

LEGAL TRAPS DUE TO THE POLITICIZED SOCIAL ASSISTANCE BY INCUMBENTS IN REGIONAL ELECTIONS

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Abstract

Social assistance in the Pilkada stage is often politicized for electoral purposes by regional heads (incumbents) or non-incumbents. It becomes a legal problem when social assistance is packaged and distributed by including the vision and mission, image and/or self-image of the incumbent. The purpose of the study is to determine the legal aspects of the distribution of social assistance carried out by regional heads (incumbents) in the Pilkada stage. The research method used: Normative Legal Research, with statutory, conceptual, and comparative approaches. The legal materials used are primary, secondary, and tertiary legal materials. Further processing is carried out by editing, systematization, and description. The results showed that the legal aspects of the politicization of social assistance carried out by regional heads (incumbent or non-incumbent) in the Pilkada stage, in accordance with the provisions of Article 71 paragraph (1) and paragraph (3) in conjunction with Article 73 paragraph (1) and paragraph (2) and Article 188 of Law Number 10 of 2016 (Election Law), can result in a violation of the law up to the imposition of electoral criminal sanctions on the perpetrator, administrative sanctions for the cancellation of regional head candidate pairs (disqualification) by the KPUD based on the Decision of the Provincial Bawaslu, or other legal violation sanctions regulated outside the Election Law.

Keywords: Social Assistance, Criminal, Politicization, Incumbent, Pilkada.

Abstrak

Bantuan sosial dalam tahapan Pilkada, sering dipolitisasi untuk kepentingan elektoral oleh kepala daerah (petahana) atau bukan petahana. Menjadi masalah hukum saat bantuan sosial dikemas dan disalurkan dengan menyertakan visi misi, gambar dan/atau citra diri petahana. Tujuan penelitian untuk mengetahui aspek hukum penyaluran bantuan sosial yang dilakukan oleh kepala daerah (petahana) dalam tahapan Pilkada. Metode penelitian yang digunakan: Penelitian Hukum Normatif, dengan pendekatan perundang-undangan, konsep, dan perbandingan. Adapun bahan hukum yang digunakan yakni bahan hukum primer, sekunder, dan tersier. Untuk selanjutnya dilakukan pengolahan dengan editing, sistematisasi, dan uraian deskripsi. Hasil penelitian menunjukkan, aspek hukum politisasi bantuan sosial yang dilakukan oleh kepala daerah (petahana atau bukan petahana) dalam tahapan Pilkada, sesuai ketentuan Pasal 71 ayat (1) dan ayat (3) juncto Pasal 73 ayat (1) dan ayat (2) serta Pasal 188 Undang-Undang Nomor 10 Tahun 2016 (UU Pemilihan), dapat berakibat pelanggaran hukum hingga penjatuhan sanksi pidana pemilihan pada pelaku, sanksi administrasi pembatalan pasangan calon kepala daerah (diskualifikasi) oleh KPUD berdasarkan Putusan Bawaslu Provinsi, atau sanksi pelanggaran hukum lainnya yang diatur di luar UU Pemilihan.

Keywords: Desentralisasi, Otonomi daerah, Elit lokal.

INTRODUCTION

A regional head election (Pilkada) with integrity can be seen from the process and results. The two are inseparable, and both are interrelated, determining the quality of democracy. In practice, a poor process will produce poor results, but a good process will produce good results. Good results determine the legality of the appointment and public acceptance of the elected leader, thus supporting social and governmental stability. The process and results of electoral contests are related to the quality of democratic elections in a country.

Regarding democratic elections, Ramlan Surbakti, in Saldi Isra and Khairil Fahmi (2019:26), identifies four parameters for measuring the democratic election process. First, the regulation of each stage of the election implementation contains legal certainty. Second, the regulation of each stage is based on the principles of democratic elections: direct, general, free, secret, honest, and fair. Third, the regulation of the election supervision system is implemented in accordance with regulations. Fourth, the regulation of dispute resolution

mechanisms for all types and forms of election disputes.

