



The Regulation of Campaign Fundin the General Election in Indonesia

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ABSTRACT:- This study aims to identify and understand and explain the nature of campaign funds in the system of democratic elections, identify and explain the legal regulation of campaign funds to realize the principle of fair Election, as well as identify and explain the practice of using campaign funds in general elections in Indonesia. This study is an empirical law. Mechanical collection of legal materials through interviews, questionnaires to respondents and the study of literature, ie by collecting various documents in the form of primary legal materials, secondary law, and tertiary legal materials. The results showed that: (i) the nature of campaign financing in the general elections are a means of supporting the establishment of the sovereignty of the people, and as a means to realize the implementation of democratic elections; (ii) regulation of campaign finance law in realizing the principle of the General Election and fair has been regulated in Law Number 42 Year 2008 regarding the General Election of President and Vice President, Law No. 8 of 2012 on General Election Candidates for the DPR, DPD, and DPRD, as well as Law No. 8 of 2015 concerning Amendment to Law Number 1 Year 2015 regarding Stipulation of Government Regulation of Law No. 1 of 2014 About Election of governors, regents and mayors to become a law; (iii) the practice of using campaign funds to the generally used to conduct socialization activities, providing assistance or donations to prospective voters either individually or in groups, and are used to influence voters by way of vote-buying or money politics.

Keywords:- Campaign Fund, Election, Regulation

I. INTRODUCTION

The application of the concept as a democratic state in Indonesia has felt since the post reform era in mid-1998 and re-affirmed by the amendment of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as 'the 1945 Constitution'). One of the fundamental changes of the 1945 amendment is the general elections, particularly the presidential election which held with a direct democracy concept and Regional Head Election which held with democratically approach (Likadja, J. A. C., 2015). Based on the legal perspective, the implementation of democracy concept after the 1945 Constitution amendment be very different from previous periods (Marijan, 2006).

Accordingly, the agenda of the General Elections in a whole experienced a significant development in the period of five years (2011-2014), both in quantity and quality. The General Elections Commission (Indonesian: Komisi Pemilihan Umum) as the body that organises elections in Indonesia reported that since the year 2011-2014, there were as many as 228 regions in Indonesia which held the General Election, with the details: as much as 23 elections at the provincial level and 205 elections at the regency/city level (The Asia Foundation, 2014). As a result, the amount of the election were so many that, from the standpoint of democracy is a form of democratic progress which is very unusual and give freedom to the people to channel their right to vote without intimidation or pressure from others.

Election process for selecting members of the House of Representatives (DPR), the Regional Representative Council (DPD), the Regional Parliament (DPRD), the President, as well as Regional Head in a legal mechanism adopted for the 'campaign' as one of the activities that must be done to deliver the vision and mission of the participants of the General Election. Its the General Elections Commission responsibilities

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include deciding which parties can contest elections, organizing the voting and announcing the results and seats won in the various branches of the government. However, at practical level, campaign activities in practice costs that amount is not small and involves a third party who is not a participant in the election process.

Law No. 8 of 2015 concerning the Election of Governors, Regents and Mayors, was not yet arranged financing or campaign spending. Campaign costs can be measured not been set, including the setting of the amount of campaign funds can be issued by the Candidate Pair of Regional Head. Contrary to the Law No. 8 of 2012 concerning the Election of Members of Parliament, which has set the issue of campaign funds, as stipulated in Article 129 as follows:

- (1) Election campaign activities of members of the House of Representatives, Provincial Parliament and Regency/City Parliament funded and the responsibility of the political party participating in elections respectively.
- (2) **Election Campaign Funds** as referred to in paragraph (1) derived from:
 - a. Political parties;
 - b. candidates for the House of Representatives, Provincial Parliament and Regency/City Parliament of the political party; and
 - c. Lawful donations from other parties.
- (3) Election Campaign Funds as referred to in paragraph (2) may be in the form of **money**, stuff and/or services.
- (4) Election Campaign Fund in the form of **money** referred to in subsection (3) is placed in a **special account fund** election campaigns Political Parties in the Bank.

