP)

If a criminal act of fraud is committed by a Public Accounting Firm, then the KAP becomes a participating party (co-conspirator). A co-conspirator is a person who makes an agreement with another person to commit a criminal act and together he also participates in the implementation of the criminal act in accordance with what has been agreed upon. (Moeljatno, 2018: 117). In co-conspirators there are three important characteristics that distinguish it from other forms of participation. First, the implementation of the criminal act involves two or more people. Second, all people involved actually cooperate physically in

³⁴ Prodjudikoro, 2011

the implementation of the criminal act that occurs. Third, the occurrence of physical cooperation is not by chance, but rather an agreement that has been planned in advance. What needs to be emphasized here is that in the case of deception there is close cooperation between them when committing criminal acts (Moeljatno, 2018 : 117).

The consequences of his/her responsibility and sanctions are that the KAP that carried out the audit is found not to have provided correct information regarding the requirements regarding affiliation with the Candidate Pair or Political Party and is not a member of the Political Party, the KAP in question will be cancelled. Its work will be clarified first. And the KAP whose work has been cancelled as referred to in number 3, will not be entitled to receive payment for services³⁵.

2. Legislative Candidate.

Legislative Candidate becomes the person who orders to do something (doen pIeger). Ordering to do something is a form of involvement, in which there is clearly someone who orders another person to do a criminal act, and another person who is ordered to do the criminal act. In the science of criminal law, the person who orders to do something is usually called a *midellijk dader* or *mittelbar tate*, namely an actor who does not directly commit the criminal act himself, but through the intermediary of another person. The form of accountability is the cancellation of a candidate to carry out a legislative general election.

3. Political Parties

Political parties act as actors (agents). Actors are people who materially and personally clearly carry out actions that perfectly fulfill all elements of the formulation of the crime that occurred. A perpetrator is a person whose actions have fulfilled every element of the crime contained in the criminal law that was violated. Therefore, in principle he is a good person both individually and in relation to other people, and can be subject to criminal sanctions (M. Ali, 2011 *Dasar-Dasar Hukum Pidana*, Cetakan Pertama, Sinar Grafika: Jakarta. hlm. 122). The form of accountability is the acceptance of criminal sanctions in the form of imprisonment and fines as well as administrative sanctions.

³⁵ KPU, 2019 "Modul Dana Kampanye", hlm. 47

Therefore, based on the analysis of delict and father, accountability if there is fraud in the campaign fund report, has a different form of accountability. Accountability to the Public Accounting Firm (KAP) is only limited to the cancellation of the contract with the public accounting service. If it is proven that the political party is the father or mastermind of the perpetrator, then the political party as a form of legal subject bears all the provisions of the sanctions stated in Law Number 7 of 2017 concerning general elections and Law Number 8 of 2012 concerning general elections of members of the DPRD, DPR-RI, DPD, namely in the form of criminal sanctions in the form of imprisonment and fines and administrative. Legislative candidates have a form of accountability with the failure of a candidate to participate in the legislative general election nomination.

CONCLUSION

The form of accountability for fraudulent campaign fund reports is criminal sanctions and administrative sanctions. Political parties in this case are dader, so political parties as a form of legal subject, their accountability is the imposition of criminal sanctions on regional leaders of political parties in the form of imprisonment and fines. Legislative candidates in this case become doel pleger have a form of accountability for the imposition of administrative sanctions with the failure of a candidate/null and void by law to participate in the legislative election nomination. Accountability to the Public Accounting Firm (KAP) as medepleger is an administrative sanction in the form of cancellation of the contract with the public accounting service and not being paid.

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