Initiating democratic regional head elections, among the processes that must be implemented is taking action against any violations that erode the quality of democracy. This means that any obvious violations, both formal and material, will be promptly and fairly processed to ensure legal certainty, while also providing a deterrent effect for perpetrators and warning those who might attempt to violate. This is because every stage of the contestation process is still marred by various types of violations, including criminal, administrative, ethical, and other violations outside the Regional Election Law.

The fifth wave of regional elections, with 37 provinces and 508 regencies/cities participating, will be held on November 27, 2024. A key area of potential violation during this election is the misuse of social assistance, which regional heads, both incumbent and non-incumbent, tend to exploit for practical political gain. Social assistance is a government program whose planning and distribution are for humanitarian assistance. Social assistance distributed

by regional heads may not be used for practical electoral political gain.

According to Presidential Regulation Number 63 of 2017 concerning the Distribution of Non-Cash Social Assistance, the definition of "Social Assistance" is assistance in the form of money, goods, or services to individuals, families, groups, or communities who are poor, disadvantaged, and/or vulnerable to social risks." The provision of social assistance is a public welfare program. Social assistance is provided to meet and guarantee basic needs and improve the standard of living of recipients.

This function also aligns with the mandate of Presidential Instruction Number 7 of 2014 concerning the Implementation of the Prosperous Family Savings Program, the Indonesia Pinta Program, and the Healthy Indonesia Program to Build Productive Families. The social assistance programs implemented by the government include the Smart Indonesia Program, the National Health Insurance Program, the Family Hope Program, and the Prosperous Rice Social Assistance or Non-Cash Food Assistance.

Social assistance used by regional heads for practical political interests in elections, whether in form or distribution,

by including the vision and mission, image of the regional head and/or self-image, has the potential to be subject to criminal sanctions as regulated in Article 71 paragraph (1) and paragraph (3) in conjunction with Article 73 paragraph (1) and paragraph (2) of Law Number 1 of 2015 concerning the Stipulation of Perppu Number 1 of 2014 concerning the Election of Governors, Regents and Mayors into Law, as last amended by Law Number 6 of 2020 concerning the Stipulation of Perppu Number 2 of 2020 concerning the Third Amendment to Law Number 1 of 2015 concerning Perppu Number 1 of 2014 concerning the Election of Governors, Regents and Mayors into Law (hereinafter referred to as the Election Law). According to Ruslan Husen (2020:339), the politicization of social assistance in regional elections, as a form of election crime, also has the potential to parallel the administrative sanction of disqualification of candidate pairs, as stipulated in the Provincial Elections Supervisory Agency (Bawaslu) Decision. Based on the Provincial Elections Supervisory Agency's Decision, the Elections Commission (KPUD) will follow up by imposing administrative sanctions on incumbents, including disqualification as candidates, or other

legal violations stipulated outside the Election Law.

The prohibition and coercive sanctions imposed on regional heads in distributing social assistance are thus clearly stated. Therefore, the distinction between unlawful actions and actions of regional heads that do not violate the law and are interpreted as implementing statutory orders must be clearly clarified. The distribution of social assistance falls within the authority of the regional government, which is a regional social responsibility. Regional heads have the authority to administer social affairs by distributing social assistance to the community, particularly during natural and non-natural disasters.

The legal aspects in question relate to elements of the politicization of social assistance, which can result in legal violations, including criminal sanctions, administrative sanctions, disqualification, or other legal violations. The politicization of social assistance is an act that will be proven, whether subjective or objective, in the law enforcement process until proven or not, and whether sanctions are imposed.

Based on the above description, the research focuses on the legal aspects of the distribution of social assistance or

other activities similar to social assistance, such as aspiration funds or programmatic politics, which are intended to support the social life of the community, carried out by regional heads or politicians with the aim of gaining support during elections. In short, what are the legal aspects of the distribution of social assistance by regional heads during regional elections.

METHOD

The research method used in this study is Normative Legal Research, which conceptualizes law as norms encompassing values, positive law, and court decisions.

The approaches used include a statutory approach, a conceptual approach, and a comparative approach. The legal materials used in this study include primary, secondary, and tertiary legal materials. After the legal materials were collected, they were processed through editing, systematization, and description.