Consequently with the use of campaign funds by electoral participants with a sizeable amount, then the issue of 'transparency' to the fore and affect the global consensus on the importance of campaign finance regulation and its legal consequences for participants who commit violations of election campaign funds issue. Demands the transparency of campaign funds as cited in Surbakti *et al.*, (2008:4) is based on three objectives: *First*, to avoid the manipulation of public regarding Election Campaign Funds; *Second*, to encourage the implementation of fair competition with the work towards equal opportunity between the candidates; *Third*, to avoid the submission of election winners to the conflict of the interests with third party who is not a participant in the election process.

Taking into consideration the existence of the campaign as one part of a series of stages of election shall be passed by the participants of the election. Elections in practice requires a lot of fund and involve third parties in the financing, this has given rise to the phenomenon of transactional between participants of the election to a third party, either covertly or openly, so that the elections that took place resulted in "maneuver politics" in launching its campaign to attract sympathetic of society. Therefore, this phenomenon has spawned a research issue that there is a tendency that the use of campaign funds not yet lead to the essence of creating the system implementation of democratic elections in Indonesia.

II. METHOD OF RESEARCH

The type of research used in this paper is empirical research, reviewing legal arrangements regarding campaign financing in the general elections in relation to the practice done by electoral participants and communities involved in the use of campaign expenses. The data being used include secondary data consisting of primary law materials in the form of laws and regulations, tertiary law materials in the form of reference books, opinion of experts, and the outcomes of previous research, as well as tertiary law materials in the form of language dictionaries.

This research was conducted in East Kalimantan, Indonesia, on the basis that the elections held in the various constituencies have the same shape and character because the regulation of campaign funds applies to all constituencies in Indonesia as well as a violation of the law of the provisions governing campaign funds in each constituency in Indonesia, including the constituency of East Kalimantan.

III. ANALYSIS AND DISCUSSION

The Essence of the Financing Campaign as Supporting of the Sovereignty of the People Principle

One characteristic of a democracy is the holding of elections to choose people's representatives, both in the legislative and executive. Election as one of the mechanisms needed to realize the principle of the popular

sovereignty. Popular sovereignty or the sovereignty of the people is the principle that the authority of the government is created and sustained by the consent of its people, through their elected representatives (Rule by the People), who are the source of all political power. Popular sovereignty expresses a concept and does not necessarily reflect or describe a political reality. It is intended to realize the implementation of government in accordance with the will of the people, not just the legitimization of power holders (Gaffar, 2012).

According to Pzewski (1988) there are at least two reasons why the election became a very important variable in a democracy state. *First*, the election is a mechanism for the peaceful transfer of political power. The sense is the very legitimacy of a person or political party is not obtained using methods of violence, but because he wins a majority of the people through fair elections. *Second*, democracy gives room for freedom for the individual, necessitates conflicts.

The provisions concerning the election stated in Article 22E of the 1945 Constitution which affirms that General election shall be held directly, publicly, freely, secretly, fairly, and justly once in five years. In addition, General election shall be held to elect members of the House of People's Representative, the Regional House of Representative, the President and the Vice President and the Regional House of People's Representative. Election concept was initiated by government officials of course intend to provide direction and guidance for the implementation of democratic election in accordance with the ideals and the will of society.

Honest and fair principle is implemented at two levels, namely the normative rules and the level of morality. The level of normative regulation itself consists of two types, namely the rules of preventive and repressive rule. Rules contains provisions on preventive measures that should be done and should not be done in all stages of the election, preventive rules also regulate when there is a dispute settlement mechanism that violate the principles of honest and fair. While the repressive rule is a provision giving the penalty to those who commit violations, as opposed to the honest and fair principle.

Equally important, honest and fair principle as a cornerstone of the election signaled that the General Election is done, both the election organizers, participants election, the voters (*constituen*), watchdog or monitoring, and law enforcement institutions including judiciary, rests on values honesty. In line with the implementation process of these elections, then the required financing in the implementation of both the organizers spent by election or the participants in a general election. The consequence is, the administration of elections requires a good setting and clear to be a reference of democratic election.

Lawrend Shepard (1977) in his book titled "*Campaign Spending does it Really Matter? At The Public Opinion Quarterly*" stated that public opinion as dedicated by voting behavior is most influenced by incumbency and predilection. However, contestation and campaign spending also affect voter participation. In short, restrictions on campaign funds should be limited because it does not directly affect election participation. This rule is needed to create justice for the administration of elections.

