

The failure of the government to undermine the rights of the citizens in the general elections.

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Abstract

The government in this case a State official with authority in the exercise of government administrative powers is obliged to act neutrally and not permitted for Abuse of authority or abuse of power or in French called the *detournement de pouvoir* is one of the acts of deviation of the body / office of administration based on the principle of *exces de pouvoir* (beyond the limits of power) in the concept of rechtsstaat.

State officials who want to campaign and conduct campaigns are obliged to apply for leave and not use state facilities so as not to become potential abuse of authority in their duties.

A State official who has an interest in campaigning and gives promises to the people is not an agreement so it cannot be categorized as a failure. But when a State official that violates the electoral rules and conduct a campaign using state facilities is considered to be detrimental to the state's finances as described in Constitutional Court Law Recital No. 25/UUXIV/2016

Keyword: Government; Campaign; Abuse Of Authority; Benefit Loss;

Human activities are the execution of a clearly defined intention or purpose. Every human action is either feasible or infeasible. When a person is born, they become a legal subject, and as a result, their acts might have legal implications. Because they are legal entities, people have legal obligations and rights.

Legal subjects may hurt each other through their actions, necessitating a rule to govern interactions among them. Article 1365 of the Civil Code stipulates that any action that breaches the law shall provide compensation for the resulting loss. According to Nieuwenhuis, a loss is a decrease in a party's assets as a result of another party's actions that are against the rules¹. Wirdjono Prodjodikoro stated that losses should be understood in a comprehensive manner, encompassing not just financial aspects but also other aspects of human well-being, such as physical, spiritual, and reputational interests.²

Every individual, as a legal entity, possesses rights and duties that are protected by law, including those of government officials as outlined in Article 1, Section 8 of Law Number 5 of 2014 regarding State Civil Apparatus Protocols. Government officials hold specific jobs within the government, whether at the national level or in local areas. C.F. Strong categorises government into two meanings: government broadly and government narrowly defined. Government, in a comprehensive sense, refers to the collective entity comprising executive, legislative, and judicial authorities. This differs from government in the strict sense, which is confined to executive authority exclusively³. State officials consist of individuals who hold positions in the executive, legislative, and judicial branches of government. Government officials are individuals with authority restricted to the executive branch. Instances of state authorities Article 122 of the State Civil Apparatus Law outlines many examples of state officials.

1. Chief Executive and Deputy Chief Executive
2. Chairperson, vice chairperson, and members of the People's Consultative Assembly (MPR);

¹ Nieuwenhuis, Pokok-Pokok Hukum Perikatan, Terjemahan Djasadin Saragi, Surabaya universitas airlangga, 1985, Hal.57

² Wirdjono Prodjodikoro, Perbuatan Melanggar Hukum, Bandung, Hal.20-21

³ C.F. Strong, Modern Political Constitution, London: Sidgwick & Jackson, 1963

3. Chairperson, vice chairperson, and members of the Regional Representatives Council (DPD);
4. Chairperson, vice chairperson, and members of the House of Representatives (DPR);
5. Chairperson, vice chairperson, junior chairperson, and chief justice at the Supreme Court, as well as chairperson, vice chairperson, and judges at all judicial bodies except ad hoc judges;
6. Members of the Constitutional Court, including the Chairman and Deputy Chairman;
7. Members of the Financial Audit Board, including the Chairman and Deputy Chairman;
8. Members of the Judicial Commission, including the Chairman and Deputy Chairman;
9. Chairman and Deputy Chairman of the Corruption Eradication Commission;
10. Ministers and ministerial-level positions;
11. Head of the Republic of Indonesia's foreign representative office with the rank of Extraordinary Ambassador and Plenipotentiary;
12. Governor and vice governor;
13. Regent/mayor and vice regent/vice mayor; and 14. Other government officials specified by law.

Legislative or presidential candidates' promises made to voters during the campaign or at other times do not meet any legal standards. Therefore, in the context of civil law, commitments made for political purposes are not regarded as promises that can be fulfilled by the legal system. Similarly, if an accomplishment is verbally agreed upon and there is a verbal agreement to borrow something in relation to holding an election,.

Political pledges made during a campaign cannot be regarded as legally enforceable agreements under civil law since there is no agreement between two or more parties to do a reciprocal act. But these political pledges don't result in legally binding agreements—rather, they are merely rhetorical attempts to sway and win over people⁴.