RESULTS AND DISCUSSION

Politicization of Social Assistance

The politicization of social assistance during the election process greatly benefits incumbents, who can exploit government facilities to create a positive

image among the recipients. This practice is highly detrimental to non-incumbent candidates due to limited access to government facilities. If allowed to continue, it will create unfair competition and potentially undermine free and fair elections.

Furthermore, the politicization of social assistance, especially for electoral purposes, constitutes a corrupt act in the form of abuse of authority. This means that social assistance is intended for those in need, and the exercise of its distribution authority must comply with written legal regulations. Regarding authority, Ridwan HR (2011:108-109) states that although regional heads are granted discretionary authority, in a state governed by the rule of law, there is essentially no freedom in the broadest sense or unlimited freedom. In a state governed by the rule of law, the exercise of authority is subject to legal limitations accompanied by legal accountability for the use of authority.

The politicization of social assistance in practice is similar to the American term "pork barrel." The practice of "pork barrel" has acquired negative connotations, referring to politicians who use state funds for practical political gain rather than for the benefit of the people

they represent. This term refers to expenditures made by politicians to constituents in exchange for political support in the previous election. The goal is to secure their reelection in the next election.

According to Hendri F. Isnaeni (2010), the phrase "pork barrel" has a negative connotation and carries derogatory and demeaning connotations, traced back to the practice of providing salted pork to Black slaves during the Civil War (1861-1865). In this practice, slave owners provided salted pork to Black slaves through a contest. The behavior of legislators seeking government subsidies for practical political gain can be likened to the behavior of slaves competing for pork.

The practice of pork barrel in other countries is called patronage (political contracts). Denmark, Sweden, and Norway refer to it as "election pork," where politicians make promises before an election. In Finland, it's called "sewer politics," referring to national politicians concentrating on local issues. In Romania, it's called "electoral charity." In Poland, it's called "election sausage."

If that's the meaning of pork barrel politics, how is it different from the aspiration funds of members of the House

of Representatives (DPR) and political clientelism in Indonesia? According to Hendri F. Isnaeni, aspiration funds in Indonesia are no different from pork barrels in America. Similarly, in practice, according to Teddy Lesmana (2010), those who propose aspiration funds in the DPR try to use logic, arguing that the program is part of budgetary rights and therefore does not violate legal regulations. Furthermore, aspiration funds are directed to underdeveloped areas and untouched by development. However, do DPR members also need to participate in regulating the technical issues of budget allocation and thus have the right to demand the targets of aspiration funds?

Political clientelism occurs when voters, campaigners, or other actors provide electoral support to politicians in exchange for social assistance or pragmatic material benefits. According to Edward Aspinall & Ward Berenschot (2019:2), these politicians use clientelistic methods to win elections by distributing aid, goods, or cash to voters, both individuals and small groups. In return, they are expected to reciprocate by voting for these politicians. These goods and assistance can take various

forms, from cash envelopes to social assistance.

Political clientelism originated in the patron-client relationship in Southeast Asia, originating from the relationship between landlords and their sharecroppers in society, which spilled over into the political sphere. During difficult times, sharecroppers often turned to the landlords who had traditionally exploited them for assistance. They now transferred that loyalty into formal politics, to trusted associates of landlords, or to young professional bureaucrats and party leaders who had displaced landlords.

Edward Aspinall & Ward Berenschot further explain that political clientelism differs from programmatic politics, in which candidates or parties offer broad policies that benefit many, even entire populations, regardless of their political support during elections.

However, such programmatic politics can be considered clientelistic if they distribute the program, identify beneficiaries based on their loyalty to a particular party or political figure, or based on their votes during elections, and manipulate the rules to ensure that these individuals receive preferential access. Clientelistic politics can provide personal

benefits, such as money from politicians to voters or state resources distributed as a result of a government policy.

Clientelism in Indonesian society occurs most often through distribution, utilizing informal networks rather than through political parties. Patronage flows to voters in two forms: through ad hoc campaign teams formed by candidates, and through formal and informal networks that infiltrate society and influence people's daily lives, such as networks based on religion, ethnicity, friendships, and so on.