Political costs that occur because of election using the open proportional system on the basis of a majority vote. The competition is not only between political parties, but also among the candidates in a political party. Conventional campaign through electronic media, print, poster, billboard, and other trinkets continued to dominate, with the involvement of the community is expanding to the ongoing campaign will obviously be a major cause of high political cost. Meanwhile, under the law in force, political parties have been allowed to conduct campaign activities in the form of certain specified as three days after the election participants. This means that the legislative elections being the only election to the span of the campaign for so long.

Have to recognize that with the flexibility of the law regarding elections in Indonesia, providing for so long became a huge political cost. At the same time, various forms of campaign activity is practically requires no small cost. Therefore, the campaign as a portion of a system of general elections has consequences on the financing of the forms of campaign activities undertaken. This is the essence and nature of that campaign funds in a democratic general elections are indispensable. Based on the mandate of the 1945 Constitution that the General Election be a means for the realization of the people's sovereignty, then *mutatis-mutandis*, campaign funds into one of the means to support the realization of the people's sovereignty.

In practice in many countries, there is a law that specifically regulates election campaign fund (*Campaign Fund Act*). Technically, its own laws or parts of laws election may not be a problem as long as the provisions on party financing are set out in full. Moreover, as cited in Surbaktiet *al.*, (2008) in some of these countries also have formed a Supervisory Board Election Campaign Fund and the Finance Parties (or other name) with the following five main tasks:

- (1) Creating regulations and the implementation of various technical guidelines implementing the provisions on party financing;
- (2) Socializing completely and deeply concerning provisions Dana Election Campaign and Finance Party to an administrator, cadres and candidates from political parties, whether requested or not requested, so that each political party is not only fully understand what should be done but also capable of carrying out what should be done statutory;
- (3) Conduct an audit of the revenue and expenditure reports Participants election and announce to the public;
- (4) Investigate reports of alleged violations of the provisions on party finances, including requiring anyone who is suspected of knowing an infringement case to testify; and
- (5) Wearing different types of sanctions (financial and non-financial, administrative, and even criminal) for those convicted of certain types of violations, and continued allegations of violations of financial rules regarding criminal offenses to the Police, Attorney to the Court. Various forms of sanctions should be formulated carefully, especially those that would have a deterrent effect.

Setting comprehensively about the Agency, including the requirements and the process of determining keaggotaan as well as related duties and authorities, be a matter which should be noted by the Indonesian government. At least the American model (*Federal Election Commission, FEC*) and the British model (*The Electoral Commission of the United Kingdom*) can be taken into consideration in determining this Agency. Federal Election Commission for example, although not as the organizing body election (Electoral Management Body, EMB) but fully formed as a watchdog and enforcement legislation governing the Federal Election campaign funds.

So, how is the condition that occurs in Indonesia? Do we follow the model Federal Election Commission of USA or the Electoral Commission of the United Kingdom? During this time, the Election Commission of Indonesia (KPU) to handle two tasks related to the election campaign fund, namely: making the implementation of campaign finance regulations, and set a public accounting firm to audit the Revenue and Expenditure Reports Election Campaign Fund and announced the audit results to the public. Therefore the task of organizing the General Election is consuming a lot of time and energy, then the implementation of the five supervisory it should no longer be given to the Election Commission.

IV. PRACTICES AND REALITIES CAMPAIGN FUND IN THE INDONESIAN ELECTION

In the modern political era, as now, money plays a major role in the political contest. As one of the famous quote from a political leader in California in the 1960s, Jesse Unruh says, "*money as the mother's milk of politics*" (Nassmacher, 2003:5). Experience of elections in 2004 and 2009 at least corroborate the thesis Thus, where the party's most widely poured campaign spending turns out as winning the most seats.

The outcomes of the research indicate that in 2004, the party "Golkar" became the winner of the election with total expenditure of Rp. 112.8 billion. While in 2009, the party "Democratic" spending campaign funds to Rp. 235.1 billion to win the election, or experienced a significant improvement compared to the previous winner of the election, Golkar only spend Rp. 145 billion at the time. In addition, a large campaign spending also yielded positive results for the number of seats for the new party. As performed by the Party "Gerindra" by spending more than Rp. 300 billion pulled in 4.6 million votes and 26 seats in parliament, more 8 seats from the party "Hanura" fellow new party in 2009 (Supriyanto and Lia, 2013).