Discussion

To comprehend this issue, it is necessary to have a working knowledge of two legal science concepts: unlawful actions (PMH), also known as *onrechtmatige daad*, and unlawful actions by the government (PMHP/OOD), also known as *onrechtmatige overheidsdaad*. A civil law case known as a PMH is distinct from a contract violation. Article 1365 of the Civil Code

⁴ This article was published on SerambiNews.com with the title Beware of Default in Elections, <https://aceh.tribunnews.com/2024/02/02/mewaspadai-wanprestasi-dalam-pemilu>.



regulates PMH. A person's action that causes harm to another person is known as PMH. PMH does not require this, in contrast to default, which occurs when parties are within the parameters of an earlier agreement but neglect to perform.⁵

According to Supreme Court Regulation Number 2 of 2019, ⁶Article 1 Point 4 defines PMHP/OOD as a dispute that includes statutory provisions and a claim to declare a government official's action illegal and/or void, or that it lacks binding legal force and suitable compensation. PMH performed by the government or government representatives is interpreted as PMHP; this is distinct from PMH that is under the purview of civil law.

According to Law No. 30 of 2014 concerning Government Administration and Perma No. 2 of 2019, the lawsuit filed by the prima party is included in Unlawful Acts by the Government (*Onrechtmatig overheidsdaad/OOD*) or PMHP, which is under the jurisdiction of the PTUN. But the PTUN even believed the litigation was beyond its purview. It seems that the Prima Party decided to file a legal lawsuit against the KPU in district court as a result of this PTUN blunder.⁷

The people are not directly bound to the government but are represented by general elections. The sovereignty recognized by Indonesia under the UUD in 1945 is the right of the people to determine their own destiny and the rule of law, because "Article 1 paragraph (2) of the UUD 1945 states that sovereignty is in the hands of people and is carried out" (Amendment of the Constitution). The debate that arose during the district head election (*pilkada*) is closely linked to the ideals of reformation.

Principles of democracy and the supremacy of the law are important for democracies because *pilkada* is one of the forms of democratic reform. This principle is a mandate of the reformation The election of head of district directly in parliament is the result of the demands

⁵ *Kitab Undang-Undang Hukum Perdata [Burgerlijk Wetboek]*, diterjemahkan oleh Subekti dan Tjitrosudibio, (Jakarta: Balai Pustaka, 2014), Ps. 1365

⁶ Indonesia, Mahkamah Agung, *Peraturan Mahkamah Agung tentang Pedoman Penyelesaian Sengketa Tindakan Pemerintahan dan Kewenangan Mengadili Perbuatan Melanggar Hukum oleh Badan dan/atau Pejabat Pemerintahan (Onrechtmatige Overheidsdaad)*, Perma No. 2 Tahun 2019

⁷ Indonesia, *Undang-Undang Tentang Administrasi Pemerintahan*, UU No. 30 Tahun 2014



of reform and the implementation of mandates of reform, but the fact is that the direct election of Parliament along with the direct elections of heads of districts has given rise to many practices that are rather detrimental, on the contrary.

Abuse of power is an act carried out by an official who uses his authority for personal or group interests. The abuse of the post of head of district in the form of a covert campaign by putting certain pressure on the civil apparatus of the state on the institutions he leads to campaign for both executive and legislative seats. Government officials who abuse power often run covert campaigns. It is usually done at the inauguration of the project, since the general election is carried out directly on the Pilkada of the candidate head of the district.

The opening of the mosque or the inaugural church of these government officials will often come. It can be categorized as indirect campaigns; leakage of Bansos funds and covert campaigns are "abuse of power" in a gentle way. The existence of an incumbent, or, in other words, often referred to as an incubator in the electoral process, is indirectly in a less favorable position.

Those in power who commit electoral fraud through abuse of power are always at risk of facing detention. Forms of abuse of governmental authority in the conduct of elections are acts that violate the promise and purpose of the Constitutional Trust, namely the introduction of the Basic Law of the Republic of Indonesia in 1945, namely to advance the general well-being. The objective of the formation of the Government of the United States of the Republic of Indonesia is (1) protecting the entire nation of Indonesia and the entire bloodshed of Indonesia; (2) enlightening the life of the nation; and (3) following the world order. Government in terms of organizing mandatory government to be guided by Law No. 30 of 2014 on Government Administration (State Gazette of the Republic of Indonesia No. 292 of 2014) explaining "that in order to improve the quality of government administration, bodies and/or government officials in the exercise of authority must refer to the general principles of good governance and based on the provisions of the regulations of the legislation."⁸