Although similar to the practice of pork barrel politics in America, DPR aspiration funds and political clientelism cannot be prosecuted as violations of the law in Indonesia. This is because the criminal prohibition in the Election Law does not categorize it as a prohibited act and is punishable by sanctions. Similarly, social assistance, when it is programmatic in nature, is not considered a violation of the law.

Indonesia, as a country of law, in practice applies the principle of legality in law enforcement. This means that an act cannot be punished unless there is a prior legal provision. A violation of the law is considered if the written regulation

clearly states the prohibition, and violations will result in legal sanctions.

Once again, although the practices of aspiration funds, programmatic politics, and political clientelism are synonymous with acts of reciprocation or the expectation of votes during elections, these activities are not categorized as violations of the law because there is no legal basis prohibiting them. In fact, the legality of the practice is affirmed through regulations that serve as the legal basis for the implementation of both aspiration funds and government programs. Although in practice, social assistance is often politically motivated, it is provided to loyal constituents or to voters whose votes are expected.

So, when is an action considered a violation of the law? When the practice of distributing social assistance by a regional head involves practical political actions, including campaign elements such as invitations and/or stickers identifying prospective or prospective election participants, carried out during the prohibited election period.

There is an element of the perpetrator (the regional head), the prohibited politicization of social assistance, which involves benefiting or harming one of the candidate pairs, and is

carried out within a specific timeframe, namely within 6 (six) months before the date of the candidate pair's determination until the date of the elected candidate pair's determination.

Criminal Penalties for Incumbents

Election law enforcement aims to protect and restore voting rights, both the right to vote and the right to be elected (the right to be a candidate), and to ensure free and fair elections. Therefore, election law enforcement is both corrective and punitive. Corrective means the law enforcement process is aimed at amending or overturning previous decisions, for example in dispute resolution, handling administrative violations, and disputes over election results. Punitive means imposing sanctions on those legally and convincingly proven to have committed legal violations, whether administrative or criminal.

Regarding the use of social assistance by incumbents for the practical political interests of regional head elections, action can be taken for violating the provisions of Article 71 paragraphs (1) and (3) in conjunction with Article 73 paragraphs (1) and (2), and Article 188 of Law Number 10 of 2016 (the Election Law).

Article 71

(1) State officials, regional officials, civil servants, members of the Indonesian National Armed Forces (TNI)/Indonesian National Police (POLRI), and Village Heads or other titles/Lurah (village heads) are prohibited from making decisions and/or taking actions that benefit or harm one of the candidate pairs.

(2) The Governor or Deputy Governor, Regent or Deputy Regent, and Mayor or Deputy Mayor are prohibited from replacing officials 6 (six) months before the date of the candidate pair determination until the end of their term of office, unless they have received written approval from the Minister.

(3) The Governor or Deputy Governor, Regent or Deputy Regent, and Mayor or Deputy Mayor are prohibited from using their authority, programs, and activities that benefit or harm one of the candidate pairs, either in their own region or in other regions, within 6 (six) months before the date of the candidate pair determination until the date of the elected candidate pair determination.

(4) The provisions referred to in paragraphs (1) through (3) also apply to the acting Governor or Acting Regent/Mayor.

(5) If the Governor or Deputy Governor, Regent or Deputy Regent, and Mayor or Deputy Mayor as incumbents violate the provisions as referred to in paragraph (2) and paragraph (3), the incumbent will be subject to sanctions in the form of cancellation as a candidate by the Provincial KPU or Regency/City KPU.

(6) The sanctions referred to in paragraphs (1) through (3) for non-incumbents are regulated in accordance with applicable laws and regulations. Article 73 paragraphs (1), (2), and (5)

(1) Candidates and/or campaign teams are prohibited from promising and/or providing money or other materials to influence election organizers and/or voters.

(2) Candidates found to have committed violations as referred to in paragraph (1) based on a decision by the Provincial Bawaslu may be subject to administrative sanctions in the form of disqualification as candidate pairs by the Provincial KPU or Regency/City KPU.