In line with the report of Indonesia Corruption Watch (ICW) regarding election campaign funding in 2009, where there are five political parties participating in elections are dishonest in campaign funds to the auditor's report. These findings describe the difference between the actual expenditure of political parties in the print media and television that exceed campaign finance reports. Party "Golkar" ranks first difference of the actual campaign spending with the reported very significant, namely Rp. 171 billion. Followed by "PDIP" (Rp. 77 billion), the party "Democrat" (Rp. 75 billion), the Party "Gerindra" (Rp. 64 billion), and the Party "Hanura" (Rp. 38 billion). It thus indicates, political parties lack transparency and accountability in the management of campaign funds for political activities (Table 1).

Table1. Calculation of Advertising Expenditure Political Parties in the General Election 2009

No.	Political Parties	Expenditure Ads Reported (Rp)	Actual Expenditure Ads (Rp)	Difference (Rp)
1.	Golkar	105.727.996.650	277.291.000.000	171.563.003.350
2.	Gerindra	. 86.998.699.150	151.175.000.000	64.176.300.840
3.	PDIP	25.542.433.102	102.892.000.000	77.349.566.898
4.	Hanura	6.615.080.000	44.795.000.000	38.179.920.000
5.	Demokrat	139.127.528.740	214.438.000.000	75.310.471.260

Source: *Indonesia Corruption Wact (ICW), 2009.*

Accordingly, lack of transparency in political party funding was already a culture of most political parties in parliament. It can be seen by observing related survey Transparency Level Political Party Funding In Level Political Party Central Executive Board, as reported by Transparency International Indonesia in 2013. The outcomes of the poll indicate that, on average, political parties have not been transparent in matters of campaign funds, of which 9 (nine) political party in Parliament surveyed, only 5 parties were very cooperative, namely Gerindra, PAN, PDIP, PKB, and Hanura. Meanwhile, the first co-operative is PPP and less co-operative Party (PKS and Demokrat), and one uncooperative party (Golkar). The most crucial thing for example appears on the assessment of the level of transparency related to the identity of donors and large donations from individuals not members of political parties and of the company less than 50%.

The weakness of the rule is the most fundamental problems to achieve transparency and accountability of funding of political campaigns. Specifically regarding the prohibition is still fairly normative and operational. In particular, such as the prohibition of receiving funds from a particular party without a clear identity and donations exceeding the specified limits. One thing for sure, this is a gap (loopholes) are large enough to be used by political parties to commit irregularities in the management of political campaign funds. As the nature of money is classified as an asset not named (anonymous asset), then the funds received in cash will not be recorded in the financial system and further funds will not be counted as income campaign funds.

The use of cash transactions in the activity of financing the election campaign of political parties and the election of President and Vice President have become one of the actual problems in realizing a fair and democratic election. Basically the problem is very closely related to the problems experienced in law enforcement corruption and money laundering. To be sure, the rise of financial transactions in cash in the community an opportunity to enrich the financial crimes. In such a context, the election could be one destination to disguise the criminal proceeds. At its most extreme, political resources can be later deployed in the search for illegal profits to finance political campaigns.

V. CONSLUSION

The essence of campaign fund in the general elections is a means of supporting the realization of the people's sovereignty, and as a means to realize the implementation of democratic elections. Based on the mandate of the 1945 Constitution that the General Election be a means for the realization of the people's sovereignty, then *mutatis-mutandis*, campaign funds into one of the means to support the realization of the people's sovereignty.

In line with the outcomes of the research that the amount of campaign funds has positive influence on the vote, so that the consequences of the General Election results are factual greatly influenced by the power of money owned by electoral participants. In order to provide appropriate opportunities and creating an honest, fair, democratic, and quality election, it is recommended that the stages of the campaign was changed to the socialization of participants election conducted by the Election Commission in charge of socialization charged to the State through the state budget plus the cost of socialization charged to each participant that amount evenly election.

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