⁸ HR. Ridwan. (2006), *Hukum Administrasi Negara*. Jakarta: RajaGrafindo Persada, P. 376 sebagaimana dikutip oleh Firna Novi Anggoro "Pengujian Unsur Penyalahgunaan Wewenang

The Government or a State official who uses the State facilities to support one of the candidate pairs in the election is considered an element of abuse of authority therefore for the State official wishing to conduct a campaign is compulsory to meet some conditions, namely Article 281 para. (1) The Election Act stipulates that the election campaign involving the President, Vice President, Minister, Governor, Vice-Governor, Chancellor, Deputy Chancellor, Mayor, and Deputy Mayor must comply with the provision not to use the facilities in their office, except for the security facilities for State officials as stipulated in the provisions of the regulations of the legislation; and to go on leave outside the State's jurisdiction.

For the Minister who has an interest in the election or who is going to conduct a campaign, it is mandatory to apply for a leave from the President through the Secretary of State, whose application for such leave is submitted no later than 12 working days before the conduct of the campaign, except on public holidays, because it includes free days for conducting the campaign. Structural and functional officials of the civil apparatus of the state must refrain from engaging in activities that show bias against voters, as per Article 283 of the Election Act. Before and after the campaign.

State officials who conduct campaigns outside the holidays and make policies and decisions that are beneficial or even have a specific purpose can potentially abuse authority. If the President wants to campaign, then the President is forbidden to use state facilities.

1. Examples of means of mobility include service vehicles.
2. office buildings, office homes, and office houses owned by the government, the provincial government, and the district or city government, except for remote areas whose implementation must be carried out in accordance with the principle of justice;
3. The government-owned office facilities, regional radio and code/telecommunications, and other equipment in the province/district/city;
4. Other facilities funded by either the State Purchasing Income Framework or the Regional Purchase Income Budget.



State officials who violate electoral regulations and conduct campaigns using state facilities so that they are considered to be damaging to the state's finances as described in Constitutional Court Law Recital No. 25/PUUXIV/2016 Paragraph 3.10.4 state that "the measure of damaging the state's finances is no longer understood as a potential loss but must be understood as actually occurring or actual loss in order to be applicable in the criminal offence of corruption."

Conclusion

Indonesia's government administration is governed by the State Civil Apparatus Protocols, which outline the rights and duties of government officials. These officials hold specific positions within the government, including the Chief Executive, Deputy Chief Executive, and members of the People's Consultative Assembly, Regional Representatives Council, House of Representatives, Supreme Court, Constitutional Court, Financial Audit Board, Judicial Commission, and Corruption Eradication Commission.

In civil law, political pledges made during campaigns are not considered legally enforceable agreements, as they are rhetorical attempts to win over people. Legislative or presidential candidates' promises made during campaigns do not meet legal standards. The Supreme Court Regulation Number 2 of 2019 defines PMHP/OOD as a dispute that includes statutory provisions and a claim to declare a government official's action illegal or void, or that it lacks binding legal force and suitable compensation.

The Prima Party filed a legal lawsuit against the KPU in district court due to a PTUN blunder, which led to the Prima Party filing a legal lawsuit against the KPU in district court. The State Civil Apparatus Protocols and the Corruption Eradication Commission play crucial roles in ensuring the integrity and fairness of Indonesia's government administration

Indonesia's government administration is guided by the Constitutional Trust, which was introduced in 1945 to advance the general well-being of the nation. The election of head of district directly in parliament is a result of demands for reform and implementation of mandates of reform. However, direct elections of Parliament and heads of districts have led



to many practices that are detrimental to democracy. Abuse of power is an act carried out by an official who uses their authority for personal or group interests, such as covert campaigns or leakage of Bansos funds.

The objective of the formation of the Government of the United States of the Republic of Indonesia is to protect the entire nation, enlighten the life of the nation, and follow the world order. To improve the quality of government administration, bodies and officials must refer to the general principles of good governance and based on the provisions of the legislation.

State officials who use state facilities to support one of the candidate pairs in the election are considered an element of abuse of authority. They must comply with certain conditions, such as not using facilities in their office, going on leave outside the state's jurisdiction, and refraining from activities that show bias against voters. State officials who violate electoral regulations and conduct campaigns using state facilities are considered to be damaging to the state's finances, as described in Constitutional Court Law Recital No. 25/PUUXIV/2016 Paragraph 3.10.4.