(5) Imposing administrative sanctions for violations as referred to in paragraph (2) does not waive criminal sanctions.

Article 188

Any state official, Civil Service official, and Village Head or other title/Lurah who intentionally violates the provisions

referred to in Article 71 shall be subject to imprisonment for a minimum of 1 (one) month and a maximum of 6 (six) months and/or a fine of a minimum of Rp600,000.00 (six hundred thousand rupiah) and a maximum of Rp6,000,000.00 (six million rupiah).

An example of politicizing social assistance is the distribution of nine basic food items to the community by attaching the image or picture of the incumbent regional head. Providing social assistance for the purposes of candidacy in regional head elections is a criminal offense and is subject to criminal and administrative sanctions. The administrative sanction imposed is disqualification from the candidate pair by the Provincial or Regency/City General Elections Commission.

The law enforcement process for regional head elections is aimed at achieving justice and legal certainty by technically proving whether there has been a violation and fulfilling the subjective and objective elements of the alleged article. These elements serve as guidelines for all parties involved in the process of taking action against violations, in seeking evidence of violations and proving that violations have occurred through a series of initial

information searches, examinations or clarifications of evidence.

First, the legal subject. Article 71 paragraphs (1) and (3) of the Election Law states that the legal subject of the perpetrator is a regional official, and the regional head, namely the governor or deputy governor, regent or deputy regent, and mayor or deputy mayor as the incumbent. Not only that, handling of alleged violations can be carried out after the incumbent is identified (after the candidate is determined). The stage of candidate determination, which legally changes the status of the regional head to a regional head election participant (incumbent), serves as the basis for calculating the time of the alleged violation.

Second, the candidate pair. A candidate pair is a prospective candidate pair who has met the requirements and been determined as election participants by the local General Elections Commission (KPU). Before the candidate pair is determined, even if there is an alleged violation, no action can be taken. Therefore, election supervisors can only record and continue to investigate to gather and strengthen evidence of the violation. Once the incumbent is determined as a candidate pair, the

process for handling the violation, whether criminal, administrative, or other legal violations, immediately begins.

Third, prohibited acts. These include practical political actions by a person holding public office for the benefit of the election contest, such as using their authority, programs, and activities to benefit or harm a particular candidate pair. The advantage or disadvantage of a candidate pair by an incumbent or non-incumbent is not only directed at the candidate pair within their jurisdiction, but also in areas outside their jurisdiction. Regional government programs and activities constitute efforts to implement government policies based on regional development planning documents, including the RPJMD (Regional Medium-Term Development Plan), RKPD (Regional Work Plan), and APBD (Regional Budget). Therefore, there is no prohibition against regional heads implementing social programs and activities; in fact, it is a mandatory authority for regional heads.

Restrictions on the use of authority exist when regional heads use their authority for practical political purposes, such as politicizing social assistance by garnering sympathy and encouraging the

public to vote for them in the upcoming election. This is evidenced by witnesses who witnessed and heard the distribution of social assistance accompanied by invitations to vote for the person concerned in the election, and/or social assistance being affixed with stickers of the incumbent as the prospective regional head candidate.

Fourth, the time of the act. Prohibited acts must be committed within the six-month period before the candidate pairing is determined until the elected candidate pair is determined. This prohibited period appears to be intended by the legislators to prevent potential contestants from using access to power and government facilities for practical political purposes. This is because during this period, self-image building is deeply ingrained in voters' minds. Any action taken outside the six-month period before the election date automatically prevents law enforcement from taking place.

During the process of handling violations, if the elements of the violation are proven, the consequences will be a violation of the law. This can lead to the imposition of sanctions on the perpetrator in the form of administrative violations, election crime violations, and other legal violations.

a. Administrative Violations

The consequences of politicizing social assistance as part of money politics by an incumbent can result in administrative sanctions, including disqualification of the candidate, in accordance with the Provincial Election Supervisory Agency (Bawaslu) Decision, as stipulated in Article 73 paragraphs (1) and (2) of the Election Law. What if the incumbent is not the incumbent? They are still subject to legal sanctions stipulated in laws outside the Election Law.

The author believes that the sanction of disqualification from being a candidate by the Provincial KPU or Regency/City KPU, as referred to in Article 71 paragraph (5) of the Election Law, has not been met and cannot be applied to the politicization of social assistance, because this provision adheres to a "cumulative" rather than alternative basis. This is indicated by the normative diction "...as referred to in paragraph (2) and paragraph (3)..." The provision on disqualification of candidate pairs only applies to incumbents who violate the law regarding the replacement of officials before the date of the candidate pair's determination until the end of their term of office.

b. Criminal election violations

Violations of the prohibition on politicizing social assistance by incumbents are subject to progressive criminal sanctions, as stipulated in Article 73 paragraph (5) in conjunction with Articles 188 and 190 of the Election Law. Reportable or discovered incidents are those that occurred within the six-month period before the determination of the candidate pair until the determination of the elected candidate pair, with the additional element being actions that benefit or harm the candidate pair.

c. Other legal violations

Other legal violations, as regulated in Article 76 paragraph (1) letters (a) and (d) of Law Number 23 of 2014 concerning Regional Government, state that: "Regional heads and deputy regional heads are prohibited from:

(a) making decisions that specifically benefit themselves, their families, their cronies, certain groups, or their political groups, which are contrary to statutory provisions.

(d) abusing authority for personal gain and/or harming the region they lead."

Another regulation is found in Article 78 of Law Number 27 of 2019 concerning Disaster Management, which states:

"Any person who intentionally misuses the management of disaster relief

resources as referred to in Article 65 shall be punished with life imprisonment or a minimum of 4 (four) years or a maximum of 20 (twenty) years and a fine of at least IDR 6,000,000,000.00 (six billion rupiah) or a maximum fine of IDR 12,000,000,000.00 (twelve billion rupiah)."

This is also stated in Article 3 of Law Number 39 of 1999 concerning the Eradication of Criminal Acts of Corruption, as amended by Law Number 30 of 2002 concerning the Eradication of Criminal Acts of Corruption, that:

"Any person who, with the aim of benefiting himself or another person or a corporation, abuses the authority, opportunity, or means available to him due to his position or position or means available to him due to his position or position which can harm state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and or a fine of at least Rp. 50,000,000 (fifty million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah)."

Sanctions are intended to enforce the law as an instrument to ensure citizen

behavior complies with applicable legal norms. Likewise, the distribution of social assistance as a legitimate and legal programmatic policy by regional heads to any recipient. However, it is important to ensure that it does not constitute a violation of the law and that the social assistance in question is not politicized for the practical political interests of regional head election candidacy.

The distribution of social assistance, aspiration funds, or programmatic policies to support the social life of the community by regional heads or politicians with the aim of gaining support during elections is not inherently a violation of the law. It is considered an unlawful act, specifically violating Article 71 paragraph (3) of the Election Law, when the distribution by regional heads involves practical political actions, such as incorporating campaign elements such as calls to vote and/or stickers of prospective or prospective election participants, interpreted as actions that benefit or harm the candidate pair, and conducted within a period of six months before the election and until the election of the elected candidate pair.

CONCLUSION

The legal aspects of the politicization of social assistance by

regional heads (incumbents or non-incumbents) during the regional elections, in accordance with the provisions of Article 71 paragraphs (1) and (3) in conjunction with Article 73 paragraphs (1) and (2) and Article 188 of Law Number 10 of 2016 (the Election Law), can result in legal violations, including the imposition of criminal sanctions on the perpetrators, administrative sanctions in the form of disqualification of regional head candidate pairs by the Election Commission (KPUD) based on a decision from the Provincial Elections Supervisory Agency (Bawaslu), or other legal sanctions regulated outside the Election Law. Therefore, the government and election organizers should continue to disseminate information and prevent these legal violations, in order to warn all regional heads and acting regional heads against committing violations of the politicization of social assistance. This includes raising awareness among the public about the dangers of pragmatic attitudes and money politics on the quality and legitimacy of the implementation and results of democracy through regional elections.

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